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 to Amend the Complaint to Conform to the Evidence**

Due to delays in completing class-discovery that have been no fault of the Plaintiffs, the nature and extent of Defendants' price-gouging scheme, as described in detail in Plaintiffs' pending Motion for Class-Action Certification filed on May 15, 2019, have only recently become apparent. Despite Plaintiffs' diligent efforts to obtain complete documentary discovery and schedule depositions well in advance of the April 15 class-discovery deadline,[1] Defendants Floros and Ghoubrial only made themselves available to be deposed on March 20, and April 9, respectively. Additionally, Ghoubrial only produced the bulk of his written discovery responses and document production on April 1, only 8 days before his deposition, despite a February 5 Court order pursuant to Plaintiffs' December 21, 2018 motion to compel requiring him to do the same.

Specifically, the recently discovered evidence confirms the highly coordinated nature of the scheme at issue, and makes clear that the Defendants have violated the Ohio Corrupt Practices Act (R.C. 2923.34, the "OCPA") by conspiring to defraud thousands of former KNR clients, including named Plaintiffs Harbour, Norris, and Reid. This evidence further shows that other chiropractors statewide, in addition to Defendant Floros in Akron, were instrumental to and profited from the

[1] The extent of the obstruction faced by Plaintiffs in conducting discovery is well (if not completely) summarized in Plaintiffs' respective (and successful) motions for extension of the class-discovery deadline filed on April 11, 2019, January 2, 2019, September 18, 2018, as well as the various (also, substantially, successful) motions to compel that the Plaintiffs have been required to file.

scheme and are thus similarly liable under the OCPA and for fraud. This includes Nazreen Khan and Stephen Rendek of Town & Country Chiropractic in Columbus, Philip Tassi in Canton, Eric Crawley in Cleveland, and Patrice Lee-Seyon in Toledo, who all, like Defendant Floros, conspired with the KNR Defendants to direct their clients by the hundreds to receive and be overcharged for medical care, including the fraudulent trigger-point injections, from Defendant Ghoubrial.

Thus, Plaintiffs hereby seek leave, under Civ.R. 15(B) and (A), to file the proposed Sixth Amended Complaint, attached as **Exhibit 1**,[2] primarily to conform their claims to this recently discovered evidence by (1) streamlining Plaintiffs' existing claims from the seventeen currently pleaded causes of action down to twelve; (2) adding new claims against the existing Defendants that are supported by the existing evidence; and (3) adding the new chiropractor Defendants who were instrumental to and profited from the fraudulent scheme at issue.

I. The requested amendment should not delay the Court's impending determination on class-certification and no undue prejudice would result from permitting the amendment.

Permitting the requested amendments should not require any substantial delay in the determination of class-certification and will in fact expedite the resolution of Plaintiffs' and class members' claims on the merits.

The new claims that Plaintiffs seek to assert, primarily under the OCPA, are all based on the very same evidence that Plaintiffs have obtained in support of their existing claims, and thus (1) have been impliedly consented to by the current parties; (2) require little to no further discovery prior to class-certification even against the new parties, who have long been on notice of their own conduct and its relevance to the claims at issue in this suit since March of 2017; and (3) are otherwise viable class-action claims.

[2] The allegations in the proposed Sixth Amended Complaint, while largely similar in substance, have, due to the recently discovered evidence, been streamlined and reorganized to such a degree from those contained in the Fifth Amended Complaint that attaching a redline markup of the differences between the two pleadings would be useless.

The first category of amendments pertains to fraud and unjust enrichment claims currently pleaded in the pending Fifth Amended Complaint as only against Defendant Ghoubrial regarding his fraudulent delivery and charges for certain medical supplies (the "Tritec medical supplies" class). Based on the extensive evidence recently revealed showing all of the Defendants' participation in an overarching price-gouging scheme (as detailed in the class-certification motion and further below), Plaintiffs have sought to combine this class with the "Injections" class currently pleaded in the Fifth Amended Complaint as against both Ghoubrial and the KNR Defendants to certify a streamlined "price-gouging" class (Class A) against all Defendants.

Civ.R. 23 does not require plaintiffs to seek certification of classes that are identical to those pleaded in a complaint, nor does it prohibit certification of a class immediately upon entry of a pleading. *See* Civ.R. 23(C)(1)(a) (providing that class certification should be determined "at an early practicable time after a person sues or is sued as a class representative"). Thus, the Court may and should simply permit the requested amendment and certify Class A as to these existing claims as against the existing parties accordingly. The KNR Defendants in particular, having already been sued for allowing their clients to be overcharged for one form of healthcare from Ghoubrial (the injections), cannot legitimately claim unfairness now that extensive discovery has revealed that all of Ghoubrial's charges, including the medical supplies, were unconscionable and part of the scheme too, and that the whole point was to overcharge the clients so as to inflate the Defendants' profits with a minimum of effort.

As for the newly pleaded claims against both the existing Defendants (under the OCPA) and new Defendants (OCPA, fraud, unjust enrichment), discussed in detail below, these can and should proceed in this litigation on a separate track that will allow the limited class-discovery that will be necessary on these claims to take place while the Court's decision on the pending class-certification issues against the current Defendants is up on appeal. Thus, class certification for both sets of claims

and Defendants can be determined on overlapping and largely contemporaneous timelines, with all remaining claims to be litigated together on the merits. Proceeding in this fashion would be entirely within "the trial court's special expertise and familiarity with case-management problems and its inherent power to manage its own docket," which are particularly important in class-action proceedings. *Hamilton v. Ohio Savs. Bank*, 82 Ohio St.3d 67, 70, 1998-Ohio-365, 694 N.E.2d 442; *See also Norwest Bank Minnesota, N.A. v. Alex-Saunders*, 6th Dist. Erie No. E-03-007, 2004-Ohio-6883, ¶ 26 ([T]rial courts are granted enormous discretion in managing their own dockets," which necessarily includes managing case proceedings and setting deadlines); *Creque v. Ioppolo*, 9th Dist. Summit No. 28909, 2019-Ohio-1333, ¶ 10 (a trial court has "inherent authority to control its own docket and manage the cases before it.").

Plaintiffs are mindful of the Court's statement in its Nov. 27, 2018 Order that it is "not inclined to allow any [further] amendments at this stage of the proceedings absent a substantive showing of need to amend," but that need is now apparent. Given the extensive evidence of the new Defendants' involvement in and responsibility for the fraudulent scheme (as shown in Plaintiffs' motion for class certification and further detailed below), neither justice nor common sense would be served by proceeding with this lawsuit without their participation, which would be inevitable in the event the price-gouging Class is certified. Proceeding in any other manner—such as in a separate lawsuit, which would be the Plaintiffs' right to institute[3]—would waste the Court's and the parties' resources on duplicative litigation and would similarly make no sense. *See Sogevalor, SA v. Penn Cent. Corp.*, 137 F.R.D. 12, 14 (S.D.Ohio 1991) ("[J]udicial economy suggests that this action proceed now without the delay and waste precipitated by a second filing" because initiating a new case "would

[3] If the Plaintiffs were to file a separate lawsuit including the new claims and the new Defendants, it would be this Court's decision as to whether to consolidate that new lawsuit with this one under Local Rule 16.01, which provides, in part, that, "[c]ivil cases shall be consolidated pursuant to Civ.R. 42, upon motion for consolidation filed with the judge assigned the lowest case number of the cases wherein one or more parties desire consolidation."

needlessly consume the additional resources of all the parties and of the Court."). Thus, rather than wait, Plaintiffs are coming forward now, as promptly as possible, to preserve putative class-members' rights and provide the Court as complete a picture as possible of what is, or should be, properly at issue in these proceedings.

Plaintiffs have not been dilatory in pursuing the new claims, and due to the extremely detailed allegations set forth in the Second through the Fifth Amended Complaints in this case to date, both the existing and new Defendants have long been on notice of their potential liability on them. Moreover, given the abusive and retaliatory nature of the defense faced to date, excess caution would be warranted in pursuing the new claims in any event. *See* Plaintiffs' 03/06/2019 Motion for Sanctions re: the KNR Defendants' Counterclaims.[4] Thus, no undue prejudice could possibly result from the proposed amendments, which should be permitted as explained fully below.

II. The Court should permit the new claims against the existing Defendants to be added to this lawsuit under Civ.R. 15(B).

A. Civ.R. 15(B) permits amendments to conform to the evidence "at any time."

Under Civ.R. 15(B), parties may amend the pleadings "at any time" based on the discovery or presentation of new evidence. The Rule provides, in pertinent part, that,

> when issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment.

[4] Plaintiffs had intended to file this motion to amend concurrently with their motion for class-certification, but required additional time to complete the necessary research on the OCPA claims (as set forth below), which was not practicable to complete by the May 15 class-certification deadline, which itself, as the Court ordered on May 14, was not subject to any further extension. Given Defendants' heavy-handed (to put it kindly) approach to date, and that the OCPA allows for fee-shifting (albeit under limited circumstances) to defendants who prevail on these claims (R.C. 2923.34(G)), it was especially important that Plaintiffs' research and pleading be thorough.

This provision "expresses a liberal policy toward the allowance of amendments," and "is consistent with the general principle that cases should be decided on the issues actually" present rather than what the parties pleaded. *Hall v. Bunn*, 11 Ohio St.3d 118, 121, 464 N.E.2d 516 (1984); *Baxter v. ABS Constr. Supply Co.*, 2d Dist. Darke No. 1344, 1994 Ohio App. LEXIS 5968, at *13 (Dec. 28, 1994); *Peterson v. Teodosio*, 34 Ohio St.2d 161, 175, 297 N.E.2d 113 (1973) (because "[t]he spirit of the Civil Rules is the resolution of cases upon their merits, not upon pleading deficiencies," Civ.R.15 must be liberally construed toward permitting such amendment); *State ex rel. Rothal v. Smith*, 151 Ohio App.3d 289, 2002-Ohio-7328, 783 N.E.2d 1001, ¶ 68 (9th Dist.) ("This rule conveys a liberal policy toward allowing amendments where such allowance is not sought in bad faith and does not cause undue delay or prejudice to the opposing party.").

Civ.R.15(B) permits two categories of amendment.[5] The first category, relevant here, occurs "when the parties have expressly or impliedly consented to the trial of issues not contained in the pleadings." *Hall v. Bunn*, 11 Ohio St.3d 118, 121, 464 N.E.2d 516 (1984). To determine when the parties have impliedly consented to litigate an issue, courts consider whether (1) the parties have recognized that "an unpleaded issue" has become relevant to the litigation; (2) the opposing party has received an opportunity to address the issue; and (3) whether the witnesses have been subject to

[5] The second category of amendment occurs when the opposing party objects "to the evidence offered on grounds that it is not within the issues framed by the pleadings." *Hall*, at 121. In such cases, "the trial court shall allow amendment if the following criteria exist: (1) 'the presentation of the case's merits will be subserved thereby' and (2) 'the objecting party does not satisfy the court that admission of the evidence would prejudice him in maintaining his case upon the merits.'" *State ex rel. Rothal v. Smith*, 151 Ohio App.3d 289, 2002-Ohio-7328, 783 N.E.2d 1001, ¶ 70 (9th Dist.). Further, the party objecting to the amendment must show "serious disadvantage in presenting this case" other than "mere surprise." *Id.*, citing *Hall*, at 122. As explained above, Plaintiffs here rely on the first, rather than the second, category of amendment under Civ.R. 15(B) because the facts and evidence Plaintiffs have obtained in support of their existing claims for theories of liability based on fraud are the same facts that will support the claims Plaintiffs seek to add against the Defendants under the Ohio Corrupt Practices Act. The Court should note, however, that Civ.R 15(B) would permit Plaintiffs to amend the pleadings at trial upon any objection from Defendants to admission of evidence pertaining to the existence of a criminally fraudulent scheme.

cross-examination on facts pertaining to the issue. *State ex rel. Evans v. Bainbridge Twp. Trustees*, 5 Ohio St.3d 41, 45-46, 5 Ohio B. 99, 448 N.E.2d 1159 (1983).

"Implied consent may arise from" "evidence bearing directly on the unpleaded issue." *Whitmer v. Zochowski*, 2016-Ohio-4764, 69 N.E.3d 17, ¶ 57 (10th Dist.) citing *DeHoff v. Veterinary Hosp. Operations of Cent. Ohio, Inc.*, 10th Dist. No. 02AP-454, 2003-Ohio-3334, ¶ 128; *See also Sun Life Assur. Co. of Canada v. Belmont Properties, Inc.*, 9th Dist. Lorain Nos. 2957 and 2958, 1980 Ohio App. LEXIS 14036, at *3-5 (Nov. 12, 1980) (finding that trial court erred in granting summary judgment where "allegations of fraud were raised in depositions submitted to the trial court for consideration" even though such allegations were not raised in the pleadings due to Civ.R. 15(B)).

Amendments under Civ.R. 15(B) should be granted unless permitting such amendment would cause the opposing party "substantial prejudice" due to the unawareness of evidence bearing on the issue sought to be added to the pleadings. *See, e.g.*, *Lee v. Lombard/Kapadia Constr.*, 9th Dist. Summit No. 12251, 1986 Ohio App. LEXIS 5544, at *3-5 (affirming trial court's granting Civ.R. 15(B) amendment where the objecting party "was aware" that certain evidence "was aimed at establishing" its liability and the party was not "unprepared to face [the] issue" as "some of the evidence was in" the objecting party's "hands prior to trial."); *Brown v. Learman*, 2d Dist. Miami No. 00 CA 30, 2000 Ohio App. LEXIS 5071, at *5-7 (Nov. 3, 2000) (finding that a party impliedly consented to try an unpleaded issue where the party was "questioned at length" at his deposition regarding the factual basis for the unpleaded issue); *Mannix v. DCB Serv.*, 2d Dist. Montgomery No. 19910, 2004-Ohio-6672, ¶ 39 (affirming trial court order permitting Civ.R.15(B) amendment where the party objecting to the amendment "knew or reasonably should have known" that the opposing party had gathered and introduced evidence directed toward the unpleaded issue).

B. The evidence warrants amendment under 15(B) to add claims against the existing Defendants under the Ohio Corrupt Practices Act on behalf of putative Class A (The price-gouging class).

As discussed in detail below, discovery in this case has recently uncovered substantial evidence showing that the Defendants have conspired to engage in a price-gouging scheme that violates the OCPA. *See* **Ex. 1,** Sixth Amended Complaint, at ¶ 34–¶ 112.

Because Civ.R. 15(B) must be construed in favor of permitting amendment, the Court should reject any claim that Defendants have not impliedly consented to litigate issues relating to or arising out of the existence of the alleged scheme. "A party cannot stand by silently while evidence" pertaining to an unpleaded issue is gathered for admission at trial, "and then claim later that no relief can be granted because the matter was not pleaded." *Standen v. Smith*, 9th Dist. Lorain No. 01CA007886, 2002-Ohio-760, ¶ 11 (internal citations omitted).

Here, Defendants have impliedly consented to the trial of issues pertaining to their potential liability under the OCPA, and should not be permitted to claim unawareness that during discovery, Plaintiffs' counsel has elicited facts and evidence aimed at the existence of and Defendants' collective participation in a scheme that necessarily constitutes a violation of the OCPA. As is their right, Defendants participated in the depositions of Defendants Nestico, Floros, and Ghoubrial, in addition to those of former KNR attorneys, where these witnesses recently—as recently as March 20 in the case of Floros and April 9 in the case of Ghoubrial—provided testimony confirming the scheme and its nature. *See* **Ex. 1,** Sixth Amended Complaint, at ¶ 34–¶ 112. Moreover, Defendants have long been on notice that Plaintiffs' theories of liability against them include the existence of a widespread scheme designed and perpetuated by Defendants to defraud the Plaintiffs and class members out of funds from their legal settlements.[6] Accordingly, Defendants have impliedly

[6] The Fifth Amended Complaint contains allegations directly pertaining to the scheme, which only recently be. *See, e.g.*, at ¶ 4 ("To further monetize their extreme and unlawful solicitation practices, the KNR Defendants have engaged in a deliberate scheme to defraud their clients …"); ¶ 64 ("To further incentivize chiropractors, including those at ASC, to refer clients to KNR, the KNR Defendants devised a way to divert even more of their clients' money to those providers" "by paying certain providers a 'narrative fee' for every referred client, and then fraudulently deducting

consented to the litigation of issues relating to the Defendants' actions in developing, controlling, and profiting from a widespread scheme calculated to defraud socioeconomically disadvantaged car-accident victims of millions of dollars, including by overcharging them for healthcare that would have otherwise been covered by their health-insurance providers. Consistent with Civ.R. 15(B)'s requirement that amendments be liberally permitted, the Court should permit Plaintiffs to add the proposed claims. Essentially the same operative facts demonstrating why Plaintiffs' existing claims are proper for class-wide treatment will also establish that such treatment is appropriate for the new claims.

1. Plaintiffs have submitted evidence sufficient to meet all four elements of an OCPA claim.

A civil claim under the OCPA has three elements: "(1) that the conduct of the defendant involves the commission of two or more specifically prohibited state or federal criminal offenses; (2) that the prohibited criminal conduct of the defendant constitutes a pattern; and (3) that the defendant has participated in the affairs of the enterprise or has acquired and maintained an interest in or control of an enterprise." *Morrow v. Reminger & Reminger Co. LPA*, 183 Ohio App.3d 40, 2009-Ohio-2665, 915 N.E.2d 696, ¶ 27 (10th Dist.), quoting *Patton v.* Wilson, 8th Dist. Cuyahoga No. 82079, 2003-Ohio-3379, ¶ 12.

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that fee as an expense from the amounts recovered on each clients' behalf"); ¶ 82-113 (alleging the existence of a scheme by which the Defendants collectively conspired to inflate clients' medical bills and legal fees by administering as much treatment as possible); ¶ 90-91 (alleging that the KNR Defendants benefitted from the scheme through higher attorneys' fees and kickbacks from their preferred healthcare providers); ¶ 291 ("Defendant Ghoubrial's administration of injections to KNR clients at inflated prices was undertaken as part of a scheme to enrich himself at the expense of Plaintiffs and the Class clients by inflating their medical bills. The KNR Defendants continued their referral relationship with Ghoubrial, despite their knowledge of the fraudulent nature of the injections, and despite their knowledge that insurance companies viewed his treatment with skepticism, believing that Ghoubrial's reliably inflated medical bills would inure to the benefit in the form of higher attorneys' fees and kickback payments from Ghoubrial.").

a. Defendants have engaged in "corrupt activity" under R.C. 2923.31(I) by engaging in telecommunications fraud under R.C. 2913.05 and mail and wire fraud under 18 U.S.C. 1341 and 1343.

The OCPA makes it unlawful for someone "employed by or associated with" "an enterprise" to "conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of corrupt activity…" R.C. 2923.32(A)(1). "Any person who is injured or threatened with injury by a violation of section 2923.32" "may institute a civil proceeding with an appropriate court seeking relief from any person whose conduct violated or allegedly violated section 2923.32 of the Revised Code." R.C. 2923.34(A).

"Corrupt activity" includes "engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing or intimidating another person to" violate R.C. 2913.05, Ohio's telecommunications fraud statute. R.C. 2923.31(I)(2)(a). "Corrupt activity" also includes "racketeering activity" under the Organized Crime Control Act of 1970. R.C. 2923.31(A)(I)(1), which includes mail fraud under 18 U.S.C. 1341 and wire fraud under 18 U.S.C. 1343. Accordingly, because federal mail and wire fraud constitute "racketeering activity" under the Organized Crime Control Act of 1970, such acts of fraud constitute "corrupt activity" under the OCPA.

Ohio's telecommunications fraud statute makes it a felony for a "person, having devised a scheme to defraud," to "knowingly disseminate, transmit, or cause to be disseminated or transmitted … any writing, data, sign, signal, picture, sound, or image with purpose to execute or otherwise further the scheme to defraud." R.C. 2913.05(A). To "defraud" "means to knowingly obtain, by deception, some benefit for oneself or another, or to knowingly cause, by deception, some detriment to another." R.C. 2913.01(B). In turn, "deception" means to deceive another person,

> by any false or misleading representation, by withholding information, by preventing another from acquiring information, or by any other conduct, act, or omission that creates, confirms, or perpetuates a false impression in another, including a false impression as to law, value, state of mind, or other objective or subjective fact.

R.C. 2913.01(A).

Similar to Ohio's telecommunications fraud statute, the mail fraud statute makes it unlawful to, "having devised or intending to devise any scheme or artifice to defraud … for the purpose of executing such scheme or artifice or attempting to do so," cause "any matter or thing" "to be sent or delivered." 18 U.S.C. 1341. And the wire fraud statute makes it unlawful to, "having devised or intending to devise any scheme or artifice to defraud" transmit or cause "to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signals, pictures, or sounds for the purpose of executing such scheme or artifice." 18 U.S.C. 1343.

The mail and wire fraud statutes strictly prohibit using "the interstate mails or wires communications system in furtherance of a scheme to misuse" the "fiduciary relationship for gain at the expense of the party to whom the fiduciary duty was owed," which includes a kickback arrangement between a law firm and chiropractor. *U.S. v. Hausmann*, 345 F.3d 952, 956 (7th Cir.2003); *United States v. Frost*, 125 F.3d 346, 366 (6th Cir.1997) ("[P]rivate individuals" "may commit mail fraud by breaching a fiduciary duty and thereby depriving the person or entity to which the duty is wed of the tangible right to the honest services of that individual.").

Here, the evidence shows that Defendants engaged in conduct that constitutes telecommunications fraud, mail fraud, and wire fraud. Indeed, Defendants' scheme depends on the use of mail and telecommunications wires to drive the high volume of clients on which the KNR settlement mill depends. Not only does the firm use a massive direct-advertising budget to draw clients into its scheme, it also conspires with chiropractors, including Defendant Floros, who employ telemarketers to solicit the clients directly on the firm's behalf, going so far as to send drivers directly to the clients' doorstep to transport them to the chiropractors' offices where they become engaged by the law firm. *See* **Ex. 1**, Sixth Amended Complaint, at ¶ 36–¶ 38, ¶ 43, ¶ 102, citing 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; Nestico Tr., 125:6–12; 234:6–7 ("[W]e advertise and spend a lot of money in Akron."); 256:12–18, Lantz Tr. at 298:19–300:19; Petti Tr. at 62:17–24; 258:9–15; Phillips Tr. at 222:14–17; Reid Aff., ¶ 2; Carter Aff., ¶ 2; Beasley Aff., ¶ 2.

In addition to Defendants' routine use of mail and wires to drive the clients into their scheme, the scheme itself depends on the same. For example, Brandy Gobrogge, KNR's operations manager, frequently sent emails containing Nestico's instructions and directives, to ensure that both KNR and the referring chiropractors were complying with their quid-pro-quo referral arrangements. *See* **Ex. 1**, Sixth Amended Complaint, ¶ 39–¶ 40, ¶ 42, ¶ 83, ¶ 110, ¶ 118, ¶ 133, ¶ 138, ¶ 143, citing Nestico Tr. 95:24–25; 116:22–117:2, Ex. 8; 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."); 239:6–24, Ex. 20 ("Referrals are not up for negotiation."); 293:17–297:22, Ex. 32. ("These are the only Narrative Fees that get paid … Narrative Report Fees are paid to … Dr. Minas Floros (Akron Square) $200.00 … to the doctor personally."). Moreover, KNR attorneys routinely emailed proposed settlement memoranda to Nestico so that Nestico could personally call "certain" providers to discuss their potential earnings from each settlement, which inevitably included Floros and Ghoubrial. *See, e.g.*, Gobrogge Tr., 404:4–405:12, Ex. 58 ("There were some chiropractors that Rob called himself" to negotiate bills); 412:17–19, Ex. 59 (Nestico "wanted to approve" reductions to chiropractors' bills); 414:3–7, Ex. 60 ("So any time, whether it's a chiropractor or any doctor, if you're not paying them for the full amount of the bill, he would have to call them and ask them to reduce their bill."); Nestico Tr., 178:21–179:18, Ex. 17; 181:9–15 (Nestico would review "some of" the settlement memoranda for "certain" providers, but could not testify to which providers).

Thus, the evidence shows that the Defendants have both solicited victims directly by phone and disseminated and transmitted hundreds of writings, including emails and advertisement material,

in furtherance of their scheme, which depended on these transmissions to ensure its success in violation of R.C. 2913.05, 18 U.S.C. 1341, and 18 U.S.C. 1343.

b. An association-in-fact enterprise existed among Defendants, through which they acted to further the scheme.

The OCPA defines an enterprise to include "any individual, sole proprietorship, partnership, limited partnership, corporation, trust, union, government agency, or other legal entity, or any organization, association, or group of persons associated in fact although not a legal entity." R.C. 2923.31(C). An enterprise can be shown through "ongoing, coordinated behavior among the defendants that would constitute an association-in-fact." *Begala v. PNC Bank, Ohio, N.A.*, 214 F.3d 776, 781 (6th Cir.2000).

In determining when an "enterprise" exists, the "enterprise element is to be broadly construed to effectuate the remedial purpose of the statute." *W. & S. Life Ins. Co. v. JPMorgan Chase Bank, N.A.*, 54 F.Supp.3d 888, 917 (S.D.Ohio 2014); *see also State v. Habash*, 9th Dist. Summit No. 17071, 1996 Ohio App. LEXIS 281, at *14 (Jan. 31, 1996) ("Despite defendant's suggestion that an enterprise must be a formal, structured organization, the legislature defined this term broadly…"). Moreover, an "enterprise" need not "have an existence separate and apart from the underlying corrupt activity." *CSAHA/UHHS-Canton, Inc. v. Aultman Health Found.*, 5th Dist. Stark No. 2010-CA-00303, 2012-Ohio-897, ¶ 67.

Accordingly, an "enterprise" exists under the OCPA when **one** of the following exists: "(1): an ongoing organization with a commonality of purpose or a guiding mechanism to direct the organization; (2) a continuing unit with an ascertainable structure; or (3) an organizational structure distinct from the pattern of predicate acts." *Herakovic v. Catholic Diocese*, 8th Dist. Cuyahoga No. 85467, 2005-Ohio-5985, ¶ 23. *See also Allstate Ins. Co. v. Plambeck,* N.D. Texas No. 3:08-CV-388-M, at *6 (Mar. 31, 2014). The statute is not "limited to groups whose crimes are sophisticated, diverse, complex, or unique." *Boyle v. United States*, 556 U.S. 938, 948, 129 S.Ct. 2237, 173 L.Ed.2d 1265

(2009). Rather, "an association-in-fact enterprise is simply a continuing unit that functions with a common purpose." *Id.*

Here, the evidence shows that the Defendants coordinated their association with one another to (1) solicit vulnerable car-accident victims as clients (*see* **Ex. 1**, Sixth Amended Complaint, ¶ 14, ¶ 34, ¶ 36–¶ 38, ¶ 111); and (2) not only refer solicited victims among the group, but tell these victims that it will damage their cases if they don't continue to work with these group members, while failing to disclose the true nature of the association (*see id.* at ¶ 42–¶ 44, ¶ 62, ¶ 64–¶ 65, ¶ 68, ¶ 73, ¶ 110–¶ 111, ¶ 119, ¶ 128); In the process, they (3) coerce these victims into signing forms that constitute an unwitting waiver of their health-insurance coverage, allowing the Defendants to avoid scrutiny by the insurers and collect payment directly from the clients' settlement proceeds (*see id.* at ¶ 71–¶ 72, ¶ 78–¶ 79, ¶ 93–¶ 94, ¶ 112); (4) provide healthcare to the KNR clients under the liens, for which they charge exorbitant and unconscionable rates (*see id.* at ¶ 35, ¶ 47–¶ 48; ¶ 51, ¶ 53, ¶ 61); and (5) continue subjecting clients to the scheme knowing that the defendants' auto-insurance carriers, who paid the patients' personal injury settlements from which the providers' bills were satisfied, view the providers' treatment as fraudulent and unworthy of compensation (*see id.* at ¶ 52, ¶ 80–¶ 86, ¶ 89); because (6) it did not matter to the Defendants whether the clients' settlements were negatively impacted on an individual basis, because they would make up for it—with the critical assistance of mail and telecommunications wires—by sending a greater volume of clients through their scheme (*see id.* at ¶ 87, ¶ 90, ¶ 99–¶ 101, ¶ 102–¶ 104, ¶ 106–¶ 107).

More specifically, the evidence shows that if an individual first responded to Floros's telemarketing, Floros, through ASC, advised patients that they needed an attorney and put them on the phone with a KNR attorney. *See, e.g.*, **Ex. 1**, Sixth Amended Complaint, at ¶ 38, citing Phillips Tr. 48:24–49:11; Petti Tr. 63:2–18; Reid Aff., ¶ 4; Carter Aff., at ¶ 3; Beasley Aff., at ¶ 3. Nearly immediately after the phone call, the client/patient receives a fee agreement to sign. **Ex. 1,** Sixth

Amended Complaint, at ¶ 38, citing Reid Aff., at ¶ 4–¶ 5; Carter Aff., at ¶ 4; Beasley Aff., at ¶ 4. If an individual wound up at KNR first, KNR did everything it could to send him or her to Floros or other conspiring chiropractors, including exclusively sending clients to Floros if the client wound up at KNR by responding to a so-called "red bag" referral—an action for which KNR has no legitimate explanation. *See e.g.*, **Ex. 1,** Sixth Amended Complaint, ¶ 39–¶ 42, citing Gobrogge Tr. 385:1–19; 387:7–388:18, Ex. 52; Nestico Tr., 270:14–271:3, Ex. 38; 379:9–13; 384:1–25, Ex. 51; Norris Aff., at ¶ 4. Due to these practices, KNR and Defendant Floros have sent or received over 4,700 referrals since 2012. **Ex. 1,** Sixth Amended Complaint, ¶ 119, citing Floros Tr. at 168:12–24; Ex. 7, at 9.

After the clients were sent to and from KNR and the Defendant chiropractors, KNR and the chiropractors would cooperate to ensure the clients received "pain management" services from Ghoubrial's practice, Clearwater Billing, LLC. *See* **Ex. 1,** Sixth Amended Complaint, ¶ 43–¶ 44, citing Carter Aff., ¶ 5, ¶ 9; Harbour Aff., ¶ 3, ¶ 10; Reid Aff., ¶ 6; Beasley Aff., ¶ 5, ¶ 12; Norris Aff., ¶ 6. Former KNR attorneys have testified that they understood KNR's policy as requiring them to send patients to Ghoubrial whenever possible, precisely "because he charges a lot more for his treatment, which means it increases the value of the case," and that clients ended up with Ghoubrial "through the relation that everyone had with one another." **Ex. 1**, Sixth Amended Complaint, ¶ 43–¶ 44, ¶ 51, ¶ 62, citing Lantz Tr. 27:15–23; 29:17–19; 30:14–20; Petti Tr. at 189:10–13. If a patient of Floros's ended up with Ghoubrial, it was almost certainly because Floros made the referral. *Id.*, citing Floros Tr. at 186:18–188:2, 189:22–190:2. Ghoubrial has admitted that he relies on chiropractors such as Floros for the "vast majority" of the business for his "personal-injury clinic," which does not advertise and has no public face outside of this referral network. *Id.*, at ¶ 62 and ¶ 73, citing Ghoubrial Tr., 42:1–3; 43:16–19.

KNR understood that they were required to send clients to Ghoubrial precisely because he allowed the firm to inflate its clients' medical bills with a minimum of effort. **Ex. 1**, Sixth Amended

Complaint, ¶ 48, ¶ 51, ¶ 106, citing Lantz Tr. 27:15–23; 29:17–19; 30:14–20. Ghoubrial, in turn, was a willing participant in the scheme because he knew that Nestico would do everything he could to ensure that Ghoubrial was paid a disproportionately high portion of his already inflated bills. *See id.*, at ¶ 106, citing Lantz Tr., 161:25–162:1; 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…"). And because KNR's contingency fee from each case is calculated on the gross amount recovered before medical bills are deducted from the settlement, KNR had a substantial interest in inflated medical bills. *Id.*, at ¶ 51, citing Nestico Tr. 170:2–14. Likewise, Floros benefits from having KNR direct thousands of patients to attend multiple appointments with him, for which he is minimally involved. *See id.*, at ¶ 101, ¶ 109, ¶ 116, ¶ 124, citing Floros Tr. 45:9–46:19; Horton Tr. 300:15–25; Petti Tr. 67:4–23; 78:23–79:12; 80:5; 177:12–178:9; 277:1–12; 284:23–285:12; 317:22–318:1; Nestico Tr. 313:21–25. Moreover, to further the scheme, Floros assists KNR in inflating the clients' bills by sending patients to Ghoubrial. *Id.*, at ¶ 110, Floros Tr., 88:23–89:12; 91:18–2; 186:20–187:1–2.

Thus, the Defendants maintained "an ongoing organization" whose "commonality of purpose" was to profit at the expense of an unwitting clientele who were serially overcharged for healthcare and whose interests were serially subverted to the needs of Defendants' organization. *Herakovic v. Catholic Diocese*, 8th Dist. Cuyahoga No. 85467, 2005-Ohio-5985, ¶ 23; *See also United States v. Elliot*, 571 F.2d 880, 898 (5th Cir.1978) ("The thread tying all of these departments, activities, and individuals together was the desire to make money."); and *Plambeck*, at *6 (finding an "enterprise" where "the members were not at cross-purposes or acting independently but were, instead, an interdependent and coordinated association that existed to perpetuate the enterprise and its profitability.").

c. Defendants' conduct constitutes a "pattern of corrupt activity."

Under the OCPA, a "pattern of activity" means "two or more incidents of corrupt activity, whether or not there has been a prior conviction, that are related to the affairs of the same enterprise, are not isolated, and are not so closely related to each other and connected in time and place that they constitute a single event." R.C. 2923.31(E). A "series of corrupt acts involving specific incidents" and "committed by the participants in the enterprise" shows the requisite "pattern of corrupt activity" for liability under the statute. *State v. Fritz*, 178 Ohio App.3d 65, 2008-Ohio-4389, 896 N.E.2d 778, ¶ 50 (2d Dist.). In essence, the "pattern of corrupt activity" element requires that the underlying acts "be related" to one another. *Bradley v. Miller*, 96 F. Supp. 3d 753, 773 (S.D.Ohio 2015).

Here, Plaintiffs have put forth voluminous evidence that the Defendants subjected thousands of clients to the price-gouging scheme described above, thus establishing a "pattern of activity" as required by the OCPA. *See* **Ex. 1**, Sixth Amended Complaint, at ¶ 34–¶ 112.

d. Defendants injured or threatened to injure Plaintiffs and Class A members through their pattern of corrupt activity.

