IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS 715 Woodcrest Drive Wadsworth, Ohio 44281 NAOMI WRIGHT 873 Carroll Street Akron, Ohio 44305 MATTHEW JOHNSON 805 Thayer Street Akron, Ohio 44310 THERA REID 28 Safer Plaza Akron, Ohio 44306 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 MINAS FLOROS D.C. Akron Square Chiropractic 1419 S. Arlington Street Akron, Ohio 44306 Defendants.	Case No. CV-2016-09-3928 Judge Alison Breaux

THIRD AMENDED CLASS-ACTION COMPLAINT WITH JURY DEMAND

I. NATURE OF THE ACTION

1. Defendants Alberto R. "Rob" Nestico and Robert W. Redick own and manage Kisling, Nestico & Redick, LLC ("KNR"), a Northeast-Ohio-based personal-injury law firm that has unlawfully grown its business by systematically violating the Ohio Rules of Professional Conduct, breaching its fiduciary duties to its clients, and engaging in calculated schemes to deceive and defraud them. By their unlawful, deceptive, fraudulent, and predatory business practices, Defendants have degraded the profession, and warped the market for legal services to the detriment of honest lawyers, consumers, and the administration of justice statewide.

2. Specifically, Nestico, Redick, and KNR have developed unlawful quid pro quo referral relationships with a network of chiropractors—including Defendant Minas Floros of Akron Square Chiropractic—whose interests, along with their own, Defendants prioritize over their clients.' The KNR Defendants circumvent Ohio's prohibition against direct client-solicitation by unlawfully communicating through these chiropractors to solicit car-accident victims without disclosing the quid pro quo nature of the relationship. By this practice, Defendants rob their clients of their right to unconflicted counsel, and do so in the wake of painful car accidents when the clients are at their most vulnerable. Defendants rope these clients in by promising them quick cash by way of an immediate high-interest loan that Defendants help to facilitate. Defendants further abuse their clients by coercing them into unwanted healthcare, and by unlawfully diverting client funds to the chiropractors to maintain the quid pro quo relationships—including by paying a fraudulent "narrative fee" that functions as a kickback to compensate high-referring chiropractors.

3. To further monetize their extreme and unlawful solicitation practices, the KNR Defendants have engaged in a deliberate scheme to defraud their clients by charging them fees for so-called "investigations" that are never actually performed. KNR's so-called "investigators" do

nothing more than chase down car-accident victims at their homes and other locations to sign them to KNR fee agreements as quickly as possible, for the KNR Defendants' exclusive benefit, to keep potential clients from signing with competitors. Yet the KNR Defendants charge their clients after the fact for having been solicited in this way by adding a misleadingly named "investigation fee" to each client's settlement statement, taking advantage of their position of trust and its clients' natural eagerness to obtain settlement funds by conditioning disbursement of such funds on the clients' unwitting approval of the fee.

4. Additionally, in 2012, the KNR Defendants established a quid pro quo relationship with a loan company, Liberty Capital Funding, LLC, that provided loans to its clients at extremely high annual rates of 49% and higher, plus fees. The KNR Defendants assisted Liberty Capital in forming its business and directed KNR clients to borrow from Liberty Capital. In turn, Liberty Capital provided unlawful kickback payments to the KNR Defendants for every client that KNR referred for a loan.

5. This is a class action under Ohio Civ.R. 23, alleging claims under Ohio law for fraud, breach of fiduciary duty, breach of contract, unjust enrichment, and deceptive trade practices under R.C. 1345.09.

6. Unless otherwise specified, the practices described in this complaint date back to KNR's founding in 2005 and are ongoing.

7. The allegations contained in this Third Amended Complaint are based on information provided by the Named Plaintiffs, as well as former KNR attorneys who are Plaintiffs' source of many of the documents quoted herein, and will testify to the accuracy of Plaintiffs' allegations.

II. PARTIES

8. Defendant KNR is an Ohio law firm focusing 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."

9. Defendant Minas Floros is the owner and manager of Akron Square Chiropractic. Dr. Floros, through his chiropractic clinic, unlawfully solicits clients on KNR's behalf in exchange for patient referrals and kickback payments, including a fraudulent "narrative fee."

10. 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 below. As with their other clients, Defendants fraudulently charged Ms. Williams for an "investigation fee" as described below. Ohio law requires Defendants to reimburse this illegal fee to Ms. Williams and all other current and former KNR clients who were so charged.

11. Plaintiff Naomi Wright is an Akron, Ohio resident who was injured in two car accidents in August 2016. Defendants unlawfully solicited Wright through their associates at Akron Square Chiropractors, and deceived and coerced her into accepting a conflicted legal representation, unwanted medical care, and a high-interest loan agreement as described below. After Ms. Wright terminated Defendants' services due to their coercive conduct, KNR asserted liens against her

lawsuit proceeds. Ohio law entitles Ms. Wright—and all other current and former clients who were solicited through KNR and ASC's unlawful kickback relationship—to a declaratory judgment that all such liens asserted by KNR are void as a matter law, and to reimbursement of all funds that Defendants collected under these liens.

12. Plaintiff Thera Reid is an Akron, Ohio resident who was injured in a car accident in 2016. Like with Plaintiff Wright, Defendants unlawfully solicited Ms. Reid through their associates at Akron Square Chiropractic, and deceived and coerced her into accepting a conflicted legal representation and also charged her a fraudulent "narrative fee," paid from her settlement proceeds directly to Dr. Floros, as described below.

13. Plaintiff Matthew Johnson is an Akron, Ohio resident who was injured in a car accident in 2012. Defendants recommended to Johnson that he take out a $250 loan with Liberty Capital, guaranteed by the prospective proceeds of his lawsuit, at an annual rate of 49%, compounded semi-annually, with $70 in processing fees that also accrued interest at the same rate. Defendants did not disclose to Mr. Johnson that they received a kickback payment in connection with his loan. Ohio law entitles Mr. Johnson—and all other current and former clients who have paid interest and fees in connection with Liberty Capital loans—to reimbursement by Defendants of all interest and fees paid on these loans.

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

III. JURISDICTION AND VENUE

15. The 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.

16. 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 practices at issue.

IV. FACTUAL ALLEGATIONS

A. KNR unlawfully solicits clients through a network of chiropractors with whom it maintains unlawful quid pro quo referral relationships, at the expense of its clients.

17. Plaintiff Wright was in a car accident on August 2, 2016, and again on August 29, 2016.

18. On or about August 7, 2016, a representative of Akron Square Chiropractic (ASC), who had apparently accessed a report of Wright's August 2 car accident, called Wright by phone, offering to pick her up in an automobile to transport her to its office on Arlington Street in Akron and provide her with chiropractic care. This ASC representative advised Wright that she was likely to be approached by other telemarketers in connection with her accident, that those telemarketers were untrustworthy, and that she should not talk to them or any other chiropractors or lawyers about her case.

19. When Wright arrived at the ASC office for treatment, she was in severe pain from her car accident. At this initial meeting, an ASC representative put her in a room with a telephone and suggested that Wright speak with "our attorneys." The ASC representative then dialed the phone to connect with a representative of KNR, and handed the phone to Ms. Wright, at which point the KNR representative solicited her. As part of the solicitation, the KNR representative told Ms. Wright that KNR would obtain money for her in a lawsuit, and would also provide her a cash

advance on her lawsuit proceeds "within a week or two." ASC had copies of KNR fee agreements on site, and provided one for Wright to sign. Wright trusted ASC and signed the agreement with KNR on ASC's advice.

20. ASC never advised Wright that it maintained a quid pro quo referral relationship with KNR.

21. Ms. Wright was unaware that KNR has established a quid pro quo relationship with ASC, and other healthcare providers, under which KNR and the providers exchange benefits, including referrals and guarantees of payment on behalf of KNR's unwitting clients.

22. For example, while Ohio Rule of Professional Conduct 7.3 prohibits attorneys from soliciting potential clients in person or by phone, ASC agrees to phone potential clients on KNR's behalf and to refer these clients to KNR for legal services. In turn, KNR agrees to refer its own clients to ASC for chiropractic care, pressures these clients to treat with ASC whether they want to or not, and promises ASC that its clients from KNR will pay a certain rate for their healthcare.

23. KNR's internal correspondence reveals that it routinely solicits patients through chiropractors. For example, on June 3, 2014, KNR office manager Brandy Lamtman[1] wrote to KNR's prelitigation support staff (KNR staff who were assigned to work on the prelitigation phase of KNR-client matters): "We have two intakes today that were referred to ASC and they are signing forms there." As the email shows, it was a routine practice for KNR to keep copies of its engagement agreement at ASC offices for ASC staff to provide to potential clients. On January 14, 2014, KNR intake manager Holly Tusko wrote to all KNR attorneys and intake staff: "If a doctor calls in and asks for a specific attorney you RING THIS out to the attorney intake button. … When

[1] Ms. Lamtman changed her last name from Brewer at some point during the course of conduct alleged in this Third Amended Complaint. While her name appears as Brewer in some of the documents quoted in this Complaint, she is referred to as Lamtman throughout.

the doctor calls and the patient is there with them, THAT is when the intake gets completed by the attorney that will get the case." This email shows that it was routine practice for certain chiropractors to advise their clients to call KNR offices, and directly participate in these phone calls.

