

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

<p>MEMBER WILLIAMS, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>KISLING, NESTICO & REDICK, LLC, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 2016-CV-09-3928</p> <p>Judge James A. Brogan</p> <p>Defendant Minas Floros' Brief in Opposition to Plaintiffs' Motion to Amend the Complaint to Conform to the Evidence</p>
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Plaintiffs have requested leave to file a sixth-amended complaint. Under Civ. Rule 15(B), Plaintiffs are seeking to add new claims against Defendants and to change the identities of the purported classes. Under Civ. R. 15(A), Plaintiffs are seeking to add five new chiropractor Defendants. This Court should deny leave for these reasons:

- Civ. R. 15(B) does not apply because this case is not at the trial stage.
- Plaintiffs have no standing for their claims against the new chiropractor Defendants.
- Plaintiffs' motion is made in bad faith, untimely, and will cause undue prejudice to Defendants.
- Plaintiffs' OCPA claims are futile and fail as a matter of law.

I. Introduction

Plaintiffs originally filed this case on September 16, 2016. Since then, Plaintiffs have amended their complaint five times. The parties have also conducted extensive discovery and enormous amount of briefing. This includes class certification briefs, motions to dismiss, motions to strike, and motions of the pleadings, as well as several sets of interrogatories, requests for admissions, request for production of documents, and associated discovery motions. Over a

dozen all-day depositions have also taken place. This Court has additionally scheduled an all-day hearing on class certification for next month. And in their last order granting Plaintiffs' fifth amendment, this Court warned Plaintiffs that it was "not inclined to allow any future amendments...absent a substantive showing of need to amend."

Despite this warning and the significant amount of litigation that has occurred, Plaintiffs' now want to redo everything. Plaintiffs' motion seeks to add new claims against Defendants based on facts and legal theories that were never pleaded before. It seeks to change the identifies of the purported class, despite the parties already filing class certification motions. And it seeks to add five new chiropractor Defendants to this action, even though none of the named Plaintiffs treated or had any contact with the new chiropractor Defendants. These new chiropractors include Nazreen Khan and Stephen Rendek of Town & Country Chiropractic in Columbus, Philip Tassi in Canton, Eric Crawley in Cleveland, and Patrice Lee-Seyon in Toledo.

This is an obvious attempt to further delay this case and cause financial harm to Defendants. Plaintiffs have failed to show "substantive showing of need" to amend the claims against Floros under Civ. R. 15(B), since that rule only applies at trial. And even if Civ. R. 15(B) did apply, Plaintiffs' motion is untimely, unduly prejudicial to Defendants, futile, and made in bad faith. Plaintiffs also lack standing for their claims against the new Defendants. Their motion fails as a matter of law and should be denied.

II. Law and Argument

A. Civ. R. 15(B) only applies at trial and cannot be used in support of Plaintiffs' proposed sixth amendment.

Civ. R. 15(B) provides:

"Amendments to conform to the evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such

amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment. Failure to amend as provided herein does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.”

“Civ.R. 15(B) provides for amendment of the pleadings in two situations: (1) **after trial**, when the parties have expressly or impliedly consented to the trial of issues not contained in the pleadings; and (2) **during trial**, when there is an objection to the evidence offered because it is outside the pleadings.” *Stormont v. Tenn-River Trading Co.*, 10th Dist. Franklin No. 94APG08-1272, 1995 Ohio App. LEXIS 1759, at *28 (Apr. 27, 1995) citing *Hall v. Bunn*, 11 Ohio St.3d 118, 464 N.E.2d 516 (1984)(emphasis added).

When there has been no trial, the use of Civ.R. 15(B) to amend the pleadings is improper. *Merrill Lynch Mtge. Lending, Inc. v. 1867 West Market, L.L.C.*, 9th Dist. No. 23443, 2007-Ohio-2198, ¶11 (“Civ. R. 15(B) deals with amending the complaint to conform to the evidence at trial. There has been no trial in this case, and the use of Civ. R. 15(B) was inappropriate.”); *Wilson v. Mercy Med. Ctr.*, 5th Dist. Stark No. 2015CA00010, 2015-Ohio-3928, ¶ 16(“In cases where there has been no trial, reviewing courts have found the use of Civ. R. 15(B) inappropriate.”); *Thomas v. Reserves Network*, 9th Dist. Lorain No. 10CA009886, 2011-Ohio-5857, ¶8(“Civ. R. 15(B) governs the amendment of a complaint to conform to the evidence at trial and has no application in a case where there has been no trial.”); *Suriano v. NAACP*, 7th Dist. Jefferson No. 05 JE 30, 2006-Ohio-6131; *Kent State Univ. v. Bradley Univ.*, 11th Dist. Portage No. 2017-P-0056, 2019-Ohio-2088, ¶ 111.

Plaintiffs are now asking that this Court “permit the new claims against the existing Defendants to be added to this lawsuit under Civ. R. 15(B).” This includes Plaintiffs’ new claims against Floros for fraud (narrative fee payment) and self-dealing/price-gouging (conspiracy, aiding and abetting, fraud, breach of fiduciary duty, unconscionable contract, unjust enrichment, violation of the OCPA, unlawful telecommunications, and mail fraud) .¹

In support, Plaintiffs misrepresent the holdings of several cases. Plaintiffs use cherry picked and carefully edited quotes to make it seem like Civ. R. 15(B) can be used before trial.² As discussed above, this is not the law. Ohio courts have routinely held that “in cases where there has been no trial...the use of Civ. R. 15(B) [is] inappropriate.” There are no exceptions. The cases that Plaintiffs rely on are all distinguishable because the request for Civ. 15(B) amendment occurred during or after the trial stage.

Since this case is not at the trial stage, Civ. R. 15(B) cannot be used. As a result, this Court must deny Plaintiffs’ motion, since their request to add new claims against the existing Defendants was based solely on Civ. R. 15(B).

B. Plaintiffs lack standing for their proposed claims against the new chiropractor Defendants.

Under Civ. R. 15(A), Plaintiffs are seeking to add five new chiropractor Defendants. While Civ.R. 15(A) generally allows for liberal amendment of a complaint, a motion for leave to amend must be made timely. *See Brown v. FirstEnergy Corp.*, 9th Dist. Summit No. 22123, 159

¹ Plaintiffs currently only have two claims against Floros, breach of fiduciary duty and unjust enrichment, which solely relate to Floros’ receipt of his narrative fee. There are no claims against Floros related to price gouging, unlawful solicitation, telecommunications fraud, mail fraud, conspiracy, OCPA, or common-law fraud.

² In Plaintiffs’ motion to amend, they intentionally edited out the mention of “trial” when quoting and citing a court’s holding. *See, e.g., Standen v. Smith*, 9th Dist. Lorain No. 01CA007886, 2002-Ohio-760, ¶ 11.

Ohio App. 3d 696, 2005-Ohio-712, 825 N.E.2d 206, ¶6. A motion for leave should be denied if there is a showing of “bad faith, undue delay or undue prejudice to the opposing party.” *Hoover v. Sumlin*, 12 Ohio St.3d 1, 465 N.E.2d 377 (1984). “A party seeking leave to amend a pleading is required to do so in good faith, therefore there must be at least a *prima-facie* showing that the movant can marshal support for the new matters sought to be pleaded, and that the amendment is not simply a delaying tactic or one which would cause prejudice to the defendant.” *Glazer v. Chase Home Fin. LLC*, 8th Dist. Cuyahoga Nos. 99875, 99736, 2013-Ohio-5589, ¶98; *see also Lottridge v. Gahanna-Creekside Invests., LLC*, 2015-Ohio-2168, 36 N.E.3d 744 (10th Dist.).

Courts may consider a motion for leave prejudicial if a proposed amendment alters the case’s theory and is proposed late enough that the opponent would have to engage in significant new preparation. *Wright & Miller, Federal Practice and Procedure*, §1487. Courts will also deny motions for leave to amend a complaint when the claims are futile or lack evidentiary support. *See, e.g. Hensley v. Durrani*, 1st Dist. Hamilton No. C-130005, 2013-Ohio-4711, ¶14; *State ex rel. Brewer-Garrett Co. v. MetroHealth Sys.*, 8th Dist. Cuyahoga No. 87365, 2006-Ohio-5244, ¶17.

Moreover, courts will deny a motion for leave when the moving party seeks to add time-barred claims. *Thornton v. Hardiman, Buchanan, Howland & Trivers*, 8th Dist. Cuyahoga No. 83400, 2005-Ohio-1969; *Porter v. Probst*, 2014-Ohio-3789, 18 N.E.3d 824 (7th Dist.); *Yates v. Hassell*, 10th Dist. Franklin No. 11AP-588, 2012-Ohio-328, ¶ 11 (“The general rule is that a person may not be brought into a civil action as a new party defendant when the cause of action as to him is barred by the statute of limitations.”).

Plaintiffs’ motion to add new parties under Civ. R. 15(A) must be denied because the new claims lack standing. Specifically, Plaintiffs have failed to allege that they had any

interaction at all with the five new chiropractor Defendants. Nazreen Khan and Stephen Rendek have additionally indicated in their non-party brief in opposition that they never treated the named Plaintiffs, never received any payments or benefits from the named Plaintiffs, and never communicated with the named Plaintiffs. See Non-Party BIO to PL's Motion for Leave, pgs. 7-8.

Plaintiffs is thus seeking to file a claim with no client. This cannot be done in good faith. It is fundamental that a party cannot maintain a class action against a defendant who has not caused them legal injury. *Gawry v. Countrywide Home Loans, Inc.*, 640 F. Supp. 2d 942, 950 (N.D. Ohio 2009); *Paoletti v. The Travelers Indem. Co.*, 6th Dist. Lucas No. L-75-196, 1977 WL 198462, *3, (May 6, 1977).

C. Plaintiffs' motion is made in bad faith, untimely, and will cause undue prejudice to Defendants.

According to Plaintiffs, the reason for their late proposed amendment is that Floros caused discovery delays and would not make himself available for deposition until May 20, 2019. In support of this claim that Floros' actions delayed discovery, Plaintiffs argue that they succeeded in their motions for extension of time to conduct class discovery and motions to compel. Plaintiffs also argue that Defendants have been on notice of these new claims. These arguments lack merit and are made in bad faith.

Floros did not cause any delay in discovery. Rather it was Plaintiffs' own actions that caused any delay. For instance, Plaintiffs added Floros as a defendant party back in November 2017. Plaintiffs then waited over 10 months to serve discovery to Floros. As allowed under the civil rules, Floros timely responded to Plaintiffs' discovery requests within 28 days. Since that time, Plaintiffs served to three more sets of discovery. Floros timely responded to each request.

As for those discovery requests, Plaintiffs filed two motions to compel against Floros. Contrary to what Plaintiffs suggest, both motions against Floros were unsuccessful and overruled

by this Court. Likewise, this Court has also granted Defendants' motions to compel discovery and depositions against Plaintiffs. Thus, under Plaintiffs' flawed logic, they have also caused delay in discovery and engaged in "abusive and retaliatory" conduct.

Moreover, as seen in the attached emails, Plaintiffs did not request a deposition date from Floros until December 2018. Plaintiffs thus waited for over a year to request a deposition date from Floros. When they made their request, Plaintiffs wanted to depose Floros in from in January or February. On December 7, 2018, Floros' counsel offered multiple possible deposition dates for Floros in late January. Ex. A. Plaintiffs' counsel did not respond to this email. A week later, Floros' counsel offered additional dates, which included February 6th and February 27th. Ex. B. Plaintiffs' counsel later told Floros' counsel that he wanted to hold off on his deposition. Ex. C.

It was not until February 12th, that Plaintiffs requested dates again for Floros' deposition. At that time, Plaintiffs wanted to take Floros' deposition in March or April. Ex. D. Two-days later, Floros offered the dates of March 20th and April 3rd. *Id.* Thus, contrary to what Plaintiffs falsely claim, Floros has diligently responded to Plaintiffs' requests for discovery and deposition dates. Floros also offered several dates for his deposition before March 20, 2019.

