IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, *et al.*, Plaintiff, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. CV-2016-09-3928 Judge James A. Brogan **Notice of Filing Motion to Intervene in the Ghoubrials' Lawsuit for a Writ of Prohibition regarding the Production of Julie Ghoubrial's Deposition Transcript for *In Camera* Review**

On June 25, 2019, Defendant Ghoubrial and non-party Julie Ghoubrial filed an original action in the Ninth District Court of Appeals, *State ex rel. Ghoubrial, v. Summit County Court of Common Pleas,* No. CA-29548, seeking a writ of prohibition against this Court's order compelling the production of Julie's deposition transcript from her divorce proceedings with Defendant Ghoubrial. Plaintiffs hereby give notice that they filed a motion to intervene in that action, attached as **Exhibit A**, to protect their interests in discovering relevant evidence contained in Julie's deposition transcript.

Respectfully submitted,

/s/ Peter Pattakos

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Certificate of Service

The foregoing document was filed on June 11, 2019, using the Court's e-filing system, which will serve copies on all necessary parties.

/s/ Peter Pattakos
Attorney for Plaintiffs

IN THE NINTH DISTRICT COURT OF APPEALS
SUMMIT COUNTY, OHIO

State, ex rel. SAM N. GHOUBRIAL, M.D., *et al.*, Relator, v. SUMMIT COUNTY COURT OF COMMON PLEAS, *et al.*, Respondents.	Case No. CA-29458 **Member Williams, Thera Reid, Monique Norris, and Richard Harbour's Motion to Intervene**

Member Williams, Thera Reid, Monique Norris, and Richard Harbour hereby move to intervene under Civ.R. 23(A)(2) to protect their interest in discovering relevant evidence contained in Julie Ghoubrial's deposition transcript that is the subject of this action for a writ of prohibition. The grounds for this motion are stated fully below.

Statement of Facts

Ms. Williams, Ms. Reid, Ms. Norris, and Mr. Harbour are the named plaintiffs ("Plaintiffs") in the underlying putative class-action lawsuit (Summit C.P. No. 2016-09-3928) against the Kisling Nestico & Redick personal-injury law firm ("KNR"), its owners, and certain health-care providers, including Relator Sam N. Ghoubrial, M.D. ("Defendant Ghoubrial"), with whom KNR allegedly conspired to defraud the firm's clients.

Defendant Ghoubrial, specifically, is alleged to have conspired with the KNR Defendants to subject the firm's clients to a price-gouging scheme by which the client's were duped into paying exorbitant rates for healthcare administered by Ghoubrial, including, primarily, "trigger point injections" that he serially administered despite that these injections are not only medically unnecessary but actually contraindicated for injuries resulting from auto accidents. A summary of

EXHIBIT A

Plaintiffs' claims against Ghoubrial and the evidence supporting those claims is provided in Plaintiffs' proposed Sixth Amended Complaint in the underlying lawsuit, which Plaintiffs sought leave to file on April 24, 2019 and is attached, without exhibits, as **Exhibit 1**. *See*, e.g., **Ex. 1** at ¶ 32–¶ 112.

In early September of 2018, as Plaintiffs were preparing to first assert claims against Defendant Ghoubrial in the underlying lawsuit via their Fourth Amended Complaint (which Plaintiffs sought leave to file on September 6, 2018), Ghoubrial's now ex-wife, Relator Julie Ghoubrial, contacted the undersigned Plaintiffs' attorney through her own attorney, Gary Rosen, to set up an in-person meeting. At this meeting (which also took place on September 6, 2018), Julie—accompanied by Mr. Rosen and Attorney Josh Lemerman, who represented Julie in her then-pending divorce proceedings against Defendant Ghoubrial (Summit C.P. No. DR-2018-04-1027)—provided detailed information to the undersigned, based on her personal knowledge, that supported both Plaintiffs' claims in the Fourth Amended Complaint and additional claims that Plaintiffs shortly asserted in their Fifth Amended Complaint.

Shortly after the undersigned's meeting with Julie and her attorneys, Plaintiffs were also contacted by additional witnesses who provided additional detailed information about Ghoubrial's fraudulent conduct against KNR clients. This included Plaintiff Richard Harbour as well as Ghoubrial's employee, Richard Gunning, M.D., who contacted Plaintiffs' counsel on October 2, 2018 and spoke on the phone for two hours about his employer's unlawful conduct. *See* **Ex. 1**, proposed Sixth Amended Complaint, at ¶ 49–¶50, fn 4.

On September 27, 2018 while Plaintiffs' motion for leave to file the Fourth Amended Complaint was still pending, Judge James A. Brogan, who is presiding over the underlying lawsuit, conducted a telephonic status conference during which Plaintiffs' counsel first indicated to defense counsel and the court that Plaintiffs were in receipt of new information that supported new claims

against the Defendants that were not asserted in the proposed Fourth Amended Complaint.

On October 4, 2018, Plaintiffs sought leave to supplement their proposed Fourth Amended Complaint with new claims supported by highly specific allegations based on information that was provided, in part, by Julie Ghoubrial, Mr. Harbour, and Dr. Gunning.

At this point, Defendants were apparently in a panic to discover where the Plaintiffs obtained the information supporting the highly specific allegations that were eventually admitted into the underlying suit via Plaintiffs' now pending Fifth Amended Complaint. Accordingly, Defendants sent attorney David Best—Defendant Ghoubrial's longtime personal attorney[1] who, notably, represents the KNR Defendants in the underlying lawsuit[2]—to Julie's October 12, 2018 deposition in the divorce proceedings to question her, on Defendant Ghoubrial's behalf, specifically about Plaintiffs' new allegations. Julie's attorney, Mr. Rosen, had notified Plaintiffs' counsel of his expectation that Mr. Best would examine Julie about the claims at issue in the underlying lawsuit by an email dated October 12, 2018, attached as **Exhibit 2**. Shortly after this deposition took place, Mr. Rosen informed the undersigned by phone that Mr. Best did in fact appear at Julie's deposition on Defendant Ghoubrial's behalf, and questioned her for approximately one hour about the claims at issue in the underlying lawsuit. While Mr. Rosen did not inform the undersigned about the specific contents of Julie's testimony, he did state that Julie told the truth in response to Mr. Best's questions, thus confirming that Julie affirmed the truth of Plaintiffs' allegations based on her personal knowledge.

Upon receiving this confirmation from Mr. Rosen that Julie's deposition testimony

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[1] *See*, *e.g.*, *Bowers v. Herron*, 5th Dist. Fairfield No. 15 CA 34, 2016-Ohio-766; *State ex rel. Ghoubrial v. Herbert*, 10th Dist. Franklin No. 15AP-470, 2016-Ohio-1085; *Trick v. Scherker*, 2d Dist. Montgomery No. 26461, 2015-Ohio-2972.

[2] Attorney Best noticed his appearance on behalf of the KNR Defendants in the underlying lawsuit on April 16, 2018, approximately 5 months before Plaintiffs first asserted claims against Defendant Ghoubrial.

contained information relevant to Plaintiffs' claims, Plaintiffs served discovery requests to Defendant Ghoubrial for a copy of the transcript as well as information as to how a copy of the transcript could otherwise be obtained. After Defendant Ghoubrial refused to produce the transcript or any of the requested information pertaining to it, Plaintiffs moved to compel its production on December 21. Additionally, Plaintiffs served a subpoena on Julie on October 3, 2018 for her deposition in the civil case, and, on April 3, 2019, Plaintiffs served another subpoena on Julie that specifically requested production of the deposition transcript from the domestic relations proceedings.

These developments ultimately led to Judge Brogan's order—the subject of this action for a writ of prohibition—that the deposition transcript be produced for Judge Brogan's *in camera* review to determine its relevancy to these proceedings, whether any privilege applies to bar its production, and whether any portions of it should ultimately be produced to the Plaintiffs.

Defendant Ghoubrial is apparently so desperate to keep Julie's testimony from coming to light that he has filed no fewer than 20 briefs in the underlying proceedings that together contain an incredible array of shifting, half-baked, and ultimately baseless arguments in an effort to avoid complying with the trial court's repeated orders that the transcript be produced for *in camera* review. With all of these arguments having been properly rejected by the trial court, and with an interlocutory appeal on this issue unavailable under Ohio law (*See Bell v. Mt. Sinai Med. Ctr.*, 67 Ohio St.3d 60, 63, 616 N.E.2d 181 (1993)), Ghoubrial now approaches this Court with a request for a writ of prohibition that is as thoroughly baseless as the parade of filings that preceded it in the trial court. *See State ex rel. Mason v. Burnside*, 117 Ohio St.3d 1, 2007-Ohio-6754, 881 N.E.2d 224, ¶ 11, ¶ 14 ("Given the discretionary authority vested in [trial courts] in discovery matters, 'an extraordinary writ will not issue to control ... judicial discretion, even if that discretion is abused.' ... [T]he availability of an appeal ... constitute[s] 'an adequate remedy at law sufficient to preclude the granting of an

extraordinary writ."").