A civil claim under the OCPA does not require that a plaintiff have suffered "direct injury" caused by the pattern of corrupt activity. Rather, "[a]ny person who is injured ***or threatened with injury*** by a violation of section 2923.32 of the Revised Code … may institute a civil proceeding seeking relief from any person whose conduct violated or allegedly violated" that section. *See* R.C. 2923.34(A). By the statute's plain language, a plaintiff need not show an injured directly caused by the defendants' actions. *See, e.g.*, *Schlenker Ents., LP v. Reese*, 3d Dist. Auglaize Nos. 2-10-16, 2-10-19, 2010-Ohio-5308, ¶ 38 ("A civil OCPA claim" "can be brought by persons who are injured or threatened with injury from an OCPA violation."); and *Samman v. Nukta*, 8th Dist. Cuyahoga No. 85739, 2005-Ohio-5444, ¶ 24 (explaining that R.C. 2923.34 "permits a civil action for violations of R.C. 2923.32 by any person" "threatened with injury from the violation.").

Ohio courts have recognized that the OCPA allows "a party to recover when 'indirectly' injured" "to offer standing to a broader class of plaintiffs than federal RICO statutes." *Lowe v. Ransier*, 581 B.R. 843, 849 (Bank. 6th Cir. 2018). *See also Aultman Health*, at ¶ 77 ("Given Ohio's recognition of recovery for indirect injury … we find the evidence sufficient to support the jury's inference/conclusion" that a "pattern of corrupt activities proximately caused damage."). Thus, OCPA claims may not be dismissed on the basis that the plaintiff did not suffer direct injury:

> In choosing to broaden standing to bring RICO claims under state law, the Ohio General Assembly decided to widen the right to bring an action. Such determination is clearly a policy matter. Making this policy decision is within the prerogative of the legislature … the Ohio General Assembly has determined that persons indirectly injured should have standing to bring an action.

Iron Workers Local Union No. 17 Ins. Fund v. Philip Morris Inc., 23 F.Supp.2d 771, 786 (N.D.Ohio 1998) (interpreting the OCPA).

Accordingly, to certify a class under the OCPA or the federal RICO statute, the named plaintiffs need only "allege that their damages arise from a course of conduct that impacted the class." *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1120 (9th Cir. 2017). "[T]hey need not show that each members' damages from that conduct are identical." *Id.* Certification is appropriate where the class members are "able to 'show that their damages stemmed from the'" overarching scheme that "created the legal liability." *Id.* at 1121.

For example, in *Community Bank of N. Virginia Mtge. Lending Practices Litigation, PNC Bank NA*, 795 F.3d 380, 385 (3d Cir.2015), plaintiffs brought class claims based on a "scheme affecting numerous borrowers" that was spearheaded by a group of entities that "offered high-interest mortgage-backed loans to financially strapped homeowners." The plaintiffs specifically alleged that fees listed on relevant documents "included illegal kickbacks" that "did not reflect the value of any services actually performed," and that the defendants "actively worked" "to expand the loan volume generated by the scheme." *Id.* at 386. On appeal from the district court's order certifying the class,

the court firmly rejected arguments that certification was improper due to the existence of individualized inquiries:

> PNC asserts that the question of whether each settlement fee at issue was somehow improper will require a loan-by-loan and fee-by-fee analysis … Individual issues will predominate, says PNC, because the Plaintiffs will need to demonstrate the difference between the fees that they paid and the fees that they should have paid. Once more …, that argument fails—the Plaintiffs do not assert that [defendants] rendered inadequate services for which the class members are entitled to claw back part of the fee. They assert that [defendants] performed no services and was entitled to no fee at all.

Id. at 408.

This is especially true for class action claims under the OCPA. In *Philip Morris*, one of the few class actions pursued under the OCPA, the court certified a class alleging claims under the OCPA despite defendants' claims that the court would "be required to evaluate individualized proof and independent evidence regarding the claims of each of the more than 100 trust funds." *Philip Morris*, at 540. The court found allegations that "defendants engaged in a common course of misrepresentation designed to affect all plaintiffs in like fashion" sufficient to "establish issues common to the class." *Id.*

Here, the Named Plaintiffs and all other class members who were sent through Defendants' scheme were both injured and threatened with injury from Defendants' corrupt activities. Not only were all such class members fraudulently overcharged for healthcare, former KNR attorneys have uniformly testified that they believed their clients' cases suffered from KNR's relationship with Floros and Ghoubrial because insurance companies were skeptical of how KNR's clients were continuously involved with KNR, Floros, and Ghoubrial. *See, e.g.*, **Ex. 1**, Sixth Amended Complaint, at ¶ 102, citing Petti Tr. 86:12–22. This threat of injury alone is sufficient for standing under the OCPA. *See C*SAHA/*UHHS-Canton, Inc. v. Aultman Health Found.*, 5th Dist. Stark No. 2010-CA-00303, 2012-Ohio-897, ¶ 67.

C. The evidence warrants amendment under 15(B) to hold all of the existing Defendants liable to the putative class A representatives and members for fraud and unjust enrichment.

The proposed Sixth Amended Complaint also conforms to the evidence by combining the "Tritec" and "injection" classes identified in the Fifth Amended Complaint into a single class, and seeking to hold all of the current Defendants liable on fraud and unjust enrichment claims as described in Section I above. This amendment is supported by the evidence detailed above and in the class-certification motion showing Defendants' shared involvement in, responsibility for, and profit from the scheme.

D. The evidence warrants amendment under 15(B) to add a claim for fraud pertaining to the currently pending narrative-fee class.

As to putative Class B, relating to the narrative fees, Plaintiffs have asserted claims for breach of fiduciary duty and unjust enrichment against the KNR Defendants and Defendant Floros. In addition to those claims, Plaintiffs seek the Court's leave to formally add a claim for fraud on behalf of the Class B members based on the substantial evidence showing that the fee functioned as a kickback. *See* **Ex. 1**, at ¶ 114, ¶ 116–¶ 128, citing, *e.g.*, Horton Tr. 300:15–25; Petti Tr. 67:4–68:21; 78:23–79:12 ("[L]awyers had nothing to do with whether or not there was a narrative report fee."); 80:5; 277:1–12; 284:23–285:6 (certain of the firm's "preferred" chiropractors produced narrative reports on "every single case or virtually every single case."); Nestico Tr. 313:21–25 (admitting that narrative fees were paid from certain chiropractors as a "default" policy); 340:23–244:1, Ex. 50; Gobrogge Tr. 293:17–297:22, Ex. 32 (instructing KNR employees that the "Plambeck Clinic" chiropractors are "the only Narrative Fees that get paid."); Lantz Tr. 104:20–105:13; 267:9–21; Ex. 21, Lee Aff., ¶ 9.

Indeed, KNR's clients were never informed about the existence of the narrative fee, the true nature of the fee, or why it was paid on their cases. *See* **Ex. 1,** Sixth Amended Complaint, at ¶ 128, citing Reid Aff., ¶ 15–¶ 17; Carter Aff., ¶ 7, ¶ 12, ¶ 18–¶ 19; Beasley Aff., ¶ 9, ¶ 16–¶ 17, ¶ 19–¶ 20; Norris Aff., ¶ 9, ¶ 13. Because the existing claims relating to the narrative fee already assert that narrative reports were automatically ordered for certain of the firm's "preferred" chiropractors without regardless of the need for a report, and that the fee was a kickback designed to compensate KNR's high-referring chiropractors for continued referrals to the firm, Defendants have been on notice that the Class B claims sound in fraud, and adding a separate fraud claim at this stage of the proceedings should essentially be a formality.

III. The Court should permit the claims against the new chiropractor Defendants to be added to this lawsuit under Civ.R. 15(A).

Based on similar evidence only recently obtained in discovery, Plaintiffs also seek to add, as Defendants, certain chiropractors who participated in the price-gouging scheme against Class A members by trading referrals with the KNR firm and directing class-members, *en masse*, to receive fraudulent medical care from Defendant Ghoubrial. The claims against the new chiropractor Defendants are well grounded in the evidence that has been discovered in this case to date.

A. Civ.R. 15(A) "favors a liberal amendment policy and a motion for leave to amend should be granted absent a finding of bad faith, undue delay, or undue prejudice to the opposing party."

Civ.R. 15(A) requires courts to "freely give leave" to parties seeking to amend pleadings "when justice so requires." "[T]he language of Civ.R. 15(A) favors a liberal amendment policy and a motion for leave to amend should be granted absent a finding of bad faith, undue delay, or undue prejudice to the opposing party." *State ex rel. Vindicator Printing Co. v. Wolff*, 132 Ohio St.3d 481, 487, 2012-Ohio-3328 (quoting *Hoover v. Sumlin*, 12 Ohio St.3d 1, 6 (1984)); *see also Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227 (1962) (explaining that unless the party opposing the amendment can show

bad faith, undue delay, or undue prejudice, "the leave sought should, as the rules require, be freely given.").

Where a plaintiff seeks to add a new defendant or a new claim, the court should permit the amendment if it relates to the claims previously asserted against the existing defendants and "involves a common question of law or fact." *Perdue v. Morgan*, S.D.Ohio No. CV-878, 2014 U.S. Dist. LEXIS 138575, 5-6 (July 7, 2014). When a proposed amendment adds a claim or defendant, Civ.R. 15 demands similarity, not equivalence. *Mick v. Level Propane Gases, Inc.*, 203 F.R.D. 324, 327-328 (S.D.Ohio 2001) (noting that, in ruling on a motion for leave to amend after class certification, "the named Plaintiffs' claims need not be identical to the claims and defenses of the other members of the putative class").

B. Chiropractors who participated in the price-gouging scheme should be Defendants in this lawsuit.

Here, the nature and extent of Defendants' price-gouging scheme only became apparent upon the completion of the depositions former KNR attorneys Kelly Phillips, Robert Horton, Kelly Phillips, and Amanda Lantz, and Defendants Nestico, Floros, and Ghoubrial, which began in February of this year and concluded as recently as April 9.

Testimony given at these depositions confirms that other chiropractors, in addition to Defendant Floros, were instrumental to and profited from the price-gouging scheme and are thus similarly liable for fraud, unjust enrichment, and under the OCPA. *See* **Ex. 1**, Sixth Amended Complaint, at ¶ 110, ¶ 117, ¶ 119.

Defendant Ghoubrial confirmed, at his deposition, that he has treated approximately five to six thousand KNR clients since approximately 2010, the vast majority (if not all) of whom were subject to the price-gouging scheme. Ghoubrial testified that his personal-injury clinic—through which he treated all of the Class A members—obtains its clients almost entirely by referrals from

chiropractors. He also testified that, to date, he makes regular trips to specific chiropractors' offices in Canton, Cleveland, Columbus to regularly treat masses of KNR clients (in addition to his visits to Defendant Floros's clinic in Akron), and during substantial portions of the class period also traveled to chiropractors' offices in Dayton, Toledo, and Cincinnati to do the same. **Ex. 1**, Sixth Amended Complaint, ¶ 110, citing Ghoubrial Tr. 46:5–49:19. These chiropractors include Dr. Phillip Tassi at the Canton Injury Center (*Id.* 47:19–48:1), Dr. Eric Cawley at the Cleveland Injury Center (f/k/a Detroit Shoreway Chirorpactic) (*Id.* 47:7–9); Drs. Nazreen Khan and Stephen Rendek at Town & Country Chiropractic in Columbus (*Id.* 46:8–47:5); Dr. Patrice Lee-Seyon at Toledo Spine and Rehab (*Id.* 48:2–17); and chiropractors in Dayton and Cincinnati that Ghoubrial claimed to be unable to identify (*Id.* 48:18–23).[7] Ghoubrial apparently treated so many personal-injury clients at these chiropractors' offices that he, for a time, traveled to them by private plane. *Id.* 49:4–25.

These chiropractors and any other who routinely sent KNR clients to Dr. Ghoubrial to receive and be overcharged for medically contraindicated trigger-point injections is subject to liability to the Class A members under the OCPA as members of the KNR enterprise. Any such chiropractor knew or should have known that Ghoubrial's primary (and essentially sole) method of treatment of these patients was to deliver the *per se* fraudulent injections for which the clients were ultimately overcharged. All of these chiropractors required the class members to sign medical liens (or letters of protection ("LOPs")) to receive treatment, and knew or should have known that Ghoubrial imposed the same requirement. *See*, *e.g.*, **Ex. 1**, Sixth Amended Complaint ¶ 72–78, citing, *inter alia*, Ghoubrial Tr. 278:15–279:5; Phillips Tr. 51:18–52:12; Floros Tr. 97:5–98:5; Petti Tr. 347:6–

[7] Ghoubrial and the KNR Defendants should be ordered to disclose the identity of all chiropractors whose offices Ghoubrial regularly traveled to treat KNR clients, and the number of each chiropractors' clients Ghoubrial treated—information that is readily available from Defendants' records, including the settlement memoranda and "Forms 1500" contained in every client file. Plaintiffs will immediately seek discovery of this information either upon the institution of the claims pleaded in the proposed Sixth Amended Complaint, or the institution of merits discovery on the existing claims, and promptly seek to add all responsible chiropractors as Defendants as warranted.

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."). And all of these chiropractors were constantly negotiating with Defendant Nestico regarding what share of the clients' settlement funds they would receive to satisfy their bills. *Id.* at ¶ 110, citing Nestico Tr. 211:16–213:9, Ex. 23 ("As you are aware, Rob approves chiropractor reductions" for "certain chiropractors."); Gobrogge Tr. 404:12–406:17, Ex. 58 ("There were some chiropractors that Rob called himself and there are some chiropractors that the attorneys called."); Phillips Tr. 91:1–4 Thus, it may be inferred that all such chiropractors sent these patients to Ghoubrial in keeping with the scheme to sustain KNR's settlement mill to maximize profits at a minimum of effort, and share in these profits regardless of the negative impact on the clients.

Indeed, discovery obtained to date—including the testimony of former KNR attorneys Amanda Lantz and Kelly Phillips—has confirmed that chiropractors Nazreen Khan and Stephen Rendek, the wife-and-husband team that runs Town & Country Chiropractic in Columbus, had an explicit agreement in place requiring KNR to send "at least one" case to Town & Country "for every three" that was sent to KNR. **Ex. 1,** Sixth Amended Complaint, at ¶ 41, citing Lantz Tr. at 46:22–25; 453:22–454:5; Phillips Tr. at 41:12–42:11; 46:16–18; 185:13–16; 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."). According to Lantz and Phillips, the firm "relied" so "heavily on referrals from Town & Country"—of clients who were directly solicited by a pseudonymous telemarketer known as "Will" (a "fake name"), who would misrepresent himself as an insurance company representative—that lawyers in KNR's Columbus office would do "whatever" they "could to make sure the patient would stay" treating at that clinic. **Ex. 1,** Sixth Amended Complaint, at ¶ 21, ¶ 37, ¶ 41, citing Lantz

Tr. at 19:7–14; 298:19–300:16; Philips Tr. at 47:7–21; 50:2–11; 373:14–18 (confirming that "the whole point of the Columbus office was to keep Dr. Khan happy").

Consistent with the scheme, approximately one-third to one-half of the KNR clients who treated with Town & Country (which Mr. Phillips has estimated to be up to 90% of the Columbus office's cases) ended up treating, on site at Town & Country's office, with Ghoubrial, who would invariably administer trigger-point injections to these clients for which the clients' settlements were directly (over)charged pursuant to a letter of protection. *See, e.g.*, **Ex. 1,** Sixth Amended Complaint, at ¶ 44–¶ 45, citing Phillips. Tr. 50:2–51:20; 379:3–12 (estimating that Ghoubrial provided the injections on "pretty much every case"); Lantz Tr. 17:15–18:5 (Ghoubrial traveled to Town & Country to treat KNR clients "on Fridays"); *Id.* 18:15–19:20 (if a KNR client indicated that they did not want to treat with a chiropractor, the firms attorneys "were directed to say, 'well, go in on a Friday and meet with the M.D. that's there' ... [a]nd that was Dr. Ghoubrial").

Accordingly, KNR ensured that Town & Country received a higher proportion of their bills paid from client settlements than would ordinarily be obtained under industry standards. As Mr. Phillips recalled complaining to Defendant Nestico:

> 'Well, Rob, you clearly have an established relationship with Town & Country.' I said, 'One of the things that I noticed is, when I just have Town & Country on a case, I'm limited as to how much I can cut their bill.'

Phillips Tr. 89:19–25; *Id.* 94:11–24: (confirming that Nestico would not cut Town & Country's bills nearly as much as any comparable personal injury firm would have negotiated with a comparable chiropractor). And Ms. Lantz similarly testified that,

> if a case came from Town & Country, we didn't want to cut their bill too much. That was the last bill we wanted to cut. We would cut our fee deeper before cutting the bill.

Lantz Tr. 164:12–17.

Also consistent with the scheme, KNR's attorneys—and, undoubtedly, the Town & Country

chiropractors themselves—understood that when Ghoubrial was involved with a Town & Country case, the satisfaction of his bill from client funds was prioritized over that of Town & Country's charges. As Phillips explained:

> [I]f Dr. Ghoubrial is involved [with a Town & Country case], I'm allowed to cut [Town & Country's] bill a lot more so that Dr. Ghoubrial can be paid more. ...
>
> I couldn't stand the contradiction within things when Ghoubrial was involved. ... How come it's okay to cut Town & Country down to 40% if Ghoubrial's involved, and pay him 80%? But, then, when I had another case that's tough, and it's just Town & Country treatment, I'm only allowed to cut them 25% or 30%. That wasn't logical to me. It didn't make sense. That's why my concern was that, if people started looking at him, and I'm working there, that they could interpret this as meaning there is just an overwhelming disparity in how Dr. Ghoubrial was treated, comparatively speaking.

Phillips Tr. 89:23–90:3; 94:11–95:19; Lantz Tr. 164:22–165:6 ("What my issue was was that the client – the chiropractor has more involvement with the treatment and Dr. Ghoubrial might have seen the patient one time but charged 1,400 bucks for the trigger point injections. So it just didn't make sense why we wouldn't cut that bill at all or touch that bill, but cut our fee, cut the chiro's fee, especially if the chiro was the referral source."); *Id.* 388:3–11 ("All ... reductions for Town & Country and [Ghoubrial] were strictly through Rob Nestico"); *Id.* 432:15–433:16 ("We cut the heck out of Town & Country in order to preserve Dr. Ghoubrial. ... Dr. Ghoubrial always got the biggest share of [the client settlements].").

While Phillips was worried that it might "create a problem" with Dr. Khan "if she ever figured out that her percentages were going down significantly on cases involving Dr. Ghoubrial," here he was missing the point. Phillips Tr. 90:4–10. Dr. Khan knew which of her clients treated with Ghoubrial, and that she would receive a lower percentage of her bills on those cases. But she also understood that Ghoubrial's involvement was essential to the scheme, allowing the Defendants to inflate medical bills, and thus, their fees, on a higher volume of cases with a minimum of effort. As

Ms. Lantz explained, firm management "directed" staff to "send [clients] to [Ghoubrial]," precisely "because he 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. *See also* **Ex. 1**, at ¶ 29, ¶ 102–¶ 103, ¶ 105, ¶ 109, citing F.B. MacKinnon, CONTINGENT FEES FOR LEGAL SERVICES: PROFESSIONAL ECONOMICS AND RESPONSIBILITIES 198 (1964) ("It 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."); Engstrom Aff. ¶ 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."); Petti Tr. 85:24–88:4 ("[T]hat 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."); *Id.* 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.* 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); Phillips Tr. 41:3–5 ("With the volume that we had, and the way the operation worked, the intakes fed the machine."); Petti Tr. 58:16–59:5 (explaining how 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").

The KNR enterprise's systematic prioritization of quantity over quality also explains why the Defendants disregarded and buried their knowledge of the negative impact that its associated

healthcare providers had on their clients' settlements.[8] **Ex. 1**, Sixth Amended Complaint, at ¶ 82 and ¶ 85, citing Lantz Tr. at 43:6–12; 122:14–23; 319:11–321:5 (explaining the "toxic" impact that Town & Country's and Ghoubrial's combined involvement would have on the clients' cases); Phillips Tr. 53:9–55:16; 187:6–8; 371:19–25) (Insurance companies 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.").

Thus, just as Khan and Rendek at Town & Country served as the Columbus equivalent of Defendant Floros and Akron Square in KNR's scheme (*see* Lantz Tr. at 302:5–7; 306:3–7; 307:15–20), it can be inferred that the chiropractors in Canton, Cleveland, Toledo, Dayton, and Cincinnati who allowed Ghoubrial to treat masses of patients at their offices played a corresponding role in the scheme. Limited class-discovery as to these new Defendants is expected to further confirm this inference, as does the involvement of many of these same chiropractors in the related "narrative-fee" kickback scheme. Indeed, Dr. Cawley (Cleveland), Dr. Tassi (Canton), and Dr. Lee-Seyon (Toledo) are all identified in KNR documents as "automatic" recipients of the narrative fee. *See* **Ex. 1**, at ¶ 116–¶ 117, ¶ 119. And review of the settlement statements and "Form 1500" health insurance claim forms that are contained in every KNR client file will confirm exactly how many of these chiropractors' patients treated with Ghoubrial, what treatment they received from him, and what they were charged for it. *See, e.g.,* **Ex. 1**, Sixth Amended Complaint, at ¶ 111. Analysis of these client records is also likely to reveal consistent patterns in terms of the number of chiropractor appointments the clients pursuant to efforts to hit "the sweet spot" in terms of "get[ting] a greater

[8] It is also noteworthy that KNR and the Town & Country chiropractors preyed specifically on Columbus's large population of Somalian immigrants, and employed a full-time Somalian translator in the firm's Columbus office. *See* Lantz Tr. 304:20–305:25

percentage of" bills covered "to a certain level" at which point the clients are "discharge[d] ... either as healed or maximum medical improvement." Petti Tr. 58:16–59:5; Floros Tr. 45:9–46:19; 88:7–22.

Conclusion

Given the evidence that has been uncovered to date, it is apparent that (1) the existing Defendants should not escape the full extent of liability for fraud, including under the OCPA; and (2) the additional chiropractor Defendants should also be held accountable for their participation in the price-gouging scheme. Plaintiffs should not be required to proceed in separate lawsuits to pursue these claims, particularly given that their addition at this stage of the proceedings should not substantially impact the timeline for determination of class-certification or the merits of this action. As explained above, the Court should permit the requested amendment and allow the parties to proceed as necessary with limited class-action discovery and class-certification briefing regarding the new Defendants and claims.

Respectfully submitted,

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Certificate of Service

The foregoing document was filed on May 23, 2019, using the Court's electronic-filing system, which will serve copies on all necessary parties.

/s/ Peter Pattakos
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IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS 715 Woodcrest Drive Wadsworth, Ohio 44281 THERA REID 28 Safer Plaza Akron, Ohio 44306 MONIQUE NORRIS 2321 19th Street SW Akron, Ohio 44314 RICHARD HARBOUR 25 Hawk Ridge Rittman, Ohio 44270 Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC 4490 Litchfield Drive Copley, Ohio 44321 ALBERTO R. NESTICO Kisling, Nestico & Redick 3412 West Market Street Fairlawn, Ohio 44333 ROBERT W. REDICK Kisling, Nestico & Redick 3412 West Market Street Fairlawn, Ohio 44333 SAM GHOUBRIAL, M.D. 3454 Skye Ridge Drive Richfield, Ohio 44286 MINAS FLOROS, D.C. Akron Square Chiropractic 1419 S. Arlington Street Akron, Ohio 44306	Case No. CV-2016-09-3928 Judge James A. Brogan **Sixth Amended Class-Action Complaint with Jury Demand**

EXHIBIT 1

NAZREEN KHAN, D.C. Town and Country Chiropractic 3894 E. Broad Street Columbus, Ohio 43213 STEPHEN RENDEK, D.C. Town and Country Chiropractic 3894 E. Broad Street Columbus, Ohio 43213 PHILIP TASSI, D.C. Canton Injury Center F/K/A West Tusc Chiropractic, LLC 3410 Tuscarawas St. W Canton, Ohio 44708 ERIC CAWLEY, D.C. Cleveland Injury Center, LLC 6508 Detroit Avenue Cleveland, Ohio 44102 PATRICE LEE-SEYON, D.C. Timber Spine & Rehab F/K/A Toledo Spine & Rehab 3130 Central Avenue, Suite 23 Toledo, Ohio 43606 Defendants.	

I. Introduction

1. Plaintiffs Member Williams, Thera Reid, Monique Norris, and Richard Harbour seek to proceed, under Civ.R. 23, as representatives of three classes of individuals—all former clients of the Defendant law firm Kisling Nestico & Redick, LLC ("KNR")—who fell victim to three related fraudulent schemes run by the firm, its owners, Defendants Alberto R. Nestico, Robert R. Redick, Defendant physician Sam Ghoubrial, M.D., and Defendant chiropractors Minas Floros, D.C., Nazreen Khan, D.C., Stephen Rendek, D.C., Philip Tassi, D.C., Eric Cawley, D.C., and Patrice Lee-Seyon, 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 their unwitting clients.

2. Thus, Plaintiffs seek to pursue claims on behalf of the following classes of former KNR clients who were respectively and fraudulently charged,

- 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;
- 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
- 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.

3. 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.

II. Parties

4. Defendant KNR is an Ohio law firm, headquartered in Akron, that focuses on personal-injury cases, mainly representing car-accident victims. Founded in 2005, KNR has three offices in the Cleveland area—in Independence, Beachwood, and Westlake—and a single office in each of the Akron, Canton, Cincinnati, Columbus, Dayton, Toledo, and Youngstown areas. KNR markets its services to the public through a ubiquitous multimedia advertising campaign with the tagline "Hurt in a car? Call KNR."

5. Defendants Alberto R. Nestico and Robert W. Redick are Ohio residents who, at all relevant times, owned and controlled the KNR firm and caused it to engage in the conduct alleged in this Complaint.

6. Defendant Sam Ghoubrial is a medical doctor to whom KNR clients are funneled by the KNR Defendants and the Defendant chiropractors for fraudulent "pain management" services and other medical treatment for which the clients are serially overcharged. Ghoubrial has treated approximately 5,000 KNR clients since 2010, and travels throughout the State of Ohio to do so at the offices of the Defendant chiropractors.

7. Defendant chiropractors Minas Floros, D.C., Nazreen Khan, D.C., Stephen Rendek, D.C., Philip Tassi, D.C., Eric Cawley, D.C., and Patrice Lee-Seyon, D.C., are chiropractors who own and operate clinics in Akron (Floros), Columbus (Khan and Rendek), Canton (Tassi), Cleveland (Cawley), and Toledo (Lee-Seyon), respectively. These chiropractors make extensive use of telemarketers to unlawfully solicit clients on KNR's behalf, trade referrals with the firm, and assist the other Defendants in coercing the clients into waiving their health-insurance benefits and receiving fraudulent medical care from Defendant Ghoubrial pursuant to Defendants' price-gouging scheme.

8. Plaintiff Member Williams is a Wadsworth, Ohio resident and was a KNR client from September 2013 until August 2015. Defendants represented Williams as her attorneys under a contingency-fee agreement in connection with a car accident in which she was injured. Defendants recovered a settlement on Williams's behalf and, before disbursing settlement proceeds to her, required her to execute a Settlement Memorandum as described herein. As with their other clients, Defendants fraudulently charged Ms. Williams for an "investigation fee." Ohio law requires Defendants to reimburse this illegal fee to Ms. Williams and all other current and former KNR clients who were so charged.

9. Plaintiff Thera Reid is an Akron, Ohio resident who was injured in a car accident in 2016. Defendants unlawfully solicited Ms. Reid through Defendant Floros at Akron Square Chiropractic, deceived and coerced her into accepting a conflicted legal representation, charged her a fraudulent "narrative fee," paid from her settlement proceeds directly to Dr. Floros, and subjected her to fraudulent treatment by Defendant Ghoubrial, including more than ten medically contraindicated "trigger-point" injections, for which she was charged unconscionable rates pursuant to the price-gouging scheme described herein.

10. Plaintiff Monique Norris is an Akron, Ohio resident and former KNR client to whom Defendant Ghoubrial recommended, distributed, and overcharged an unconscionable rate for office visits and an electrical stimulation device, or "TENS Unit" pursuant to Defendants' price-gouging scheme. Ms. Norris was also unlawfully charged the investigation fee and narrative fee.

11. Plaintiff Richard Harbour is a Rittman, Ohio resident and another former KNR client who was directed by the firm to treat with Defendant Ghoubrial, and was similarly subject to the price-gouging scheme, including by the administration of the fraudulent injections. Ghoubrial also overcharged Mr. Harbour for not one but two TENS units from Tritec, and KNR also unlawfully charged Mr. Harbour for the investigation fee described above.

III. Jurisdiction and Venue

12. This Court has original jurisdiction under R.C. 2305.01. Removal under the Class Action Fairness Act (28 U.S.C. § 1453) would be improper because two-thirds or more of the members of the proposed class are Ohio citizens, the primary defendants are Ohio citizens, and the primary injuries alleged occurred in Ohio.

13. Venue is proper under Ohio Civ.R. 3(B) because Defendant KNR is headquartered in Summit County and conducted activity in Summit County that gave rise to the claim for relief,

including the use of a Summit County offices to solicit clients who were victims of the unlawful schemes at issue.

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

14. 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]

15. 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' 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.

16. 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

[1] Where an "**Exhibit**" or "**Ex**." is noted in boldfaced type in this Sixth Amended Complaint, it is attached as an exhibit to this document. 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.

[2] The complete transcripts containing all of the deposition testimony cited in this Sixth Amended Complaint have been filed with the Clerk of Courts and made a part of the record in this case.

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.

17. 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.

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

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.

19. 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.

20. 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.

21. 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,

- 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;

- 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;

- 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.").

- 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.");

- 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);

- The firm does not engage in rigorous case screening, accepts nearly every case that comes 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;

- 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;

- 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;

- 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.

22. 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.

23. 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.

24. 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.

25. 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.*

26. 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.

27. 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.

28. 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.

29. 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).

30. 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.

31. 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.

32. 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:

- 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);

- 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,

- 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).

33. 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).

34. 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,

- 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;

- 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;

- 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;

- 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;

- 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;

- 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.

35. 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.

36. In addition to its massive direct-advertising budget that is believed to be in the millions of dollars, annually,[3] KNR also conspires with a network of chiropractors who unlawfully solicit car-accident victims on the firm's behalf.

37. The chiropractors, including Defendants Floros, Khan, Rendek, Tassi, Cawley, and Lee-Seyon, employ telemarketers who cold-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 2,** Affidavit of Named Plaintiff Thera Reid, ¶ 2; **Exhibit 3,** Affidavit of former KNR client Taijuan Carter, ¶ 2; **Exhibit 4,** Affidavit of former KNR client Chetoiri Beasley, ¶ 2. The chiropractors then promise the car-accident victims a free consultation, and offer a free ride to their clinic. **Ex. 2,** Reid Aff., ¶ 2. The clients are then typically picked up by a van that transports them to the chiropractor's office. *Id.*, ¶ 3.

38. 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. 2,** Reid Aff., ¶ 4; **Ex. 3,** Carter Aff., ¶ 3; **Ex. 4,** 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. 2,** Reid Aff., ¶ 4–¶ 5; **Ex. 3,** Carter Aff., ¶ 4; **Ex. 4,** Beasley Aff., ¶ 4. In turn, if the

[3] *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; Lantz Tr. 97:1–98:–6 (discussing that the investigator fee the firm charged to its clients helped cover marketing costs).

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 5,** Affidavit of Named Plaintiff Monique Norris, at ¶ 4.

39. 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. *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.

40. 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.").

41. 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 Defendant 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 Khan 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.").

42. 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.

43. 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. 5,** Norris Aff., ¶ 5; **Exhibit 6,** Affidavit of Named Plaintiff Richard Harbour, ¶ 5–¶ 6; **Ex. 2,** 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. 2,** Reid Aff., ¶ 6; **Ex. 3,** Carter Aff., ¶ 5, ¶ 9; **Ex. 4,** Beasley Aff., ¶ 5, ¶ 12; **Ex. 5,** Norris Aff., ¶ 6; **Ex. 6,** Harbour Aff., ¶ 3, ¶ 10. 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.

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.

44. 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.

45. 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.").

46. 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.

47. 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.

48. 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 7,** Affidavit of Michael Walls, M.D., ¶ 6. Complete

merits discovery on prevailing pricing for these injections will undoubtedly confirm that the amount Ghoubrial charged KNR clients for this procedure is indefensible.

49. 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. 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.

50. 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 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.[4]

51. 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.

52. 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 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,

[4] 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.

> 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.

53. 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.

54. 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.

55. Ghoubrial's administration of the dramatically overpriced injections to car-accident victims is not just unnecessary, it is medically indefensible.[5]

[5] 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.

56. 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. 7,** 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. 7,** 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.

57. 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. 7,** 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.

58. 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. 7,** Walls Aff., ¶ 4; **Exhibit 8,** 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.

59. 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. 7,** 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.

60. 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.

61. 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.[6] According to a leading study on the use of trigger-point injections, the use of kenalog and other

[6] 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.

corticosteroids in these injections "ha[s] been associated with significant myotoxicity." *Id.* at 385:16–388:16, Ex. 2, at p. 658.

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

62. 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.

63. 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. 7,** 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.

64. 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.

65. 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.

- 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.

66. 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.

67. 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.

68. 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. Lantz Tr. 184:6–11.

69. 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. 3**, Carter Aff., ¶ 6, ¶ 10, ¶ 14; **Ex. 4,** Beasley Aff., ¶ 7, ¶ 14; **Ex. 5,** Norris Aff., ¶ 7; **Ex. 6,** Harbour Aff. ¶ 7, ¶ 11. 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. 3**, Carter Aff., ¶ 6, ¶ 10, ¶ 14– ¶ 15; **Ex. 4,** Beasley Aff., ¶ 7, ¶ 14, ¶ 17; **Ex. 5,** Norris Aff. ¶ 7; **Ex. 6,** Harbour Aff., ¶ 7, ¶ 11, ¶ 15. 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. 6,** Harbour Aff., ¶ 11; *See also* **Ex. 4,** Beasley Aff., ¶ 14.

70. 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.

c. 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.

71. 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*).

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.

72. Not only do the Defendant providers 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. 3,** Carter Aff., ¶ 5, ¶ 9, **Ex. 4,** Beasley Aff., ¶ 5, ¶ 6, ¶ 12–¶ 13; **Ex. 5,** Norris Aff., ¶ 6; **Ex. 6,** Harbour Aff., ¶ 3, ¶ 10. Floros also requires his patients to sign a letter of protection as standard policy. Floros Tr. 97:5–98:5.

73. 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.

74. 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.

75. 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.").

76. Confirming both of these points is the Affidavit of Cleveland, Ohio-based attorney Ryan Fisher (**Exhibit 9**), 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.

77. 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.