24. Reciprocal referral agreements like the one between KNR and ASC constitute a conflict of interest, barred by Prof.Cond.R. 1.7. And Prof.Cond.R. 7.3, comment [5] expressly states, "A reciprocal referral agreement between lawyers, or between a lawyer and a nonlawyer, is prohibited." The Supreme Court of Ohio's Board of Professional Conduct (previously known as Commissioners on Grievances and Discipline) explained the prohibition of attorney-chiropractor reciprocal referral relationships in formal Opinion 2004-9:

> An attorney may not enter an agreement with the chiropractor for mutual referral of clients; may not reward or compensate a chiropractor for a referral; and may not request that the chiropractor recommend the attorney's legal services to the chiropractor's clients. … For example, if an attorney believes it is in the client's best interest to see a chiropractor and the client needs guidance in choosing a chiropractor, the attorney may provide several names of chiropractors so that the client may freely choose. If a chiropractor's patient needs legal services, the client should come to an attorney voluntarily having exercised free choice, not as a condition imposed by the chiropractor. The exercise of an attorney's professional independent judgment on behalf of a client demands that there be no mutual referral agreements, no rewards or compensation for recommendations or referrals, and no improper self-recommendation of legal services. Disinterested and informed recommendations are best for a client. An attorney and a chiropractor should not engage in any conduct involving or implying there is a business relationship between the two.

25. Defendants' conduct routinely and flagrantly violates these principles at the expense of their clients.

B. KNR's internal correspondence shows that it routinely directs its clients to treat with certain healthcare providers depending on KNR's business interests and without regard for its clients' interests, in violation of Ohio law.

26. To maintain its relationships with ASC and other providers, KNR tracks both its outgoing referrals and referral sources for each client to carefully monitor whether KNR and the chiropractors are meeting their obligations under their quid pro quo arrangements.

27. KNR tracks every client's referral source and uses e-mails and whiteboards, which KNR calls "chiro boards," to dictate instructions for which chiropractors and doctors KNR clients should be sent to at any given time. KNR makes these determinations based on prearranged agreements with the providers, as well as on the number of clients the doctors or chiropractors have referred to KNR. If a certain healthcare provider has referred KNR a certain number of clients, KNR will refer a proportionate number of its clients to that provider. KNR management constantly updates its chiro boards and e-mails instructions to its staff in an effort to maintain these proportions.

28. The KNR Defendants' decisions as to which chiropractors to refer to its clients have nothing to do with clients' needs and everything to do with Defendants' desire to maintain the quid pro quo referral relationships, and its expectation that the chiropractors will send them a commensurate number of referrals in return.

29. For example, on November 15, 2012, Nestico emailed KNR staff stating: "Please make sure to refer ALL Akron cases to ASC [Akron Square Chiropractic] this month. We are 30-0." 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.

30. On August 21, 2013, Lamtman emailed KNR's prelitigation attorneys (KNR attorneys who were assigned to work on the prelitigation phase of KNR-client matters) about the A Plus Injury chiropractic clinic, stating, "Please do not send any more clients there this month. We are 6 to 1 on referrals."

31. On May 29, 2012, Lamtman e-mailed KNR's attorneys and staff explaining as follows: "I had a chiropractor call me on Friday to review the number of cases she sent to us and we sent to her. I was unable to tell her how many we sent to her because this information was not in the referred to box in the case. I remembered that we did send her a couple of cases, but I wasn't sure of the details. This is why it is VERY important that this information is properly entered on the intake sheet. PLEASE make sure you are filling in ALL information on the intake sheet."

32. On January 27, 2014, Lamtman forwarded KNR staff an email from paralegal Courtney Warner stating that, "Deaconess Chiro[practic clinic] called … wants us to email them the names of ALL clients we referred in January, and going forward email the clients we refer every time we refer."

33. On June 9, 2014, Lamtman wrote to KNR's pre-litigation attorneys: "Please make sure you are using the chiro boards. When I left on Wednesday I switch [*sic*] Akron to Akron Injury and you sent ZERO cases there and 4 to ASC, I also added Tru Health and removed Shaker Square and you sent 3 cases to Shaker Square and ZERO to True Health. Core was removed as well and you sent a case there!"

34. On October 17, 2012, Lamtman 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 … ."

35. On May 22, 2013, Lamtman sent all pre-litigation attorneys and intake staff the following admonition, copying Nestico: "I have spent a significant amount of my day fixing referral mistakes. PLEASE make sure the information that you give and receive is listed on the intake sheet. Just this month alone there were 13 mistakes made by your [*sic*] regarding the referred to's [*sic*]. This cannot happen. I work hard to maintain a close relationship with chiropractors and I am in contact

with most of them several times a day. Furthermore, every single intake that gets done by attorneys, an email should be sent indicating what the referral is, where the case is referred to and how/when/who is signing case."

36. On May 17, 2013, Lamtman wrote to all KNR attorneys: "I cannot stress the importance of this enough, you MUST put the referred to on the intake sheet. I just fixed 3 cases today!!! This is VERY VERY VERY important."

37. On June 4, 2013, KNR intake manager Holly Tusko wrote to all KNR attorneys and intake staff: "I CANNOT express enough the importance of making sure that the referred by's [*sic*] are correct (regardless if it's chiros, directs, etc. … If they received a Direct mail YOU MUST ASK if they received a red bag on their door or if they received a mailer in their mailbox."

38. Defendants routinely send their clients to certain chiropractors even when they know that doing so will actually be detrimental to their clients. For example, ASC is part of a network of chiropractic clinics operated by Michael Plambeck that was sued in various courts by both Allstate and State Farm insurance companies. The insurance companies alleged that the chiropractors conspired with a network of lawyers and telemarketers to fraudulently inflate billings. Defendants knew about these lawsuits and knew that these insurance companies, which provided coverage for the defendants in countless KNR-clients' cases, would view client treatment at Plambeck clinics as inherently suspect and treat the KNR-clients' cases accordingly. Yet Defendants had no concern for this in continuing to pressure their clients to treat at ASC and other Plambeck clinics, thus prioritizing their own kickback arrangement with the chiropractors over the interests of their clients.

39. The KNR Defendants' special kickback relationship with Plambeck requires them to provide preferential treatment to Plambeck clinics like ASC. For example, KNR sends ASC all its so-called "red bag" referrals. Red-bag referrals are cases where the KNR Defendants located car

accident victims from publicly available crash reports and would then send an employee or agent to the victim's place of residence, without consent, to hang a "red bag" of KNR promotional materials on the victim's doorknob. These materials include a fake dollar bill mocked up with KNR branding and the phrases "GET MONEY NOW" and "Kisling, Nestico and Redick Can Help You Get a CASH ADVANCE On Your Settlement." *See* **Exhibit A**. These materials also contain the phrase: "$$LET US GET MONEY FOR YOU$$." *Id.* KNR obsessively reminds its attorneys and staff by email that all red-bag referrals are to be sent to ASC.

40. The KNR Defendants' decision to send all red-bag referrals to ASC has nothing to do with their client's needs and everything to do with their desire to maintain their quid pro quo referral relationship with ASC, and their expectation that ASC will send them a commensurate number of referrals in return.

41. For example, on July 17, 2013, Lamtman emailed KNR's prelitigation attorneys: "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."

42. On June 19, 2014, Lamtman emailed KNR's prelitigation attorneys: "Twice in the past week, I've learned that ASC has roped in companions from OUR referrals. You must indicate if there are companions on the intake and you MUST try to rope them in. Obviously you cannot call them, but we don't have this problem with Paul or our Columbus attorneys as they do a great job with this. This is a BIG problem in Akron." While it would not otherwise matter who "roped in" the clients, since KNR would be providing legal services to them in any event, the reason that Lamtman was so concerned that the referral was "roped in" by ASC as opposed to KNR is that such "roping in" created a deficit as to the number of referrals that KNR then owed to ASC, as opposed to the other way around.

43. The KNR Defendants were so protective of their quid pro quo referral relationship with ASC that they would take extra care to ensure that every client who had any affiliation with ASC would be directed to treat at ASC and not at a competing clinic. For example, on December 16, 2014, Lamtman emailed KNR prelitigation attorneys: "We need to get cases over to [another chiropractic clinic located in the Akron area]. Please make sure companion to cases [*sic*] aren't at ASC, they haven't treated at ASC in the past. No affiliation whatsoever at ASC!" Here, KNR wanted to reward the other Akron-area clinic for sending it some cases, but also did not want to risk offending ASC, with whom it had a preferential kickback relationship.

44. To further protect their relationship with ASC, the KNR Defendants would screen ASC cases for potential issues regarding insurance coverage. For example, on September 14, 2014, Lamtman emailed the following instructions to KNR prelitigation attorneys and their support staff, copying Defendant Nestico: "When there is an insurance issue or even the possibility of insurance issues on ASC cases, please send an email to akron2@csgonline.net and Katie@managedservices4u.com with the information. This MUST be done. Thank you." Here, KNR was attempting to protect ASC from providing treatment for which it might not be compensated. As with the red-bag referrals, KNR did not extend the same privilege to other chiropractors with whom it worked. This privilege had nothing to do with the quality of care provided by ASC and everything to do with KNR's kickback relationship with ASC.

45. The KNR Defendants would further reward their high-referring chiropractors like ASC by taking them on vacations to locations like Cancun, Mexico, and Punta Cana in the Dominican Republic. On November 6, 2013, Lamtman emailed "room arrangements" for a trip to Cancun that KNR arranged for Nestico, Redick, their "prelit intake" attorneys, and their highest

referring doctors and chiropractors, including Defendant Floros of ASC, and Sam Ghoubrial, a "pain management" doctor with whom Nestico maintains close personal and business relationships.

C. KNR pressures its clients into unwanted healthcare to serve the interests of the providers with whom it maintains quid pro quo relationships.

46. As a matter of firm policy, KNR pressures its clients to obtain treatment from ASC and other chiropractors and doctors with whom it maintains quid pro quo relationships, even when the client would prefer to treat elsewhere. When clients resist this pressure, KNR tells the clients, falsely, that their cases will be damaged if they do not treat with KNR-preferred providers, and subtly or explicitly threatens to drop the clients' cases. Thus, healthcare providers refer cases to KNR knowing that KNR will pressure these clients into continuing to treat with them, and also into making multiple billable visits to the providers.

