IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, *et al.*, Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. 2016-CV-09-3928 Judge James A. Brogan **Plaintiffs' Motion for Class-Action Certification and Appointment of Class Counsel under Civ.R. 23**

I. Introduction

Plaintiffs Member Williams, Thera Reid, Monique Norris, and Richard Harbour hereby move, under Civ.R. 23, for certification of three classes of individuals who fell victim to three related fraudulent schemes run by the Defendant law firm Kisling Nestico & Redick, LLC ("KNR"), its owners, Defendants Alberto R. Nestico, Robert R. Redick, and the Defendant healthcare providers Sam Ghoubrial, M.D., and Minas Floros, D.C. These schemes were all devised to allow the Defendants to take advantage of KNR's high-volume, high-advertising business model by which they systematically prioritize their own financial interests—particularly, in driving a greater number of clients through their highly routinized system—over the interests of the clients. Thus, Plaintiffs seek certification of the following classes:

- KNR clients who paid exorbitantly inflated prices for medical treatment and equipment provided by KNR's "preferred" healthcare providers pursuant to a price-gouging scheme by which the clients were pressured into waiving insurance benefits that would have otherwise protected them;

- KNR clients charged for a sham narrative fee that KNR paid as a kickback to select chiropractors as compensation for referrals and participation in the price-gouging scheme; and

- KNR clients who had a bogus "investigation" fee deducted from their settlements to pay so-called "investigators" whose job was primarily to chase new clients down to sign them up before they could sign with a competing firm.

The Plaintiffs can satisfy all the prerequisites to class certification under Civ. R. 23. Each of the proposed classes will seek recovery based on "standardized practices and procedures" of KNR that afflicted all of its members. *Cope v. Metropolitan Life Ins. Co.*, 82 Ohio St.3d 426, 437, 1998-Ohio-405, 696 N.E.2d 1001. And each class asserts "fraud [claims] that involve a single underlying scheme and common misrepresentations or omissions across the class [that] are particularly subject to common proof." *Carder Buick-Olds Co. v. Reynolds & Reynolds*, 148 Ohio App.3d 635, 2002-Ohio-2912, 775 N.E.2d 531, ¶ 47 (2d Dist.) citing *Cope* at 432. The Court can thus adjudicate, in a single ruling, the validity of each class of claims for all of the putative class-members. The class-action mechanism exists for this very type of case.

As set forth fully below, the Court should certify the three classes at issue. It also should appoint the undersigned attorneys from the Pattakos Law Firm LLC and Cohen Rosenthal & Kramer LLP as class counsel pursuant to Civ.R. 23(F). These attorneys have demonstrated their capability and commitment to provide exemplary representation to the class.

II. Statement of Facts and Summary of the Three Putative Classes

KNR is a high-volume personal-injury law firm, or, "settlement mill," that handles thousands of client matters annually pursuant to a "take all comers" business model—driven by a massive advertising budget and extremely aggressive solicitation practices—that places the firm's interests fundamentally at odds with those of its unwitting clients. *See* **Exhibit 1**, Affidavit of Nora Freeman Engstrom.[1]

As discussed below, the well-documented structural flaws of the "settlement mill" model—mainly, (1) the conflicting incentives created by contingency-fee billing, where it is in the attorneys'

[1] The exhibits to this motion, denoted as "attached," herein, and which amount to a combined file size of 29.3 MB, have been contemporaneously filed in four separate documents with the Clerk of Courts, whose system can only accept documents up to 8 MB in size. These exhibits are also accessible at https://thepattakoslawfirmlcc.box.com/s/b8cffkr3o1je5eyfx3h758xpec643ui8

short-term interest to secure the maximum fee with the minimum expenditure of time and effort, combined with (2) a massive advertising budget that relaxes the attorneys' need to maintain a good reputation to generate business, thus reducing the long-term costs of self-dealing—have not only gone unchecked by the KNR firm, they have been exploited by the Defendants in what has been described by former KNR attorneys as a "race to the bottom." Petti Tr. 42:8–24;[2] *See also*, **Ex. 1**, Engstrom Aff.

This business model, and KNR's need to sustain it, has given rise to the unlawful quid-pro-quo relationships with the Defendant healthcare providers that are at the heart of this lawsuit, and by which one provider alone, Defendant Sam Ghoubrial M.D., has collected nearly eight-million dollars ($8,000,000.00) from KNR client' settlements since approximately 2011. Ghoubrial Tr. 11:2–12:7; 11:2–12:7; 19:19–20:4; 21:24–25:21; 175:10–176:6, Ex. 5.[3]

Specifically, to sustain the firm's ever growing need to routinize its procedures and continue to drive a steady stream of new clients into its pipeline, as well as its ever growing incentive to inflate medical bills (and, thus, attorneys' fees) on the low-value soft-tissue cases it predominantly handles, the firm relies on its relationships with these providers whose interests, along with the firm's, are systematically and fraudulently prioritized over those of the firm's clients.

The misalignment of interests inherent in KNR's business model is at the root of all three fraudulent schemes at issue:

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[2] Excerpts of the deposition testimony of former KNR attorney Gary Petti that is cited in this motion are attached as **Exhibit 2**. The full transcript of this testimony and the exhibits thereto have been separately filed and made part of the record. Where an "**Exhibit**" or "**Ex**." is noted in boldfaced type in this motion, it is attached as an exhibit to this motion. Where exhibits, or "Exs." are herein noted in regular type, it is to denote exhibits to the deposition transcript, affidavit, or other document referenced in the immediately prior citation.

[3] Excerpts of the deposition testimony of Defendant Sam Ghoubrial, M.D. that is cited in this motion are attached as **Exhibit 3**. The full transcript of this testimony and the exhibits thereto have been separately filed and made part of the record.

A. KNR operates a high-volume settlement mill whose advertising-dependent "take all comers" business model places the firm's interests fundamentally at odds with those of its unwitting clients.

High-volume personal-injury firms like KNR—better described as "settlement mills"—are a new phenomenon in American law, made possible by the 1977 U.S. Supreme Court decision in *Bates v. State Bar of Arizona* which invalidated state bans on attorney advertising as incompatible with the First Amendment. **Ex. 1**, Engstrom Aff., ¶ 20–¶ 21 citing *Bates v. State Bar of Arizona*, 429 U.S. 1059, 97 S.Ct. 782, 50 L.Ed.2d 775 (1977). According to the leading scholar on settlement mills, Professor Nora Freeman Engstrom of Stanford University, "no development in the legal services industry has been more widely observed and less carefully scrutinized than the emergence of these firms."

1. KNR's business model epitomizes that of a settlement mill, where the practice of law is approached as a business, rather than a learned profession, and efficiency and fee generation trump process and quality.

Having "analyzed nearly a dozen high-volume personal-injury law firms, interviewed nearly fifty attorney and non-attorney personnel, and reviewed tens of thousands of pages of documentary evidence (including records from legal malpractice lawsuits and lawyer disciplinary proceedings)," Professor Engstrom has found that these firms embody the following characteristics:

> Settlement mills are: (1) high-volume personal-injury law practices, that (2) engage in aggressive advertising from which they obtain a high proportion of their clients, (3) epitomize "entrepreneurial legal practices," and (4) take few, if any, cases to trial.
>
> In addition to these defining characteristics, settlement mills tend to, but do not always: (5) charge tiered contingency fees; (6) fail to engage in rigorous case screening and thus primarily represent accident victims with low-dollar (often, soft-tissue injury) claims; (7) fail to prioritize meaningful attorney-client interaction; (8) incentivize settlements via mandatory quotas imposed on their employees or by offering negotiators awards or fee-based compensation; (9) resolve cases quickly, usually within two-to-eight months of the accident; and (10) rarely file lawsuits.

Ex. 1, Engstrom Aff., ¶ 8–¶ 9.

Professor Engstrom has reviewed the depositions of the KNR firm's owner, Defendant Alberto R. Nestico, as well as four former KNR attorneys and managers, which leave no doubt that "KNR qualifies as a 'settlement mill' as [she] has defined and analyzed that term." *Id.* ¶ 10. As Engstrom has summarized,

1. KNR handles thousands of cases each year, and the firm's individual lawyers juggle extraordinary case volumes, up to "around 600" cases at any given time; Nestico Tr. 134:20–136:4, 137:13–23; Phillips Tr. 28:9–17; Horton Tr. 210:8–21; 225:2–4;[4]

2. KNR engages in aggressive advertising, with most of its business coming to the firm from advertising and referrals from healthcare providers as opposed to from traditional sources (attorney referrals or client word-of-mouth); Petti Tr. 85:24–88:4; id. 19:19–25; Phillips Tr. 19:16–25; 112:14–113:13; Lantz Tr. 19:7–14; Nestico Tr. 234:3–7;

3. KNR epitomizes an "entrepreneurial law practice," whereby the practice of law is approached as a business, rather than a learned profession, efficiency and fee generation trump process and quality, and signing up clients, negotiating with insurance adjusters, and brokering deals is prioritized over work that draws on a specialized legal education; Lantz Tr. 283:2–284:1 (explaining that, "[t]o meet the quotas . . . you couldn't spend that much time" and estimating that each case received "no more than five hours" of attorney time "and that might be generous"); Petti Tr. 87:2–87:3; accord Horton Tr. 205:19–20 (describing KNR as "an efficient business for sure"); see also Petti Tr. 193:20–22 ("[M]ost of those cases really settle themselves. Again, like I said earlier, there's very little legal stuff going on.").

4. KNR takes comparatively few cases to trial; Petti Tr. 27:4–12 (recalling that, during his time at the firm, none of his cases went to trial); Horton Tr. 222:1–7; (recalling that, of the cases he handled while at the firm, only one ended up going to trial); *accord* Lantz Tr. 279:6–9 ("We were just encouraged—you get more money in pre-litigation or you get more money settling the case than you do going to trial.");

5. The firm charges clients via a contingency fee, and requires clients to "advance litigation expenses" of approximately $2000 if a client insists on taking a case to trial.; Nestico Tr. 33:25–34:4 (explaining that the firm's billing is "99 percent . . . [i]f not 100 percent" contingency-based); Lantz Tr. 363:16–25, 365:18–366:11–12 (describing the threatened $2000 fee as "our way to get them to take settlements"); *Id.* 503:4–23 (further discussing how the obligation to front $2000 in litigation expenses was strategically used to dissuade clients from taking claims to trial);

6. The firm does not engage in rigorous case screening, accepts nearly every case that comes

[4] Excerpts of the deposition testimony of Defendant Alberto R. Nestico, the founder and sole-owner of the KNR firm, and former KNR attorneys Kelly Phillips, Robert Horton, and Amanda Lantz that is cited in this motion are attached as **Exhibits 4–7**, respectively. The full transcripts of this testimony and the exhibits thereto have been separately filed and made part of the record.

through the door, and primarily represents clients with low-dollar claims and minor soft-tissue injuries; Horton Tr. 220:16–23; *accord* Phillips Tr. 36:4–13; 40:6–19, quoting Nestico ("I want them all"); Petti Tr. 26:2–10 (recalling that the "typical case settled for less in terms of fees than $2000"); Lantz Tr. 279:4–9 ("I mean they were low value cases."); Phillips Tr. 36:14–37:24; Lantz Tr. 157:6–10; 434:3–8;

7. KNR does not prioritize meaningful attorney-client interaction, and instead encourages "persuasive tactics" to "encourage[] clients "to settle"; Lantz Tr. 153:13–16 ("[O]n the volume that we were dealing with, you can't differentiate between cases. You don't see your clients half the time."); *Id.* 113:15–21 ("They wanted – even when the cases got to litigation here, all of them settle, regardless if you had to shove the settlements down the client's throat ... ."); *Id.* 363:16–25; Petti Tr. 21:18–25;

8. KNR imposes quotas on its attorneys, requiring them to generate a certain sum (typically, $100,000) in fees per month on penalty of probation or termination, and basing compensation on the total fees generated; Phillips Tr. 28:18–29:12; Petti Tr. 21:18–22:15 ("I cannot think of anything else that they ever said other than generate fees. And the goal was $100,000 a month and you've got to meet the goal."); Lantz Tr. 55:17–56:3; 60:5–9 ("I mean I would be to the point of tears some months because I was so worried I wasn't going to hit the 100 grand goal."); Phillips Tr. 33:10–33:18 ("[Y]ou got paid percentages, based on how many fee dollars you came up with. Then, once you hit certain markers in fee dollars during the year, that percentage would go up."); Horton Tr. 203:23–25; Nestico Tr. 61:5–16; 148:8–154:10;

9. Finally, and accordingly, KNR rarely files lawsuits. *See* Lantz Tr. 282:20–283:1 (estimating that, of her cases, approximately 5% went into litigation); Petti Tr. 27:4–12 (recalling that, of his cases, "less than five percent" ever even went to the litigation department); Lantz Tr. (*Id.* 113:15–21 "[A]ll of them settle ... .]").

Id. ¶ 11–¶ 19.

While KNR's embodiment of these factors is not necessary to establish Plaintiffs' claims, nor is it dispositive of them, it both predicts and explains the fraudulent schemes at issue.

2. KNR's "settlement mill" business model places its interests fundamentally at odds with those of its clients.

Until Professor Engstrom began studying settlement mills late last decade, "these firms had not been the subject of any serious study, or even significant commentary," due in part to their recent development in the wake of the 1977 *Bates* decision. *Id.* ¶ 20–¶ 21.

Thus, while the structural flaws of this model are predictable and easy to understand, they have only recently become subject to scrutiny.

a. A high-volume, high-advertising business model reduces the need for an attorney to maintain a good reputation, and thus reduces the long-term cost of economic self-dealing.

For example, as Professor Engstrom has explained, "[a]dvertising works well for settlement mills precisely because these firms do not make a significant investment into each matter." *Id.* ¶ 22. Because "little time or effort will be expended" on each case, settlement mills can afford to represent clients with small or borderline claims that other firms might reject as unprofitable." *Id.* This, in turn, relaxes the need to expend effort on screening processes. *Id.*

More troubling, a high-advertising high-volume business model allows settlement mills to "make an end-run around the 'reputational imperative.'" As Engstrom has explained, "the 'reputational imperative' describes the fact that most personal injury lawyers must maintain a good reputation among past clients and fellow practitioners in order to obtain referrals and thus generate future business." *Id.* ¶ 23. Thus, "for the vast majority of lawyers, a good reputation is the cornerstone of—and a prerequisite to—financial success," and many lawyers will maximize profits over the long haul if they take their time, do quality work, and obtain full value for their clients." *Id.* ¶ 24. By contrast,

> [i]f an attorney obtains the majority or vast majority of his business via paid advertising, rather than by referrals or word-of-mouth, he need not have a sterling reputation among fellow practitioners or past clients. He requires only a big advertising budget and a steady supply of unsophisticated consumers from which to draw.

Id. ¶ 25. Thus, "aggressive advertising reduces the long-term cost of economic self-dealing." *Id.*; *See also id.* ¶ 26–¶ 27; ("[S]ettlement mills ... tend to represent individuals who are poor, uneducated, and/or who belong to historically disadvantaged ethnic and racial minority groups); *accord* Nestico Tr. 477:11–25 (explaining that "a lot" of KNR's clients come from lower socioeconomic backgrounds); Horton Tr. 432:6–18 ("We had a lot of African-American clients ... ."); Petti Tr. 172:12–15; Lantz Tr. 192:13–16 (explaining that the majority of KNR's clients "don't have the

network of family lawyers that they would refer to").

b. It is financially more profitable for a settlement mill to handle a mass of small claims with a minimum expenditure of time on each than it is to treat each as a unique case and work for the maximum possible recovery for each client.

Compounding this problem is the manner in which settlement mills tend to exploit the misaligment of incentives inherent in contingency-fee billing, whereby a lawyer unchecked by the reputational imperative will be more included to spend as little effort as possible on any given case in an effort to maximize profits. More specifically,

> t]he problem is as follows: Clients who have agreed to pay a flat contingency fee are indifferent to incremental additional expenditures of attorney time and effort. While clients do bear some additional direct costs as a case progresses (such as court costs, travel costs, expert witness fees, and the like), from the client's perspective, attorney time is costless: The more of it the better. It is in the attorney's short-term economic interest, meanwhile, to secure the maximum fee with the minimum expenditure of time and effort. To accomplish this goal, attorneys have an incentive to invest in a claim only up to the point at which further investment is not profitable for the firm—a level that may be far below the investment needed to produce the optimal award for the client.

Id. ¶ 32. Thus, "[p]articularly when the plaintiff's injury is modest and the potential upside is limited, rather than squeezing every dollar out of every case, it is in an attorney's short-term financial interest to seek a high volume of cases and quickly process each, expending minimal time and resources on case development." *Id.* Or, as another scholar has explained, "[i]t is financially more profitable to handle a mass of small claims with a minimum expenditure of time on each than it is to treat each as a unique case and fight for each dollar of the maximum possible recovery for the client." *Id.*, citing F.B. MacKinnon, CONTINGENT FEES FOR LEGAL SERVICES: PROFESSIONAL ECONOMICS AND RESPONSIBILITIES 198 (1964).

Quotas, as imposed by KNR on its attorneys, tend to "exacerbate the above dynamic by further encouraging line-level attorneys to settle cases quickly, even when the settlement may not be in the individual client's best interest." *Id.* ¶ 33; *See also* Section II.A.1., above, quoting, *inter alia*, Petti Tr. 21:18–22:15 ("I cannot think of anything else that they ever said other than generate fees. And the goal was $100,000 a month and you've got to meet the goal."); Lantz Tr. 55:17–56:3; 60:5–9 ("I mean I would be to the point of tears some months because I was so worried I wasn't going to hit the 100 grand goal.").

c. The settlement mill model incentivizes "medical buildup," the practice of seeking unnecessary treatment to inflate a Plaintiffs' claimed damages.

Consistent with the incentives to resolve cases with a minimal amount of effort, settlement mills typically resolve their cases based on highly standardized and routinized procedures, keyed largely to "formulas, typically based on lost work, type and length of treatment, property damage, and/or medical bills." *Id.* ¶ 36. "This, in turn, incentivizes unscrupulous plaintiffs' lawyers to promote 'medical buildup,' *i.e.*, the practice of seeking extra, unnecessary medical treatment to inflate a plaintiff's claimed economic loss." *Id.* ¶ 37.

3. The misaligned interests inherent in KNR's business model have played out in predictable ways, giving rise to the fraudulent schemes at issue in this lawsuit.

At his deposition, Nestico could not even acknowledge the basic misalignment of interests inherent in contingent-fee billing, let alone explain any protective measures the firm had taken to ensure its clients weren't exploited by its high-volume model. Nestico Tr. 141:3–144:14. This is, perhaps, unsurprising given the degree to which the firm's clients represent little more than grist for the KNR mill. As the voluminous evidence detailed below shows:

1. The incentive for medical build-up and the corresponding need to continue to drive a steady stream of clients through its model has caused KNR to enter quid pro quo relationships with providers who trade referrals with the firm and conspire to collect exorbitant rates from the clients for healthcare (Class A: The price-gouging class);

2. The firm further fuels its model by diverting client funds in the form of a fraudulent "narrative fee," which functions as a kickback to its "preferred" chiropractors as payment for sending KNR cases and participating in its price-gouging scheme (Class B: The narrative-fee class); And,

3. KNR employs a team of so-called "investigators" whose primary job is to chase down potential clients as quickly as possible to keep them from signing with the firm's competitors, and for whose work the client's are fraudulently charged (Class C: The investigation-fee class); And,

Thus, KNR's settlement-mill model has both required and sustained all three sets of claims alleged in this suit, each of which involve thousands of the firm's current and former clients, and thus, naturally, "common misrepresentations or omissions across the class [that] are particularly subject to common proof." *Carder Buick-Olds Co.*, 148 Ohio App.3d 635, ¶ 47.

B. To exploit and sustain its settlement mill, KNR conspires with its "preferred" medical providers to defraud its clients with a price-gouging scheme for healthcare that the clients are pressured to accept (Class A: The price-gouging class).

The continued need to drive a steady supply of new clients to the firm while simultaneously ensuring its profitability as its volume increases has resulted in a scheme whereby the KNR conspires with its "preferred" medical providers to solicit car-accident victims and then overcharge them for health care that would or should have otherwise been covered by their health-insurers. As discovery in this case has revealed, Defendants leverage KNR's massive advertising budget with their quid-pro-quo relationships, abusing their fiduciary positions to enrich themselves by,

1) charging exorbitant and unconscionable rates for medical care, medical supplies, and chiropractic care, that Defendants Ghoubrial and Floros administered in systematic disregard for less expensive and less invasive modes and sources of treatment;

2) at the expense of thousands of their captive and socioeconomically disadvantaged clients, many of whom were unlawfully solicited by KNR through its network of "preferred" chiropractors, including Defendant Floros, who, with the KNR firm, would send the clients to Defendant Ghoubrial and direct them to accept his treatment

3) and who were coerced by the law firm and healthcare providers, solely for the lawyers' and providers' financial benefit, to forgo coverage and other benefits that would otherwise have been provided by the patients' health-insurance carriers;

4) where the law firm and providers knew that the defendants' auto-insurance carriers, who paid the patients' personal injury settlements from which the providers' bills were satisfied, viewed the providers' treatment as fraudulent and unworthy of compensation;

5) where the law firm would nevertheless ensure, to sustain the quid pro quo relationship with the providers and a steady stream of referrals, not only that its clients would continue to treat with these providers, but that the providers were paid a disproportionately high percentage of their inflated bills, at a higher rate than the clients' health insurers would have ever paid;

6) and where the law firm's attorneys understood, based on their conversations with the firm's owner, Defendant Rob Nestico, that Nestico did not care whether defendants' auto-insurers disfavored treatment from KNR's so-called "preferred providers," or even viewed it as outright fraudulent, because the firm would make up for it by continuing to drive a higher volume of clients with the assistance of these providers.