78. 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. 3,** Carter Aff., ¶ 5, ¶ 9; **Ex. 4,** Beasley Aff., ¶ 5, ¶ 6, ¶ 12, ¶ 13; **Ex. 5,** Norris Aff., ¶ 6; **Ex. 6,** Harbour Aff., ¶ 3, ¶ 10.

79. 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. 2,** Reid Aff., ¶ 8, ¶ 16; **Ex. 3,** Carter Aff., ¶ 6–¶ 7, ¶ 10–¶ 11, ¶ 14–¶ 15, ¶ 18–¶ 19; **Ex. 4,** Beasley Aff., ¶ 6–¶ 7, ¶ 9, ¶ 13–¶ 17, ¶ 19–¶ 20; **Ex. 5,** Norris Aff., ¶ 6–¶ 7, ¶ 9–¶ 10, ¶ 12; **Ex. 6,** Harbour Aff., ¶ 7–¶ 8, 11; ¶ 15–¶ 16, ¶ 19. 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. 2,** 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.

80. 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 10, Affidavit of Larry Lee, ¶ 4, ¶ 6.

81. 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.

82. 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.").

83. 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. 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[7]), and that Allstate was "tightening the screws even more" on all Plambeck cases. Nestico Tr. 373:25–374:21, Ex. 57.

[7] *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

84. 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, 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.

85. 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

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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.").

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.

86. 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.

87. 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.").

88. 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.

89. 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!!!!" Nestico Tr. 412:23–460:24, Ex. 61; *See also* Nestico Tr., 378:4–381:9, Ex. 57 (Nestico: "I agree we need to file all these Allstate files.").

90. 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. 12, 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").

91. 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.

92. 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, Nestico 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.

93. 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."); Ghoubrial 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).

94. 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.

95. 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.

96. 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. 8,** 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. 7,** 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. 9,** 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.).

97. 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).

98. 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.

99. 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.

100. 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.

101. 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.

102. 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.").

103. 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.

104. 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).

105. 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.**

106. 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.

107. 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.").

108. 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. 9,** Fisher Aff., ¶ 5.

6. The Defendant chiropractors are integral to the price-gouging scheme.

109. The Defendant chiropractors are integral to and benefit from Defendants' scheme, by which thousands of KNR clients are directed to attend multiple appointments with the chiropractors that are all highly routinized, mechanized, and require minimal chiropractor involvement. *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) and 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, these chiropractors aim to hit "the sweet spot" in terms of how much treatment they provide to KNR's clients, knowing that they will "get a greater percentage of" their bills covered at "a certain level" at which point the clients are discharged "either as healed or maximum medical improvement." Petti Tr. 58:16–59:5.

110. Additionally, these chiropractors, who direct masses of their clients to treat with Ghoubrial, who travels across the state to visit their offices, all knew that Ghoubrial's primary (and essentially sole) method of treatment of these patients was to deliver the *per se* fraudulent injections for which the clients were ultimately overcharged. Ghoubrial Tr. 46:5–49:19; Floros Tr. at 88:23–89:12; 91:18–2; 186:20–187:1–2. These chiropractors all participated in KNR's solicitation and referral-trading scheme described above, they all required the KNR clients members to sign medical liens to receive

treatment, and all knew or should have known that Ghoubrial imposed the same requirement. *See, e.g.*, **Ex. 2,** Reid Aff., ¶ 3, ¶ 7, ¶ 14, Ex. A, (medical liens); **Ex. 5,** Norris Aff., ¶ 4, ¶ 6, ¶ 10, Exs. B, C (same); **Ex. 6,** Harbour Aff., ¶ 3, ¶ 10, ¶ 15, Exs. A, C (same). And all of these chiropractors were constantly negotiating with Defendant Nestico regarding what share of the clients' settlement funds they would receive to satisfy their bills, and could count on receiving disproportionately high shares of their inflated bills in exchange for participating in the scheme. *See* Nestico Tr. 211:16–213:9, Ex. 23 ("As you are aware, Rob approves chiropractor reductions" for "certain chiropractors."); Gobrogge Tr. 404:12–406:17, Ex. 58 ("There were some chiropractors that Rob called himself and there are some chiropractors that the attorneys called."); Phillips Tr. 91:1–4 (whether Nestico would agree to cut a provider's bills "was all dependent on the state of the relationship with the health provider. But, Khan was clearly the golden goose. There's no doubt about it."); 96:23–98:18 (discussing that Defendant Nestico would "look at the deduction differently" depending on the medical provider's referral relationship with KNR).

In addition, Defendant Floros was not able to testify about whether he spoke to Defendant Nestico "frequently" for this purpose because that was "a tough word," and otherwise could not recall details about his conversations with Defendant Nestico about negotiating his bills. *See* Floros Tr. 210:5–13 and 211:8–14. Thus, the Defendant chiropractors intentionally sent these patients to Ghoubrial in keeping with the scheme to sustain KNR's settlement mill to maximize profits at a minimum of effort, and share in these profits regardless of the negative impact on the clients.

7. Named Plaintiffs Reid, Norris, and Harbour are victims of Defendants' price-gouging scheme.

111. As detailed in their attached affidavits cited above and incorporated by reference herein, named Plaintiffs Reid, Norris, and Harbour, respectively, had $3,900, $600, and $3,000 fraudulently deducted from their KNR settlements pursuant to Defendants' price-gouging scheme. **Ex. 2,** Reid Aff., ¶ 15, Ex. E (settlement statement); **Ex. 5,** Norris Aff., ¶ 9, Ex. E (same); **Ex. 6,** Harbour Aff.,

¶ 8, ¶ 14, Exs. B, D (same). Reid was solicited by a telemarketer employed by Defendant Floros who directed her to sign with KNR. **Ex. 2,** Reid Aff., ¶ 2–¶ 6. Norris was directed by KNR to treat with Floros. **Ex. 5,** Norris Aff., ¶ 4. All three of these Plaintiffs were directed by KNR and their affiliated chiropractor to receive treatment from Ghoubrial, for which they were charged unconscionable rates from their settlement proceeds. **Ex. 2,** Reid Aff., ¶ 6; **Ex. 5,** Norris Aff., ¶ 6, ¶ 9; **Ex. 6,** Harbour Aff., ¶ 3, ¶ 8, ¶ 10, ¶ 14.

112. All three of these Plaintiffs informed the Defendants that they had health-insurance to cover their treatment, but were nevertheless directed to sign medical liens that constituted a waiver of this insurance coverage without being provided any notice or indication from the Defendants that this waiver could negatively impact them financially. **Ex. 2,** Reid Aff., ¶ 3, ¶ 7, ¶ 14, Ex. A, (medical liens); **Ex. 5,** Norris Aff., ¶ 4, ¶ 6, ¶ 10, Exs. B, C (same); **Ex. 6,** Harbour Aff., ¶ 3, ¶ 10, ¶ 15, Exs. A, C (same). None of these Plaintiffs were advised of the true cost of the medical and chiropractic care provided to them by the Defendants, and all of them trusted and assumed that the Defendant attorneys and healthcare providers would not charge them extreme markups for this care. **Ex. 2,** Reid Aff., ¶ 8, ¶ 15, ¶ 16; **Ex. 5,** Norris Aff., ¶ 7, ¶ 9, ¶ 12; **Ex. 6,** Harbour Aff., ¶ 7, ¶ 8, ¶ 11, ¶ 14, ¶ 15, ¶ 16.

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).

113. 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.

114. 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 11,** Affidavit of Gary Petti, ¶ 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.

115. A legitimate narrative report includes information the medical records themselves do not present. **Ex. 11,** Petti Aff., ¶ 8. The plaintiff's attorney typically decides whether to obtain a narrative report for his client. *Id.*

116. 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.

117. 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" 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.

118. 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.

119. 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, including Defendants Tassi, Cawley, and Lee-Seyon, 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.

120. 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.[8] 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.

121. 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.

122. 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

[8] 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. 10,** 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.

123. 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.

124. 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.

125. 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 representative of Defendant Tassi's clinic 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.

126. 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.

127. Additionally, the KNR handbook (quoted in Section IV(C)(1) 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. 10,** Lee Aff., ¶ 9.

128. 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. 2,** Reid Aff., ¶ 15–¶ 17; **Ex. 3,** Carter Aff., ¶ 7, ¶ 12, ¶18–¶ 19; **Ex. 4,** Beasley Aff., ¶ 9, ¶ 16–¶ 17, ¶ 19–¶ 20; **Ex. 5,** Norris Aff., ¶ 9, ¶ 13.

4. Named Plaintiffs Reid and Norris are victims of the narrative-fee scheme.

129. As detailed in their attached affidavits cited above and incorporated by reference herein, named Plaintiffs Reid and Norris had funds deducted from their KNR settlements to pay Defendant Floros for the fraudulent narrative fee. **Ex. 2,** Reid Aff., ¶ 15, Ex. E (settlement statement); **Ex. 5,** Norris Aff., ¶ 9, Ex. E (same). Neither Reid nor Norris was advised as to the true nature of this fee, or given a meaningful choice as to whether to consent to it. **Ex. 2,** Reid Aff., ¶ 5, ¶ 15–¶ 17; **Ex. 5,** Norris Aff., ¶ 9, ¶ 12–¶ 13.

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).

130. 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.

131. 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., 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).

132. 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 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.

133. "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. *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.

134. 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 12.** 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).

135. 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.

136. 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.

137. 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.

138. 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). *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.").

139. 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.

140. 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.

141. 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).

140. 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.

142. 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.

143. "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; 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.

144. 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.

145. 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.

146. 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. Affidavit of Member Williams, attached as **Exhibit 13,** ¶ 3, Ex. B (settlement statement); **Ex. 2,** Reid Aff., ¶ 15, Ex. E (same); **Ex. 3,** Carter Aff., ¶ 7, ¶ 12, Exs. D, G (same); and **Ex. 4,** Beasley Aff., ¶ 7, ¶ 9, Exs. D, H (same). **Ex. 5,** Norris Aff., ¶ 9, ¶ 11, Ex. E (same); **Ex. 6,** Harbour Aff., ¶ 8, ¶ 14, Exs. B, E (same).

147. Clients are never informed of the true nature of the investigator fee. **Ex. 13,** Williams Aff., ¶ 3–¶ 5; **Ex. 2,** Reid Aff., ¶ 15, ¶ 17; **Ex. 3,** Carter Aff., ¶ 7, ¶ 12, ¶ 16–¶ 17, ¶ 19; **Ex. 4,** Beasley Aff., ¶ 9, ¶ 16, ¶ 18, ¶ 20; **Ex. 5,** Norris Aff., ¶ 9, ¶ 11, ¶ 13; **Ex. 6,** Harbour Aff., ¶ 8, ¶ 18–¶19. 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; *See also id*, 117:3–5 (Q. "The firm has always offered prospective clients a free consultation, correct?" A. "I believe so.").

147. Accordingly, 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).

6. Named Plaintiffs Williams, Reid, Norris, and Harbour are all victims of the investigation-fee scheme.

148. As detailed in their attached affidavits cited above and incorporated by reference herein, all four named Plaintiffs had funds deducted from their KNR settlements to pay for the fraudulent investigation fee. **Ex. 13,** Williams Aff., ¶ 3, Ex. B (settlement statement); **Ex. 2,** Reid Aff., ¶ 15, Ex. E (same); **Ex. 5,** Norris Aff., ¶ 9, ¶ 11, Ex. E (same); **Ex. 6**, Harbour Aff., ¶ 8, ¶ 14, Exs. B, E (same). None of the Plaintiffs were advised as to the true nature of this fee, or given a meaningful choice as to whether to consent to it. **Ex. 13,** Williams Aff., ¶ 3–¶ 5; **Ex. 2,** Reid Aff., ¶ 15, ¶ 17; **Ex. 5,** Norris Aff., ¶ 9, ¶ 11, ¶ 13; **Ex. 6,** Harbour Aff., ¶ 8, ¶ 18–¶19.

V. Class Allegations

149. Plaintiffs Williams, Reid, Norris, and Harbour bring claims under Ohio Civ.R. 23(A) and (B)(3) on behalf of themselves and the following Classes of all others similarly situated:

A. 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.

B. 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.

C. 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[9] to the present.

150. The Classes are so large that joinder of all Class members is impracticable. And while Plaintiff is unable to state at this time the exact size of the potential Classes, based on KNR's extensive public advertising and high-volume business model, Plaintiff believes each Class consists of thousands of people. Each class is readily ascertainable from KNR and client records, including client settlement statements, KNR's "Needles" computer system.[10]

151. Common legal or factual issues predominate individual issues affecting the Classes. These issues include determinations as to whether,

A. for Class A,

- Did KNR unlawfully conspire with Defendant 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?

[9] 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.

[10] Needles is the name of the computer system by which KNR stores all information about its client matters. On January 28, 2014, Gobrogge emailed KNR staff: "Make sure you are noting EVERYTHING you do on a case in Needles." This includes referral sources, as shown by Gobrogge's December 1, 2014 email to KNR staff ("NOBODY should change the referred by's in Needles").

- 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 Defendant chiropractors 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, unjust enrichment, or under the Ohio Corrupt Practices Act (R.C. 2923.34) based primarily on the answers to the questions above?

B. for Class B,

- 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. and for Class C,

- 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?

152. The claims of Plaintiffs Williams, Reid, Norris, and Harbour are typical of Class members' claims. Plaintiffs' claims arise out of the same course of conduct by Defendants and are based on the same legal theories as Class members' claims.

153. Plaintiffs will fairly and adequately protect Class members' interests. Plaintiffs' interests are not antagonistic to, but instead comport with, the interests of the other Class members. Plaintiffs' counsel are adequate class counsel under Civ.R. 23(F)(1) and (4) and are fully qualified and prepared to fairly and adequately represent the Class's interests.

154. The questions of law or fact that are common to the Class, including those listed above, predominate over any questions affecting only individual members.

155. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Requiring Class members to pursue their claims individually would entail a host of separate suits, with concomitant duplication of costs, attorneys' fees, and demands on court resources. The Class members' claims are sufficiently small that it would be impracticable for them to incur the substantial cost, expense, and risk of pursuing their claims individually. Certification of this case under Civ.R. 23 will enable the issues to be adjudicated for all class members with the efficiencies of class litigation.

VI. Class-Action Claims

Claim 1—Fraud
Undisclosed Self-Dealing/Price-Gouging
Plaintiffs Reid, Norris, Harbour, and Class A

156. Plaintiffs Reid, Norris, and Harbour incorporate all previous allegations.

157. Plaintiffs Reid, Norris, and Harbour assert this claim under Civ.R. 23(B)(3) against all Defendants, on behalf of 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 (Class A).

158. Defendants induced Plaintiffs and Class A to waive their health-insurance coverage and pay unconscionable rates for this treatment without disclosing Defendant's financial interest in the transactions. Defendants knowingly concealed these facts from Plaintiffs and the Class.

159. Defendants' misrepresentations about and concealment of facts were material to Plaintiffs' and the Class's decision to waive their health-insurance coverage, treat with the Defendant providers, approve their Settlement Memoranda, and thus pay the unconscionable fees from their settlements.

160. Defendants' misrepresentations about and concealment of facts were made with the intent of misleading Plaintiffs and the Class into relying upon them.

161. KNR's clients, including Plaintiffs and Class A members, reposed a special trust and confidence in Defendants, who was in a position of superiority or influence over their clients as a result of their positions of trust.

162. The actions, omissions, and course of conduct and dealing of Defendants as alleged above were undertaken knowingly and intentionally, by standardized and routinized procedures, with a conscious disregard of the rights and interests of Plaintiffs and the Class, and with certainty of inflicting harm and damage on Plaintiffs and the Class.

163. Plaintiffs and the Class were justified in relying on Defendants' uniform misrepresentations and concealment of facts, and did, in fact, so rely.

164. Plaintiffs and the Class were injured and their injury was directly and proximately caused by their reliance on Defendants' uniform misrepresentations about and concealment of facts regarding Defendants' interest in the transactions.

165. Defendants' conduct in inducing Plaintiffs and the Class to pay fraudulent rates for the fraudulent medical treatment, without disclosing his financial interest in the transactions, was intentionally deceptive.

166. Plaintiffs and the Class were injured and their injury was directly and proximately caused by their reliance on Defendants' misrepresentations about and concealment of facts regarding their interest in the transaction.

167. Where any of the Defendants—in particular the chiropractor Defendants—did not have any direct involvement or contact with any particular Plaintiff or Class A member, these Defendants are jointly and severally liable both for aiding and abetting fraud and conspiring to commit fraud. These Defendants all provided substantial assistance or encouragement in the scheme by driving a high

volume of KNR clients to receive the fraudulent treatment from Ghoubrial with knowledge that his conduct, and the charges for it, were fraudulent, and knowing that the KNR settlement mill depended on continuing to drive a high volume of clients via standardized and routinized procedures. All Defendants' participation in the scheme constitutes a malicious combination of two or more persons, causing injury to another person or property, via a common plan to defraud. *See Williams v. Aetna Fin. Co.*, 83 Ohio St.3d 464, 475–476, 1998-Ohio-294, 700 N.E.2d 859 citing *Halberstam v. Welch*, 227 U.S.App. D.C. 167, 705 F.2d 472, 477-478 (1983), PROSSER & KEETON ON TORTS (5 Ed.1984) 323, Section 46.

168. Where lawyers, doctors, and chiropractors take a secret profit in a transaction involving their client, as Defendants have here, such dealing is fraudulent and void as a matter of law, whether or not there is a causal relation between the self-dealing and the plaintiff's loss. *In re Binder: Squire v. Emsley*, 137 Ohio St. 26, 57–58, 27 N.E.2d 939 (1940); *Myer v. Preferred Credit*, 117 Ohio Misc. 2d 8, 9, 2001-Ohio-4190, ¶ 23, 766 N.E.2d 612 (C.P. 2001) citing 3 OHIO JURISPRUDENCE 3D (1998) 136, 134, Agency, §§ 117, 115.

169. Plaintiff Reid became aware of Defendant's misrepresentations and concealment of facts no earlier than March of 2017, Plaintiff Norris no earlier than November of 2017, and Plaintiff Harbour no earlier than September of 2018. The other class members remain unaware as of the filing of this Complaint.

170. Plaintiffs and the Class are entitled to compensation for the damages caused by Defendants' fraud, including the amounts for which they were overcharged for Defendant Ghoubrial's healthcare, disgorgement of all fees paid to the Defendants from Plaintiffs' and Class members' KNR settlements pursuant to Defendants' inherently corrupt relationships, as well as punitive damages, and attorneys' fees.

Claim 2—Breach of Fiduciary Duty
Undisclosed Self-Dealing/Price-Gouging
Plaintiffs, Reid, Norris, Harbour, and Class A

171. Plaintiffs Reid, Norris, and Harbour incorporate all previous allegations.

172. Plaintiffs Norris and Harbour assert this claim under Civ.R. 23(B)(3) against the KNR Defendants (KNR, Nestico, and Redick), on behalf of all Class A members as defined in Claim 1 above.

173. KNR's clients, including Plaintiffs and the Class Members, reposed a special trust and confidence in the KNR Defendants, who were in a position of superiority or influence over their clients as a result of this position of trust, and owed these clients a fiduciary duty.

174. The KNR Defendants' conduct, as summarized above regarding Claim 1, constituted intentional deception and an intentional breach of the KNR Defendants' fiduciary duty, and Plaintiffs and Class A have suffered damages as a direct and proximate result of these breaches.

175. Where a fiduciary takes a secret profit in a transaction involving his client, as the KNR Defendants have here, such dealing is fraudulent and void as a matter of law, whether or not there is a causal relation between the self-dealing and the plaintiff's loss. *In re Binder: Squire v. Emsley*, 137 Ohio St. 26, 57–58, 27 N.E.2d 939 (1940); *Myer v. Preferred Credit*, 117 Ohio Misc. 2d 8, 9, 2001-Ohio-4190, ¶ 23, 766 N.E.2d 612 (C.P. 2001) citing 3 OHIO JURISPRUDENCE 3D (1998) 136, 134, Agency, §§ 117, 115.

176. Plaintiffs and the Class are entitled to compensation for the damages caused by the KNR Defendants' breaches, including the amounts for which they were overcharged for Defendant Ghoubrial's healthcare, disgorgement of all fees paid to the KNR Defendants from Plaintiffs' and Class members' KNR settlements, as well as punitive damages, and attorneys' fees.

Claim 3—Unjust Enrichment
Undisclosed Self-Dealing/Price-Gouging
Plaintiffs Reid, Norris, Harbour and Class A

177. Plaintiffs Reid, Norris, and Harbour incorporate all previous allegations.

178. Plaintiffs assert this claim under Civ.R. 23(B)(3) against all Defendants on behalf of all Class A members as definied in Claim 1 above.

179. Having been coerced into entering conflicted attorney-client and physican/chiropractor-patient relationships with the Defendants and paying them fraudulent and unconscionable fees pursuant to those relationships, Plaintiffs and Class A have, to their substantial detriment, conferred a substantial benefit on Defendants of which they are aware.

180. Due to Defendants' intentionally deceptive conduct in inducing Plaintiffs and Class Members to pay these fees without disclosing their financial interest in the transaction, Defendants' retention of any portion of these fees paid to them by Plaintiffs and Class members without repayment to Plaintiffs and the Class would be unjust and inequitable.

181. Equity entitles Plaintiffs and the Class to disgorgement of all such funds by Defendants, as well as punitive damages and attorneys' fees for Defendants' intentionally deceptive conduct.

Claim 4—Unconscionable Contract
Undisclosed Self-Dealing/Price-Gouging
Plaintiffs Reid, Norris, Harbour, and Class A

182. Plaintiffs Reid, Norris, and Harbour incorporate all previous allegations.

183. Plaintiffs Norris and Harbour assert this claim under Civ.R. 23(B)(3) against Defendant Ghoubrial on behalf of all Class A members as defined in Claim 1 above.

184. Plaintiffs and Class A members paid fees for medical equipment pursuant to a contract with Defendant Ghoubrial by which Plaintiffs and Class A members were obligated to pay Ghoubrial reasonable fees and expenses in exchange for his services.

185. By taking an undisclosed profit of up to 1,800% for medical supplies and other medical care provided to Plaintiffs and Class A members through this contract, after having coerced the clients into waiving their health insurance benefits that would have otherwise paid for reasonable and necessary healthcare at previously negotiated industry-standard rates, Ghoubrial enforced contract terms that were unreasonably favorable to him and were not commercially reasonable in any sense, and did so in a situation where Plaintiffs and Class A members did not have a meaningful opportunity to decline the charge.

186. The contract terms by which Plaintiffs and the Class were charged for this treatment are invalid as unconscionable, and Plaintiffs and the Class are therefore entitled by Ohio law and equity to disgorgement and reimbursement of the profits that Ghoubrial took pursuant to these transactions.

Claim 5—Ohio Corrupt Practices Act (R.C. 2923.34)
Undisclosed Self-Dealing—Price-Gouging
Plaintiffs Reid, Norris, Harbour, and Class A

187. Plaintiffs Reid, Norris, and Harbour incorporate all previous allegations.

188. Plaintiffs Reid, Norris, and Harbour assert this claim under Civ.R. 23(B)(3) against Defendants Nestico, Redick, Ghoubrial, and the Chiropractor Defendants on behalf of all Class A members as defined in Claim 1 above.

189. Defendants conspired with one another to take advantage of their respective positions of trust over Plaintiffs and Class A members by inducing them to waive their health-insurance benefits and receive fraudulent healthcare from Defendant Ghoubrial for which they were charged unconscionable rates.

190. Defendants have engaged in "corrupt activity" under R.C. 2923.31(I) by engaging in telecommunications fraud under R.C. 2913.05 and mail and wire fraud under 18 U.S.C. 1341 and 1343 in furtherance of their scheme.

191. Defendants knowingly devised their scheme to defraud, which constitutes a pattern of activity that depended on their knowing and repeated dissemination of writings, data, signs, signals, pictures, sound, or images with purpose to execute or otherwise further the scheme to defraud, in violation of Ohio's telecommunications fraud statute, and the federal mail and wire fraud statutes, including their advertisements, their telephonic solicitations and other telephonic and email communications with their clients and one another. R.C. 2913.05(A); 18 U.S.C. 1341; 18 U.S.C. 1343. Defendants' scheme relies on the use of mail and telecommunications wires, including to disseminate its ads and telemarketing communications, to drive the high volume of clients that sustains the KNR settlement mill by which Plaintiffs and Class A members were repeatedly defrauded by the KNR enterprise's pattern of activity.

192. The mail and wire fraud statutes strictly prohibit using "the interstate mails or wires communications system in furtherance of a scheme to misuse" the "fiduciary relationship for gain at the expense of the party to whom the fiduciary duty was owed," which includes a kickback arrangement between a law firm and chiropractor. *U.S. v. Hausmann*, 345 F.3d 952, 956 (7th Cir.2003); *United States v. Frost*, 125 F.3d 346, 366 (6th Cir.1997) ("[P]rivate individuals" "may commit mail fraud by breaching a fiduciary duty and thereby depriving the person or entity to which the duty is wed of the tangible right to the honest services of that individual.").

193. The participation of Defendants Nestico, Redick, Ghoubrial, and the chiropractor Defendants were integral to the affairs of the KNR enterprise, and all derived a direct financial interest and exercised a degree of control over the enterprise's operations.

194. Plaintiffs and Class A members have all been directly injured, indirectly injured, and threatened with injury by Defendants' administration of the scheme. R.C. 2923.34(A).

195. Plaintiffs and the Class are entitled to compensation for the damages caused by Defendants' fraudulent enterprise, including the amounts for which they were overcharged for Defendant

Ghoubrial's healthcare, disgorgement of all fees paid to the Defendants from Plaintiffs' and Class members' KNR settlements pursuant to Defendants' scheme, as well as punitive damages, and attorneys' fees.

Claim 6—Fraud
Undisclosed Self-Dealing with Chiropractors—Narrative Fees
Plaintiffs Reid and Norris and Class B

196. Plaintiffs Reid and Norris incorporate all previous allegations.

197. Plaintiffs Reid and Norris assert this claim under Civ.R. 23(B)(3) against the KNR Defendants and Defendant Floros on behalf of all current and former KNR clients who had deducted from their settlements a narrative fee paid to (1) Defendant Floros, (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 (Class B).

198. Defendants failed disclose to Plaintiffs and Class members the true nature of their relationship and the narrative fee.

199. Defendants' misrepresentations and concealment of facts regarding the narrative fee and narrative report were material to Plaintiffs' and the Class's decision to approve the Settlement Memoranda and pay these fees.

200. Defendants' misrepresentations and concealment of facts were made with the intent of misleading Plaintiffs and the Class into relying on them.

201. KNR's clients, including Plaintiffs and Class B members, reposed a special trust and confidence in Defendants, who were in a position of superiority or influence over their clients and patients as a result of this position of trust.

202. The actions, omissions, and course of conduct and dealing of the Defendants as alleged above were undertaken knowingly and intentionally, by standardized and routinized procedures,

with a conscious disregard of the rights and interests of Plaintiff Reid and Norris and the Class, and with certainty of inflicting harm and damage on Plaintiffs and the Class.

203. Plaintiffs and the Class were justified in relying on Defendant's uniform misrepresentations and concealment of facts, and did, in fact, so rely.

204. No KNR client would have agreed to have the fee deducted from their settlement had they been advised of the quid pro quo relationship between KNR and the chiropractors and the true nature of the fee.

205. Plaintiffs and the Class were injured and their injury was directly and proximately caused by their reliance on Defendants' uniform misrepresentations about and concealment of facts.

206. Defendants' conduct in charging and collecting the narrative fee from their clients as a kickback to reward referring chiropractors, and in failing to disclose the true nature of the fee, was intentionally deceptive, was undertaken by standardized and routinized procedures, and constitutes fraud upon Plaintiffs Reid and Norris and Class B.

207. Plaintiffs and the Class were injured and their injury was directly and proximately caused by their reliance on Defendants' misrepresentations about and concealment of facts regarding the kickback nature of the narrative fee.

208. Where lawyers and chiropractors take a secret profit in a transaction involving his client, as Defendants have here, such dealing is fraudulent and void as a matter of law, whether or not there is a causal relation between the self-dealing and the plaintiff's loss. In re Binder: Squire v. Emsley, 137 Ohio St. 26, 57–58, 27 N.E.2d 939 (1940); Myer v. Preferred Credit, 117 Ohio Misc. 2d 8, 9, 2001-Ohio-4190, ¶ 23, 766 N.E.2d 612 (C.P. 2001) citing 3 OHIO JURISPRUDENCE 3D (1998) 136, 134, Agency, §§ 117, 115.

209. Plaintiffs Reid and Norris and Class B are entitled to relief as a result of Defendants' breach, including rescission and reimbursement of the narrative fee, disgorgement of all narrative fees

collected by the affiliated chiropractors, including Defendant Floros, on Plaintiffs Reid and Norris and Class B members' claims, and punitive damages, and attorneys' fees for Defendants' intentionally deceptive conduct.

Claim 7—Breach of Fiduciary Duty
Undisclosed Self-Dealing with Chiropractors—Narrative Fee
Plaintiffs Reid and Norris and Class B

210. Plaintiffs Reid and Norris incorporate all previous allegations.

211. Plaintiffs Reid and Norris assert this claim under Civ.R. 23(B)(3) against the KNR Defendants and Defendant Floros on behalf of all Class B members as defined in Claim 6 above.

212. KNR's clients, including Plaintiffs Reid and Norris, reposed a special trust and confidence in Defendants, who were in a position of superiority or influence over their clients as a result of this position of trust. Thus, Defendants owed their clients a fiduciary duty.

213. Defendants' conduct in charging and collecting the narrative fee from their clients as a kickback to reward referring chiropractors, and in failing to disclose the true nature of the fee, was intentionally deceptive, was undertaken by standardized and routinized procedures, and constitutes a breach of Defendants' fiduciary duty to Plaintiffs Reid and Norris and Class B.

214. No KNR client would have agreed to have the fee deducted from their settlement had they been advised of the quid pro quo relationship between KNR and the chiropractors and the true nature of the fee.

215. Plaintiffs Reid and Norris and Class B have suffered damages as a direct and proximate result of these breaches due to KNR's assertion of liens on their settlement proceeds, and collecting on these liens.

216. Where a fiduciary takes a secret profit in a transaction involving his client, as Defendants have here with respect to their failure to disclose their quid pro quo relationship with the chiropractors and the true nature of the narrative fees, such a transaction is fraudulent and void as a

matter of law, whether or not there is a causal relation between the self-dealing and the plaintiff's loss. *In re Binder: Squire v. Emsley*, 137 Ohio St. 26, 57-58, 27 N.E.2d 939 (1940); *Myer v. Preferred Credit*, 117 Ohio Misc. 2d 8, 9, 2001-Ohio-4190, ¶ 23, 766 N.E.2d 612 (C.P. 2001) citing 3 OHIO JURISPRUDENCE 3D (1998) 136, 134, Agency, §§ 117, 115.

217. Plaintiffs Reid and Norris and Class B are entitled to relief as a result of Defendants' breach, including rescission and reimbursement of the narrative fee, disgorgement of all narrative fees collected by the affiliated chiropractors, including Defendant Floros, on Plaintiffs Reid and Norris and Class B members' claims, and punitive damages, and attorneys' fees for Defendants' intentionally deceptive conduct.

Claim 8—Unjust Enrichment
Undisclosed Self-Dealing with Chiropractors—Narrative Fee
Plaintiffs Reid and Norris and Class B

218. Plaintiffs Reid and Norris incorporate all previous allegations.

219. Plaintiffs Reid and Norris assert this claim under Civ.R. 23(B)(3) against the KNR Defendants and Defendant Floros on behalf of all Class B members as defined in Claim 6 above.

220. By unwittingly allowing Defendants to deduct and pay the narrative fee to the affiliated chiropractors from their settlement proceeds, without knowledge of KNR's quid pro quo relationship with the chiropractors or the true nature of the fee, Plaintiffs Reid and Norris and Class B have, to their substantial detriment, conferred a substantial benefit on Defendants of which the Defendants are aware.

221. Due to Defendants' conduct in charging and collecting the narrative fee from their clients as a kickback, and in failing to disclose their quid pro quo relationship or the true nature of the fee, Defendants' retention of the narrative fee paid by Reid and Norris and Class B members' lawsuit proceeds would be unjust and inequitable.

222. Equity entitles Plaintiffs Reid and Norris and the Class to rescission of the narrative fee, and disgorgement or repayment of all narrative fees deducted from their settlements, as well as punitive damages, and attorneys' fees for Defendants' intentionally deceptive conduct.

Claim 9—Fraud
Investigation Fees
Plaintiffs Williams, Reid, Norris, Harbour and Class C

223. Plaintiffs Williams, Reid, Norris, and Harbour incorporate all previous allegations.

224. Plaintiffs Williams, Reid, Norris, and Harbour assert this claim under Civ.R. 23(B)(3) against Defendants KNR, Nestico, and Redick on behalf of 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 to the present.

225. Defendants induced Plaintiffs and Class C to pay the investigation fees knowing that no investigation ever took place, and that the so-called "investigators" never performed any services that were properly chargeable to clients.

226. Defendants made false representations of fact to KNR clients about what the investigation fees were for, with knowledge or with utter disregard and recklessness about the falsity of these statements. By charging KNR clients for the investigation fees, Defendants misrepresented to KNR clients that those fees were for investigative services that were actually performed and properly charged as a separate case expense as opposed to an overhead expense that was subsumed in KNR's contingency fee percentage.

227. Defendants knowingly concealed facts about the true nature of the investigation fees, including their knowledge that these fees were not incurred for investigative services or any services that were properly chargeable as a separate case expense.

228. Defendants' misrepresentations about and concealment of facts regarding the investigation fees were material to Plaintiffs' and the Class's decision to approve their Settlement Memoranda and thus pay these fees.

229. Defendants' misrepresentations about and concealment of facts regarding the investigation fees were made with the intent of misleading Plaintiffs and the Class into relying upon them.

230. KNR's clients, including Plaintiffs and Class C members, reposed a special trust and confidence in Defendants, who were in a position of superiority or influence over their clients as a result of this position of trust.

231. Defendants knew that KNR clients were more likely to approve the fraudulent expenses when receipt of their settlement or judgment proceeds was dependent on such approval.

232. The actions, omissions, and course of conduct and dealing of Defendants as alleged above were undertaken knowingly and intentionally, by standardized and routinized procedures, with a conscious disregard of the rights and interests of Plaintiffs and the Class, and with certainty of inflicting harm and damage on Named Plaintiffs and the Class.

233. Plaintiffs and the Class were justified in relying on Defendants' uniform misrepresentations and concealment of facts, and did, in fact, so rely.