That said, Floros expects that Plaintiffs will claim that they were justified in delaying their discovery and deposition requests on Floros because they wanted to first obtain discovery from other parties and witnesses. This is invalid excuse. A party cannot unilaterally delay discovery and dictate the order of depositions without a court order under Ohio Civ. R. 26(D):

Sequence and timing of discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

As further discussed in the Staff Notes. Civil Rule 26(D) “makes it clear that there is no particular order or pattern in the use of discovery methods” and that the “parties are on equal footing.” *Id.* “For example, interrogatories may be used before or after depositions.” *Id.* A plaintiff cannot delay their discovery on one defendant because they are waiting for discovery from another defendant, as each party’s discovery is independent of the other. *Id.* If a party feels it is necessary in the interests of justice to prioritize the sequence of discovery, then they must file a motion with the court. *Id.* Since Plaintiffs failed to obtain an order dictating the sequence of discovery and depositions, as required under Civ. R. 26(D), they cannot now claim that they were entitled to delay discovery on certain parties.

Ohio courts have also held that a claim that “new evidence” exists, by itself, does not justify leave to amend a complaint. *Wright v. Nationwide Mut. Ins. Co.*, 9th Dist. Lorain C.A. No. 2363, 1976 Ohio App. LEXIS 6832, at *5 (Feb. 4, 1976)(“This statement, that ‘new evidence’ had been produced, standing by itself, is insufficient to support a motion for leave to file an amended complaint. The trial court must be presented with something more than an unsupported statement before it can find that a faulty complaint can be corrected through an amendment.”); *see also United Studios of Am. v. Laman*, 5th Dist. Stark No. 2007CA00277, 2008-Ohio-3497, ¶ 31 (holding that information was not “newly discovered” when it was readily ascertainable by the Plaintiff prior to the close of discovery in this case).

Here, Plaintiffs have failed to show what “new evidence” came from Floros’ deposition. In fact, in support of their new OCPA claims, Plaintiffs mostly cite the same false allegations that were in their previous amended complaint and testimony from their own witnesses. Plaintiffs’ counsel has also long been in possession of his clients’ legal files and medical bills. The costs and reductions of these medical bills is not “new” information.

Moreover, Plaintiffs questioned Brandy Gobrogge and Rob Nestico on the new chiropractor Defendants back in October 2018 and February 2018, respectively. Back in September 2018, Plaintiffs' counsel also solicited information and announced potential claims against some of the new chiropractor Defendants in facebook posts, which were discussed in past motions. Thus, this information cannot be considered "new" evidence.

In the few times that Plaintiffs cited Floros' testimony, they also misrepresent what he said. For example, Plaintiffs cited Floros' testimony in support of the allegation that "Floros assists KNR in inflating the clients' bills by send patients to Ghoubrial." If this Court actually looks at the cited portions of Floros' testimony, it is clear that he did not state anything close to this statement. Floros specifically testified that he refers patients to other doctors, not just Ghoubrial. Ex. E. Floros Tran. pgs. 88-91. He also testified that he refers patients for a medical consult when patient does not have their own physician and wants to see a doctor and when the patient is still in significant pain despite chiropractic treatments. *Id.* At no point did he testify that he referred patients to Ghoubrial to inflate KNR's clients' medical bills, as Plaintiffs falsely claim:

Q. You refer your personal injury clients to Dr. Ghoubrial, correct?

A. Correct.

Q. And what do you do that for?

A. They're injured--they got high inflammatory levels. The patient advised me that their medication ran out from the hospital, they can't sleep, they're in high levels of pain. They hurt more when they're working. It helps me get the patient better faster. I'm not a medical doctor. I can't prescribe the medication, so, yeah, I refer a lot of patients to Dr. Ghoubrial, he's a great doctor.

Q Are there other doctors that you send your patients to for similar treatment?

A. Oh, yeah. In the last 15 years I've worked with many doctors.

Q. Who else besides Dr. Ghoubrial would provide similar services?

A. Dr. Soni --

MR. KEDIR: Objection.

MR. POPSON: Objection.

A. -- was one of the orthopedic surgeons I referred patients to for pain management.

Q. Dr. Soni?

A. Dr. Soni.

Q. S-o-n-i?

A. Yes. Comprehensive Pain Management is another place I refer many patients to –

Q. That's the Lababidi's?

A. Yes. And they have -- they have a lot of pain management specialists there. Center of Neuro &

Spine is another place I refer patients to. Dr. Chonko, Dr. Tharp, Dr. Pinkowski. There was Dr. Pogorelec back in the day that would see my patients. I'm willing to refer my patients to anybody who accepts patients injured in car accidents and sometimes that's very difficult to find.

Again, I'm willing to work with any medical doctor, any physician, that's willing to take on my patients. And I get new ones or once in a while I see a report of a patient with a medical doctor, I try to reach out to the doctor and see if he's willing to accept my patients or to see patients injured in car accidents or work injuries, and again, its [sic] extremely difficult to find medical doctors that will treat patients injured in car accidents, especially in my area.

Id. Plaintiffs also falsely claim that Floros testified that he was minimally involved with treating each patient. *Id.* 45-46. Floros specifically testified that patients can be in the office between 15-45 minutes and that his chronic adjustments can last 20 minutes. *Id.*

Q. Okay. And then you will perform manipulation, and then the trigger point therapy, if necessary. So that would take approximately, would you say you spend about 20 to 30 minutes?

A. Yes. The patient typically is in our office between 15 minutes and 45 minutes.

Id. Floros further testified that the only act that his assistants help with is administering electric stimulation therapy and hot and cold packs. *Id.*

And even if Floros had testimony relevant to their new claims, Plaintiffs have failed to explain adequately why they waited three months and after the class certification deadline to

amend their claims against Floros. At the very least, Plaintiffs should have sought leave before the filing of class certification briefs.

Plaintiffs' claims that Defendants were on notice of the new and additional claims are also baseless. Because if this claim had merit, then Plaintiffs should have addressed this issue in their reply briefs to Defendants' motions to strike class allegations, motions to dismiss, and motions on the pleadings. These briefs only addressed the actual class claims alleged. At no point did Plaintiffs argue that additional claims existed.

Moreover, Ohio courts have routinely held that a motion requesting leave to file an amended complaint is untimely when it is two years after the filing of the original complaint and after discovery has been completed.³ As in those cases, this Court should deny Plaintiffs' motion

³ See, e.g., *Forrester v. Mercker*, 10th Dist. Franklin No. 15AP-833, 2016-Ohio-3080, ¶ 15 (“[i]t would be unfair to allow Plaintiff to so greatly alter the scope of his claim after approximately two and a half years of litigation”); *Johnson v. Norman Malone & Assocs., Inc.*, 9th Dist. Summit C.A. No. 14142, 1989 Ohio App. LEXIS 4798 (Dec. 20, 1989)(affirming denial of motion to amend that was not filed “almost twenty-months after the original complaint”); *Wells v. Bowie*, 87 Ohio App.3d 730, 735, 622 N.E.2d 1170 (5th Dist. 1993) (affirming denial of leave where appellant waited “nearly two years” to seek to amend her complaint); *Leo v. Burge Wrecking, LLC*, 6th Dist. Lucas No. L-16-1163, 2017-Ohio-2690, ¶ 15, 89 N.E.3d 1268 (affirming denial of leave on account of substantial delay of moving party without explanation); *St. Marys v. Dayton Power & Light Co.*, 79 Ohio App.3d 526, 535-536, 607 N.E.2d 881 (3rd Dist. 1992) (affirming denial of leave to amend complaint due to moving party's delay and prejudice to the defendant due to upcoming hearing); *Woomer v. Kitta*, 8th Dist. Cuyahoga Nos. 70863 and 71049, 1997 Ohio App. LEXIS 1515 (April 17, 1997) (affirming denial of leave to amend complaint for delay and potential prejudice to defendant). *Lipchak v. Chevington Woods Civil Ass'n*, 5th Dist. Fairfield No. 14-CA-40, 2015-Ohio-263, ¶46 (denying motion to amend due to undue prejudice and delay because two amended complaints had already been filed and discovery had already been completed); *Enyart v. Karnes*, Case No. 2:09-CV-687, 2011 WL 4367352, *3 (S.D. Ohio Sept. 19, 2011)(denying motion to amend because three amended complaints had already been filed and the matter had been pending for over two years); *Adams v. Lucent Tech., Inc.*, Case No. 2:03-cv-300, 2005 WL 8162173, *2 (S.D. Ohio Aug., 19, 2005)(denying motion to amend because the matter had been pending for over two years, and an amendment would only further delay the proceedings by the increased costs of additional discovery); *Radio Parts Co. v. Invacare Corp.*, 178 Ohio App.3d 198, 2008-Ohio-4777, ¶11 (10th Dist.)(holding the same); *Lundeen v. Graff*, 46 N.E.3d 236, 2015-Ohio-4462, ¶30 (10th Dist.)(holding the same); *Bachtel v. Jackson*, 10th Dist. Franklin No. 08AP-714, 2009-Ohio-

for leave, since this case has been pending for over two and a half years. In their five previous amendments, Plaintiffs have had ample time and opportunities to add these claims. Doing so now is without question untimely.

Ohio courts have further held that motions to amend after filing of a class certification motion are untimely and unduly prejudicial. *Fowler v. Ohio Edison Co.*, 7th Dist. Jefferson No. 07-JE-21, 2008-Ohio-6587, ¶ 100; *Barrett v. ADT Corp.*, S.D. Ohio No. 2:15-cv-1348, 2016 U.S. Dist. LEXIS 28767, at *15 (Mar. 7, 2016) (“In this Court's view, granting leave to amend the class allegations here is a means to three undesirable ends: 1) it would subject the parties to more costly discovery; 2) it would beget additional briefing by the parties; and most importantly, 3) it would delay the inevitable denial of class certification.”).

There can be no question here that allowing an amendment of Plaintiffs' complaint for a sixth time at this stage of the proceedings will cause significant delay and will be highly prejudicial to the parties. Floros and the other Defendants have only conducted discovery and motion practice on the claims alleged in Plaintiffs' Fifth Amended Complaint. The class claims against Floros were only related to narrative fees and only included breach of fiduciary and unjust enrichment claims. Plaintiffs' new allegations go way beyond this. Plaintiffs are now claiming that Floros is engaging in fraudulent price-gouging and Ohio RICO scheme with the other Defendants. Nowhere in Plaintiffs' Fifth Amended Complaint did they previously allege price gouging against Floros.

If this Court grants Plaintiffs' motion, then Floros will have conduct new discovery and re-depose Plaintiffs on the new claims. The new chiropractor Defendants would also likely claim

1554, ¶27 (holding the same); *Brown v. First Energy Corp.*, 159 Ohio App.3d 696, 2005-Ohio-712, ¶7 (9th Dist.) (denying motion to amend because the matter had been pending for over three years).

a right to conduct discovery, including written discovery, depositions of new individuals and re-deposing individuals who have already testified. The parties will also have to file new class certification briefs. Floros should not have to incur new litigation expenses because of Plaintiffs' untimely actions.

Thus, any argument that the addition of new claims and five new party defendants would not cause substantial delay and undue prejudice Defendants is baseless and should be rejected. All the parties are entitled to discovery on the new claims and new parties.