As noted above, Defendant Ghoubrial has admitted that he alone has collected approximately $8,000,000.00 from KNR clients' settlements since 2011 through this scheme, which he runs as a side job, in addition to owning "Wadsworth's largest primary care practice" and also treating patients in a "separate nursing home business." Ghoubrial Tr. 11:2–12:7; 11:2–12:7; 19:19–20:4; 21:24–25:21; 175:10–176:6, Ex. 5. The details of Defendants' price-gouging scheme are set forth fully below.

1. KNR and the Defendant healthcare providers have developed unlawful quid-pro-quo relationships whereby they trade referrals and conspire to solicit car-accident victims into their price-gouging scheme.

In addition to its massive direct-advertising budget that is believed to be in the millions of dollars, annually,[5] KNR also conspires with a network of chiropractors who unlawfully solicit car-accident victims on the firm's behalf.

The chiropractors, including Defendant Minas Floros, D.C., employ telemarketers who cold-

[5] *See, e.g.*, Petti Tr. 85:24–88:4; Phillips Tr. 18:4–10; 19:16–25; 112:14–113:13; Nestico Tr. 234:3–7; 258:24–259:11; and Lantz Tr. 97:1–98:–6 (discussing that the investigator fee the firm charged to its clients helped cover marketing costs).

call victims of recent auto-accidents, using information from publicly available crash reports. *See* Petti Tr. 62:17–24; 258:9–15; Lantz Tr. 298:19–300:19; Phillips Tr. 222:14–17; **Exhibit 8**, Affidavit of Named Plaintiff Thera Reid, ¶ 2; **Exhibit 9**, Affidavit of former KNR client Taijuan Carter, ¶ 2. Affidavit of former KNR client Chetoiri Beasley, ¶ 2; **Exhibit 10**, The chiropractors then promise the car-accident victims a free consultation, and offer a free ride to their clinic. **Ex. 7**, Reid Aff., ¶ 2. The clients are then typically picked up by a van that transports them to the chiropractor's office. *Id.*, ¶ 3.

At the first appointment with the chiropractor, a representative of the office advises the car-accident victims that they need an attorney, and that the chiropractor knows a good law firm "who we work with." *See* Phillips Tr. 48:24–49:11; Petti Tr. 63:2–18; **Ex. 8**, Reid Aff., ¶ 4; **Ex. 9**, Carter Aff., ¶ 3; **Ex. 10**; Beasley Aff., ¶ 3. The clients are provided with a packet of paperwork at the chiropractors' office that includes KNR's contingency-fee agreement and a letter of protection or "medical lien" that authorizes the providers to collect the full amount of their bill from the clients directly, or from their accident settlement, as opposed to from the clients' health insurance providers. **Ex. 8**, Reid Aff., ¶ 4–¶ 5; **Ex. 9**, Carter Aff., ¶ 4; **Ex. 10**, Beasley Aff., ¶ 4. In turn, if the clients come to KNR directly, the firm immediately directs them to treat with one of the so-called "preferred" chiropractors, where they will sign the same medical lien, which sometimes includes the law firm's signature. **Exhibit 11**, Affidavit of Named Plaintiff Monique Norris, at ¶ 4.

The record is replete with evidence showing that KNR obsessively tracks both its outgoing referrals and referral sources for each client, and constantly dictates specific orders to its attorneys and staff as to which chiropractors should receive referrals at any given time. The evidence shows that these instructions are based primarily on the firm's need to maintain its quid pro quo relationships with the chiropractors, and are keyed to the number of clients the chiropractors have

referred to KNR. In other words, if a certain chiropractor has referred KNR a certain number of clients, KNR will refer a proportionate number of its clients to that provider. For example:

- On November 15, 2012, Nestico emailed KNR staff stating: "Please make sure to refer ALL Akron cases to ASC [Defendant Floros's Akron Square Chiropractic clinic] this month. We are 30-0." Gobrogge Tr., 272:5–12, Ex. 29.[6] *See also* Petti Tr. 47:25–48:16, Ex. 7 (Nestico's statement that "[w]e are 30-0" meant that ASC had referred KNR 30 cases that month while KNR had not yet referred any clients to ASC);

- On October 17, 2012, KNR operations manager Brandy Gobrogge wrote to all KNR pre-litigation attorneys: "I just noticed that we've sent 2 cases to A Plus when these cases could've gone to Shaker, who sends us way more cases. I've sent this email three times now, please note this … ." Gobrogge Tr., 249:3–9, Ex. 22.

- On July 12, 2013, Gobrogge instructed KNR attorney Rob Horton to send a client to Akron Square, even though another chiropractic clinic known to the firm, Cain chiropractic, was located closer to the client's home, because, according to Gobrogge, "Cain doesn't send us shit!" Gobrogge Tr. 264:9–24, Ex. 26.

Dozens of emails are in accord. *See e.g.*, Gobrogge Tr. 134:1–135:1, Ex. 8; 225:7–226:8, Ex. 17; 229:14–230:7, Ex. 18 ("I work hard to maintain a close relationship with chiropractors and I am in contact with most of them several times a day."); 238:1–16, Ex. 19; 239:6–24, Ex. 20 ("Referrals are not up for negotiation."); 252:8–253:5, Ex. 23 ("Please do not send any more clients [to A Plus Injury] this month. We are 6 to 1 on referrals."); 254:17–255:25, Ex. 24; 352:16–353:6, Ex. 45 ("PLEASE make sure you are calling the chiro and scheduling the appointment. This has been discussed before."); 364:7–365:3, Ex. 47 ("if you do an intake and the person already has an appointment with a chiropractor we do not work with, either pull it and send to one of our doctors or call the chiropractor directly. You MUST do this on all intakes, otherwise the chiropractor will pull and send to one of their attorneys!"); 369:23–370:16, Ex. 48 ("When doing an intake, just [because the client] tells you they are treating with [a primary care physician] doesn't mean you shouldn't refer to a chiro.").

[6] Excerpts of the deposition testimony of KNR's operations manager, Brandy Gobrogge, that is cited in this motion are attached as **Exhibit 12**. The full transcript of this testimony and the exhibits thereto have been separately filed and made part of the record.

And testimony from former KNR attorneys leaves no doubt as to the quid pro quo nature of the relationships. Former KNR attorney Ms. Lantz, who at one point was the longest tenured KNR-attorney working in the firm's Columbus office apart from the office's managing partner, Paul Steele, testified that it was her "explicit" understanding that the firm maintained such a relationship with the chiropractors at the Town & Country Chiropractic clinic, including its owner Nazreen Khan:

> [W]e need to keep Town & Country happy and we need to send them one for every three they send us. So [Paul Steele] would track it throughout the month and say, hey, we've sent over – halfway through the month he would say, gosh, we've sent over 50 this month so far, we're matching Kahn one to one, so we can just chill out and send [cases] to other chiropractors.

Lantz Tr., 451:7–452:19; 46:22–25 ("[T]he agreement was for every three that Khan sends us, we had to send at the Columbus office at least one back to her."); *See also* Petti Tr., 47:25–48:16, Ex. 7; Phillips Tr. 373:14–18; 374:2–4 ("The only thing I can unequivocally testify to is that I was instructed to send all [Columbus-office] cases to Town & Country.").

Additionally, KNR dictated its chiropractor referrals based on the type of promotional material by which the client was solicited by the firm. Numerous documents, as well as testimony from Gobrogge and Nestico, confirm that clients were sent to certain chiropractors depending on whether the client received a "red bag" of promotional material at their home. For example, all red bag referrals in Akron were sent to Defendant Floros of Akron Square. *See, e.g.*, Gobrogge Tr. 385:1–19; 387:7–388:18, Ex. 52 ("ALL RED BAG REFERRALS NEED TO GO TO AKRON SQUARE."); 388:22–389:18, Ex. 53 ("Please make sure you do not send a delivery referral to [Rolling Acres or Summit Injury] though … these only go to ASC."); Nestico Tr., 270:14–271:3, Ex. 38 ("Today we sent 3 to ASC … please get the next Akron case to Dr. Holland at Akron Injury. Please just make sure it's not a red bag referral and not a current or former client that treated at ASC."). The Defendants cannot identify any legitimate reason for distributing their referrals in this

manner. *Id.* at 379:9–13 (Q: "And you don't have any idea as to why, if a client came in on a red bag referral, that they would be sent to a particular chiropractor?" A. "I do not."); 388:14–17 (Q: "And you have no memory, no idea, why all red bag referrals needed to go to Akron Square on December 19, 2012?" A: "I don't."). *See also*, *Id.* at 384:1–25, Ex. 51; Nestico Tr. 262:16–20 (Q: "Why couldn't you just look at the red bags no matter what chiropractor it went to? A: It's a choice that I made. It doesn't – it doesn't matter. There is no rhyme or reason to who."). KNR admits that it has sent or received more than 4,700 referrals from Defendant Floros alone since 2012. *See* Floros Tr. at 168:12–24; Ex. 7 at p. 9.[7]

Regardless of whether a particular client was solicited by the law firm or the chiropractors, once signed by KNR, the firm directs the client to continue to accept treatment from the chiropractor, both of whom tell the clients that it will "hurt their case" if they do not accept this treatment. **Ex. 11,** Norris Aff., ¶ 5; **Exhibit 14**, Affidavit of Named Plaintiff Richard Harbour, ¶ 5–¶ 6; **Ex. 8**, Reid Aff., ¶ 9. Additionally, certain of these chiropractors, including Defendant Floros, conspire with the KNR lawyers to direct the clients to receive "pain management" treatment from Defendant physician Sam Ghoubrial, whose services the clients are also pressured by the Defendants to accept. *See* Lantz Tr. 27:15–19; 306:3–7; Petti Tr.189:10–13; Floros Tr. at 186:18–188:2; 189:22–190:2; **Ex. 10**, Carter Aff., ¶ 5, ¶ 9; **Ex. 14**, Harbour Aff., ¶ 3, ¶ 10; **Ex. 8**, Reid Aff., ¶ 6; **Ex. 11**, Norris Aff., ¶ 6; **Ex. 10**, Beasley Aff., ¶ 5, ¶ 12. As described immediately below, Ghoubrial essentially runs an "injection mill" into which KNR clients are funneled by the thousands to receive medical procedures and supplies that are not only medically unnecessary, but contraindicated for injuries resulting from car accidents, and for which the clients are dramatically overcharged via deductions from their KNR settlements.

[7] Excerpts of the deposition testimony of Defendant Minas Floros, D.C. that is cited in this motion are attached as **Exhibit 13**. The full transcript of this testimony and the exhibits thereto have been separately filed and made part of the record

2. The Defendants charge KNR clients unconscionable rates for healthcare services, including for medically indefensible "trigger point" injections that are serially administered in systematic disregard for less expensive and less invasive modes and sources of treatment.

Defendant Ghoubrial has treated thousands of KNR clients since 2011 pursuant to this arrangement, by which he has collected nearly $8 million from KNR clients' settlements as noted above. Ghoubrial Tr., 175:10–176:8, Ex. 5. Typically, the chiropractor formally makes the referral to Ghoubrial, *see* Phillips Tr. 50:21–51:1, and representatives from the chiropractors' offices schedule the clients' appointments with Ghoubrial, whereby a number of the chiropractors' clients will see Ghoubrial on a single morning or afternoon, either directly at the chiropractor's office, or at a facility nearby. Floros Tr. 189:22–190:2. During a substantial portion of the class period, Ghoubrial flew across the state in a private plane that he co-owned with Nestico, visiting different chiropractors in different cities on different days to the KNR clients en masse at each chiropractor's office. Ghoubrial Tr. at 46:5–50:13; Nestico Tr. at 498:1–19.

a. Ghoubrial administers as many trigger-point injections to as many KNR clients as possible, and charges unconscionable rates for the procedure.

Ghoubrial offered the great majority of these clients, if not all of them, "trigger point injections," which were purportedly to treat their pain resulting from the car accidents. Former KNR attorneys have testified that Ghoubrial "routinely became involved in the treatment of [KNR's clients] in terms of providing [the trigger point] injections," which he administered in "every" case, "pretty much every case." Petti Tr. 109:9–111:2; Phillips Tr. 379:3–11; Lantz. Tr. 312:3–10 ("If you saw Ghoubrial, you got injections … I don't recall any cases where any other treatment was

administered. The clients would tell me that it was a two-minute appointment. There were no words exchanged between Dr. Ghoubrial and the client. And the nurse would be the one to say, 'Okay. Turn.' And the doctor would shoot them.").

As discussed above, and in more detail below, Ghoubrial refused to accept payment from the clients' health insurers, insisting on being paid directly by the client or from the clients' settlement proceeds.

Ghoubrial's refusal to accept payment from the KNR clients' health insurers allowed him to charge an exorbitant rate for these this procedure. At his deposition, Ghoubrial confirmed that his practice charges in increments of $400, $800, and $1,000 for a series of trigger-point injections administered in a single appointment. Ghoubrial Tr. at 35:4–36:19; 257:5–258:3; 214:23–215:5; 234:23–25; 244:18–19; 207:25–208:3; 184:14–21. By contrast, the U.S. government's Center for Medicare & Medicaid Service's public "physician fee-schedule search" available at CMS.gov, confirms that the most Medicare or Medicaid would ever compensate Ghoubrial for a series of trigger point injections administered under the same billing codes is $43.48. *Id.* at 256:22–258:3, Ex. 25.

Additionally, former KNR attorney Amanda Lantz, who became the longest tenured pre-litigation attorney in the firm's Columbus office during her time there, *see* Lantz Tr. 97:22–25, testified that the injections were readily available from other local physicians for $200 or less. Lantz Tr. 29:17–19; 30:14–20. And physician Michael Walls, M.D., a board certified pain-management specialist, formerly the Chief Fellow of the Cleveland Clinic's Pain Management unit from 2008–2009, who has since treated thousands of patients from Ohio and Kentucky for back and neck pain since 2009, has submitted an affidavit confirming that his office is typically reimbursed between $70

and $90 by insurers for the injections. **Exhibit 15**, Affidavit of Michael Walls, M.D., ¶ 6.[8] Complete merits discovery on prevailing pricing for these injections will undoubtedly confirm that the amount Ghoubrial charged KNR clients for this procedure is indefensible.

Accordingly, Ghoubrial's goal was to administer as many of these injections as possible. This was confirmed at the deposition of Richard Gunning, M.D., who has been Ghoubrial's at-will employee since 2011. Gunning Tr. at 14:1–4.[9] Immediately after the first round of claims against Ghoubrial were filed in this lawsuit last fall, Dr. Gunning placed a phone call to Plaintiffs' counsel to state that Ghoubrial had "bullied" him into executing an affidavit submitted in his defense. Gunning Tr. at 10:13–25, 11:1–11, 11:24–13:10, 32:12–33:13, 55:23–56:14, 60:1–12; 63:7–64:19, 79:4–13. This phone call lasted more than two hours, during which Gunning—who also testified that he has wanted to leave Ghoubrial's practice for years, but has been unable to do so, in part because he fears retaliation from Ghoubrial—confirmed that Ghoubrial excluded him from treating KNR clients at the off-site personal injury clinics because, as Gunning assumed, he wasn't administering as many injections as Ghoubrial wanted him to. *Id.* at 14:5–15; 107:15–21.

According to Gunning, Ghoubrial's so-called "approach to informed consent" was to surreptitiously administer the injections to KNR clients without informing them that they would receive a shot, a practice that caused at least six patients to complain to Gunning that "they didn't want shots and the next thing they knew they were getting a shot." *Id.* at 22:17–23:14; 34:25– 35:11. While Gunning claimed, at his deposition, to have a hazy memory of his conversation with

[8] The exhibits to Dr. Walls' Affidavit, **Ex. 15**, are not attached to this motion because they contain many pages of medical research papers. These exhibits, some of which are readily available to the public on the internet, as cited below, will be filed separately and formally made part of the record contemporaneously with this motion.

[9] Excerpts of the deposition testimony of Richard Gunning, M.D. that is cited in this motion are attached as **Exhibit 16**. The full transcript of this testimony and the exhibits thereto have been separately filed and made part of the record

Plaintiffs' counsel due to having taken a dose of Ativan, an anti-anxiety medication, prior to that conversation, Gunning did not deny having stated that Ghoubrial once lost his temper at him because he saw a certain number of personal injury clients in one day and only administered two injections. *Id.* at 32:12–33:13. Nor did he deny that Ghoubrial "'constantly' told him that the practice didn't make money if he didn't administer shots." *Id.* at 31:18–32:6.[10]

Ghoubrial was, of course, not the only one who "made money" from the shots. Former KNR attorney Ms. Lantz testified that firm management "directed" staff that if "our client wanted an M.D., send them to [Ghoubrial]," precisely "because [Ghoubrial] charges a lot more for his treatment, which means it increases the value of the case." Lantz Tr. 27:15–23; 29:17–19; 30:14–20. Importantly, KNR's contingency fee from each case is calculated based on the gross amount recovered, before the medical bills are paid from the settlement. Nestico Tr. 170:2–14.

Former KNR attorney Kelly Phillips affirmed both Gunning's and Lantz's testimony as follows:

> I would just say [to KNR management], 'Listen, Ghoubrial being involved is making these cases impossible to settle. This is creating a problem. Clients are getting upset.' I had more than one client, when I was attempting to settle a case, in fact, I would easily say dozens, and, in fact, possibly, more, that would say, 'I didn't even want the

[10] Gunning also confirmed—after being ordered to return to answer deposition questions that Ghoubrial's attorneys instructed him not to answer the first time around—that Ghoubrial would use a common and deplorable racial epithet in referring to the injections. Gunning confirmed that on his phone call with Plaintiffs' counsel, he disclosed that Ghoubrial, on several occasions, referred to the procedure as "n*gger point injections," and "Afro-puncture," in reference to the high-proportion of KNR's clientele that are black people. Gunning Tr. 8:24–13:7. Gunning and Ghoubrial both attempted to excuse these slurs by claiming that Ghoubrial—who is undeniably Caucasian—is from Egypt, thus, "African American," and "feels that he has the right to use the term as legitimately as any black rapper and uses it in casual conversation." Gunning Tr. 9:18–10:14; Ghoubrial Tr. 412:17–415:14. But regardless of whether Ghoubrial's "casual" and repeated use of these terms is evidence of callous disregard for the patients to whom he administered the injections, it does show that the injections were an essential part of his practice. Gunning Tr. 10:15–19. Also, that Gunning would mention Ghoubrial's use of these terms on his two-hour call to Plaintiffs' counsel also shows—despite the obvious pressure that Ghoubrial put on Gunning to walk back on his disclosures at his deposition—that this call was intended and functioned as a confession.

> damn injections. I don't know why I was sent in there. I never asked for them. They just told me I had to go back to this office, and there is some guy back there with a nurse, telling me I would need a shot.'
>
> So, the clients were upset that, (A), they didn't understand why they were getting – I'm not saying all of them. But, some of them were like, 'I don't even know why I was getting these injections.' And, then, when they found out the cost, and what it was doing to their settlement, then, that made them even less happy.

Phillips Tr. 69:22–70:18.

And documents produced by the Defendants also confirm Ghoubrial's intent to administer as many of the trigger-point injections as possible. Of the 13 case-files produced by the Defendants for KNR clients who treated with Ghoubrial, the records confirm that Ghoubrial offered injections in all 13 of these cases, and in 11 of the cases ended up receiving the injections, including Named Plaintiffs Harbour and Reid. Ghoubrial Tr. 249:24–250:16, Exs. 12–24.

Finally, the holding company that served as the titleholder for Ghoubrial's share of the private plane that he used to treat KNR clients statewide was called "TPI airways." When Ghoubrial was asked why he named this company "TPI airways" he said that he didn't know, but he was sure that it didn't have anything to do with the common abbreviation for "trigger point injections." Ghoubrial Tr. 391:1–5.

b. Ghoubrial's use of the trigger-point injections is medically indefensible.

Ghoubrial's administration of the dramatically overpriced injections to car-accident victims is not just unnecessary, it is medically indefensible.[11]

[11] The Class A claims do not depend on proving that Ghoubrial deviated from the applicable standard of care in administering the trigger-point injections, because the claims largely pertain to the fact that the Defendants conspired to overcharge the class-members for medical care. Ghoubrial's deviation from the standard of care is, however, so extreme, and the evidence in this regard so overwhelming (as set forth fully below), that it strongly supports Plaintiffs' allegations that the Defendants set out to abuse their position of trust with the class members to serially defraud them.

i. According to all available medical research, it is well settled that trigger-point injections are contraindicated for the treatment of acute pain resulting from car accidents.