47. For example, when Named Plaintiff Naomi Wright explained to her KNR attorney, Devin Oddo, that she no longer wanted to treat with ASC due to the substandard care they were providing her, Attorney Oddo, following the policy dictated to him by the KNR Defendants, told her that she would have to continue to treat with ASC or it would hurt her case. This caused Ms. Wright to suffer severe emotional distress, and caused her to seek new legal representation to replace KNR on her personal-injury claims.

48. Ms. Wright's experience was not unique. For example, on March 26, 2013, Lamtman emailed all KNR attorneys: "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." Here, Lamtman was instructing the attorneys to "pull" the KNR clients away from their chosen chiropractors and send them to a chiropractor that KNR "works with." As the rest of Lamtman's message makes clear, this instruction had nothing to do with the clients'

interests and everything to do with KNR's desire to maintain control over the clients and not lose them to other attorneys.

49. On May 1, 2013, Lamtman wrote to KNR prelitigation attorneys: "This happens frequently so we wanted to address this with all of you. When doing an intake, just [because] they tell you they are treating with PCP [a primary-care physician], doesn't mean you shouldn't refer to a chiro. Always refer to a chiro bc they can do both." Here, Lamtman was instructing KNR attorneys to pressure their clients into chiropractic care even when the clients stated, as they "frequently" did, that they were already treating with their chosen doctor and did not want to treat with KNR's chiropractor.

50. In fact, as a matter of firm policy, KNR management instructed its staff to call the chiropractors directly to schedule appointments for their clients. On March 12, 2013, Lamtman wrote to KNR prelitigation attorneys, copying Nestico: "PLEASE make sure you are calling the chiro and scheduling the appointment. This has been discussed before." And on A24, she wrote: I know that many of you already do this, but for those of you that do not, PLEASE put the intake on hold and call the chiropractor's office and set up the appointment for the client and then let the client know the time they need to be there. It is IMPERATIVE that this gets done. Paralegals, when you do your first phone call with the client after the case gets opened, make sure the client went to see the chiropractor."

51. The predatory nature of the KNR Defendants' relationship with the chiropractors is made clear by the fact that the KNR Defendants would not pressure certain preferred clients into chiropractic care. For example, in September 2013 Lamtman referred one of her friends to KNR, and on September 16, 2013 wrote to then-KNR attorney Robert Horton: "Since she is a nurse, she may not want chiro. Feel her out before you refer. She may want family doc and PT." The great

majority of KNR clients received no such consideration before KNR pressured them into chiropractic treatment.

52. As for Ms. Wright, after she terminated KNR's representation due to the pressure it placed on her to obtain what she viewed as substandard chiropractic care, KNR wrote a letter dated January 11, 2017, to Safe Auto Insurance Company, who insured the parties who caused Wright's car-accident. In this letter, KNR "assert[ed] a charging lien" of "33 1/3% [of] … whatever final settlement amount is paid" to Wright, plus "verified case expenses in the amount of $348.87." On March 15, 2017, KNR wrote to Wright's new attorney, Matthew Ameer, "asserting a charging lien for … the contractually agreed upon percentage quantum meruit [*sic*] of $2,430.00 on [Wright's] 8/2/16 accident and $900 on [her] 8/29/16 accident … in addition to verified case expenses" in the amount of $348.87. These lien letters[2] are representative of the liens that KNR has asserted against the lawsuit proceeds of every client who has terminated its services.

D. KNR serves the interests of its preferred healthcare providers at the expense of its clients by guaranteeing its clients' payments to the providers, and failing to disclose the conflict of interest to its clients.

53. The KNR Defendants also reward their quid pro quo providers by guaranteeing the providers' fees on KNR clients' cases.

54. KNR's standard fee agreement, attached as **Exhibit B** and discussed in more detail below, contains a provision by which each KNR client "authorizes and directs [KNR] to deduct from [the client's] share of proceeds and pay, directly to any doctor, hospital, expert or other medical creditor, any unpaid balance due them for [the client's] care and treatment." By this provision, KNR

[2] These lien letters from KNR are not attached under Civ.R. 10(D)(1) because the Court's June 27, 2017 Order granting Plaintiffs leave to file this Third Amended Complaint (at 1) states that "Plaintiff is barred from attaching any documents to her Third Amended Complaint **unless** the document is the subject of a **breach of contract claim**." (Emphasis in original.)

unlawfully purports to contract around its duty to negotiate the best possible settlement result *for its clients*, as opposed to third parties.

55. It is standard industry practice for healthcare providers to accept significant reductions to their bills, and for personal-injury lawyers to negotiate their clients' case-related healthcare bills to the lowest amount possible before finalizing a settlement. The idea, of course, is to maximize value for the client—the sole person to whom the lawyer owes a duty of loyalty.

56. The KNR Defendants fail to advise their clients of this standard industry practice, and fail to advise their clients of their quid pro quo relationship with the providers, thus failing to disclose their conflict of interest between their clients and the providers, and breaching their fiduciary duties to their clients. Due to this undisclosed conflict of interest, the KNR Defendants fail to negotiate industry-standard reductions to their clients' healthcare bills.

E. KNR charges fraudulent "narrative fees" to its clients as part of a scheme to reward chiropractors who solicit and refer clients to KNR

57. 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 these providers. They do so by paying certain providers a "narrative fee" for every referred client, and then fraudulently deducting that fee as an expense from the amounts recovered on each client's behalf, as with the "investigation fee" described below. These narrative fees are ostensibly paid to the chiropractors in exchange for a narrative summary of the client's injuries to use in negotiating a settlement with the opposing party.

58. But these narratives are worthless. In most if not all cases, the narratives consist entirely of material cut directly from the client's medical records and pasted into a form. The narratives never contain any information that is not readily apparent and easily accessible from the client's medical records. Defendants know the narratives do not make an opposing party any more

likely to settle a client's case, that the narratives would not make a finder of fact any more likely to resolve an issue in a client's favor, and that the narratives add no value to their client's cases.

59. The narrative fees are nothing more than kickback payments to referral sources. The KNR Defendants' decision to pay these fees—and then charge their clients for them—has nothing to do with individual clients' needs and everything to do with the kNR Defendants' desire to maintain their quid pro quo/kickback relationships with the chiropractors. Indeed, the KNR Defendants selectively paid narrative fees only to certain cherry-picked group of high-referring chiropractors, including Defendant Floros, as KNR management dictated to the firm's rank-and-file attorneys. KNR paid these fees out of its clients settlement funds as a matter of policy, as a secret kickback to compensate referral sources, regardless of any benefit to the client.

60. For example, on October 2, 2013, Lamtman sent a "High Priority" email to all of KNR's litigation and pre-litigation attorneys and support staff stating, "[t]hese are the only Narrative Fees that get paid," before listing a series of chiropractors and instructions for payment of the narrative fees. Evidently, "narratives" from other chiropractors were of no value.

61. Defendant Rob Nestico would travel to certain chiropractors' offices in Ohio to inform these chiropractors of KNR's willingness to pay the narrative fee on every referral, no questions asked and regardless of the client's needs, in exchange for a steady stream of referrals. KNR paid the narrative fee out of its clients' settlement funds

62. The KNR Defendants took deliberate steps to ensure that the narrative fees would avoid scrutiny, including by maintaining a policy that narrative fees would not be paid in cases involving clients under 18 years old. The KNR Defendants adopted this policy because Ohio law provides that settlements for minors are subject to a county probate court's review and approval under R.C. 2111.05 and 2111.18, and Sup. R. 67–68.

63. Because the KNR Defendants knew that their narrative-fee scam would not withstand probate-court scrutiny, they routinely reminded KNR attorneys and staff that narrative fees should not to be paid on cases involving clients under 18 years old. For example, on April 2, 2014, Lamtman emailed all KNR pre-litigation attorneys and staff to instruct them in capital letters: "NO NARRATIVES ARE TO BE PAID ON ANY MINOR PATIENT!"

64. KNR's rank-and-file attorneys knew these narrative fees were fraudulent and expressed their disapproval of these fees to KNR management.

65. For example, before he joined KNR in March of 2012 as a pre-litigation attorney, Gary Petti became aware that KNR paid the "narrative fee" as a kickback to certain chiropractors. When he spoke with certain chiropractors from Plambeck-owned clinics who would occasionally refer him cases, they told him that KNR paid them a narrative-report fee every time they referred a case to KNR and asked if he would do the same. Petti refused, and did not understand at the time that this was KNR's firm-wide policy, as opposed to a practice followed by certain KNR attorneys. When he went to work for KNR, he assumed he would not be required to charge his clients for unnecessary narrative-fee expenses.

66. When he began working at KNR, Petti primarily worked on the cases that he had brought to the firm, and when he closed these cases, no narrative fee was charged to these clients because Petti never ordered narrative reports for them. It was always his understanding that the decision as to whether a narrative report was worthwhile was the attorney's decision to make, upon consultation with the client. Petti 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.

67. As Petti began to work on cases from KNR that had been taken in and previously worked on by other KNR attorneys, he would see the narrative fee appear on the client's settlement statement. He assumed that these fees were for narrative reports that were ordered by the previous KNR attorney who worked on the case. He soon learned that these narrative reports ordered by KNR were very different from the narrative reports that he 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 Defendant Floros, of Akron Square Chiropractic, were especially bad, and the worst narrative reports Petti 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 to Petti 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

68. In approximately mid-to-late November of 2012, Petti's paralegal Megan Jennings, who was also KNR's "intake coordinator," began to collect a package of documentation on a case that was to be submitted to the defendant's insurance company for evaluation, including police reports, and medical records. When she submitted this package to Petti for his approval, he noticed a charge for a narrative report in the documents. Petti immediately expressed his surprise and disapproval that the narrative fee would be included in this package, and asked Jennings why this was the case. He also told her that he is the lawyer, so he is the one who gets to advise the client as to whether the narrative report is a justifiable expense. In response, Jennings informed him 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. Petti then told her that he would not approve of any such fees being charged to his clients without his express approval.