D. Plaintiffs proposed OCPA claims are futile and fail as a matter of law.

For several reasons, Plaintiffs' OCPA claims are futile, lack standing, and fail as a matter of law. Foremost, it should be noted that Ohio applies the stricter federal pleading standard when analyzing OCPA claims, since it was directly adopted from RICO. *Dixon v. Huntington Natl. Bank*, 8th Dist. Cuyahoga No. 100572, 2014-Ohio-4079, ¶ 7-2; see also *Dottore v. Vorys, Sater, Seymour & Pease, L.L.P.*, 8th Dist. Cuyahoga No. 98861, 2014-Ohio-25; *Canterbury v. Columbia Gas of Ohio*, S.D. Ohio No. C2-99-1212, 2001 U.S. Dist. LEXIS 26286, at *32-40 (Sep. 29, 2001). Thus, for an OCPA claim to be futile, it the alleged complaint must establish these elements for each defendant: "(1) conduct of the defendant which involves the commission of two or more of specifically prohibited state or federal criminal offenses; (2) the prohibited criminal conduct of the defendant constitutes a pattern of corrupt activity; and (3) the defendant has participated in the affairs of an enterprise or has acquired and maintained an interest in or control of an enterprise." *Id.* Failure to prove any of these elements is fatal to an OCPA claim. *Id.* This requires specifying the time, place, and content of the alleged fraudulent communications or transactions. *Id.*

In their proposed Sixth Complaint, Plaintiffs allege that “Defendants have engaged in “corrupt activity” under R.C. 2923.31(I) by engaging in telecommunications fraud under R.C. 2913.05 and mail and wire fraud under 18 U.S.C. 1341 and 1343 in furtherance of their scheme.” Plaintiffs, however, have failed to plead any facts that show how Floros violated these laws. Indeed, nowhere in Plaintiffs’ complaint does it state that Floros engaged in mail fraud. This alone destroys Plaintiffs’ OCPA claims, since Floros must have committed at least two of the listed state and federal offenses.

As to telecommunications fraud, Plaintiffs only makes conclusory arguments that Floros engaged in unlawful solicitation by hiring telemarketers to solicit clients. Plaintiffs fail to plead with specificity how Floros’ telemarketing solicitations were “deceptive,” “defrauded,” or “deprived” Plaintiffs as required under R.C. 2913.05.⁴ Plaintiffs have failed to show any specific statements were knowingly false or otherwise gave a false impression. Plaintiffs do not even discuss what was said in the solicitations. Plaintiffs’ arguments also fail to recognize that OAC 4734-9-02 specifically allows chiropractors to solicit over the phone.

Moreover, the only named Plaintiff that is alleged to have been solicited by Floros was Thera Reid. At her deposition, Reid admitted to signing a disclosure and agreeing that she “not

⁴ Under R.C. 2913.01, “Deception” means knowingly deceiving another or causing another to be deceived by any false or misleading representation, by withholding information, by preventing another from acquiring information, or by any other conduct, act, or omission that creates, confirms, or perpetuates a false impression in another, including a false impression as to law, value, state of mind, or other objective or subjective fact. “Defraud” means to knowingly obtain, by deception, some benefit for oneself or another, or to knowingly cause, by deception, some detriment to another. “Deprive” means to do any of the following: (1) Withhold property of another permanently, or for a period that appropriates a substantial portion of its value or use, or with purpose to restore it only upon payment of a reward or other consideration; (2) Dispose of property so as to make it unlikely that the owner will recover it; (3) Accept, use, or appropriate money, property, or services, with purpose not to give proper consideration in return for the money, property, or services, and without reasonable justification or excuse for not giving proper consideration.

pressured to set an appointment by the caller(s), and decided to make an appointment and go to the chiropractor solely out of the concern for my own health and well-being, after my recent accident.” See Ex. F, Reid Tran. 273-280. Plaintiff Reid also admitted that she was not “coerced” to treat with Floros and that the treatment was helpful:

Q And you went to those visits with the chiropractor because you believed you needed that treatment, true?

A **True.**

Q I mean, you would have stopped going if it didn't help, true?

A **Correct.**

Q The reason you continued to go was because the chiropractic treatment was effective for you?

A **Yes.**

Q You're not complaining about the treatment the chiropractor gave you, are you?

A **No.**

Q Okay. Now, KNR, and when I say "KNR," I'm including the lawyers there, Matt Walker or any of the others, they never pressured you into unwanted medical care, did they?

A **No.**

Q They never pressured you into unwanted chiropractic care, did they?

A **No.**

Q Okay. So if we look at your answer to Interrogatory Number 29, and before you told me that the conflicted legal representation was your own internal conflict because you were vulnerable or whatever the words are you used, but that's not the answer you gave when you were under oath answering these interrogatories, is it? Would you agree your answer to Interrogatory Number 29 is completely different from what you told me before about conflicted local representation?

A **Yes.**

Q And your answer to Interrogatory Number 29, it indicates "pressuring clients into unwanted and needed chiropractic care." And you've already told us they didn't do that to you. Do you know anybody they did do that too?

A **I'm unsure.**

Id., 100-102, 239-240. Reid, went on to admit that she benefited from the deferring payment to ASC and the reduction in her chiropractic bill:

Q Okay. And you're not alleging that the cost of that treatment was improper, are you?

A **No.**

Q Are you alleging in any way that Akron Square's bills to you, the \$5,025 for the treatment that you received there was fraudulent or incorrect in any way?

A **No, just costly.**

Q Well --

A **I get they're costly.**

Q Well, how much was it a visit?

A **I don't know how much it was a visit.**

Q How many visits did you have?

A **I don't even remember.**

Q Have you called other chiropractors to see what they charge?

A **No, but I get they're expensive.**

Q Okay. And in fact, they had to forego getting paid for --

A **A few visits, yes, I understand that. Quite a while actually.**

Q Exactly, which is money they could have had in their business?

A **I understand that.**

Q Okay. You're certainly grateful to Akron Square for reducing their bill by \$525, aren't you?

A **Yes.**

Q Okay.

Id. 184, 297-298.

Reid further testified that Floros did not refer to KNR. Rather, according to Reid, it was ASC staff and Dr. Michael Dumond that recommend KNR. Ex. J, 101; PL's Mot. Ex. 11, Reid. It is also undisputed that Floros is a salary employee of Akron Square Chiropractic (ASC) and that he has no ownership rights in ASC. Ex. E, Floros Tran. 56, 65, 69, 170, 220. And it is undisputed that ASC employs the telemarketers, not Floros. *Id.* All this testimony contradicts Plaintiffs' claim that Floros coerced Plaintiffs into receiving unwanted treatment and representation from KNR, or that Floros charged unconscionable rates.

If Floros' recommendation to see Ghoubrial for a medical consult was improper or unnecessary, as Plaintiffs seem to be alleging in the OCPA claim, then that would also mean that Plaintiffs are actually alleging a medical malpractice claim. This would require an expert

affidavit under Civ. R. 10(D)(2), which Plaintiffs have failed to provide. This would also mean that Plaintiffs' claims would be timed barred under R.C. 2305.113.

Lastly, Plaintiffs OCPA claims fail the plausibility test. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Dottore v. Vorys*, C.P. No. CV 10 741375, 2012 Ohio Misc. LEXIS 142, at *25-34 (Aug. 3, 2012). The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully. *Id.* When a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief. *Id.*

For instance, in *Dottore*, the court denied the plaintiffs' Ohio RICO claim where the defendant did not actually gain any benefit in participating in the alleged scheme:

"The plaintiffs' RICO claim lacks facial plausibility. The plaintiffs allege that Vorys bribed elected officials by hiring their sons for work that did not exist or that they were not qualified to do, and then charged the expense of those bribes to the plaintiffs in the form of unjustified bills. That allegation ignores the purpose — indeed, the primary element — of a bribe: getting something for the bribe. A bribe is supposed to pay for itself. To find the plaintiffs' allegations plausible, the court has to conclude that Vorys was so inept at making a bribe — defined at R.C. 2921.02(A) as giving a public official a thing of value with the purpose to improperly influence the official in the performance of his duties — that it had to cover the expense of the bribe by defrauding its clients and not by getting anything for the bribe. Such a "scheme or artifice to defraud" may be possible but it stops well short of crossing the line to plausibility."

As in *Dottore*, Plaintiffs' OCPA lacks plausibility because there is no financial incentive for Floros or other chiropractors to refer patients to Ghoubrial. Plaintiffs acknowledge this in their Motion. *See* PL's Mot. Pg. 26. Plaintiffs specifically cite testimony from former KNR employees where they talk about "cut[ting] the heck" out of [chiropractic bills] in order to preserve Dr. Ghoubrial...Dr. Ghoubrial always go the biggest share of [the client settlements]."

Plaintiffs try to dismiss this glaring flaw in their argument by claiming that it the chiropractors still engaged in the scheme to their financial detriment because it meant possibly more referrals. Plaintiffs, however, fail to offer any allegations in support of this claim in their proposed-sixth Complaint.

Plaintiffs' OCPA claims are thus contrary to their own testimony and fail as a matter of law. As a result, Plaintiffs are not entitled to amend their complaint because it would be futile and cause unnecessary delay.

III. Conclusion

In summary, Plaintiffs' Motion should be denied because there is no basis to amend the claims against KNR to "conform to the evidence" pursuant Civ.R. 15(B), since this Rule only applies to matters that have proceeded to trial. To extent Plaintiffs seek to add claims against new parties or KNR pursuant to Civ.R. 15(A), such amendments are also futile, untimely, and unduly prejudicial to Defendants.

Respectfully submitted,

/s/ Shaun H. Kedir

Shaun H. Kedir (#0082828)

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Counsel for Defendant Minas Floros

CERTIFICATE OF SERVICE

A copy of Defendant Minas Floros' Brief in Opposition to Plaintiffs' Motion to Amend the Complaint to Conform to the Evidence was served electronically on this 8th day of July, 2019. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ Shaun H. Kedir
Shaun H. Kedir (#0082828)

From: Shaun Kedir
Sent: Friday, December 7, 2018 3:36 PM
To: Peter Pattakos
Subject: Williams v. KNR - Floros

Peter,

Attached please find Floros' responses to your second set of discovery.

As to deposition dates, I know you mentioned wanting to depose Floros in mid-late February, but is late January an option? If so, we are both available on 1/23 and 1/30.

I'm currently unavailable the dates that Floros provided me in February (I have two trials and multiple final pre-trials in mid-late February). So I am waiting on alternative dates from him.

Regards,

Shaun Kedir

Shaun H. Kedir
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614 West Superior Avenue
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From: Shaun Kedir
Sent: Thursday, December 13, 2018 4:04 PM
To: Peter Pattakos
Cc: Mannion, Tom; James M. Popson; Brad.Barmen@lewisbrisbois.com; David Best; Joshua Cohen; Rachel Hazelet
Subject: Re: Nestico

Peter, as I previously mentioned to you, possible deposition dates for Floros include 1/23 and 1/30. 2/6 also works for us. If those dates don't work, then possibly 2/27, but I would have to see if I can move two final pretrials on the date.

Sent from my iPhone

On Dec 13, 2018, at 12:34 PM, Peter Pattakos <peter@pattakoslaw.com> wrote:

Tom,

We are not proceeding with Mr. Nestico's deposition next week.

First, the motion for a protective order that the KNR Defendants filed yesterday broadly seeks to bar "Plaintiffs' counsel from inquiring at the depositions of Nestico, Redick or any employee of KNR into alleged violations of the Ohio Rules of Professional Conduct, including, but not limited to, questions relating to 'unlawful quid pro quo referral relationships with a network of healthcare providers' and 'direct client-solicitation by unlawfully communicating through chiropractors to solicit car-accident victims without disclosing the quid pro quo nature of that relationship.'" Even if you weren't going to object and instruct your client not to answer every time we try to ask about the quid pro quo relationships that are at the heart of this lawsuit (consistent with Mr. Barmen's conduct at Dr. Gunning's deposition yesterday in repeatedly instructing the witness not to answer questions about highly and unquestionably relevant subject matter), you further have no right to burden us by insisting that we break up our deposition outline to isolate questions about the ethical rules that are implicated in this case.

Additionally, after defense counsel's conduct at Dr. Gunning's deposition yesterday, we need to seek a protective order barring any further speaking objections at depositions. Between you, Mr. Barmen, and Mr. Best, you must have violated Local Rule 17.02(b)(4) a hundred times, not to mention the outrageous insults you repeatedly leveled at us, including on the transcript. See Local Rule 17.02(b)(2). Under these circumstances, I can't imagine that any decent lawyer would proceed with another deposition, not least one as important as Nestico's is in this case, without seeking court intervention first.