234. Plaintiffs and the Class were injured and their injury was directly and proximately caused by their reliance on Defendants' uniform misrepresentations about and concealment of facts regarding the investigation fees.

235. Where a fiduciary takes a secret profit in a transaction involving his client, as Defendants have here with respect to the investigation fee, such dealing is fraudulent and void as a matter of law, whether or not there is a causal relation between the self-dealing and the plaintiff's loss. *In re Binder*: *Squire v. Emsley*, 137 Ohio St. 26, 57-58, 27 N.E.2d 939 (1940); *Myer v. Preferred Credit*, 117 Ohio Misc.

2d 8, 9, 2001-Ohio-4190, ¶ 23, 766 N.E.2d 612 (C.P. 2001) citing 3 OHIO JURISPRUDENCE 3D (1998) 136, 134, Agency, §§ 117, 115.

236. Plaintiff Williams only became aware of Defendants' misrepresentations and concealment of facts in November of 2015, Plaintiff Reid as of March of 2017, Plaintiff Norris as of November 2017, and Plaintiff Harbour no earlier than September of 2018. The other class members remain unaware as of the filing of this Complaint.

237. Plaintiffs and the Class are entitled to compensation for the damages caused by Defendants' fraud, disgorgement of the benefit conferred upon Defendants as a result of their fraud, punitive damages, and attorneys' fees.

Claim 10—Breach of Contract
Investigation Fees
Plaintiffs Williams, Reid, Norris, Harbour, and Class C

238. Plaintiffs Williams, Reid, Norris, and Harbour incorporate all previous allegations.

239. Plaintiffs Williams, Reid, Norris, and Harbour assert this claim under Civ.R. 23(B)(3) against Defendant KNR on behalf of all Class C members as defined in Claim 9 above.

240. Every fee agreement that KNR has ever entered with its clients provides, whether expressly or impliedly, that KNR may deduct only reasonable expenses from a client's share of proceeds—that is, KNR may only deduct fees for reasonably priced services that were actually and reasonably undertaken in furtherance of the client's legal matter, and properly chargeable as a separate case expense as opposed to an overhead expense that was subsumed in KNR's contingency fee percentage. In all cases, the parties to the agreement understood that KNR would not be permitted to incur expenses unreasonably and then charge their clients for those unreasonable expenses.

241. By collecting the investigation fees from their clients when these fees were for expenses not reasonably undertaken for so-called "services" that were not properly chargeable as a separate case

expense, or were never performed at all, KNR materially breached its fee agreements with its clients, including its agreements with Named Plaintiffs and the Class.

242. Plaintiffs and Class C have suffered monetary damages as a result of these breaches in the amount of the investigation fees paid, and are entitled to repayment of these amounts.

Claim 11—Breach of Fiduciary Duty
Investigation Fees
Plaintiffs Williams, Norris, Harbour, and Class C

243. Plaintiffs Williams, Reid, Norris, and Harbour incorporate all previous allegations.

244. Plaintiffs Williams, Reid, Norris, and Harbour assert this claim under Civ.R. 23(B)(3) against Defendants Nestico, Redick, and KNR on behalf of all Class C members as defined in Claim 9 above.

245. KNR's clients reposed a special trust and confidence in the firm and its attorneys, who were in a position of superiority or influence over its clients as a result of this position of trust. Thus, the KNR Defendants owed their clients a fiduciary duty.

246. The KNR Defendants' conduct in charging its clients the investigation fees was intentionally deceptive, undertaken by standardized and routinized procedures, and constitutes a breach of fiduciary duty.

247. Plaintiffs Williams and Class C have suffered damages as a direct and proximate result of this breach.

248. Where a fiduciary takes a secret profit in a transaction involving his client, as the KNR Defendants have here with respect to the investigation fee, such dealing is fraudulent and void as a matter of law, whether or not there is a causal relation between the self-dealing and the plaintiff's loss. *In re Binder: Squire v. Emsley*, 137 Ohio St. 26, 57–58, 27 N.E.2d 939 (1940); *Myer v. Preferred Credit*, 117 Ohio Misc. 2d 8, 9, 2001-Ohio-4190, ¶ 23, 766 N.E.2d 612 (C.P. 2001) citing 3 OHIO JURISPRUDENCE 3D (1998) 136, 134, Agency, §§ 117, 115.

249. Plaintiffs and the Class are entitled to compensation for the damages caused by Defendants' breach, disgorgement of the benefit conferred upon Defendants as a result of their breach, punitive damages, and attorneys' fees.

Claim 12—Unjust Enrichment
Investigation Fees
Plaintiffs Williams, Reid, Norris, Harbour and Class C

250. Plaintiffs Williams, Reid, Norris, and Harbour incorporate all previous allegations.

251. Plaintiffs Williams, Reid, Norris, and Harbour assert this claim under Civ.R. 23(B)(3) against Defendant KNR on behalf of all Class C members as defined in Claim 9 above.

252. By unwittingly allowing KNR to deduct the investigation fees from their lawsuit proceeds, Plaintiffs and Class C members have, to their substantial detriment, conferred a substantial benefit on Defendants of which Defendants are aware.

253. Due to Defendants' intentionally deceptive conduct in collecting these fees from their clients, retention of these funds by Defendants without repayment to Plaintiffs and the Class would be unjust and inequitable.

254. Equity entitles Plaintiffs and the Class to disgorgement of the fee by Defendants, as well as punitive damages and attorneys' fees for Defendants' intentionally deceptive conduct.

VII. Prayer for Relief

Plaintiff, and all those similarly situated, collectively request that this Court provide the following relief:

(1) An order permitting this litigation to proceed as a class action, and certifying the Classes under Civ.R. 23(A) and (B)(3);

(2) An order to promptly notify to all class members that this litigation is pending;

(3) Compensatory and rescissionary damages for Plaintiffs Williams, Reid, Norris, and Harbour and the classes represented, in excess of $25,000;

(4) Punitive damages, attorneys' fees, costs, and pre-judgment interest; and

(5) Such other relief in law or equity as this Court deems just and proper.

VIII. Jury Demand

Plaintiffs demand a trial by jury on all issues within this Complaint.

Respectfully submitted,

/s/ Peter Pattakos

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Attorneys for Plaintiffs

Request for Service

To the Clerk of Courts:

Please issue the Summons and Complaint and serve the Sixth Amended Complaint and accompanying exhibits to the following Defendants at the address listed below, making return according to law.

Nazreen Khan, D.C.
Town and Country Chiropractic
3894 E. Broad Street
Columbus, Ohio 43213

Stephen Rendek, D.C.
Town and Country Chiropractic
3894 E. Broad Street
Columbus, Ohio 43213

Philip Tassi, D.C.
Canton Injury Center
F/K/A West Tusc Chiropractic, LLC
3410 Tuscarawas St. W
Canton, Ohio 44708

Eric Cawley, D.C.
Cleveland Injury Center, LLC
6508 Detroit Avenue
Cleveland, Ohio 44102

Patrice Lee-Seyon, D.C.
Timber Spine & Rehab
F/K/A Toledo Spine & Rehab
3130 Central Avenue, Suite 23
Toledo, Ohio 43606

/s/ Peter Pattakos
Attorney for Plaintiffs

Certificate of Service

The foregoing document was served on all other parties by operation of the Court's e-filing system on May 22, 2019.

/s/ Peter Pattakos
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al., Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. CV-2016-09-3928 Judge James A. Brogan **Affidavit of Nora Freeman Engstrom**

I, Nora Freeman Engstrom, having been duly sworn, have personal knowledge of the following matters of fact, and testify as follows:

1. I am forty-four years of age. I am a Professor of Law and the Deane F. Johnson Faculty Scholar at Stanford Law School where I specialize in legal ethics, tort law, civil procedure, and complex litigation. I am the co-author of a leading professional responsibility casebook, *Legal Ethics* (7th ed. 2016), with Deborah L. Rhode, David Luban, and Scott L. Cummings. In its next addition, I will join, as a co-author, a leading tort law casebook, *Tort Law and Alternatives* (11th ed., forthcoming), with Marc Franklin, Robert Rabin, Michael Green, and Mark Geistfeld. I am an elected member of the American Law Institute and also a Fellow of the American Bar Foundation. I am a member of the Steering Committee of the Stanford Center on the Legal Profession, an Academic Advisor to the NYU Civil Jury Project, and an Academic Fellow of the Pound Civil Justice Institute. I am the Legal Profession Section co-editor of a prominent online academic journal (Jotwell). I am a Reporter for the American Law Institute's Third Restatement of Torts (Concluding Provisions), and from 2016 through 2018, I served as Stanford Law School's Associate Dean for Curriculum.

EXHIBIT 1

2. I have designed, and I regularly teach, a legal ethics course at Stanford Law School that specifically focuses on the structure and organization of plaintiffs' personal injury practice and personal injury lawyers' unique legal and ethical responsibilities. I began teaching this course (entitled Legal Ethics: The Plaintiffs' Lawyer) in 2011, and I am teaching it for the eighth time this spring (the spring of 2019). Hundreds of Stanford Law School students have taken this course, which is, to the best of my knowledge, the only course of its kind in the United States.

3. My scholarly work has appeared, or will soon appear, in a variety of scholarly journals, including the *Yale Law Journal*, the *Stanford Law Review*, the *Michigan Law Review*, the *University of Pennsylvania Law Review*, the *NYU Law Review*, the *Georgetown Law Journal*, and the *Georgetown Journal of Legal Ethics*, among others. My scholarship has been cited hundreds of times. My work has been excerpted in legal ethics textbooks and also cited by trial and appellate courts.

4. I am regularly called upon to provide expert commentary to news outlets. This commentary has appeared in, among others, the *The New York Times*, *The Washington Post*, *USA Today*, *The National Law Journal*, *Forbes*, Reuters, the Associated Press, the BBC, and the *LA Times*. Similarly, top scholarly journals frequently ask me to peer-review other scholars' work. I have been called upon to act as a referee for, among others, the *Yale Law Journal*, the *New England Journal of Medicine*, the *American Journal of Law and Medicine*, the *Stanford Law Review*, the *Journal of Empirical Legal Studies*, the *Law & Society Review*, and the *Journal of Consumer Policy*.

5. Before joining Stanford's faculty in 2009, I was a Research Dean's Scholar at Georgetown University Law Center. Before that, I was a litigator at Wilmer Cutler Pickering Hale and Dorr LLP. From 2003 to 2004, I was a law clerk to Judge Merrick B. Garland of the U.S. Court of Appeals for the District of Columbia Circuit, and from 2002 to 2003, I was a law clerk to Judge Henry H. Kennedy, Jr., of the U.S. District Court for the District of Columbia. Prior to law school, I worked as an Outstanding Scholar at the U.S. Department of Justice, focusing on terrorism and national

security issues. There, I was the recipient of the Attorney General's award for Superior Service. I graduated from Dartmouth College in 1997, *summa cum laude*, and from Stanford Law School in 2002, with Distinction and as a member of Order of the Coif.

6. I am admitted to the Bars of California, the District of Columbia, and Maryland. I have never been disciplined or sanctioned by any regulatory authority or academic institution for my professional or personal conduct.

7. A true and correct copy of my curriculum vitae, setting forth my experience, professional qualifications, educational background, and publication history is attached to this affidavit as Exhibit 1.

8. My academic work has, among other things, analyzed the emergence of law firms I refer to as "settlement mills."[1] 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. *See* Nora Freeman Engstrom, *Run-of-the-Mill Justice*, 22 GEO. J. LEGAL ETHICS 1485, 1492 (2009), attached hereto as Exhibit 2.

[1] Owing to my work, the term "settlement mill," is now widely used and commonly understood in the academic community. *See, e.g.*, Christopher J. Robinette, *Two Roads Diverge for Civil Recourse Theory*, 88 IND. L.J. 543, 560–64 (2013); Dana A. Remus & Adam S. Zimmerman, *The Corporate Settlement Mill*, 101 VA. L. REV. 129, 140 (2015); Benjamin H. Barton, *The Lawyer's Monopoly-What Goes and What Stays*, 82 FORDHAM L. REV. 3067, 3078–79 (2014); Donald G. Gifford, *Technological Triggers to Tort Revolutions: Steam Locomotives, Autonomous Vehicles, and Accident Compensation*, 11 J. TORT L. 71, 115 (2018); Stewart Macaulay, *New Legal Realism: Unpacking A Proposed Definition*, 6 UC IRVINE L. REV. 149, 160 (2016).

9. Over the course of my research on settlement mills, I have 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). I have published four scholarly articles specifically focused on these firms, in the *Georgetown Journal of Legal Ethics*, the *NYU Law Review*, the *American University Journal of Gender, Social Policy and the Law*, and the *Journal of Insurance Fraud of America*, respectively.

10. Based on my review of deposition testimony given in this case by the KNR law firm's managing partner, Rob Nestico, as well as former attorneys who worked for the firm, there is no question that KNR qualifies as a "settlement mill" as I have defined and analyzed that term.

11. KNR is a high-volume personal injury practice. The firm handles thousands of cases each year, Nestico Tr. 134:20–136:4, 137:13–23, and the firm's individual lawyers juggle extraordinary case volumes. Indeed, one former lawyer has explained that, during his time at KNR, his caseload consisted of "around 600" cases. Phillips Tr. 28:9–17. Another guessed that, during his tenure, he juggled "somewhere in the neighborhood of four or 500" cases at any one time, Horton Tr. 210:8–21, and settled "[s]omewhere between 30 and 50 a month," on average, *id.* 225:2–4.

12. KNR engages in aggressive advertising. *See* Petti Tr. 85:24–88:4; *id.* 19:19–25; Phillips Tr. 19:16–25; 112:14–113:13; *accord* Nestico Tr. 234:3–7 (explaining that the firm spends "a lot of money" on its Akron advertising). And, it appears that, while many clients come to the firm from advertising and also from referrals from medical providers (who, themselves, advertise), very few clients come to the firm via traditional sources (attorney referrals or client word-of mouth). *See* Lantz Tr. 19:7–14 (explaining that a high volume of clients came to the firm from Town & Country).

13. KNR epitomizes an "entrepreneurial law practice," as I have described the term. By that I mean, at KNR, 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 (and closing) deals is prioritized over work that draws on a specialized legal education. Indicative of this entrepreneurial bent, at KNR, most client matters receive only limited investments of attorney time. 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"). KNR's "business model," according to one former attorney, is to "turn it over as quick as possible." Petti Tr. 87:2–87:3; *accord* Horton Tr. 205:19–20 (describing KNR as "an efficient business for sure"); 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.").

14. 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."). In fact, according to one former attorney: "[M]ost of us attorneys had never been to jury trial, at least for a PI case." *Id.* 364:25–365:2.

15. The firm charges clients via a contingency fee. Nestico Tr. 33:25–34:4 (explaining that the firm's billing is "99 percent . . . [i]f not 100 percent" contingency-based). Unlike most other settlement mills I have studied, KNR does not charge a tiered contingency fee (i.e., a contingency fee that escalates if the case proceeds to various stages). However, KNR does something that's functionally identical: It requires clients to "advance litigation expenses" to the tune of $2000 if the client insists on taking her case to trial. Lantz Tr. at 363:16–25. This requirement has the same

effect as the tiered fee, as both mechanisms subtly discourage clients from insisting on their day in court. *Compare* Engstrom, 22 GEO. J. LEGAL ETHICS at 1526 (explaining how "tiered fees can be used to dissuade a client from insisting on her day in court"), *with* Lantz Tr. at 363:16–25 (explaining how, at KNR, she was taught to warn clients that they would have to "advance litigation expenses if we went further," recognizing that this warning would be "persuasive" and "encourage [the client] to settle" because "they came to us because they couldn't afford a lawyer" and so even if "they wanted to go to litigation, they couldn't pay the $2000 litigation expenses"); *id.* 365:18–366:12 (describing the threatened $2000 fee as "our way to get them to take settlements"); *id.* 503:4–23 (further detailing how the obligation to front $2000 in litigation expenses was strategically used to dissuade clients from taking claims to trial).

16. The firm does not engage in rigorous case screening. To the contrary, according to one former attorney, KNR "took everything that we could." Horton Tr. at 220:16–23; *accord* Phillips Tr. 36:4–13 (describing the firm's open-arms policy); *id.* 40:6–19 (describing the firm's ethos as "I want them all"). As is also typical of settlement mills, the firm primarily represents accident victims with low-dollar claims. 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."). Indeed, the great majority of the firm's cases involve minor soft-tissue injuries, such as sprains, strains, contusions, and whiplash. Phillips Tr. 36:14–37:24; Lantz Tr. 157:6–10; 434:3–8.

17. KNR does not prioritize meaningful attorney-client interaction. As one lawyer put it: "[O]n the volume that we were dealing with, you can't differentiate between cases. You don't see your clients half the time." Lantz Tr. 153:13–16. Further, when there is attorney-client interaction, that interaction tends to be paternalistic, rather than participative. Lawyers at KNR are taught "persuasive tactics" to "encourage[]" clients "to settle." *Id.* 363:16–25. According to one former

lawyer, these persuasive tactics go so far as "shov[ing] the settlements down the client's throat." *Id.* 113:15–21.

18. KNR imposes quotas on its attorneys. These quotas require attorneys to generate a certain sum (typically, $100,000) in fees per month. Phillips Tr. 28:18–29:12. As one lawyer recalled: "The most overriding thing was to generate $100,000 in fees every month. . . . 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." Petti Tr. 21:18–25. According to that lawyer, the consequence for failure to generate $100,000 in fees per month was "[a]nything up to and including termination. *Id.* 22:12–15; *accord* Lantz Tr. 55:17–56:3 (stating that attorneys "had to meet the goal each month of $100,000, collecting $100,000 in attorney fees"); *id.* 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."); *id.* 37:17–20 ("[W]e had a goal to reach each month in the Columbus office. If we didn't bring in $100,000 each month in attorneys fees, we were on probation and then we would get fired."). The firm also offers negotiators fee-based compensation. 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 (explaining that compensation consisted of a base salary and a bonus that was dependent on fee generation); *accord* Nestico Tr. 61:5–16; 148:8–154:10 (referring to the requirements as "performance goals," while agreeing that employees are financially rewarded for fee generation).

19. Finally, like other settlement mills I have studied, KNR rarely files lawsuits. Research shows that even low-status plaintiffs' attorneys file suit in a significant percentage of claims: approximately 50% of the time. Yet, at KNR, lawsuits were filed far less often—by some accounts, less than 10% of the time. *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); *cf.* Horton Tr. 224:21–225:2 (recalling that perhaps 10% of his cases went into litigation). As one former lawyer bluntly explained, in her experience, KNR attorneys went to great lengths to promote settlement, rather than full-dress litigation:

> Our goal was to settle cases. If you couldn't—no. 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 . . . .

Lantz Tr. 113:15–21; *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").

20. Until I published my first article shining a light on settlement mills in 2009, these firms had not been the subject of any serious study, or even significant commentary. As I explained in my first article entitled *Run-of-the-Mill Justice*:

> Over the past three decades, no development in the legal services industry has been more widely observed and less carefully scrutinized than the emergence of firms I call "settlement mills"—high-volume personal injury law practices that aggressively advertise and mass produce the resolution of claims, typically with little client interaction and without initiating lawsuits, much less taking claims to trial. Settlement mills process tens of thousands of claims each year. Their ads are fixtures on late-night television and big-city billboards. But their operations have been largely ignored by the academic literature, leaving a sizable gap in what is known about the delivery of contemporary legal services in the United States.

Engstrom, 22 GEO. J. LEGAL ETHICS at 1486.

21. Settlement mills did not exist prior to 1977, when the U.S. Supreme Court decided *Bates v. State Bar of Arizona*, a landmark opinion that invalidated state bans on attorney advertising as incompatible with the First Amendment and, in so doing, opened the floodgates to attorney advertising. Much of what makes settlement mills distinctive is traceable to the unique way they obtain clients via aggressive, high-volume advertising and thus, to the *Bates* decision. Advertising is primarily responsible for the fact that settlement mills represent primarily those who have sustained

minor injuries, as well as additional characteristic results of these firms' practices, as described below.

22. Advertising works well for settlement mills precisely because these firms do not make a significant investment into each matter. Given that little time or effort will be expended, *see supra* ¶ 13, settlement mills can afford to represent clients with small or borderline claims that other firms might reject as unprofitable, *see supra* ¶ 16. This, in turn, means that settlement mills' screening processes can be cursory: they need not and typically do not expend significant effort reviewing cases prior to retention. *Id.*

23. Settlement mills afford their aggressive advertising campaigns by maintaining high volumes of clients (volumes which the ads, in turn, supply), *see supra* ¶ 11, and then harnessing the resulting economies of scale by mechanizing case processing and cutting corners wherever feasible, *see supra* ¶ 13.

24. There is also another dynamic at work, traceable to settlement mills' ability to make an end-run around the "reputational imperative." 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. *See* Engstrom, 22 GEO. J. LEGAL ETHICS at 1523. Most personal injury lawyers obtain the majority or vast majority of new clients through reputation-based channels (i.e., recommendations from past clients and/or referrals from fellow practitioners). *See* HERBERT M. KRITZER, RISKS, REPUTATIONS, AND REWARDS 221–22 (2004); Stephen Daniels & Joanne Martin, *It Was the Best of Times, It Was the Worst of Times: The Precarious Nature of Plaintiffs' Practice in Texas*, 80 TEX. L. REV. 1781, 1789 (2002). As a consequence, for the vast majority of lawyers, a good reputation is the cornerstone of—and a prerequisite to—financial success. The reputational imperative therefore constrains attorney incentives in individual cases. For reasons discussed below at *infra* ¶ 31, it might be in the contingency fee lawyer's short-

term financial interest to settle cases quickly and cheaply. Due to the reputational imperative, however, many lawyers will maximize profits over the long haul if they take their time, do quality work, and obtain full value for their clients.

25. Aggressive attorney advertising throws a wrench into that delicate system. Aggressive advertising tends to tarnish an attorney's reputation, and it stigmatizes the lawyer within the legal profession. But, at the same time, and critically, aggressive advertising relaxes the reputational imperative. 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.

26. Additionally, advertising is intimately bound with the type of clients settlement mills represent. Television advertising for legal services disproportionately attracts clients who are unsophisticated, relatively uneducated, and who come from socioeconomically disadvantaged backgrounds. *See* AM. BAR ASS'N, FINDINGS OF THE COMPREHENSIVE LEGAL NEEDS STUDY 28 (1994) (reporting that the poor are significantly more likely to choose a lawyer on the basis of attorney advertising as compared to their wealthier counterparts); Michael G. Parkinson & Sabrina Neeley, *Attorney Advertising: Does It Meet Its Objective?*, 24 SERVICES MARKETING Q. 17, no. 3, 2003, at 17, 24–26 (finding, based on a survey of more than 1500 respondents, that attorney "advertising is most likely to attract lower income and lower education non-Caucasian clients").

27. Not surprisingly, then, settlement mills—firms that obtain clients from aggressive advertising—tend to represent individuals who are poor, relatively uneducated, and/or who belong to historically disadvantaged ethnic and racial minority groups. *See* Engstrom, 22 GEO. J. LEGAL ETHICS at 1516; *cf.* Lantz Tr. 156:4–6; 157:8–9; (explaining that most KNR clients are "very low

socioeconomic status"); 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 (describing the demographics of KNR's clientele as: "Lots of minorities. High percentage of minorities."). Given persistent social hierarchies, these clients are also personally acquainted with few lawyers and know comparatively little about the civil justice system. *Accord* 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").

28. The widespread acceptance of contingency fees—and particularly tiered contingency fees—has also contributed to settlement mills' rise.

29. The vast majority of personal injury claimants pay their attorneys on a contingent-fee basis. *See* Richard W. Painter, *Litigating on A Contingency: A Monopoly of Champions or A Market for Champerty?*, 71 CHI.-KENT L. REV. 625, 697 n.3 (1995) (collecting sources and putting the figure, for the tort system generally, at 95 percent); Insurance Research Council, *Motivation for Attorney Involvement in Auto Injury Claims* 27 (Nov. 2016) (reporting that, in its 2016 survey, 73% of represented auto accident claimants reported compensating their lawyer on a contingency fee basis).

30. The contingency fee has numerous advantages. First, contingency fees provide a "key to the courthouse" for impecunious clients. Second, because a lawyer is paid only if she succeeds—and because, too, non-meritorious claims often falter—contingency fees (generally) incentive careful case screening, i.e., the scrutiny of claims prior to acceptance. By incentivizing this screening (often undertaken at great expense), contingency fees cut down on fraudulent and frivolous litigation. Third, by delaying attorney payment and expense reimbursement until case resolution, the contingency fee works to expedite litigation. Fourth and finally, by tethering the fortunes of lawyer and client, contingency fees limit principal-agent conflicts. As Judge Frank Easterbrook has explained: "The contingent fee uses private incentives rather than careful monitoring to align the

interests of lawyer and client. The lawyer gains only to the extent his client gains. This interest-alignment device is not perfect . . . . But [an] imperfect-alignment of interests is better than a conflict of interests, which hourly fees may create." *Kirchoff v. Flynn*, 786 F.2d 320, 325 (7th Cir. 1986) (Easterbrook, J.).

31. Yet, the contingency fee also has drawbacks. A significant drawback is that, though the contingency fee aligns the interests of lawyer and client, the alignment is only partial. (This is what Judge Easterbrook is referring to when he says the alignment is "not perfect.") The residual misalignment tempts some lawyers to seek a "quick kill"—to work too little and settle too soon, to the client's significant detriment. Elihu Inselbuch, *Contingent Fees and Tort Reform: A Reassessment and Reality Check*, 64 LAW & CONTEMP. PROBS. 175, 180 (2001); *see also* Nora Freeman Engstrom, *Lawyer Lending: Costs and Consequences*, 63 DEPAUL L. REV. 377, 426–27 (2014) ("[T]he contingency fee tempts some lawyers to skimp on case preparation."); Ted Schneyer, *Legal-Process Constraints on the Regulation of Lawyers' Contingent Fee Contracts*, 47 DEPAUL L. REV. 371, 393 (1998) ("[T]he chief agency problem posed by percentage contingent fees is the danger that lawyers will invest too little time to develop their cases fully enough to maximize their clients' net recovery.").

32. Settlement mills tend to exploit this misalignment of incentives. The 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. Particularly 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. Or, has F.B. MacKinnon wrote in his classic book on the contingent fee: "It 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." F.B. MACKINNON, CONTINGENT FEES FOR LEGAL SERVICES: PROFESSIONAL ECONOMICS AND RESPONSIBILITIES 198 (1964). This, of course, precisely describes settlement mills' business model. As one Louisiana settlement mill lawyer explained in his firm's policy manual: "Ancient Law of the Ages: The longer we have the case, the more work we do = the less return to the office." Or, as another former settlement mill lawyer put it in an interview: "They had sort of a theory of get whatever you can because there's such a volume . . . even if you're getting $1,000 on 500 cases, that's half a million dollars." By trading in small claims with limited potential recoveries, settlement mills exploit the contingency fee's well-documented structural flaw.

33. Quotas, commonly imposed on settlement mill practitioners, can 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. *See* Engstrom, 22 GEO. J. LEGAL ETHICS at 1501 (explaining that quotas and fee-based awards "put the focus on the *number* of files closed or *aggregate* returns, as opposed to obtaining a fair value for each individual client"); *id.* at 1538 (explaining that quotas "put the emphasis on turning claims over, rather than maximizing their value"); *cf.* 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."). The temptation to settle can be particularly strong if a line-level attorney, who is subject to a quota or who relies on bonus- or fee-based compensation, loses "credit" for a case whenever she refers that case for further litigation. *Cf.* Horton Tr. 224:9–18

("Q: So if you were a prelitigation attorney and a case went into—went to [the] litigation department, and eventually resolved . . . would you still get credit for those fees[?] A: No.").

34. My research has also revealed that, at settlement mills, no-offer cases are extremely rare. As I have explained in my published work: "Although some clients with dubious claims are 'dumped' by settlement mills after retention, very few cases that proceed to negotiation result in no offer from the insurance company." Engstrom, 22 GEO. J. LEGAL ETHICS at 1517, n.207 (collecting citations); *id.* at 1517 ("[S]ettlement mills almost always obtain *something* for their clients . . . ."). The same was, apparently, true at KNR. As a former lawyer testified:

> Q: Would you agree that most of the cases did resolve in some recovery for the client?
> A: Yep. Yes.
>
> Q: Would you agree that very few cases resulted in no recovery at all?
> A: I would agree.
>
> Q: What percentage would you estimate?
> A: Less than five percent.

Petti Tr. 26: 11–18.

35. The relative paucity of no-offer cases suggests that, unlike conventional personal injury lawyers, who take on significant risk when agreeing to represent a client via a contingency fee, settlement mill representation entails little, if any, risk. *Compare* Nora Freeman Engstrom, *A Dose of Reality for Specialized Courts: Lessons from the VICP*, 163 U. PA. L. REV. 1631, 1646–47 (2015) (explaining that, of medical malpractice claimants who retain conventional counsel, "approximately 40% . . . never recover a penny"—thus suggesting that, when a conventional contingency fee lawyer agrees to take on a new client to pursue that client's medical malpractice claim, the lawyer takes on significant risk), *with* Nora Freeman Engstrom, *Sunlight and Settlement Mills*, 86 N.Y.U. L. REV. 805, 828 (2011) (explaining that, at settlement mills, [i]nsurers will offer something (as opposed to an outright denial) for nearly every claim"—thus suggesting that, when a settlement mill lawyer agrees

to take on a new client to pursue that client's auto accident claim, the lawyer takes on little, if any, risk).

36. Another distinguishing characteristic of settlement mills is the unique manner in which their cases are resolved. Instead of an individualized and fact-intensive analysis of each case's strengths and weaknesses alongside a careful study of case law and comparable jury verdicts, my research has shown that settlement mill negotiators and insurance claims adjusters assign values to claims with little regard to individual fault, based on agreed-upon formulas, typically based on lost work, type and length of treatment, property damage, and/or medical bills. *See* Engstrom, 22 GEO. J. LEGAL ETHICS at 1532–34; *cf.* Lantz Tr. 380:20–22 (explaining that, in her experience at KNR, the "evaluation" of a client's claim for settlement purposes was based on "the insurance company [and] the type of treatment"); 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.* 193:20–23 ("[M]ost of those cases really settle themselves. Again, like I said earlier, there's very little legal stuff going on. You know, everybody—it's a template sort of.").

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. *See* Nora Freeman Engstrom, *Retaliatory RICO and the Puzzle of Fraudulent Claiming*, 115 MICH. L. REV. 639, 651 (2017).

38. Medical buildup is a serious problem. Indeed, studies consistently indicate that injury exaggeration—and the overtreatment for certain injuries—is the most prevalent form of litigation

abuse. Sharon Tennyson & Pau Salsas-Forn, *Claims Auditing in Automobile Insurance: Fraud Detection and Deterrence Objectives*, 69 J. RISK & INS. 289, 289–90 (2002) (reporting that all relevant studies conclude that "the vast majority of suspicious claims involved potential buildup" rather than the outright manufacture of claims). A potential indicator of these trends is that represented claimants consistently seek more, and more expensive, medical care than unrepresented claimants. *See* Insurance Research Council, *Attorney Involvement in Auto Injury Claims* 3–4, 19–20, 22, 27 (July 2014) (reporting that, as compared to unrepresented claimants, similarly-injured represented claimants accrue higher charges for medical treatments and are "more likely to receive treatment at pain clinics" and from chiropractors); *id.* at 21 (reporting that, of represented bodily injury claimants with neck or back sprains or strains as their most serious injury, 18% reported more than twenty-five visits to a general physical therapist, while 33% reported more than twenty-five visits to a general chiropractor). Additionally, in surveys, a sizable proportion of represented claimants (more than one-quarter) report that their attorneys offer advice regarding which medical care provider to visit. Insurance Research Council, *Motivation for Attorney Involvement in Auto Injury Claims* 24 (Nov. 2016) (reporting that, of represented auto accident claimants, 28% reported that their attorney offered advice on which doctor to utilize).

39. At KNR, there is evidence that lawyers went out of their way to ensure that clients received intensive medical treatment. Further, there is evidence that lawyers went out of their way to ensure that clients received this intensive medical treatment, even when clients didn't need the treatment, ask for the treatment, want the treatment, or even physically benefit from the treatment. The colloquy below, involving former KNR attorney Amanda Lantz, is instructive:

> Q: . . . . My question is did you tell your client to go in there and ask to have their back adjusted if their ankle hurt? Did you tell them that?
> A: It depends on the case.
>
> Q: So you would do that on some cases? You would tell your client to get their back adjusted if they only hurt their ankle?

A: It depends. Yeah. Sometimes, yes and sometimes, no.

Q: . . . . You've done that before?
A: Right.

Lantz Tr. 199:6–18. Other deposition testimony is in accord. *See, e.g.*, Phillips Tr. 70:2–15 ("I had more than one client, . . . in fact, I would easily say dozens, and, in fact, possibly, more, that would say, 'I didn't even want the damn injections. I don't know why I was sent in there. I never asked for them.'"); Lantz Tr. 196:24–197:16 (explaining that she encouraged clients to "'Keep showing up to treatment,'" even though clients "knew that the treatment was a futile effort"); *id.* 247:13–16 (explaining that "there were plenty of conversations that I had with clients that they didn't want to get chiro treatment, but we had to still refer them into Town & Country").

40. Rather than fulfilling clients' demands or hastening clients' physical recovery, there is evidence that lawyers went out of their way to ensure that clients received intensive medical treatment for two troubling, self-serving reasons. Namely, there is evidence that lawyers encouraged clients to seek particular intensive treatments because (i) there was an understanding that intensive medical treatment would boost claims' settlement value (and, by extension, the firm's contingency fee), and, additionally, (ii) KNR wanted (or perhaps needed) to please its referral partners. Former KNR attorney Amanda Lantz explained:

> So the direction that we had at the firm was make sure the client gets to a chiro, period. No matter what, get them into a chiro. . . . So they would tell us—our direction from our supervisors would be, get them into a chiro. Because, one, it helped our referrals back and forth, even if they didn't "need treatment" or think they needed treatment, then it still showed that we were making an effort to meet the referral quota that we had with Town & Country.

Id. 270:7–22; *see also id.* 396:17–22 (explaining that treatment was beneficial because it would "increase the value of the case"); *id.* 197:14–16 ("Remember, we have to tell them, 'It increases your value to keep treating. Keep showing up to treatment.'"); *id.* 27:15–19 ("[T]he direction at the

Columbus firm was if our client wanted an M.D., send them to [Ghoubrial]. Because [Ghoubrial] charges a lot more for his treatment, which means it increase[s] the value of the case.").