69. Within a few days, Petti was working with Jennings on another case that was affiliated with Akron Square Chiropractic. On November 28, 2012, Petti e-mailed Jennings about this case to instruct her that no narrative fee was to be paid on it. He wrote, "Remember, no reports from doktor flooroes," deliberately misspelling Dr. Floros' name in an effort to defuse tension with humor. He also wrote, as a follow-up to their previous conversation about the narrative fees, "I've asked a number of [insurance] adjusters about the importance of those [narrative] reports and the most common response is nearly uncontrolled laughter."

70. The KNR Defendants terminated Petti's employment within weeks of his having sent this e-mail complaining about the narrative reports. KNR had no legitimate business reason for terminating him, simply telling Petti that he was "not a good fit" at the firm. KNR terminated Petti in retaliation for his complaint about the narrative fees and to avoid further internal scrutiny of its fraudulent business practices.

71. The kNR Defendants deducted a $150 narrative fee from Plaintiff Thera Reid's settlement and paid it to Dr. Floros, after illegally soliciting her through Dr. Floros and Akron Square Chiropractic in the same manner as with Plaintiff Naomi Wright described above.

72. On or about April 21, 2016, a representative of Akron Square Chiropractic (ASC), who had apparently accessed a report of Reid's April 20 car accident, called Reid by phone, offering to pick her up in an automobile to transport her to its office on Arlington Street in Akron and provide her with chiropractic care. This ASC representative advised Reid that she was likely to be approached by other telemarketers in connection with her accident, that those telemarketers were untrustworthy, and that she should not talk to them or any other chiropractors or lawyers about her

case.

73. When Reid arrived at the ASC office for treatment, she was in severe pain from her car accident. At this initial meeting, an ASC representative suggested that Reid speak with attorneys from KNR. The ASC representative then dialed the phone to connect with a representative of KNR, and handed the phone to Ms. Reid, at which point the KNR representative solicited her. ASC had copies of KNR fee agreements on site, and provided one for Reid to sign. Reid trusted ASC and signed the agreement with KNR on ASC's advice.

74. ASC never advised Reid that it maintained a quid pro quo referral relationship with KNR.

75. Ms. Reid was unaware that KNR has established a quid pro quo relationship with ASC, and other healthcare providers, under which KNR and the providers exchange benefits, including referrals and guarantees of payment on behalf of KNR's unwitting clients.

76. After all the deductions KNR made from Ms. Reid's settlement proceeds to pay attorneys fees and other expenses incurred at KNR's direction, including to doctors, chiropractors, loan companies, and medical imaging and billing companies, Ms. Reid received only $12,349.70 of the $48,720 that KNR recovered on her behalf.

F. KNR fraudulently charges clients "investigation fees" for investigations that never take place.

77. Since its founding in 2005, KNR has entered into contingency-fee agreements with its clients which contain the following standard language authorizing recovery of reasonable advanced expenses:

> The Attorneys shall receive as a fee for their services, one-third 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.
>
> 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 [*sic*] 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 [*sic*] share of proceeds and pay, directly to any doctor, hospital, expert or other medical creditor, any unpaid balance due them for Clients [*sic*] care and treatment.

(**Exhibit B**, emphasis in original.)

78. To the extent that KNR and its clients have entered into contingency-fee agreements with differing language, this differing language was substantially similar to the language quoted in the preceding paragraph, and KNR drafted this differing language with the same intended legal effect as this language.

79. KNR's contingency-fee agreements expressly or impliedly provided that KNR could deduct only reasonable expenses from a client's share of proceeds—that is, reasonably priced services that were actually and reasonably undertaken to advance the client's case, and not a KNR overhead expense that was already subsumed in KNR's contingency fee percentage. All class members understood that KNR would not incur expenses unreasonably and would not charge them for unreasonable expenses.

80. In all cases where KNR recovered money for a client in a judgment or settlement, KNR followed the standard practice of requiring client to execute a "Settlement Memorandum" that the firm prepared before distribution.

81. KNR's Settlement Memoranda purport to set forth the expenses that KNR incurred

or advanced on each client's behalf and the corresponding amounts that KNR deducted and retained from each client's recovery to pay for those expenses.

82. When itemizing the amounts deducted and retained from the recovery amount, KNR represented to its clients on each Settlement Memorandum that the deductions were only for reasonable expenses—that is, for reasonably priced services that were reasonably and actually undertaken in furtherance of the client's legal matter, and not a KNR overhead expense that was already subsumed in KNR's contingency fee percentage.

83. In requiring the client's signature on each Settlement Memorandum, KNR purported to obtain the client's written approval for KNR's deductions and conditioned the disbursement of the client's money on KNR's receipt of this purported approval.

84. During the class period, KNR aggressively pursued prospective clients, subjecting its attorneys and staff to discipline if prospective clients were not signed up within 24 hours of the prospective client's first contact with KNR. If a prospective client would not come to a KNR office to sign a fee agreement within 24 hours, KNR attorneys and staff were instructed to "send an investigator" to the client.

85. During the class period, KNR's promotional material promised prospective clients a free consultation, and promised that if a prospective client could not travel to a KNR office, KNR would "come to them." *See* **Exhibit A at 5** ("Call now for a free consultation – If you can't come to us, we'll come to you."). Neither KNR's promotional material nor fee agreement stated or implied that KNR would charge prospective clients a fee for KNR's coming to them. KNR never disclosed to its clients or prospective clients that they would be so charged.

86. But KNR charged its clients a fee of approximately $50 and more (an "investigation fee") for sending employees to clients' homes, places of employment, chiropractors' offices, doctors'

offices, or other locations for the purpose of obtaining their signature on KNR's contingency-fee agreement.

87. KNR, as a matter of policy, deducted and retained from clients' recoveries as a case expense this investigation fee that KNR never disclosed to clients in KNR's promotional materials, in clients' contingency-fee agreements, or in any other way. The charge for the investigation fee appears on the client Settlement Memoranda, as charged to "AMC Investigations, Inc.," "MRS Investigations, Inc," or to other corporations or people purporting to provide investigative services. Defendant Nestico personally reviews every KNR client's Settlement Memorandum before it is submitted to the client for approval, including to personally approve reductions to chiropractic charges, as stated in a July 31, 2013 email from Lamtman to all KNR attorneys.

88. AMC Investigations, Inc. is an Ohio corporation registered to Aaron M. Czetli, a personal friend of Defendant Nestico, KNR's managing partner. Since 2005, KNR has employed Czetli as an employee or independent contractor, mainly to stuff envelopes for promotional mailers and to perform other odd jobs, in addition to meeting prospective clients to sign them to contingency-fee agreements.

89. MRS Investigations, Inc. is an Ohio corporation registered to Michael R. Simpson, who, like Aaron Czetli, is Nestico's personal friend. Like Czetli, KNR has employed Simpson since 2005 as an employee or independent contractor, mainly to stuff envelopes for promotional mailers and to perform other odd jobs, in addition to meeting prospective clients to sign them to contingency-fee agreements.

90. Czetli and Simpson are not licensed as private investigators by the Ohio Department of Public Safety. Nor are any of the other so-called "investigators" KNR engaged.

91. Although registered with the Ohio Secretary of State, AMC Investigations and MRS

Investigations do not do any business apart from Czetli's and Simpson's employment with KNR as described above—nor does any other investigation entity whose fees KNR charges to its clients.

92. In some cases, Czetli, Simpson, or other "investigators," such as Wesley Steele in the Columbus area, or Gary Monto in the Toledo area, traveled to prospective clients' homes, places of employment, chiropractors' offices, doctors' offices, or other locations to obtain signatures on fee agreements and, in some cases, to obtain copies of case-related documents from the potential client. This was the only task that Czetli, Simpson, or the other investigator ever performed in connection with any KNR client's file, and it was the only task performed in connection with the "investigation fee" that KNR charged every class member. All of KNR's so-called "investigators" held themselves out to clients and consumers as KNR employees and all of them had KNR email addresses. For example, Czetli's and Simpson's email addresses were aczetli@knrlegal.com and msimpson@knrlegal.com, respectively.

93. In other cases, KNR's clients sign their fee agreement at a KNR office or a chiropractor's office, or otherwise provide the signed agreement by fax, mail, or email. In these instances, neither Czetli, Simpson, nor any other investigator performs any task at all in connection with the client. But KNR still deducts the investigation fee from the settlement or judgment proceeds obtained on behalf of these clients, and pays the fee either to Czetli or Simpson on a rotating basis.

94. In rare cases, such as when a court or outside attorney reviewed a client's Settlement Memorandum, KNR removed the investigation fee to avoid scrutiny of it. On some of these occasions, senior KNR attorneys specifically instructed junior KNR attorneys and staff to remove references to the investigation fee from Settlement Memoranda.

95. In no case was the investigation fee properly chargeable to any KNR client as a case

expense. Even in the cases where the so-called "investigator" travelled to meet the prospective client to obtain a signature or documentation, the prospective client—who was promised a free consultation—never agreed to be charged for the so-called service. By passing this charge off as a fee for an "investigation," Defendants defrauded KNR clients into paying KNR's overhead expenses above and beyond the level properly subsumed in KNR's contingency fee.