Both in written discovery and at his deposition, Ghoubrial was not able to identify a single study that supported his administration of trigger-point injections to auto-accident victims. Ghoubrial Tr. 62:6–63:4. This is unsurprising, given that all available medical research confirms that trigger-point injections are actually contraindicated for widespread back pain, as well as acute back pain, which, as Ghoubrial admitted, is precisely the type of pain suffered by the great majority of his personal-injury patients. **Ex. 15**, Walls Aff., ¶ 3–¶ 4; Ghoubrial Tr. 377:19–21, Ex. 2 (David J. Alvarez, *Trigger points: Diagnosis and management*, 65 AMERICAN FAMILY PHYSICIAN 653 (2002)), Ex. 3 (Ciara S.M. Wong and Steven H.S. Wong, *A New Look at Trigger Point Injections*, ANESTHESIOL. RES. PRACT. (2012)), Ex. 4, (Stephen Kishner, *Trigger Point Injection,* Medscape (2019), Ex. 36 (Noonan TJ, Garrett WE Jr., *Muscle strain injury: diagnosis and treatment*, J. AM. ACAD. ORTHOP. SURG. (1999)), Ex. 37 (L. Bagge, *et al.*, *Tratment of Skeletal Muscle Injury: A Review*, ISRN ORTHOP. (2012)), Ex. 38 (*Noninvasive Treatments for Acute, Subacute, and Chronic Low Back Pain: A Clinical Practice Guideline from the American College of Physicians*, ANNALS OF INTERNAL MEDICINE (2017)), Ex. 41 (Christopher L. Knight, *et al.*, *Treatment of acute low back pain*, UPTODATE (Dec. 2017)), Ex. 42 (Roger Chou, *Subacute and chronic low back pain: Nonpharmacologic and pharmacologic treatment*, UPTODATE (Aug. 2018), Ex. 43 (Irving Kushner, *Overview of soft tissue rheumatic disorders*, UPTODATE (Jan. 2019). Part of the reason for this is that most acute pain tends to resolve on its own within a short period of time, in which case it would be clear that the pain was not being caused by a trigger point that would benefit from an injection. **Ex. 15**, Walls Aff., ¶ 3. Similarly, in the case of widespread pain, which also tends to resolve within a short period of time, it would be impossible to identify whether a trigger point was the source of the pain at issue. *Id.* at ¶ 5.

Thus, the standard of care for treating acute back pain calls for more conservative modes of

treatment, including, most commonly, "RICE" therapy (rest, ice, compression, and elevation), physical therapy, and the administration of oral non-steroidal anti-inflammatory drugs ("NSAIDs"), sufficient doses of which are often available over the counter for a nominal price. **Ex. 15**, Walls Aff., ¶ 3–¶ 4. Indeed, trigger-point injections are not even mentioned in the summary of research for treatment contained on UpToDate, a widely used research database—that Ghoubrial admits to having used in his practice—through which over "6,900 world-renowned physicians, authors, editors and reviewers use a rigorous editorial process to synthesize the most recent medical information into trusted, evidence-based recommendations." Ghoubrial Tr. 365:9–12; 366:7–19, Ex. 39.

Accordingly, physicians and chiropractors who have treated thousands of patients suffering from acute and widespread back and neck pain, pursuant to the proper standard of care, never "administer [or recommend] trigger point injections to a patient suffering from acute or widespread back pain." **Ex. 15**, Walls Aff., ¶ 4; **Exhibit 17**, Affidavit of David George D.C., ¶ 4–¶ 5.

ii. Ghoubrial's administration of trigger-point injections deviates extremely from the standard of care pertaining to their use.

Trigger-point injections have only ever been proven effective in treating chronic pain resulting from Myofascial Pain Syndrome ("MPS"). *See* Ghoubrial Tr. 378:22–384:10, Ex. 43, **Ex. 15**, Walls Aff., ¶ 4. At his deposition, Ghoubrial admitted that he has never diagnosed one of his personal-injury patients with MPS. Ghoubrial Tr. 125:11–15. Even assuming, *arguendo*, that Ghoubrial was giving trigger-point injections to patients whose condition would benefit from them (despite that all available evidence is to the contrary), his administration of the injections deviates extremely from the established standard of care pertaining to their use.

1. The standard of care provides that the injections only be used after months of more conservative treatment has failed; Ghoubrial typically administers the

injections within days of the clients' auto accidents.

This standard clearly dictates that the injections only be administered after aggravating factors have been eliminated, and more conservative modalities have failed. Ghoubrial Tr. 378:22–384:10, Ex. 43 (explaining that trigger-point injections might be effective "[i]f simple measures have not sufficed."). Accordingly, health-insurers' published policies dictate that they will only reimburse for trigger-point injections when they are administered after three months of failed conservative treatment. Ghoubrial Tr. 405:24–406:6, Ex. 47. Ghoubrial, however, having freed himself from any constraints imposed by health insurers, typically administers the injections without regard for any more conservative treatment, on his very first appointment with the KNR clients, which is typically within a week or two of their auto accidents at issue. The thirteen KNR client files reviewed in this case show that Ghoubrial offered or administered the first injection, on average, within one week of their auto accidents. *See* Ghoubrial Tr. 249:24–250:16; 181:20–250:16; Exs. 12–Ex. 24; *See also id.* 396:5–15.

2. In his trigger-point injections, Ghoubrial uses, and charges extra for, steroids that are contraindicated and are proven to damage muscle tissue.

Ghoubrial admitted at his deposition that all of his trigger-point injections contain kenalog, a corticosteroid. Ghoubrial Tr. 142:5–143:5. He charges an extra $50 to $80 for each dose of kenalog, for which he pays approximately $6 per dose. Ghoubrial Tr. 185:11; 198:20–22; 208:3; 232:13, Ex. 19.[12] According to a leading study on the use of trigger-point injections, the use of kenalog and other corticosteroids in these injections "ha[s] been associated with significant myotoxicity." *Id.* at 385:16–388:16, Ex. 2, at p. 658.

[12] According to an invoice produced by Ghoubrial, his practice paid $64.64 for each 10 milliliter quantity of Triamcinolone Acetonide (Kenalog). *See* Ghoubrial Tr., 282:15–18, Ex. 29. He typically used 1 milliliter for each dose. *Id.*, 185:11–13.

iii. Ghoubrial does not even try to assess whether his administration of the injections is effective.

While Ghoubrial purports to justify his use of these injections by claiming that they allow him to avoid prescribing addictive narcotics to his patients (Ghoubrial Tr. 250:11–21; Gunning Tr. 117:10–18), 10 of the 13 clients whose files have been reviewed, 11 of whom received trigger point injections, also received narcotics prescriptions from Ghoubrial, with the majority of these 10 receiving between 2 and 5 such prescriptions. Ghoubrial Tr. 249:24–250:16, Exs. 12–24. Further, 12 of the 13 also received prescriptions for muscle relaxers. *Id.* Additionally, Ghoubrial has confirmed that the "vast majority" of his patients in his "personal injury clinic" are referred by chiropractors, and are also receiving chiropractic care. *Id.* at 42:4–43:19.

Of course, if a patient suffering from any kind of pain resulting from a car accident received trigger point injections within days or weeks of the accident, while also simultaneously undergoing physical therapy, chiropractic care, or taking muscle relaxers, oral non-steroidal anti-inflammatory drugs, or narcotics for pain relief, there would be no way to determine whether any reduction in pain was the result of the injections, or even just rest with the passage of time. *See* **Ex. 15**, Walls Aff., ¶ 5. When asked at his deposition about how he could know if his trigger-point injections are effective given the mix of treatment his patients receive, the clearest answer Ghoubrial could give, over ten pages of sprawling testimony, *see* Ghoubrial Tr. at 132:21–142:4, was to say that "patients improve when you take a multidisciplinary approach to their care," and that he knows the injections work because "it's based on ten or 12 years' experience," and that "the patients tell him" the injections worked. Ghoubrial Tr. 132:21–136:10; 140:19–141:9. When asked how the patients could know whether it was the injections and not any of the other modes of treatment they received, Ghoubrial had nothing tangible to add to his answer. Ghoubrial Tr. 141:10–142:4.

c. Ghoubrial also charges exorbitant rates for office visits and the distribution of TENS units and back-braces to the KNR clients.

Ghoubrial also serially overcharges for office visits and medical supplies that he distributes to KNR clients who have no idea that they will end up paying exorbitant rates for them out of their settlement proceeds.

At his deposition, Ghoubrial confirmed the extremely inflated prices that his office charged to these clients and patients for medical care, including:

- $300 for initial office visits, and $150 for follow-up office visits (*Id.*, 208:1–23), for which the most Medicaid would have reimbursed Ghoubrial is $75 and $50, respectively; *Id.*, 269:22–271:14, Ex. 27;

- $1,500 for back braces for which Medicaid would not have reimbursed, that Ghoubrial purchased for $100 and that would have been readily available for purchase by the clients from alternative sources for $100 or less; Ghoubrial Tr. at 184:22–185:2; 227:24–228:17; 256:22–258:3, Ex. 25; 284:6–24, Ex. 29; 05/09/2019 Google search results for Cybertech one size fits all brace, attached as **Exhibit 18.**

- and $500 for "Ultima 3T" electrical stimulation devices ("TENS units") for which Medicaid would not have reimbursed, that Ghoubrial purchased for $28.75, and that similarly would have been readily available for purchase by the clients from alternative sources at $28.75 or less; *E.g.*, *Id.* 208:1–23; 256:22–258:3, Ex. 25; 284:6–18, Ex. 29; Lantz Tr. 184:6–11; 05/09/2019 Google search results for Ultima 3T TENS Unit, attached as **Exhibit 19**.

Of the 13 case-files produced by Defendants for KNR clients who treated with Ghoubrial, the records confirm that Ghoubrial distributed TENS units in 10 of these cases, including twice to two of the same clients, and three times to another client. *Id.*, 249:24–250:16, Ex. 12–Ex. 24.

Ghoubrial claims that his distribution of TENS units is "an adjunctive treatment," or "an additional treatment modality," but could not identify any specific research or peer-reviewed studies to support this practice. *Id.*, 147:19–148:2; 149:3–13.

When asked to explain the exorbitant prices that he charged for the back braces and TENS units, Ghoubrial could only say that it was to compensate him for his overhead expenses, and that he "felt we were right on par with what they sell for, generally." *Id.,* at 280:17–21; 284:19–285:25.

This does not explain why his overhead expenses should have been the KNR clients' responsibility, given that these items could have been easily obtained from alternative sources for a small fraction of what Ghoubrial charged for them. **Ex. 18; Ex. 19** (Google search results showing available pricing for Cybertech one size fits all braces and Ultima 3T TENS Units); Lantz Tr. 184:6–11.

The KNR clients who received TENS units from Ghoubrial uniformly report that Ghoubrial or a member of his staff merely handed them the device and suggested they should take it home. **Ex. 11**, Norris Aff., ¶ 7; **Ex. 14**, Harbour Aff. ¶ 7, ¶ 11; **Ex. 9**, Carter Aff., ¶ 6, ¶ 10, ¶ 14; **Ex. 10**, Beasley Aff., ¶ 7, ¶ 14. All of these clients report that Ghoubrial did not so much as suggest that the clients would be charged for the devices, let alone at such an exorbitant markup. **Ex. 11**, Norris Aff. ¶ 7; **Ex. 14**, Harbour Aff., ¶ 7, ¶ 11, ¶ 15; **Ex. 9**, Carter Aff., ¶ 6, ¶ 10, ¶ 14– ¶ 15; **Ex. 10**, Beasley Aff., ¶ 7, ¶ 14, ¶ 17. And when Named Plaintiff Harbour informed Ghoubrial, the second time Ghoubrial offered him a TENS unit, that he already had one, Ghoubrial responded by simply telling him that he should take another one home. **Ex. 10**, Harbour Aff., ¶ 11; *See also* **Ex. 10**, Beasley Aff., ¶ 14.

According to a peer-reviewed study published in the Annals of Internal Medicine, TENS Units "had no effect on pain or function compared with control [or 'sham'] treatments." Ghoubrial Tr. 363:12–364:8, Ex. 38. Additionally, Aetna, one of the largest health insurers in the U.S., has published a policy on reimbursement for TENS units, which provides that "Aetna considers TENS experimental and investigational [thus not reimbursable] for acute pain, less than three months duration, other than post-operative pain." Ghoubrial Tr. 407:21–409:23. The 13 KNR client files reviewed in this case show that Ghoubrial distributed TENS units on 10 of these files roughly within one week of the clients' auto accidents. *Id.*, at 249:24–250:16, Ex. 12–Ex. 24.

d. Ghoubrial admits that he never informs the KNR clients of the cost or price he will charge them for the healthcare and supplies that he provides.

Confirming the KNR clients' testimony, Ghoubrial admits that he never discusses prices or the cost of care with his patients. Ghoubrial Tr. 296:11–24; 314:14–17. He claims that this is "because I simply give them the best treatment that's available irrespective of whether they are able to pay, including my treatment." *Id.* 314:18–23. Of course, Ghoubrial knows that the clients will be "able to pay," because he requires them all to sign a form giving him a right to collect the full amount of his bills from their settlements through the KNR firm, whose attorneys ensure that Ghoubrial is paid. *See* **Ex. 1**, Engstrom Aff., ¶ 34, citing Petti Tr. 26:11–18 ("My research has also revealed that, at settlement mills," such as KNR, "no-offer cases are extremely rare," such that the client always receives *something*);

e. Defendant Floros and KNR's other "preferred" chiropractors also benefit financially from the price-gouging scheme.

Floros and KNR's other preferred chiropractors similarly benefit from Defendants' scheme. First, Floros benefits from having the firm direct thousands of their patients to attend multiple appointments with him, which are all highly routinized, mechanized, and require minimal involvement by Floros himself. *See* Floros Tr. 45:9–46:19 (explaining that his assistants perform electrical stimulation therapy and the hot and cold packs, and that Floros himself spends only "three to 20 minutes" with the patients); 88:7–22 (discussing that his guiding determination in when to release a patient from treatment is his comparing their condition "to day one."). As Gary Petti explained, Floros aimed to hit "the sweet spot" in terms of how much treatment he provided to KNR's clients, in order to "get a greater percentage of" his bills covered if he got the "bill to a certain level and then discharge them either as healed or maximum medical improvement." Petti Tr. 58:16–59:5.

Additionally, Floros further assists KNR in inflating the clients' medical bills by directing them to treat with Ghoubrial, *see* Floros Tr. at 88:23–89:12; 91:18–2; 186:20–187:1–2 (if one of Floros's patients, such as Named Plaintiff Thera Reid, "saw Dr. Ghoubrial," it was Floros who "made the referral."), knowing that he will continue to be rewarded, in turn, with a steady stream of referrals in exchange for his continued participation in the scheme.

3. The Defendants coerce the KNR clients to forgo coverage from their health-insurance providers in order to avoid scrutiny of, and obtain higher fees for, their fraudulent healthcare services.

Not only do Defendants Floros and Ghoubrial know they will be paid for their treatment of KNR clients, they know that he will be paid at a higher rate than any health-insurer would ever pay for it. *See* Lantz Tr. 500:23–501:8 (a good reason that providers such as Ghoubrial did not accept insurance was that "they would get paid more if they didn't bill health insurance."); and Petti Tr. 132:18–133:6 (KNR attorneys, such as Petti, understood that providers would not accept insurance so that they could receive a higher "payment rate."). Despite having treated 5,000+ KNR clients since 2010, *see* Ghoubrial Tr. 41:5–10, Ghoubrial does not accept payment from their health-insurance providers, and instead would not treat KNR clients unless they signed a letter of protection authorizing for Ghoubrial to receive compensation directly out of their settlement proceeds. Ghoubrial Tr. 278:15–279:5; Phillips Tr. 51:18–52:12; **Ex. 9**, Carter Aff., ¶ 5, ¶ 9, **Ex. 14**, Harbour Aff., ¶ 3, ¶ 10; **Ex. 11**, Norris Aff., ¶ 6; **Ex. 10**, Beasley Aff., ¶ 5, ¶ 6, ¶ 12–¶ 13. Floros also requires his patients to sign a letter of protection as standard policy. Floros Tr. 97:5–98:5.

Here, it is important to note again that the "personal injury clinic" through which Ghoubrial treats the KNR clients is only his side-business, which does not advertise, has no public face, and apparently thrives on referrals from KNR's "preferred" chiropractors. *See* Ghoubrial Tr. 42:1–3 and 43:16–19 (Q: "Would you say all of the patients of the personnel injury clinics are referred by chiropract[ors]?" A: "I can't say for sure, but I'd say the vast majority."). This practice is maintained

separately from the internal-medicine practice that Ghoubrial owns and operates in Wadsworth, "Wadsworth's largest primary care practice," which Ghoubrial advertises to the public. *See* Ghoubrial Tr. at 11:2–12:7; 21:24–25:21, *et seq*. In his internal medicine practice, Defendant Ghoubrial provides primary care to regular long-term patients, including individuals in his "nursing home" business, Geriatric Long-Term Care Providers, and accepts payment from most major health-insurance companies in this practice. *Id.* at 11:2–12:7; 19:19–20:4; 21:24–25:21; 163:2–165:22; 389:25–390:6.

By contrast, Ghoubrial does not accept any health-insurance payments in his "personal injury clinic," because, he claims, (1) "the credentialing process is extremely cumbersome," (2) the "vast majority" of his personal injury patients "don't have health insurance," and (3) he has "heard through numerous sources" that health insurers, for unspecified reasons, "deny claims" for patients involved in car accidents. *Id.* at 35:4–36:19.

These explanations do not hold water.

First, it is not true that the "vast majority" of KNR clients "don't have health insurance." Not only has federal law, for most of the class-period, required every U.S. citizen to maintain a health insurance policy, *see* 6 U.S.C. 5000(A)(a), former KNR lawyers and have testified that most KNR clients (by one estimate, 80%) did have coverage, many (or "plenty") through Medicaid. Horton Tr. 264:1–9; Lantz Tr. 324:23–325–2; Phillips Tr. 363:8–14. Second, there is no basis for the notion that a health insurer could "deny claims" for reasonable and necessary health care for its insureds based on the cause of the insureds' injuries. Indeed, any insurer who purported to do so would be subject to liability for the tort of bad-faith. *See, e.g.*, *Zoppo v. Homestead Ins. Co.*, 71 Ohio St.3d 552, 644 N..E.2d 397 (1994), paragraph one of the syllabus ("An insurer fails to exercise good faith in the processing of a claim of its insured where its refusal to pay the claim is not predicated upon circumstances that furnish reasonable justification therefore.").

Confirming both of these points is the Affidavit of Cleveland, Ohio-based attorney Ryan Fisher (**Exhibit 20**), who in his 29-year career has "represented thousands of car accident victims in cases seeking recovery for their injuries," and has affirmed (at ¶ 2–¶ 4) that,

> most [of these] clients, as a matter of routine, treat with healthcare providers who accept payment from their health insurance providers. ... Generally, the clients will always be better off paying for healthcare through their own health insurance, or a medpay provider, because the healthcare providers typically have negotiated discounted rates with the insurance providers that the healthcare providers are required to accept. Additionally, payment from health insurance or medpay ensures that the medical providers are promptly paid irrespective of the length of the underlying injury claim or the ultimate outcome.

Thus, it is clear that there is only one reason Ghoubrial has undertaken the "extremely cumbersome" process to become credentialed with most major insurance companies in his Wadsworth-based internal-medicine practice, but not at all with his personal-injury practice: That is, the personal injury clients are subject to the Defendants' price-gouging scheme, which wouldn't be possible if the patients' health-insurers were responsible for payment and providing scrutiny over the care provided.

Accordingly, Defendant Floros, and presumably all of KNR's "preferred" chiropractors do not accept health-insurance payments from KNR's clients, and also require a letter of protection to treat them, for similarly inexplicable reasons. Floros Tr. 97:5–98:5; Petti Tr. 347:6–22; Lantz Tr. 323:17–19 (Q: "Because at KNR almost all of the cases that you handled you were instructed to use an LOP—" A: "Right."); 496:10–13 ("[T]he policy with our office was that if a case was coming from our office, we do an LOP."); **Ex. 9**, Carter Aff., ¶ 5, ¶ 9, **Ex. 14**, Harbour Aff., ¶¶ 3, 10; **Ex. 11**, Norris Aff., ¶ 6; **Ex. 10**, Beasley Aff., ¶¶ 5, 6, 12, 13.

KNR's clients thus waive their health-insurance coverage either completely unwittingly—simply signing all of the documents as required at their first appointment with the providers, whom they trust, along with their recommending KNR attorneys, neither of whom advises the clients of

the consequences—or trusting that these providers would not charge substantially more than their health-insurers would pay for the same treatment. **Ex. 8**, Reid Aff., ¶ 8, ¶ 16; **Ex. 11**, Norris Aff., ¶ 6–¶ 7, ¶ 9–¶ 10, ¶ 12; **Ex. 14**, Harbour Aff., ¶ 7–¶ 8, 11; ¶ 15–¶ 16, ¶ 19; **Ex. 9**, Carter Aff., ¶ 6–¶ 7, ¶ 10–¶ 11, ¶ 14–¶ 15, ¶ 18–¶ 19; **Ex. 10**, Beasley Aff., ¶ 6–¶ 7, ¶ 9, ¶ 13–¶ 17, ¶ 19–¶ 20. Because the providers never request payment directly from the clients, the clients have little reason to consider the issue or suspect that Defendants' charges for healthcare would ever need to be scrutinized, and even led clients to believe that their insurance would be billed later for the treatment they had received. *See, e.g.*, **Ex. 8**, Reid Aff., ¶ 7 ("At the beginning of my treatment, I informed Drs. Floros and Ghoubrial that I had health insurance that could cover my medical care. In response, representatives of ASC and Dr. Ghoubrial's practice informed me that information concerning my health insurance was not needed until later.").

4. The Defendants know that the auto-insurance carries who are responsible for paying the clients' claims view treatment from the Defendant providers as fraudulent and unworthy of compensation.

The auto insurers for the negligent drivers who are ultimately responsible for the KNR clients' claims have drawn natural and predictable conclusions from seeing Defendant Ghoubrial and the "preferred chiropractors," including Defendant Floros, on thousands of KNR cases, delivering the same pattern of treatment. As explained by Larry Lee, a 20-year veteran of the insurance industry who retired in 2016 as the head of the special investigations unit ["SIU"] for Westfield Insurance Company,

> It was clear from the documentation submitted during ... insurance investigations that the chiropractors, including Minas Floros of Akron Square, would administer a similar identified pattern of care, including directing clients to treat with certain physicians, including Sam Ghoubrial M.D., who would administer a similar identified pattern of care which included injections of pain relief. ...
>
> Whether or not this treatment was in fact fraudulent and/or not medically necessary, after seeing the same chiropractors and

> physicians treating the same law firm's clients in the same manner, our job duties required us to examine whether an improper relationship [existed] between the law firm and these healthcare providers. Floros and Ghoubrial were involved in so many cases in which they provided the same type of treatment that cases involving these providers were turned over to the Special Investigation Units, reviewed and scrutinized with inherent skepticism and investigated with increased scrutiny.