If the January 31 and February 1 dates that you gave us before for Nestico's deposition are still good, we should nail those down, which should give the Court enough time to rule on the pending and necessary motions. Also, as I have been requesting for months to no response, we still need deposition dates for the following, in this order:

Paul Steele and Kelly Phillips;



Rob Horton and Gary Petti;

Dr. Floros, Dr. Ghoubrial, and Mr. Redick;

As well as Julie Ghoubrial which can take place at any time.

Please advise ASAP.

Thank you.

Peter Pattakos
The Pattakos Law Firm LLC
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Fairlawn, OH 44333
330.836.8533 office; 330.285.2998 mobile
peter@pattakoslaw.com
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On Thu, Dec 13, 2018 at 9:58 AM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

Peter:

Is Rob's Depo on or off. We need to know. Why not take his deposition now. Finish everything but questions on ethical rules. And then if court sides with you, we reconvene on those issues. We can even come up with a proposed date now in the event the Court so rules. You asked for multiple days anyway. Please let us know as soon as possible. This impacts a lot of schedules.

Tom

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Shaun Kedir

From: Peter Pattakos <peter@pattakoslaw.com>
Sent: Thursday, December 13, 2018 4:26 PM
To: Shaun Kedir
Cc: Mannion, Tom; James M. Popson; Brad.Barmen@lewisbrisbois.com; David Best; Joshua Cohen; Rachel Hazelet
Subject: Re: Nestico

Shaun,

I'm sorry if my multiple messages on this have been unclear, but, as noted again below, we need to complete the depositions of Nestico, Steele, Phillips, Petti, and Horton before we can proceed with Floros. Once we have those dates nailed down then we can talk about dates for Floros.

Thanks.

Peter Pattakos
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On Thu, Dec 13, 2018 at 4:04 PM Shaun Kedir <shaunkedir@kedirlaw.com> wrote:

Peter, as I previously mentioned to you, possible deposition dates for Floros include 1/23 and 1/30. 2/6 also works for us. If those dates don't work, then possibly 2/27, but I would have to see if I can move two final pretrials on the date.

Sent from my iPhone

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First, the motion for a protective order that the KNR Defendants filed yesterday broadly seeks to bar "Plaintiffs' counsel from inquiring at the depositions of Nestico, Redick or any employee of KNR into alleged violations of the Ohio Rules of Professional Conduct, including, but not limited to, questions relating to 'unlawful quid pro quo referral relationships with a network of healthcare providers' and 'direct client-solicitation by unlawfully communicating through chiropractors to solicit car-accident victims without disclosing the quid pro quo nature of that relationship.'" Even if you weren't going to object and instruct your client not to answer every time we try to ask about the quid pro quo relationships that are at the heart of this lawsuit (consistent with Mr. Barmen's conduct at Dr



From: Shaun Kediri
Sent: Thursday, February 14, 2019 11:46 AM
To: Peter Pattakos; Barmen, Brad; Mannion, Tom; James M. Popson; John Myers
Cc: Joshua Cohen; Rachel Hazelet
Subject: RE: Williams v. KNR: Ghoubrial, Gunning, Floros depositions

Peter, let me know if March 20th or April 3rd works for Floros' deposition. I will also have a response by tomorrow (or earlier) to your pending discovery requests. Thank you.

Shaun

Shaun H. Kediri
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From: Peter Pattakos
Sent: Tuesday, February 12, 2019 7:40 PM
To: Barmen, Brad; Mannion, Tom; James M. Popson; Shaun Kediri; John Myers
Cc: Joshua Cohen; Rachel Hazelet
Subject: Williams v. KNR: Ghoubrial, Gunning, Floros depositions

Counsel,

We need to get these depositions on the calendar ASAP.

- 1) It's been almost two weeks since I asked you for dates to resume Dr. Gunning's deposition as ordered by the Court. Please provide dates immediately.
- 2) Brad, please let us know when you expect Dr. Ghoubrial to come into compliance with last week's Court order granting our motion to compel so that we can set a date for Dr. Ghoubrial's deposition that gives us some time to seek Court intervention on the amended responses as necessary.



3) Shaun, please advise as to our pending requests, as clarified in our motion to compel, and also provide dates for Dr. Floros's deposition.

Thank you.

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1

IN THE COURT OF COMMON PLEAS

SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.,

Plaintiffs,

-vs- CASE NO. CV-2016-09-3928

KISLING, NESTICO
& REDICK, LLC, et al.,

Defendants.

- - - -

Videotaped deposition of MINAS FLOROS, DC, taken as if upon examination before Brian A. Kuebler, Kurt Spencer, Notary Publics within and for the State of Ohio, at the Pattakos Law Firm, 101 Ghent Road, Fairlawn, Ohio, at 9:09 a.m. on Friday, March 20, 2019, pursuant to notice and/or stipulations of counsel, on behalf of the Plaintiffs.

- - - -

JK COURT REPORTING
55 PUBLIC SQUARE
SUITE 1332
CLEVELAND, OHIO 44113
(216) 664-0541
www.jarkub.com

3

ALSO PRESENT:

John J. Reagan, Esq.
Peter Graves - videographer

2

APPEARANCES:

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and

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On behalf of the Defendants,
Kisling, Nestico & Redick, LLC;

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On behalf of the Defendant,
Dr. Minas Floros, DC;

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1375 East 9th Street, Suite 2250
Cleveland, Ohio 44114
(216) 344-9467
Ryan.rubin@lewisbrisbois.com

On behalf of the Defendants,
Sam N. Ghoubrial, MD;

4

EXAMINATION MINAS FLOROS, DC BY MR. PATTAKOS	5
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1 A. **I get there at 7:00, I usually leave at 7:00 --**
 2 **7:00 a.m. to 7:00 p.m. Most patients arrive**
 3 **around seven -- it depends, 7:15, 7:30.**
 4 Q. Is the clinic open after 7:00 or it closes at
 5 7:00, typically?
 6 A. **It depends. Sometimes patients will ask me to**
 7 **stay later if they can't make it and I'll stay.**
 8 **I don't say no.**
 9 Q. Okay. If you are treating -- if you were
 10 providing this, say, treatment to Thera Reid,
 11 Thera Reid comes in for her appointment on, let's
 12 say, March 11th -- or May 11 on the first page
 13 here --
 14 A. **Yep.**
 15 Q. -- she receives electrical stimulation therapy
 16 and the hot and cold packs. That's administered
 17 by one of your assistants?
 18 A. **Correct.**
 19 Q. Okay.
 20 A. **I'll assist, too. Like if we get really busy,**
 21 **I'll get in the therapy bay and hook patients up**
 22 **myself. I don't mind doing that.**
 23 Q. Okay. But that's not necessary though?
 24 A. **No, it's not necessary at all.**
 25 Q. Okay. And then you will perform manipulation,

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1 and then the trigger point therapy, if necessary.
 2 So that would take approximately, would you say
 3 you spend about 20 to 30 minutes?
 4 A. **Yes. The patient typically is in our office**
 5 **between 15 minutes and 45 minutes. So when they**
 6 **leave the passive therapy bay -- usually they're**
 7 **in the therapy bay, like I said, from 12 to 20**
 8 **minutes. When they're done with their passive**
 9 **therapy, they wait to see me. They come into my**
 10 **room where I adjust the patient. It's just me**
 11 **and the patient or me and the patient and their**
 12 **spouse or kids. And that's when I'll do the**
 13 **manipulation and the trigger point work, and the**
 14 **therapeutic exercises when they're done in the**
 15 **room, which can take, again, up to, it can be**
 16 **three minutes, it can be 20 minutes. It depends**
 17 **on what I do.**
 18 Q. Okay. But about three to 20 minutes, generally?
 19 A. **Correct.**
 20 Q. The exercises, can you describe those?
 21 A. **There's all kinds of exercises. There's**
 22 **TheraBand stuff. There's range of motion type of**
 23 **exercises. There's core exercises. There's**
 24 **plank work. There's glut bridges. There's glut**
 25 **extensions. There's weighted balls, not like**

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1 **kettle balls, they're just weighted six and eight**
 2 **pound balls that work a patient's shoulders and**
 3 **neck areas. There's all kinds of stuff that we**
 4 **do.**
 5 Q. Do you encourage the patients to do these
 6 exercises at home?
 7 A. **I do. Not those specific -- sometimes I give**
 8 **them different, just basic active range of motion**
 9 **stuff to do at home. Just basic -- if it's low**
 10 **back, trunk rotation, bending type of exercises.**
 11 **I don't expect them to start doing, you know,**
 12 **heavy-duty core plank work at home, I'd rather do**
 13 **them with me present.**
 14 Q. Okay. What's heavy-duty plank work?
 15 A. **Holding a plank in a bridge position for, let's**
 16 **say, 30 seconds.**
 17 Q. Okay.
 18 A. **If you have a hot disc and you're trying to do a**
 19 **side plank where you're literally on your side**
 20 **and you're raising your body up, I want to make**
 21 **sure their form is good so they don't blow out**
 22 **their disc or herniate the disc even more.**
 23 **In Thera Reid's case and Monique Norris'**
 24 **case, I don't think I performed any in-office**
 25 **therapeutic exercises.**

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1 Q. But you would bill for that if you did, right?
 2 A. **Of course, yeah.**
 3 Q. Okay. You would agree that if the -- if you do
 4 recommend exercises to a patient that if they do
 5 those exercises at home, they'll be better off?
 6 MR. KEDIR: Objection.
 7 A. **It will help get them better quicker, yes.**
 8 Q. Okay. How did you come to be employed at Akron
 9 Square?
 10 A. **Ah -- wow, in trimester eight or nine maybe**
 11 **another chiropractor recommended that I talk to**
 12 **CSG, Chiropractic Strategies Group. And I**
 13 **remember making the call out there and that was**
 14 **it.**
 15 Q. Okay. And what is Chiropractic Strategies Group?
 16 A. **It's a corporation, I believe, that owns multiple**
 17 **offices in the United States.**
 18 Q. Chiropractic offices?
 19 A. **I don't know. Maybe.**
 20 Q. Okay.
 21 A. **I think there's various offices that they own.**
 22 Q. Who did you meet with at Chiropractic Strategies
 23 Group?
 24 A. **Oh, a lot of people. When I actually flew out**
 25 **there, I met a ton of people back in '04.**

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1 the table. And again, most patients don't go to
 2 level four, five, six unless they have a very
 3 high pain threshold. I like four, five, six. A
 4 lot of patients don't.

5 Q. Would you agree that a massage would always be
 6 more effective therapy than a mechanical traction
 7 table?

8 MR. KEDIR: Objection.

9 A. **No. They're very -- very, very different.**

10 Q. How's that?

11 A. **Well, massage therapy doesn't put any sort of**
 12 **mobility in the joint as traction does. It's**
 13 **impossible. The amount of force that the**
 14 **traction puts into the spine to break up**
 15 **adhesions, break up scar tissue, increase**
 16 **circulation, is much different than what a**
 17 **massage does.**

18 **Massage therapy works the muscles surrounding**
 19 **the spine. Traction directly works on the spine.**
 20 **It's very, very different.**

21 Q. But wouldn't a human being with their hands be
 22 able to touch the same parts of the spine with
 23 more individualized focus to the patient's
 24 injuries and parts of the spine than a mechanical
 25 table rolling a roller back and forth would be

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1 able to?

2 MR. KEDIR: Objection.

3 A. **Yeah, so a massage therapist can touch the spine.**
 4 **Obviously, they touch the back. They touch every**
 5 **part of your back --**

6 Q. Sure.

7 A. **-- but the level of movement that a massage**
 8 **therapist can do compared to a traction device is**
 9 **completely different, they're completely**
 10 **different. Night and day.**

11 Q. Okay. So would you agree that it's typical for a
 12 patient in one appointment to get three or four
 13 -- strike that.