96. Ohio law expressly prohibits attorneys from charging basic administrative services, like KNR's "investigation" or "sign-up" fee, as a separate case expense. For example, in *Columbus Bar Assn. v. Brooks*, 87 Ohio St.3d 344, 346, 721 N.E.2d 23 (1999), the Supreme Court of Ohio found that an attorney breached his fee agreement and charged an excessive fee in violation of the Ohio Code of Professional Responsibility, DR 2-106(A) (since replaced by Prof.Cond.R. 1.5), by collecting for secretarial and law clerk expenses in addition to filing fees, deposition fees, and thirty-three percent contingency fee on a settlement. The court explained its holding as follows:

> Costs of litigation generally do not include secretarial charges or fees of paraprofessionals. Those costs are considered to be normal overhead subsumed in the percentage fee. In cases where legal services are contracted for at an hourly rate, an attorney's secretarial costs, except in unusual circumstances and then only when clearly agreed to, are part of overhead and should be reflected in the hourly rate. If an attorney charges separately for a legal assistant, the legal assistant's hourly charges should be stated and agreed to in writing.

97. The Supreme Court of Ohio's holding in *Brooks* is consistent with Formal Opinion 93-379 of the American Bar Association's Committee on Ethics and Professional Responsibility, which reads in part as follows:

> In the absence of disclosure to the client in advance of the engagement to the contrary, the client should reasonably expect that the lawyer's cost in maintaining a library, securing malpractice insurance, renting of office space, purchasing utilities and the like would be subsumed within the charges the lawyer is making for professional services. ... [I]n the absence of an agreement to the contrary, it is impermissible for a lawyer to create an additional

> source of profit for the law firm beyond that which is contained in the provision of professional services themselves. The lawyer's stock in trade is the sale of legal services, not photocopy paper, tuna fish sandwiches, computer time or messenger services.

98. KNR's practice of sending so-called "investigators" to obtain client signatures on fee agreements is a basic administrative service that is not properly chargeable as a separate expense. By charging their clients for this practice after the fact, after having promised a free consultation and that "if you can't come to us, we'll come to you," and cloaking the charge under the guise of an "investigation," the KNR Defendants have intentionally misled their clients in an unlawful attempt to create a profit source beyond the provision of legal services

99. KNR deducted an investigation fee from the settlement it obtained on behalf of Named Plaintiff Member Williams as a $50 expense payable to MRS Investigations, Inc., as reflected on the Settlement Memorandum attached as **Exhibit C**. Williams never had any interaction with any representative of MRS Investigations, Inc. When Williams signed up as a KNR client, she traveled herself to a KNR office to sign up in person. KNR never advised Williams as to the purpose of the charge to MRS Investigations, Inc., and never obtained Williams's consent for the charge. No services were ever provided to Williams in connection with the $50 payment to MRS Investigations, Inc.

G. Internal KNR correspondence reveals the fraudulent nature of the "investigation fee."

100. The KNR Defendants' internal correspondence reveals that the investigation fee is a fraud.

101. For example, on May 6, 3013, Lamtman wrote to KNR prelitigation attorneys, copying Nestico: "We MUST send an investigator to sign up clients!! We cannot refer to Chiro and have them sign forms there. This is why we have investigators. We are losing too many cases doing this!!!!!!!" This email makes clear that KNR's purpose in "having" the so-called investigators was not

to perform any investigations, but rather simply to chase down potential clients to have them sign forms so that KNR did not lose the potential clients' business.

102. A December 7, 2012 email from Defendant Robert Redick further clarifies that the so-called "investigation fee" has nothing to do with investigations, but rather amounts only to a "sign up" fee, *i.e.*, a fee to the client for having been "signed up." In his email, Redick wrote to all KNR staff, copying Nestico: "Please be advised that if the attorney on the case requests any investigator – WHO IS NOT MIKE [Simpson] OR AARON [Czetli] – to do something for a case that has already been opened. I.E. – Pick up records - knock on the door to verify address - they CAN be paid on a case by case basis depending on the task performed. However, no checks for anything other than the SU fee should ever be requested without getting in-writing approval from the handling attorney, myself and/or Brandy. Under no circumstances should any additional checks to MRS or AMC be requested other than at the time the case is set-up. Please see me if you have any questions."

103. By his reference to "the SU fee" in his December 7, 2012 email, Redick was referring to the "sign up fee" or, in other words, the fraudulent "investigation fee" that every KNR client was charged as a matter of firm policy. Redick's email made clear that any task beyond the basic "sign-up" could be charged separately and paid to the investigator on a case by case basis depending on the task performed, unless it was Czetli or Simpson who performed the task. The reason that Czetli and Simpson were not to be so paid is that they were already paid on a rotating basis for the "sign-ups," such as those that occurred at chiropractors' offices where a so-called investigator never participated. Because Czetli and Simpson were already well compensated enough by the fraudulent payments for doing nothing at all on these additional sign-ups, KNR did not pay them for performing additional tasks.

104. KNR's intake department sent a daily email containing a chart of each day's intakes. These daily emails confirm that KNR paid an "investigator" as a matter of policy on every single case it took in, and paid Czetli and Simpson on cases in which they had no involvement at all. For example, KNR's daily intake email for October 14, 2014 confirms that Czetli and Simpson, Akron-based "investigators," were paid on cases that came in from a chiropractic clinic in Toledo, and by direct mail to the Columbus office, despite the fact that KNR has Toledo and Columbus-based investigators on staff. On this same day, Czetli and Simpson were paid on a total of 22 cases that came in from Akron, Canton, Shaker Heights, Elyria, and Youngstown, and other undisclosed locations.

105. The daily intake email for May 30, 2014 confirms that Simpson was paid on two cases from the Sycamore Spine & Rehabilitation clinic in Dayton, Ohio, while also being paid on two cases from Cleveland (200 miles away from Dayton), two from Akron, one from Stark County, and four more from undisclosed sources.

106. Emails by KNR employees routinely use the terms "sign-up" or "sign-ups" when referring to investigators. For example, on June 19, 2013, KNR secretary Amber Angelilli, in an email to all KNR staff titled "Investigator info," advised that "[Investigator] Jeff Allen is back on duty. Please contact him for sign-ups." On March 8, 2013, KNR attorney Kristen Lewis wrote to all KNR attorneys: "Once the intake screening form is completed by the attorney, an investigator will handle the signups. They will have our fee agreement signed and leave a more detailed medical questionnaire for the client to complete."

107. Emails by KNR attorneys further confirm that KNR does not use its so-called "investigators" to perform actual investigations.

108. For example, on February 24, 2012, KNR attorney Ken Zerrusen wrote to all KNR

staff: "I need a private investigator to find a driver when we only have the license plate # Who do we use for this?"

109. On December 23, 2013, KNR attorney Kristen Lewis wrote to all KNR attorneys: "Is there someone that we regularly use when trying to locate a MIA client?"

110. On August 27, 2014, KNR attorney Joshua Angelotta wrote to all KNR attorneys: "Any recommendations for an Akron area investigator we can hire to get potential fact witness statements?"

111. In short, Czetli, Simpson, and Co. weren't really "investigators." They were Defendant's employees who performed a basic intake function, among other odd jobs, and were paid via fraud against Defendants' clients.

H. KNR directed its clients to take out high-interest loans with Liberty Capital Funding, a company in which Defendants maintained a financial interest.

112. An attorney's professional obligations require the exercise of caution in referring clients to loan or financing companies, and any self-dealing with respect to such referrals is strictly prohibited by law. These considerations were explained by the Supreme Court of Ohio's Board of Commissioners on Grievances and Discipline, in formal Opinion 94-11, which states, in part, as follows:

> [B]efore referral to a financing company, a lawyer must carefully consider whether the referral is in the client's best interest. A lawyer should consider whether he or she could provide pro bono representation or whether the client might be eligible to receive pro bono representation elsewhere. A lawyer should assist the client in determining whether payment of the legal services or costs and expenses of litigation could be accomplished through the use of the client's already established credit cards, particularly if the interest rates are lower. *See* Opinion 91-12 (1991). A lawyer should encourage a client to consider other possible sources of loans that might carry lower interest rates, such as bank loans or personal loans from family or friends. An attorney should consider whether or not to advance or guarantee the expenses of litigation as permitted under DR 5-103 (B).

> *See* Op. 87-001 (1987) ("[i]t is ethically proper for an attorney to advance expenses of litigation on behalf of a client, provided the client remains ultimately liable for such expenses"); Op. 94-5 (1994) (advising on the issue of settling a lawsuit against a client for expenses of litigation). Finally, the attorney must be satisfied that the terms and conditions of the financing company do not involve the attorney in a violation of the Ohio Code of Professional Responsibility.

113. KNR routinely and flagrantly violates these principles in recommending loan companies to its clients, and engaging in self-dealing regarding these loans.

114. On May 2, 2012, Defendant Nestico emailed all KNR attorneys and staff requesting "a copy of the questionnaire sent to us when a client asks for a loan … from Oasis or [P]referred [C]apital," two companies that KNR was recommending to its clients at the time.

115. On May 10, 2012, Nestico sent an email to all KNR attorneys, introducing them to a new loan company, Liberty Capital Funding, and instructing them that "For any Plambeck patients only please use the below company for cash advances." The next day, Nestico clarified his instruction by an email stating, "Sorry applies to all cases not just Plambeck."

116. On May 14, 2012, Lamtman emailed all KNR staff on the subject of "Loans": "For today or until further notice, please use Preferred Capital instead of new company. We are ironing out some glitches."

117. Documents from the Florida and Ohio Secretaries of State confirm that Liberty Capital Funding was registered as a corporation on April 16, 2012, just under two weeks before Nestico requested copies of forms used by other loan companies, and just under three weeks before Nestico instructed his staff to refer KNR clients to Liberty Capital for all cash advances.