Thus, Plaintiffs have no choice but to intervene in this action to protect their rights and interest in accessing relevant and discoverable evidence contained in Julie's transcript. If this Court determines that the trial court in the underlying case is prohibited from ordering the production of relevant evidence from Julie's transcript, Plaintiffs would be left with no means to appeal this Court's decision if they are denied the right to intervene, and no other means to ensure their access to this evidence.

Law and Argument

The facts set forth above and affirmed in the Affidavit of Peter Pattakos, attached as **Exhibit 3**, establish Plaintiffs' right to intervene in this action under Civ.R. 23(A)(2), which provides in pertinent part that,

> Upon timely application anyone shall be permitted to intervene in an action ... when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Here, Plaintiffs have claimed an interest in accessing relevant and discoverable portions of Julie's deposition transcript, which is the subject of this action, disposition of which may as a practical matter impair or impede Plaintiffs' ability to protect that interest. Because Plaintiffs' interests in accessing this information are naturally and fundamentally different from the Respondents' in this matter, it cannot be said that Respondents adequately represent the Plaintiffs here.

Conclusion

For the foregoing reasons, this Court should grant Plaintiffs leave to intervene in this action under Civ.R. 23(A)(2). Defendant Ghoubrial and Julie should not be permitted to sidestep the Common Pleas Court's jurisdiction over discovery matters in the underlying lawsuit, and certainly not without Plaintiffs having the opportunity to protect their rights to access that discovery in this

action. Plaintiffs' responsive pleading is accordingly attached as **Exhibit 4** pursuant to Civ.R. 24(C).

Respectfully submitted,

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Certificate of Service

The foregoing document was served by operation of the Court's e-filing system on July 11, 2019.

/s/ Peter Pattakos
Attorney for Intervening Parties Member Williams, Thera Reid, Monique Norris, and Richard Harbour

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

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

EXHIBIT 1

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

I. Introduction

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

high-volume, high-advertising business model by which they systematically prioritize their own financial interests—particularly, in driving a greater number of clients through their highly routinized system—over the interests of their unwitting clients.

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

- exorbitantly inflated prices for medical treatment and equipment provided by KNR's "preferred" healthcare providers pursuant to a price-gouging scheme by which the clients were pressured into waiving insurance benefits that would have otherwise protected them;
- a sham narrative fee that KNR paid as a kickback to select chiropractors as compensation for referrals and participation in the price-gouging scheme; and
- a bogus "investigation" fee deducted from their settlements to pay so-called "investigators" whose job was primarily to chase new clients down to sign them up before they could sign with a competing firm.

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

II. Parties

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

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

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

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

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

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

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

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

III. Jurisdiction and Venue

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

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

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

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

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

15. As discussed below, the well-documented structural flaws of the "settlement mill" model—mainly, (1) the conflicting incentives created by contingency-fee billing, where it is in the attorneys' short-term interest to secure the maximum fee with the minimum expenditure of time and effort, combined with (2) a massive advertising budget that relaxes the attorneys' need to maintain a good reputation to generate business, thus reducing the long-term costs of self-dealing—have not only gone unchecked by the KNR firm, they have been exploited by the Defendants in what has been described by former KNR attorneys as a "race to the bottom." Petti Tr. 42:8–24.[2] *See also*, **Ex. 1,** Engstrom Aff.

16. This business model, and KNR's need to sustain it, has given rise to the unlawful quid-pro-quo relationships with the Defendant healthcare providers that are at the heart of this lawsuit, and by which one provider alone, Defendant Sam Ghoubrial M.D., has collected nearly eight-million

[1] Where an "**Exhibit**" or "**Ex**." is noted in boldfaced type in this Sixth Amended Complaint, it is attached as an exhibit to this document. Where exhibits, or "Exs." are herein noted in regular type, it is to denote exhibits to the deposition transcript, affidavit, or other document referenced in the immediately prior citation.

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

dollars ($8,000,000.00) from KNR client' settlements since approximately 2011. Ghoubrial Tr. 11:2–12:7; 11:2–12:7; 19:19–20:4; 21:24–25:21; 175:10–176:6, Ex. 5.

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

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

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

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

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

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

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

Ex. 1, Engstrom Aff., ¶ 8–¶ 9.

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

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

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

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

- KNR takes comparatively few cases to trial; Petti Tr. 27:4–12 (recalling that, during his time at the firm, none of his cases went to trial); Horton Tr. 222:1–7; (recalling that, of the cases he handled while at the firm, only one ended up going to trial); *accord* Lantz Tr. 279:6–9 ("We

were just encouraged—you get more money in pre-litigation or you get more money settling the case than you do going to trial.");

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

- The firm does not engage in rigorous case screening, accepts nearly every case that comes through the door, and primarily represents clients with low-dollar claims and minor soft-tissue injuries; Horton Tr. 220:16–23; *accord* Phillips Tr. 36:4–13; 40:6–19, quoting Nestico ("I want them all"); Petti Tr. 26:2–10 (recalling that the "typical case settled for less in terms of fees than $2000"); Lantz Tr. 279:4–9 ("I mean they were low value cases."); Phillips Tr. 36:14–37:24; Lantz Tr. 157:6–10; 434:3–8;

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

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

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

Id. ¶ 11–¶ 19.

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

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

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

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

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

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

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

> [i]f an attorney obtains the majority or vast majority of his business via paid advertising, rather than by referrals or word-of-mouth, he need not have a sterling reputation among fellow practitioners or past

> clients. He requires only a big advertising budget and a steady supply of unsophisticated consumers from which to draw.

Id. ¶ 25.

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

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

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

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

Id. ¶ 32.

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

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

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

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

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

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

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

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

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

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

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

34. The continued need to drive a steady supply of new clients to the firm while simultaneously ensuring its profitability as its volume increases has resulted in a scheme whereby the KNR conspires with its "preferred" medical providers to solicit car-accident victims and then overcharge

them for health care that would or should have otherwise been covered by their health-insurers. As discovery in this case has revealed, Defendants leverage KNR's massive advertising budget with their quid-pro-quo relationships, abusing their fiduciary positions to enrich themselves by,

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

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

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

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

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

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

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

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

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

37. The chiropractors, including Defendants Floros, Khan, Rendek, Tassi, Cawley, and Lee-Seyon, employ telemarketers who cold-call victims of recent auto-accidents, using information from publicly available crash reports. *See* Petti Tr. 62:17–24; 258:9–15; Lantz Tr. 298:19–300:19; Phillips Tr. 222:14–17; **Exhibit 2,** Affidavit of Named Plaintiff Thera Reid, ¶ 2; **Exhibit 3,** Affidavit of former KNR client Taijuan Carter, ¶ 2; **Exhibit 4,** Affidavit of former KNR client Chetoiri Beasley, ¶ 2. The chiropractors then promise the car-accident victims a free consultation, and offer a free ride to their clinic. **Ex. 2,** Reid Aff., ¶ 2. The clients are then typically picked up by a van that transports them to the chiropractor's office. *Id.*, ¶ 3.

38. At the first appointment with the chiropractor, a representative of the office advises the car-accident victims that they need an attorney, and that the chiropractor knows a good law firm "who we work with." *See* Phillips Tr. 48:24–49:11; Petti Tr. 63:2–18; **Ex. 2,** Reid Aff., ¶ 4; **Ex. 3,** Carter Aff., ¶ 3; **Ex. 4,** Beasley Aff., ¶ 3. The clients are provided with a packet of paperwork at the chiropractors' office that includes KNR's contingency-fee agreement and a letter of protection or "medical lien" that authorizes the providers to collect the full amount of their bill from the clients directly, or from their accident settlement, as opposed to from the clients' health insurance providers. **Ex. 2,** Reid Aff., ¶ 4–¶ 5; **Ex. 3,** Carter Aff., ¶ 4; **Ex. 4,** Beasley Aff., ¶ 4. In turn, if the

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

clients come to KNR directly, the firm immediately directs them to treat with one of the so-called "preferred" chiropractors, where they will sign the same medical lien, which sometimes includes the law firm's signature. **Exhibit 5,** Affidavit of Named Plaintiff Monique Norris, at ¶ 4.