14 Would you say that a patient who is being
 15 treated for injuries that were suffered in a car
 16 accident, that it would be typical for them to
 17 receive, approximately, two to four of these
 18 modes that are listed here in Monique and Thera's
 19 documents --

20 MR. KEDIR: Objection.

21 Q. -- in one appointment?

22 A. **It can be one to five. Like many times a patient**
 23 **will come in and I'll only manipulate their**
 24 **spine. Or a patient will come in and will only**
 25 **do muscle stimulation. It just depends. It**

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1 varies from one modality to usually five.

2 Q. Why five?

3 A. **Well, because if you do therapeutic exercises,**
 4 **you do manipulation, muscle stimulation, heat,**
 5 **traction, exercise. Is that five? Yeah, that's**
 6 **five.**

7 Q. So those are the typical --

8 A. **Correct.**

9 Q. -- those are the typical modes that you use.
 10 Are there any others that you use in treating
 11 car accident victims?

12 A. **Usually that's it, one to five modalities.**

13 Q. Okay.

14 A. **I'd like to do more, but I just have no time.**

15 Q. How many patients do you see every day?

16 A. **Oh, it varies every single day. There's no set**
 17 **number.**

18 Q. What's --

19 A. **Throughout the years, it's varied.**

20 Q. What's a normal day?

21 A. **Oh, I don't -- again, every day is different.**

22 Q. What's a range? What's a busy day versus a slow
 23 day?

24 A. **It's hard to speculate because it can mean -- you**
 25 **know, busy can mean less patients but more time**

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1 with the patient. For example, Thera Reid
 2 required way more time than another patient
 3 because of the level of injury --

4 Q. She had broken bones.

5 MR. KEDIR: Objection.

6 A. **-- the level of injury is greater. So to me busy**
 7 **means spending more time with the patient as**
 8 **opposed to seeing more patients, because you have**
 9 **to put a lot more time with the patient. An**
 10 **example, Thera Reid. But there's no way to know.**
 11 **I don't know. I really don't know.**

12 Q. You don't get home and say, wow, I treated 30
 13 patients today, that was a lot, that was a busy
 14 day?

15 MR. KEDIR: Objection.

16 A. **No, I don't -- I don't even know my patient**
 17 **count. I don't look at sign-in sheets, I don't**
 18 **keep stats of anything. I just -- I'm tired**
 19 **every day. When I work 12 hours, I'm tired.**

20 Q. It's typical for you to put in 12-hour days
 21 there?

22 A. **Ten to 12.**

23 Q. Ten to 12 hours?

24 A. **To 12 hours a day, yeah.**

25 Q. What are the hours of the clinic?

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1 **A. It's very hard to say. On a day-to-day basis it**
 2 **changes.**
 3 **Q.** But you can say that it's more than 50 percent?
 4 MR. KEDIR: Objection.
 5 **A. It could be on a Monday. It might not be on a**
 6 **Tuesday.**
 7 **Q.** Okay. And it's true that many of your patients
 8 come to Akron Square because they're solicited by
 9 telemarketers who contact them based on
 10 information obtained in crash reports, correct?
 11 MR. KEDIR: Objection.
 12 MR. POPSON: Objection.
 13 **A. Oh, I have no idea.**
 14 **Q.** You have no idea about the telemarketers?
 15 **A. No.**
 16 **Q.** You don't know that your clinic, representatives
 17 of your clinic, routinely contact your patients
 18 and solicit them by telemarketers?
 19 MR. KEDIR: Objection.
 20 **A. I have no knowledge of that at all.**
 21 MR. POPSON: Objection.
 22 **Q.** Okay.
 23 **A. Like I said, Peter, I'm just the physician. I**
 24 **treat the patient when they come in. I do the**
 25 **exam, I treat them, they leave. That's it.**

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1 **Q.** Okay.
 2 - - - -
 3 (Thereupon, Plaintiff's Exhibit 6 was marked
 4 for purposes of identification.)
 5 - - - -
 6 **Q.** This document was produced by your attorneys as
 7 part of Thera Reid's file. Do you have any
 8 reason to doubt that?
 9 **A. No.**
 10 **Q.** Have you ever seen one of these documents before?
 11 **A. No, I have not.**
 12 **Q.** Okay. It says patient acknowledgement. I
 13 confirm I was contacted by telephone on one or
 14 more occasions by one or more persons who I
 15 understood to be representatives of Akron Square
 16 Chiropractic regarding the availability of a
 17 chiropractic consultation and spinal screening
 18 examination.
 19 I was told in the very first such telephone
 20 conversation and in each conversation thereafter,
 21 that the caller worked for this health care
 22 facility and Dr. M. Floros DC, and that the calls
 23 had no relation to and nothing whatsoever to do
 24 with my insurance company or the other driver's
 25 insurance company or any insurance company or any

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1 police department or any government agency,
 2 hospital, or service or entity. I'll stop there.
 3 Does this refresh your recollection about the
 4 telemarketers?
 5 **A. No, it doesn't.**
 6 MR. KEDIR: Objection.
 7 **Q.** Who asks Thera Reid -- who asked Thera Reid to
 8 sign this document?
 9 **A. When a new patient comes in, they're handed a**
 10 **bunch of documents --**
 11 **Q.** Uh-huh.
 12 **A. -- and this may have been one of the records that**
 13 **were in the documents. It's patient intake,**
 14 **name, address, phone number, medical release**
 15 **disclosures and then I guess whatever this is.**
 16 **Q.** Who is responsible for determining the contents
 17 of --
 18 MR. KEDIR: Objection.
 19 **Q.** -- these forms that are provided to the patients?
 20 **A. Oh, I don't know.**
 21 **Q.** Okay. And you don't even know who you can ask?
 22 **A. No. These have been consistent since I started**
 23 **working at Akron Square Chiropractic, I'm**
 24 **assuming.**
 25 **Q.** So if one of your patients complained about

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1 having to sign this form to you, what would you
 2 tell them?
 3 MR. KEDIR: Objection.
 4 **A. I would tell them if they don't want to sign it,**
 5 **they don't have to sign it.**
 6 **Q.** And then what, they wouldn't be able to treat
 7 with you?
 8 MR. KEDIR: Objection.
 9 **A. No, I treat everybody. I don't turn a**
 10 **consultation down. Any patient that comes in**
 11 **with any problem, I'll look at them. I have no**
 12 **problem whatsoever with that.**
 13 **Q.** So if one of your office staff says that a
 14 patient is refusing to sign a form, your response
 15 would be, okay, we will go ahead and treat the
 16 patient anyway?
 17 MR. KEDIR: Objection.
 18 **A. Yes. Have them fill out the rest of the forms**
 19 **and get them in the consultation room.**
 20 **Q.** What if they don't want to fill out any of the
 21 forms?
 22 **A. Well, look, if I don't know who they are or why**
 23 **they're in my office, I wouldn't perform a**
 24 **consultation on them. I can't walk -- I'm not**
 25 **going to -- just randomly a person says, hey, I**

1 want to get treatment and they don't want to tell
 2 me who their name is, I wouldn't treat that
 3 person, but if they fill out their name and they
 4 have a problem or if they just want to be checked
 5 out and have a screening, I would definitely
 6 check out the patient.
 7 Q. And --
 8 A. **It happens all the time.**
 9 Q. Okay. So you're not aware of any caller that
 10 works for you that makes these telemarketing
 11 calls?
 12 A. **No, we have -- I'm aware --**
 13 MR. KEDIR: Objection.
 14 A. **-- that we have a marketing department that's**
 15 **responsible for all the marketing.**
 16 Q. Okay.
 17 A. **They're responsible for all.**
 18 Q. A marketing department at Akron Square?
 19 A. **Not at Akron Square, no. There's no marketing**
 20 **department at Akron Square.**
 21 Q. The marketing department is with Chiropractic
 22 Strategies Group?
 23 A. **It may be.**
 24 MR. KEDIR: Object.
 25 Q. Well, when you say we have a marketing

1 department, who are you referring to?
 2 A. **Just I'm aware there's marketing that takes**
 3 **place, you know, advertisements. This type of**
 4 **thing, that somebody does.**
 5 Q. Do you do any work to market the firm?
 6 MR. KEDIR: Objection.
 7 A. **What firm? What are you talking about?**
 8 Q. Your chiropractic firm, your chiropractic office.
 9 A. **None at all.**
 10 MR. KEDIR: Objection.
 11 Q. When you started at Akron Square, a large portion
 12 of the clientele was personal -- car accident
 13 victims?
 14 MR. KEDIR: Objection.
 15 A. **It's so hard to say. Like I said, Peter, every**
 16 **day is very different. New patients come in all**
 17 **the time.**
 18 Q. But you don't remember that you were treating car
 19 accident victims from the moment you started
 20 working at Akron Square?
 21 A. **Oh, no, of course I did. Absolutely, yeah.**
 22 Q. Okay. There are certain law firm's clients of
 23 whom you treat hundreds of every year, correct?
 24 A. **It's hard to say. I can't speculate on numbers.**
 25 Q. Well, you don't deny that you treat hundreds of

1 KNR clients a year, do you?
 2 MR. KEDIR: Objection.
 3 A. **I can't speculate on numbers. I have no idea.**
 4 Q. So it's possible, according to your recollection,
 5 that you treat fewer than 100 KNR clients --
 6 MR. KEDIR: Objection.
 7 Q. -- a year, is that your testimony?
 8 A. **I can't -- I can't attest to that. Because a lot**
 9 **of times I don't even know if the patient is**
 10 **repped by an attorney or not until the end of**
 11 **treatment, so I don't know. Like some days maybe**
 12 **there are more patients than others that are**
 13 **represented by attorneys, but many times there's**
 14 **more that aren't represented by attorneys. It**
 15 **changes very -- it changes from patient to**
 16 **patient.**
 17 Q. Right. But you prepare narrative reports for
 18 many of your patients that are represented by
 19 attorneys, correct?
 20 A. **Yes. I prepare a narrative report. When the**
 21 **patient finishes care, I get a request from**
 22 **different law firms. And many times they request**
 23 **medical records, narrative reports, bills, many**
 24 **other documents, any referral forms that I refer**
 25 **to other providers, the medical providers. They**

1 **ask for all that stuff.**
 2 Q. And you produce hundreds of these reports a year,
 3 do you not?
 4 MR. KEDIR: Objection.
 5 A. **Oh, I don't know the number. I have no idea. I**
 6 **don't keep track of any numbers, so I have no**
 7 **idea.**
 8 Q. So you can't say that you've produced -- that you
 9 produce hundreds of narrative reports a year in
 10 personal injury cases?
 11 MR. KEDIR: Objection.
 12 A. **Very tough to say.**
 13 Q. Okay. KNR has provided documents -- I'm sorry,
 14 strike that.
 15 KNR has provided formal discovery responses
 16 in which they produce the number of clients that
 17 they claim were referred to and from you, Akron
 18 Square, by that law firm. And the numbers that
 19 they provided are as follows 2012, 615. 2013,
 20 748. For 2014, 798. For 2015, 880. For 2016,
 21 1,117. And for 2017, 647 as of September 17th of
 22 that year.
 23 Does that sound accurate to you?
 24 A. **Oh, I have --**
 25 MR. KEDIR: Objection.