118. On May 21, 2012, KNR attorney Paul Steele, at Defendants' direction, provided KNR staff with further instructions about working with Liberty Capital. He wrote: "When clients call in about a loan – send them to Liberty Capital Funding. If they contact Pref Capital or Oasis

first, let them stay with PCF or Oasis. When you give them liberty Funding [*sic*] info, tell them to call and ask for Ciro at 866-612-6000. Liberty Funding will then email you for case info just like Pref Cap does. Use this template when responding. They are matching Pref Cap rates + fee for Western Union."

119. On November 27, 2012, Lamtman's assistant Sarah Rucker emailed KNR prelitigation attorneys, copying Nestico, to instruct them that, "Tomorrow there will be a lunch with Ciro Cerrato from Liberty Capital. Rob [Nestico] would like each Pre-Lit Attorney to attend. If you are unable to attend please have your paralegal attend in your place. Thanks!"

120. On November 30, 2012, Nestico emailed KNR prelitigation attorneys on the subject, "Lending co": "Please use [L]iberty [C]apital until further notice."

121. Liberty Capital's rates were extremely high. According to the agreement that KNR advised Named Plaintiff Matthew Johnson to enter, Liberty Capital charged an annual interest rate of 49%, which was topped by a $50 purported "delivery fee" and a $20 purported "processing fee" that also accrued interest at the same 49% rate.[3] Thus, a client who took out a loan for just $250, would pay $566.01 in total after one year, $838.82 after two years, and $1,261.69 after three years. Mr. Johnson paid his loan back with fees and accrued interest after approximately one year.

122. The KNR Defendants knew that many KNR clients would be unable to repay their Liberty Capital loans until their lawsuits resolved, a process that often takes years.

123. Liberty Capital and the KNR Defendants required KNR clients, in taking out a Liberty Capital Loan, to authorize KNR—who also signed to its clients' Liberty Capital loan agreements—to deduct any amounts due to Liberty Capital from the clients' settlement or judgment

[3] Mr. Johnson's agreement with Liberty Capital is not attached under Civ.R. 10(D)(1) because the Court's June 27, 2017 Order granting Plaintiffs leave to file the Second Amended Complaint (at 1) states that "Plaintiff is barred from attaching any documents to her Second Amended Complaint **unless** the document is the subject of a **breach of contract claim**." (Emphasis in original.)

amounts and pay those amounts directly to Liberty Capital. For example, the agreement requires the KNR clients to represent as follows: "I understand that I am instructed to follow Matthew Johnson's Irrevocable direction and authorization to pay such sums that shall be due and owing at the time of the resolution of the above Legal Claim."). The Liberty Capital loan agreements that Defendants advised KNR clients to sign also expressly prohibited KNR from "disbursing any proceeds" to the client or to anyone else on the client's behalf as long as any "dispute" was pending "over the amount owed [to Liberty Capital]," except to KNR for its own attorneys fees and advanced expenses. *Id.* By this provision, the KNR Defendants agreed up front to protect Liberty Capital's interests at the expense of KNR clients, and also carved out an exception under which the KNR Defendants could pay themselves from KNR clients' lawsuit proceeds, before ever disbursing any funds to the clients, without breaching any obligations to Liberty Capital.

124. Liberty Capital's loan agreements with KNR clients, to which KNR was a signatory, also contained the following false representation by a KNR attorney, intended to falsely disclaim and thus insulate Defendants from liability for their involvement in the transactions: "I am not endorsing or recommending this transaction." *Id.* This representation is directly contradicted by Defendants' repeated orders to their staff to recommend Liberty Capital to KNR clients, and is also directly contradicted by KNR advertisements promising potential clients that they can "GET MONEY NOW" and that "Kisling, Nestico and Redick Can Help You Get a CASH ADVANCE On Your Settlement." *See* **Exhibit A**.

125. Defendants subjected KNR attorneys and staff to harsh discipline if they disbursed settlement or judgment funds to a client without paying amounts owed to Liberty Capital, including deduction of the amounts owed to Liberty Capital from the KNR attorneys' and staff members' paychecks.

126. Liberty Capital stopped making loans in 2014, and ceased operations shortly thereafter. KNR clients were Liberty Capital's only customers, or the great majority of its customers, throughout the history of its operations.

127. According to Liberty Capital's annual reports filed with the Florida Secretary of State, its "principal place of business" throughout its existence was a 3,392 square-foot residential property owned by Cerrato at 8275 Calabria Lakes Drive, Boynton Beach, Florida 33473. This property is or was at all relevant times, Cerrato's residence. Cerrato served as the registered agent, manager, CEO, and sole managing member of Liberty Capital, and was Liberty Capital's only apparent employee. As shown by KNR attorney Paul Steele's May 21, 2012 email quoted in Paragraph 104 above, the KNR Defendants instructed KNR clients "to call and ask for Ciro at 866-612-6000" to obtain their loans.

128. According to Cerrato's LinkedIn profile, he was a health-insurance broker for Paychex Insurance Agency in South Florida from May 2007 until October 2011, immediately before becoming Liberty Capital's "CEO" in November 2011, where he remained until November 2015, when he took a position as an employee-benefits advisor with Gulfshore Insurance, Inc., in South Florida. In October 2016, according to his LinkedIn profile, Cerrato went to work as an employee-benefits advisor for USI Insurance Services, also in South Florida, where he is currently employed.

129. On October 30, 2012, about a month before KNR prelitigation attorneys were instructed to attend a lunch with Cerrato, Nestico emailed all KNR attorneys and litigation and prelitigation support staff: "If anyone has been having problems with [Liberty Capital] please email me what has happened and be as specific as possible. Thank you." This email shows that Nestico had a significant influence on Liberty Capital and its operations.

130. The KNR Defendants had no legitimate reason for their blanket policy directing all KNR clients to take out loans with Liberty Capital—a brand new company with no track record, run

out of the home of its so-called CEO and only apparent employee, who himself had most recently worked as an insurance broker—as opposed to any of a number of established financing companies that existed at the time. In fact, Liberty Capital's rates were more expensive than some of these other companies', including Preferred Capital, to whom the KNR Defendants would refer clients for loans before Liberty Capital's formation. This is because Preferred Capital did not charge any itemized fees to lenders like Liberty Capital did with its $50 "delivery fee" and $20 "processing fee." Thus, Defendants advised their clients to use a loan company whose loans were more expensive than other options on the market of which Defendants were aware.

131. As with all of the unlawful practices described in this document, KNR's unlawful relationship with Liberty Capital was a routine subject of discussion among KNR's rank-and-file attorneys. These attorneys were fearful of raising their concerns with Defendants Nestico & Redick, who ruled the firm with an iron fist and swiftly dismissed any dissenters like former KNR attorney Gary Petti who raised concerns about the chiropractor "narrative fees" as described in Paragraphs 61-62 above. The depressed market for law jobs in Ohio and throughout the United States since 2008 also contributed to this lack of effective dissent. *See* Richard A. Westin, "The Need for Prompt Action to Revise American Law Schools," 46 Akron L. Rev. 137 (2013); Noam Schieber, "An Expensive Law Degree and No Place to Use It," *New York Times* (June 19, 2016) BU1, available at https://www.nytimes.com/2016/06/19/business/dealbook/an-expensive-law-degree-and-no-place-to-use-it.html (accessed March 22, 2017).

132. By early 2015, the KNR Defendants had apparently become concerned about the exposure to liability created by their brazen self-dealing with Liberty Capital at the expense of their clients. On February 3, 2015, Lamtman emailed all KNR staff stating: "Please be sure to offer two different companies to your clients, only if they request a loan." This was a sharp turn from

Defendants' prior practice of baiting clients with promises to help obtain quick cash via loans, and directing all of their clients to obtain these loans through Liberty Capital.

133. The allegations above support a strong inference that Defendants assisted in Liberty Capital's formation.

134. The allegations above support a strong inference that Defendants retained an ownership interest in Liberty Capital or obtained kickback benefits for referring KNR clients for loans.

H. Defendants Nestico and Redick are personally responsible for KNR's unlawful acts.

135. Since KNR's founding in 2005 until 2012, Defendants Nestico and Redick were the sole equity partners and controlling shareholders of KNR, along with their partner Gary Kisling. In 2012, when Kisling retired from the firm, Nestico purchased Kisling's and Redick's respective interests in KNR, and became the sole equity partner and sole controlling shareholder of the firm. In or around January 2016, Nestico granted "shareholder" status to four KNR attorneys, but this shareholder status only permits these attorneys to share in a percentage of KNR's profits. It does not grant the shareholders any control over the firm. Since 2012, Nestico has retained complete control over the firm and its policies.

136. KNR's equity partners are solely responsible for setting and enforcing the firm's policies, and have the sole discretion to retain and allocate the firm's profits and other resources. KNR did not enter any contracts or agreements and did not enact any policy without the equity partners' knowledge and approval. When KNR managers or staff, like Lamtman and Tusko, issued directives to KNR attorneys or staff, they did so with the knowledge of and at the direction of the equity partners.

137. During their respective tenures as equity partners, Nestico and Redick were not only

aware of all of the conduct alleged in this Third Amended Complaint, but directed and approved of this conduct for the purpose of enriching themselves. During their respective tenures as equity partners, Nestico and Redick personally profited from the unlawful conduct at issue in this Third Amended Complaint and intended KNR clients to rely on the misrepresentations at issue for their own personal benefit. Since KNR's founding in 2005, Nestico and Redick owed all KNR clients a fiduciary duty and intentionally breached that fiduciary duty, as alleged in this Third Amended Complaint, for their own personal benefit.