41. My final concern vis-à-vis settlement mills is the one that gives me the greatest pause. It is that, with their high volumes, minimal attorney-client interaction, strict quotas, cookie-cutter procedures, and reluctance to file lawsuits and (when warranted) take claims to trial, settlement mills do not offer conventional legal services. Settlement mill clients, however—who are, for the most part, poor, unsophisticated, or otherwise marginalized, *see supra* ¶ 27—sign up for settlement mill services without knowing that a distinct form of legal service is on offer, and worse, in the shadow of ads that actively cultivate a contrary impression. This, in turn, means that while settlement mills have traded traditional tort for a streamlined form of compensation resting on routine and rules-of-thumb, not all settlement mill clients have agreed to—or are even aware of—the exchange.

I affirm the above to be true and accurate to the best of my knowledge under penalty of perjury.

[signature] 5/14/19

Signature of Affiant Date

See next page

Sworn to and subscribed before me on _____ at _____, Stanford, California.

_____

Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Santa Clara

Subscribed and sworn to (or affirmed) before me on this 14th day of May, 2019, by Nora Freeman Engram,
~~proved to me on the basis of satisfactory evidence to be the~~ person(s) who appeared before me.

C. PARIS
COMM. #2274653
Notary Public - California
Santa Clara County
My Comm. Expires Jan. 7, 2023
NRO1 NRO1

(Seal)

Signature

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al., Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. CV-2016-09-3928 Judge James A. Brogan **Affidavit of Thera Reid**

I, Thera Reid, having been duly sworn, have personal knowledge of the following matters of fact, and testify as follows:

1. I was represented by the Akron, Ohio law firm of Kisling, Nestico & Redick, LLC ("KNR") and received treatment from Minas Floros, D.C. ("Dr. Floros"), and Sam Ghoubrial, M.D. ("Dr. Ghoubrial"), in connection with an accident in which I suffered injuries on April 20, 2016.

2. Nearly immediately after my accident, I was contacted by telemarketers from Akron Square Chiropractic ("ASC"), who offered to pick me up and transport me to ASC for chiropractic care. The telemarketer also told me that I would be contacted by other telemarketers, that the other telemarketers were untrustworthy, and that I should not speak to any other telemarketer, chiropractor, or attorney who was not associated with ASC.

3. After ASC's telemarketers contacted me, I agreed to visit ASC for chiropractic care on April 22, 2016, and was picked up by an ASC representative in a van. The van stopped on the way to ASC to pick up one other person. Anytime I received treatment from ASC, I was picked up and transported to ASC by an ASC representative. Before I could receive any treatment from Dr. Floros, I was required to sign a series of documents, including an acknowledgment that I was solicited to

Thera Reid

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Rachel Hazelet

EXHIBIT 2

ASC by a telemarketer. A true and accurate copy of paperwork I completed for ASC is attached as **Exhibit A.**

4. When I arrived at ASC, representatives of ASC told me that I should speak with ASC's attorneys and sat me in a room with a telephone for that purpose. ASC representatives called KNR on my behalf and handed me the telephone once a KNR representative was on the line. Immediately after the conversation with KNR concluded, an ASC representative handed me a blank KNR fee agreement to sign.

5. On advice from ASC and the KNR representative I spoke to on the phone, I signed the KNR fee agreement, trusting that ASC and KNR were acting for my benefit, rather than their own financial gain. No one explained that by signing the fee agreement, I was authorizing KNR to deduct the costs of my medical care directly from my settlement, that I would be charged an investigation fee relating to having signed the fee agreement, that KNR would deduct a narrative fee from my settlement to compensate Dr. Floros and ASC for referring me to KNR, or that KNR and Dr. Floros would send me to treat with Dr. Ghoubrial, who would be paid directly out of my settlement. A true and accurate copy of the fee agreement I signed is attached as **Exhibit B.**

6. Dr. Floros and KNR directed me to treat with their pain-management physician, Dr. Ghoubrial. Based on the advice I received from Dr. Floros and KNR, on April 26, 2016, I agreed to receive treatment from Dr. Ghoubrial. I believed that Dr. Ghoubrial maintained a personal office at ASC because each time Dr. Ghoubrial treated me, he did so at ASC.

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. Based on this information, I believed that that the costs of my medical care would not detrimentally impact my settlement.

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8. In connection with my accident, Dr. Ghoubrial's practice gave me a series of trigger-point injections. I do not recall any person at Dr. Ghoubrial's practice ever informing me that I would be charged for the procedure, that Dr. Ghoubrial would earn a substantial profit from charging me for it, or that I could or should obtain a similar procedure for a much lower price elsewhere.

9. Roughly one month into KNR's representation of me, I recall that a doctor at the Summa Health System trauma center advised me that I should not be treating with a chiropractor based on the extent and severity of my injuries. I was further advised to go immediately to an orthopedic surgeon who could repair fractures in my shoulder. When I communicated these concerns to KNR, I was told me to continue treating with Dr. Floros because withdrawing from his care would harm my lawsuit. A true and accurate copy of the email I sent to KNR is attached as **Exhibit C.** When I discussed these same concerns with Dr. Floros, he told me that if I withdrew from his care, I would be required to immediately pay out-of-pocket for the treatment I had received to date.

10. Toward the end of Dr. Ghoubrial's treatment of me, I recall that he referred me to Dr. Chonko, an orthopedic surgeon. Dr. Ghoubrial led me to believe that Dr. Chonko would perform my shoulder surgery. When I consulted with Dr. Chonko, he immediately told me that he does not perform surgical procedures relating to the shoulder because he is a hip surgeon.

11. Dr. Chonko, in turn, sent me to Dr. Matthew Noyes. When I consulted with Dr. Noyes, his office told me that he would not perform surgery on me unless I agreed to pay for the surgery out of my settlement proceeds, despite that I had health insurance. Dr. Noyes also informed me that he was planning to leave the Akron, Ohio area for one year, and that he wanted me to wait to have the surgery so that he could do it when he returned. I did not receive the surgery from Dr. Noyes because I would not agree to have the cost of the surgery deducted from my settlement.

12. During KNR's representation of me, I was facing eviction from my home. When I informed KNR representatives of concerns relating to being homeless, KNR representatives routinely told me

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not to worry about not having a home for myself or my children. A true and accurate copy of one such email I sent to KNR is attached as **Exhibit D.** When KNR finally communicated a settlement offer in relation to my accident, I believed that I had no choice but to accept the offer as it was communicated to me so that I could afford a home for myself and my children.

13. This settlement offer came shortly after my interactions with Dr. Noyes. Because of my need to get my children off of the streets and into a home, I had no choice but to settle the case before I had the opportunity to receive the shoulder surgery that I needed. Had KNR advised me to treat with my own physician in connection with this case, or had Floros or Ghoubrial immediately advised me to see a surgeon, I would have received the surgery I needed prior to settlement of the case.

14. As of the date of signing this affidavit, I have not received surgery on my shoulder and continue to live in severe pain as a result of not receiving the surgery in a timely manner.

15. When my case settled in January 2017, I received only $12,349.70 of the $48,720 that KNR recovered in connection with my accident after the deduction of all fees and expenses incurred at KNR's direction. Before seeing the settlement memorandum that KNR presented to me, I was not aware that KNR would deduct a narrative fee from my settlement for Dr. Floros or an investigator fee for MRS Investigators. I assumed that all these charges, as well as the medical expenses taken out of my settlement, were legitimate and I did not ask questions about them because I trusted my KNR lawyers and the doctors with whom they had me treat. I further believed my lawyers would never deduct illegitimate charges from my settlement. I was never advised me and I never otherwise became aware of any work, investigative or otherwise, performed by MRS Investigations. A true and accurate copy of the settlement memorandum I signed is attached as **Exhibit E.**

16. I trusted and assumed that KNR, as my attorneys, and Dr. Ghoubrial's practice, being in charge of my medical care, would not charge me extreme markups for the injections I was provided.

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I further trusted and assumed that my settlement proceeds would not be used to compensate a referral relationship between KNR and Dr. Floros.

17. I would have refused to sign the settlement reflected in **Exhibit E** had KNR accurately informed me about the true nature of the investigator fee, the narrative fee, or the amounts being paid to Drs. Floros or Ghoubrial from my settlement.

I affirm the above to be true and accurate to the best of my knowledge under penalty of perjury.

Thera Reed 5-10-19

Signature of Affiant Date

Sworn to and subscribed before me on 5-10-2019 at Akron, Ohio.

Rachel Hazelet

Notary Public, State of Ohio

Attorney Rachel L. Hazelet
Notary Public, State of Ohio
My Commission
Has No Expiration Date
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CONFIDENTIAL PATIENT INFORMATION

DATE	4-22-2016
NAME	Thomas Reid
STREET ADDRESS	[redacted]
CITY	Akron
ZIP	Ohio
CELL PHONE/HOME PHONE	[redacted]
DATE OF BIRTH	
SSN	
EMAIL ADDRESS:	

SEX: ___Male ✓Female
MARITAL STATUS: ✓Single ___Married ___Divorced

PRESENT COMPLAINT/PAIN (circle all that apply):

Neck pain ✓	Upper/Mid Back Pain ✓	Low Back Pain ✓
Shoulder pain (right / left) ✓	Elbow pain (right / left) ✓	Wrist/Hand Pain (right / left)
Hip Pain (right / left) ✓	Knee pain (right / left) ✓	Ankle/Foot Pain (right / left)
Headaches ✓	Chest Pain ✓	Face Pain
Nausea / Vomiting ✓	Dizziness / Memory Loss ✓	Anxiety / Depressed / Fatigue ✓

Other Symptoms: _____

ARE THE COMPLAINTS/PAIN CIRCLED ABOVE RELATED TO (CIRCLE ONE):

CAR ACCIDENT	WORK INJURY	OTHER

DATE OF ACCIDENT: 4-20-16

NAME OF INSURANCE COMPANY OF THE AT FAULT PERSON: _____

NAME OF YOUR CAR INSURANCE: MK

NAME OF YOUR PERSONAL HEALTH INSURANCE (if you have): _____

EXHIBIT A

PATIENT ACKNOWLEDGMENT

I confirm I was contacted by telephone, on one or more occasions, by one or more persons who I understood to be representatives of Akron Square Chiropractic regarding the availability of a chiropractic consultation and spinal screening examination.

I WAS TOLD IN THE VERY FIRST SUCH TELEPHONE CONVERSATION (AND IN EACH CONVERSATION THEREAFTER) THAT THE CALLER WORKED FOR THIS HEALTH CARE FACILITY AND DR M FLOROS, DC, AND THAT THE CALL(S) HAD NO RELATION TO, AND NOTHING WHATSOEVER TO DO WITH, MY INSURANCE COMPANY, OR THE OTHER DRIVER'S INSURANCE COMPANY OR ANY INSURANCE COMPANY, OR ANY POLICE DEPARTMENT, OR ANY GOVERNMENT AGENCY, HOSPITAL, OR OTHER SERVICE OR ENTITY.

NO PERSON WHO IDENTIFIED HIMSELF OR HERSELF AS BEING EMPLOYED BY OR AFFILIATED WITH ANY INSURANCE COMPANY, GOVERNMENT AGENCY, POLICE DEPARTMENT OR HOSPITAL HAS EVER ADVISED ME OR SUGGESTED TO ME THAT I VISIT OR SEEK TREATMENT FROM AKRON SQUARE CHIROPRACTIC.

The caller(s) told me that the chiropractic consultation and 10 point spinal screening examination were offered without any obligation to accept the appointment and at no cost to any insurance company or me.

I was not pressured to set an appointment by the caller(s), and decided to make an appointment and go to the chiropractor solely out of concern for my own health and well being, after my recent accident.

I acknowledge that the consultation and 10 point screening examination were offered without obligation to become a patient of Akron Square Chiropractic, or to receive treatment from Akron Square Chiropractic.

I attest that these statements are true and a complete recollection of my recent telephone conversation(s).

I, the patient named below, attest that the employee named read the statement above aloud and in full to me.

Date: 4-22-16 Name (Signature): TR

Printed Name: Thera Reid

Kisling, Nestico & Redick, LLC
Attorneys at Law

CONTINGENCY FEE AGREEMENT

Thera Reid, hereinafter called Client, request and authorize Kisling, Nestico & Redick, LLC, hereinafter called Attorneys, to represent MYSELF for all purposes in connection with clients injuries and damages arising out of an incident which occurred on the 20 day of April 2016 in Summit County, Ohio, on the following conditions:

1) Attorneys will devote their full professional abilities to Clients case and Client agrees to fully cooperate with Attorneys. In the event of an appeal, an additional agreement for services shall be made by the parties hereto. No appeal will be made without both parties agreeing thereto. I understand that my case may be handled by any one or more of the members of the firm of Kisling, Nestico & Redick, LLC and different members may handle the case at different times. Client understands and agrees that Attorneys are not representing Client for any Workers Compensation, medical malpractice, disability, or employment related claims arising from this incident, injuries or damages, unless separate written contingency fee agreements have been signed for such claims.

2) The Attorneys shall receive as a fee for their services, one-third (1/3) of the total gross amount of recovery of any and all amounts recovered, and Client hereby assigns said amount to Attorneys and authorizes Attorneys to deduct said amount from the proceeds recovered. Attorney shall have a charging lien upon the proceeds of any insurance proceeds, settlement, judgment, verdict award or property obtained on your behalf. IN THE EVENT OF NO RECOVERY, CLIENT SHALL OWE ATTORNEYS NOTHING FOR SERVICES RENDERED.

3) Client agrees and authorizes Attorneys to deduct, from any proceeds recovered, any expenses which may have been advanced by Attorneys in preparation for settlement and/or trial of Clients case. IN THE EVENT OF NO RECOVERY, CLIENT SHALL OWE ATTORNEYS NOTHING FOR SUCH ADVANCED EXPENSES.

Client authorizes and directs Attorneys to deduct from Clients share of proceeds and pay, directly to any doctor, hospital, expert or other medical creditor, any unpaid balance due them for Clients care and treatment.

4) Client agrees that Attorneys have made no promises or guarantees regarding the outcome of Clients claim. Client understands Attorneys will investigate Clients claim and then Attorneys shall have the right to withdraw from representation.

Signed this 22 day of April 2016

X Thera Reid
CLIENT

ATTORNEY

EXHIBIT B

Thera

Thera Reid [therareid@yahoo.com]
Sent:Sunday, May 08, 2016 7:22 PM
To: Marti Dunlavy

Sorry I'm a bug. I'm confused about what's going on. Talked to the trauma center, they don't want me to see the chiropractor and that I'm suffering from a concussion. I talked to Richard as well today. He's still saying Donnie does not have insurance. ThT Allstate is sending an adjuster, to value his bike, this week. Does this mean its almost over??? I'm not saying settle but I'm so down mentally emotionally and physically. Will b seeing a therapist soon. B in touch with info from those visit(s).

Sent from Yahoo Mail on my Android device

EXHIBIT C

Marti Dunlavy

From: Marti Dunlavy
Sent: Thursday, November 10, 2016 12:20 PM
To: 'Thera Reid'
Subject: RE:

Thera, everything is here – so we don't need anything.
Part of the problem was that the Dr. Noyes that you saw has an office inside chonko's office but his stuff came from other places.
I know it has been frustrating and you need some good luck. We are helping you – and we will get as much money as we can for you on your settlement.
Don't stress too much about Oasis – that will get worked out.

From: Thera Reid [mailto:therareid@yahoo.com]
Sent: Thursday, November 10, 2016 12:16 PM
To: Marti Dunlavy
Subject:

What is going on? I spoke to Mat the other day, he said waiting on bill from chonko. I call chonko and all involved, they ALL said they sent you what is requested back in June/July. I'm on the street right now. 2 month waiting list for homeless shelters and 5 months plus for Amha. I have been in touch with my congressman, thinking maybe there is another direction I can go! I'm gonna owe out the ass for oasis and have nothing for my kids when all is said and done with at this rate. I'm pissed enough to swallow nails. Something has to give yesterday!!! Sick and tired of bs and kicked in the face when I'm down. You guys offered to help me! I'm sorry but it seems like I'm working for you.

EXHIBIT D

260443 / Thera Reid

Settlement Memorandum

Recovery:

REC	Allstate Insurance Companies*	$ 45,500.00
PSF	Oasis Legal Finance	$ 3,220.00
		$ 48,720.00

DEDUCT AND RETAIN TO PAY:

Kisling, Nestico & Redick

Floros, Dr. Minas	$ 150.00
chartswap#1211588	$ 53.18
MRS Investigations, Inc.	$ 50.00
Summa Health System	$ 107.12
Clearwater Billing Services, LLC	$ 50.00
Total Due	$ 410.30

DEDUCT AND RETAIN TO PAY TO OTHERS:

Kisling, Nestico & Redick	($15,1665.65)	$ 14,000.00
Ohio Tort Recovery Unit		$ 9,000.00
Oasis Legal Finance		$ 5,096.00
Akron Square Chiropractic	($5,025.00)	$ 4,500.00
Clearwater Billing Services, LLC	($3,460.00)	$ 3,000.00
National Diagnostic Imaging Consultants		$ 200.00
North Star Orthopedic Group		$ 164.00
Total Due Others		$ 35,960.00

Total Deductions	**$ 36,370.30**
Total Amount Due to Client	$ 12,349.70
Less Previously Paid to Client	$ 3,220.00
Net Amount Due to Client	**$ 9,129.70**

I hereby approve the above settlement and distribution of proceeds. I have reviewed the above information and attorney's fees with Kisling, Nestico & Redick. I acknowledge that it accurately reflects all costs, including but not limited to, the investigation fee, and all outstanding expenses associated with my injury claim. I further understand that the itemized bills listed above will be deducted and paid from the gross amount of my settlement except as otherwise indicated. If any amount was withheld from the settlement for potential subrogation interests, any balance due after the subrogation interest is satisfied may be subject to Attorney Fees not to exceed the contractually agreed amount. Finally, I understand that any bills not listed above, including but not limited to Health Insurance or Medical Payments Subrogation and/or those initialed by me to indicate that they are not being paid from the settlement are my responsibility and not the responsibility of Kisling, Nestico & Redick.

Date: 1-26-17

Name: Thera Reid
Thera Reid

Firm: _____
Kisling, Nestico & Redick

EXHIBIT E

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al., Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. CV-2016-09-3928 Judge James A. Brogan **Affidavit of Taijuan Carter**

I, Taijuan Carter, having been duly sworn, have personal knowledge of the following matters of fact, and testify as follows:

1. I was represented by the Akron, Ohio law firm of Kisling, Nestico & Redick, LLC ("KNR") and received treatment from Minas Floros, D.C. ("Dr. Floros"), and Sam Ghoubrial, M.D. ("Dr. Ghoubrial"), in connection with multiple accidents in which I suffered injuries between 2011 and 2015.
2. The first such accident was an auto accident that occurred on April 16, 2011. Within a few days of this accident, I recall that a telemarketer from Akron Square Chiropractic ("ASC") called me by phone and asked me to visit their office to receive chiropractic care for the injuries resulting from the accident.
3. After receiving the call from ASC, I visited Dr. Floros at ASC for chiropractic care on April 21, 2011. When I visited ASC on this day, I had not yet retained an attorney to represent me in connection with the accident. ASC representatives informed me that Dr. Floros would not treat a patient if the patient was not represented by an attorney. A true and accurate copy of the form I completed for ASC is attached as **Exhibit A.**

NOTARIAL SEAL
STATE OF OHIO

Attorney Peter G. Pattakos
Resident Summit County
Notary Public, State of Ohio
My Commission Has No Expiration Date
Sec 147.03 RC

EXHIBIT 3

4. Once I indicated to ASC that I did not have legal representation, an ASC representative made a phone call to a KNR, put me on the phone with a KNR representative, and handed me paperwork to fill out for KNR at ASC's office. That paperwork included the KNR fee agreement. A true and accurate copy of the agreement I signed is attached as **Exhibit B.**

5. Dr. Floros and KNR advised me to treat with their pain-management physician, Dr. Ghoubrial. Based on their advice, I visited Dr. Ghoubrial's practice on April 22, 2011, the day after my first visit to Dr. Floros. A true and accurate copy of the medical lien that Dr. Ghoubrial required me to sign on my first visit to his practice is attached as **Exhibit C.** Representatives of Dr. Ghoubrial's practice informed me that they would not treat me if I did not sign the medical lien.

6. During my visits to Dr. Ghoubrial's practice in connection with my 2011 accident, I was given a back brace and a TENS unit to take home with me. No one at the practice ever informed me what the practice charged for the back brace or the TENS unit, or that Dr. Ghoubrial would earn a substantial profit from charging me for them, or that I could or should obtain similar devices for a much lower price elsewhere.

7. When my case settled in November 2011, I received only $5,084.88 of the $16,350.00 that KNR recovered in connection with my accident. Before seeing the settlement memorandum that KNR presented to me, I was not aware that KNR would deduct a $200 narrative fee from my settlement for Dr. Floros or a $50 investigator fee for AMC Investigators. I had likewise never heard of Clearwater Billing Services, LLC. I assumed that all these charges, as well as the medical expenses taken out of my settlement, were legitimate and I did not ask question about them because I trusted my KNR lawyers and the doctors that they had me treat with and I believed they would never deduct illegitimate charges from my settlement. A true and accurate copy of the settlement memorandum I received is attached as **Exhibit D.**

NOTARIAL SEAL STATE OF OHIO

Attorney Peter G. Pattakos
Resident Summit County
Notary Public, State of Ohio
My Commission Has No Expiration Date
Sec 147.03 RC

8. My second accident during this timeframe occurred on December 15, 2013. I signed up with KNR and ASC both on December 16, 2013, the day after my accident. True and accurate copies of the forms I completed for ASC and KNR are attached as **Exhibit E.**

9. Dr. Floros and KNR again advised me to treat with Dr. Ghoubrial, who they described as their own pain-management doctor. My first date of treatment with Dr. Ghoubrial's practice was on December 18, 2013, two days after I signed on with ASC and KNR. A true and accurate copy of the medical lien I was required to sign on my first visit to Dr. Ghoubrial's practice is attached as **Exhibit F.**

10. During my visits to Dr. Ghoubrial's practice in connection with my 2013 accident, I was provided with a second TENS unit, despite that I had already received one. As before, no one at the practice ever informed me what the practice charged for the device, that Dr. Ghoubrial would earn a substantial profit from charging me for it, or that I could or should obtain a similar device for a much lower price elsewhere.

11. In addition to receiving a second TENS unit, I was also given trigger-point injections. I did not want trigger-point injections, but I was informed by Dr. Ghoubrial's practice that receiving such injections was a requirement if I wanted to receive narcotics for pain relief. No one at the practice ever informed me what the practice charged for this procedure, that Dr. Ghoubrial would earn a substantial profit from charging me for it, or that I could or should obtain a similar treatment for a much lower price elsewhere.

12. When my case settled in January 2015, I received only $1,579.50 of the $7,500.00 that KNR recovered in connection with my accident. Before seeing the settlement memorandum that KNR presented to me, I was not aware that KNR would deduct a $200 narrative fee from my settlement proceeds for Dr. Floros or a $50 investigator fee for AMC Investigators. As with my first KNR settlement, I assumed that all these charges, as well as the medical

Attorney Peter G. Pattakos
Resident Summit County
Notary Public, State of Ohio
My Commission Has No Expiration Date
Sec 147.03 RC

expenses taken out of my settlement, were legitimate and I did not ask question about them because I trusted my KNR lawyers and the doctors that they had me treat with and I believed they would never deduct illegitimate charges from my settlement. A true and accurate copy of the settlement memorandum I signed is attached as **Exhibit G.**

13. My third accident during this time frame occurred on October 6, 2015. I was not represented by KNR for this accident, but I was treated by Dr. Ghoubrial's practice and Dr. Floros. I saw Drs. Floros and Ghoubrial for this accident two days after the accident. True and accurate copies of the forms I was required to complete in connection with this treatment are attached to this Affidavit as **Exhibit H.**

14. As with my 2011 and 2013 accidents, I received from Dr. Ghoubrial's practice a series of trigger-point injections and a third TENS unit, even though I had already received two prior TENS units. Like with my prior two accidents, I received no information from Dr. Ghoubrial's practice about the price of this treatment, that Dr. Ghoubrial stood to profit substantially from it, or that I could obtain similar treatment at a much lower cost elsewhere.

15. Throughout the entirety of my relationship with Dr. Ghoubrial's practice and Dr. Floros, I was never asked if I had insurance coverage. I recall that I did have active insurance coverage that could have been used during each accident, instead of having the charges deducted from my settlement. Instead of asking whether I wanted to use my insurance coverage, Drs. Ghoubrial and Floros and my KNR attorneys led me to believe that I would not need to worry about covering the costs of my care. Based on their reassurances, I also believed that the costs of my care would not detrimentally impact my settlements.

16. During the entirety of KNR's representation of me, KNR never advised me and I never otherwise became aware of any work, investigative or otherwise, performed by AMC

NOTARIAL SEAL STATE OF OHIO

Attorney Peter G. Pattakos
Resident Summit County
Notary Public, State of Ohio
My Commission Has No Expiration Date
Sec 147.03 RC

Investigations or any other investigator, nor did I interact with a KNR investigator or an individual purporting to be a KNR investigator.

17. The only information KNR provided to me about the nature of the investigator fee was that it was their fee for gathering information and retrieving records, which was discussed in relation to the other administrative costs deducted from my settlement. I did not question the small charge to AMC Investigations on my settlement memoranda and trusted that my KNR attorneys would not charge me illegitimate fees.

18. Throughout my legal matters, I trusted and assumed that KNR, as my attorneys, and Dr. Ghoubrial, as my physician, would not charge me extreme markups for medical treatment or supplies for profit. I further trusted and assumed that my settlement proceeds would not be used to compensate a referral relationship between KNR and Dr. Floros.

19. Each time KNR presented me with a settlement memorandum to sign, KNR did not explain to me what the individual charges represented. I would have refused to sign each settlement memorandum had KNR accurately informed me about the true nature of the investigator fee, the narrative fee, and the amounts being paid to Drs. Floros or Ghoubrial from my settlement.

I affirm the above to be true and accurate to the best of my knowledge under penalty of perjury.

Signature of Affiant — Date: 4/24/19

Sworn to and subscribed before me on 4.24.19 at Akron, Ohio.

Notary Public, State of Ohio

NOTARIAL SEAL STATE OF OHIO

Attorney Peter G. Pattakos
Resident Summit County
Notary Public, State of Ohio
My Commission Has No Expiration Date
Sec 147.03 RC

CONFIDENTIAL PATIENT INFORMATION

PERSONAL INFORMATION:

NAME: Taliuan Carter [redacted] TODAY'S DATE: 4/21/11

STREET: [redacted]

CITY: Akron STATE: Ohio ZIP: 44313

HOME PHONE [redacted] CELL PHONE _____ PAGER _____

BIRTHDATE [redacted] SOCIAL SECURITY NUMBER [redacted]

SEX ☑ Male ☐ Female MARITAL STATUS: ☑ Single ☐ Married ☐ Divorced STUDENT STATUS: ☑ N/A ☐ F/T ☐ P/T

EMPLOYER NAME: _____ OCCUPATION: _____

EMPLOYER ADDRESS: _____ WORK PHONE: _____

EMPLOYER CITY: _____ STATE: _____ ZIP: _____

SPOUSE'S/SIGNIFICANT OTHER NAME: _____

SPOUSE'S EMPLOYER: _____ SPOUSE'S WORK PHONE: _____

NAME AND PHONE NEAREST FRIEND/RELATIVE NOT LIVING WITH YOU: [redacted]

PRESENT COMPLAINT:

PLEASE DESCRIBE YOUR SYPMTOM (S) BRIEFLY: 1. Knee pain 2. Shoulders pain 3. Upper back pain 4. Middle backs pain 5. lower back pain 6. Stiffness, Burning

ARE THESE SYMPTOMS DUE TO AN ACCIDENT? ☑ Yes ☐ No IF YES, TYPE OF ACCIDENT: ☑ Auto ☐ Work ☐ Other

DATE OF ACCIDENT: 4/16/11 ACCIDENT REPORTED: ☐ No ☑ Yes ☐ Worker's Comp ☐ Insurance carrier ☐ Employer

HAVE YOU RETAINED AN ATTORNEY FOR THIS ACCIDENT ☐ Yes ☑ No

IF YES, THE NAME AND PHONE NUMBER _____

NAME OF INSURANCE COMPANY OF THE AT FAULT PERSON _____

NAME OF YOUR AUTOMOBILE INSURANCE _____

NAME OF YOUR HEALTH INSURANCE _____

MEDICAL HISTORY:

☐ Anemia	☐ Muscular Dystrophy	☐ Rheumatic Fever	☐ High Blood Pressure	☐ Allergies	☐ Cancer
☐ Polio	☐ Multiple Sclerosis	☐ Scarlet Fever	☐ Tuberculosis	☐ HIV	☐ Sinus Trouble
☐ Asthma	☐ German Measles	☐ Nervousness	☐ Heart Trouble	☐ Numbness	☐ Convulsions
☐ Epilepsy	☐ Concussion	☐ Dizziness	☐ Digestive Orders	☐ Neuritis	☐ Rheumatism
☐ Diabetes	☐ Arthritis	☐ Venereal Disease	☐ Hepatitis	☐ Backaches	

EXHIBIT A

Kisling, Nestico & Redick, LLC
Attorneys at Law

CONTINGENCY FEE AGREEMENT

TAIJUAN CARTER, hereinafter called Client, request and authorize Kisling, Nestico & Redick, LLC, hereinafter called Attorneys, to represent _____ for all purposes in connection with clients' injuries and damages arising out of an incident which occurred on the 16 day of April, 11 in _____ County, Ohio, on the following conditions:

1) Attorneys will devote their full professional abilities to Client's case and Client agrees to fully cooperate with Attorneys. In the event of an appeal, an additional agreement for services shall be made by the parties hereto. No appeal will be made without both parties agreeing thereto. I understand that my case may be handled by any one or more of the members of the firm of Kisling, Nestico & Redick, LLC and different members may handle the case at different times.

2) The Attorneys shall receive as a fee for their services, one-third *(1/3)* of the total gross amount of recovery of any and all amounts recovered, and Client hereby assigns said amount to Attorneys and authorizes Attorneys to deduct said amount from the proceeds recovered. IN THE EVENT OF NO RECOVERY, CLIENT SHALL OWE ATTORNEYS NOTHING FOR SERVICES RENDERED.

3) Client agrees and authorizes Attorneys to deduct, from any proceeds recovered, any expenses which may have been advanced by Attorneys in preparation for settlement and/or trial of Client's case. IN THE EVENT OF NO RECOVERY, CLIENT SHALL OWE ATTORNEYS NOTHING FOR SUCH ADVANCED EXPENSES.

Client authorizes and directs Attorneys to deduct from Client's share of proceeds and pay, directly to any doctor, hospital, expert or other medical creditor, any unpaid balance due them for Client's care and treatment.

4) Client agrees that Attorneys have made no promises or guarantees regarding the outcome of Client's claim. Client understands Attorneys will investigate Client's claim and then Attorneys shall have the right to withdraw from representation.

Signed this 21 day of April, 11

CLIENT

ATTORNEY

EXHIBIT B

[redacted]

Sam N. Ghoubrial M.D.
Richard H. Gunning M.D.
MEDICAL ASSIGNMENT

Re: Patient Taijuan Carter

First date of service: 4/22/11

I hereby direct you to pay to Clearwater Billing Services, LLC from the net proceeds of any settlement, claim, judgment, verdict or award, for any and all services rendered as a result of an injury that I received on 4/16/11.

Said amount being fair and reasonable price of medical services provided by Hancrist, LLC for me at the direction of my doctor or doctors. I authorize you to withhold said sums from the net proceeds of any settlement, claim, judgment, verdict, or awards as may be necessary to pay Clearwater Billing Services, LLC

I fully understand that I am directly and fully responsible to Clearwater Billing Services, LLC for the aforementioned account submitted to me by Clearwater Billing Services, LLC for services rendered me, and that this agreement is made solely for its additional protection and in consideration of its awaiting payment. I further understand that such payment is not contingent on any settlement, claim, judgment, verdict or award by which I may eventually recover said fee.

Dated: 4/22/11 [signature]

The undersigned being attorney of record for the above patient does hereby agree to observe all terms of the above and agrees to withhold such claims from the net proceeds of any settlement, claim, judgment, verdict, or award as may be necessary to adequately protect Clearwater Billing Services, LLC provided that said lien is subordinate to attorney's lien herein.

Dated: 4/25/11 [signature]

Kisling, Nestico & Redick, LLC
Attorneys at Law

Kisling, Nestico & Redick, LLC
3200 W. Market St., Suite 300
Akron, Ohio 44333
(330) 869-9007
(330) 869-9008 (fax)

EXHIBIT C

214892 / Taijuan Carter **Settlement Memorandum**

Recovery:

REC	Merchants Insurance Group	$ 16,000.00
REC	Preferred Capital	$ 350.00
		$ 16,350.00

DEDUCT AND RETAIN TO PAY:

Kisling, Nestico & Redick, LLC

Clearwater Billing Services, LLC; docs fee		$ 50.00
Comprehensive Pain Management *; recs fee	EF	$ 8.19
Floros, Dr. Minas; narrative fee		$ 200.00
Summa Health System; 1105-95 05690599		$ 34.80
Summa Health System; mrn 05690599		$ 18.63
AMC Investigations; 214892		$ 50.00
Total Due		$ 361.62

DEDUCT AND RETAIN TO PAY TO OTHERS:

Akron Radiology*		$ 30.00
Akron Square Chiropractic		$ 4,272.00
Clearwater Billing Services, LLC		$ 1,500.00
Comprehensive Pain Management *		$ 700.00
EMPI, Inc.*		$ 957.62
Kisling, Nestico & Redick, LLC	($5,333.33)	$ 3,600.00
Millennium Laboratories		$ 573.68
Preferred Capital Funding		$ 481.50
Summa Emergency Associates, Inc.*		$ 225.00
Total Due Others		$ 12,339.80

Total Deductions	$ 12,701.42
Total Amount Due to Client	$ 3,648.58
Total Amount to be Paid by Client	$ 1,786.30
Net Amount Due to Client	$ 5,434.88
Less Previously Paid to Client	$ 350.00
Net Amount Due to Client	**$ 5,084.88**

I hereby approve the above settlement and distribution of proceeds. I have reviewed the above information and I acknowledge that it accurately reflects all outstanding expenses associated with my injury claim. I further understand that the itemized bills listed above will be deducted and paid from the gross amount of my settlement except as otherwise indicated. Finally, I understand that any bills not listed above, including but not limited to Health Insurance or Medical Payments Subrogation and/or those initialed by me to indicate that they are not being paid from the settlement are my responsibility and not the responsibility of Kisling, Nestico & Redick, LLC.