1 A. **Yes.**
 2 Q. -- you will recommend multiple law firms?
 3 A. **Correct.**
 4 Q. Why multiple?
 5 A. **Because there's a lot of good attorneys out there**
 6 **and I don't -- I don't have no preference on a**
 7 **specific law firm. I don't -- I prefer my**
 8 **patients be represented by attorneys in these**
 9 **situations because I've seen patients been taken**
 10 **advantage of many, many times by insurance**
 11 **companies, so my preference is for them to be**
 12 **represented by somebody. Who they choose to be**
 13 **represented by though it doesn't matter to me, I**
 14 **don't really care.**
 15 Q. You agree there's no short -- sorry. Go ahead.
 16 A. **And in terms of the clients in question here, Ms.**
 17 **Reid and Ms. Norris, I didn't recommend or refer,**
 18 **to use your word, to any law firm.**
 19 Q. You agree there's no shortage of good personal
 20 injury lawyers in --
 21 MR. KEDIR: Objection.
 22 Q. -- northeast Ohio?
 23 A. **Oh, I would have no knowledge, but I would say**
 24 **there's probably plenty other good ones.**
 25 Q. What are your criteria for choosing which law

1 firms you would recommend to your patients?
 2 MR. KEDIR: Objection.
 3 A. **I have no criteria. It doesn't matter. Like I**
 4 **said, Peter, it doesn't matter who the attorney**
 5 **is, there's no criteria. You know, there have**
 6 **been attorneys that have come into my office, you**
 7 **know, soliciting business, give me business**
 8 **cards, and I utilize them.**
 9 Q. Do you follow-up to check on whether those
 10 attorneys are any good?
 11 A. **No. I mean, I ask my patients. Through**
 12 **interaction with my patients on a day-to-day**
 13 **basis like they'll -- they'll tell me, hey, this**
 14 **attorney sucks. Why isn't he calling me back?**
 15 **Well, I don't know. Call the paralegal, talk to**
 16 **the assistant. And many times a patient gets**
 17 **extremely frustrated or multiple patients and**
 18 **they fire their attorney or they get another**
 19 **attorney. So I hear it. You know, like I said,**
 20 **I've treated many patients injured in car**
 21 **accidents and I've heard it, I've heard**
 22 **everything.**
 23 Q. You identified seven law firms in your discovery
 24 response as firms that you will recommend your
 25 clients to.

1 A. **There are a lot more than seven. I remember**
 2 **doing the discovery and I just -- I can't**
 3 **remember in 15 years how many attorneys I've**
 4 **recommended. It's way more than seven.**
 5 Q. Okay. Well, so you listed KNR, Slater & Zurz --
 6 A. **Uh-huh.**
 7 Q. -- Gary Himmel --
 8 A. **Yep.**
 9 Q. -- Alberto Pena --
 10 A. **Yep.**
 11 Q. -- Elk & Elk --
 12 A. **Yes.**
 13 Q. -- Amourgis & Associates --
 14 A. **Uh-huh.**
 15 Q. -- and Skolnick Weiser?
 16 A. **Correct.**
 17 Q. Who else?
 18 A. **On 15 years?**
 19 Q. Yes.
 20 A. **Oh, there was Thomas Magliner [phonetic], there**
 21 **was Westfield, there was Dyer up in Kent.**
 22 **There's been Lisa Haywood -- geez, there's been a**
 23 **lot. I don't remember.**
 24 Q. And you can't say whether you do more business
 25 with one of these firms than any other?

1 A. **No, it's hard to say.**
 2 Q. And you can't even estimate?
 3 A. **No.**
 4 Q. How do you decide when a car accident victim with
 5 soft-tissue injury doesn't need treatment
 6 anymore?
 7 A. **We assess their pain levels. We look at range of**
 8 **motion. Palpatory findings. Essentially see**
 9 **where their pain level is at compared to day one.**
 10 **See how their injury is affecting their**
 11 **activities of daily living. See if they're back**
 12 **to work. See if they're functional. If they're**
 13 **able to raise their kids, for example or if**
 14 **they're able to go for a walk.**
 15 **It's a subjective and objective thing as to**
 16 **when I decide the patient is to be released.**
 17 **Every patient is different and every patient is**
 18 **treated differently.**
 19 **Though we do whatever is in the best interest**
 20 **of the patient to get them back to pre-accident**
 21 **condition. Many times the patient is well when**
 22 **they're released and many times they're not.**
 23 Q. You refer your personal injury clients to Dr.
 24 Ghoubrial, correct?
 25 A. **Correct.**

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1 Q. And what do you do that for?

2 A. **They're injured --**

3 Q. Uh-huh.

4 A. **-- they got high inflammatory levels. The**

5 **patient advised me that their medication ran out**

6 **from the hospital, they can't sleep, they're in**

7 **high levels of pain. They hurt more when they're**

8 **working. It helps me get the patient better**

9 **faster. I'm not a medical doctor. I can't**

10 **prescribe the medication, so, yeah, I refer a lot**

11 **of patients to Dr. Ghoubrial, he's a great**

12 **doctor.**

13 Q. Are there other doctors that you send your

14 patients to for similar treatment?

15 A. **Oh, yeah. In the last 15 years I've worked with**

16 **many doctors.**

17 Q. Who else besides Dr. Ghoubrial would provide

18 similar services?

19 A. **Dr. Soni --**

20 MR. KEDIR: Objection.

21 MR. POPSON: Objection.

22 A. **-- was one of the orthopedic surgeons I referred**

23 **patients to for pain management.**

24 Q. Dr. Soni?

25 A. **Dr. Soni.**

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1 Q. S-o-n-i?

2 A. **Yes. Comprehensive Pain Management is another**

3 **place I refer many patients to --**

4 Q. That's the Lababidi's?

5 A. **Yes. And they have -- they have a lot of pain**

6 **management specialists there. Center of Neuro &**

7 **Spine is another place I refer patients to. Dr.**

8 **Chonko, Dr. Tharp, Dr. Pinkowski. There was Dr.**

9 **Pogorelec back in the day that would see my**

10 **patients.**

11 **I'm willing to refer my patients to anybody**

12 **who accepts patients injured in car accidents and**

13 **sometimes that's very difficult to find.**

14 Q. How did you meet Dr. Ghoubrial?

15 A. **I don't remember.**

16 Q. Well, how did you come to first send your

17 patients to him?

18 A. **He may have been a mutual treatment with one of**

19 **the pain management facilities that have treated**

20 **my patients. That's probably where I first saw**

21 **his name pop up.**

22 **Again, I'm willing to work with any medical**

23 **doctor, any physician, that's willing to take on**

24 **my patients. And I get new ones or once in a**

25 **while I see a report of a patient with a medical**

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1 **doctor, I try to reach out to the doctor and see**

2 **if he's willing to accept my patients or to see**

3 **patients injured in car accidents or work**

4 **injuries, and again, its extremely difficult to**

5 **find medical doctors that will treat patients**

6 **injured in car accidents, especially in my area.**

7 Q. In Akron?

8 A. **Yeah. I'll send them anywhere. I'll send them**

9 **up to Cleveland, Medina, Fairlawn, Kent,**

10 **Canton -- they've been down to Canton --**

11 **Massillon. Anywhere.**

12 Q. Dr. Ghoubrial will sometimes treat patients at

13 your office, correct?

14 A. **Yes.**

15 Q. So he'll set up a number of appointments on any

16 given day and will come there and treat a number

17 of patients on a particular day?

18 A. **Yeah, that's more recent. Again, I've been**

19 **referring patients to Dr. Ghoubrial for many**

20 **years. Him coming to the office is more of a**

21 **recent thing. I don't remember when he started**

22 **but he used to -- I used to refer patients out to**

23 **Wadsworth, but it was difficult for the patients**

24 **to get there. A lot of patients don't have money**

25 **for gas. A lot of patients have not**

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1 **transportation. And he set up an office**

2 **somewhere in Akron --**

3 Q. On Brown Street?

4 A. **-- made it easier for my patients -- I think it**

5 **was Brown Street -- made it a lot easier for my**

6 **patients to get to. But I think ultimately it's**

7 **better that he comes to my office.**

8 Q. And why is that?

9 A. **Just easier. It's just easier. The patients**

10 **don't have to go anywhere. Again, my patients**

11 **don't have the finances to go -- put gas in their**

12 **car to go get an MRI. The place I refer for MRI**

13 **up in Medina, they provide transportation to my**

14 **patients. My patients can't get up there.**

15 Q. Do any other doctors come treat patients at your

16 office?

17 A. **No. Actually, I should -- I'm sorry, just to go**

18 **back. There are a few other doctors that have**

19 **come to my office over the last 15 years to treat**

20 **patients. Recently, no.**

21 Q. Okay. Who are those doctors that have come to

22 your office?

23 A. **Dr. Soni was one of the doctors that would come**

24 **to my office a few times. Again, he was located**

25 **down in -- close to the downtown Canton area.**

1 **A. I have no idea. I don't know what these numbers**
 2 **are. I have no idea.**
 3 **Q.** Okay. You have no idea whether you sent, whether
 4 you recommended KNR to 440 clients in 2012?
 5 **A. I wouldn't have any idea.**
 6 **Q.** But, you don't have any reason to disagree with
 7 KNR's representation there?
 8 MR. KEDIR: Objection.
 9 **A. I don't know where KNR came up with these**
 10 **numbers, so I can't testify to that.**
 11 **Q.** Well, do you think it's wrong?
 12 **A. I wouldn't know if it's wrong or right.**
 13 **Q.** Do you think it is wrong, as it is here --
 14 MR. KEDIR: Objection.
 15 **Q.** -- as you are sitting here, do you believe KNR is
 16 making a misrepresentation of these numbers?
 17 MR. POPSON: Objection.
 18 **A. I don't know.**
 19 **Q.** Okay.
 20 - - - - -
 21 (Thereupon, Deposition Exhibit 13 was marked
 22 for purposes of identification.)
 23 - - - - -
 24 **Q.** Can you identify these documents, as records for
 25 Thera Reid that were produced by your attorneys

1 in this litigation?
 2 **A. Yes.**
 3 **Q.** So, Thera Reid was in a serious motor vehicle
 4 accident on April 20th, correct?
 5 **A. Correct.**
 6 **Q.** And, she was in your office on April 22nd.
 7 **A. That is correct.**
 8 **Q.** Because a telemarketer from your office contacted
 9 her, correct?
 10 MR. KEDIR: Objection.
 11 **A. I can't testify to who contacted her.**
 12 **Q.** But, you would agree that the first page of this
 13 document reflects that a telemarketer did, in
 14 fact, contact Thera Reid, correct?
 15 MR. KEDIR: Objection.
 16 **A. Like I said, Mr. Pattakos, there's a series of**
 17 **forms that new patients in the office are given.**
 18 **And this could have been in there. I don't know**
 19 **if she was contacted, or not contacted, I have no**
 20 **idea. I would have no way of knowing that.**
 21 **Q.** But, if Ms. Reid testified that she was, in fact,
 22 contacted by a telemarketer, as she acknowledged
 23 here, would you have any reason to doubt that?
 24 **A. I wouldn't know. I can't testify to that or not.**
 25 **Q.** Okay. So, your narrative report form for Ms.