39. The record is replete with evidence showing that KNR obsessively tracks both its outgoing referrals and referral sources for each client, and constantly dictates specific orders to its attorneys and staff as to which chiropractors should receive referrals at any given time. The evidence shows that these instructions are based primarily on the firm's need to maintain its quid pro quo relationships with the chiropractors, and are keyed to the number of clients the chiropractors have referred to KNR. In other words, if a certain chiropractor has referred KNR a certain number of clients, KNR will refer a proportionate number of its clients to that provider. For example:

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

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

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

40. Dozens of emails are in accord. *See e.g.*, Gobrogge Tr. 134:1–135:1, Ex. 8; 225:7–226:8, Ex. 17; 229:14–230:7, Ex. 18 ("I work hard to maintain a close relationship with chiropractors and I am in contact with most of them several times a day."); 238:1–16, Ex. 19; 239:6–24, Ex. 20 ("Referrals are not up for negotiation."); 252:8–253:5, Ex. 23 ("Please do not send any more clients [to A Plus Injury] this month. We are 6 to 1 on referrals."); 254:17–255:25, Ex. 24; 352:16–353:6, Ex. 45 ("PLEASE make sure you are calling the chiro and scheduling the appointment. This has been

discussed before."); 364:7–365:3, Ex. 47 ("if you do an intake and the person already has an appointment with a chiropractor we do not work with, either pull it and send to one of our doctors or call the chiropractor directly. You MUST do this on all intakes, otherwise the chiropractor will pull and send to one of their attorneys!"); 369:23–370:16, Ex. 48 ("When doing an intake, just [because the client] tells you they are treating with [a primary care physician] doesn't mean you shouldn't refer to a chiro.").

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

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

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

42. Additionally, KNR dictated its chiropractor referrals based on the type of promotional material by which the client was solicited by the firm. Numerous documents, as well as testimony from Gobrogge and Nestico, confirm that clients were sent to certain chiropractors depending on whether the client received a "red bag" of promotional material at their home. For example, all red bag referrals in Akron were sent to Defendant Floros of Akron Square. *See, e.g.*, Gobrogge Tr.

385:1–19; 387:7–388:18, Ex. 52 ("ALL RED BAG REFERRALS NEED TO GO TO AKRON SQUARE."); 388:22–389:18, Ex. 53 ("Please make sure you do not send a delivery referral to [Rolling Acres or Summit Injury] though … these only go to ASC."); Nestico Tr., 270:14–271:3, Ex. 38 ("Today we sent 3 to ASC … please get the next Akron case to Dr. Holland at Akron Injury. Please just make sure it's not a red bag referral and not a current or former client that treated at ASC."). The Defendants cannot identify any legitimate reason for distributing their referrals in this manner. *Id.* at 379:9–13 (Q: "And you don't have any idea as to why, if a client came in on a red bag referral, that they would be sent to a particular chiropractor?" A. "I do not."); 388:14–17 (Q: "And you have no memory, no idea, why all red bag referrals needed to go to Akron Square on December 19, 2012?" A: "I don't."). *See also*, *Id.* at 384:1–25, Ex. 51; Nestico Tr. 262:16–20 (Q: "Why couldn't you just look at the red bags no matter what chiropractor it went to? A: It's a choice that I made. It doesn't – it doesn't matter. There is no rhyme or reason to who."). KNR admits that it has sent or received more than 4,700 referrals from Defendant Floros alone since 2012. *See* Floros Tr. at 168:12–24; Ex. 7 at p. 9.

43. Regardless of whether a particular client was solicited by the law firm or the chiropractors, once signed by KNR, the firm directs the client to continue to accept treatment from the chiropractor, both of whom tell the clients that it will "hurt their case" if they do not accept this treatment. **Ex. 5,** Norris Aff., ¶ 5; **Exhibit 6,** Affidavit of Named Plaintiff Richard Harbour, ¶ 5–¶ 6; **Ex. 2,** Reid Aff., ¶ 9. Additionally, certain of these chiropractors, including Defendant Floros, conspire with the KNR lawyers to direct the clients to receive "pain management" treatment from Defendant physician Sam Ghoubrial, whose services the clients are also pressured by the Defendants to accept. *See* Lantz Tr. 27:15–19; 306:3–7; Petti Tr.189:10–13; Floros Tr. at 186:18–188:2; 189:22–190:2; **Ex. 2,** Reid Aff., ¶ 6; **Ex. 3,** Carter Aff., ¶ 5, ¶ 9; **Ex. 4,** Beasley Aff., ¶ 5, ¶ 12; **Ex. 5,** Norris Aff., ¶ 6; **Ex. 6,** Harbour Aff., ¶ 3, ¶ 10. As described immediately below, Ghoubrial

essentially runs an "injection mill" into which KNR clients are funneled by the thousands to receive medical procedures and supplies that are not only medically unnecessary, but contraindicated for injuries resulting from car accidents, and for which the clients are dramatically overcharged via deductions from their KNR settlements.

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

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

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

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

saw Ghoubrial, you got injections … I don't recall any cases where any other treatment was administered. The clients would tell me that it was a two-minute appointment. There were no words exchanged between Dr. Ghoubrial and the client. And the nurse would be the one to say, 'Okay. Turn.' And the doctor would shoot them.").

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

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

48. Additionally, former KNR attorney Amanda Lantz, who became the longest tenured pre-litigation attorney in the firm's Columbus office during her time there, *see* Lantz Tr. 97:22–25, testified that the injections were readily available from other local physicians for $200 or less. Lantz Tr. 29:17–19; 30:14–20. And physician Michael Walls, M.D., a board certified pain-management specialist, formerly the Chief Fellow of the Cleveland Clinic's Pain Management unit from 2008–2009, who has since treated thousands of patients from Ohio and Kentucky for back and neck pain since 2009, has submitted an affidavit confirming that his office is typically reimbursed between $70 and $90 by insurers for the injections. **Exhibit 7,** Affidavit of Michael Walls, M.D., ¶ 6. Complete

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

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

50. According to Gunning, Ghoubrial's so-called "approach to informed consent" was to surreptitiously administer the injections to KNR clients without informing them that they would receive a shot, a practice that caused at least six patients to complain to Gunning that "they didn't want shots and the next thing they knew they were getting a shot." *Id.* at 22:17–23:14; 34:25– 35:11. While Gunning claimed, at his deposition, to have a hazy memory of his conversation with Plaintiffs' counsel due to having taken a dose of Ativan, an anti-anxiety medication, prior to that conversation, Gunning did not deny having stated that Ghoubrial once lost his temper at him because he saw a certain number of personal injury clients in one day and only administered two

injections. *Id.* at 32:12–33:13. Nor did he deny that Ghoubrial "'constantly' told him that the practice didn't make money if he didn't administer shots." *Id.* at 31:18–32:6.[4]

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

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

> I would just say [to KNR management], 'Listen, Ghoubrial being involved is making these cases impossible to settle. This is creating a problem. Clients are getting upset.' I had more than one client, when I was attempting to settle a case, in fact, I would easily say dozens, and, in fact, possibly, more, that would say, 'I didn't even want the damn injections. I don't know why I was sent in there. I never asked for them. They just told me I had to go back to this office, and there is some guy back there with a nurse, telling me I would need a shot.'
>
> So, the clients were upset that, (A), they didn't understand why they were getting – I'm not saying all of them. But, some of them were like, 'I don't even know why I was getting these injections.' And,

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

> then, when they found out the cost, and what it was doing to their settlement, then, that made them even less happy.

Phillips Tr. 69:22–70:18.

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

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

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

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

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

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

56. Both in written discovery and at his deposition, Ghoubrial was not able to identify a single study that supported his administration of trigger-point injections to auto-accident victims. Ghoubrial Tr. 62:6–63:4. This is unsurprising, given that all available medical research confirms that trigger-point injections are actually contraindicated for widespread back pain, as well as acute back pain, which, as Ghoubrial admitted, is precisely the type of pain suffered by the great majority of his personal-injury patients. **Ex. 7,** Walls Aff., ¶ 3–¶ 4; Ghoubrial Tr. 377:19–21, Ex. 2 (David J. Alvarez, *Trigger points: Diagnosis and management*, 65 American Family Physician 653 (2002)), Ex. 3 (Ciara S.M. Wong and Steven H.S. Wong, *A New Look at Trigger Point Injections*, Anesthesiol. Res. Pract. (2012)), Ex. 4, (Stephen Kishner, *Trigger Point Injection,* Medscape (2019), Ex. 36 (Noonan TJ, Garrett WE Jr., *Muscle strain injury: diagnosis and treatment*, J. Am. Acad. Orthop. Surg. (1999)), Ex. 37 (L. Bagge, *et al.*, *Tratment of Skeletal Muscle Injury: A Review*, ISRN Orthop. (2012)), Ex. 38 (*Noninvasive Treatments for Acute, Subacute, and Chronic Low Back Pain: A Clinical Practice Guideline from the American College of Physicians*, Annals of Internal Medicine (2017)), Ex. 41 (Christopher L. Knight, *et al.*, *Treatment of acute low back pain*, UpToDate (Dec. 2017)), Ex. 42 (Roger Chou, *Subacute and chronic low back pain: Nonpharmacologic and pharmacologic treatment*, UpToDate (Aug. 2018), Ex. 43 (Irving Kushner, *Overview of soft tissue rheumatic disorders*, UpToDate (Jan. 2019). Part of the reason for this is that most acute pain tends to resolve on its own within a short period of time, in which case it would be clear that the pain was not being caused by a trigger point that would benefit from an injection. **Ex. 7,** Walls Aff., ¶ 3. Similarly, in the case of widespread pain, which also tends to resolve within a short period of time, it would be impossible to identify whether a trigger point was the source of the pain at issue. *Id.* at ¶ 5.