Date: 11/28/14

Name: _____
Taijuan Carter

Firm: _____
Kisling, Nestico & Redick, LLC

EXHIBIT D

CONFIDENTIAL PATIENT INFORMATION

DATE	12/16/13
NAME	TAIJUAN V. CARTER
STREET ADDRESS	[redacted]
CITY	AKRON, OHIO
ZIP	44311
CELL PHONE/HOME PHONE	[redacted]
DATE OF BIRTH	
SSN	
EMAIL ADDRESS:	

SEX: X Male ____ Female
MARITAL STATUS: X Single ____ Married ____ Divorced

PRESENT COMPLAINT/PAIN (circle all that apply):

Neck pain	Upper/Mid Back Pain	Low Back Pain
Shoulder pain (right / left)	Elbow pain (right / left)	Wrist/Hand Pain (right / left)
Hip Pain (right / left)	Knee pain (right / left)	Ankle/Foot Pain (right / left)
Headaches	Chest Pain	Face Pain
Nausea / Vomiting	Dizziness / Memory Loss	Anxiety / Depressed / Fatigue

Other Symptoms: _____

ARE THE COMPLAINTS/PAIN CIRCLED ABOVE RELATED TO (CIRCLE ONE):

CAR ACCIDENT	WORK INJURY	OTHER

DATE OF ACCIDENT: 12/15/13

NAME OF INSURANCE COMPANY OF THE AT FAULT PERSON: American Family Ins.

NAME OF YOUR CAR INSURANCE: _____

NAME OF YOUR PERSONAL HEALTH INSURANCE (if you have): United Health Care

EXHIBIT E

Kisling, Nestico & Redick, LLC
Attorneys at Law

CONTINGENCY FEE AGREEMENT

Taijuan Carter, hereinafter called Client, request and authorize Kisling, Nestico & Redick, LLC, hereinafter called Attorneys, to represent myself for all purposes in connection with clients injuries and damages arising out of an incident which occurred on the 15 day of December, 13 in Summit, County, Ohio, on the following conditions:

1) Attorneys will devote their full professional abilities to Clients case and Client agrees to fully cooperate with Attorneys. In the event of an appeal, an additional agreement for services shall be made by the parties hereto. No appeal will be made without both parties agreeing thereto. I understand that my case may be handled by any one or more of the members of the firm of Kisling, Nestico & Redick, LLC and different members may handle the case at different times. Client understands and agrees that Attorneys are not representing Client for any Workers Compensation, medical malpractice, disability, or employment related claims arising from this incident, injuries or damages, unless separate written contingency fee agreements have been signed for such claims.

2) The Attorneys shall receive as a fee for their services, one-third *(1/3)* of the total gross amount of recovery of any and all amounts recovered, and Client hereby assigns said amount to Attorneys and authorizes Attorneys to deduct said amount from the proceeds recovered. Attorney shall have a charging lien upon the proceeds of any insurance proceeds, settlement, judgment, verdict award or property obtained on your behalf. IN THE EVENT OF NO RECOVERY, CLIENT SHALL OWE ATTORNEYS NOTHING FOR SERVICES RENDERED.

3) Client agrees and authorizes Attorneys to deduct, from any proceeds recovered, any expenses which may have been advanced by Attorneys in preparation for settlement and/or trial of Clients case. IN THE EVENT OF NO RECOVERY, CLIENT SHALL OWE ATTORNEYS NOTHING FOR SUCH ADVANCED EXPENSES.

Client authorizes and directs Attorneys to deduct from Clients share of proceeds and pay, directly to any doctor, hospital, expert or other medical creditor, any unpaid balance due them for Clients care and treatment.

4) Client agrees that Attorneys have made no promises or guarantees regarding the outcome of Clients claim. Client understands Attorneys will investigate Clients claim and then Attorneys shall have the right to withdraw from representation.

Signed this 16th day of Dec, 2013

CLIENT

ATTORNEY

Sam N. Ghoubrial M.D.
Richard H. Gunning M.D.
Joshua M. Jones M.D.

MEDICAL LIEN

Re: Patient TAILUNN CARTER

First date of service: 12/18/13

I hereby direct you to pay to Clearwater Billing Services, LLC from the net proceeds of any settlement, claim, judgment, verdict or award, for any and all services rendered as a result of an injury that I received on 12/18/13.

Said amount being fair and reasonable price of medical services provided by Hancrist, LLC for me at the direction of my doctor or doctors. I authorize you to withhold said sums from the net proceeds of any settlement, claim, judgment, verdict, or awards as may be necessary to pay Clearwater Billing Services, LLC

I fully understand that I am directly and fully responsible to Clearwater Billing Services, LLC for the aforementioned account submitted to me by Clearwater Billing Services, LLC for services rendered me, and that this agreement is made solely for its additional protection and in consideration of its awaiting payment. I further understand that such payment is not contingent on any settlement, claim, judgment, verdict or award by which I may eventually recover said fee.

Dated: 12/18/13

The undersigned being attorney of record for the above patient does hereby agree to observe all terms of the above and agrees to withhold such claims from the net proceeds of any settlement, claim, judgment, verdict, or award as may be necessary to adequately protect Clearwater Billing Services, LLC provided that said lien is subordinate to attorney's lien herein.

Dated: 1-20-14

Kisling, Nestico & Redick, LLC
Attorneys at Law

Kisling, Nestico & Redick, LLC
3412 W. Market St.
Akron, Ohio 44333
(330) 869-9007
(330) 869-9008 (fax)

EXHIBIT F

215 East Waterloo Road, Suite 12, Akron, Ohio 44319
Phone: (330) 331-7207
Fax: (330) 331-7567

236538 / Taijuan Carter

Settlement Memorandum

Recovery:

REC	American Family Insurance*	$ 6,000.00
MP	Electric Insurance Company	$ 1,000.00
REC	Preferred Capital Funding	$ 500.00
		$ 7,500.00

DEDUCT AND RETAIN TO PAY:

Kisling, Nestico & Redick, LLC

Clearwater Billing Services, LLC;	$ 50.00
Floros, Dr. Minas; MZ	$ 200.00
P & G Reporting, LLC; inv # 4150	$ 27.50
Summit County filing fee	$ 360.50
AMC Investigations;	$ 50.00
Total Due	$ 688.00

DEDUCT AND RETAIN TO PAY TO OTHERS:

Akron Square Chiropractic	$ 1,350.00
Clearwater Billing Services, LLC	$ 1,300.00
Kisling, Nestico & Redick, LLC	$ 1,350.00
National Diagnostic Imaging Consultants	$ 110.00
Preferred Capital Funding	$ 622.50
Total Due Others	$ 4,732.50

Total Deductions	$ 5,420.50
Total Amount Due to Client	$ 2,079.50
Less Previously Paid to Client	$500.00
Net Amount Due to Client	$ 1,579.50

I hereby approve the above settlement and distribution of proceeds. I have reviewed the above information and I acknowledge that it accurately reflects all outstanding expenses associated with my injury claim. I further understand that the itemized bills listed above will be deducted and paid from the gross amount of my settlement except as otherwise indicated. Finally, I understand that any bills not listed above, including but not limited to Health Insurance or Medical Payments Subrogation and/or those initialed by me to indicate that they are not being paid from the settlement are my responsibility and not the responsibility of Kisling, Nestico & Redick, LLC.

Date: 4/24/15

Name: Taijuan Carter

Firm: Kisling, Nestico & Redick, LLC

EXHIBIT G

CONFIDENTIAL PATIENT INFORMATION

DATE	10-8-15
NAME	TaJuan Carter
STREET ADDRESS	[redacted]
CITY	Akron, Ohio
ZIP	44311
CELL PHONE/HOME PHONE	[redacted] HOME:
DATE OF BIRTH	[redacted]
SSN	[redacted]
EMAIL ADDRESS:	[redacted]

SEX: X Male ____ Female
MARITAL STATUS: X Single ____ Married ____ Divorced

PRESENT COMPLAINT/PAIN (circle all that apply):

Neck pain	Upper/ Mid Back Pain	Low Back Pain
Shoulder pain (right / left)	Elbow pain (right / left)	Wrist/Hand Pain (right / left)
Hip Pain (right / left)	Knee pain (right / left)	Ankle/Foot Pain (right / left)
Headaches	Chest Pain	Face Pain
Nausea / Vomiting	Dizziness / Memory Loss	Anxiety / Depressed / Fatigue

Other Symptoms: _____

ARE THE COMPLAINTS/PAIN CIRCLED ABOVE RELATED TO (CIRCLE ONE):

CAR ACCIDENT	WORK INJURY	OTHER Fall / Slip

DATE OF ACCIDENT: 10-6-15

NAME OF INSURANCE COMPANY OF THE AT FAULT PERSON: _____

NAME OF YOUR CAR INSURANCE: _____

NAME OF YOUR PERSONAL HEALTH INSURANCE (if you have): _____

EXHIBIT H

Sam N. Ghoubrial M.D.
Richard H. Gunning M.D.
Joshua M. Jones M.D.
Lisa Esterle D.O.
215 East Waterloo Road
Akron, Ohio 44319
Phone: (330) 331-7207

Registration
(Please print)

Date: 10-8-15

Patient Information

Name: CARTER TAQUAN V. Phone: [redacted]
Last First Middle

Address: [redacted]

City: Akron State: Ohio Zip: 44311

Sex: ☒ Male ☐ Female Age: 40 Date of Birth: [redacted]

☒ Single ☐ Married ☐ Widowed ☐ Separated ☐ Divorced SSN [redacted]

Employer: _____ Occupation: _____

Business Address: _____

Business Phone: _____

In case of an emergency, who should we notify? Gwendolyn Reed

Phone: 330-572-9509 Relationship: Girlfriend

1419 South Arlington Street, Akron, Ohio 44306
Phone: (330) 331-7207
Fax: (330) 331-7567

Sam N. Ghoubrial M.D.
Richard H. Gunning M.D.
Joshua M. Jones M.D.
Lisa M. Esterle D.O.

Authorization for Release of Protected Health Information

Patient Information

Name: CARTER (Last) TaJuan (First) V (Middle) Phone: [redacted]

Address [redacted]

City: Akron State: Ohio Zip: 44311

Sex: ☒Male ☐Female Age: 40 Date of Birth: [redacted]

SSN: [redacted]

I hereby authorize _____
to release any and/or all medical records to:

_____.

This consent authorizes the release of the aforementioned requested information regarding my treatment, hospitalization, emergency or ambulatory health care and/ or evaluation.

I understand that I may revoke this authorization at any time by putting it in writing and presenting it to the Hanchrist Medical Professionals staff. I understand that tha renovation will not apply to information that has already been released in response to this authorization. I understand that the revocation will not apply to my insurance company when the law provides my insurer with the right to consent a claim under my policy.

Unless otherwise revoked, this authorization will expire on the following date, event or condition _____. If a specific expiration date, event or condition is not listed, this consent will expire in three months from the date signed. Further disclosure of the information is prohibited without specific written consent of the person to whom it pertains. I am aware that in some instances, I may be charged a fee for copies and records requested.

I understand this is authorization is voluntary and that I may refuse to sign this authorization. My refusal to sign will not affect my ability to obtain treatment, receive payment, or eligibility for benefits unless allowed by law. I understand that any disclosure of information carries with it a potential for an unauthorized re-disclosure by the recipient and the information may no longer be protected by federal confidentiality or privacy laws/ rules. If I have questions about disclosure of my health information, I can contact the privacy officer.

10-8-15
Date Signed

Patient Signature

1419 South Arlington Street, Akron, Ohio 44306
Phone: (330) 331-7207
Fax: (330) 331-7567

Sam N. Ghoubrial M.D.
Richard H. Gunning M.D.
Joshua M. Jones M.D.
Lisa Esterle D.O.

Auto/ Personal Injury Information

Name of person injured: Tadyan Carter
Date of accident: 10-6-15
Place of accident: (Street/ intersection) [redacted]
Description of accident:
Walking down basement stys and step gave way and I fell
Person at fault: Landlord
Person at fault insurance company:
Insurance company address:

Insurance company phone number:
Claim number assigned:
Name of attorney handling case: Slater and Zaze
Attorney address:
1 Cascade Plaza # 2210
Akron, Ohio 44308
Attorney phone number: 330-762-0700
Are you filing a personal injury claim? Yes or No
Your auto insurance name:
Your auto insurance address:

Your auto insurance phone:

1419 South Arlington Street, Akron, Ohio 44306
Phone: (330) 831-7207
Fax: (330) 831-7567

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al., Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. CV-2016-09-3928 Judge James A. Brogan **Affidavit of Chetoiri Beasley**

I, Chetoiri Beasley, having been duly sworn, have personal knowledge of the following matters of fact, and testify as follows:

1. I was represented by the Akron, Ohio law firm of Kisling, Nestico & Redick, LLC ("KNR") and received treatment from Minas Floros, D.C. ("Dr. Floros"), and Sam Ghoubrial, M.D. ("Dr. Ghoubrial"), in connection with two accidents in which I suffered injuries between 2015 and 2017.

2. The first such accident was an auto accident that occurred on January 11, 2015. Within one day of this accident, I recall that a telemarketer from Akron Square Chiropractic ("ASC") contacted me by phone and asked me to visit their office to receive chiropractic care for the injuries resulting from the accident.

3. After receiving the call from ASC, I visited Dr. Floros at ASC for chiropractic care on January 12, 2015. When I visited ASC on this day, I had not yet retained an attorney to represent me in connection with the accident. After I told ASC representatives that I did not have an attorney, ASC told me that KNR could provide me with better legal representation than other law firms because KNR and ASC were closely associated and worked together. A true and accurate copy of the form I completed for ASC is attached as **Exhibit A.**

NOTARIAL SEAL STATE OF OHIO

Attorney Rachel L. Hazelet
Notary Public, State of Ohio
My Commission
Has No Expiration Date
Sec 147.03 RC

EXHIBIT 4

Rachel Hazelet

4. The next day, when I returned to ASC for additional chiropractic care, ASC representatives called KNR on my behalf. After the phone call, I was given paperwork to fill out for KNR, including a fee agreement. No one explained the fee agreement to me, including that I was authorizing KNR to deduct the costs of my medical care directly from my settlement by signing the fee agreement, a true and accurate copy of which is attached as **Exhibit B.**

5. Dr. Floros and KNR advised me to treat with their pain-management physician, Dr. Ghoubrial. Based on their advice, when I was at ASC on January 14, 2015, I agreed to receive treatment from Dr. Ghoubrial. During my first treatment with Dr. Ghoubrial, I noticed that he maintained a personal office at ASC, next to Dr. Floros's personal office. A true and accurate copy of the medical lien that Dr. Ghoubrial required me to sign on the date of my first treatment is attached as **Exhibit C.**

6. When I was presented with the document reflected in **Exhibit C,** I informed Dr. Ghoubrial that I would prefer to pay the cost of my bills out-of-pocket, and that I did not agree to authorize KNR to deduct the cost of my medical bills from my settlement. I also told Dr. Ghoubrial that I had insurance that could cover the cost of my medical care. In response, Dr. Ghoubrial informed me that he would not treat me if I did not sign the document reflected in **Exhibit C.**

7. In connection with my 2015 accident, Dr. Ghoubrial provided me a TENS unit to take home with me. I told Dr. Ghoubrial that I did not want a TENS unit if I would have to pay for it. Dr. Ghoubrial told me not to worry about the cost, led me to believe that it was free, and suggested that everyone who treated with him received a TENS unit. No one ever informed me what I would be charged for the TENS unit, that Dr. Ghoubrial would earn a substantial profit from charging me for it, or that I could or should obtain a similar device for a much lower price elsewhere.

8. In addition to the TENS unit Dr. Ghoubrial provided me, I also received trigger-point injections. I did not want trigger-point injections, but Dr. Ghoubrial told me that I was required to

receive them to accompany my chiropractic care. Before Dr. Ghoubrial administered the injections, I further objected to the procedure by telling him that I did not like needles. In response, he simply told me that the shots would benefit my back. Based on this experience, I believed that Dr. Ghoubrial was trying to persuade me into accepting injections even though I had indicated I did not wish to receive them. No one ever informed me what I would be charged for trigger-point injections, that Dr. Ghoubrial would earn a substantial profit from charging me for the procedure, or that I could or should obtain a similar treatment for a much lower price elsewhere.

9. When my case settled in April 2015, I received only $6,950.83 of the $21,000.00 that KNR recovered in connection with my accident. Before seeing the settlement memorandum that KNR presented to me, I was not aware that KNR would deduct a narrative fee from my settlement for Dr. Floros or an investigator fee for MRS Investigators. I had likewise never heard of Clearwater Billing Services, LLC. I assumed that all these charges, as well as the medical expenses taken out of my settlement, were legitimate and I did not ask questions about them because I trusted my KNR lawyers and the doctors with whom they had me treat. I further believed they would never deduct illegitimate charges from my settlement. A true and accurate copy of the settlement memorandum I signed is attached as **Exhibit D.**

10. My second accident during this timeframe occurred on November 3, 2017. I signed up with KNR on November 4, 2017, the day after my accident. I recall that an individual who called himself a KNR investigator visited my residence to have me sign a fee agreement for KNR. No one explained that I was authorizing KNR to deduct the costs of my medical care directly from my settlement by signing the fee agreement, a true and accurate copy of which is attached as **Exhibit E.**

11. After signing up with KNR, I visited Dr. Floros to receive chiropractic care for the injuries from the accident based on advice from KNR. My first visit to Dr. Floros was on November 7,

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Attorney Rachel L. Hazelet
Notary Public, State of Ohio
My Commission
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Sec 147.03 RC

Rachel Hazelet

2017, three days after I signed up with KNR. A true and accurate copy of the form I completed for ASC is attached as **Exhibit F.**

12. During my first visit to Dr. Floros, I was also asked to signed a document authorizing Dr. Ghoubrial's practice to treat me, even though I did not receive treatment from Dr. Ghoubrial until the next day. A true and accurate copy of the form I completed for Dr. Ghoubrial's practice is attached as **Exhibit G.**

13. As with my first accident, I again told Dr. Ghoubrial that I would prefer to pay the cost of my bills out-of-pocket, and that I did not want to authorize KNR to deduct the cost of my medical bills from my settlement. I also told Dr. Ghoubrial that I had insurance that could cover the cost of my medical care. Dr. Ghoubrial nonetheless informed me, as he did with my first accident, that I could not be treated if I did not sign the document reflected in **Exhibit G.**

14. In connection with my 2017 accident, Dr. Ghoubrial gave me a second TENS unit, despite that I had already received one. Before I accepted the second TENS unit, I informed Dr. Ghoubrial that I already had one. Dr. Ghoubrial told me in response that I should take another one, further leading me to believe that I would not be charged for it. As before, no one informed me that I would be charged for the device, that Dr. Ghoubrial would earn a substantial profit from charging me for it, or that I could or should obtain a similar device for a much lower price elsewhere.

15. In addition to receiving a second TENS unit, I was also given trigger-point injections. No one ever informed me that I would be charged for this procedure, that Dr. Ghoubrial would earn a substantial profit from charging me for it, or that I could or should obtain a similar treatment for a much lower price elsewhere.

16. When my case settled in April 2018, I received only $9,058.14 of the $28,600.00 that KNR recovered in connection with my accident. Before seeing the settlement memorandum that KNR presented to me, I was not aware that KNR would deduct a narrative fee from my settlement

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Attorney Rachel L. Hazelet
Notary Public, State of Ohio
My Commission
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Sec 147.03 RC

Rachel Hazelet

proceeds for Dr. Floros or an investigator fee for AMC Investigators. As with my first KNR settlement, I assumed that all these charges, as well as the medical expenses taken out of my settlement, were legitimate and I did not ask questions about them because I trusted my KNR lawyers and the doctors with whom they had me treat. I further believed they would never deduct illegitimate charges from my settlement. A true and accurate copy of the settlement memorandum I signed is attached as **Exhibit H.**

17. Throughout the entirety of my relationship with Dr. Ghoubrial and Dr. Floros, I recall that I informed Dr. Ghoubrial and Dr. Floros, as well as their representatives, that I had insurance coverage that could have been used during each accident, instead of having the charges deducted from my settlement. Rather than offering to use my insurance or informing me that I could receive treatment from another provider who would accept my insurance, Drs. Ghoubrial and Floros and my KNR attorneys led me to believe that I would not need to worry about covering the costs of my care. Based on their reassurances, I also believed that the costs of my care would not detrimentally impact my settlements.

18. During the entirety of KNR's representation of me, KNR never advised me and I never otherwise became aware of any work, investigative or otherwise, performed by AMC or MRS Investigations or any other investigator. KNR did not explain to me why I was charged an investigator fee. I did not question the small charges to AMC or MRS Investigations on my settlement memoranda and trusted that my KNR attorneys would not charge me illegitimate fees.

19. Throughout my legal matters, I trusted and assumed that KNR, as my attorneys, and Dr. Ghoubrial, as my physician, would not charge me extreme markups for medical treatment or supplies for profit. I further trusted and assumed that my settlement proceeds would not be used to compensate a referral relationship between KNR and Dr. Floros.

NOTARIAL SEAL STATE OF OHIO

Attorney Rachel L. Hazelet
Notary Public, State of O
My Commission
Has No Expiration
Sec 147.0

Rachel Hazelet

20. Each time KNR presented me with a settlement memorandum to sign, KNR did not explain to me what the individual charges represented. I would have refused to sign each settlement memorandum had KNR accurately informed me about the true nature of the investigator fee, the narrative fee, and the amounts being paid to Drs. Floros or Ghoubrial from my settlement.

I affirm the above to be true and accurate to the best of my knowledge under penalty of perjury.

Signature of Affiant Date 5-03-19

Sworn to and subscribed before me on May 3, 2019 at Akron, Ohio.

Notary Public, State of Ohio

Attorney Rachel L. Hazelet
Notary Public, State of Ohio
My Commission
Has No Expiration Date
Sec 147.03 RC

CONFIDENTIAL PATIENT INFORMATION

DATE	1-12-15
NAME	Chetoiri Beasley
STREET ADDRESS	[redacted]
CITY	Akron OH
ZIP	44306
CELL PHONE/HOME PHONE	[redacted]
DATE OF BIRTH	[redacted]
SSN	[redacted]
EMAIL ADDRESS:	

SEX: ___Male ___Female
MARITAL STATUS: ___Single ___Married ___Divorced

PRESENT COMPLAINT/PAIN (circle all that apply):

Neck pain	Upper/ Mid Back Pain	Low Back Pain
Shoulder pain (right / left)	Elbow pain (right / left)	Wrist/Hand Pain (right / left)
Hip Pain (right / left)	Knee pain (right / left)	Ankle/Foot Pain (right / left)
Headaches	Chest Pain	Face Pain
Nausea / Vomiting	Dizziness / Memory Loss	Anxiety / Depressed / Fatigue

Other Symptoms: _____

ARE THE COMPLAINTS/PAIN CIRCLED ABOVE RELATED TO (CIRCLE ONE):

CAR ACCIDENT	WORK INJURY	OTHER

DATE OF ACCIDENT: 12-Dec-15 1-12-15

NAME OF INSURANCE COMPANY OF THE AT FAULT PERSON: _____

NAME OF YOUR CAR INSURANCE: _____

NAME OF YOUR PERSONAL HEALTH INSURANCE (If you have): _____

EXHIBIT A

PS

Kisling, Nestico & Redick, LLC
Attorneys at Law

CONTINGENCY FEE AGREEMENT

Chatairi Beasley, hereinafter called Client, request and authorize Kisling, Nestico & Redick, LLC, hereinafter called Attorneys, to represent myself for all purposes in connection with clients injuries and damages arising out of an incident which occurred on the 11 day of January, 15 in Summit County, Ohio, on the following conditions:

1) Attorneys will devote their full professional abilities to Clients case and Client agrees to fully cooperate with Attorneys. In the event of an appeal, an additional agreement for services shall be made by the parties hereto. No appeal will be made without both parties agreeing thereto. I understand that my case may be handled by any one or more of the members of the firm of Kisling, Nestico & Redick, LLC and different members may handle the case at different times. Client understands and agrees that Attorneys are not representing Client for any Workers Compensation, medical malpractice, disability, or employment related claims arising from this incident, injuries or damages, unless separate written contingency fee agreements have been signed for such claims.

2) The Attorneys shall receive as a fee for their services, one-third *(1/3)* of the total gross amount of recovery of any and all amounts recovered, and Client hereby assigns said amount to Attorneys and authorizes Attorneys to deduct said amount from the proceeds recovered. Attorney shall have a charging lien upon the proceeds of any insurance proceeds, settlement, judgment, verdict award or property obtained on your behalf. IN THE EVENT OF NO RECOVERY, CLIENT SHALL OWE ATTORNEYS NOTHING FOR SERVICES RENDERED.

3) Client agrees and authorizes Attorneys to deduct, from any proceeds recovered, any expenses which may have been advanced by Attorneys in preparation for settlement and/or trial of Clients case. IN THE EVENT OF NO RECOVERY, CLIENT SHALL OWE ATTORNEYS NOTHING FOR SUCH ADVANCED EXPENSES.

Client authorizes and directs Attorneys to deduct from Clients share of proceeds and pay, directly to any doctor, hospital, expert or other medical creditor, any unpaid balance due them for Clients care and treatment.

4) Client agrees that Attorneys have made no promises or guarantees regarding the outcome of Clients claim. Client understands Attorneys will investigate Clients claim and then Attorneys shall have the right to withdraw from representation.

Signed this 13 day of January, 15

CLIENT

ATTORNEY

EXHIBIT B

Sam N. Ghoubrial M.D.
Richard H. Gunning M.D.
Joshua M. Jones M.D.
Lisa M. Esterle D.O.

MEDICAL LIEN

Re: Patient Chastoni Beasley

First date of service: 1-14-15

I hereby direct you to pay to Clearwater Billing Services, LLC from the net proceeds of any settlement, claim, judgment, verdict or award, for any and all services rendered as a result of an injury that I received on 1-11-15.

Said amount being fair and reasonable price of medical services provided by Hancrist, LLC for me at the direction of my doctor or doctors. I authorize you to withhold said sums from the net proceeds of any settlement, claim, judgment, verdict, or awards as may be necessary to pay Clearwater Billing Services, LLC

I fully understand that I am directly and fully responsible to Clearwater Billing Services, LLC for the aforementioned account submitted to me by Clearwater Billing Services, LLC for services rendered me, and that this agreement is made solely for its additional protection and in consideration of its awaiting payment. I further understand that such payment is not contingent on any settlement, claim, judgment, verdict or award by which I may eventually recover said fee.

Dated: 1-14-15

The undersigned being attorney of record for the above patient does hereby agree to observe all terms of the above and agrees to withhold such claims from the net proceeds of any settlement, claim, judgment, verdict, or award as may be necessary to adequately protect Clearwater Billing Services, LLC provided that said lien is subordinate to attorney's lien herein.

Dated: 1-19-15

Kisling, Nestico & Redick, LLC
Attorneys at Law

Kisling, Nestico & Redick, LLC
3412 W. Market St.
Akron, Ohio 44333
(330) 869-9007
(330) 869-9008 (fax)

e 1-16-15 DS

215 East Waterloo Road, Suite 12, Akron, Ohio 44319
Phone: (330) 331-7207
Fax: (330) 331-7567

EXHIBIT C

247295 / Chetoiri Beasley

Settlement Memorandum

Recovery:

REC	Pekin Insurance Company	$ 20,500.00
PSF	Preferred Capital Funding-Ohio, LLC	$ 500.00
		$ 21,000.00

DEDUCT AND RETAIN TO PAY:

Kisling, Nestico & Redick, LLC	
Floros, Dr. Minas; narr fee	$ 150.00
MRS Investigations, Inc.	$ 50.00
Summa Health System	$ 22.47
Summa Health System	$ 39.20
Clearwater Billing Services, LLC	$ 50.00
Total Due	$ 311.67

DEDUCT AND RETAIN TO PAY TO OTHERS:

Akron Square Chiropractic	$ 3,880.00	$3,000 / KMZ
Clearwater Billing Services, LLC	$ 3,000.00	
Kisling, Nestico & Redick, LLC	($6,833.33) $ 6,075.00	
National Diagnostic Imaging Consultants	$ 110.00	
Ohio Tort Recovery Unit	$ 400.00	
Preferred Capital Funding-Ohio, LLC	$ 622.50	
Total Due Others	$ 14,087.50	

Total Deductions	$ 14,399.17
Total Amount Due to Client	$ 6,600.83
Less Previously Paid to Client	$ 500.00
Net Amount Due to Client	$ 6,100.83

I hereby approve the above settlement and distribution of proceeds. I have reviewed the above information and I acknowledge that it accurately reflects all outstanding expenses associated with my injury claim. I further understand that the itemized bills listed above will be deducted and paid from the gross amount of my settlement except as otherwise indicated. Finally, I understand that any bills not listed above, including but not limited to Health Insurance or Medical Payments Subrogation and/or those initialed by me to indicate that they are not being paid from the settlement are my responsibility and not the responsibility of Kisling, Nestico & Redick, LLC.

$1 + 880 = $6,980.83

Date: 4-20-15

Name: _____
Chetoiri Beasley

Firm: _____
Kisling, Nestico & Redick, LLC

EXHIBIT D

Kisling, Nestico & Redick, LLC
Attorneys at Law

CONTINGENCY FEE AGREEMENT

Chetoiri Beasley, hereinafter called Client, request and authorize Kisling, Nestico & Redick, LLC, hereinafter called Attorneys, to represent Myself for all purposes in connection with clients injuries and damages arising out of an incident which occurred on the 3 day of November 2017 in Summit, County, Ohio, on the following conditions:

1) Attorneys will devote their full professional abilities to Client's case and Client agrees to fully cooperate with Attorneys. In the event of an appeal, an additional agreement for services shall be made by the parties hereto. No appeal will be made without both parties agreeing thereto. I understand that my case may be handled by any one or more of the members of the firm of Kisling, Nestico & Redick, LLC and different members may handle the case at different times. Client understands and agrees that Attorneys are not representing Client for any Workers Compensation, Medical Malpractice, Disability, or Employment related claims arising from this incident, injuries or damages, unless separate written contingency fee agreements have been signed for such claims.

2) The Attorneys shall receive as a fee for their services, one-third *(1/3)* of the total gross amount of recovery of any and all amounts recovered, and Client hereby assigns said amount to Attorneys and authorizes Attorneys to deduct said amount from the proceeds recovered. Attorney shall have a charging lien upon the proceeds of any insurance proceeds, settlement, judgment, verdict award or property obtained on your behalf.
IN THE EVENT OF NO RECOVERY, CLIENT SHALL NOT OWE ATTORNEYS FOR SERVICES RENDERED.

3) Client agrees and authorizes Attorneys to deduct, from any proceeds recovered, any expenses which may have been advanced by Attorneys as required in the Attorney's professional judgment in preparation for settlement and/or trial of Client's case. Such expenses include a flat rate fee of $50.00 to $100.00 for investigative services provided by a third party. IN THE EVENT OF NO RECOVERY, CLIENT SHALL NOT OWE ATTORNEYS FOR SUCH ADVANCED EXPENSES.

Client authorizes and directs Attorneys to deduct from Clients share of proceeds and pay directly to any doctor, hospital, expert and/or other medical creditor any unpaid balance due to them for Client's care and treatment.

4) Client agrees that Attorneys have made no promises or guarantees regarding the outcome of Client's claim. Client understands Attorneys will investigate Client's claim and then Attorneys shall have the right to withdraw from representation.

5) Client agrees to allow us to provide medical and health insurance providers with information and status updates to facilitate medical care and/or resolution of client's medical expenses/subrogation claims per the client's authorization.

DATE: 11/04/17

CLIENT

ATTORNEY

EXHIBIT E

CONFIDENTIAL PATIENT INFORMATION

DATE	November 7 2017
NAME	Chetorei K Beasley
STREET ADDRESS	[redacted]
CITY	Akron OH
ZIP	44302
CELL PHONE/HOME PHONE	[redacted] HOME:
DATE OF BIRTH	[redacted]
SSN	[redacted]
EMAIL ADDRESS:	

SEX: ___Male X Female
MARITAL STATUS: X Single ___Married ___Divorced

PRESENT COMPLAINT/PAIN (circle all that apply):

Neck pain	Upper/ Mid Back Pain	Low Back Pain
Shoulder pain (right / left)	Elbow pain (right / left)	Wrist/Hand Pain (right / left)
Hip Pain (right / left)	Knee pain (right / left)	Ankle/Foot Pain (right / left)
Headaches X	Chest Pain	Face Pain
Nausea / Vomiting	Dizziness / Memory Loss	Anxiety / Depressed / Fatigue

Other Symptoms: _____

ARE THE COMPLAINTS/PAIN CIRCLED ABOVE RELATED TO (CIRCLE ONE):

CAR ACCIDENT X	WORK INJURY	OTHER

DATE OF ACCIDENT: 11-03-17

NAME OF INSURANCE COMPANY OF THE AT FAULT PERSON: _____

NAME OF YOUR CAR INSURANCE: PASSENGER

NAME OF YOUR PERSONAL HEALTH INSURANCE (if you have): CARESOURCE

EXHIBIT F

Sam N. Ghoubrial M.D.
Richard H. Gunning M.D.
Lisa M. Esterle D.O.

MEDICAL LIEN

Re: Patient Chetairi Beasley

First date of service: 11-08-17

I hereby direct you to pay to Clearwater Billing Services, LLC from the net proceeds of any settlement, claim, judgment, verdict or award, for any and all medical services rendered as a result of an injury that I received on 11 3 17.

Said amount being fair and reasonable price of medical services provided by our medical providers for me at the direction of my doctor or doctors. I authorize you to withhold said sums from the net proceeds of any settlement, claim, judgment, verdict, or awards as may be necessary to pay Clearwater Billing Services, LLC. Furthermore, I also request that you forward all my records and bills to my attorney.

I fully understand that I am directly/fully responsible and guarantee payment to Clearwater Billing Services, LLC for the aforementioned account submitted to me by Clearwater Billing Services, LLC for services rendered me, and that this agreement is made solely for its additional protection and in consideration of its awaiting payment. I further understand that such payment is not contingent on any settlement, claim, judgment, verdict or award by which I may eventually recover said fee.

Dated: 11-02-17

The undersigned being attorney of record for the above patient does hereby agree to observe all terms of the above and agrees to withhold such claims from the net proceeds of any settlement, claim, judgment, verdict, or award as may be necessary to adequately protect Clearwater Billing Services, LLC provided that said lien is subordinate to attorney's lien herein.