1 Reid has been previously marked, but it's also
 2 the last page of this exhibit.
 3 **A. Okay.**
 4 **Q.** If you want to take a look at it.
 5 MR. KEDIR: Exhibit 9.
 6 MR. PATTAKOS: I guess it was
 7 Exhibit 9. Because if you look at
 8 Exhibit 9, it's also the last page of
 9 Exhibit 13, which is the complete file that
 10 Dr. Floros produced.
 11 **Q.** Is it typical, well, let me back up. You
 12 understand that Ms. Reid had a fractured
 13 humerus, and, also, had multiple fractures in
 14 her shoulder, correct?
 15 **A. Correct.**
 16 **Q.** Is it typical for you to perform chiropractic on
 17 someone that has such injuries?
 18 **A. We're not performing any chiropractic**
 19 **manipulation on the shoulder. We're performing**
 20 **chiropractic manipulation on the spine. So, my**
 21 **answer is yes, I would perform therapy to a**
 22 **patient that has a fracture in an area unrelated**
 23 **to the fracture.**
 24 **Q.** Okay. Beyond Ms. Reid's emergency room visit, do
 25 your records reflect that she received any

1 additional treatment?
 2 **A. I don't see any of the records here that she has.**
 3 **Q.** So, from these records, you can't tell what
 4 additional treatment she would have received?
 5 **A. Correct.**
 6 **Q.** Apart from what occurred at Akron General,
 7 correct?
 8 **A. Correct.**
 9 **Q.** So, when you write in the narrative report about
 10 the patient's description of pain --
 11 **A. Uh-huh.**
 12 **Q.** *She presented to Akron Square Chiropractic*
 13 *following a motor vehicle accident with symptoms*
 14 *of moderate to severe spinal soft tissue injury.*
 15 You don't mention the broken bones in this
 16 report.
 17 **A. I do not.**
 18 **Q.** Is there a reason for that?
 19 **A. I'm not the one to have diagnosed the broken**
 20 **bone. I just didn't put it in there, knowing**
 21 **that the, probably, surgeon had a much more**
 22 **thorough report about the specific break, and the**
 23 **location of the break. I want to prepare a**
 24 **report, and testify to what I actually treated on**
 25 **the patient, as opposed to saying it's a broken**

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07/03/2018

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1 STATE OF OHIO,)
COUNTY OF SUMMIT.) SS:

2

IN THE COURT OF COMMON PLEAS

3 MEMBER WILLIAMS, et al.,)
4)
Plaintiffs,)
5)
vs.) JUDGE BREAUX
6) CASE NO. CV-2016-09-3928
KISLING, NESTICO &)
7 REDICK, LLC, et al.,)
8 Defendants.)
9

- - - - -
THE VIDEOTAPE DEPOSITION OF
THERA REID
TUESDAY, JULY 3, 2018
- - - - -

10 The deposition of THERA REID, called by the
11 Defendants for examination pursuant to the Ohio
12 Rules of Civil Procedure, taken before me, the
13 undersigned, Margaret A. Trombetta, RMR and Notary
14 Public within and for the State of Ohio, taken at
15 the offices of Kisling, Nestico & Redick, LLC, 3412
16 W. Market Street, Fairlawn, Ohio, commencing at
17 10:30 a.m., the day and date above set forth.
18
19
20
21
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25

Page 3

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1 more than a pronoun.
 2 **A** Okay. You want a little more than a pronoun.
 3 That's how I was damaged. I didn't get a lot
 4 of money, okay. They recovered \$48,000 and I
 5 got 12.
 6 **Q** I understand you keep saying that.
 7 **A** Yeah, I'm going to keep saying that.
 8 **Q** Okay.
 9 **A** And I understand you're a high-paid lawyer.
 10 Smile.
 11 **Q** I guess you probably don't understand that I'm
 12 actually here charging zero per hour right now.
 13 **A** I don't care. I don't care.
 14 **Q** Do you know how much I charge?
 15 **A** I don't know how much you charge. You ain't my
 16 lawyer.
 17 **Q** Okay. Then why are you saying things like that
 18 to me right now. I'm been very respectful to
 19 you.
 20 **A** You keep asking me the same old thing.
 21 **Q** Well, ma'am, I'm trying to find out when I get
 22 into court --
 23 **A** And I keep telling you and telling you and
 24 telling you and telling you and how are you
 25 going to keep asking me the same thing and I

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1 keep telling you the same thing.
 2 **Q** Because I'd like to know how much you're going
 3 to ask the jury for and tell the jury that
 4 these defendants damaged you other than --
 5 **A** And I'm telling you.
 6 **Q** Well, you're not.
 7 **A** And I'm going to keep telling you and I'm going
 8 to keep telling you the same thing.
 9 **Q** Okay. What's the amount?
 10 **A** Right here.
 11 **Q** What's "right here"?
 12 **A** Oh, lordy be.
 13 **Q** Okay. What amount of money --
 14 **A** Okay.
 15 **Q** -- over the 150 or 200 are you saying that the
 16 defendants somehow defrauded you or damaged
 17 you?
 18 **A** I need a cigarette so bad right now.
 19 **Q** Okay.
 20 **MR. MANNION:** It's 12:41.
 21 Let's take our lunch break.
 22 **MR. BEST:** There's a
 23 question pending.
 24 **MR. MANNION:** Oh, yeah. I'm
 25 sorry. Please read back the last question.

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1 **MR. PATTAKOS:** Thera, just
 2 answer the question and we can take a break.
 3 - - - - -
 4 (Requested portion of the record was read.)
 5 - - - - -
 6 **Q** And the question is, ma'am, what amount over
 7 150 or 200 are you saying the defendants
 8 damaged you or defrauded you out of, what
 9 amount?
 10 **A** I'm saying I was damaged this, but this isn't
 11 what we're here for. We are here for the class
 12 action lawsuit.
 13 **Q** So in this lawsuit, your only claim is for 150
 14 or \$200?
 15 **A** I guess, yes, that's what my claim would be.
 16 **Q** Okay.
 17 **MR. MANNION:** Let's take our
 18 break.
 19 **THE VIDEOGRAPHER:** Off the record.
 20 The time is 12:41.
 21 - - - - -
 22 (Recess was had.)
 23 - - - - -
 24 **THE VIDEOGRAPHER:** We're back on
 25 the record. The time is 1:47.

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1 **Q** We are back now after the break.
 2 Are there any of the answers that you
 3 gave earlier that you thought about over the
 4 break and would like to add anything to, revise
 5 anything?
 6 **A** No.
 7 **Q** Okay. Now, eventually the day after this
 8 accident, you went to the chiropractor's
 9 office, correct?
 10 **A** Yes.
 11 **Q** They came and picked you up?
 12 **A** Yes.
 13 **Q** Who was it from there that picked you up? Do
 14 you know?
 15 **A** Her name was Olivia.
 16 **Q** And you thought you needed some chiropractic
 17 treatment because of the accident, correct?
 18 **A** Correct.
 19 **Q** Okay. And in fact, you went to the
 20 chiropractor about how many times to treat for
 21 your injuries?
 22 **A** I'm unsure.
 23 **Q** KNR never told you to go to that chiropractor,
 24 fair?
 25 **A** Fair.

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Pages 181-184

Page 181	Page 183
1 A Thank you very much.	1 in parenthesis.
2 Q You're welcome.	2 Do you see that?
3 A I didn't see him but a couple of times.	3 A Oh, yeah.
4 Q Okay.	4 Q And then 4,500 was the amount that they were
5 A So yes, honestly I do think \$150 is a little	5 actually paying to him though, correct?
6 much to go in and write out a report.	6 A Yes.
7 Q Really?	7 Q So this was for your actual chiropractic
8 A When all's I did was go in and see him and he	8 treatment; when you add up all the visits and
9 just wrote out a prescription for pain meds,	9 how much they charged for the visits, it was
10 yes, really.	10 \$5,025, correct?
11 Q Okay. Thank you. Do you know what this report	11 A Okay.
12 was used for?	12 Q Correct, ma'am?
13 A Yes.	13 A Okay, yes.
14 Q What was it used for?	14 Q And in fact, KNR was able to negotiate \$525 off
15 A For them, KNR.	15 of that bill, correct?
16 Q Excuse me?	16 A I don't know.
17 A To get me this little bit of money.	17 Q Well, they only paid them 4,500, correct?
18 Q Okay. It was used to help settle your case,	18 A That's how much they took that day you said.
19 fair?	19 Q Okay. Do you know whether they ever paid Akron
20 A Yeah.	20 Square Chiropractic anything else?
21 Q Okay. And so how much do you think a	21 A No, I do not.
22 chiropractor or a health care provider should	22 Q And you don't owe Akron Square Chiropractic
23 charge to prepare a detailed report like this	23 practice as you sit here, do you?
24 to help you get a settlement?	24 A I haven't received a bill.
25 A Well, sir, when you've got a thousand dollars	25 Q Okay. So if they negotiated a discount of \$525
Page 182	Page 184
1 down here for Akron Square Chiropractic,	1 off that bill, that's 525 extra dollars that
2 5,000-some-odd dollars, and then you've got up	2 went in your pocket, true?
3 here, come on, really?	3 A If they negotiated it, yes.
4 Q That really wasn't my question though. I'll	4 Q If so you look at the top, the 150 for this
5 ask my question again in a second.	5 report, would you have rather had them
6 A I know what you were --	6 negotiate 520 off and pay the 150 or would you
7 Q I'll go to where you were --	7 have rather paid the whole 5,025?
8 A I know what you were asking. You were saying	8 A I guess I would have rather negotiated.
9 how much do you think they should be, you know.	9 Q Okay. And so if we look back now at the
10 Q Do you know if you could have got a settlement	10 interrogatory or request for admissions answer,
11 from Allstate without this report?	11 and you say that you "deny the report was
12 A No, I don't.	12 necessary."
13 Q Okay.	13 Okay. Why do you deny that this report
14 A And if I -- it would have probably been what	14 was necessary?
15 Richard got, \$3,000.	15 A I didn't say it was nec --
16 Q So if you got more than \$150 extra from	16 Q Do you believe it was necessary?
17 Allstate because of this report, aren't you	17 A I'm looking at it and -- I don't know.
18 glad that they prepared it?	18 Q Okay.
19 A In some way, yeah.	19 A I just -- I don't know.
20 Q Okay. Now, you did mention though about the	20 Q And you have no idea what a reasonable charge
21 two charges, so let's look back at Defendants'	21 from a chiropractor is for reports setting
22 Exhibit 5, ma'am, if you could please remove	22 forth opinions like this, is that true?
23 that and look at Exhibit 5 again.	23 A That's true.
24 Okay. Now, on Exhibit 5 you noted the	24 Q Okay. Why then are you saying the \$150 is too
25 Akron Square Chiropractic bill that was \$5,025	25 much for this report?

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1 you the very first time and in the office, when
 2 Akron Square did, they told you specifically
 3 that they were not affiliated with any other
 4 type of entity as far as who they were speaking
 5 for, true?
 6 **A Who said that?**
 7 **Q** Whoever you talked to from Akron Square.
 8 **A I don't remember that.**
 9 - - - - -
 10 (Defendants' Exhibit 20, Patient
 11 Acknowledgment, was marked.)
 12 - - - - -
 13 **Q** Okay. Let's look at now if you could pull
 14 Exhibit 20 that's marked there.
 15 At the bottom, do you see how you had to
 16 use your left hand to write "TR"?
 17 **A Yes.**
 18 **Q** But that is your initials, true?
 19 **A Yes.**
 20 **Q** And that was the only way you could sign your
 21 name because of your injury at the time?
 22 **A Yes.**
 23 **Q** And this was signed on the very date you went
 24 to see Akron Square?
 25 **A Yes.**

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1 **Q** Now, when you talked with Akron Square on the
 2 phone, what they actually offered to you, and
 3 this is when you talked to them the day after
 4 the accident, when you talked to them on your
 5 phone, what they actually told you was that
 6 they would give you a free chiropractic
 7 consultation and a free ten-point spinal
 8 screening exam without any obligation or any
 9 costs to anybody for that, true?
 10 **A Yes.**
 11 **Q** And that's one of the reasons you went to see
 12 them, fair?
 13 **A One of.**
 14 **Q** Okay. One of the others is because they
 15 provided a ride and you had trouble with
 16 transportation?
 17 **A One of.**
 18 **Q** One of the others is because you trusted them
 19 from talking to them on the phone?
 20 **A Correct.**
 21 **Q** Okay. And one of the others is because you
 22 needed some health care attention?
 23 **A Correct.**
 24 **Q** Any other reasons?
 25 **A I thought I could trust them.**

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1 **Q** Okay. Any other reasons than what I just
 2 listed?
 3 **A No.**
 4 **Q** Okay. Now, let's go through this. You do
 5 agree you read and signed, to the extent your
 6 initials or signature, Exhibit 20, correct?
 7 **A Yes.**
 8 **Q** And you read it first?
 9 **A Yes.**
 10 **Q** Did you have any questions for them at the
 11 time?
 12 **A I don't know. I had questions and papers and I**
 13 **signed a lot of things.**
 14 **Q** Okay. You don't recall whether you did have
 15 questions or whether you didn't have questions
 16 about Exhibit 20?
 17 **A No, I do not.**
 18 **Q** Okay. So we'd have to rely on their memory if
 19 they remember, true?
 20 **A Probably, yes.**
 21 **Q** Okay. You wouldn't have signed this if there
 22 was something about it you didn't understand,
 23 would you?
 24 **A No.**
 25 **Q** So let's look at this. In the first paragraph,