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

58. Accordingly, physicians and chiropractors who have treated thousands of patients suffering from acute and widespread back and neck pain, pursuant to the proper standard of care, never "administer [or recommend] trigger point injections to a patient suffering from acute or widespread back pain." **Ex. 7,** Walls Aff., ¶ 4; **Exhibit 8,** Affidavit of David George D.C., ¶ 4–¶ 5.

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

59. Trigger-point injections have only ever been proven effective in treating chronic pain resulting from Myofascial Pain Syndrome ("MPS"). *See* Ghoubrial Tr. 378:22–384:10, Ex. 43, **Ex. 7,** Walls Aff., ¶ 4. At his deposition, Ghoubrial admitted that he has never diagnosed one of his personal-injury patients with MPS. Ghoubrial Tr. 125:11–15. Even assuming, *arguendo*, that Ghoubrial was giving trigger-point injections to patients whose condition would benefit from them (despite that all available evidence is to the contrary), his administration of the injections deviates extremely from the established standard of care pertaining to their use.

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

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

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

61. Ghoubrial admitted at his deposition that all of his trigger-point injections contain kenalog, a corticosteroid. Ghoubrial Tr. 142:5–143:5. He charges an extra $50 to $80 for each dose of kenalog, for which he pays approximately $6 per dose. Ghoubrial Tr. 185:11; 198:20–22; 208:3; 232:13, Ex. 19.[6] According to a leading study on the use of trigger-point injections, the use of kenalog and other

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

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

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

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

63. Of course, if a patient suffering from any kind of pain resulting from a car accident received trigger point injections within days or weeks of the accident, while also simultaneously undergoing physical therapy, chiropractic care, or taking muscle relaxers, oral non-steroidal anti-inflammatory drugs, or narcotics for pain relief, there would be no way to determine whether any reduction in pain was the result of the injections, or even just rest with the passage of time. *See* **Ex. 7,** Walls Aff., ¶ 5. When asked at his deposition about how he could know if his trigger-point injections are effective given the mix of treatment his patients receive, the clearest answer Ghoubrial could give, over ten pages of sprawling testimony, *see* Ghoubrial Tr. at 132:21–142:4, was to say that "patients improve when you take a multidisciplinary approach to their care," and that he knows the injections work because "it's based on ten or 12 years' experience," and that "the patients tell him" the injections worked. Ghoubrial Tr. 132:21–136:10; 140:19–141:9. When asked how the patients could know whether it was the injections and not any of the other modes of treatment they received, Ghoubrial had nothing tangible to add to his answer. Ghoubrial Tr. 141:10–142:4.

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

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

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

- $300 for initial office visits, and $150 for follow-up office visits (*Id.*, 208:1–23), for which the most Medicaid would have reimbursed Ghoubrial is $75 and $50, respectively; *Id.*, 269:22–271:14, Ex. 27;
- $1,500 for back braces for which Medicaid would not have reimbursed, that Ghoubrial purchased for $100 and that would have been readily available for purchase by the clients from alternative sources for $100 or less; Ghoubrial Tr. at 184:22–185:2; 227:24–228:17; 256:22–258:3, Ex. 25; 284:6–24, Ex. 29.
- and $500 for "Ultima 3T" electrical stimulation devices ("TENS units") for which Medicaid would not have reimbursed, that Ghoubrial purchased for $28.75, and that similarly would have been readily available for purchase by the clients from alternative sources at $28.75 or less; *E.g.*, *Id.* 208:1–23; 256:22–258:3, Ex. 25; 284:6–18, Ex. 29; Lantz Tr. 184:6–11.

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

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

68. When asked to explain the exorbitant prices that he charged for the back braces and TENS units, Ghoubrial could only say that it was to compensate him for his overhead expenses, and that he "felt we were right on par with what they sell for, generally." *Id.,* at 280:17–21; 284:19–285:25. This does not explain why his overhead expenses should have been the KNR clients' responsibility,

given that these items could have been easily obtained from alternative sources for a small fraction of what Ghoubrial charged for them. Lantz Tr. 184:6–11.

69. The KNR clients who received TENS units from Ghoubrial uniformly report that Ghoubrial or a member of his staff merely handed them the device and suggested they should take it home. **Ex. 3**, Carter Aff., ¶ 6, ¶ 10, ¶ 14; **Ex. 4,** Beasley Aff., ¶ 7, ¶ 14; **Ex. 5,** Norris Aff., ¶ 7; **Ex. 6,** Harbour Aff. ¶ 7, ¶ 11. All of these clients report that Ghoubrial did not so much as suggest that the clients would be charged for the devices, let alone at such an exorbitant markup. **Ex. 3**, Carter Aff., ¶ 6, ¶ 10, ¶ 14– ¶ 15; **Ex. 4,** Beasley Aff., ¶ 7, ¶ 14, ¶ 17; **Ex. 5,** Norris Aff. ¶ 7; **Ex. 6,** Harbour Aff., ¶ 7, ¶ 11, ¶ 15. And when Named Plaintiff Harbour informed Ghoubrial, the second time Ghoubrial offered him a TENS unit, that he already had one, Ghoubrial responded by simply telling him that he should take another one home. **Ex. 6,** Harbour Aff., ¶ 11; *See also* **Ex. 4,** Beasley Aff., ¶ 14.

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

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

71. Confirming the KNR clients' testimony, Ghoubrial admits that he never discusses prices or the cost of care with his patients. Ghoubrial Tr. 296:11–24; 314:14–17. He claims that this is "because I simply give them the best treatment that's available irrespective of whether they are able

to pay, including my treatment." *Id.* 314:18–23. Of course, Ghoubrial knows that the clients will be "able to pay," because he requires them all to sign a form giving him a right to collect the full amount of his bills from their settlements through the KNR firm, whose attorneys ensure that Ghoubrial is paid. *See* **Ex. 1,** Engstrom Aff., ¶ 34, citing Petti Tr. 26:11–18 ("My research has also revealed that, at settlement mills," such as KNR, "no-offer cases are extremely rare," such that the client always receives *something*).

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

72. Not only do the Defendant providers know they will be paid for their treatment of KNR clients, they know that he will be paid at a higher rate than any health-insurer would ever pay for it. *See* Lantz Tr. 500:23–501:8 (a good reason that providers such as Ghoubrial did not accept insurance was that "they would get paid more if they didn't bill health insurance."); and Petti Tr. 132:18–133:6 (KNR attorneys, such as Petti, understood that providers would not accept insurance so that they could receive a higher "payment rate."). Despite having treated 5,000+ KNR clients since 2010, *see* Ghoubrial Tr. 41:5–10, Ghoubrial does not accept payment from their health-insurance providers, and instead would not treat KNR clients unless they signed a letter of protection authorizing for Ghoubrial to receive compensation directly out of their settlement proceeds. Ghoubrial Tr. 278:15–279:5; Phillips Tr. 51:18–52:12; **Ex. 3,** Carter Aff., ¶ 5, ¶ 9, **Ex. 4,** Beasley Aff., ¶ 5, ¶ 6, ¶ 12–¶ 13; **Ex. 5,** Norris Aff., ¶ 6; **Ex. 6,** Harbour Aff., ¶ 3, ¶ 10. Floros also requires his patients to sign a letter of protection as standard policy. Floros Tr. 97:5–98:5.

73. Here, it is important to note again that the "personal injury clinic" through which Ghoubrial treats the KNR clients is only his side-business, which does not advertise, has no public face, and apparently thrives on referrals from KNR's "preferred" chiropractors. *See* Ghoubrial Tr. 42:1–3 and 43:16–19 (Q: "Would you say all of the patients of the personnel injury clinics are referred by

chiropract[ors]?" A: "I can't say for sure, but I'd say the vast majority."). This practice is maintained separately from the internal-medicine practice that Ghoubrial owns and operates in Wadsworth, "Wadsworth's largest primary care practice," which Ghoubrial advertises to the public. *See* Ghoubrial Tr. at 11:2–12:7; 21:24–25:21, *et seq*. In his internal medicine practice, Defendant Ghoubrial provides primary care to regular long-term patients, including individuals in his "nursing home" business, Geriatric Long-Term Care Providers, and accepts payment from most major health-insurance companies in this practice. *Id.* at 11:2–12:7; 19:19–20:4; 21:24–25:21; 163:2–165:22; 389:25–390:6.

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

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

refusal to pay the claim is not predicated upon circumstances that furnish reasonable justification therefore.").