V. CLASS ALLEGATIONS

138. Plaintiffs Williams, Wright, Johnson, and Reid 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 to whom KNR charged sign-up fees paid to AMC Investigations, Inc., MRS Investigations, Inc., or any other so-called "investigator" or "investigation" company ("investigation fees");

B. All current and former KNR clients who were referred to KNR by Akron Square Chiropractic or referred to ASC by KNR, terminated KNR's services, and had a lien asserted by KNR on their lawsuit proceeds;

C. All current and former KNR clients who paid interest or fees on a loan taken through Liberty Capital Funding, LLC.

D. All current and former KNR clients who had a narrative fee deducted by KNR from their settlement proceeds to be paid to a chiropractor.

139. 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,[4] and Liberty Capital loan agreements.

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

A. for Class A,

i. the so-called "investigators" never performed any investigations;

ii. in the majority of instances where the investigation fee was charged, the so-called "investigators" never performed any task at all in connection with the client;

iii. the so-called "investigators" never performed any services that were properly chargeable to clients as separate case expenses, as opposed to an overhead expense that was subsumed in KNR's contingency fee percentage;

iv. Defendants never properly disclosed to their clients what the investigation fee was for;

v. Defendants never obtained their clients' consent for the investigation fee;

vi. Defendants intended to mislead KNR clients into paying the investigation fee;

vii. KNR breached its fee agreement with its clients in assessing and collecting the investigation fee;

viii. Defendants' undisclosed self-dealing in collecting the fee renders the fee void as a matter of law as to all Class A members;

ix. Defendants breached their fiduciary duty to their clients in assessing and collecting the investigation fee, causing injury to the Class in the amount of the investigation fee;

B. for Classes B and D, whether

[4] Needles is the name of the computer system by which KNR stores all information about its client matters. On January 28, 2014, Lamtman emailed KNR staff: "Make sure you are noting EVERYTHING you do on a case in Needles." This includes referral sources, as shown by Lamtman's December 1, 2014 email to KNR staff ("NOBODY should change the referred by's in Needles"), and her May 29, 2012 email to KNR attorneys and staff quoted in Paragraph 30, above ("I had a chiropractor call me on Friday to review the number of cases she sent to us and we sent to her. I was unable to tell her how many we sent to her because this information was not in the referred to box in the case.").

i. Defendants maintained arrangements with ASC and other chiropractors from Plambeck-owned clinics ("the chiropractors") by which Defendants and ASC split certain marketing costs to target clients for both KNR and the chiropractors;

ii. Defendants maintained arrangements with the chiropractors by which Defendants would use the chiropractors' representatives to circumvent the Ohio Rules of Professional Conduct by directly soliciting KNR clients on KNR's behalf;

iii. Defendants, as a matter of KNR firm policy, directed their clients to treat with certain chiropractors regardless of their clients' preferences or needs;

iv. Defendants, as a matter of KNR firm policy, directed their clients to treat with the chiropractors based on a quid pro quo referral relationship with the chiropractors;

v. Defendants, as a matter of KNR firm policy, deducted a "narrative fee" from client settlements as a kickback to reward certain chiropractors.

vi. Defendants received kickbacks in the form of referrals and other benefits in exchange for referring cases to the chiropractors;

vii. Defendants, as a matter of KNR firm policy, failed to disclose to their clients that they maintained a quid pro quo relationship with the chiropractors;

viii. Defendants knew that advising their clients to treat with the chiropractors would be detrimental to their clients' cases due to various fraud lawsuits by major insurance carriers against the owner of the chiropractors' clinics;

ix. Defendants had no legitimate justification for directing their clients to treat with these chiropractors;

x. Defendants' breached their fiduciary duty to Class B and D members by this conduct;

xi. Defendants' undisclosed self-dealing renders all related agreements with Class B and D members, including fees deducted from and liens asserted by Defendants on the proceeds of Class B and D members' lawsuits, void as a matter of law;

xii. Class B and D members are entitled to rescission of all agreements with KNR as a result of these breaches, including rescission of all liens asserted by KNR on Class members' settlement proceeds and disgorgement of all fees collected under such liens and under such agreements;

C. and for Class C, whether

i. Defendants, as a matter of KNR firm policy, recommended to their clients that they obtain loans with Liberty Capital;

ii. Defendants received kickback payments for every loan transaction that Liberty Capital completed with KNR clients;

iii. Defendants failed to advise their clients of their financial interest in the Liberty Capital loans;

iv. Defendants failed to consider whether the loan was in their clients' best interest, and failed to encourage their clients to consider other possible sources of funds that carried lower interest rates and fees;

v. Defendants conduct constituted a breach of fiduciary duty under Ohio law that injured the Class of KNR clients in the same manner;

vi. Defendants' undisclosed self-dealing renders all related agreements with Class C members void as a matter of law;

vii. Class C members are entitled to damages as a result of these breaches, including in the amount of fees and interest paid on all Liberty Capital loans and disgorgement of all such fees and interest retained by Defendants in connection with such agreements.

141. The claims of Plaintiffs Williams, Wright, Johnson, and Reid 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.

142. 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.

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

144. 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
Investigation Fees
Plaintiff Williams and Class A

145. Plaintiff Williams incorporates all previous allegations.

146. Plaintiff Williams asserts this claim under Civ.R. 23(B)(3) against Defendants KNR, Nestico, and Redick on behalf of all current and former KNR clients whom KNR charged the investigation fee (Class A).

147. Defendants induced Plaintiff Williams and Class A 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.

148. 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.

149. Defendants knowingly concealed facts about 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.

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

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

152. KNR's clients, including Plaintiff Williams and Class A 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. Thus, Defendants owed their clients a fiduciary duty.

153. 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.

154. 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 Plaintiff Williams and the Class, and with certainty of inflicting harm and damage on Plaintiff and the Class.

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

156. Plaintiff Williams 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.

157. 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.

158. Plaintiff Williams only became aware of Defendants' misrepresentations and concealment of facts in November of 2015. The other class members remain unaware as of the filing of this Complaint.

159. Plaintiff Williams 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 2—Breach of Contract
Investigation Fees
Plaintiff Williams and Class A

160. Plaintiff Williams incorporates all previous allegations.

161. Plaintiff Williams asserts this claim under Civ.R. 23(B)(3) against Defendant KNR on behalf of all current and former KNR clients whom KNR charged the investigation fee (Class A).

162. 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.

163. 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 Plaintiff and the Class.

164. Plaintiff Williams and Class A 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 3—Breach of Fiduciary Duty
Investigation Fees
Plaintiff Williams and Class A

165. Plaintiff Williams incorporates all previous allegations.

166. Plaintiff Williams asserts this claim under Civ.R. 23(B)(3) against Defendants KNR, Nestico, and Redick on behalf of all current and former KNR clients whom KNR charged the investigation fee (Class A).

167. KNR's clients 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, KNR owed its clients a fiduciary duty.

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

169. Plaintiff Williams and Class A have suffered damages as a direct and proximate result of this breach.

170. 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.

171. Plaintiff Williams 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 4—Unjust Enrichment
Investigation Fees
Plaintiff Williams and Class A

172. Plaintiff Williams incorporates all previous allegations.

173. Plaintiff Williams asserts this claim under Civ.R. 23(B)(3) against Defendants KNR, Nestico, and Redick on behalf of all current and former KNR clients whom KNR charged the investigation fee (Class A).

174. By unwittingly allowing KNR to deduct the investigation fees from their lawsuit proceeds, Plaintiff Williams and Class A have, to their substantial detriment, conferred a substantial benefit on Defendants of which Defendants are aware.

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

176. Equity entitles Plaintiff Williams and the Class to disgorgement of the fee by Defendants, as well as punitive damages and attorneys fees for Defendants' intentionally deceptive

conduct.

Claim 5—Breach of Fiduciary Duty
Unlawful Solicitation and Undisclosed Self-Dealing with Chiropractors
Plaintiff Wright and Class B

177. Plaintiff Wright incorporates all previous allegations.

178. Plaintiff Wright asserts this claim under Civ.R. 23(B)(2) and (3) against Defendants KNR, Nestico, and Redick on behalf of all current and former KNR clients who were referred to KNR by Akron Square Chiropractic or referred to ASC by KNR, terminated KNR's services, and had a lien asserted by KNR on their lawsuit proceeds (Class B).

179. KNR's clients, including Plaintiff Wright, 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.

180. Defendants' conduct in soliciting Ms. Wright and Class B members through representatives of ASC, and in failing to disclose their quid pro quo relationship with ASC, was intentionally deceptive, was undertaken by standardized and routinized procedures, and constitutes a breach of Defendants' fiduciary duty to Plaintiff Wright and Class B.

181. No KNR client solicited by ASC would have retained KNR had they been advised of the quid pro quo relationship between KNR and ASC.

182. Plaintiff Wright 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.

183. Where a fiduciary takes a secret profit in a transaction involving his client, as Defendants have here with respect to their unlawful solicitation of Wright and Class B members through ASC, and their failure to disclose their quid pro quo relationship with ASC, 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.

184. Plaintiff Wright and Class B are entitled to relief for the damages caused by Defendants' breach, including rescission of their fee agreements with KNR, disgorgement of all amounts collected by KNR on the liens asserted against Plaintiff Wright and Class B members' claims, a declaration that all such pending liens are void as a matter of law, and punitive damages, and attorneys' fees for Defendants' intentionally deceptive conduct.

Claim 6—Unjust Enrichment
Unlawful Solicitation and Undisclosed Self-Dealing with Chiropractors
Plaintiff Wright and Class B

185. Plaintiff Wright incorporates all previous allegations.

186. Plaintiff Wright asserts this claim under Civ.R. 23(B)(2) and (3) against Defendants KNR, Nestico, and Redick on behalf of all current and former KNR clients who were referred to KNR by Akron Square Chiropractic or referred to ASC by KNR, terminated KNR's services, and had a lien asserted by KNR on their lawsuit proceeds (Class B).