Exhibit 21, Affidavit of Larry Lee, ¶ 4, ¶ 6.

Westfield was far from the only auto-insurance carrier who viewed Defendants' treatment in this way. As former KNR attorney Gary Petti explained:

> [Defendant] Floros is a disliked guy among insurance adjusters. ... Because of the volume. ... And since Floros had tons of patients and they saw tons of his medical records and they were handing out tons of money to him, in terms of medical fees, he was not a well-liked guy. And I got comments all the time [from insurance adjusters] about the connection between Floros and KNR. ...
>
> Allstate—Grange basically did the same thing. Grange assigned an investigator to all of the KNR Akron Square cases and they all went to their special investigation unit. ...
>
> [T]hat's why Allstate, you know, gives $1,500 offers and rejects all the bills because they know that they can make Floros look bad at trial ...
>
> [The] litigation becomes less about what happened to the client, more about who Dr. Floros is ... how the lawyer – how [the client] got to see Dr. Floros. It becomes all about the perceived manufactured claim.

Petti Tr. 86:8–22; 98:15–101:20.

Former KNR attorney Amanda Lantz similarly testified about KNR cases in which Ghoubrial was involved:

> The bad combination was Allstate with KNR or Allstate KNR and Town & Country[, a chiropractors office in Columbus that similarly handles thousands of KNR cases and funnels the KNR clients to Ghoubrial for injections]. Those three together were a toxic combination where Allstate -- that's when it got flipped to the SIU. Towards the end after having constant communication with SIU adjusters, it was all Ghoubrial cases where they were going to SIU. ...

> I would talk to the adjusters because they were asking more -- during recorded statements, they were asking more about how the client got to these treatment providers as opposed to what injuries they had and what type of treatment they were -- well, they would go into what type of treatment they were receiving, but we could usually stop them before that. But it seemed like the adjusters were more in tune with how did you find Dr. Ghoubrial. How did you find Town & Country.

Lantz Tr. 122:14–23. *See also id.* at 125:20–24 ("Geico made a change towards the end of my time there and they started—Ghoubrial got on their list too where they were skeptical. I don't know if they were just not covering his bill or just cutting it."); 319:11–323:5 ("[T[hey made it clear, the adjuster, you could ask any of them, and they would make it clear that they were -- their target was to figure out what the relationship was and what kind of treatment the actual chiropractor was giving to clients when they went to Town & Country.").

KNR management, including Defendant Nestico, was well aware of the insurance companies' jaundiced views of the firm's "preferred" providers. For example, on May 30, 2013, Nestico participated in an email discussion that included several attorneys from the prelitigation department in the Akron office (attached as **Exhibit 22**). In these emails, three different KNR attorneys complain, respectively, about "new pre-lit procedures" on Akron Square [Floros] cases, "getting unusually low offers on Plambeck cases" (Plambeck is the owner of a network of chiropractic clinics, including Floros's Akron Square clinic, that is notorious in the insurance industry for fraud[13]), and that Allstate was "tightening the screws even more" on all Plambeck cases. **Ex. 22**; Nestico Tr. 373:25–374:21, Ex. 57.

[13] *See, e.g.*, *Allstate Ins. Co. v. Michael Kent Plambeck, et al.*, No. 14-10574 (5th Cir.2015). Nestico traveled to Texas to watch the trial in person. Nestico Tr. 370:24–372:16. As a chiropractor employed for a clinic owned by Michael Plambeck, Floros testified for the defense of the Plambeck clinics, yet somehow was unable at his deposition to recall anything about the substance of his testimony or the underlying allegations—of fraud—involved in the case, other than that he testified about x-rays. *See* Floros Tr. 226:15–228:5 (A: "I was just told to fly in one day, testify on records and x-rays, and that was it." Q: And, you have no idea what the case is about?" A: "No.").

Similarly, on October 16, 2014, former KNR attorney Kelly Phillips sent an email to Nestico and the managing attorney of KNR's Columbus office, Paul Steele (attached as **Exhibit 23**), explaining that certain large insurance companies were refusing to compensate the firm's clients at all for treatment delivered by Ghoubrial's office. In this email, which reads in part as follows, Phillips explicitly questioned whether KNR was prioritizing its relationship with Ghoubrial over the interests of its clients:

> Gentlemen,
>
> Please know that I am not questioning what is going on here, nor am I trying to overstep my bounds. I fully understand my place in the organization. This email is for informational purposes only.
>
> I am now 5 for my last 5 with Nationwide cases where they are flat out refusing to consider anything relating to Clearwater [the business name for Ghoubrial's personal injury practice]. At least when Progressive refuses, they offset with generosity in the general damages. Nationwide is not. Basically, I was told that if I am going to file on the case I was discussing, then I better be prepared to file a whole lot of lawsuits. Clearly the Nationwide adjusters have received some form of a directive.
>
> This brings about some concern. In some cases, it makes settlement a near financial impossibility. At the very least, it is taking money out of our client's pocket, and ours. I am a bit concerned with the ethical dilemma this creates. It is not difficult to make an argument that we are treating Clearwater's interests as equal to our clients. If we get a savvy client, we could find ourselves in some trouble. We are playing awful close to the fire. ...
>
> In my experience, when you are running an organization that continues to grow at unprecedented rates, you must regularly stop and take stock in what is happening around you. I am not suggesting that you are not. I am simply saying that given my experience, I am seeing some things that are bringing about some concern.

At his deposition, Phillips explained that Nationwide had "made it quite clear that [Ghoubrial's] bills were not included in their evaluation," because "they just didn't feel the treatment was necessary, or that people weren't properly referred to him," and "[t]here was no justification for the injections." Phillips Tr. 53:9–55:16, Ex. 1. Nestico Tr. 412:20, Ex. 61. Phillips

also testified that he deliberately understated his concerns in this email, because he was afraid of offending Nestico. Phillips Tr. 69:11–14. Nestico "rules with an iron fist," Phillips explained. "I didn't want to lose my job over expressing a concern." *Id.*, 69:3–5.

Phillips shared his email with Mr. Steele before he sent it, and believed that Steele wanted Phillips to raise these concerns with Nestico, but "wouldn't dare" do so himself. *Id.*, 71:21–73:8. Amanda Lantz testified that Phillips' email and Nestico's "angry response" to it were widely discussed around the Columbus office, and that Steele told her, after the email was sent, that Phillips's "days [at KNR] are numbered" as a result. Lantz Tr. 169:5–170:4 KNR terminated Phillips's employment two months later, on December 16, 2014, telling him that he was fired because the firm believed (erroneously, as it turns out) that he was seeking employment elsewhere. Phillips Tr. 224:4–25; 121:10–129:22.

5. To sustain its settlement mill, KNR not only continues to direct its unsuspecting clients to treat with the Defendant providers despite the negative impact on the clients' cases, the firm ensures that the providers are paid a disproportionately high percentage of their inflated bills from their clients' settlements.

Not only did the KNR firm fail to adjust its practices to account for the damage that its preferred providers were doing to its client's cases, Nestico made clear to the firm's attorneys that in response to the insurance companies' negative feedback the firm would simply double down on the relationships. *See, e.g.*, Phillips Tr. 79:6–16 ("My understanding of all of this was stay off Ghoubrial … Leave [Ghoubrial] alone, yes, we'll keep doing what we're doing."). The firm never informs its clients about this situation, and the firm's attorneys know that their jobs would be at risk if they did so. *Id.*, 71:13–22; 81:21–25 (discussing his belief that if he would have told clients that "Ghoubrial's involvement is screwing [their] case up," he would not "have been employed very long.").

KNR's purported reasons for continuing to send their clients to treat with these tainted providers are transparently false and easily disproven—particularly in light of the evidence showing

the importance of the *quid pro quo* relationships to KNR's high-volume business model. Thus, the firm continues to ensure that the providers receive a disproportionately high percentage of their inflated bills, because it is more profitable to expend as little effort as possible on a high volume of cases, which the providers help to ensure in exchange for their inflated payments.

a. KNR management intentionally disregards the negative impact that its "preferred" providers have on its clients' cases, and protects the firm's relationship with the providers at the clients' expense.

Nestico's response both to Mr. Phillips's email re: Ghoubrial, and the other KNR attorneys' emails about Allstate "tightening the screws" on Plambeck cases, is simply to instruct his attorneys to file suit on all of these cases, or, in his words: "If you run into those problems this is why we have a litigation department. Sue them EVERY TIME!!!!" **Ex. 23**; Nestico Tr. 412:23–460:24, Ex. 61; *See also* **Ex. 22**; Nestico Tr., 378:4–381:9, Ex. 57 (Nestico: "I agree we need to file all these Allstate files.").

Nestico knew that this response was not credible. First, he knew that his pre-litigation attorneys' pay was dependent on the number of cases they were able to settle without having to litigate, and they would simply do what they could to make cases resolve. As insurance industry expert Larry Lee explains, and testimony from former KNR attorneys confirms:

> [W]e would hear from the attorneys at these firms that they would not allow interviews and they would pursue these cases by filing suit and going to trial. We were aware that these tactics were not credible because these high-volume firms only filed lawsuits in rare instances and would only be taken to trial in the rarest of times. Additionally, litigated actions by these firms, including KNR, would also allow for us to obtain discovery of [the] relationship[s] between the firm and the healthcare providers, which we knew that the law firms wanted to avoid.

Ex. 21, Lee Aff., ¶ 7; Lantz Tr. 282:20–283:1 (estimating that, of her cases, approximately 5% went into litigation); Petti Tr. 27:4–12 (recalling that, of his cases, "less than five percent" ever even went to the litigation department); Horton Tr. 224:21–225:2 (recalling that perhaps 10% of his cases went

into litigation); Lantz Tr. ("Our goal was to settle cases. ... They wanted—even when the cases got to litigation here, all of them settle, regardless if you had to shove the settlements down the client's throat, you settled the case."); *See also id.* 277:14–278:22 (identifying that the many obstacles that had to be cleared before a lawsuit would be filed, while observing that "it was really hard to get a case into litigation" and that litigation would only be considered "if it's a denial . . . or [the insurers'] offer is really, really low, and it has to be obscenely low").

Additionally, Defendants have no good answer for the obvious question raised here: Why drag the clients into unnecessary litigation instead of simply advising them to treat with different providers who aren't viewed with such skepticism by the insurers? As Kelly Phillips put it at his deposition,

> [I]f you know that you got an insurance company that you're dealing with that's not going to consider [Ghoubrial's] treatment, and you're going to force a client who – every client would say they don't want to go to lawsuit, if they could avoid it.
>
> You know, why wouldn't you consider other options? Why does it have to be [Ghoubrial]? If [the insurers] have a hang up with him, why aren't we looking for other options? If injections are truly necessary, then, why can't we look for somebody else that possibly charges more reasonably, or that is more willing to work on the bill, when it comes settlement time.

Phillips Tr. 60:1–15.

Similarly, Nestico was asked at his deposition,

> So why isn't the solution here, instead of taking the position that you're going to go to litigation on every case involving Ghoubrial and these insurance companies, to make sure that Ghoubrial gets paid, to instead use that energy -- and that effort on developing relationships with doctors who will accept your client's health insurance payments instead of insisting on working on a [letter of protection]?

Nestico Tr. 451:12–23. In response, he first referred to the *Robinson v. Bates* case, 112 Ohio St.3d 17, 2006-Ohio-6362, explaining that it "allows the defense lawyers to introduce into evidence the amount of the bill that was actually paid" whereas the plaintiffs "get to introduce evidence of the

amount of the bill that was actually billed." *Id.*, 452:5–453:4.

Additionally, Nestico testified that the firm was not able to find any other doctors who were willing to treat its patients, and that "doctors won't accept Medicaid," and "won't bill Medicaid" or "bill health insurance" in cases involving auto accidents. *Id.* 453:13–454:6; *See also id.* 185:24–189:9 ("more often than not doctors refuse to treat car accident victims" because "they don't want to be involved in motor vehicle accident cases"); Floros Tr. 94:2–95:10 (explaining that he does not affiliate with an insurance network because he does not "know how to."); 97:11–98:1 (claiming that "adjusters that work at these insurance companies, they won't consider our bill, they won't pay the bill. They'll say go to the patient, we're not looking at it … I don't know why they don't pay the bill, but they just don't."); and 9:12–13 ("I'm out of network with every insurance company."); Ghoub Tr. 328:13–20 (claiming that "[a]t least 70 percent of time," "patients come to me, because they can't get appointments in these clinics or they don't want to be seen in these clinics or the doctors there don't want to deal with them."); 330:23–24 ("What I said is, 70 or 80 percent of the patients that I've see[n], can't get care elsewhere."); 332:3–19 (stating that his patients "don't want to be seen anywhere else" but at his practice).

Regarding *Robinson v. Bates*, Nestico was unable to cogently explain (1) why it should matter when such a miniscule number of KNR's cases ever go to trial (*Id.*, 454:12–18); (2) why a jury wouldn't be able to understand the difference between the amounts billed by and the amounts paid to medical providers (*Id.*, 482:12–484:4); or (3) why a good case for trial wouldn't be a good case for trial regardless of any difference between these numbers. *Id.*, 486:14–488:12.

And more pertinently, Nestico's claim that there are no other providers who would treat KNR clients or bill their health-insurers is plainly false, as discussed below.

b. There is no shortage of competent healthcare providers in Ohio who are willing and able to treat car-accident victims and bill the clients' health insurers for the treatment.

The Defendants' repeated claims that there is a shortage of providers willing to treat car accident victims, and bill through the clients' insurers, are the testimony of parties with a solution—or, more accurately, a price-gouging scheme—in search of a problem. In the real world, no such problem exists, as testimony from former KNR attorneys, as well as experienced doctors, chiropractors, and other experienced personal-injury attorneys confirms. Petti Tr. 124:13–24 ("I would say in my experience, the overwhelming majority are – if you have some means to pay, they'll treat you."); 128:24–129:2 (agreeing that there are doctors who would treat a personal injury patient using the patient's own health insurance); Lantz Tr. 323:6–6 ("I didn't feel like there was a shortage" of doctors who would treat personal injury patients and accept their insurance; "[t]here was always options."); Phillips Tr. 76:24–77:1 (agreeing that there was not a shortage of doctors willing to treat KNR's clients and that he did not have "any problems finding doctors to treat" his clients); **Ex. 17**, George Aff., ¶ 2, ¶ 6 ("I have treated thousands of patients for back pain of all types, including patients suffering acute pain from ... car accidents. ... I accept payment from most major health-insurance companies. If any of my patients want to pay me through their health-insurance providers, I will do whatever is practicable to accommodate them"); **Ex. 15**, Walls Aff., ¶ 2, ¶ 10 ("In my practice, I accept payment from most major health-insurance companies. ... If a patient is not covered ... I am able to offer them a "self-pay" fee ... that ... must be reasonably aligned for the typical reimbursement from an insurance carrier and/or not extraordinary excess of reasonable expected overhead expense of the procedure"); Ex. 20, Fisher Aff. ¶ 3–¶ 4. ("[M]ost [personal-injury] clients, as a matter of routine, treat with healthcare providers who accept payment from their health insurance providers" and "[g]enerally, ... will always be better off" doing so.).

Additionally, there are numerous clinics in the area that advertise their willingness or are

otherwise well-known to be willing to serve underserved populations, including patients with Medicare coverage or even no insurance. For example, AxessPointe operates five federally funded clinics in the Akron area, provides a wide-range of services underserved, underinsured, and uninsured communities, and accepts most insurance plans, specifically including Medicaid and Medicare. Ghoubrial Tr. 317:24–322:1, Ex. 32. A number of other organizations offer similar services. *See, e.g.*, Ghoubrial Tr. Ex. 33 (Faithful Servants Health Care, an organization located in the Akron community, providing free health-care services, including sprains and back pain, to those without insurance or the financial ability to access medical care), Ghoubrial Tr. Ex. 34 (Open M Medical Clinic, an organization located in Summit County, providing free health-care services to patients with limited access to such care); and Ghoubrial Tr. Ex. 35, at 3 (Summa Health, which provides charity care assistance to qualifying individuals).

It is perhaps precisely because there is no shortage of providers who would be willing to provide legitimate care to KNR's clients, and legitimately bill for that care, that the firm fails to advise its clients of the negative impact—or even the possibility of a negative impact—caused by its "preferred" providers' involvement on the clients' cases.

For example, when asked whether he instructed his firm's attorneys to advise the firm's clients—who KNR serially refers to Plambeck-owned clinics, including Defendant Floros's—of the "unusually low offers" his attorneys were reporting on Plambeck cases, Nestico said, "No, I haven't because I don't care about it." Nestico Tr. 382:17–382:3, Ex. 57 (attached as **Ex. 22**).

Similarly, when asked whether the firm's attorneys' were instructed to advise their clients about the concerns raised in Kelly Phillips's email about Nationwide's refusal to compensate for Ghoubrial's treatment, he said, "I don't tell them how to practice law." *Id.* 448:10–19. And Nestico could not identify a single example of any attorney at his firm ever advising a client about these issues. *Id.* 449:6–21.

Accordingly, the firm's attorneys have testified that they understood that if they questioned the firm's relationships with Ghoubrial, Floros, and the other "preferred" providers, their jobs would be in jeopardy. Phillips Tr. 79:1–16 ("My understanding of all of this is stay off Ghoubrial. That's what it was. This is above your pay grade. Stay of Ghoubrial."); Lantz Tr. 178:20–25 (questioning the firm's relationship with Ghoubrial was "a straight road to being fired. There's no way. You do not buck authority."); and 256:10–21 (Q: "[Y]ou never questioned [Ghoubrial] about the treatment he provided to any of your clients[?]" A: "No. I would have gotten fired."); and Petti Tr. 177:12–178:9 (discussing that the firm terminated him soon after he questioned KNR's practice of automatically requesting narrative reports from Floros on every case).

c. KNR profits by prioritizing its development of a high-volume of clients over the interests of the individual clients and relies on the Defendant providers to drive referrals and inflate medical bills with a minimum of effort.

Indeed, KNR's attorneys understood that the firm's management did not care whether defendants' auto-insurers disfavored treatment from KNR's so-called "preferred providers," or even viewed it as outright fraudulent, because the firm would make up for it by continuing to drive a higher volume of clients with the assistance of these providers. As Gary Petti testified, he "got comments all the time" from insurance adjusters "about the connection between Floros and KNR." Petti Tr. 86:12–22. But he did not discuss these comments with KNR management,

> [b]ecause that was their business model. I mean, high volume, turn it over as quick as possible. And then actually Rob even told me that before I started. He told me that Slater paid me too much and that if he didn't pay me so much money, then he would be able to invest more money in marketing and advertising, get more people, send them back to the chiropractor, and then get more in return from the chiropractor.

Petti Tr. at 85:24–88:4. *See also* Phillips Tr. at 19:19–20:6 ("[Nestico] talked about how they're heavily – high-volume market-driven business, advertising-driven business."); *Id.* at 41:3–5 ("[W]ith the

volume that we had, and the way the operation worked, the intakes fed the machine."); *Id.* at 112:17–22 ("When you start a machine, like, KNR ... It just takes more and more to fuel the machine, as it continues to grow.").

In other words, it did not matter to KNR management whether the individual clients' settlements would decrease as a result of treating with these providers because the firm would continue to profit by sending a greater number of clients through its pipeline. *See, e.g.*, Petti Tr. 120:1–15 ("Nestico doesn't really care what you make on [a] case, he only cares that you make 100 for the month" to meet the attorneys' fees quota). As Professor Engstrom has explained (**Ex. 1**, Engstrom Aff. ¶ 25),

> If an attorney obtains the majority or vast majority of his business via paid advertising, rather than by referrals or word-of-mouth, he need not have a sterling reputation among fellow practitioners or past clients. He requires only a big advertising budget and a steady supply of unsophisticated consumers from which to draw. In this way, aggressive advertising reduces the long-term cost of economic self-dealing.

Thus, it becomes "financially more profitable to handle a mass of small claims with a minimum expenditure of time on each than it is to treat each as a unique case and fight for each dollar of the maximum possible recovery for the client." *Id.*, ¶ 32, citing F.B. MacKinnon, Contingent Fees for Legal Services: Professional Economics and Responsibilities 198 (1964).

This, of course, precisely describes KNR's business model, which is exacerbated by the quotas the firm imposes on its attorneys. *Id.*, ¶ 33 quoting Lantz Tr. 283:24 –284:1 ("To meet the quotas, yeah, you couldn't spend that much time. I would say no more than five hours, and that might be generous."). *See also id.*, ¶ 36 quoting Petti Tr. 194:10–15 ("I mean, you see the medical treatment and how long it lasted, what the nature of it is with the nature of the impact and you already have a general range where this case is going to go, unless there's some other compelling reason otherwise."); *Id.* at ¶ 37 ("To the extent plaintiffs' lawyers key settlements to medical bills or

type or length of medical treatment, lawyers (paid via contingency fees) face a financial incentive to ensure that a client's medical bills are large, which often entails ensuring that the client's medical treatment is lengthy and intensive. This, in turn, incentivizes unscrupulous plaintiffs' lawyers to promote "medical buildup," i.e., the practice of seeking extra, unnecessary medical treatment to inflate a plaintiff's claimed economic loss.").

d. **KNR sustains the quid pro quo relationships, and its high-volume scheme, by ensuring that the providers are paid a disproportionately high percentage of their inflated bills for their clients' settlements.**

Accordingly, to sustain the quid pro quo relationships with the providers on which its business model relies, KNR ensures that the providers are paid a disproportionately high percentage of their inflated bills, at a higher rate than the clients' health insurers would have ever paid. Lantz Tr. 27:15-19 ("[T]he direction at the Columbus firm was … send them to [Ghoubrial]. Because [he] charges a lot more for his treatment, which means it increases the value of the case."); 161:25–162:1 ("KNR was paying [Ghoubrial] prioritized payment on his bill, so paying him more proportionately compared to" other providers); 388:3–5 ("All of our reductions for Town & Country and Clearwater were strictly through Rob Nestico."); Phillips Tr. 61:6–10 ("[W]e had nowhere near the flexibility with Ghoubrial's bills that we had with any of the other treatment providers we did business with…"); 89:11–16 (Ghoubrial "would be paid in the neighborhood of eighty-plus percent of his bill."); 282:1–283:4 ("[C]uts to Town & Country were allowed to be bigger, if Dr. Ghoubrial was involved."); Ghoubrial Tr. 184:22–185:2; 227:24–228:17; 257:5–258:3; 284:6–24.