Dated: 11/10/17

Kisling, Nestico & Redick, LLC
Attorneys at Law

Kisling, Nestico & Redick, LLC
3412 W. Market St.
Akron, Ohio 44333
(330) 869-9007
(330) 869-9008 (fax)

1419 South Arlington Street, Akron, Ohio 44306
Phone: (330) 331-7207 Fax: (330) 331-7567

EXHIBIT G

275579 / Chetoiri Beasley

Settlement Memorandum

Recovery:

PSF	Oasis Legal Finance	$ 350.00
REC	Erie Insurance	$ 27,000.00
PSF	Oasis Legal Finance	$ 750.00
PSF	Oasis Legal Finance	$ 500.00
		$ 28,600.00

DEDUCT AND RETAIN TO PAY:

Kisling, Nestico & Redick

AMC Investigations;	$ 50.00
Clearwater Billing Services, LLC	$ 50.00
Floros, Dr. Minas	$ 150.00
Chartswap	$ 42.00
Medinform	$ 26.00
Akron General Medical Center	$ 63.86
Total Due	**$ 381.86**

DEDUCT AND RETAIN TO PAY TO OTHERS:

Akron Square Chiropractic	($4,010.00)	$ 3,200.00
Clearwater Billing Services, LLC	($2,150.00)	$ 1,500.00
Kisling, Nestico & Redick		$ 9,000.00
National Diagnostic Imaging Consultants	($200.00)	$ 100.00
Oasis Legal Finance		$ 2,260.00
Ohio Tort Recovery Unit		$ 3,100.00
Total Due Others		**$ 19,160.00**

Total Deductions	**$ 19,541.86**
Total Amount Due to Client	$ 9,058.14
Less Previously Paid to Client	$ 1,600.00
Net Amount Due to Client	**$ 7,458.14**

I hereby approve the above settlement and distribution of proceeds. I have reviewed the above information and attorney's fees with Kisling, Nestico & Redick. I acknowledge that it accurately reflects all costs, including but not limited to, the investigation fee, and all outstanding expenses associated with my injury claim. I further understand that the itemized bills listed above will be deducted and paid from the gross amount of my settlement except as otherwise indicated. If any amount was withheld from the settlement for potential subrogation interests, any balance due after the subrogation interest is satisfied may be subject to Attorney Fees not to exceed the contractually agreed amount. Finally, I understand that any bills not listed above, including but not limited to Health Insurance or Medical Payments Subrogation and/or those initialed by me to indicate that they are not being paid from the settlement are my responsibility and not the responsibility of Kisling, Nestico & Redick.

Date: 4-20-18

Name: _____
Chetoiri Beasley

Firm: _____
Kisling, Nestico & Redick

EXHIBIT H

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al., Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. CV-2016-09-3928 Judge James A. Brogan **Affidavit of Monique Norris**

I, Monique Norris, having been duly sworn, have personal knowledge of the following matters of fact, and testify as follows:

1. I was represented by the Akron, Ohio law firm of Kisling, Nestico & Redick, LLC ("KNR") and received treatment from Minas Floros, D.C. ("Dr. Floros"), and Sam Ghoubrial, M.D. ("Dr. Ghoubrial"), in connection with a car accident in which I suffered injuries on July 29, 2013.

2. Within a matter of hours after I initially contacted KNR on July 30, 2013, an individual who called himself a KNR investigator visited me to have me sign a fee agreement for KNR. At the time the investigator visited me, I had not decided whether I wanted to have KNR represent me in connection with my accident. I likewise do not recall verbally agreeing to the representation during my initial contact to KNR. Because I still had questions about my case and the process relating to KNR's representation of me, I hesitated to sign the fee agreement.

3. Despite my hesitation, I was told that KNR could not discuss my case until I signed up with the firm and reluctantly signed an electronic copy of the agreement. I was not given a copy of the document I had signed. No one explained that I was authorizing KNR to deduct the costs of my medical care directly from my settlement by signing the fee agreement, that I would be charged a sign-up fee for the investigator visiting me to sign the fee agreement, or that KNR would send me to

EXHIBIT 5

treat with Dr. Floros and Dr. Ghoubrial, both of whom would refuse to accept my health insurance, as a part of a referral relationship KNR actively maintained with such providers. A true and accurate copy of the fee agreement I signed is attached as **Exhibit A.**

4. The day after I signed-up with KNR, I received advice and instruction from my KNR attorney to treat with Dr. Floros at Akron Square Chiropractic ("ASC"). Based on that advice and instruction, I visited ASC for chiropractic care on July 31, 2013. In the paperwork I completed for ASC, I indicated that I had active health insurance coverage through Buckeye Insurance, a true and accurate copy of which is attached as **Exhibit B.**

5. Because I was not satisfied with the treatment I was receiving from Dr. Floros, I complained to KNR and asked to treat with a different chiropractor. In response, KNR advised me that my case would become more difficult and would take longer to resolve if I stopped treating with Dr. Floros. When I brought these concerns to Dr. Floros, he offered to increase the amount of care I was receiving and advised me that treating with a different chiropractor would hurt my case.

6. Once I began treating with Dr. Floros at KNR's advice and instruction, I was sent to treat with their pain-management physician, Dr. Ghoubrial. I first received treatment from Dr. Ghoubrial on August 2, 2013. No person at Dr. Ghoubrial's practice asked me whether I had health insurance, despite that I did have insurance that could have paid for my medical care instead of having such costs deducted directly from my settlement. A true and accurate copy of the medical lien that Dr. Ghoubrial required me to sign on the date of my first treatment is attached as **Exhibit C**.

7. In connection with my accident, Dr. Ghoubrial's practice provided me a TENS unit to take home with me. No one at Dr. Ghoubrial's practice ever informed me that I would be charged for the TENS unit, that Dr. Ghoubrial would earn a substantial profit from charging me for it, or that I could or should obtain a similar device for a much lower price elsewhere.

8. In October 2013, a few months into KNR's representation of me, I explained to my KNR attorney that I wanted to resolve my case as quickly as possible. In response, I was provided what I now understand to be forms for a loan from a company called Liberty Capital Funding LLC ("LCF") as a means to access settlement proceeds in advance of my case's resolution. KNR did not inform me of other sources of funding that were not as costly, caused me to believe that LCF was the best available source of funding, and did not disclose to me in any manner that KNR's managing partner had a relationship with LCF. I would not have taken out a loan from LCF without the information and recommendation I received from KNR. A true and accurate copy of the contract I signed with LCF is attached as **Exhibit D.**

9. When my case settled in May 2014, I received only $1,845.91 of the $6,732.55 that KNR recovered in connection with my accident after all fees and expenses were deducted from my settlement. Before seeing the settlement memorandum that KNR presented to me, I was not aware that KNR would deduct a narrative fee from my settlement for Dr. Floros or an investigator fee for MRS Investigators. I assumed that all these charges, as well as the medical expenses taken out of my settlement, were legitimate and I did not ask questions about them because I trusted my KNR lawyers and the doctors with whom they had me treat. I further believed they would never deduct illegitimate charges from my settlement. A true and accurate copy of the settlement memorandum I signed is attached as **Exhibit E.**

10. Throughout the entirety of my relationship with Dr. Ghoubrial and Dr. Floros, I recall that I informed Dr. Ghoubrial and Dr. Floros, as well as their representatives, that I had insurance coverage that could have been used to cover the cost of my medical care, instead of having the charges deducted from my settlement. Rather than offering to use my insurance or informing me that I could receive treatment from another provider who would accept my insurance, Drs. Ghoubrial and Floros and KNR led me to believe that I would not need to worry about covering

the costs of my care. Based on their reassurances, I also believed that the costs of my care would not detrimentally impact my settlements.

11. During the entirety of KNR's representation of me, KNR never advised me and I never otherwise became aware of any work, investigative or otherwise, performed by MRS Investigations. KNR did not explain to me why I was charged an investigator fee. I did not question the small charges to MRS Investigations on my settlement memorandum and trusted that my KNR attorneys would not charge me illegitimate fees.

12. I trusted and assumed that KNR, as my attorneys, and Dr. Ghoubrial's practice, in charge of my medical care, would not charge me extreme markups for the TENS unit I was provided. I further trusted and assumed that my settlement proceeds would not be used to compensate a referral relationship between KNR and Dr. Floros.

13. When KNR presented me with the settlement memorandum reflected in **Exhibit E**, KNR did not explain to me what the individual charges represented. I would have refused to sign the settlement had KNR accurately informed me about the true nature of the investigator fee, the narrative fee, and the amounts being paid to Drs. Floros or Ghoubrial from my settlement.

I affirm the above to be true and accurate to the best of my knowledge under penalty of perjury.

[signature] 5/6/19

Signature of Affiant Date

Sworn to and subscribed before me on 5·6·2019 at Fairlawn, Ohio.

[signature]

Notary Public, State of Ohio

NOTARIAL SEAL STATE OF OHIO

Attorney Peter G. Pattakos
Resident Summit County
Notary Public, State of Ohio
My Commission Has No Expiration Date
Sec 147.03 RC

Kisling, Nestico & Redick, LLC
Attorneys at Law

CONTINGENCY FEE AGREEMENT

Monique Norris, hereinafter called Client, request and authorize Kisling, Nestico & Redick, LLC, hereinafter called Attorneys, to represent Myself for all purposes in connection with clients injuries and damages arising out of an incident which occurred on the 29 day of July, 13 in Summit, County, Ohio, on the following conditions:

1) Attorneys will devote their full professional abilities to Clients case and Client agrees to fully cooperate with Attorneys. In the event of an appeal, an additional agreement for services shall be made by the parties hereto. No appeal will be made without both parties agreeing thereto. I understand that my case may be handled by any one or more of the members of the firm of Kisling, Nestico & Redick, LLC and different members may handle the case at different times. Client understands and agrees that Attorneys are not representing Client for any Workers Compensation, medical malpractice, disability, or employment related claims arising from this incident, injuries or damages, unless separate written contingency fee agreements have been signed for such claims.

2) The Attorneys shall receive as a fee for their services, one-third *(1/3)* of the total gross amount of recovery of any and all amounts recovered, and Client hereby assigns said amount to Attorneys and authorizes Attorneys to deduct said amount from the proceeds recovered. Attorney shall have a charging lien upon the proceeds of any insurance proceeds, settlement, judgment, verdict award or property obtained on your behalf. IN THE EVENT OF NO RECOVERY, CLIENT SHALL OWE ATTORNEYS NOTHING FOR SERVICES RENDERED.

3) Client agrees and authorizes Attorneys to deduct, from any proceeds recovered, any expenses which may have been advanced by Attorneys in preparation for settlement and/or trial of Clients case. IN THE EVENT OF NO RECOVERY, CLIENT SHALL OWE ATTORNEYS NOTHING FOR SUCH ADVANCED EXPENSES.

Client authorizes and directs Attorneys to deduct from Clients share of proceeds and pay, directly to any doctor, hospital, expert or other medical creditor, any unpaid balance due them for Clients care and treatment.

4) Client agrees that Attorneys have made no promises or guarantees regarding the outcome of Clients claim. Client understands Attorneys will investigate Clients claim and then Attorneys shall have the right to withdraw from representation.

Signed this 30 day of July, 2013

Monique Norris
CLIENT

ATTORNEY

EXHIBIT A

KNR004320

CONFIDENTIAL PATIENT INFORMATIC...

DATE	7-31-13
NAME	Monique Norris
STREET ADDRESS	[redacted]
CITY	Akron
ZIP	44306
CELL PHONE/HOME PHONE	[redacted]
DATE OF BIRTH	
SSN	
EMAIL ADDRESS:	

SEX: ___Male X Female
MARITAL STATUS: X Single ___Married ___Divorced

PRESENT COMPLAINT/PAIN (circle all that apply):

Neck pain X	Upper/ Mid Back Pain	Low Back Pain X
Shoulder pain (right / left)	Elbow pain (right / left)	Wrist/Hand Pain (right / left)
Hip Pain (right / left)	Knee pain (right / left)	Ankle/Foot Pain (right / left)
Headaches	Chest Pain	Face Pain
Nausea / Vomiting	Dizziness / Memory Loss	Anxiety / Depressed / Fatigue

Other Symptoms: _____

ARE THE COMPLAINTS/PAIN CIRCLED ABOVE RELATED TO (CIRCLE ONE):

CAR ACCIDENT	WORK INJURY	OTHER

DATE OF ACCIDENT: 7/29/13

NAME OF INSURANCE COMPANY OF THE AT FAULT PERSON: Nationwide

NAME OF YOUR CAR INSURANCE: Motorist Mutual

NAME OF YOUR PERSONAL HEALTH INSURANCE (If you have): Buckeye

EXHIBIT B

Sam N. Ghoubrial M.D.
Richard H. Gunning M.D.
Joshua M. Jones M.D.
MEDICAL ASSIGNMENT

Re: Patient Monique Norris

First date of service: 8/2/13

I hereby direct you to pay to Clearwater Billing Services, LLC from the net proceeds of any settlement, claim, judgment, verdict or award, for any and all services rendered as a result of an injury that I received on 7/29/13.

Said amount being fair and reasonable price of medical services provided by Hancrist, LLC for me at the direction of my doctor or doctors. I authorize you to withhold said sums from the net proceeds of any settlement, claim, judgment, verdict, or awards as may be necessary to pay Clearwater Billing Services, LLC

I fully understand that I am directly and fully responsible to Clearwater Billing Services, LLC for the aforementioned account submitted to me by Clearwater Billing Services, LLC for services rendered me, and that this agreement is made solely for its additional protection and in consideration of its awaiting payment. I further understand that such payment is not contingent on any settlement, claim, judgment, verdict or award by which I may eventually recover said fee.

X **Dated:** 8/2/13 X

The undersigned being attorney of record for the above patient does hereby agree to observe all terms of the above and agrees to withhold such claims from the net proceeds of any settlement, claim, judgment, verdict, or award as may be necessary to adequately protect Clearwater Billing Services, LLC provided that said lien is subordinate to attorney's lien herein.

Dated: _____

Kisling, Nestico & Redick, LLC
Attorneys at Law

@ 8-2-13 TS

Kisling, Nestico & Redick, LLC
3412 W. Market St.
Akron, Ohio 44333
(330) 869-9007
(330) 869-9008 (fax)

1134 Brown Street Suite 1A Akron, Ohio 44301
Phone: (330) 331-7207
Fax: (330) 331-7567

EXHIBIT C

232154 / Monique Norris

Settlement Memorandum

Recovery:

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

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	

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	

Total Deductions	$ 4,886.64
Total Amount Due to Client	$ 1,845.91
Less Previously Paid to Client	$ 1,500.00
Net Amount Due to Client	$ 345.91

I hereby approve the above settlement and distribution of proceeds. I have reviewed the above information and I acknowledge that it accurately reflects all outstanding expenses associated with my injury claim. I further understand that the itemized bills listed above will be deducted and paid from the gross amount of my settlement except as otherwise indicated. Finally, I understand that any bills not listed above, including but not limited to Health Insurance or Medical Payments Subrogation and/or those initialed by me to indicate that they are not being paid from the settlement are my responsibility and not the responsibility of Kisling, Nestico & Redick, LLC.

Date: 5/25/14

Name: Monique Norris

Firm: Kisling, Nestico & Redick, LLC

EXHIBIT E

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al., Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. CV-2016-09-3928 Judge James A. Brogan **Affidavit of Richard Harbour**

I, Richard Harbour, having been duly sworn, am over 21 years of age, have personal knowledge of the following matters of fact, and testify as follows:

1. I was represented by the Akron, Ohio law firm of Kisling Nestico & Redick ("KNR") in connection with four separate cases involving four separate car accidents I was in between 2011 and 2016.

2. The first accident was an auto accident that occurred on April 15, 2011. When I signed the KNR fee agreement to have KNR represent me in connection with this accident, no one explained the fee agreement to me, including that I was authorizing KNR to deduct the costs of my medical care directly from my settlement by signing the fee agreement.

3. In the first case, I was instructed by KNR attorney Mark Lindsey to treat with chiropractors from Rolling Acres chiropractic, and Dr. Sam Ghoubrial, who Mr. Lindsey referred to as "KNR's doctor," because the firm already had a relationship with him. Based on Mr. Lindsey's advice, I began treating with Dr. Ghoubrial on April 27, 2011. Before he would treat me, Dr. Ghoubrial required me to sign a medical lien, a true and accurate copy of which is attached as **Exhibit A.**

4. I saw Dr. Ghoubrial several times in connection with this first accident over the course of only a few months. Each time I saw him, the appointment took approximately ten minutes, Dr. Ghoubrial did

EXHIBIT 6

not check on any of my vital signs, he gave me an injection of some kind of medication, and he gave me a prescription for Flexeril, a muscle relaxer.

5. I have cerebral palsy, and I did not feel well when I first took the Flexeril that Dr. Ghoubrial prescribed me, so I stopped taking it after only having taken it once or twice. When I went back to Dr. Ghoubrial's office for my second appointment with him, he gave me another prescription for Flexeril. When I told him that I did not need this prescription because I still had a whole bottle of the medication at home, he did not respond, and indicated that I should take the prescription anyway.

6. I then asked my KNR attorneys about why Dr. Ghoubrial would give me this prescription when I told him I did not need it, and KNR attorney Robert Redick said in response that I should get the prescription filled even if I wasn't taking the pills, because it was important for my case that it looked like I was following the doctor's orders.

7. At one of my appointments with Dr. Ghoubrial in 2012, he gave me a TENS unit to take home with me. He never informed me that I would be charged for it, he never informed me that he would earn a profit from charging me for this device, and he never informed me or suggested that I could or should obtain a similar device for a lower price elsewhere.

8. When my case settled in April 2012, I received only $6,490.89 of the $20,000 that KNR recovered in connection with my accident after the deduction of all fees and expenses I incurred at KNR's direction. Before seeing the settlement memorandum that KNR presented to me, I was not aware that KNR would deduct an investigator fee for AMC Investigations. I had likewise never heard of Clearwater Billing Services, LLC. I assumed that all these charges, as well as the medical expenses taken out of my settlement, were legitimate and I did not ask questions about them because I trusted my KNR lawyers and the doctors with whom they had me treat. I further believed they would never deduct illegitimate charges from my settlement. A true and accurate copy of the settlement memorandum I signed is attached as **Exhibit B.**

9. My second accident during this timeframe occurred on May 10, 2012. When I signed the KNR fee agreement to have KNR represent me in connection with this accident, no one explained that I was authorizing KNR to deduct the costs of my medical care directly from my settlement by signing the fee agreement.

10. My KNR attorneys again directed me to treat with Dr. Ghoubrial. Based on their direction, I began treating with Dr. Ghoubrial on May 23, 2012. Again, Dr. Ghoubrial required me to sign a medical lien, a true and accurate copy of which is attached as **Exhibit C.**

11. Dr. Ghoubrial also gave me a second TENS unit to take home. When I told him that I still had my TENS unit from the 2011 accident, he simply told me I should take another one. Again, he never informed me that I would be charged for it, he never informed me that he would earn a profit from charging me for this device, and he never informed me or suggested that I could or should obtain a similar device for a lower price elsewhere.

12. As with my appointments with Dr. Ghoubrial in connection with the 2011 accident, each time I saw him, the appointment took approximately ten minutes, Dr. Ghoubrial did not check on any of my vital signs, he gave me an injection of some kind of medication, and he gave me a prescription for Flexeril.

13. Over the course of KNR's representation of me for this accident, my deposition was taken by the insurance company defending the claim. Before my deposition, my KNR lawyer advised me that the insurance company's lawyer, who would be asking me questions during the deposition, did not like Dr. Ghoubrial and that my having treated with Dr. Ghoubrial would be a "sticking point" throughout the deposition.

14. When my case settled in July 2015, I received only $6,400.00 of the $22,500.00 that KNR recovered in connection with my accident. Before seeing the settlement memorandum that KNR presented to me, I was not aware that KNR would deduct an investigator fee. As with my first KNR

settlement, I assumed that all these charges, as well as the medical expenses taken out of my settlement, were legitimate and I did not ask questions about them because I trusted my KNR lawyers and the doctors with whom they had me treat. I further believed they would never deduct illegitimate charges from my settlement. A true and accurate copy of the settlement memorandum I signed is attached as **Exhibit D.**

15. Throughout the entirety of my relationship with Dr. Ghoubrial, I was led to believe that I would not need to worry about covering the costs of my care and that the costs of my care would not hurt my settlements.

16. I trusted and assumed that KNR, as my attorneys, and Dr. Ghoubrial, as my doctor, would not charge me extreme markups for medical treatment or supplies, and would not sell me medical devices at a profit without informing me that I could obtain the same devices at a lower cost from alternative sources.

17. Approximately two days after one of my appointments with Dr. Ghoubrial in connection with the 2012 accident, I complained to my chiropractor Dr. Auck that I did not feel well. Dr. Auck checked my blood pressure in response to my complaint, found that it was extremely high, and recommended that I go immediately to a hospital. I then went immediately to the emergency room at Barberton Hospital where I was treated for high blood pressure. After this episode, I informed my KNR attorneys that I would no longer treat with Dr. Ghoubrial again for any reason.

18. During the entirety of KNR's representation of me, KNR never advised me of and I never otherwise became aware of any work, investigative or otherwise, performed by AMC Investigations or MRS Investigations or any outside investigator. Likewise, KNR did not explain to me why I was charged an investigator fee. I did not question the small charges to these companies on my settlement memoranda and trusted that KNR, as my attorneys, would not charge me illegitimate fees.

19. Each time KNR presented me with a settlement memorandum to sign, KNR did not explain to

me what the individual charges represented. I would have refused to sign each settlement memorandum had KNR accurately informed me about the true nature of the investigator fee and the amounts being paid to Dr. Ghoubrial from my settlement.

I affirm the above to be true and accurate to the best of my knowledge under penalty of perjury.

[redacted] 5/8/19

Signature of Affiant Date

Sworn to and subscribed before me on 5/8/19 at RITTMAN, Ohio.

Rachel Hazelet

Notary Public, State of Ohio

Attorney Rachel L. Hazelet
Notary Public, State of Ohio
My Commission
Has No Expiration Date
Sec 147.03 RC

[redacted]

Sam N. Ghoubrial M.D.
Richard H. Gunning M.D.
MEDICAL ASSIGNMENT

Re: Patient Richie A Harbour

First date of service: 4\27\11

I hereby direct you to pay to Clearwater Billing Services, LLC from the net proceeds of any settlement, claim, judgment, verdict or award, for any and all services rendered as a result of an injury that I received on 4\15\2011.

Said amount being fair and reasonable price of medical services provided by Hancrist, LLC for me at the direction of my doctor or doctors. I authorize you to withhold said sums from the net proceeds of any settlement, claim, judgment, verdict, or awards as may be necessary to pay Clearwater Billing Services, LLC

I fully understand that I am directly and fully responsible to Clearwater Billing Services, LLC for the aforementioned account submitted to me by Clearwater Billing Services, LLC for services rendered me, and that this agreement is made solely for its additional protection and in consideration of its awaiting payment. I further understand that such payment is not contingent on any settlement, claim, judgment, verdict or award by which I may eventually recover said fee.

Dated: 4\27\11 x Richie A Harbour

The undersigned being attorney of record for the above patient does hereby agree to observe all terms of the above and agrees to withhold such claims from the net proceeds of any settlement, claim, judgment, verdict, or award as may be necessary to adequately protect Clearwater Billing Services, LLC provided that said lien is subordinate to attorney's lien herein.

Dated: _____

Kisling, Nestico & Redick, LLC
Attorneys at Law

Kisling, Nestico & Redick, LLC
3200 W. Market St., Suite 300
Akron, Ohio 44333
(330) 869-9007
(330) 869-9008 (fax)
1134 Brown Street Suite 1A Akron, Ohio 44301 (330) 925-1500

EXHIBIT A

4/25/2012

214858 / Richard A Harbour

Settlement Memorandum

Recovery:

REC	Erie Insurance	$ 20,000.00
		$ 20,000.00

DEDUCT AND RETAIN TO PAY:

Kisling, Nestico & Redick, LLC	
Akron General Medical Center **;	$ 31.23
Akron General Medical Center **; Records/KN	$ 34.38
AMC Investigations;	$ 50.00
Clearwater Billing Services, LLC;	$ 50.00
Akron General Health System;	$ 1.50
Total Due	$ 167.11

DEDUCT AND RETAIN TO PAY TO OTHERS:

Akron General Medical Center **	RAH	$ 2,470.00
Akron General Medical Center **	RAH	$ 342.00
General Emergency Medical Specialists, Inc.*	RAH	$ 130.00
Ghoubrial, M.D., Dr. Sam N.		$ 2,000.00
Kisling, Nestico & Redick, LLC		$ 4,700.00
Rolling Acres Chiropractic Inc		$ 3,700.00
Total Due Others		$ 13,342.00

Total Deductions	$ 13,509.11
Total Amount Due to Client	$ 6,490.89

I hereby approve the above settlement and distribution of proceeds. I have reviewed the above information and I acknowledge that it accurately reflects all outstanding expenses associated with my injury claim. I further understand that the itemized bills listed above will be deducted and paid from the gross amount of my settlement except as otherwise indicated. Finally, I understand that any bills not listed above, including but not limited to Health Insurance or Medical Payments Subrogation and/or those initialed by me to indicate that they are not being paid from the settlement are my responsibility and not the responsibility of Kisling, Nestico & Redick, LLC.

Date: X 4/25/12

Name: X RAH
Richard A Harbour

Firm:
Kisling, Nestico & Redick, LLC

EXHIBIT B

Sam N. Ghoubrial M.D.
Richard H. Gunning M.D.
MEDICAL ASSIGNMENT

Re: Patient Richie A Harbour

First date of service: 5\23\12

I hereby direct you to pay to Clearwater Billing Services, LLC from the net proceeds of any settlement, claim, judgment, verdict or award, for any and all services rendered as a result of an injury that I received on 5\10\12.

Said amount being fair and reasonable price of medical services provided by Hancrist, LLC for me at the direction of my doctor or doctors. I authorize you to withhold said sums from the net proceeds of any settlement, claim, judgment, verdict, or awards as may be necessary to pay Clearwater Billing Services, LLC

I fully understand that I am directly and fully responsible to Clearwater Billing Services, LLC for the aforementioned account submitted to me by Clearwater Billing Services, LLC for services rendered me, and that this agreement is made solely for its additional protection and in consideration of its awaiting payment. I further understand that such payment is not contingent on any settlement, claim, judgment, verdict or award by which I may eventually recover said fee.

Dated: 5\23\12 Y Rad

The undersigned being attorney of record for the above patient does hereby agree to observe all terms of the above and agrees to withhold such claims from the net proceeds of any settlement, claim, judgment, verdict, or award as may be necessary to adequately protect Clearwater Billing Services, LLC provided that said lien is subordinate to attorney's lien herein.

Dated: _____ _____

Kisling, Nestico & Redick, LLC
Attorneys at Law

@5.24.12 DS

Kisling, Nestico & Redick, LLC
3200 W. Market St., Suite 300
Akron, Ohio 44333
(330) 869-9007
(330) 869-9008 (fax)

EXHIBIT C

7/27/2015

221620 / Richard Harbour

Settlement Memorandum

Recovery:

MP	Progressive Insurance*	$ 5,000.00
REC	Erie Insurance	$ 17,500.00
		$ 22,500.00

DEDUCT AND RETAIN TO PAY:

Kisling, Nestico & Redick, LLC	
AMC Investigations;	$ 40.00
Clearwater Billing Services, LLC;	$ 50.00
First Healthcare**; dd	$ 12.00
HealthPort; dd	$ 48.23
Kisling, Nestico & Redick, LLC; Filing Fee/rjk	$ 386.25
Professional Receivables Control, Inc.*;	$ 16.00
Trisha Beban Yost, RPR; #6018/depo of Fischer	$ 55.00
Akron General Health System*;	$ 2.50
Total Due	$ 609.98

DEDUCT AND RETAIN TO PAY TO OTHERS:

Bath Fire Department	$ 450.00
Clearwater Billing Services, LLC	$ 1,900.00
Kisling, Nestico & Redick, LLC	$ 6,388.33
Progressive Insurance*	$ 3,335.00
Radiology & Imaging Services	$ 38.00
Radiology & Imaging Services	$ 47.01
Rolling Acres Chiropractic Inc	$ 3,331.68
Total Due Others	$ 15,490.02

Total Deductions	$ 16,100.00
Total Amount Due to Client	$ 6,400.00
Less Previously Paid to Client	$ 0.00
Net Amount Due to Client	$ 6,400.00

EXHIBIT D

I hereby approve the above settlement and distribution of proceeds. I have reviewed the above information and I acknowledge that it accurately reflects all outstanding expenses associated with my injury claim. I further understand that the itemized bills listed above will be deducted and paid from the gross amount of my settlement except as otherwise indicated. Finally, I understand that any bills not listed above, including but not limited to Health Insurance or Medical Payments Subrogation and/or those initialed by me to indicate that they are not being paid from the settlement are my responsibility and not the responsibility of Kisling, Nestico & Redick, LLC.

Date: 7/29/15

Name: RCH
Richard Harbour

Firm: Kisling, Nestico & Redick, LLC

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al., Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. CV-2016-09-3928 Judge James A. Brogan **Affidavit of Michael Walls, M.D.**

I, Michael Walls, M.D., having been duly sworn, have personal knowledge of the following matters of fact, and testify as follows:

1. I am 42 years of age, licensed to practice medicine in both the state of Ohio and Kentucky. I have been a licensed and practicing physician in the State of Kentucky since 2009, specializing in the area of Anesthesiology based Pain Management. My practice has been based in Northern Kentucky since 2009. I graduated from The Cleveland Clinic in 2008 for Anesthesiology and from The Cleveland Clinic in 2009 for Pain Management where I served as Chief Fellow of CCF Pain Management from 2008-2009. I am board certified in Anesthesiology and Pain Medicine. I have never been disciplined or sanctioned by any regulatory authority for my professional conduct. A copy of my c.v. is attached to this affidavit as Exhibit 1.

2. During the course of my practice over the past 10 years, I have treated thousands of patients from Ohio and Kentucky for back pain of all types, including patients suffering acute pain from work related injuries and car accidents.

3. There are numerous peer-reviewed and accredited medical studies to support that the large majority (>70%) of patients with acute (<4 weeks) and subacute (<12 weeks) pain resolves spontaneously with minimal treatment. Therefore, I rarely prescribe opioid based pain medication

EXHIBIT 7

to patients suffering from acute pain and only if the injury is severe enough to warrant such an action. Sprain and/or strain related to MVA would not meet that criteria. Because the large majority of acute back and/or neck pain tends to resolve with time and minimal treatment, more conservative methods of treatment should be considered first before proceeding with more invasive modalities. These include research-supported therapies with efficacy shown for "RICE" therapy (rest, ice, compression, and elevation), physical therapy, NSAIDs (non-steroidal anti-inflammatory drugs), and non-benzodiazapine muscle relaxants as first line treatments.

4. I do not administet and do not agree with the administration of Trigger Point Injections (TPIs) to a patient suffering from acute and/or widespread back pain, and more specifically pain related to a Motor Vehicle Accident (MVA). Administering TPIs for patients with acute injury pain and/or widespread pain goes against best practices based on Evidence Based Medicine (EBM). EBM is the conscientious, explicit, judicious and reasonable use of modern, best evidence in making decisions about the care of individual patients. EBM integrates clinical experience and patient values with the best available research information. There is no credible research that I have ever come across that supports administering TPIs for acute and/or widespread pain or as a first line therapy for the treatment thereof. There are numerous peer-reviewed and accredited research articles that list acute pain and/or widespread pain as contraindications for the administration of TPIs. These research articles only support and show evidence of efficacy of TPIs in the treatment of chronic pain related to such disorders as Myofascial Pain Syndrome (MPS).

5. If a patient suffering from acute back pain resulting from a car accident were to receive TPIs within weeks of the accident, while also simultaneously undergoing chiropractic care and/or physical therapy and/or medications for pain relief; there would be no way to determine whether any reduction in pain was the result of the injections or from any of the other modalities of treatment.

6. When I do administer TPIs in my practice for chronic pain related to such disorders as MPS, I can expect a typical reimbursement from an insurance carrier under codes 20552 (one-two muscles injected) and 20553 (>2 muscles injected) of approximately $50-$70 total per procedure/visit.

7. For an initial new patient office visit under billing code 99203 & 99204, I can expect a typical reimbursement from an insurance carrier for approximately $100-$170 and for follow-up visits under code 99213 & 99214, approximately $70-$110.

8. There is no credible peer-reviewed evidence in the literature to support the use of Transcutaneous Electrical Nerve Stimulation (TENS) for the treatment of acute low back pain. In addition to this, numerous TENS units of all types are available for purchase at medical supply stores or online for much less than $500, the majority of which can be found for less than $100. Failure to disclose this while administering a $500 TENS unit without informing the patient of cost, risk, and alternatives is intentionally misleading. TENS unit has only been shown to be effective in the treatment of chronic low back pain, and only with minimal supporting evidence. I do not administer these at all in my clinic and only mention them to patients as a possible addition and/or alternative therapy which they can pursue on their own through outside purchase.

9. There is no credible peer-reviewed evidence in the literature to support the use of back bracing for the treatment of acute low back pain. In addition to this, numerous back braces of all types are available for purchase at medical supply stores or online for much less than $1500, the majority of which can be found for approximately $100 or less. Failure to disclose this while administering a $1500 brace without informing the patient of cost, risk, and alternatives is intentionally misleading. Highly specialized braces are only occasionally used in the treatment of chronic low back pain and are indicated for the treatment and spinal stabilization of patients with such conditions as Lumbar Spondylolisthesis, Compression Fracture, Kyphosis/Osteoporosis,

spinal stabilization post implant/surgery, etc. These are authorized and covered under the patient's insurance for treatment of these specific conditions, none of which are related to sprain or strain.

10. In my practice, I accept payment from most major health-insurance companies. If a patient is covered by any of the insurance carriers for which I participate, I am required by law to bill said insurance for the patient's care. If a patient is not covered under one of the offered insurance providers and/or seeks treatment outside of their medical coverage, I am able to offer them a "self-pay" fee. However, under my ethical and professional obligations to the patient, that fee must be reasonably aligned for the typical reimbursement from an insurance carrier and/or not in extraordinary excess of reasonable expected overhead expense of the procedure. Cost, consent, along with risk/benefits/alternatives of said procedure should be discussed and agreed upon with patient prior to proceeding.

11. Physicians should follow a code of medical ethics as outlined by the American Medical Association when determining a course of action for their patient. The relationship between a patient and a physician is based on trust, which gives rise to physicians' ethical responsibility to place patients' welfare above the physician's own self-interest or obligations to others, to use sound medical judgment on patients' behalf, and to advocate for their patients' welfare. Patients have the right to receive information from their physicians and to have opportunity to discuss the benefits, risks, and costs of appropriate treatment alternatives, including the risks, benefits and costs of forgoing treatment. Patients should be able to expect that their physicians will provide guidance about what they consider the optimal course of action for the patient based on the physician's objective professional judgment. Patients also have the right to obtain a second opinion if so desired and to be advised of any conflicts of interest their physician may have in respect to their care.