187. By unwittingly entering fee agreements with KNR after having been solicited through representatives of ASC, without knowledge of KNR's quid pro quo relationship with ASC, Plaintiff Wright and Class B have, to their substantial detriment, conferred a substantial benefit on Defendants of which Defendants are aware.

188. Due to Defendants' intentionally deceptive conduct in soliciting Ms. Wright and Class B members through representatives of ASC, and in failing to disclose their quid pro quo relationship with ASC, Defendants' retention of a lien on Wright and Class B members' lawsuit

proceeds, and any funds collected under such liens, would be unjust and inequitable.

189. Equity entitles Plaintiff Wright and the Class to rescission of their fee agreements with KNR, including all liens asserted by KNR on the Wright and Class B members' lawsuit proceeds, disgorgement of all proceeds collected under such liens, a declaration that all such pending liens are void as a matter of law, and punitive damages and attorneys fees for Defendants' intentionally deceptive conduct.

Claim 7—Fraud
Undisclosed Self-Dealing with Liberty Capital Funding, LLC
Plaintiff Johnson and Class C

190. Plaintiff Johnson incorporates all previous allegations.

191. Plaintiff Johnson asserts this claim under Civ.R. 23(B)(3) against Defendant KNR, on behalf of all current and former KNR clients who paid interest or fees on a loan taken through Liberty Capital Funding (Class C).

192. Defendant induced Plaintiff Johnson and Class C to take out loans with Liberty Capital, representing to its clients that Liberty Capital was the best source of loan funding for its clients, without disclosing Defendant's financial interest in the Liberty Capital Loans, and without disclosing that lower-cost sources of loans were available to the clients. Defendant knowingly concealed these facts from Plaintiff Johnson and the Class.

193. Defendant's misrepresentations about and concealment of facts regarding the investigation fees were material to Plaintiff Williams's and the Class's decision to approve their Settlement Memoranda and thus pay these fees.

194. Defendant's misrepresentations about and concealment of facts regarding the investigation fees were made with the intent of misleading Plaintiff Williams and the Class into relying upon them.

195. KNR's clients, including Plaintiff Johnson and Class C members, reposed a special trust and confidence in Defendant's, who were in a position of superiority or influence over their clients as a result of this position of trust. Thus, Defendant's owed their clients a fiduciary duty.

196. 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 Plaintiff Johnson and the Class, and with certainty of inflicting harm and damage on Plaintiff and the Class.

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

198. Plaintiff Johnson and the Class were injured and their injury was directly and proximately caused by their reliance on Defendant's uniform misrepresentations about and concealment of facts regarding the Liberty Capital loans.

199. Defendant's conduct in recommending Liberty Capital to KNR clients, failing to disclose lower-cost sources of loans, and failing to disclose that they stood to benefit from each Liberty Capital transaction, was intentionally deceptive and constitutes a breach of Defendant's fiduciary duty to Plaintiff Johnson and Class C.

200. No KNR client would have taken out a loan with Liberty Capital were it not for Defendant's recommendation, or had they been advised of Defendant's secret kickback arrangement with Liberty Capital.

201. Plaintiff Johnson and the Class were injured and their injury was directly and proximately caused by their reliance on Defendant's misrepresentations about and concealment of facts regarding the Liberty Capital loans.

202. Where a fiduciary takes a secret profit in a transaction involving his client, as Defendant has here regarding 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.

203. Plaintiff Johnson became aware of Defendant's misrepresentations and concealment of facts no earlier than August of 2016. The other class members remain unaware as of the filing of this Complaint.

204. Plaintiff Johnson and the Class are entitled to compensation for the damages caused by Defendant's fraud, including fees and interest paid on the loans, as well as disgorgement of the benefit conferred upon Defendant's as a result of their breach, punitive damages, and attorneys' fees.

Claim 8—Breach of Fiduciary Duty
Undisclosed Self-Dealing with Liberty Capital Funding, LLC
Plaintiff Johnson and Class C

205. Plaintiff Johnson incorporates all previous allegations.

206. Plaintiff Johnson asserts this claim under Civ.R. 23(B)(3) against Defendants KNR, Nestico, and Redick on behalf of all current and former KNR clients who paid interest or fees on a loan taken through Liberty Capital Funding (Class C).

207. KNR's clients, including Plaintiff Johnson, 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.

208. Defendants' conduct in recommending Liberty Capital to KNR clients, failing to disclose lower-cost sources of loans, and failing to disclose that they stood to benefit from each

Liberty Capital transaction, was intentionally deceptive, was undertaken by standardized and routinized procedures, and constitutes a breach of Defendants' fiduciary duty to Plaintiff Johnson and Class C.

209. No KNR client would have taken out a loan with Liberty Capital were it not for Defendants' recommendation, or had they been advised of Defendants' secret kickback arrangement with Liberty Capital.

210. Plaintiff Johnson and Class C have suffered damages as a direct and proximate result of these breaches in the amount of interest and fees paid on these loans.

211. 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.

212. Plaintiff Johnson and the Class are entitled to compensation for the damages caused by Defendants' breach, including fees and interest paid on the loans, as well as disgorgement of the benefit conferred upon Defendants as a result of their breach, punitive damages, and attorneys' fees.

Claim 9—Unjust Enrichment
Undisclosed Self-Dealing with Liberty Capital Funding, LLC
Plaintiff Johnson and Class C

213. Plaintiff Johnson incorporates all previous allegations.

214. Plaintiff Johnson asserts this claim under Civ.R. 23(B)(3) against Defendants KNR, Nestico, and Redick on behalf of all current and former KNR clients who paid interest or fees on a loan taken through Liberty Capital Funding (Class C).

215. By unwittingly entering loan agreements with Liberty Capital at Defendants' recommendation for high-interest loans in which Defendants retained a financial interest, Plaintiff Johnson and Class B have, to their substantial detriment, conferred a substantial benefit on Defendants of which Defendants are aware.

216. Due to Defendants' intentionally deceptive conduct in recommending Liberty Capital to KNR clients, failing to disclose lower-cost sources of loans, and failing to disclose that they stood to benefit from each Liberty Capital transaction, Defendants' retention of any portion of the fees or interest on these loans without repayment to Plaintiff Johnson and the Class would be unjust and inequitable.

217. Equity entitles Plaintiff Johnson 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 10—Breach of Fiduciary Duty
Undisclosed Self-Dealing with Chiropractors—Narrative Fee
Plaintiff Reid and Class D

218. Plaintiff Reid incorporates all previous allegations.

219. Plaintiff Reid asserts this claim under Civ.R. 23(B)(2) and (3) against all Defendants on behalf of all current and former KNR clients who had a narrative fee deducted by KNR from their settlement proceeds to be paid to a chiropractor (Class D).

220. KNR's clients, including Plaintiff Reid, 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.

221. Defendants' conduct in charging and collecting the narrative fee from their clients as a kickback to reward referring chiropractors, and in failing to disclose their quid pro quo relationship

with one another, was intentionally deceptive, was undertaken by standardized and routinized procedures, and constitutes a breach of Defendants' fiduciary duty to Plaintiff Reid and Class D.

222. 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.

223. Plaintiff Reid and Class D 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.

224. 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.

225. Plaintiff Reid and Class D 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 chiropractors, including Defendant Floros, on Plaintiff Reid and Class D members' claims, and punitive damages, and attorneys' fees for Defendants' intentionally deceptive conduct.

Claim 11—Unjust Enrichment
Undisclosed Self-Dealing with Chiropractors—Narrative Fees
Plaintiff Reid and Class D

226. Plaintiff Reid incorporates all previous allegations.

227. Plaintiff Reid asserts this claim under Civ.R. 23(B)(2) and (3) against Defendant

Floros and other chiropractors to be identified through discovery on behalf of all current and former KNR clients who had a narrative fee deducted by KNR from their settlement proceeds to be paid to a chiropractor (Class D).

228. By unwittingly allowing Defendants to deduct and pay a narrative fee to Defendant Floros and the chiropractors from their settlement proceeds, without knowledge of KNR's quid pro quo relationship with Floros and the chiropractors, Plaintiff Reid and Class D have, to their substantial detriment, conferred a substantial benefit on Defendant Floros and the chiropractors of which Defendant Floros and the chiropractors are aware.

229. Due to Defendants' conduct in charging and collecting the narrative fee from their clients as a kickback to reward referring chiropractors, and in failing to disclose their quid pro quo relationship with one another, Defendants' retention of the narrative fee paid by Reid and Class D members' lawsuit proceeds would be unjust and inequitable.

230. Equity entitles Plaintiff Reid and the Class to rescission of the narrative fee, disgorgement of all narrative fees collected by the chiropractors, including Defendant Floros, on Plaintiff Reid and Class D members' claims, and punitive damages, and attorneys' fees for Defendants' intentionally deceptive conduct.

VIII. 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), (B)(2), and (B)(3);

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

(3) Declaratory and injunctive relief against Defendants' unlawful conduct, including declaratory judgments that the conduct at issue is unfair and deceptive in violation of R.C. 1345.02, and a declaratory judgment under Civ.R. 23(B)(2) that all liens asserted

by Defendants against Class B members' lawsuit proceeds are void as a matter of law due to Defendants' fraudulent undisclosed self-dealing;

(3) Compensatory and rescissionary damages for Plaintiffs Williams, Wright, Johnson 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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CERTIFICATE OF SERVICE

The foregoing document was served on all necessary parties by operation of the Court's e-filing system on November 13, 2017.

/s/ Peter Pattakos
Attorney for Plaintiffs