Thus, Nestico actively ensured that the providers who referred a high volume of cases to KNR would continue to be compensated through lower reductions on their bills. *See*, *e.g.*, Petti Tr. 106:4–14 ("I think there was definitely a desire to minimize the reductions for the high referring chiropractors, yes."); Lantz Tr. 387:7–12 (attorneys had to emphasize whether a particular case was referred to KNR in creating their settlement demands, because "if it was Town & Country to us, it

was less likely that Rob Nestico would permit a reduction on Clearwater and Town & Country.").

By this scheme, Defendants subvert the traditional role of a personal-injury attorney, "an essential part of [whose] job is to require any alleged lienholders to prove their right to receive any proceeds whatsoever from a client's settlement or awards." **Ex. 20**, Fisher Aff., ¶ 5.

5. The Class A members and claims

The corrupt nature of KNR's relationships with the Defendant healthcare providers—as shown by the voluminous evidence above, and explained further below—renders all of the fees collected pursuant to these relationships, fraudulent and subject to disgorgement as a matter of law.

Thus, the Plaintiffs seek certification of a class that includes:

> All current and former KNR clients who had deducted from their settlements any fees paid to Defendant Ghoubrial's personal-injury clinic for trigger-point injections, TENS units, back braces, kenalog, or office visits, billed pursuant to the clinic's standard rates from the date of its founding in 2010 through the present.

As explained in the Law & Argument section below, these class members—including Named Plaintiffs Norris, Harbour, and Reid—are all entitled to disgorgement of all fees collected by Ghoubrial, Floros, and the KNR Defendants pursuant to the price-gouging scheme on claims for fraud, breach of fiduciary duty, unconscionable contract, and unjust enrichment.

C. KNR further fuels its settlement mill by paying a kickback to "preferred" chiropractors in the form of a fraudulent "narrative fee" (Class B: The narrative-fee class).

Putative Class B relates to KNR's practice of charging its clients an across-the-board "narrative fee," which functioned as a "kickback" to high-referring chiropractors who helped fuel KNR's settlement mill as described above. The evidence shows that KNR only paid the narrative fee to certain selected chiropractors, immediately upon referral to or from a case with those chiropractors, before it was ever determined whether a medical narrative would be useful in resolving a given clients' case.

1. KNR required its clients to pay a narrative fee on every case involving certain chiropractors, regardless of any need for the report.

In the context of personal injury litigation, narrative reports come from medical professionals "to explain why the plaintiff's injuries were different or more challenging than they might appear from the contents of the medical records." **Exhibit 24**, Affidavit of Gary Petti Aff., ¶ 8. It also may address the issue of causation, linking the automobile accident experienced by patients with the injuries they are suffering. Nestico Tr. 355:4–356:5.

A legitimate narrative report includes information the medical records themselves do not present. **Ex. 24**, Petti Aff. ¶ 8. The plaintiff's attorney typically decides whether to obtain a narrative report for his client. *Id.*

Lawyers at KNR had no say in deciding whether to obtain a narrative report in the cases they were handling. Management at the firm demanded that they do so, with the decision to order the report based entirely on the identity of the chiropractor who is treating the particular client. Horton Tr. 300:15–25; Petti Tr. 78:23–79:12 ("[L]awyers had nothing to do with whether or not there was a narrative report fee."). Thus, certain "preferred" chiropractors, including Defendant Floros and other chiropractors from Plambeck-owned clinics, "create" a narrative report on "every single case or virtually every single case." Petti Tr. 284:23–285:6. KNR procured the reports "automatically, immediately, as soon as the case comes in," before anyone at the firm had an opportunity to evaluate the relevant facts. *Id.*, 284:23–285:12; 317:22–318:1. Nestico admitted that narrative fees were ordered from these chiropractors as a "default" policy. Nestico Tr. 313:21–25.

KNR's internal communications confirmed the automatic payment going to Plambeck practitioners for narrative reports. For example, a document from KNR's employee handbook titled "Updated Narrative and WD Procedure for Plambec [sic] Clinics and Referring Physicians" (attached as **Exhibit 25**) reads in part as follows (emphasis in original):

> Those highlighted are the only **Narrative Fees** that get paid automatically (with the amount indicated) **to the doctor personally** ….
>
> The following below are Plambec [sic] clinics:
>
> * Akron Square Chiropractic: Dr. Minas Floros
> * Cleveland Injury Center (Detroit Shoreway): Dr. Eric Cawley
> * Canton Injury Center (West Tusc): Dr. Zach Peterson (narrative to Dr. Phillip Tassi)
> East Broad Chirpractic: Dr. Heather Kight
> Old Town Chiropractic: Dr. Gregory Smith
> Shaker Square Chiropractic: Dr. Drew Schwartz
> * Timber Spine & Rehab (Toledo Spine): Dr. Patrice Lee-Seyon
> * Valley Spine & Rehab (Vernon Place/Werkmore): Dr. Jason Maurer
> * West Broad Spine & Rehab: Dr. Sean Neary
>
> ***Narrative Report Fees are paid to Dr. Patrice Lee-Seyon **via MedReports** (Timber Spine/Toledo Spine) for $150.00, Dr. Minas Floros (Akron Square) $150.00, Dr. Phillip Tassi (Canton Injury) $150.00, Dr. Jason Maurer (Cincinnati Spine/Vernon Place/Werkmore) $150.00, Dr. Eric Cawley (Cleveland Injury) $150.00, Dr. Sean Neary (West Broad) $150.00 **to the doctor personally (all doctors are in needles)**.
>
> In addition to:
>
> Akron/Cleveland Area ((NOT PLAMBEC [sic]))
> Dr. Alex Frantzis/Dr. Todd Waldron with NorthCoast Rehab, LLC ($200.00) ((NOT PLAMBEC [sic]))
> Accident Injury Center of Akron (P.O. Box 20770) $200.00
> Columbus/Cincinnati Area ((NOT PLAMBEC [sic]))
> Accident Care & Wellness Center (P.O. Box 20770) $200.00
> Columbus Injury & Rehab (P.O. Box 20770) $200.00

Gobrogge Tr. Ex. 33, 298:6–9, 301:24–313:10. *See also* Nestico Tr. 340:23–344:1, Ex. 50. Additionally, an October 2, 2013 email from KNR operations manager Brandy Gobrogge to all of the firm's litigation attorneys and support staff also identifies the "Plambeck Clinics" as among "the only Narrative Fees that get paid." Gobrogge Tr. 293:17–297:22, Ex. 32 (also attached as **Exhibit 26**).

Between 2013 and 2017, KNR and Defendant Floros at Akron Square Chiropractic referred

more than four thousand clients to one another. Floros Tr. 168:12–24, Ex. 7, at 9. Dr. Floros prepared a narrative report in "every single [one] or virtually every single" one of these cases. Petti Tr. 284:23–285:6; Horton Tr. 298:9–18; 300:15–25; 305:18–19. Other Plambeck chiropractors did likewise for the clients they shared with KNR. *See* Gobrogge Tr. Ex. 33, 298:6–9, 301:24–313:10.

2. The narrative reports are worthless.

Most of the narrative reports consist largely of boilerplate cut and pasted from old medical studies, with only limited portions of each report referring specifically to the individual client. *See* Floros Tr. 125:12–126:16, Exhs. 8-11. This information contained nothing that could not "be gleaned easily from the medical reports." Petti Tr. 70:6–16. Dr. Floros testified that he used "templates" in drafting the reports. Floros Tr. 114:10–116:7. In any given case, he "just open[s] up one of [his] narrative reports and … fill[s] in the gaps." *Id.* at 115:17–116:7.[14] In addition, there would be "no reason" why Floros would opt to use one template instead of another, because he just "know[s]" that he has "to produce a narrative and that's pretty much it." Floros Tr., 125:24–126:21; 127:22–23.

Unsurprisingly, under the circumstances, the narrative reports had "no independent value whatsoever," according to one former KNR lawyer. Petti Tr. 277:9–12. Another similarly opined that the reports did nothing to "increase the value" of clients' cases. Lantz Tr. 267:9–21.

Insurance-industry expert Larry Lee's Affidavit also confirms the fraudulent nature of the reports. In his 20+ years leading and working for special investigation units for auto-insurance companies, Lee became familiar with the narrative reports "provided on every case involving high-volume chiropractors … working for clinics owned by Michael Kent Plambeck," who had become the subject of "fraud investigations and lawsuits by several large insurance companies … and was

[14] Later in the deposition, Dr. Floros tried to walk back this testimony, claiming that he only used "headings" from the templates and independently typed in the information that appeared below. *Id.*, at 127:1–9.

well-known in the insurance industry for suspected over-billing." **Ex. 21**, Lee Aff., ¶ 8. *See also Allstate Ins. Co. v. Michael Kent Plambeck, et al.*, No. 14-10574 (5th Cir.2015). As Lee explains, the following facts illustrate the reports' fraudulent nature:

- the chiropractors provided the reports in every case, "regardless of any apparent accident-related causation issues";
- more than 95 percent of the cases brought by these law firms that his Unit investigated never resulted in formal litigation;
- the reports only rarely contained "supportive information" to document the treatment provided to the law firm's client; and
- the reports "could have easily been comp[iled] by someone other than the chiropractor," including the attorneys representing the client or their staff members.

Id. ¶ 9. Indeed, even Floros admitted that causation is basically assumed in the great majority of the cases that KNR handles. Floros Tr. 117:4–118:21; 119:15–17; 120:4–22. Gary Petti similarly explained, that since causation was "essentially a given," the reports were not necessary, which is why KNR did not "get" reports "from any other doctors." Petti Tr. 285:19–22. *See also id.*, 77:8–25 ("never" became aware that one of KNR's preferred chiropractors found no causation in a narrative report); 277:9–12 ("The narrative report has no independent value whatsoever in those cases and" is "paid strictly as a means to make the chiropractor happy."); 481:2–21 (agreeing with "near certainty" that "on a soft-tissue cases that never gets filed where the attorney's fee is going to be $2,000 or less," "it's extremely unlikely that a narrative report added any value no matter what").

3. The narrative fee functions as a kickback to KNR's high-referring chiropractors.

Accordingly, it was clear to KNR's attorneys that the narrative fee was a "kickback"—a "means to make the chiropractor happy," and to compensate them for continuing to refer cases to the firm. Petti Tr. 277:1–12; 67:4–23; 80:5. As Gary Petti explained,

> There's no other reason for them that—you know, in Akron we, of course, did business with chiropractors and that sort of thing for

> years without anyone ever paying a narrative report fee on every single case or virtually every single case to one particular chiropractor. There's no justification for it. And then as I understand it, the volume of cases, once KNR started paying for narrative report fees went to them—in terms of an overwhelmingly majority of cases went to them.

Id. at 67:17–68:2.

Moreover, KNR's operations manager Ms. Gobrogge believed that Nestico had "invented the narrative report thing" and told Petti it was after Nestico "invented" the narrative reports that "business really took off." *Id.*, 68:15–21. A Plambeck chiropractor confirmed as much when he asked Petti, who was then unaffiliated with KNR whether, he would match the $200 that KNR paid for client referrals and told him, "if you want referrals from me, you've got to get a narrative report every time." *Id.*, 91:10–19; 283:4–13. Another Columbus-area chiropractor told Petti that "he had lunch with [Nestico] and [Nestico] brought up the narrative report and if he wanted to get narrative reports—or produce narrative reports as part of their relationship and [the chiropractor] said, no." *Id.*, 461:24–462:6.

Petti was not the only KNR attorney who understood the dubiousness of the fee's purpose. Amanda Lantz testified that on a trip to Punta Cana, in the Dominican Republic, sponsored by the firm for certain of its attorneys in 2015, Rob Horton revealed to her that narrative fees were "an issue" for attorneys "in Akron," because "some chiropractors would include [narrative fees] no matter what and expect to get paid on it." Lantz Tr., 104:20–105:13. Horton further expressed, out of frustration, that "[t]here was no reduction that could be taken on the narrative fees," "that they didn't increase the value" of a case, and that it "didn't matter if they were on the case or not." *Id.*, 267:9–21.

Additionally, the KNR handbook (quoted in Section 2 above) explicitly stated that the firm remitted narrative fees to the "doctors personally," rather than to the clinics through which they operated their practices. Gobrogge Tr. 298:6–9, Ex. 33. This off-the-books arrangement

corroborates the corrupt purpose served by payment of these sums, which, as insurance-fraud investigator Larry Lee has explained, was readily inferred from the reports themselves and the manner in which they were provided. **Ex. 21,** Lee Aff., ¶ 9.

Neither KNR nor Floros ever informed their patients or clients of the true nature of the narrative fee or of their relationship with one another. **Ex. 8**, Reid Aff., ¶ 15–¶ 17; **Ex. 11**, Norris Aff., ¶ 9, ¶ 13; **Ex. 9**, Carter Aff., ¶ 7, ¶ 12, ¶18–¶ 19; **Ex. 10**, Beasley Aff., ¶ 9, ¶ 16–¶ 17, ¶ 19–20.

4. The Class B members and claims

Because the narrative fee is a kickback, Plaintiffs seek certification of a class that includes,

> All current and former KNR clients who had deducted from their settlements a narrative fee paid to (1) Dr. Minas Floros of Akron Square Chiropractic, (2) all other chiropractors employed at clinics owned by Michael Kent Plambeck, and (3) certain other chiropractors identified in KNR documents as "automatic" recipients of the fee, from KNR's founding in 2005 to the present.

As explained in the Law & Argument section below, these class members—including Named Plaintiffs Norris and Reid—are all entitled to damages and disgorgement of all narrative fees deducted from their settlements on claims for fraud, breach of fiduciary duty, and unjust enrichment.

D. KNR further exploits its high-volume model by double-billing for overhead expenses via a fraudulent "investigation fee" deducted from every client settlement (Class C: The investigation-fee class).

Putative Class C relates to an across-the-board $50 to $100 "investigation fee" KNR assesses against its clients when it settles their cases. KNR portrays the payment as reimbursement of a payment made to a specified "investigation" firm that worked on the case. In truth, it represents the cost of basic marketing and administrative functions, already subsumed in the firm's contingency free, for which it could not lawfully double-charge. KNR has charged this fee to "the vast majority"

of its clients since 2009, approximately 40,000 to 45,000 of them. Nestico Tr. 132:18–15; 136:15–137:16.

1. Defendants routinely refer to the misleadingly named "investigation" fee as a "sign-up" fee, reflecting its true purpose: to sign clients as soon as possible so they are not lost to KNR's competitors.

Despite its name, the "investigation fee" has nothing at all to do with any investigation. KNR more accurately refers to the charge in private communications as a "sign-up" fee. *See, e.g.*, Gobrogge Tr., 206:22–207:14, Ex. 14 (Q: "Do you agree that the SU fee Mr. Redick was referring to here was in fact, he meant the signup fee?" A: "So, 'signup fee,' and 'investigator fee,'" are "the same thing…"). The firm pays the $50–$100 to "investigators" after they meet with a new client to obtain his or her signature on the KNR engagement letter, collect any relevant paperwork and information, and sometimes takes photographs of whatever injury or damage the client may have sustained. Simpson Tr.,[15] 16:5–17:10 ("I'll meet with [potential clients] and – and get different tasks done that they need done in order for them to become clients."); Czetli Tr., 21:16–20 (Q: "And it's your belief that the attorneys told them you were coming for purposes to get them to sign these documents and do whatever else you do out there?" A: "Correct."); Lantz Tr. 461:5 (the function of the investigator was to "push papers"); 480:7–10 (the fee was paid "for someone to be there to have the client sign the paperwork."); Phillips Tr. 48:20–49:11 (explaining that the firm sent investigators to "rope the client in" and "[l]ock" in the representation).

The evidence leaves no doubt the "sign ups" serve as a means of procuring clients. One "investigator" describes the process as follows: "I'll meet with them … and get different tasks that they need done for them to become clients." Simpson Tr., 16:8–13. Another "investigator" stated

[15] Excerpts of the deposition testimony of KNR "investigators" Michael Simpson and Aaron Czetli that is cited in this motion are attached as **Exhibits 27–28**, respectively. The full transcripts of this testimony and the exhibits thereto have been separately filed and made part of the record

that, "I'm basically sent out by Kisling, Nestico & Redick to someone that would like to have the firm represent them." Czetli Tr., 14:17–20.

"We MUST send an investigator to sign up clients!!" declared the KNR office manager, Brandy Gobrogge, in a May 6, 2013 email to the firm's prelitigation attorneys (attached as **Exhibit 27**). *See also* Gobrogge Tr. 105:9–106:24, Ex. 4. "We cannot refer [the clients] to Chiro[practors] and have them sign forms there," she explained. *Id.* "This is why we have investigators. We are losing too many cases doing this." *Id.* This email confirms the primary purpose of the so-called "investigators"—to sign the clients as quickly as possible and keep the firm from losing out on business. *See also* Lantz Tr. 83:17–85:18.

Testimony from former KNR attorneys similarly confirms that the purpose of the investigators was to assist the firm in obtaining clients. According to Amanda Lantz, she "settled approximately 1,300 cases on behalf of KNR clients during [her] time with the firm," and "never became aware of an investigator doing anything at all for the client apart from obtaining the client's signature on the KNR fee agreement." Affidavit of Amanda Lantz, ¶ 11, attached as **Exhibit 28**. Ms. Lantz clarified at her deposition that sometimes the investigators would take photos of a client's injuries, but that these photos—which were an "insignificant" part of their job—were taken more to placate the clients and not used in resolving their cases. Lantz Tr. 99:8–100:5; 329:8–11 (Q. "Did anything an investigator ever did at KNR ever help you as an attorney in resolving one of your cases?" A. "Not resolving it, no."). *See also* Phillips Tr. 109:5–16 (confirming same). Lantz further explained:

> [I]f you didn't get the client signed right away, you would get an e-mail from Brandy saying, 'Hey, what's the status on this case? They haven't been signed.' ... So, yeah. It was within 24 hours and that was policy. ... There has to be e-mails going back and forth saying, 'Hey, we need to get investigators out within 24 hours before another attorney snatches up the client.'

Id. 93:3–20. Robert Horton similarly testified:

> It was my understanding that they were getting paid for going out and getting the client or potentially some of the other -- you know, taking pictures and things like that. But going out and getting clients signed up.

Horton Tr. 386:15–19. As did Kelly Phillips:

> The investigator's role, which I find that title just hysterical. Their role was to go out, and when called upon, go meet the client, and facilitate the conversation. Get it to a point, where they felt they had the client onboard, I guess, I would say.

Phillips Tr. 105:25–5.

2. The so-called "investigators" only perform, at most, basic administrative tasks that any law firm or would have to perform to adequately represent a client.

KNR attempts to defend the investigator fee by claiming that in addition to sign-ups, the investigators are "on the hook" to perform other administrative tasks or messenger services on an ad hoc basis, as might be necessary on any given case. Nestico Tr. 602:19–604:21, Ex. 93. The firm's list of criteria for the investigators' work, however, only refers to basic administrative tasks relating to the sign-up, including 1) the signed contingency fee agreement and related "authorization" and "proof of representation" forms; and 2) photos of the client, the clients' insurance cards, any visible injuries, the vehicle, and the related police report. *Id.* Ex. 93 (Holly Tusko email listing criteria for payment of investigation-fee, also attached as **Exhibit 29**). *See also* Lantz Tr., 102:20–25 (explaining that the investigators gathered only "the basic information," such as "name, address, how many people were involved, where to get the police report" and then get "the document signed.").

To the extent these ad hoc assignments occur, they bear no relation to the fee charged. KNR asks "investigators" to perform them without respect to who "signed up" the client in question. Simpson Tr. 40:1–3 (Q: "Are the requests always made to you in cases in which you did the sign-up?" A: "I don't know."); Czetli Tr. 31:16–33:1, Ex. 4. In other words, an "investigator" will do the ad hoc work in both cases where he performed the "sign-up" and received a fee and cases where did

no "sign-up" and received nothing. Czetli Tr. 31:16–33:1; 44:10–14. KNR cannot seriously argue that the "sign-up" fee covered additional services which may or may not have taken place and which (if they occurred) may have been performed not by the recipient of the payment but by some unaffiliated person.

3. KNR charges the "investigation" fee even on cases where the investigator performs no task at all.

Additionally, KNR documents and testimony from former KNR attorneys confirms that investigators are compensated on cases on a rotating basis, even where they perform no sign-up and no task at all in connection with the case. As Amanda Lantz testified about conversations she had with the managing attorney of KNR's Columbus office, Paul Steele:

> even on cases where there's no -- where there's no investigator going to sign up the client, there's still an investigator fee because it helps cover marketing cost, because Paul's mom stuffed envelopes at home from her home. So it was a way for -- Wes Steele was kind of the default investigator. So even if he wasn't there for cases, he would still get -- he would still get the investigator fee. And then Paul said, well, it also helps compensate Wes Steele's wife,' which is Paul Steele's mom, for stuffing envelopes and marketing materials at home.