12. Best practice supports all new patients presenting with pain should have a documented history and physical examination and an assessment that ultimately supports a chosen treatment

strategy. In addition to a history of current illness, the history should include (1) a review of available records/imaging, (2) medical history, (3) surgical history, (4) social history, including substance use or misuse, (5) family history, (6) history of allergies, (7) current medications, including use or misuse, and (8) a review of systems. The causes and the effects of the pain (e.g., MVA, change in occupational status, etc) and the impacts of previous treatment(s) if any should be evaluated and documented. The physical examination should include an appropriately directed neurologic and musculoskeletal evaluation, with attention to other systems as indicated. Findings from the patient history, physical examination, and diagnostic evaluation should be combined to provide the foundation for an individualized treatment plan focused on the optimization of the risk– benefit ratio with an appropriate progression of treatment from a lesser to greater degree of invasiveness.

13. Informed consent to medical treatment is fundamental in both ethics and law. Patients have the right to receive information and ask questions about recommended treatments so that they can make well considered decisions about care. The process of informed consent occurs when communication between a patient and physician results in the patient's authorization or agreement to undergo a specific medical intervention. The physician should include information about the diagnosis, the nature and purpose of recommended interventions, the burdens, risks, and expected benefits of all options, including forgoing treatment, and document the informed consent conversation and the patient's (or surrogate's) decision in the medical record in some manner.

14. Physicians are expected to conduct themselves as honest, responsible professionals. Physicians should not recommend, provide, or charge for unnecessary medical services. Nor should they make intentional misrepresentations to increase the level of payment they receive or to secure noncovered health benefits for their patients.

15. The documents I have reviewed in preparing this affidavit include the studies and summaries marked as Exhibits 2, 4, 37, 38, 41, 42, and 43 to the deposition of Sam Ghoubrial, M.D. taken in

the above-captioned case, as well as the four studies attached to this affidavit as Exhibits 2–5, and the American Medical Association's Code of Medical Ethics.

I affirm the above to be true and accurate to the best of my knowledge under penalty of perjury.

Signature of Affiant 5/13/19
Date

Sworn to and subscribed before me on May 13, 2019 at Crescent Springs, KY

Notary Public

SCOTT BEST
Notary Public, Kentucky State at Large
My Commission Expires Dec. 10, 2019
Notary ID# 547000

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al., Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. CV-2016-09-3928 Judge James A. Brogan **Affidavit of David C. George, D.C.**

I, David C. George, D.C., having been duly sworn, have personal knowledge of the following matters of fact, and testify as follows:

1. I am 58 years of age. I have been a licensed and practicing chiropractor in the State of Ohio since August of 1985. My practice has been based in Cuyahoga Falls since October of 1985. I graduated from Logan College of Chiropractic in April of 1985. I have never been disciplined or sanctioned by any regulatory authority for my professional conduct.

2. During the course of my practice over the past 34 years, I have treated thousands of patients for back pain of all types, including patients suffering acute pain from work related injuries and car accidents.

3. During the course of my practice, I routinely refer my patients to physical therapists and physicians, primarily sports medicine physicians and orthopedic surgeons, for treatment of chronic and acute conditions. I typically make such referrals when surgery or other procedures are required to address a client's condition, when the client would benefit from a more active physical therapy or rehabilitation regimen, when a chronic condition requires medication to alleviate a patient's symptoms.

NOTARIAL SEAL
STATE OF OHIO

Attorney Peter G. Pattakos
Resident Summit County
Notary Public, State of Ohio
My Commission Has No Expiration Date
Sec 147.03 RC

EXHIBIT 8

4. For the following reasons, I rarely if ever refer a patient suffering from acute back pain to a doctor for the purpose of that doctor prescribing pain medication, let alone injection procedures, to the patient: 1) acute back pain tends to resolve with time, and with more conservative methods of treatment, including "RICE" therapy (rest, ice, compression, and elevation), chiropractic care, and physical therapy; 2) typically, when these conservative methods fail, or more immediate pain relief is desired, over-the-counter nonsteroidal anti-inflammatory drugs are sufficient.

5. I have never and would never refer a patient suffering from acute or widespread back pain to a doctor to receive trigger point injections. According to all available peer-reviewed medical research, trigger-point injections are contraindicated for acute and widespread pain, and have only ever been proven effective in treating chronic pain resulting from Myofascial Pain Syndrome ("MPS").

6. In my chiropractic practice, I accept payment from most major health-insurance companies, approximately 400 of them by my estimation. If any of my patients want to pay me through their health-insurance providers, I will do whatever is practicable to accommodate them, regardless of the type of injuries suffered by the patient or the cause of those injuries. I am not aware of any reason why any chiropractor would refuse to accept payment from a patient's health insurance provider other than to be compensated at a higher level than the insurance provider would otherwise pay.

I affirm the above to be true and accurate to the best of my knowledge under penalty of perjury.

5-8-19

Signature of ~~Affiant~~ Date

Sworn to and subscribed before me on 5-8-19 at Fairlawn, Ohio.

Notary Public, State of Ohio

NOTARIAL SEAL STATE OF OHIO

Attorney Peter G. Pattakos
Resident Summit County
Notary Public, State of Ohio
My Commission Has No Expiration Date
Sec 147.03 RC

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al., Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. CV-2016-09-3928 Judge James A. Brogan **Affidavit of Ryan H. Fisher, Esq.**

I, Ryan H. Fisher, Esq., having been duly sworn, have personal knowledge of the following matters of fact, and testify as follows:

1. I am 54 years of age. I have been a licensed and practicing attorney in the State of Ohio since 1989. My practice has been based in Northeast Ohio since 1989. I graduated from Cleveland Marshall College Of Law. I have never been disciplined or sanctioned by any regulatory authority for my professional conduct.

2. My practice is focused on representing plaintiffs in personal injury cases. During the course of my career, I have represented thousands of car accident victims in cases seeking recovery for their injuries. Nearly all of these clients have received some type of medical or chiropractic care in connection with these cases for which they and/or their health insurers expect to be reimbursed in resolving their legal claims.

3. The great majority of these clients have some type of health insurance coverage, as required by federal law. In treating for injuries suffered in the related car accidents, most of these clients, as a matter of routine, treat with healthcare providers who accept payment from their health insurance providers. In the minority of instances where a client reports to me that they have no health insurance or they are unable to locate a healthcare provider who will accept payment from their

EXHIBIT 9

health insurance, or medpay, I am able to refer them to a medical provider who will do so or a medical provider who will provide treatment in the absence of health insurance.

4. 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 health-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. It is an essential part of a personal-injury attorney's job to negotiate with his clients' healthcare providers and health-insurance providers to ensure that the healthcare and health-insurance providers have a legal interest in the settlement funds and so that the providers do not take more than their fair share of the clients' personal injury settlements or awards.

5. It is an essential part of a personal-injury attorney's job to require any alleged "lienholders" to prove their right to receive any proceeds whatsoever from a client's settlement or awards.

I affirm the above to be true and accurate to the best of my knowledge under penalty of perjury.

5-13-19

Signature of Affiant Date

Sworn to and subscribed before me on May 13, 2019 at Cleveland, Ohio.

Judith DelNostro

Notary Public, State of Ohio

Judith DelNostro
Notary Public, **State of Ohio**
My commission **expires**
March 4, 2024

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al., Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. CV-2016-09-3928 Judge James A. Brogan **Affidavit of Larry Lee**

I, Larry Lee, having been duly sworn, have personal knowledge of the following matters of fact, and testify as follows:

1. I am 62 years of age. In 2016, I retired from Westfield Insurance Company working in Cincinnati, Ohio, where I was the Unit Leader of the Special Investigation Unit for the last 9 ½ years. I retired from Westfield Insurance in 2016 after 18 years. At Westfield, I worked to develop and implement up-to-date process and procedures to identify and combat insurance fraud. I managed an in-depth team of investigators focusing on questionable or suspicious insurance claims, as a result or industry research of potentially fraudulent trends and implementing internal processes to identify and combat insurance fraud. Prior to joining the insurance industry, I was a law enforcement officer for the Vienna, Wood County West Virginia Police Department from 1978-1998, where I was the Officer in Charge of Investigations which included financial and medical crime/fraud, retiring after 20 years of service. I have worked for combined 44 years in the law enforcement and insurance industries with the last 20 years has been spent investigating and preventing fraudulent insurance claims. I hold the following certified designations:

- CFE (Certified Fraud Examiner-ACFE)
- CFI (Certified Forensic Interviewer- Wicklander-Zulawski & Assoc.)
- CCCI (Certified Cyber Crime Investigator-International Association of Financial Crimes Investigators)

EXHIBIT 10

- CFCI (Certified Financial Crime Investigator-International Association of Financial Crimes Investigators)
- CCS (Certified Control Specialist (The Institute for Internal Controls)

I also hold the following designations:

- SCLA: Senior Claim Law Assoc. American Education Institute, Inc.
- FCLA: Fraud Claim Law Assoc. American Education Institute, Inc.
- PCLA: Property Claim Law Assoc. American Education Institute, Inc.
- CCLA: Casualty Claim Law Assoc. American Education Institute, Inc
- LPCS: Law Principal Claim Specialist American Education Institute, Inc

2. During the course of my career in the insurance industry, I routinely investigated or managed the investigations of law firm, including Kisling Nestico & Redick ("KNR"), that heavily advertise and handle high-volume of personal injury claims, the great majority of which were low-damage cases focusing mainly on soft-tissue injuries. As part of these investigations, I also investigated and managed the investigations of these law firms with certain chiropractors and medical doctors who would treat a high volume of these firms' clients.

3. Based on my team's internal research and available industry-gained information I was able to readily infer that the firm had entered into a relationship with certain chiropractors who would solicit clients on the law firm's behalf, using information from publicly available car-accident reports, and in turn benefit from the law firm's direction and encouragement that the clients continue to treat with the chiropractors. I also supervised claims where these same law firms would direct persons who they had solicited through their own advertising to treat with these same chiropractors in the same manner.

4. It was clear from the documentations submitted during these insurance investigations the chiropractors, including Minas Floros of Akron Square, who 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 for pain relief.

5. The medical necessity of these types of treatment was routinely investigated, as a great majority of soft tissue injuries are known to resolve in a matter of months, if not weeks, without any treatment. Further, a vast majority of the cases I investigated and supervised did not contain the necessary documentation to support the necessity of either the treatment or the length of treatment as stated necessary by the AMA Chiropractic Guidelines. My colleagues and I concluded, in processing these claims, that the routinized treatment provided by these chiropractors and physicians to the same law firm's clients, was undertaken not out of documented medical necessity, but to inflate medical bills in an effort to justify higher settlements of the claims.

6. Whether not this treatment was in fact fraudulent and/or not medically necessary, after seeing so 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 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.

7. Representative of the insurance companies for whom I worked routinely and clearly communicated to these law firms, including KNR, that these identified cases would be viewed with inherent skepticism and increased scrutiny, and would be investigated by the Special Investigation Unit as a matter of company policy which included requested necessary in-person interviews of their clients. In the vast majority of these cases we 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 relationship between the firm and the healthcare providers, which we knew that the law firms wanted to avoid.

8. During the course of my career in the insurance industry, I also became familiar with the "narrative reports" that certain chiropractors would provide in the settlement packages that the law firms, including KNR, would submit to the insurance companies, purportedly to summarize the clients' injuries and provide an opinion on causation. In or around 2012, we began to notice that a narrative report was provided on every case involving certain high-volume chiropractors, mostly those working for clinics owned by Michael Kent Plambeck, whose business was the subject of fraud investigations and lawsuits by several large insurance companies, including State Farm and Grange, and was well known in the insurance industry for suspected over-billing.

9. My colleagues and I inferred that these narrative reports were primarily a means for the law firms to divert more client funds to the chiropractors to sustain their quid pro relationships. We drew this conclusion from the following facts, among others: (A) that the reports were provided on every case from certain chiropractors, regardless of any apparent accident-related causation issues, (B) that the majority of cased handled (my estimation being greater than 95%) by these firms and submitted to both Insurance companies where I worked, that were investigated by the Special Investigation Unit never resulted in lawsuits being filed; (D) that the reports rarely continued supportive information to support the documented treatment that was to have been provided to the chiropractor's patient and the law firm's clients; (E) the narrative report submitted to the insurance companies could have easily been complied by someone other than the chiropractor, including the attorney representing their client or their staff members.

I affirm the above to be true and accurate to the best of my knowledge under penalty of perjury.

Larry D Lee 05/09/2019
Signature of Affiant Date

Sworn to and subscribed before me on 5/9/19 at Columbus, Ohio.

Notary Public, State of Ohio

NOTARIAL SEAL STATE OF OHIO

CHERYL A PATTERSON
Notary Public
In and for the State of Ohio
My Commission Expires
June 10, 2021

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, Plaintiff, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. CV-2016-09-3928 Judge Alison Breaux

AFFIDAVIT OF GARY PETTI

I, Gary Petti, having been duly sworn, have personal knowledge of the following matters of fact, and testify as follows:

1. In March of 2012, I became employed as a prelitigation attorney with the law firm of Kisling, Nestico & Redick, LLC ("KNR") in Akron, Ohio. Before my employment with KNR, I had worked since 1997 as a personal-injury lawyer with the Akron-based law firm of Slater & Zurz, primarily on behalf of insurance companies on the defense side, and car-accident victims on the plaintiffs' side. I resigned from my position at Slater & Zurz to join KNR because my practice at Slater & Zurz required me to travel frequently to Columbus, Ohio, and the KNR position would allow me to remain closer to my home in Wadsworth, Ohio while my wife went back to school to obtain her degree as a nurse-anesthetist. My wife and I have three children, who, at the time, were ages 6, 10, and 13. When I left Slater & Zurz to join KNR, I took

EXHIBIT 11

approximately 200 cases with me, and continued to represent these clients through KNR.

2. While I was working for Slater & Zurz, I first learned that KNR paid kickbacks to certain chiropractors in the form of a "narrative fee." When I spoke with certain chiropractors from Plambeck-owned clinics who would occasionally refer me cases, they told me that KNR paid them a narrative-report fee every time the chiropractors referred a case to KNR, and asked if I would do the same. I told them that I would not. I did not understand at the time that this was KNR's firm-wide policy, as opposed to a practice followed by certain KNR attorneys, and when I went to work for KNR, I assumed that I would not be required to charge my clients for unnecessary narrative-fee expenses.

3. When I began working at KNR, I primarily worked on the cases that I had brought to the firm, and when I closed these cases, no narrative fee was charged to these clients because I never ordered narrative reports for them. It was always my understanding that the decision as to whether a narrative report is worthwhile in a case is the attorney's to make, upon consultation with the client. I always understood that narrative reports were only properly used to allow a medical professional to explain why the plaintiff's injuries were different or more challenging than they might appear from the contents of the medical records, and in doing so, provide information that was not included in the records.

4. As I began to work on cases from KNR that had been taken in and previously worked on by other KNR attorneys, I would see the narrative fee appear on the client's settlement statement. I assumed that these fees were for narrative reports that were ordered by the previous KNR attorney who worked on the case. I soon learned that these narrative reports ordered by KNR were very different from the narrative reports that I was accustomed to using, and were essentially worthless, containing no information that was not already apparent from the client's medical records. The narrative reports provided by Dr. Minas Floros of Akron Square

Chiropractic, a Plambeck-owned clinic in Akron, were especially bad, and the worst narrative reports I had ever seen. They appeared to follow a basic formula of a few sentences where Floros merely filled in the blanks with information that was readily apparent from the medical records. It was clear that virtually no time or effort could have been expended on his worthless narratives—certainly no effort remotely justifiable by the narrative fees being paid.

5. As I continued to work at KNR, and continued to close the cases that I brought to the firm, I began working on KNR cases that I had taken in while at the firm. On several occasions while I was working at KNR, I took calls from chiropractors from Plambeck-owned clinics who were present on the line with a patient that the chiropractors sought to refer to KNR.

6. In approximately mid-to-late November of 2012, my paralegal Megan Jennings began to collect a package of documentation on a case that was to be submitted to the defendant's insurance company, including police reports, and medical records. When she submitted this package to me for my approval, I noticed a charge for a narrative report in the documents. I immediately expressed my surprise and disapproval that the narrative fee would be included in this package, and asked Jennings why this was the case. I also told her that I am the lawyer, so I'm the one who gets to advise the client as to whether the narrative report is a justifiable expense. In response, Jennings informed me that narrative fees are paid on every case that comes in from Akron Square Chiropractic and other Plambeck-owned clinics, and that the check is made out to the chiropractor personally and sent directly to the chiropractor's house. I then told her that I would not approve of any such fees being charged to my clients without my express approval.

7. Within a few days, I was working with Jennings on another case that was affiliated with Akron Square Chiropractic. On November 28, 2012; I emailed Jennings about this case to instruct her that no narrative fee was to be paid on it. I wrote, "Remember, no reports from

doktor flooroes," deliberately misspelling his name in an effort to defuse tension with humor. I also wrote, as a follow-up to our previous conversation, "I've asked a number of adjusters about the importance of those reports and the most common response is nearly uncontrolled laughter." This comment, while hyperbolic, referred to the fact that on the occasions when I attempted to refer to Plambeck narrative-reports in negotiating settlements on behalf of KNR clients, the insurance adjusters paid absolutely no regard to these reports.

8. Within approximately two weeks of having sent this email to Jennings, KNR terminated my employment. I was told by KNR attorney John Regan that I was "not a good fit" there. I could not disagree and little else was said in the meeting. I understood that by stating that I was "not a good fit" at KNR, Regan was only referring to my unwillingness to participate in KNR's schemes to defraud their clients, like with the narrative fees, as there were no other issues of which I was made aware. At that point, I was glad to leave KNR and the practice of law, and have since been working in the construction business.

9. During my time working at KNR, I became aware of the firm's so-called investigators, including Aaron Czetli and Michael Simpson. I would often witness Czetli and Simpson performing odd jobs around KNR's Akron office, such as stuffing envelopes and putting up holiday lights. Although I had ample opportunity to observe their activities, comings, goings, and work-product, I never witnessed or became aware of these so-called investigators performing any actual investigations. To my knowledge, their only involvement with client matters was to meet potential clients and sign them to KNR fee agreements.

10. Within a few months before KNR terminated my employment, KNR Managing Partner Rob Nestico criticized me in front of other KNR attorneys for my unwillingness to be dishonest to potential KNR clients. This happened in a meeting where all KNR prelitigation attorneys were present, and Nestico played a recording of a phone call that I had over the firm's phone line

with a potential client. On this call, a car-accident victim told me that he was an independent contractor and sub-contractor, and was concerned about recovering lost wages for work missed due to his car-accident injuries. I advised this potential client that his status as a contractor would make it more complicated to recover damages because he would have to prove not only that he did not work as a result of the accident, but also that he would have otherwise worked on certain jobs, for a certain amount of money during the same time period. After Nestico played the recording of the phone call for everyone in the room, he asked what I had done wrong on the call. The answer, according to Nestico, was that I was too honest with the client in advising him of the complications in recovering damages due to his status as an independent contractor, and that I did not tell the potential client "what he wanted to hear."

11. On March 23, 2017, I received a phone call from a man who identified himself as Attorney Brian Roof with the law firm of Sutter O'Connell, and said that he represents KNR and Nestico in the above-captioned lawsuit. He asked me if I was familiar with the lawsuit and the recently filed proposed Second Amended Complaint. I told him that I was, and had read a press release about the Second Amended Complaint. He asked me about my time at KNR and what documents I took with me when I left, and he said that it was his clients' position that all such documents were confidential. I interpreted this as a threat, and told Mr. Roof that as far as I'm concerned, everything in the press release is true, and that I was terminated by KNR because of my refusal to participate in their kickback schemes.

12. Every document I have disclosed and all information I have provided to Plaintiffs' counsel in this litigation was and is, to the best of my knowledge and understanding, evidence of fraud and illegal activity by KNR. I do not believe that any of it is confidential or subject to any confidentiality agreement. I can't imagine that my own emails mocking the fraud would be confidential.

I affirm the above to be true and accurate to the best of my knowledge under penalty of perjury.

Signature of Affiant 4/3/17
Date

State of Ohio
County of Summit

Sworn to and subscribed before me on 4-3-2017

at Sharon Center, Ohio.

(Signature of Notary Public)

(Notary Public Seal)

Attorney Peter G. Pattakos
Resident Summit County
Notary Public, State of Ohio
My Commission Has No Expiration Date
Sec 147.03 RC

Peter Pattakos
(Printed Name of Notary Public)

Notary Public, State of Ohio

My commission expires on N/A

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al., Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. CV-2016-09-3928 Judge James A. Brogan **Affidavit of Amanda J. Lantz, Esq.**

I, Amanda J. Lantz, Esq., having been duly sworn, have personal knowledge of the following matters of fact, and testify as follows:

1. I am a practicing attorney licensed in the State of Ohio. I have never been sanctioned or disciplined for my professional conduct.

2. Upon graduating from The University of Dayton School of Law in 2013 and passing the Ohio bar examination, I obtained a job with the law firm of Kisling Nestico and Redick ("KNR"), working as an attorney in the law firm's Columbus, Ohio office.

3. Shortly upon joining the firm in November of 2013, I retained a caseload of approximately 400 active cases at any given time. The firm imposed quotas on its attorneys, setting a goal for each attorney to bring in $100,000 in attorneys' fees to the firm each month. Given the relatively low-damage cases that came into the Columbus office, I was required to settle approximately 60 to 70 cases each month to make this number. One month, I settled 89 cases on behalf of KNR clients.

4. During my time working at KNR, it was firm policy to direct clients to treat with certain health-care providers, including Dr. Sam Ghoubrial, and various chiropractors who

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Attorney Peter G. Pattakos
Resident Summit County
Notary Public, State of Ohio
My Commission Has No Expiration Date
Sec 147.03 RC

Amanda Lantz

EXHIBIT 12

maintained mutual referral relationships with the law firm.

5. The decision as to whether to refer a client to Dr. Ghoubrial depended on the level of property damage the client sustained in the car accident at issue. If the property damage was above a certain minimal level, we were encouraged by our KNR supervisors to direct the client to see Dr. Ghoubrial to obtain "trigger point" injections of certain medication, including pain-blocking and anti-inflammatory medication. Dr. Ghoubrial would often administer multiple injections to the client, to different parts of the spine, in the same appointment, charging between $880 to $1280 for each injection. He would travel to Columbus on certain days to treat groups of KNR clients on the same day.

6. During my time working at KNR, in or around October of 2014, I became aware that an attorney in the Columbus office, Kelly Phillips, sent an email to the firm's managing partner Alberto R. ("Rob") Nestico and the managing partner of the Columbus office, Paul Steele, in which Phillips expressed concerns about the firm's relationship with Dr. Ghoubrial and stated that this relationship was improper. I understood that Mr. Phillips communicated in this email that KNR attorneys could not legitimately claim to be acting in our clients' best interests by sending the clients to treat with Ghoubrial, knowing that the insurance companies viewed his treatment with skepticism, and knowing that the clients could have obtained the same treatment for a substantially lower cost elsewhere. I recall specifically that Mr. Phillips was especially concerned about the fact that Nestico would ensure that Ghoubrial was paid substantial amounts out of client settlements even when the Defendants' insurance company representatives told KNR attorneys that they were not crediting or paying for Ghoubrial's treatment in settling the case. I knew that Nestico was upset about this email, and sent an angry response to Phillips. This exchange was a topic of conversation and controversy around the office in the time period after it was sent. To my knowledge, the firm did not change its

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Sec 147.03 RC

policies regarding Dr. Ghoubrial in response to this email or at any other time.

7. The attorneys in the firm were also instructed by our supervisors to send our clients to a chiropractor as soon as possible. We (attorneys and paralegals) were directed to set up reminders, including through the firm's computer system, Needles, to ensure that the client had treated with a chiropractor within 10 days of contacting the firm, and also to ensure that the client had treated with the chiropractor at least 3 times within a certain period of time.

8. It was understood that the chiropractors would send us referrals in exchange for us doing the same. The chiropractor to whom we sent the most referrals from the Columbus office, and who referred our office the most cases, was Nasreen Khan of Town and Country chiropractic. Dr. Khan, and other chiropractors with whom we worked, employed telemarketers who contacted car accident victims using information contained in publicly available crash reports to solicit them for chiropractic services. When these car-accident victims arrived at the chiropractor's office, they were provided with a KNR fee agreement directly by a representative of the chiropractor, or greeted by a so-called "investigator" from KNR who would obtain the car-accident victim's signature on the KNR fee agreement. Town and Country often would not treat the client until they signed the KNR fee agreement and a form "letter of protection" authorizing the law firm to pay the chiropractic bills out of the client's settlement.

9. On several occasions when I asked my clients how they came to treat at Town and Country, they informed me that a representative of their insurance company called them to instruct them to treat there. I knew that this was not the case, and that Town and Country's telemarketers misrepresented themselves as representatives of the client's insurance company to induce the clients to treat there. Either my supervisor or another attorney at KNR informed me that a telemarketer who was known as "Will" (which was not his real name) worked out of

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Amanda Pattakos

the basement of Dr. Khan's home, and that he did not get paid on a given case unless the client he solicited treated with Town and Country at least three times. I also became aware, during my time working at KNR, that Dr. Khan would retaliate against the firm if she believed the firm was not honoring the quid pro quo relationship, and withhold referrals if she learned that a patient she referred to the firm began treating with another chiropractor.

10. When a potential client communicated with the firm, it was KNR office policy to send an "investigator" to sign that client to a fee agreement within 24 hours. The chiropractic offices followed this policy as well would directly request that a KNR "investigator" come to the offices out to sign patients to KNR fee agreements. On rare occasions involving exceptionally high-valued cases, the attorneys were required meet the client within 24 hours to obtain the signature on the fee agreement and establish the attorney-client relationship. We constantly received emails from KNR management pressuring us to sign-up potential clients within 24 hours, who had communicated with the firm. Our supervisors made it clear to us that the purpose of sending these investigators was to avoid losing the potential client to another law firm and secure the attorney-client relationship.

11. It was also office policy to charge an "investigation fee" on almost every case. This fee was charged as a matter of firm policy whether an "investigator" ever met with a client or not. I settled approximately 1,300 cases on behalf of KNR clients during my time with the firm, and an investigation fee between $50 to $200 was charged on approximately 95% of these cases, with the exact amount of the fee depending on the mileage the investigator had to travel. In all of these cases, I 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.

12. My immediate supervisor at KNR's Columbus office was Paul Steele, Esq. His father, Wes Steele, was the primary "investigator" who signed up clients for the Columbus office.

Attorney Peter G. Pattakos
Resident Summit County
Notary Public, State of Ohio
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13. During my time working at KNR, it was also office policy to recommend to clients that they obtain loans, including from a company called Liberty Capital funding. We were instructed by our KNR supervisors, including Paul Steele, to offer our clients loans whenever they became upset or threatened to terminate the firm, to placate them with the promise of quick cash. The manager at Town & Country also made potential clients aware that KNR attorneys could get cash advances for their clients. On more than one occasion, new clients or potential clients told me that they heard our law firm could get them fast money and asked me to do so for them. During a period of my employment at KNR, we were instructed to send our clients exclusively to Liberty Capital whenever they requested a loan or settlement advance.

14. After approximately one year working there, I no longer wanted to be associated with the KNR firm and began to seek employment elsewhere. In or around March of 2015 I took personal time off to attend a series of job interviews with a local legal recruiting company to obtain a position as a legal recruiter. I no longer wanted to practice law. On the day of my final interview with this company, I returned to the office and was called to meet with Paul Steele, who informed me that my employment with KNR was being terminated because I "wasn't a long-term fit." I was never given any warnings by KNR that my employment status was in jeopardy and was never made aware of any issues that would justify my termination or any reasons why I wasn't a long-term fit. In fact, I had recently been recognized as one of the top performing attorneys in the firm and was rewarded by an invitation to attend a trip with Rob Nestico and other top performing KNR attorneys to Punta Cana in the Dominican Republic that January, less than three months before I was terminated. At the time of my termination, I was exclusively using a mobile phone that was issued by the firm. I believe that KNR was monitoring my communications and/or e-mails on that phone and terminated my

NOTARIAL SEAL STATE OF OHIO

Attorney Peter G. Pattakos
Resident Summit County
Notary Public, State of Ohio
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Amanda Lantz

employment upon learning, by monitoring my communications, that I was seeking employment elsewhere.

I affirm the above to be true and accurate to the best of my knowledge under penalty of perjury.

Amanda Lents 9-28-18

Signature of Affiant Date

Sworn to and subscribed before me on 9-28-18 at Springfield, Ohio.

Notary Public, State of Ohio

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Attorney Peter G. Pattakos
Resident Summit County
Notary Public, State of Ohio
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Amanda Lents

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al., Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. CV-2016-09-3928 Judge James A. Brogan **Affidavit of Member Williams**

I, Member Williams, having been duly sworn, have personal knowledge of the following matters of fact, and testify as follows:

1. I was represented by the Akron, Ohio law firm of Kisling, Nestico & Redick, LLC ("KNR") in connection with a car accident in which I suffered injuries on September 13, 2013. A true and accurate copy of the fee agreement I signed is attached as **Exhibit A.**

2. At no time did I consent to incur separate charges for the firm performing basic administrative tasks. Nor did any person at KNR discuss with me the existence of the investigator fee, the purpose of the investigators, that an investigator fee would be deducted from my settlement, or why, or the administrative nature of the work for which the MRS Investigations was paid the fee.

3. When my case settled in August 2015, I received $5,868.54 of the $9,965.30 that KNR recovered in connection with my accident after the deduction of all fees and expenses incurred at KNR's direction. Before seeing the settlement memorandum that KNR presented to me, I was not aware that KNR would deduct an investigator fee for MRS Investigations. A true and accurate copy of the settlement memorandum I signed is attached as **Exhibit B.**

4. When KNR presented me with the settlement memorandum reflected in **Exhibit B**, I asked the KNR representative who presented me with the memo what the $50 fee to MRS Investigations

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EXHIBIT 13

was for. I was told, in response, that it was for obtaining police reports. I did not push the issue any further because it was only $50 and I assumed that my KNR lawyers would not charge me illegitimate fees. This was the extent of my communications with any KNR representatives about the fee until I spoke with Rob Horton months later, after he was no longer employed by the firm.

5. I have never otherwise become aware of any work, investigative or otherwise, performed by MRS Investigations in relation to my case with KNR.

I affirm the above to be true and accurate to the best of my knowledge under penalty of perjury.

Signature of Affiant 5/9/19
Date

Sworn to and subscribed before me on 5/9/19 at Fairlawn, Ohio.

Rachel Hazelet
Notary Public, State of Ohio

Attorney Rachel L. Hazelet
Notary Public, State of Ohio
My Commission
Has No Expiration Date
Sec 147.03 RC

Kisling, Nestico & Redick, LLC
Attorneys at Law

CONTINGENCY FEE AGREEMENT

Member Williams, hereinafter called Client, request and authorize Kisling, Nestico & Redick, LLC, hereinafter called Attorneys, to represent me for all purposes in connection with clients injuries and damages arising out of an incident which occurred on the 13th day of September, 2013 in Summit, County, Ohio, on the following conditions:

1) Attorneys will devote their full professional abilities to Clients case and Client agrees to fully cooperate with Attorneys. In the event of an appeal, an additional agreement for services shall be made by the parties hereto. No appeal will be made without both parties agreeing thereto. I understand that my case may be handled by any one or more of the members of the firm of Kisling, Nestico & Redick, LLC and different members may handle the case at different times. Client understands and agrees that Attorneys are not representing Client for any Workers Compensation, medical malpractice, disability, or employment related claims arising from this incident, injuries or damages, unless separate written contingency fee agreements have been signed for such claims.

2) The Attorneys shall receive as a fee for their services, one-third *(1/3)* of the total gross amount of recovery of any and all amounts recovered, and Client hereby assigns said amount to Attorneys and authorizes Attorneys to deduct said amount from the proceeds recovered. Attorney shall have a charging lien upon the proceeds of any insurance proceeds, settlement, judgment, verdict award or property obtained on your behalf. IN THE EVENT OF NO RECOVERY, CLIENT SHALL OWE ATTORNEYS NOTHING FOR SERVICES RENDERED.

3) Client agrees and authorizes Attorneys to deduct, from any proceeds recovered, any expenses which may have been advanced by Attorneys in preparation for settlement and/or trial of Clients case. IN THE EVENT OF NO RECOVERY, CLIENT SHALL OWE ATTORNEYS NOTHING FOR SUCH ADVANCED EXPENSES.

Client authorizes and directs Attorneys to deduct from Clients share of proceeds and pay, directly to any doctor, hospital, expert or other medical creditor, any unpaid balance due them for Clients care and treatment.

4) Client agrees that Attorneys have made no promises or guarantees regarding the outcome of Clients claim. Client understands Attorneys will investigate Clients claim and then Attorneys shall have the right to withdraw from representation.

Signed this 17 day of September, 2013

CLIENT

ATTORNEY

EXHIBIT A

233588 / Member Williams

Settlement Memorandum

Recovery:

REC	State Farm Insurance	$ 9,965.30
		$ 9,965.30

DEDUCT AND RETAIN TO PAY:

Kisling, Nestico & Redick, LLC		
MRS Investigations, Inc.;	$ 50.00	
Selson Clinics Neurology; /bd	$ 43.44	
Selson Clinics Neurology; /bd	$ 15.32	
Summa Wadsworth-Rittman Hospital; /bd	$ 5.00	
UHMP; 2128/bc	$ 42.78	
IOD Incorporated (Crystal Clinic); 28447554/bc	$ 33.56	
Total Due	$ 190.10	

DEDUCT AND RETAIN TO PAY TO OTHERS:

Kisling, Nestico & Redick, LLC	$ 3,321.76	
Selson Clinics Neurology	$ 121.10	
Summa Wadsworth-Rittman Hospital	$ 463.80	
Total Due Others	$ 3,906.66	

Total Deductions	$ 4,096.76
Total Amount Due to Client	$ 5,868.54
Less Previously Paid to Client	$ 0.00
Amount to be paid by Client	$121.10
Net Amount Due to Client	$ 5,989.64

I hereby approve the above settlement and distribution of proceeds. I have reviewed the above information and I acknowledge that it accurately reflects all outstanding expenses associated with my injury claim. I further understand that the itemized bills listed above will be deducted and paid from the gross amount of my settlement except as otherwise indicated. Finally, I understand that any bills not listed above, including but not limited to Health Insurance or Medical Payments Subrogation and/or those initialed by me to indicate that they are not being paid from the settlement are my responsibility and not the responsibility of Kisling, Nestico & Redick, LLC.

Date: 8/7/15

Name: _____
Member Williams

Firm: _____
Kisling, Nestico & Redick, LLC

EXHIBIT B