76. Confirming both of these points is the Affidavit of Cleveland, Ohio-based attorney Ryan Fisher (**Exhibit 9**), who in his 29-year career has "represented thousands of car accident victims in cases seeking recovery for their injuries," and has affirmed (at ¶ 2–¶ 4) that,

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

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

78. Accordingly, Defendant Floros, and presumably all of KNR's "preferred" chiropractors do not accept health-insurance payments from KNR's clients, and also require a letter of protection to treat them, for similarly inexplicable reasons. Floros Tr. 97:5–98:5; Petti Tr. 347:6–22; Lantz Tr. 323:17–19 (Q: "Because at KNR almost all of the cases that you handled you were instructed to use an LOP—" A: "Right."); 496:10–13 ("[T]he policy with our office was that if a case was coming from our office, we do an LOP."); **Ex. 3,** Carter Aff., ¶ 5, ¶ 9; **Ex. 4,** Beasley Aff., ¶ 5, ¶ 6, ¶ 12, ¶ 13; **Ex. 5,** Norris Aff., ¶ 6; **Ex. 6,** Harbour Aff., ¶ 3, ¶ 10.

79. KNR's clients thus waive their health-insurance coverage either completely unwittingly—simply signing all of the documents as required at their first appointment with the providers, whom they trust, along with their recommending KNR attorneys, neither of whom advises the clients of the consequences—or trusting that these providers would not charge substantially more than their health-insurers would pay for the same treatment. **Ex. 2,** Reid Aff., ¶ 8, ¶ 16; **Ex. 3,** Carter Aff., ¶ 6–¶ 7, ¶ 10–¶ 11, ¶ 14–¶ 15, ¶ 18–¶ 19; **Ex. 4,** Beasley Aff., ¶ 6–¶ 7, ¶ 9, ¶ 13–¶ 17, ¶ 19–¶ 20; **Ex. 5,** Norris Aff., ¶ 6–¶ 7, ¶ 9–¶ 10, ¶ 12; **Ex. 6,** Harbour Aff., ¶ 7–¶ 8, 11; ¶ 15–¶ 16, ¶ 19. Because the providers never request payment directly from the clients, the clients have little reason to consider the issue or suspect that Defendants' charges for healthcare would ever need to be scrutinized, and even led clients to believe that their insurance would be billed later for the treatment they had received. *See, e.g.*, **Ex. 2,** Reid Aff., ¶ 7 ("At the beginning of my treatment, I informed Drs. Floros and Ghoubrial that I had health insurance that could cover my medical care. In response, representatives of ASC and Dr. Ghoubrial's practice informed me that information concerning my health insurance was not needed until later.").

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

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

> It was clear from the documentation submitted during ... insurance investigations that the chiropractors, including Minas Floros of Akron Square, would administer a similar identified pattern of care,

> including directing clients to treat with certain physicians, including Sam Ghoubrial M.D., who would administer a similar identified pattern of care which included injections of pain relief. ...
>
> Whether or not this treatment was in fact fraudulent and/or not medically necessary, after seeing the same chiropractors and physicians treating the same law firm's clients in the same manner, our job duties required us to examine whether an improper relationship [existed] between the law firm and these healthcare providers. Floros and Ghoubrial were involved in so many cases in which they provided the same type of treatment that cases involving these providers were turned over to the Special Investigation Units, reviewed and scrutinized with inherent skepticism and investigated with increased scrutiny.

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

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

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

Petti Tr. 86:8–22; 98:15–101:20.

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

> The bad combination was Allstate with KNR or Allstate KNR and Town & Country[, a chiropractors office in Columbus that similarly

> handles thousands of KNR cases and funnels the KNR clients to Ghoubrial for injections]. Those three together were a toxic combination where Allstate -- that's when it got flipped to the SIU. Towards the end after having constant communication with SIU adjusters, it was all Ghoubrial cases where they were going to SIU. ...
>
> I would talk to the adjusters because they were asking more -- during recorded statements, they were asking more about how the client got to these treatment providers as opposed to what injuries they had and what type of treatment they were -- well, they would go into what type of treatment they were receiving, but we could usually stop them before that. But it seemed like the adjusters were more in tune with how did you find Dr. Ghoubrial. How did you find Town & Country.

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

83. KNR management, including Defendant Nestico, was well aware of the insurance companies' jaundiced views of the firm's "preferred" providers. For example, on May 30, 2013, Nestico participated in an email discussion that included several attorneys from the prelitigation department in the Akron office. In these emails, three different KNR attorneys complain, respectively, about "new pre-lit procedures" on Akron Square [Floros] cases, "getting unusually low offers on Plambeck cases" (Plambeck is the owner of a network of chiropractic clinics, including Floros's Akron Square clinic, that is notorious in the insurance industry for fraud[7]), and that Allstate was "tightening the screws even more" on all Plambeck cases. Nestico Tr. 373:25–374:21, Ex. 57.

[7] *See, e.g.*, *Allstate Ins. Co. v. Michael Kent Plambeck, et al.*, No. 14-10574 (5th Cir.2015). Nestico traveled to Texas to watch the trial in person. Nestico Tr. 370:24–372:16. As a chiropractor employed for a clinic owned by Michael Plambeck, Floros testified for the defense of the Plambeck clinics, yet somehow was unable at his deposition to recall anything about the substance of his testimony or the

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

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

85. At his deposition, Phillips explained that Nationwide had "made it quite clear that [Ghoubrial's] bills were not included in their evaluation," because "they just didn't feel the

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underlying allegations—of fraud—involved in the case, other than that he testified about x-rays. *See* Floros Tr. 226:15–228:5 (A: "I was just told to fly in one day, testify on records and x-rays, and that was it." Q: And, you have no idea what the case is about?" A: "No.").

treatment was necessary, or that people weren't properly referred to him," and "[t]here was no justification for the injections." Phillips Tr. 53:9–55:16, Ex. 1. Nestico Tr. 412:20, Ex. 61. Phillips also testified that he deliberately understated his concerns in this email, because he was afraid of offending Nestico. Phillips Tr. 69:11–14. Nestico "rules with an iron fist," Phillips explained. "I didn't want to lose my job over expressing a concern." *Id.*, 69:3–5.

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

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

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

88. KNR's purported reasons for continuing to send their clients to treat with these tainted providers are transparently false and easily disproven—particularly in light of the evidence showing the importance of the *quid pro quo* relationships to KNR's high-volume business model. Thus, the firm continues to ensure that the providers receive a disproportionately high percentage of their inflated bills, because it is more profitable to expend as little effort as possible on a high volume of cases, which the providers help to ensure in exchange for their inflated payments.

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

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

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

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

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

to the litigation department); Horton Tr. 224:21–225:2 (recalling that perhaps 10% of his cases went into litigation); Lantz Tr. ("Our goal was to settle cases. ... They wanted—even when the cases got to litigation here, all of them settle, regardless if you had to shove the settlements down the client's throat, you settled the case."); *See also id.* 277:14–278:22 (identifying that the many obstacles that had to be cleared before a lawsuit would be filed, while observing that "it was really hard to get a case into litigation" and that litigation would only be considered "if it's a denial . . . or [the insurers'] offer is really, really low, and it has to be obscenely low").

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

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

Phillips Tr. 60:1–15.

92. Similarly, Nestico was asked at his deposition,

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

Nestico Tr. 451:12–23. In response, Nestico first referred to the *Robinson v. Bates* case, 112 Ohio St.3d 17, 2006-Ohio-6362, explaining that it "allows the defense lawyers to introduce into evidence

the amount of the bill that was actually paid" whereas the plaintiffs "get to introduce evidence of the amount of the bill that was actually billed." *Id.*, 452:5–453:4.

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

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

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

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

96. The Defendants' repeated claims that there is a shortage of providers willing to treat car accident victims, and bill through the clients' insurers, are the testimony of parties with a solution—or, more accurately, a price-gouging scheme—in search of a problem. In the real world, no such problem exists, as testimony from former KNR attorneys, as well as experienced doctors, chiropractors, and other experienced personal-injury attorneys confirms. Petti Tr. 124:13–24 ("I would say in my experience, the overwhelming majority are – if you have some means to pay, they'll treat you."); 128:24–129:2 (agreeing that there are doctors who would treat a personal injury patient using the patient's own health insurance); Lantz Tr. 323:6–6 ("I didn't feel like there was a shortage" of doctors who would treat personal injury patients and accept their insurance; "[t]here was always options."); Phillips Tr. 76:24–77:1 (agreeing that there was not a shortage of doctors willing to treat KNR's clients and that he did not have "any problems finding doctors to treat" his clients); **Ex. 8,** George Aff., ¶ 2, ¶ 6 ("I have treated thousands of patients for back pain of all types, including patients suffering acute pain from ... car accidents. ... I accept payment from most major health-insurance companies. If any of my patients want to pay me through their health-insurance providers, I will do whatever is practicable to accommodate them"); **Ex. 7,** Walls Aff., ¶ 2, ¶ 10 ("In my practice, I accept payment from most major health-insurance companies. ... If a patient is not covered ... I am able to offer them a "self-pay" fee ... that ... must be reasonably aligned for the typical reimbursement from an insurance carrier and/or not extraordinary excess of reasonable expected overhead expense of the procedure"); **Ex. 9,** Fisher Aff. ¶ 3–¶ 4. ("[M]ost [personal-injury] clients, as a matter of routine, treat with healthcare providers who accept payment from their health insurance providers" and "[g]enerally, ... will always be better off" doing so.).