Lantz Tr. 97:2–15. Mr. Horton similarly testified:

> Mike [Simpson] and Aaron [Czetli] I believe got paid on cases from -- far away from Akron. On what basis I can't tell you. I don't know -- so that would be a case where they didn't actually do the sign-up, but I don't know if they did anything else or not.

Horton Tr. 390:13–17; *See also Id.* 391:6–393:19, Ex. 30 (confirming that Simpson and Czetli were paid on a total of 22 cases that were signed up on a single day from all across the state of Ohio, including Toledo, Columbus, Akron, Canton, Shaker Heights, Elyria, and Youngstown).

By this method, the firm compensates certain investigators for other odd jobs the investigators perform around the office, and essentially pays the salaries of functional employees who serve as in-house messengers and office assistants, as described below.

4. The so-called "investigators" are functionally KNR employees.

KNR portrays the "investigators" as independent service providers to whom it pays a legitimate litigation expense. In reality, the "investigators" effectively work as employees of the firm as part of its machinery for signing up and retaining new clients. The "investigators" have no business website, business telephone number, or fax numbers of their own. Simpson Tr. 20:4–15; Czetli Tr. 14:24–15:13. They do not advertise for business and work exclusively for KNR, except for services sometimes performed for law firms affiliated with KNR in handling large cases. Simpson Tr. 19:3–20:6; Czetli Tr. 15:14–16:4. KNR attorneys have direct access to the calendars maintained by "investigators" for purposes of scheduling appointments. Simpson Tr. 30:21–31:6; Czetli Tr. 27:10–25.

"Investigators" do "sign-ups" in accordance with specific instructions contained in KNR emails and record and report their work on Ipads provided to them by the firm. Simpson Tr. 20:17–25:2, Ex. 2; 25:7–28:1, Ex. 3; Czetli Tr. 21:22–23:11, Ex. 2; 23:13–26:23, Ex. 3; **Ex. 29**, Nestico Tr. Ex. 93 (Holly Tusko email listing criteria for payment of investigation-fee). At least one "investigator" retains no files of his own regarding this work. Simpson Tr. 27:2–21. "Investigators" also do not invoice KNR for the "sign-ups" but instead rely exclusively upon the firm to account for the jobs they handled. *Id.* 29:7–22; Czetli Tr. 34:20–35:19. Moreover, KNR has never declined to pay the fee to investigators if they submitted paperwork. Simpson Tr., 29:20–22; Czetli Tr., 35:20–36:1.

Former KNR attorneys have testified that the investigators even have their own offices at the firm, were in the office very day, and were expected to be on call to handle signups and other "small tasks," effectively as full-time employees of the firm. Horton Tr. 380:19–382:22; 388:20–389:13 ("They were on call -- they were working every day to do sign-ups. .... [T]hey did not work for anybody else."). *See also* Nestico Tr. 613:21–614:8.

5. The so-called "investigators" lack any credentials to perform actual investigations.

One "investigator" admitted at deposition that this work requires no special expertise. Simpson Tr. 18:12–17. The KNR "investigators" also hold no professional licenses, notwithstanding the requirements state law places on those actually engaged in the profession of private investigation. *Id.* 18:19–19:2; Czetli Tr. 17:21–18:1. *See also,* R.C. 4749.01 and 4749.03 ("License requirement").

6. KNR systematically and deliberately misleads its clients as to the true nature of the "investigation" fee.

The settlement memoranda provided to KNR clients listed the name of an "investigation" company and the amount of the fee it would be receiving from the settlement proceeds. **Exhibit 30**, Affidavit of Named Plaintiff Member Williams, Ex. B; **Ex. 8**, Reid Aff., at Ex. E; **Ex. 11**, Norris Aff., at Ex. E; **Ex. 14**, Harbour Aff., at Exhs. B, E; **Ex. 9**, Carter Aff., at Exhs. D, G; and **Ex. 10**, Beasley Aff., at Exhs. D, H.

Clients are never informed of the true nature of the investigator fee. **Ex. 30**, Williams Aff., ¶ 3–¶ 5; **Ex. 14**, Harbour Aff., ¶ 8, ¶ 18–¶19; **Ex. 8**, Reid Aff., ¶ 15, ¶ 17; **Ex. 11**, Norris Aff., ¶ 9, ¶ 11, ¶ 13; **Ex. 9**, Carter Aff., ¶ 7, ¶ 12, ¶ 16–¶ 17, ¶ 19; **Ex. 10**, Beasley Aff., ¶ 9, ¶ 16, ¶ 18, ¶ 20. The documents do not disclose that these payments pertained to a "sign up," a failure that is especially misleading in the context of KNR's constant promises to prospective clients of a "free consultation," including in the firm's ad copy:

CALL NOW FOR A **FREE** CONSULTATION
IF YOU CAN'T COME TO US WE'LL COME TO YOU

Nestico Tr. 95:24–25; 116:22–117:2, Ex. 8 (also attached as **Exhibit 31**); *See also id*, 117:3–5 (Q. "The firm has always offered prospective clients a free consultation, correct?" A. "I believe so.").

Kelly Phillips testified that he found the title of "investigator" to be "hysterical" as applied to KNR's purported gumshoes. Phillips Tr. 105:25–5. And Ms. Lantz confirmed that KNR attorneys, including herself, "intentionally misled [KNR clients] as to what those investigator fees were."

138:16–21; *See also Id.*, 160:20, *et seq.*, (confirming that Ms. Lantz, upon termination of her employment at KNR, filed a report with Disciplinary Counsel relating to the investigation fee and other practices of the KNR firm).

7. The Class C members and claims

Due to the fraudulent nature of the fee, Plaintiffs seek certification of a class that includes,

> All current and former KNR clients to whom KNR charged sign-up fees paid to AMC Investigations, Inc., MRS Investigations, Inc., or any other so-called "investigator" or "investigation" company, from 2008[16] to the present.

As explained in the Law & Argument section below, these class members—including Named Plaintiffs Williams, Norris, Harbour, and Reid—are all entitled to damages and disgorgement of all narrative fees deducted from their settlements on claims for fraud, breach of fiduciary duty, breach of contract, and unjust enrichment.

III. Law and Argument

A. Trial courts have broad discretion in deciding whether to certify a class under Civ.R. 23, and all doubts regarding the propriety of class certification should be resolved in favor of certification.

The "spirit" of Civ. R. 23 is "to open the judicial system to more people" through class-actions. 73 OHIO JUR. 3D *PARTIES* § 46 (2018). This procedure permits the resolution of "disputes involving common issues between multiple parties in a single action." *Beder v. Cleveland Browns*, 129 Ohio App. 3d 188, 199, 717 N.E.2d 716 (8th Dist. 1998). The "policy at the very core" of the "class action mechanism"

> is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the … potential recoveries into something worth[while] ... .

[16] In their responses to Plaintiffs' First Set of Interrogatories (Nos. 11–12), the KNR Defendants state that they first began charging the investigation fee in late 2008 or early 2009.

Ritt v. Billy Blanks Enter., 171 Ohio App. 3d 204, 2007-Ohio-1695, 870 N.E.2d 212, ¶32-¶33. (8th Dist.).

Class certification generally becomes appropriate where "standardized practices and procedures" of the defendant afflict multiple victims. *Cope v. Metropolitan Life Ins. Co.*, 82 Ohio St. 3d 426, 437, 1998-Ohio-405, 696 N.E.2d 1001. The trial court has "broad discretion" in deciding whether to certify a class. *In re Consolidated Mtg. Satisfaction Cases*, 97 Ohio St. 3d 465, 2002-Ohio-6720, 780 N.E.2d 556, ¶5.

Plaintiffs must prove the appropriateness of class certification by a preponderance of the evidence. *Warner v. Waste Mgmt.*, 36 Ohio St. 3d 91, 94, 521 N.E.2d 1091 (1988). The court conducts a "rigorous analysis" of the prerequisites under Civ. R. 23 in assessing whether the plaintiffs have carried this burden. *Baughman v. State Farm Mut. Auto. Ins. Co.*, 88 Ohio St. 3d 480, 483, 2000-Ohio-397, 727 N.E.2d 1265. Nevertheless, "any doubts a trial court may have as to whether the elements of class certification have been met should be resolved in favor of upholding the class." *Carder Buick-Olds Co. v. Reynolds & Reynolds*, 148 Ohio App. 3f 635, 2002-Ohio-2912, 775 N.E.2d 531, ¶17 (2nd Dist.) (Brogan, J.), *citing Baughman*, 88 Ohio St. 3d at 487.

B. Courts are to consider the merits of the alleged claims only to the extent necessary to determine whether the prerequisites to class certification have been satisfied.

A motion for class certification focuses exclusively upon whether the case can "be properly adjudicated through the ... construct of a class action." *Dubin v. Security Union Title Ins. Co.*, 162 Ohio App. 3d 97, 2005–Ohio–3482, 832 N.E.2d 815, ¶21 (8th Dist.). It does not address the substantive aspects of the underlying lawsuit. *Ojalvo v. Board of Trustees*, 12 Ohio St. 3d 230, 233, 466 N.E.2d 875 (1984). The court considers the merits of asserted claims "only to the extent necessary to determine" whether the plaintiff has satisfied Civ. R. 23. *Cullen v. State Farm Mut. Auto Ins. Co.*, 137 Ohio St. 3d 373, 2013-Ohio-4733, 999 N.E.2d 614, ¶17; *accord*, *Carder Buick-Olds*, 2002-Ohio 2912 at ¶38.

C. The Plaintiffs have satisfied the prerequisites to certification of all three classes under Civ. R. 23(A).

To secure class certification, plaintiffs must establish each of the elements set forth under Civ. R. 23(A):

> **Identifiable class**: The plaintiffs must clearly identify the group of claimants she seeks to represent in the lawsuit.
>
> **Class membership**: The plaintiffs must belong to the class.
>
> **Numerosity**: The size of the proposed class must make it impracticable to join all eligible members as plaintiffs.
>
> **Commonality**: The claims of all class members must share common issues of law or fact.
>
> **Typicality**: The plaintiffs' claims must typify those of all class members.
>
> **Adequacy of representation**: The plaintiffs and their attorneys must prove their capability to prosecute the litigation fairly and adequately on behalf of the class.

Hamilton v. Ohio Savings Bank, 82 Ohio St.3d 67, 71, 1998-Ohio-365, 694 N.E.2d 442. The Plaintiffs can prove all of the mandatory elements under Civ. R. 23(A) with respect to the proposed class pursing claims relating to the "sign-up" fee charged by KNR.

1. All three classes are readily identifiable.

The Plaintiffs are pursuing claims on behalf of three identifiable classes. Civ. R. 23(A) does not obligate the plaintiff to name each eligible class member specifically. *Mozingo v. 2007 Gaslight Ohio LLC*, 9th Dist., No. 27759, 2016-Ohio-4828, ¶23. Nor does it require exactitude in defining the class. *Hamilton*, 82 Ohio St. 3d at 71-72.

Instead, the plaintiff need only describe the class in a manner that permits identification of members with "reasonable effort." *Hamilton*, 82 Ohio St. 3d at 72. If it "is administratively feasible for the court to determine whether a particular individual" qualifies as a class member, the plaintiff

has adequately identified the class for purposes of Civ. R. 23(A). *Id.* at 71-72; *accord*, *Kavanagh v. Caruthers*, 2017-Ohio-9406, 101 N.E.3d 1260, ¶22 (7th Dist.).

All three classes of claims are readily identifiable from Defendants' client files, including, primarily, the settlement statements that each KNR client signed upon resolving their cases.

a. The price-gouging class members are readily identifiable.

Class A, the price-gouging class, includes,

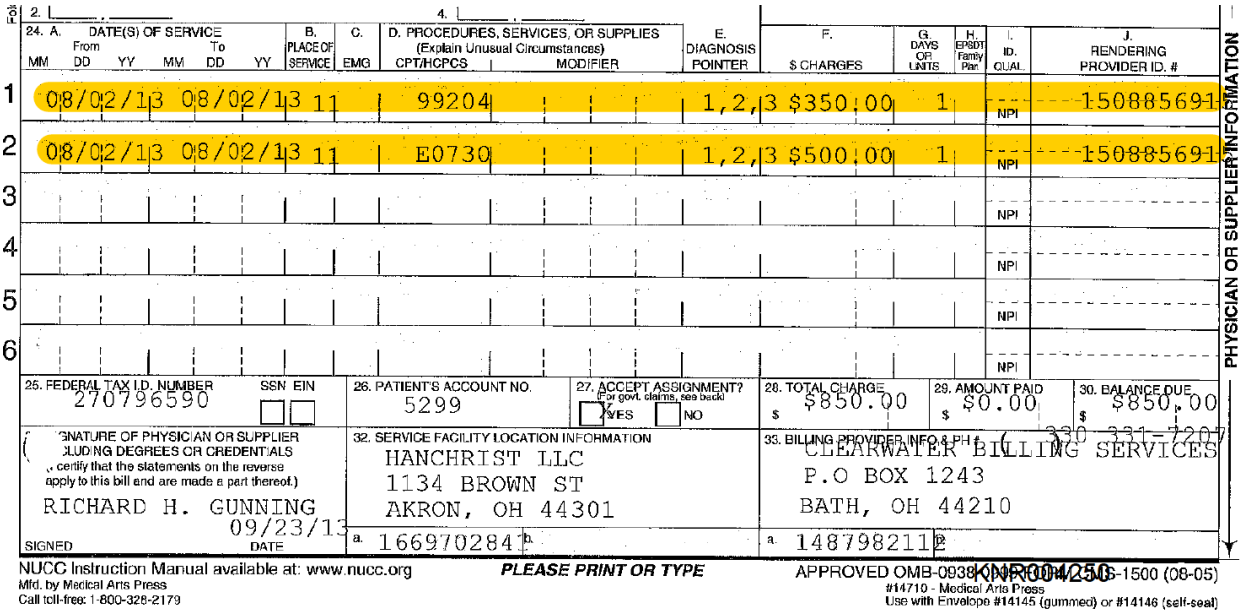
> All current and former KNR clients who had deducted from their settlements any fees paid to Defendant Ghoubrial's personal-injury clinic for trigger-point injections, TENS units, back braces, kenalog, or office visits, billed pursuant to the clinic's standard rates from the date of its founding in 2010 through the present.

These class members are readily identifiable, both from (1) the settlement statements that each KNR client signed upon resolving their cases, which show fees paid to Ghoubrial, or the corporation, "Clearwater Billing," in whose name his personal injury clients were billed; Ghoubrial Tr. 11:25–12:1; 169:5–7 ("If they are seen in the motor vehicle accident [clinic], they – they're seeen through Clearwater, so they get those forms. And so it's pretty cut and dry."); **Ex. 11**, Norris Aff., ¶ 9, Ex. E (settlement statement); *See also* **Ex. 8**, Reid Aff., ¶ 15, Ex. E (same);

DEDUCT AND RETAIN TO PAY TO OTHERS:		
Akron Square Chiropractic		$ 500.00
Clearwater Billing Services, LLC		$ 600.00
CNS Center for Neuro and Spine		$ 260.00
Kisling, Nestico & Redick, LLC	($2,077.51)	$ 1,750.00
Liberty Capital Funding LLC		$ 800.00
National Diagnostic Imaging Consultants		$ 80.00
Ohio Tort Recovery Unit*		$ 506.75
Total Due Others		$ 4,496.75

As well as from (2) the "Form 1500"'s health-insurance claim forms that the Defendants submitted to the underlying defendants' auto-insurers in connection with every client's claim. Ghoubrial Tr. 249:24–250:16; 181:20–250:16; Exs. 12–24 (thirteen Ghoubrial/KNR client case-files, the "Form

1500's" from which are also attached hereto as **Exhibit 32**). These forms detail all of the healthcare and supplies for which Defendants submitted claims to the responsible auto-insurers, containing codes that show precisely each service for which Defendants sought reimbursement. For example, codes E0730 and 99204 on the Form 1500 submitted for Norris show that she was (over)billed $350 and $500 for an initial office-visit and a TENS unit, respectively. *Id.*



	24. A. DATE(S) OF SERVICE From MM DD YY	To MM DD YY	B. PLACE OF SERVICE	C. EMG	D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) CPT/HCPCS	MODIFIER	E. DIAGNOSIS POINTER	F. $ CHARGES	G. DAYS OR UNITS	H. EPSDT Family Plan	I. ID. QUAL.	J. RENDERING PROVIDER ID. #
1	08/02/13	08/02/13	11		99204		1,2,3	$350.00	1		NPI	150885691
2	08/02/13	08/02/13	11		E0730		1,2,3	$500.00	1		NPI	150885691
3											NPI	
4											NPI	
5											NPI	
6											NPI	

25. FEDERAL TAX I.D. NUMBER: 270796590 SSN EIN
26. PATIENT'S ACCOUNT NO.: 5299
27. ACCEPT ASSIGNMENT? (For govt. claims, see back) YES NO
28. TOTAL CHARGE: $850.00
29. AMOUNT PAID: $0.00
30. BALANCE DUE: $850.00

SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.)
RICHARD H. GUNNING
SIGNED 09/23/13 DATE

32. SERVICE FACILITY LOCATION INFORMATION
HANCHRIST LLC
1134 BROWN ST
AKRON, OH 44301
a. 166970284 b.

33. BILLING PROVIDER INFO & PH #
CLEARWATER BILLING SERVICES
P.O BOX 1243
BATH, OH 44210
a. 148798211 b.

PHYSICIAN OR SUPPLIER INFORMATION

NUCC Instruction Manual available at: www.nucc.org
Mfd. by Medical Arts Press
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PLEASE PRINT OR TYPE
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#14710 - Medical Arts Press
Use with Envelope #14145 (gummed) or #14146 (self-seal)

Thus, all Class A members can be identified by the "reasonable effort" it would take to review these documents that are in every client file. *Hamilton*, 82 Ohio St. 3d at 72.

b. The narrative-fee class members are readily identifiable.

Class B, the narrative-fee class, includes,

> All current and former KNR clients who had deducted from their settlements a narrative fee paid to (1) Dr. Minas Floros of Akron Square Chiropractic, (2) all other chiropractors employed at clinics owned by Michael Kent Plambeck, and (3) certain other chiropractors identified in KNR documents as "automatic" recipients of the fee,[17] from KNR's founding in 2005 to the present.

17

These class members are similarly readily identifiable both from (1) the KNR settlement statements showing the KNR clients from whose settlement the narrative fee was deducted as a case expense; **Ex. 11**, Norris Aff., ¶ 13, Ex. E; *See also* Nestico Tr. 159:2–10; 161:3–163:14, Ex. 14 (confirming that fees for "narrative reports" would "typically be reflected" under the "deduct and retain to pay" section of the settlement memoranda reflecting case expenses advanced from KNR's "cost account"); **Ex. 8**, Reid Aff., ¶ 15, Ex. E;

DEDUCT AND RETAIN TO PAY:	
Kisling, Nestico & Redick, LLC	
Akron General Medical Center	$ 6.00
Clearwater Billing Services, LLC	$ 50.00
First Healthcare	$ 12.00
Floros, Dr. Minas	$ 200.00
Mercy Health Partners	$ 15.00
MRS Investigations, Inc.	$ 50.00
Professional Receivables Control, Inc.	$ 16.00
Akron General Medical Center	$ 40.89
Total Due	$ 389.89

As well as (2) KNR's internal documents showing to whom narrative fees were "automatically," thus, fraudulently paid. Gobrogge Tr. Ex. 33 (also attached hereto as **Ex. 25**) ("Updated Narrative and WD Procedure for Plambec [sic] Clinics and Referring Physicians," identifying "the only Narrative Fees that get paid automatically); *See also Id.* 298:6–9, 301:24–313:10; Nestico Tr. 340:23–344:1, Ex. 50 (same); Gobrogge Tr. 293:17–297:22, Ex. 32 (same, also attached hereto as **Ex. 26**).

Updated Narrative and WD Procedure for Plambec Clinics and Referring Physicians

****NO NARRATIVES ARE TO BE PAID FOR MINOR'S 12 AND UNDER!**

hose highlighted are the only **Narrative Fees** that get paid automatically (with the amount indicated) to the doctor personally (all doctors are in needles).

The following below are Plambec clinics:

*Akron Square Chiropractic: Dr. Minas Floros
*Cleveland Injury Center (Detroit Shoreway): Dr. Eric Cawley
*Canton Injury Center (West Tusc): Dr. Zach Peterson (narrative to Dr. Phillip Tassi)
East Broad Chiropractic: Dr. Heather Kight
Old Town Chiropractic: Dr. Gregory Smith
Shaker Square Chiropractic: Dr. Drew Schwartz
*Timber Spine & Rehab (Toledo Spine): Dr. Patrice Lee-Seyon
Valley Spine & Rehab: Dr. David Mullin
*Cincinnati Spine & Rehab (Vernon Place/Werkmore): Dr. Jason Maurer
*West Broad Spine & Rehab: Dr. Sean Neary

***Narrative Report Fees are paid to Dr. Patrice Lee-Seyon via MedReports (Timber Spine/Toledo Spine) for $150.00, **Dr. Minas Floros** (Akron Square) **$150.00, Dr. Phillip Tassi** (Canton Injury) **$150.00, Dr. Jason Maurer** (Cincinnati Spine/Vernon Place/Werkmore) **$150.00, Dr. Eric Cawley** (Cleveland Injury) **$150.00, Dr. Sean Neary** (West Broad) **$150.00 to the doctor personally (all doctors are in needles).**

In addition to:
Akron/Cleveland Area ((NOT PLAMBEC))
Dr. Alex Frantzis/ Dr. Todd Waldron with NorthCoast Rehab, LLC **($200.00)** ((NOT PLAMBEC))
Accident Injury Center of Akron (P.O. Box 20770) **$200.00**
Columbus/Cincinnati Area ((NOT PLAMBEC))
Accident Care & Wellness Center (P.O. Box 20770) **$200.00**
Columbus Injury & Rehab (P.O. Box 20770) **$200.00**

[redacted]

Thus, all Class B members can be identified by the "reasonable effort" it would take to review the settlement statement in every client file to determine whether a narrative fee was paid from the clients' funds to one of the identified chiropractors. *Hamilton*, 82 Ohio St. 3d at 72. It is "administratively feasible" to ascertain whether a "particular individual" qualifies for membership in Class B. *Id.*

c. The investigation-fee class members are readily identifiable.