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1 can you read that first paragraph, please.
 2 **A "I was told in the very first such phone call**
 3 **conversation."**
 4 **Q** One second. Sorry about that. The very first
 5 paragraph, right before that. "I confirm."
 6 **A "I confirm I was contacted by telephone on one**
 7 **or more occasions by one or more persons who I**
 8 **understood to be representatives of Akron**
 9 **Square Chiropractic regarding the availability**
 10 **of chiropractic consultations, spinal screening**
 11 **examinations."**
 12 **Q** Okay. Now, that is what they talked to you
 13 about when they contacted you by telephone,
 14 correct?
 15 **A Yes.**
 16 **Q** Now, this says "on one or more occasions," but
 17 in your case it was only one occasion at this
 18 time, true?
 19 **A True.**
 20 **Q** Okay. And you understood at the time they
 21 talked to you that they were representatives of
 22 Akron Square Chiropractic and not the
 23 representatives of anybody else, true?
 24 **A True.**
 25 **Q** Now, if we look at the next paragraph, "I was

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1 told in the very first such telephone	1 affiliated with any insurance company,
2 conversation and in each conversation	2 government agency, police department or
3 thereafter that the caller worked for this	3 hospital has ever advised me or suggested to me
4 health care facility and Dr. Floros DC."	4 that I visit or seek treatment from Akron
5 Did I read that correctly so far?	5 Square Chiropractic."
6 A Yes.	6 Did I read that correct?
7 Q And do you understand that "DC" means	7 A Yes.
8 chiropractor?	8 Q And was that true?
9 A Yes.	9 A Yes.
10 Q Okay. "And that the call had no relation to	10 Q Next paragraph, "The caller told me that the
11 and nothing whatsoever to do with my insurance	11 chiropractic consultation and ten-point spinal
12 company or the other driver's insurance company	12 screening examination were offered without any
13 or any insurance company or any police	13 obligation to accept the appointment and at no
14 department or any government agency, hospital	14 cost to any insurance company or me."
15 or other service or entity."	15 Did I read that correctly?
16 Did I read that correctly?	16 A Yes.
17 A Yes.	17 Q And so when you went for that first visit on
18 Q So this was just Akron Square calling on behalf	18 the 22nd of April, 2016, while you may not have
19 of Akron Square, true?	19 received actual chiropractic manipulation,
20 A Yes.	20 there was a consultation and a screening exam,
21 Q Okay. And you read and signed this, fair?	21 true?
22 A Yes.	22 A I had an x-ray and a consultation, yes.
23 Q Do you withdraw your answer saying that it was	23 Q Okay. And the next paragraph, "I was not
24 actually KNR who told them to call you?	24 pressured to set an appointment by the caller
25 A I don't know if it was them telling them to	25 and decided to make an appointment and go to
Page 278	Page 280
1 call me.	1 the chiropractor solely out of concern for my
2 Q You don't have any proof that KNR told them to	2 own health and well-being after my recent
3 call you, do you?	3 accident."
4 MR. PATAKOS: Objection.	4 Did I read that correctly?
5 A I don't have proof.	5 A Yes.
6 Q Okay.	6 Q And that was true, wasn't it, ma'am?
7 A No, I don't know, okay. It was them telling	7 A Yeah.
8 me, "Here, here's our lawyer."	8 Q Well --
9 Q No, this is the first phone call, ma'am. They	9 A Yeah.
10 didn't say anything about KNR in that first	10 Q Okay. Next paragraph, "I acknowledge that the
11 phone call, did they?	11 consultation and ten-point screening
12 A Not in the first one, no.	12 examination were offered without obligation to
13 Q Okay.	13 become a patient of Akron Square Chiropractic
14 A But after I went there.	14 or to receive treatment from Akron Square
15 Q My question is, ma'am, on that phone call to	15 Chiropractic."
16 you the day after this accident, did Akron	16 Did I read that correctly?
17 Square --	17 A Yes.
18 A No.	18 Q And is that true?
19 Q -- mention any other lawyer's name, any	19 A Give me one second, please.
20 lawyer's name?	20 Q Sure.
21 A No.	21 A I need to read that.
22 Q Any law firm's name?	22 Q Absolutely.
23 A No.	23 A Yes.
24 Q The next paragraph, "No person who identified	24 Q And the next paragraph, "I, the patient named
25 himself or herself as being employed by or	25 below, attest that the employee named read the

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Pages 281-284

<p style="text-align: right;">Page 281</p> <p>1 statement above aloud and in full to me." 2 Did I read that correctly? 3 A Yes. 4 Q And that's true as well, isn't it? 5 A Yes. 6 Q So when they called you, they actually read 7 this to you, didn't they? 8 A I don't remember hearing this over the phone. 9 Q Okay. Are you saying it didn't happen or you 10 just don't remember? 11 A I don't remember over the phone. 12 Q Okay. 13 A But I remember when I went in there in person. 14 Q They read it to you? 15 A Yes. 16 Q Okay. 17 A But I don't remember hearing it over the phone. 18 Q Okay. If it happened, you don't remember it? 19 A Correct. 20 Q Okay. And if you look at the paragraph before 21 that, you'll see it says, "I attest that these 22 statements are true and a complete recollection 23 of my recent telephone conversation." 24 Do you see that? 25 A Yes.</p>	<p style="text-align: right;">Page 283</p> <p>1 April 22nd, 2016, your memory was that this was 2 a complete recollection of your telephone 3 conversation with them. That's what you said 4 on the 22nd, true? 5 A True. 6 MR. MANNION: For the record, 7 also, we have substituted 1A with a correct 8 copy of the information that you brought. 9 Right here is a copy of it. 10 MR. PATTAKOS: Thanks. 11 MR. MANNION: We'll put that 12 with the rest of those. 13 Q Okay. Now, let's go back to the actual 14 complaint. 15 Oh, I have a question for you. 16 A Do you mind if I don't answer? 17 Q Then I might have another question. 18 A Oh Lord, I might have another answer. 19 Q Do you believe that somehow Mr. Nestico, 20 Mr. Read, KNR, Matt Walker, anybody at KNR 21 somehow put Akron Square's interests over your 22 interests? 23 A I would like to think they wouldn't. 24 Q Okay. And you don't think they did, do you? 25 A I would hope they didn't.</p>
<p style="text-align: right;">Page 282</p> <p>1 Q So this is talking about what was told to you 2 during the telephone conversation, fair? 3 A Okay. Well, like I said, you know, if they 4 read it to me over the phone, I don't remember, 5 but I do remember seeing it when I went there. 6 Q And my point is whether you remember them 7 reading all this to you or not, you do remember 8 them telling you this information in some form 9 on the telephone when you talked to them before 10 you got there, and that's what you signed here? 11 A I remember seeing it. 12 Q It says "I attest that these statements are 13 true and a complete recollection of my recent 14 telephone conversation." 15 A I know what that says, sir. 16 Q Okay. 17 A But I honestly do not remember hearing this 18 over the phone. 19 Q Okay. 20 A They could have said it, but I do not remember 21 hearing it on the phone. 22 Q Okay. 23 A But I do remember seeing it when I did get 24 there. 25 Q Understood completely. But at least as of</p>	<p style="text-align: right;">Page 284</p> <p>1 Q Okay. You don't have any evidence that they 2 did, true? 3 MR. PATTAKOS: Objection. 4 A I personally do not. 5 Q You haven't seen any evidence that they did, 6 fair? 7 MR. PATTAKOS: Objection. 8 Q Just be truthful, ma'am. Have you seen any 9 evidence of that? 10 A No, I haven't. 11 Q Okay. One second. 12 Now, if you open up this complaint, and 13 if we go all the way -- just a minute. 14 Okay. So if you look at Page 38, 15 Paragraph 138. 16 A Excuse me. Pardon me. 17 Q No problem. 18 A I need that beer that you were talking about. 19 Page 38 you said? 20 Q Yes. 21 A The one that we were just looking at? 22 Q Oh, Exhibit 4. 23 A Oh, okay. I don't have them in order here. 24 Q That's okay. I think it might be the last one 25 there.</p>

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<p style="text-align: right;">Page 285</p> <p>1 A It probably is. It would be my luck. Yes, it 2 is. 3 Q If you turn to Page 38. 4 And do you see Paragraph 138 right above 5 that, it has "V Class Allegations"? 6 A Yes. 7 Q And then you see there's A, B, C and D? 8 A Yes. 9 Q And do you know which of these you've been 10 designated for as the class representative? 11 A D. 12 Q Okay. Do you know whether you're a member, not 13 the representative, but a member of classes A, 14 B or C if it's eventually certified as a class? 15 A I do not. 16 Q Okay. If we now look at the next page, Page 17 39. 18 And Paragraph 140 alleges that "There's 19 common legal or factual issues that affect the 20 classes," and then there's some it lists out, 21 and if we look at 140, Paragraph 140, 22 Subparagraph B, it says for Classes B and D. 23 A Okay. 24 Q And we just talked about you being the 25 potential representative for Class D, correct?</p> <p style="text-align: right;">Page 286</p> <p>1 A Yes. 2 Q So it goes on say what the complaint alleges 3 and the common legal or factual issues, and if 4 we look at number -- I shouldn't say -- however 5 you want to call it, little letter i, do you 6 see that on the next page on Page 40? 7 A Yes. 8 Q "Defendants maintained arrangements with Akron 9 Square and other chiropractors from 10 Plambeck-owned clinics 'the chiropractors' by 11 which defendants and Akron Square split certain 12 marketing costs to target clients for both KNR 13 and the chiropractors." 14 Now, you have no idea whether that's 15 true, do you? 16 A I do not know. 17 Q Okay. In ii, you allege as one of the 18 plaintiffs and potential class representative 19 that the chiropractor's representatives, their 20 actions were to circumvent the Ohio rules of 21 professional conduct. 22 You don't know whether that's true, do 23 you? 24 A I was relying on my attorney. 25 Q Okay. And iii on Page 40 indicates</p>	<p style="text-align: right;">Page 287</p> <p>1 "Defendants, as a matter of KNR firm policy, 2 directed their clients to treat with certain 3 chiropractors regardless of their client's 4 preferences or needs." 5 Did I read that correctly? 6 A Yes. 7 Q Okay. They never directed you to treat with 8 any specific chiropractor, did they? 9 MR. PATTAKOS: Objection. 10 Q You've already answered it several times, but 11 I'm just making it clear here. 12 A It wasn't forceful. 13 Q Well, you started treating with them before you 14 ever talked to KNR, right? You went to Akron 15 Square even before you talked to KNR? 16 A Well, I wasn't treating there, but I was there 17 at Akron Square, yes, and they put me on the 18 phone with KNR. 19 Q Okay. 20 A But I wasn't getting treated with Akron Square. 21 Q So we can go back and look at some of the 22 testimony if we need to. 23 A No, it's all right. 24 Q But would you agree that, and you already told 25 us earlier, KNR never directed you to treat</p> <p style="text-align: right;">Page 288</p> <p>1 with any certain chiropractor, true? 2 A True. 3 Q Okay. And for us to determine whether KNR 4 directed any of their clients to treat with any 5 certain chiropractor, we'd have to look at each 6 of those cases separately, wouldn't we? 7 A Yes. 8 Q We'd have to talk to the lawyers and paralegals 9 at -- 10 A Yes, you would. 11 Q You'd have to talk to the separate lawyers or 12 paralegals who interacted with those clients? 13 A Yes. 14 Q Okay. In v, it talks about the narrative fee 15 being paid as a way to "reward certain 16 chiropractors." 17 Now, you don't expect chiropractors to 18 write narrative reports for free, do you? 19 A I wouldn't say for free. 20 Q And you have no idea as to whether KNR has a 21 policy or doesn't have a policy regarding 22 narrative fees in order to reward 23 chiropractors, do you? 24 A I was just like I said earlier, I was going -- 25 Q On your attorney?</p>
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