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

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

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

100. Similarly, when asked whether the firm's attorneys' were instructed to advise their clients about the concerns raised in Kelly Phillips's email about Nationwide's refusal to compensate for Ghoubrial's treatment, he said, "I don't tell them how to practice law." *Id.* 448:10–19. And Nestico

could not identify a single example of any attorney at his firm ever advising a client about these issues. *Id.* 449:6–21.

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

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

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

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

Petti Tr. at 85:24–88:4. *See also* Phillips Tr. at 19:19–20:6 ("[Nestico] talked about how they're heavily – high-volume market-driven business, advertising-driven business."); *Id.* at 41:3–5 ("[W]ith the volume that we had, and the way the operation worked, the intakes fed the machine."); *Id.* at 112:17–22 ("When you start a machine, like, KNR ... It just takes more and more to fuel the machine, as it continues to grow.").

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

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

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

105. This, of course, precisely describes KNR's business model, which is exacerbated by the quotas the firm imposes on its attorneys. *Id.*, ¶ 33 quoting Lantz Tr. 283:24 –284:1 ("To meet the quotas, yeah, you couldn't spend that much time. I would say no more than five hours, and that might be generous."). *See also id.*, ¶ 36 quoting Petti Tr. 194:10–15 ("I mean, you see the medical treatment and how long it lasted, what the nature of it is with the nature of the impact and you

already have a general range where this case is going to go, unless there's some other compelling reason otherwise."); *Id.* at ¶ 37 ("To the extent plaintiffs' lawyers key settlements to medical bills or type or length of medical treatment, lawyers (paid via contingency fees) face a financial incentive to ensure that a client's medical bills are large, which often entails ensuring that the client's medical treatment is lengthy and intensive. This, in turn, incentivizes unscrupulous plaintiffs' lawyers to promote "medical buildup," i.e., the practice of seeking extra, unnecessary medical treatment to inflate a plaintiff's claimed economic loss.").

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

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

107. Thus, Nestico actively ensured that the providers who referred a high volume of cases to KNR would continue to be compensated through lower reductions on their bills. *See*, *e.g.*, Petti Tr. 106:4–14 ("I think there was definitely a desire to minimize the reductions for the high referring

chiropractors, yes."); Lantz Tr. 387:7–12 (attorneys had to emphasize whether a particular case was referred to KNR in creating their settlement demands, because "if it was Town & Country to us, it was less likely that Rob Nestico would permit a reduction on Clearwater and Town & Country.").

108. By this scheme, Defendants subvert the traditional role of a personal-injury attorney, "an essential part of [whose] job is to require any alleged lienholders to prove their right to receive any proceeds whatsoever from a client's settlement or awards." **Ex. 9,** Fisher Aff., ¶ 5.

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

109. The Defendant chiropractors are integral to and benefit from Defendants' scheme, by which thousands of KNR clients are directed to attend multiple appointments with the chiropractors that are all highly routinized, mechanized, and require minimal chiropractor involvement. *See* Floros Tr. 45:9–46:19 (explaining that his assistants perform electrical stimulation therapy and the hot and cold packs, and that Floros himself spends only "three to 20 minutes" with the patients) and 88:7–22 (discussing that his guiding determination in when to release a patient from treatment is his comparing their condition "to day one."). As Gary Petti explained, these chiropractors aim to hit "the sweet spot" in terms of how much treatment they provide to KNR's clients, knowing that they will "get a greater percentage of" their bills covered at "a certain level" at which point the clients are discharged "either as healed or maximum medical improvement." Petti Tr. 58:16–59:5.

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

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

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

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

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

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

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

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

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

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

114. In the context of personal injury litigation, narrative reports come from medical professionals "to explain why the plaintiff's injuries were different or more challenging than they might appear from the contents of the medical records." **Exhibit 11,** Affidavit of Gary Petti, ¶ 8. It also may address the issue of causation, linking the automobile accident experienced by patients with the injuries they are suffering. Nestico Tr. 355:4–356:5.

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

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

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

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

Gobrogge Tr. Ex. 33, 298:6–9, 301:24–313:10. *See also* Nestico Tr. 340:23–344:1, Ex. 50.

118. Additionally, an October 2, 2013 email from KNR operations manager Brandy Gobrogge to all of the firm's litigation attorneys and support staff also identifies the "Plambeck Clinics" as among "the only Narrative Fees that get paid." Gobrogge Tr. 293:17–297:22, Ex. 32.

119. Between 2013 and 2017, KNR and Defendant Floros at Akron Square Chiropractic referred more than four thousand clients to one another. Floros Tr. 168:12–24, Ex. 7, at 9. Dr. Floros

prepared a narrative report in "every single [one] or virtually every single" one of these cases. Petti Tr. 284:23–285:6; Horton Tr. 298:9–18; 300:15–25; 305:18–19. Other Plambeck chiropractors, including Defendants Tassi, Cawley, and Lee-Seyon, did likewise for the clients they shared with KNR. *See* Gobrogge Tr. Ex. 33, 298:6–9, 301:24–313:10.

2. The narrative reports are worthless.

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

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

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

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

well-known in the insurance industry for suspected over-billing." **Ex. 10,** Lee Aff., ¶ 8. *See also Allstate Ins. Co. v. Michael Kent Plambeck, et al.*, No. 14-10574 (5th Cir.2015). As Lee explains, the following facts illustrate the reports' fraudulent nature:

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

Id. ¶ 9.

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

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

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

> There's no other reason for them that—you know, in Akron we, of course, did business with chiropractors and that sort of thing for years without anyone ever paying a narrative report fee on every single case or virtually every single case to one particular chiropractor. There's no justification for it. And then as I understand it, the volume of cases, once KNR started paying for narrative report fees went to them—in terms of an overwhelmingly majority of cases went to them.

Id. at 67:17–68:2.

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

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

127. Additionally, the KNR handbook (quoted in Section IV(C)(1) above) explicitly stated that the firm remitted narrative fees to the "doctors personally," rather than to the clinics through which

they operated their practices. Gobrogge Tr. 298:6–9, Ex. 33. This off-the-books arrangement corroborates the corrupt purpose served by payment of these sums, which, as insurance-fraud investigator Larry Lee has explained, was readily inferred from the reports themselves and the manner in which they were provided. **Ex. 10,** Lee Aff., ¶ 9.

128. Neither KNR nor Floros ever informed their patients or clients of the true nature of the narrative fee or of their relationship with one another. **Ex. 2,** Reid Aff., ¶ 15–¶ 17; **Ex. 3,** Carter Aff., ¶ 7, ¶ 12, ¶18–¶ 19; **Ex. 4,** Beasley Aff., ¶ 9, ¶ 16–¶ 17, ¶ 19–¶ 20; **Ex. 5,** Norris Aff., ¶ 9, ¶ 13.

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

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

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

130. Putative Class C relates to an across-the-board $50 to $100 "investigation fee" KNR assesses against its clients when it settles their cases. KNR portrays the payment as reimbursement of a payment made to a specified "investigation" firm that worked on the case. In truth, it represents the cost of basic marketing and administrative functions, already subsumed in the firm's contingency free, for which it could not lawfully double-charge. KNR has charged this fee to "the vast majority" of its clients since 2009, approximately 40,000 to 45,000 of them. Nestico Tr. 132:18–15; 136:15–137:16.

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

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

132. The evidence leaves no doubt the "sign ups" serve as a means of procuring clients. One "investigator" describes the process as follows: "I'll meet with them … and get different tasks that they need done for them to become clients." Simpson Tr., 16:8–13. Another "investigator" stated that, "I'm basically sent out by Kisling, Nestico & Redick to someone that would like to have the firm represent them." Czetli Tr., 14:17–20.

133. "We MUST send an investigator to sign up clients!!" declared the KNR office manager, Brandy Gobrogge, in a May 6, 2013 email to the firm's prelitigation attorneys. *See also* Gobrogge Tr. 105:9–106:24, Ex. 4. "We cannot refer [the clients] to Chiro[practors] and have them sign forms

there," she explained. *Id.* "This is why we have investigators. We are losing too many cases doing this." *Id.* This email confirms the primary purpose of the so-called "investigators"—to sign the clients as quickly as possible and keep the firm from losing out on business. *See also* Lantz Tr. 83:17–85:18.