Class C members include,

> All current and former KNR clients to whom KNR charged sign-up fees paid to AMC Investigations, Inc., MRS Investigations, Inc., or any other so-called "investigator" or "investigation" company, from 2008[18] to the present;

These class members are also readily identifiable from the KNR settlement statements showing that the investigation fee was deducted as an advanced case expense, from KNR's cost account, on nearly every KNR client file; Ex. __, Norris Aff., ¶ __, Ex. __; *See also* Nestico Tr. 159:2–10; 161:3–162:14, Ex. 14 (confirming that the investigation fees are typically listed under the "deduct and retain to pay" section of the settlement memoranda reflecting case expenses advanced from KNR's "cost account"); **Ex. 8**, Reid Aff., ¶ 15, Ex. E; **Ex. 30**, Williams Aff., ¶ 3, Ex. B; **Ex. 14**, Harbour Aff., ¶ 8, ¶ 14, Exs. B, D.

232154 / Norris, Ms. Monique

Settlement Memorandum

Recovery:

MP	Motorists Insurance Group *	$ 1,000.00
REC	Motorists Mutual Insurance Company	$ 250.00
REC	Nationwide Insurance*	$ 4,982.55
REC	Liberty Capital Funding LLC	$ 500.00
		$ 6,732.55

DEDUCT AND RETAIN TO PAY:

Kisling Legal Group

Akron General Medical Center; 412140	$ 40.89	
Akron General Medical Center; Billing Fee /jks	$ 6.00	
Clearwater Billing Services, LLC; # 5299 /jks	$ 50.00	
First Healthcare; #000412140-jks	$ 12.00	
Floros, Dr. Minas;	$ 200.00	
Mercy Health Partners*; /bc	$ 15.00	
MRS Investigations, Inc.;	$ 50.00	
Professional Receivables Control, Inc.*; 336474	$ 16.00	
Total due Kisling Legal Group		$ 389.89

Thus, the Plaintiffs are thus pursuing certification of three identifiable classes under Civ. R. 23(A).

2. The Named Plaintiffs are members of the proposed classes.

[18] In their responses to Plaintiffs' First Set of Interrogatories (Nos. 11–12), the KNR Defendants state that they first began charging the investigation fee in late 2008 or early 2009.

The settlement memoranda for each of the Named Plaintiffs also confirm that they each had the contested fees deducted from the amount remitted to them by KNR: (1) Named Plaintiffs Norris, Harbour, and Reid were charged $600, $3,000, and $3,900, respectively, for payment to Ghoubrial under the price-gouging scheme; (2) Named Plaintiffs Norris and Reid were charged $200, and $150, respectively, for narrative fees paid to Floros; and (3) All four Named Plaintiffs were charged the investigation fee. **Ex. 30**, Williams Aff., ¶ 3, Ex. B, **Ex. 14**, Harbour Aff., ¶ 8, ¶ 14, Exs. B, D; **Ex. 8**, Reid Aff., ¶ 15, Ex. E; **Ex. 30**, Williams Aff., ¶ 3, Ex. B; **Ex. 11**, Norris Aff., ¶ 13, Ex. E.

Thus, Named Plaintiffs are indisputably among the members of the prospective class. *See generally Mozingo v. 2007 Gaslight Ohio LLC*, 9th Dist., No. 27759, 2016-Ohio-4828, ¶17 (class membership requires that plaintiff "have the same interest and have suffered the same injury share by all members of the class").

3. All three classes are sufficiently numerous.

All three proposed classes are sufficiently numerous. Numerosity exists under Civ. R. 23(A) where joinder of all prospective class members appears "impracticable." *Ritt*, 2007-Ohio-1695 at ¶43. The plaintiff does not have to prove the exact size of the class in addressing this aspect of class certification. *Williams v. Countrywide Home Loans*, 6th Dist., No. L-01-1473, 2002-Ohio-5499, ¶26.

"There is no specified numerical limit" that establishes numerosity. *Vinci v. American Can Co.*, 9 Ohio St. 3d 98, 99, 459 N.E.2d 507 (1984). Classes of more than 40, however, presumptively merit certification. *Warner*, 36 Ohio St. 3d at 97. Courts may make "common-sense assumptions" in assessing the size of a proposed class for purposes of Civ. R. 23(A). *Williams*, 2002-Ohio-5499 at ¶26.

As to Class A, the price-gouging class, there is no dispute that Ghoubrial's personal-injury clinic has treated thousands of KNR clients since it opened 2010. *See*, *e.g.*, Ghoubrial Tr. 41:5–10; 151:4–22; 154:2–155:10 Exs. 5–7.

Similarly, as to Class B, the narrative-fee class, there is no dispute that Floros alone treated more than 4,000 KNR clients just between 2013 and 2017. As noted above, Floros prepared a narrative report in "every single [one] or virtually every single" one of these cases, and as KNR documents reflect, other chiropractors did likewise, "automatically," for the cases they shared with KNR. Petti Tr. 284-85; Horton Tr. 298:9–18; 300:15–25; 305:18–19; **Ex. 25** (Gobrogge Tr. Ex. 33 ("Updated Narrative and WD Procedure for Plambec [sic] Clinics and Referring Physicians," identifying "the only Narrative Fees that get paid automatically"); *See also* **Ex. 26**, Gobrogge Tr. 298:6–9, 301:24–313:10; Nestico Tr. 340:23–344:1, Ex. 50 (same); Gobrogge Tr. 293:17–297:22, Ex. 32 (same).

As to Class C, the investigation-fee class, there is no dispute that KNR has charged this fee to "the vast majority" of its clients since 2009, approximately 40,000 to 45,000 of them. Nestico Tr. 132:18–15; 136:15–137:16.

The Court could not practicably join the thousands of eligible claimants from Classes A, B, and C as actual parties to this lawsuit. *Ritt*, 2007-Ohio-1695 at ¶43. "Common sense" dictates that the litigation can most reasonably proceed on behalf of classes that includes all of these individuals, and the Court can similarly make a "common-sense assumption" that the Liberty Capital class is sufficiently numerous as well. *Martin*, 2001 WL 688896 at *3. The Plaintiffs have established numerosity under Civ. R. 23(A).

4. The claims of all three sets of class members share common elements.

The claims of all three sets of class members share common legal and factual issues. Courts "permissive[ly]" construe the element of commonality under Civ. R. 23(A). *Warner*, 36 Ohio St. 3d

91, syllabus ¶3. This component of class certification generally requires that "common questions" and "common answers" "drive the resolution" of class claims. *Stammco, L.L.C. v. United Telephone Co.*, 136 Ohio St. 3d 231, 2013-Ohio-3019, 994 N.E.2d 408, ¶32. Every class member's right to recovery must implicate "a common contention," determination of which will decide "an issue … central to the validity of each claim in one stroke." *Musial Offices v. Cuyahoga Cty.*, 2014-Ohio-602, 8 N.E.3d 992, ¶31 (8th Dist.).

Civil Rule 23(A), however, does not require "[t]otal commonality." *Planned Parenthood Ass'n v. Project Jericho*, 52 Ohio St. 3d 56, 64, 556 N.E.2d 157 (1990). Instead, only a single issue common to all class members will suffice. *Berdysz v. Boyas Excavating*, 2017-Ohio-530, 85 N.E.3d 288, ¶30.

As this rule suggests, a "common nucleus of operative facts, or a common liability issue" establishes commonality. *Hamilton*, 82 Ohio St. 3d at 77. After the plaintiffs make such a showing, commonality does not disappear simply because "factual variations" exist between the claims of individual class members. *San Allen, Inc. v. Buehrer*, 2014-Ohio-2071, 11 N.E.3d 739, ¶150 (8th Dist.). In fact, differences between class members' individual claim do not even merit consideration in assessing commonality under Civ. R. 23(A). *Marks v. C.P. Chem. Co.*, 31 Ohio St. 3d 200, 202, 509 N.E.2d 1249 (1987); *Pyles v. Johnson*, 143 Ohio App. 3d 720, 733, 758 N.E.2d 1182 (4th Dist. 2001).

Given the nature of KNR's high-volume business and the routinized nature of the practices at issue, the claims of all three sets of class-members present various factual and legal "common questions." *Stammco*, 2013-Ohio-3019 at ¶32.

a. The price-gouging class is derived entirely from a "common nucleus of operative facts," and "common liability issues."

For example, as to the price-gouging class:

- Did KNR unlawfully conspire with chiropractors to solicit clients and direct their treatment pursuant to a routinized course of care calculated to maximize the Defendants' profits?

- Did the Defendants conspire to inflate KNR clients' medical bills by the administration of trigger-point injections and other medical supplies and healthcare for which the clients were charged exorbitant and unconscionable rates?

- Did the Defendants mislead their clients into forgoing coverage from health insurance providers in order to avoid scrutiny of, and obtain higher fees for, fraudulent healthcare services?

- Did the Defendants intentionally and serially fail to disclose that the care they administered was unnecessary and/or readily available from alternative sources at a fraction of the price they charged the clients?

- Did the Defendants intentionally and serially fail to disclose that their relationships were viewed as fraudulent by auto-insurance companies responsible for paying KNR clients' claims, and were thus damaging the KNR clients' cases?

- Did Ghoubrial deliberately set out to administer as many of the injections, and distribute as many of the overpriced supplies as possible, precisely to enrich himself and his co-conspirators?

- Did KNR and Floros refer clients to Ghoubrial with the knowledge and intention that his exorbitant charges would raise the cost of settling their claims and thereby increase the amount that KNR and Floros would collect from the clients' settlements?

- Did the Defendants intentionally disregard the negative impact that the Defendant providers' involvement had on the clients' individual cases because it was more profitable to simply drive a greater number of them through their high-volume, highly routinized business model?

- Are the Defendants liable for fraud, breach of fiduciary duty, breach of contract, or unjust enrichment based primarily on the answers to the questions above?

b. The narrative-fee class is derived entirely from a "common nucleus of operative facts," and "common liability issues."

Common facts and issues similarly characterize the narrative-fee class:

- Did KNR automatically pay a narrative fee to Dr. Floros and certain other chiropractors as a matter of firm policy for every or nearly every KNR client they treated?

- How and why did KNR differentiate between the chiropractors who automatically produced narrative reports and those who didn't?

- Did KNR have legitimate reasons for automatically requesting a narrative report from just these chiropractors?

- Did KNR attorneys have any discretion to decide whether or not to obtain a narrative report from these chiropractors?

- Did KNR pay narrative fees to these chiropractors as a kickback, or a clandestine means of compensating them for referring clients and participating in their price-gouging scheme?

- Did KNR truthfully inform clients about these narrative fees?

- Are the Defendants liable for fraud, breach of fiduciary duty, breach of contract, or unjust enrichment based primarily on the answers to the questions above?

c. The investigation-fee class is derived entirely from a "common nucleus of operative facts," and "common liability issues."

As well as the investigation-fees class:

- Was KNR having clients pay for a basic administrative or marketing cost in charging them the "sign-up" fee?

- Were KNR's "investigators" truly involved in investigatory work?

- Were KNR's "investigators" functionally employees of KNR, in-house messengers and office assistants who did not operate independently from the firm?

- Did KNR intentionally mislead clients about the "sign-up" fee by representing it on settlement memoranda as an amount paid to an "investigator" or "investigation" company and by failing to disclose the true nature of the charge?

- Did the KNR engagement letters permit the firm to deduct charges like the "sign-up" fee from clients' recovery?

- Are the KNR Defendants liable for fraud, breach of fiduciary duty, breach of contract, or unjust enrichment based primarily on the answers to the questions above?

"Common answers" exist for all three sets of "common questions," as described further below regarding Civ.R.23(B)'s predominance element. *Stammco*, 2013-Ohio-3019 at ¶32. A discrete set of facts and legal principles will apply uniformly to all eligible class members. Commonality exists under these circumstances.

5. Named Plaintiffs' claims typify those of other class members.

The Plaintiffs' claims typify those of other class members. The requirement of typicality under Civ. R. 23(A) ensures "that the interests of the named plaintiffs are substantially aligned with those of the class." *Baughman*, 88 Ohio St. 3d at 484. The relevant standard "is not demanding." *Ritt*, 2007-Ohio-1695 at ¶47. Plaintiffs do not have to demonstrate that their claims identically match those of other eligible participants in the litigation. *Baughman*, 88 Ohio St. 3d at 484.

To prove typicality, plaintiffs need only show the absence of any "express conflict" between their interests and eligible claimants'. *Hamilton,* 82 Ohio St. 3d at 77. "Factual differences" will not render the plaintiffs' claim atypical if it "arises from the same event or practices … that gives rise to the claims of the class members, and … it is based on the same legal theory." *Musial*, 2014-Ohio-602 at ¶24. Meanwhile, a "unique defense" applicable to the plaintiff "will not destroy typicality … unless it is so central to the litigation that it threatens to preoccupy the class representative to the detriment of other class members." *Baughman*, 88 Ohio St. 3d at 487.

No "express conflict" (or conflict of any kind) exists between the Named Plaintiffs and members of the proposed classes. *Hamilton,* 82 Ohio St. 3d at 77. The Named Plaintiffs and class-members all had the allegedly unlawful charges deducted from their KNR settlements pursuant to the same schemes, as set forth in detail above. *See also* **Exs. 8**, **9**, **10**, **11**, **14**, **30** (affidavits of the four Named Plaintiffs, Reid, Norris, Harbour, and Williams, and former KNR clients Mr. Carter and Ms. Beasley). Plaintiffs and class-members all signed effectively identical fee agreements, and the Defendants did not provide the Plaintiffs with any special information about the allegedly fraudulent

fees that would threaten the typicality of their claims. *Id.* The Plaintiffs' claims therefore derive "from the same event[s] or practices … that gives rise to the claims of the [other] class members," since payment of the fees pursuant to the schemes at issue represents the essential operative fact under each of the alleged theories of liability. *Musial*, 2014-Ohio-602 at ¶24. *See also* Section III.D.1.a.—c., below ("The [ ] class members' claims will 'prevail or fail in unison'"). Nothing unique or anomalous distinguishes any of the Named Plaintiffs' claims.

The Plaintiffs have thus sufficiently proven the typicality of all three classes of claims.

6. The Plaintiffs and their counsel will fairly and adequately represent members of the class.

Civil Rule 23(A) requires proof that both the plaintiffs and their attorneys will adequately serve as representatives of absent class members. *Vinci*, 9 Ohio St. 3d at 101. This rule protects the due process rights of "members of the proposed class who will not have their individual day in court." *Marks*, 31 Ohio St. 3d at 203.

a. The Plaintiffs are adequate class representatives.

The Plaintiffs qualify as adequate class representatives with respect to all three classes of claims. Attacks on a plaintiff's "knowledge of and involvement in a case are … generally irrelevant to the adequacy inquiry" under Civ. R. 23(A). *County of Monroe v. Priceline.com*, 265 F.R.D. 659, 669 (S.D. Fla. 2010).[19] Moreover, "few plaintiffs come to court with halos above their heads; fewer still escape with those halos untarnished." *Haswkins v. Securitas Sec. Serv. USA*, 280 F.R.D. 388, 395 (N.D. Ill. 2011). Purported "credibility" problems implicate a plaintiff's adequacy only if they pertain to "issues directly relevant to the litigation" and raise concerns "so sharp as to jeopardize the interests of absent class members." *Hernandez v. County of Monterey*, 305 F.R.D. 132, 160 (N.D. Cal. 2015).

[19] Given the similarity between Civ. R. 23 and Fed. Civ. R. 23, federal case law serves as persuasive authority on class certification issues in Ohio courts. *See, e.g., Marks*, 31 Ohio St. 3d at 201; *Felix v. Ganley Chevrolet*, 145 Ohio St. 3d 329, 2015-Ohio-3430, 49 N.E.3d 1224, ¶34.

Viewed in its proper light, adequacy under Civ. R. 23(A) partially overlaps with the element of typicality. *Toledo Fair Housing Ctr. v. Nationwide Mut. Ins. Co.*, 94 Ohio Misc. 2d 17, 33-34, 703 N.E.2d 340 (Lucas Cty. C. Pl. 1996). Plaintiffs must show that their "interest is not antagonistic to that of other class members." *Warner*, 36 Ohio St. 3d at 98. Plaintiffs become inadequate as class representatives if some "[s]erious discrepancy" exists between their position "and that of the class." *Blankenship v. CFMOTO Powersports*, 166 Ohio Misc. 2d 21, 2011-Ohio-6946, 961 N.E.2d 750, ¶35 (Clermont Cty. C. Pl.). On the other hand, if the plaintiffs can show that their interests "are directly aligned with the rest of the" class, they have proven their adequacy under Civ. R. 23(A). *Barrow v. Village of New Miami*, 2016-Ohio-340, 58 N.E.3d 532, ¶36 (12th Dist.)

The Plaintiffs all paid the same allegedly unlawful fees that KNR deducted from the settlements of eligible members of all three classes. Nothing the Plaintiffs could say or do would alter this essential fact. The Plaintiffs have the same interest in recouping the unlawful charges as other class members, and seek to do so on the identical legal grounds. Their claims remain indistinguishable from other class members' in every meaningful sense, and no conceivable antagonism or "discrepancy" runs between their respective claims. *Blankenship*, 2011-Ohio-6946 at ¶35. This absence of any "antagonis[m]" between the Plaintiffs and the class confirms their adequacy as class representatives under Civ. R. 23(A). *Warner*, 36 Ohio St. 3d at 98

b. Plaintiffs' counsel will adequately represent the class.

The Plaintiffs' counsel also satisfy the adequacy requirement. The adequacy of class counsel depends upon their "competen[ce] to handle litigation of the type involved in the case." *Ritt*, 2007-Ohio-1695 at ¶52. If the attorneys "are qualified, experienced and generally able to conduct the proposed litigation," they can adequately represent the class. *Musial*, 2014-Ohio-602 at ¶28. Attorney demonstrate their adequacy by "zealously … prosecut[ing] the action on behalf of all members of the class." *Id.*, ¶29.

Peter Pattakos of the Pattakos Law Firm LLC serves as the Plaintiffs' lead counsel. He has extensive background in complex civil litigation and has achieved substantial results in high-stakes cases. *See* **Exhibit 33**, Affidavit of Peter Pattakos, ¶ 5–¶ 7. Pattakos has also navigated this lawsuit through almost three years of extremely intense litigation, "zealously" cultivating the asserted claims and preserving them in the face of repeated dispositive motions and continual disputes over discovery. His performance in the case to-date leaves no question about his adequacy as lead class-counsel, particularly given his association with co-counsel from Cohen Rosenthal & Kramer LLP ("CRK"). *Musial*, 2014-Ohio-602 at ¶29.

Josh Cohen and Ellen Kramer (the "C" and "K" in "CRK") serve as Pattakos's co-counsel in this lawsuit. These attorneys have extensive experience in handling complex litigation generally and class actions in particular. *See* **Exhibit 34**, Affidavit of Joshua R. Cohen, ¶ 3–¶ 12. CRK has obtained multiple substantial recoveries in class and collective actions. *Id.*, ¶ 11. Courts have explicitly recognized Joshua R. Cohen (the CRK lawyer working on this case) as "an experienced class action lawyer" and applauded the "specialized, highly competent, and effective quality" of the "legal services" he provided in litigation of this kind. *Beder v. Cleveland Browns*, 114 Ohio Misc. 2d 26, 30, 758 N.E.2d 307 (Cuyahoga Cty. C.P. 2001); *In re Revco Sec. Litig.*, No. 1:89-cv-00593, Fed. Sec. L. Rep. 97, 809 (N.D. Ohio 1993).

The Plaintiffs' attorneys are adequate class representatives. The Plaintiffs have fully complied with Civ. R. 23(A).

D. The Plaintiffs have satisfied the prerequisites to certification of all three classes under Civ. R. 23(B)(3).

"Once the requirements of Civ. R. 23(A) have been met," plaintiffs must show that their claims comply with "one of the three requirements set forth in Civ. R. 23(B)" in order to secure class certification. *New Albany Park Condo. Ass'n v. Lifestyle Communities, Ltd.*, 195 Ohio App. 3d 459, 2011-Ohio-2806, 960 N.E.2d 992, ¶56 (10th Dist.). The Plaintiffs seeks certification of their claims

under Civ. R. 23(B)(3), "which controls actions for damages." *Konarzewski v. Ganley, Inc.*, 8th Dist., No. 92623, 2009-Ohio-5827, ¶32. Class certification becomes appropriate under Civ. R. 23(B)(3) when

- legal or factual issues common to the entire class predominate over questions unique to individual class members; and
- a class action is superior to other available methods for the fair and efficient resolution of the case.

Given the nature of KNR's high-volume settlement mill, the routinized nature of the practices at issue, and the voluminous evidence supporting Plaintiffs' claims of fraudulent schemes, both elements are easily met as to all three classes of claims.