134. Testimony from former KNR attorneys similarly confirms that the purpose of the investigators was to assist the firm in obtaining clients. According to Amanda Lantz, she "settled approximately 1,300 cases on behalf of KNR clients during [her] time with the firm," and "never became aware of an investigator doing anything at all for the client apart from obtaining the client's signature on the KNR fee agreement." Affidavit of Amanda Lantz, ¶ 11, attached as **Exhibit 12.** Ms. Lantz clarified at her deposition that sometimes the investigators would take photos of a client's injuries, but that these photos—which were an "insignificant" part of their job—were taken more to placate the clients and not used in resolving their cases. Lantz Tr. 99:8–100:5; 329:8–11 (Q. "Did anything an investigator ever did at KNR ever help you as an attorney in resolving one of your cases?" A. "Not resolving it, no."). *See also* Phillips Tr. 109:5–16 (confirming same).

135. Lantz further explained:

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

Id. 93:3–20.

136. Robert Horton similarly testified:

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

Horton Tr. 386:15–19.

137. As did Kelly Phillips:

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

Phillips Tr. 105:25–5.

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

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

139. To the extent these ad hoc assignments occur, they bear no relation to the fee charged. KNR asks "investigators" to perform them without respect to who "signed up" the client in question. Simpson Tr. 40:1–3 (Q: "Are the requests always made to you in cases in which you did the sign-up?" A: "I don't know."); Czetli Tr. 31:16–33:1, Ex. 4. In other words, an "investigator" will do the ad hoc work in both cases where he performed the "sign-up" and received a fee and cases where did no "sign-up" and received nothing. Czetli Tr. 31:16–33:1; 44:10–14. KNR cannot seriously argue that the "sign-up" fee covered additional services which may or may not have taken place and which

(if they occurred) may have been performed not by the recipient of the payment but by some unaffiliated person.

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

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

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

Lantz Tr. 97:2–15.

141. Mr. Horton similarly testified:

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

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

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

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

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

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

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

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

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

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

146. The settlement memoranda provided to KNR clients listed the name of an "investigation" company and the amount of the fee it would be receiving from the settlement proceeds. Affidavit of Member Williams, attached as **Exhibit 13,** ¶ 3, Ex. B (settlement statement); **Ex. 2,** Reid Aff., ¶ 15, Ex. E (same); **Ex. 3,** Carter Aff., ¶ 7, ¶ 12, Exs. D, G (same); and **Ex. 4,** Beasley Aff., ¶ 7, ¶ 9, Exs. D, H (same). **Ex. 5,** Norris Aff., ¶ 9, ¶ 11, Ex. E (same); **Ex. 6,** Harbour Aff., ¶ 8, ¶ 14, Exs. B, E (same).

147. Clients are never informed of the true nature of the investigator fee. **Ex. 13,** Williams Aff., ¶ 3–¶ 5; **Ex. 2,** Reid Aff., ¶ 15, ¶ 17; **Ex. 3,** Carter Aff., ¶ 7, ¶ 12, ¶ 16–¶ 17, ¶ 19; **Ex. 4,** Beasley Aff., ¶ 9, ¶ 16, ¶ 18, ¶ 20; **Ex. 5,** Norris Aff., ¶ 9, ¶ 11, ¶ 13; **Ex. 6,** Harbour Aff., ¶ 8, ¶ 18–¶19. The documents do not disclose that these payments pertained to a "sign up," a failure that is especially misleading in the context of KNR's constant promises to prospective clients of a "free consultation," including in the firm's ad copy:

CALL NOW FOR A **FREE** CONSULTATION

IF YOU CAN'T COME TO US WE'LL COME TO YOU

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

147. Accordingly, Kelly Phillips testified that he found the title of "investigator" to be "hysterical" as applied to KNR's purported gumshoes. Phillips Tr. 105:25–5. And Ms. Lantz confirmed that KNR attorneys, including herself, "intentionally misled [KNR clients] as to what those investigator fees were." 138:16–21; *See also Id.*, 160:20, *et seq.*, (confirming that Ms. Lantz, upon termination of her employment at KNR, filed a report with Disciplinary Counsel relating to the investigation fee and other practices of the KNR firm).

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

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

V. Class Allegations

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

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

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

C. All current and former KNR clients to whom KNR charged sign-up fees paid to AMC Investigations, Inc., MRS Investigations, Inc., or any other so-called "investigator" or "investigation" company, from 2008[9] to the present.

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

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

A. for Class A,

- Did KNR unlawfully conspire with Defendant chiropractors to solicit clients and direct their treatment pursuant to a routinized course of care calculated to maximize the Defendants' profits?
- Did the Defendants conspire to inflate KNR clients' medical bills by the administration of trigger-point injections and other medical supplies and healthcare for which the clients were charged exorbitant and unconscionable rates?
- Did the Defendants mislead their clients into forgoing coverage from health insurance providers in order to avoid scrutiny of, and obtain higher fees for, fraudulent healthcare services?
- Did the Defendants intentionally and serially fail to disclose that the care they administered was unnecessary and/or readily available from alternative sources at a fraction of the price they charged the clients?

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

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

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

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

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

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

- Are the Defendants liable for fraud, breach of fiduciary duty, breach of contract, unjust enrichment, or under the Ohio Corrupt Practices Act (R.C. 2923.34) based primarily on the answers to the questions above?

B. for Class B,

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

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

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

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

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

- Did KNR truthfully inform clients about these narrative fees?

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

C. and for Class C,

- Was KNR having clients pay for a basic administrative or marketing cost in charging them the "sign-up" fee?
- Were KNR's "investigators" truly involved in investigatory work?
- Were KNR's "investigators" functionally employees of KNR, in-house messengers and office assistants who did not operate independently from the firm?
- Did KNR intentionally mislead clients about the "sign-up" fee by representing it on settlement memoranda as an amount paid to an "investigator" or "investigation" company and by failing to disclose the true nature of the charge?
- Did the KNR engagement letters permit the firm to deduct charges like the "sign-up" fee from clients' recovery?
- Are the KNR Defendants liable for fraud, breach of fiduciary duty, breach of contract, or unjust enrichment based primarily on the answers to the questions above?

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

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

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

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

VI. Class-Action Claims

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

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

157. Plaintiffs Reid, Norris, and Harbour assert this claim under Civ.R. 23(B)(3) against all Defendants, on behalf of all current and former KNR clients who had deducted from their settlements any fees paid to Defendant Ghoubrial's personal-injury clinic for trigger-point injections, TENS units, back braces, kenalog, or office visits, billed pursuant to the clinic's standard rates from the date of its founding in 2010 through the present (Class A).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

196. Plaintiffs Reid and Norris incorporate all previous allegations.

197. Plaintiffs Reid and Norris assert this claim under Civ.R. 23(B)(3) against the KNR Defendants and Defendant Floros on behalf of all current and former KNR clients who had deducted from their settlements a narrative fee paid to (1) Defendant Floros, (2) all other chiropractors employed at clinics owned by Michael Kent Plambeck, and (3) certain other chiropractors identified in KNR documents as "automatic" recipients of the fee, from KNR's founding in 2005 to the present (Class B).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

210. Plaintiffs Reid and Norris incorporate all previous allegations.

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

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

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

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

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

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

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

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

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

218. Plaintiffs Reid and Norris incorporate all previous allegations.

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

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

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

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

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

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

224. Plaintiffs Williams, Reid, Norris, and Harbour assert this claim under Civ.R. 23(B)(3) against Defendants KNR, Nestico, and Redick on behalf of all current and former KNR clients to whom KNR charged sign-up fees paid to AMC Investigations, Inc., MRS Investigations, Inc., or any other so-called "investigator" or "investigation" company, from 2008 to the present.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VII. Prayer for Relief

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

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

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

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

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

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

VIII. Jury Demand

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

Respectfully submitted,

/s/ Peter Pattakos

Peter Pattakos (0082884)
Rachel Hazelet (0097855)
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Attorneys for Plaintiffs

Request for Service

To the Clerk of Courts:

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

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

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

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

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

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

/s/ Peter Pattakos
Attorney for Plaintiffs

Certificate of Service

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

/s/ Peter Pattakos
Attorney for Plaintiffs

Gmail by Google

Peter Pattakos <peter@pattakoslaw.com>

Williams v. KNR: Summit C.P. No. CV-2016-09-3928 - Julie Ghoubrial subpoena

Rosen, Gary M. <grosen@dayketterer.com> Fri, Oct 12, 2018 at 10:38 AM
To: Peter Pattakos <peter@pattakoslaw.com>

My client is being deposed today in the divorce case. I suspect that David Best will ask her numerous questions about our meeting. FYI.