1. Common issues predominate over individual ones as to all three classes.

Predominance of common issues under Civ. R. 23(B)(3) and "commonality" under Civ. R. 23(A) remain "separate" and "distinct" concepts. *Musial*, 2014-0hio-602 at 1132. Predominance requires that "issues subject to generalized proof and applicable to the class as a whole predominate over those issues that are subject only to individualized proof." *Cullen*, 2013-Ohio-4733 at ¶30.

This balancing test is "qualitative, not quantitative." *Musial*, 2014-Ohio-602 at ¶32. It does not turn on the "time" required to resolve "common issues" as compared to "the time that individual issues" will consume. *Hamilton*, 82 Ohio St. 3d at 85.

Courts instead focus upon whether central points of dispute in the case are "capable of resolution for all members in a single adjudication." *Cantlin v. Smythe Cramer Co.*, 2018-Ohio-4607, 114 N.E.3d 1260, ¶33 (8th Dist.), *quoting Marks*, 31 Ohio St. 3d at 204. Common issues predominate if all class members will "prevail or fail in unison." *Musial*, 2014-Ohio-602 at ¶32. Put another way, predominance exists where the "gravamen" of every class members' claim "is the same." *Baughman*, 88 Ohio St. 3d at 489. Under such circumstances, factual differences between class members' claims do not negate compliance with Civ. R. 23(B)(3). *Consolidated Mtg.*, 2002-Ohio-6720 at ¶10.

The Court will not have to determine whether KNR could justify collecting the allegedly unlawful fees from certain clients but not others. The legitimacy of all three classes of charges will depend upon "generalized proof" of their true nature that applies across-the-board, without variation from class member to class member. *Cullen*, 2013-Ohio-4733 at ¶30. The Court can resolve these issues for all class members "in a single adjudication." *Cantlin*, 2018-Ohio-4607 at ¶33. (1) Whether KNR engaged in the price-gouging scheme, (2) whether the narrative-fee functioned as a kickback, (3) whether the investigation-fee constituted an unlawful double charge for overhead expenses, and (4) whether the firm engaged in prohibited self-dealing with Liberty Capital constitutes the "gravamen" of the three respective classes of claims. *Baughman*, 88 Ohio St. 3d at 489. Class members will "prevail or fail in unison," depending upon the Court's evaluation of these questions. *Musial*, 2014-Ohio-602 at ¶32.

a. The price-gouging class members' claims will "prevail or fail in unison."

The voluminous evidence of Defendants' price-gouging scheme detailed above is sufficient to establish that the putative class should be certified as to all of the pleaded claims.

Indeed, "[g]enerally, courts have found that when a common fraud is perpetrated on a group of plaintiffs, those plaintiffs should be able to pursue the claim without focusing on questions affecting individual members." *Carder Buick-Olds Co. v. Reynolds & Reynolds*, 148 Ohio App.3d 635, 2002-Ohio-2912, 775 N.E.2d 531, ¶ 47 (2d Dist.) (Brogan, J.) citing *Cope*, 82 Ohio St.3d 426 at 430. "In this regard, fraud cases that involve a single underlying scheme and common misrepresentations or omissions across the class are particularly subject to common proof." *Id.* citing *Cope* at 432. Thus, "[o]nce the plaintiff establishes that there are common misrepresentations or omissions affecting all class members, a class action can be certified notwithstanding the need to prove reliance." *Id.* citing *Hamilton*, 82 Ohio St.3d 67 at 83-84.

Further, "direct evidence is not necessary to establish inducement and reliance. Instead, these elements of fraud can be established by inference or presumption." *Id.* citing *Baughman*, 88 Ohio St.3d at 490-91. "Courts have generally found that because inducement and reliance can be inferred from common proof of misrepresentations or omissions, the need for individual proof is obviated." *Id.* citing *Cope*, 82 Ohio St.3d at 436. And, "[e]ven if specialized inquiries into reliance were necessary, this should not defeat class certification." *Id.* citing *Portman v. Akron Sav. & Loan Co.* (1975), 47 Ohio App.2d 216, 219, 1 Ohio Op. 3d 287, 353 N.E.2d 634. Thus, "a case involving a common scheme across the entire class should be certified as a class action notwithstanding the need for each class member to prove inducement and reliance." *Id.*

Here, evidence of "a common scheme" and "common proof of misrepresentations or omissions" is prevalent. Ghoubrial did not charge inappropriate amounts to some class members but not others. While some variation existed in the specific fee assessed for trigger-point injections, in each case the figure far exceeded the prevailing norms. And Ghoubrial, Floros, and the KNR Defendants uniformly concealed from clients the exorbitant charges they would incur by using him as their physician.

Indeed, Ghoubrial admits that he never discusses prices or the cost of care with his patients. Ghoubrial Tr. 296:11–24; 314:14–17. Rather, he serially administers the same injections and distributes the same supplies to thousands of KNR clients with no regard for the fact that the same treatment could be obtained elsewhere for a fraction of the cost. *See* Section II. B. 2, above (citing evidence). Indeed, voluminous evidence shows that Ghoubrial has deliberately set out to administer as many of these injections, and distribute as many of the overpriced supplies as possible, precisely to enrich himself and his co-conspirators. *Id.* Moreover, it is clear that Defendants fail to disclose that these injections are not only medically unnecessary, but contraindicated for car-accident victims,

and that Ghoubrial's administration of them deviates extremely from any established standard of care.

It is also clear that the Defendants omit advising their clients of the financial consequences of the letters of protection, or, medical liens, in the package of forms that the providers require the clients to sign as a condition of the treatment that the KNR attorneys urge them to accept. To the contrary, the forms falsely assure the clients that only a "fair and reasonable price of medical services" will be charged for the treatment provided, and yet nowhere does the form disclose that the clients are waiving their own health-insurance benefits by signing. *See* **Exhibit 35**, compilation of letters of protection/medical liens from Named Plaintiffs' and other former KNR clients' files; *See also* Ghoubrial Tr. 249:24–250:16; 181:20–250:16; Exs. 12–24; **Ex. 32** ("Forms 1500" from each client file). Thus, the clients have no reason to believe they would ever end up paying more for this care than it would have cost them to simply pay through their health-insurance policies, and no reason to even believe that the Defendant providers wouldn't bill their insurance companies. See *Carder Buick-Olds Co.*, 148 Ohio App.3d 635, ¶ 49 citing *Baughman*, 88 Ohio St.3d 480, 490 ("[C]laims involving interpretations of form contracts present the classic case for treatment as a class action.").

Compounding these omissions is the fact that "the patient must necessarily place great reliance, faith and confidence in the professional word, advice and acts of his doctor." *Adams v. Ison*, 249 S.W.2d 791, 793-794 (Ky.1952) citing 41 Am.Jur., Physicians and Surgeons, Secs. 70, 73, 74; 70 C.J.S., Physicians and Surgeons, § 36 ("It is the physicians' duty to act with the utmost good faith and to speak fairly and truthfully at the peril of being held liable for damages for fraud and deceit."); *Lownsbury v. VanBuren*, 94 Ohio St.3d 231, 235, 2002-Ohio-646, 762 N.E.2d 354, *quoting Tracy v. Merrell Dow Pharma.*, 58 Ohio St.3d 147, 150, 569 N.E.2d 875 (1991) ("The physician-patient relationship is a fiduciary one based on trust and confidence and obligating the physician to exercise good faith."); *Pagarigan v. Greater Valley Med. Group*, No. B172642, 2006 WL 2425298 at *16 (Cal.

App. Aug. 23, 2006) (physician's fiduciary obligations require disclosure of financial relationships that might impact professional judgment); *Bigler-Engler v. Breg, Inc.*, 7 Cal. App. 5th 276, 323, 213 Cal.Rptr.3d 82 (2017) ("[The patient]'s cause of action for concealment does not require proof of a standard of care. Instead, it requires proof of failure to disclose and, most critically, intent to deceive. It is not based on mere negligence.").[20]

Not to mention the special relationship between attorneys and their clients, and the KNR Defendants' involvement in driving this scheme. *See State v. Saunders*, 2nd Dist. Greene No. 2009-CA-82, 2011-Ohio-391, ¶ 34 ("The relation between attorney and client is a fiduciary relationship of the very highest character, and bonds the attorney to most conscientious fidelity—*uberrima fides*, which is defined as the most abundant good faith; absolute and perfect candor or openness and honesty; the absence of any concealment or deception, however slight."); *Hendry v. Pelland*, 315 U.S.App.D.C. 297, 73 F.3d 397, 401 (1996) ("[A] basic fiduciary obligation of an attorney is the duty of "undivided loyalty.").

Of course, having been sent to these providers by their own attorneys, the clients have even more reason to assume there would be no irregularities in the processing of their medical bills. KNR, however, not only fails to advise its clients that the firm's "preferred" providers' involvement in their cases actually hurts their settlement prospects, the firm sends the clients to Ghoubrial precisely because he overcharges the clients for contraindicated injections and other supplies, thus inflating the firm's fees. Lantz Tr. 27:15–23; 29:17–19; 30:14–20 (confirming that KNR management

[20] *See also Gaines v. Preterm-Cleveland, Inc.*, 33 Ohio St.3d 54, 514 N.E.2d 709 (1987) (holding that a fraud claim remains "separate and distinct" from any "medical claim" where the defendant's conduct "was prompted not by medical concerns but by motivations unrelated and even antithetical to [the plaintiff's] well-being"); *Newberry v. Silverman*, 789 F.3d 636, 644 (6th Cir. 2015) (same); *Prysock v. Ohio State Univ. Med. Ctr.*, 10th Dist. Franklin No. 01AP-1131, 2002-Ohio-2811, ¶ 17–18 (holding that plaintiff had "set forth an independent fraud claim separate from her medical malpractice claim" where the "alleged failure to disclose the true nature of the foreign object" left inside the plaintiffs' body after a caesarian section "related to protecting the medical team that performed the [procedure]").

"directed" staff that if "our client wanted an M.D., send them to [Ghoubrial]," "because [Ghoubrial] charges a lot more for his treatment, which means it increases the value of the case").

Of course, if any client were even partially advised of these facts, she would never agree to treat with Ghoubrial, receive his injections, or pay out-of-pocket for his care. Thus, here, there is particularly no need to "place an unrealistic burden on the ... plaintiff[s]" by "requir[ing them] to speculate on how they would have reacted if material information had been disclosed or if misrepresentations had not been made." *Carder Buick-Olds Co.*, 148 Ohio App.3d 635, ¶ 49 citing *Baughman*, 88 Ohio St.3d 480, 490. Not only is the "presumption" of class-wide reliance "appropriate," a contrary presumption would be ridiculous. *Id.*

Thus, not only would class-members be entitled to recover the amounts by which they were overcharged in Defendants' price-gouging scheme; given the nature of the scheme alleged, class members may also seek disgorgement of the fees that the Defendants have collected pursuant to it. *Miller v. Cloud*, 7th Dist., No. 15 CO 0018, 2016-Ohio-5063, ¶92. This is a "well-established … remedial consequence when a fiduciary obtains a benefit in breach of a duty of loyalty." Deborah A. Demott, "Causation in the Fiduciary Realm," 91 BOSTON L. REV. 851, 855 (2005). Plaintiffs can assert such claims even if they have suffered no damage as a result of the defendant's misconduct. *In re Binder: Squire v. Emsley*, 137 Ohio St. 26, 57–58, 27 N.E.2d 939 (1940); *Hendry v. Pelland*, 73 F.3d 397, 402 (D.C. Cir. 1996) ("Because a breach of the duty of loyalty diminishes the value of the attorney's representation as a matter of law, some degree of forfeiture is thus appropriate without further proof of injury."); *Greenberg v. Meyer*, 50 Ohio App.2d 381, 384, 363 N.E.2d 779 (1st Dist.1977) ("[I]t is immaterial whether the principal suffered injury or damage" when "agents/fiduciaries" breach their duties of "absolute good faith and loyalty."); *Myer v. Preferred Credit*, 117 Ohio Misc. 2d 8, 9, 2001-Ohio-4190, ¶¶ 23, 26, 30, 33, FN 20, 38, 766 N.E.2d 612 (2001), citing OHIO JURISPRUDENCE 3D (1998) 136, 134, Agency, §§ 117, 115 ("When agents intentionally conceal

material facts or secure to themselves enrichment directly proceeding from their fiduciary position, agreements accompanying such conduct are fraudulent and may be set aside.").

Identical considerations will determine for each class member whether this price-gouging scheme constituted an unconscionable breach of contract, whether the Defendants unjustly enriched themselves through this means. Given these considerations, it makes no difference whether isolated variances exist in the facts of class members' individual claims. Common issues predominate for purposes of Civ. R. 23(B)(3).

b. The narrative-fee class members' claims will "prevail or fail in unison."

The same legal principles establishing the predominance of common issues for the price-gouging class also apply to the narrative-fee, similarly, "a single underlying scheme [with] common misrepresentations or omissions across the class [that] are particularly subject to common proof." *Carder Buick-Olds Co.*, 148 Ohio App.3d 635, ¶ 47, citing *Cope*, 82 Ohio St.3d 426, 430.

Here, the evidence is similarly clear that the KNR clients are never given a choice as to whether to consent to the fraudulent narrative fee—which was paid "automatically" to certain chiropractors for the "automatically" ordered (and worthless) narrative reports—let alone advised as to the true nature of the fee. Thus, the Court can resolve the claims relating to narrative fees without having to consider the utility or wisdom of procuring a narrative report on a case-by-case basis. Common proof will show whether the fee in fact functioned as a kickback, and the class-members' reliance on the fact that it was not must be presumed. *Carder Buick-Olds Co.*, 148 Ohio App.3d 635, ¶ 49 citing *Baughman*, 88 Ohio St.3d 480, 490. The legitimacy of the fee and its true purpose is thus the "gravamen" of all class members' claims. *Baughman*, 88 Ohio St. 3d at 489. *See also U.S. v. Hausmann*, 345 F.3d 952, 956 (7th Cir. 2003) (finding that a personal- injury law firm's undisclosed kick-back arrangement with medical providers "clearly allege[d]" a "misuse of the fiduciary relationship" and a breach of the fiduciary duty owed to the clients). "[G]eneralized proof" will decide the issue for each

of them. *Cullen*, 2013-Ohio-4733 at ¶30.

c. The investigation-fee claims will "prevail or fail in unison."

As with the other two classes, the investigation-fee class pertains to "a single underlying scheme [with] common misrepresentations or omissions across the class [that] are particularly subject to common proof." *Carder Buick-Olds Co.*, 148 Ohio App.3d 635, ¶ 47, citing *Cope*, 82 Ohio St.3d 426, 430. Thus, similarly, there is no need to "focus[] on questions affecting individual members." *Id.* The Court will not have to determine whether KNR could justify collecting the "investigation" fee from certain clients but not others. The legitimacy of the charge will depend upon "generalized proof" of its true nature that applies across-the-board, without variation from class member to class member. *Cullen*, 2013-Ohio-4733 at ¶30.

Indeed, not only must "inducement and reliance [] be inferred from common proof of [KNR's] misrepresentations or omissions" regarding the fee (Cite), thus establishing the appropriateness of class-wide treatment for the fraud and equity-based claims; Common proof will also show that the fee is void as a matter of contract law.

The Supreme Court of Ohio has made clear that Ohio law prohibits attorneys from billing "normal overhead" expenses to contingency clients, including "secretarial" services or the work performed by "paraprofessionals." *Columbus Bar Ass'n v. Brooks*, 87 Ohio St. 3d 344, 346, 721 N.E.2d 23 (1999); *See also Columbus Bar Assn. v. Mills*, 109 Ohio St.3d 245, 2006-Ohio-2290, 846 N.E.2d 1253, ¶¶ 6, 10, 20 (holding that an attorney violated the prohibition against "collecting an illegal or clearly excessive fee" by "aggressively billing for secretarial, clerical, and other 'administrative' activities").

Thus, as with the fraud claims, the contract claims of all class-members will turn on a single question: Was KNR recapturing overhead expenses in assessing this amount against its clients? The investigation-fee class claims do not depend upon whether the $50 served exclusively as a sign-up

fee, or whether KNR ascribed other "investigatory" tasks to it in certain cases. Investigators may have handled tasks in particular cases beyond just signing up the client. Yet as long they were acting as KNR functionaries in doing so, as the evidence detailed above conclusively shows, the firm's overhead would still subsume any corresponding expense, no matter what services they performed.

Because the clients could not lawfully be obliged to pay this amount, regardless of what investigators specifically did in their individual cases, the investigation fee also constitutes the sort of universal injury in fact required to prove predominance on contract claims under Civ. R. 23(B)(3).

2. A class action is the superior means of resolving all three classes of claims.

A class action qualifies as "superior" under Civ. R. 23(B)(3) if the "efficiency and economy of common adjudication outweigh the difficulties and complexities of individual treatment of class members' claims." *Blumenthal v. Medina Supp. Co.,* 139 Ohio App. 3d 283, 292, 743 N.E.2d 923 (8th Dist. 2000). The case must realize the procedural advantages available under Civ. R. 23 without compromising the "fair representation" of class member who would otherwise stand as "unrelated parties." *Consolidated Mtg.*, 2002-Ohio-6720 at ¶13.

In assessing the element of superiority, courts take into account the "hypothetical alternative" of maintaining multiple separate lawsuits on behalf of individual class members. *Cantlin*, 2018-Ohio-4607 at ¶51. Civil Rule 23(B)(3) specifically identifies four criteria that reflect upon the superiority of a class action in a given case:

- "class members' interests in individually controlling" their own separate cases;
- the "extent and nature" of "litigation … already begun by or against class members";
- the "desirability or undesirability" or adjudicating the dispute in the forum where the class action is pending; and
- the "likely difficulties" posed by managing the class action.

A class action rates as superior if the class would "lack the strength to litigate their claim" in a piecemeal way. *LaBorde v. City of Gahanna*, 2015-Ohio-2047, 35 N.E.3d 55, ¶49 (10th Dist.). The unlikelihood that class members would pursue their own cases also confirms the superiority of a class action. *Pivonka v. Sears*, 8th Dist., No. 106749, 2018-Ohio-5866, ¶83. So does the fact that no one other than the plaintiffs has actually filed suit to prosecute the asserted claims. *Gembarski v. PartsSource, Inc.*, 2017-Ohio-8940, 101 N.E.3d 469, ¶ 74 (11th Dist.).

Eligible class members would realize no benefit by filing their own separate cases to seek recovery based on the unlawful fees charged by KNR. The cost of such individual litigation would be prohibitive compared to the limited amounts ($50 to approximately $2,000) that any client could realize from the suit. Ghoubrial Tr. 150:20–23, et seq., Exs. 5–7, 172:14–174:10. In fact, Plaintiffs' counsel knows of no other litigation that addresses the fees at issue.; **Ex. 33**, Pattakos Aff., ¶ 8. Realistically, if this class action does not proceed, no one other than the named Plaintiffs will likely receive any opportunity to press the alleged claims. *Id.*

Certifying the class will not present the Court with any "likely difficulties" that would not arise in any case of this sort. Civ. R. 23(3). The action is properly proceeding in this forum, in the County where KNR has its headquarters and where many class members reside.

These factors establish class litigation as the "superior" means of resolving the "investigation fee" claims. The Plaintiffs have satisfied the prerequisites to class certification under Civ. R. 23(B)(3), just as they satisfied the prerequisites under Civ. R. 23(A).

E. The Court should appoint the undersigned attorneys as class counsel, who will fairly and adequately represent the interests of the class.

Under Civ. R. 23(F), a "court that certifies a class should appoint class counsel." "Class counsel [must] fairly and adequately represent the interests of the class." Civ. R. 23(F)(4). In assessing attorneys' ability to fulfill this obligation, the court takes into account

- the work counsel has done in identifying or investigating potential claims in the action;
- counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
- counsel's knowledge of the applicable law; and
- the resources counsel will commit to representing the class.

CIV. R. 23(F)(1).

These considerations confirm the appropriateness of appointing the Pattakos Law Firm and Cohen Rosenthal & Kramer LLP as class counsel. These attorneys investigated the facts underlying the asserted claims, identified the relevant theories of liability, and educated themselves on the applicable law. **Ex. 33**, Pattakos Aff., ¶ 7. Over the course of three years of arduous litigation, they have succeeded in completing extensive discovery notwithstanding formidable resistance from the Defendants and have defended the case against repeated dispositive motions. *Id.*

The Pattakos Law Firm serves as lead counsel in this case. Two of the firm's lawyers have for extended periods devoted nearly all of their professional time to the lawsuit. *Id.*. The firm remains committed to sustaining this effort on behalf of the class through the conclusion of this litigation. *Id.*. It would receive assistance from CRK, a firm with an extensive background in class and collective actions and other complex litigation. **Ex. 34**, Cohen Aff., ¶ 4–¶ 14. Counsel has the financial wherewithal to meet the financial demands of prosecuting this class action. **Ex. 33**, Pattakos Aff., ¶ 7; **Ex. 34**, Cohen Aff., ¶ 13–¶ 14.

The Pattakos Law Firm and CRK will "fairly and adequately represent the interests of the class." 23(F)(4). The Court should appoint them as Class Counsel

IV. Conclusion

The overwhelming evidence that KNR clients were grist for the Defendants' settlement mill, detailed above, shows that this case is particularly well-suited for class-action certification. Indeed,

the type of small-dollar high-volume fraud at issue in this lawsuit is precisely what the class-action mechanism is intended to address. Without class-certification, tens of thousands of clients who were defrauded by professionals whom they trusted would be left without a meaningful remedy. For the reasons stated above, Plaintiffs' motion for class-certification and appointment of class-counsel should be granted as to all three classes of claims alleged.

Respectfully submitted,

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Certificate of Service

The foregoing motion was filed on May 15, 2019, using the Court's electronic-filing system, which will serve copies on all necessary parties.

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