Gary M. Rosen

Attorney

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MODERN LAW SINCE 1872

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Direct: 330-255-0711 • grosen@dayketterer.com

www.dayketterer.com

From: Peter Pattakos <peter@pattakoslaw.com>
Sent: Wednesday, October 3, 2018 11:35 AM
To: Rosen, Gary M. <grosen@dayketterer.com>; Rosen, Gary M. <grosen@dayketterer.com>
Subject: Williams v. KNR: Summit C.P. No. CV-2016-09-3928 - Julie Ghoubrial subpoena

Mr. Rosen,

Please advise as to whether your client Julie Ghoubrial will accept service of the attached subpoena by this email to you or whether it will be necessary for us to serve her by other means.

EXHIBIT 2

Thank you.

Peter Pattakos

The Pattakos Law Firm LLC

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Fairlawn, OH 44333

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IN THE NINTH DISTRICT COURT OF APPEALS
SUMMIT COUNTY, OHIO

State, ex rel. SAM N. GHOUBRIAL, M.D., *et al.*, Relator, v. SUMMIT COUNTY COURT OF COMMON PLEAS, *et al.*, Respondents.	Case No. CA-28642 **Affidavit of Peter Pattakos**

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

1. I am an attorney licensed to practice in the State of Ohio (Ohio Bar No. 0082884), and represent the plaintiffs, Member Williams, Thera Reid, Monique Norris, and Richard Harbour (the "Plaintiffs") in a putative class-action lawsuit pending in the Summit County Court of Common Pleas (No. 2016-09-3928, "the lawsuit") against the Kisling Nestico & Redick personal-injury law firm ("KNR"), its owners, and certain health-care providers, including Relator Sam N. Ghoubrial, M.D. ("Defendant Ghoubrial"), with whom KNR allegedly conspired to defraud the firm's clients.

2. Defendant Ghoubrial, specifically, is alleged to have conspired with the KNR Defendants to subject the firm's clients to a price-gouging scheme by which the client's were duped into accepting exorbitant rates for healthcare administered by Ghoubrial, including, primarily, "trigger point injections" that he serially administered despite that these injections are not only medically unnecessary but actually contraindicated for injuries resulting from auto accidents.

3. In early September of 2018, as I was preparing to first assert claims on my clients' behalf against Defendant Ghoubrial in the lawsuit via a Fourth Amended Complaint, which I sought leave

EXHIBIT 3

to file on my clients' behalf on September 6, 2018, Ghoubrial's now ex-wife, Julie Ghoubrial, contacted me through her attorney, Gary Rosen, to set up an in-person meeting.

4. At this meeting, which also took place on September 6, 2018, Julie—accompanied by Mr. Rosen and Attorney Josh Lemerman, who represented Julie in her then-pending divorce proceedings against Defendant Ghoubrial (Summit C.P. No. DR-2018-04-1027)— provided detailed information to me, based on her personal knowledge, that supported both Plaintiffs' claims in the Fourth Amended Complaint and additional claims that Plaintiffs shortly asserted in their Fifth Amended Complaint.

5. Shortly after my meeting with Julie and her attorneys, I was also contacted by additional witnesses who provided additional detailed information about Defendant Ghoubrial's fraudulent conduct against KNR clients. This included Plaintiff Richard Harbour as well as Defendant Ghoubrial's employee, Richard Gunning, M.D., who contacted me on October 2, 2018 and spoke on the phone for two hours about Defendant Ghoubrial's unlawful conduct.

6. On September 27, 2018 while Plaintiffs' motion for leave to file the Fourth Amended Complaint was still pending, Judge James A. Brogan, who is presiding over the lawsuit, conducted a telephonic status conference during which I first indicated to defense counsel and the court that Plaintiffs were in receipt of new information that supported new claims against the Defendants that were not asserted in the proposed Fourth Amended Complaint.

7. On October 4, 2018, I sought leave to supplement Plaintiffs' proposed Fourth Amended Complaint with new claims supported by highly specific allegations based on information that was provided, in part, by Julie Ghoubrial, Mr. Harbour, and Dr. Gunning.

8. On October 12, 2018, I received an email from Gary Rosen stating as follows: "My client [Julie] is being deposed today in the divorce case. I suspect that [Attorney] David Best will ask her numerous questions about our meeting. FYI." A true and accurate copy of this email is attached to

this Affidavit as **Exhibit 1.**

9. David Best is Defendant Ghoubrial's longtime personal attorney who represents the KNR Defendants in the putative class-action lawsuit.

10. Within a few days of receiving Mr. Rosen's October 12 email, Mr. Rosen and I spoke by telephone and Mr. Rosen informed me that Mr. Best did in fact appear at Julie's October deposition on Defendant Ghoubrial's behalf, and questioned her for approximately one hour about the claims at issue in the underlying lawsuit. While Mr. Rosen did not inform me about the specific contents of Julie's testimony, he did state that Julie told the truth in response to Mr. Best's questions, thus suggesting that Julie confirmed the truth of Plaintiffs' allegations based on her personal knowledge.

11. Upon receiving this confirmation from Mr. Rosen that Julie's deposition testimony contained information relevant to Plaintiffs' claims in the lawsuit, I served discovery requests to Defendant Ghoubrial for a copy of the transcript as well as information as to how a copy of the transcript could otherwise be obtained. After Defendant Ghoubrial refused to produce the transcript or any of the requested information pertaining to it, I filed a motion to compel its production on December 21. Additionally, I served a subpoena on Julie on October 3, 2018 for her deposition in the civil case, and, on April 3, 2019, served another subpoena on Julie that specifically requested production of the deposition transcript from the domestic relations proceedings.

12. All of the facts set forth in the Motion to Intervene to which this Affidavit is attached, as well as the Exhibits to the Motion to Intervene, including the Intervening Parties' Answer, are true and accurate to the best of my knowledge.

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

7-11-19

Signature of Affiant Date

Sworn to and subscribed before me on JULY 11, 2019

at SOUTH DENNIS, MA.

Janet A. Boudreau

(Signature of Notary Public)

JANET A. BOUDREAU
COMMONWEALTH OF MASSACHUSETTS
BARNSTABLE COUNTY
MY COMMISSION EXPIRES: 01/13/2023

Gmail by Google

Peter Pattakos <peter@pattakoslaw.com>

Williams v. KNR: Summit C.P. No. CV-2016-09-3928 - Julie Ghoubrial subpoena

Rosen, Gary M. <grosen@dayketterer.com> Fri, Oct 12, 2018 at 10:38 AM
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My client is being deposed today in the divorce case. I suspect that David Best will ask her numerous questions about our meeting. FYI.

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From: Peter Pattakos <peter@pattakoslaw.com>
Sent: Wednesday, October 3, 2018 11:35 AM
To: Rosen, Gary M. <grosen@dayketterer.com>; Rosen, Gary M. <grosen@dayketterer.com>
Subject: Williams v. KNR: Summit C.P. No. CV-2016-09-3928 - Julie Ghoubrial subpoena

Mr. Rosen,

Please advise as to whether your client Julie Ghoubrial will accept service of the attached subpoena by this email to you or whether it will be necessary for us to serve her by other means.

EXHIBIT 1

Thank you.

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IN THE NINTH DISTRICT COURT OF APPEALS
SUMMIT COUNTY, OHIO

State, ex rel. SAM N. GHOUBRIAL, M.D., *et al.*, Relator, v. SUMMIT COUNTY COURT OF COMMON PLEAS, *et al.*, Respondents.	Case No. CA-29458 **Intervening Parties Member Williams, Thera Reid, Monique Norris, and Richard Harbour's Answer to Relators' Complaint for Writ of Prohibition**

Intervening Parties Member Williams, Thera Reid, Monique Norris, and Richard Harbour hereby answer Relators' Complaint for Writ of Prohibition as follows:

1. Intervening Parties deny that "the Confidentiality Order issued in the Domestic Relations Case," which was issued at Dr. Ghoubrial's request on illegitimate grounds, excuses him from complying with court orders in other lawsuits to which he is a party. Intervening Parties otherwise admit the allegations contained in Paragraph 1 of the Complaint.

2. Intervening Parties admit the allegations contained in Paragraph 2 of the Complaint.

3. Intervening Parties admit the allegations contained in Paragraph 3 of the Complaint.

4. Intervening Parties admit the allegations contained in Paragraph 4 of the Complaint.

5. Intervening Parties admit the allegations contained in Paragraph 5 of the Complaint.

6. Intervening Parties admit the allegations contained in Paragraph 6 of the Complaint.

7. Intervening Parties admit the allegations contained in Paragraph 7 of the Complaint.

8. Intervening Parties admit the allegations contained in Paragraph 8 of the Complaint.

9. Intervening Parties admit the allegations contained in Paragraph 9 of the Complaint.

10. Intervening Parties admit the allegations contained in Paragraph 10 of the Complaint.

EXHIBIT 4

11. Intervening Parties hereby incorporate by reference their answer to all previous paragraphs of this Answer as if fully written herein.

12. Intervening Parties admit the allegations contained in Paragraph 12 of the Complaint and further state that as discovery proceeded in the underlying lawsuit against the KNR law firm, additional facts were discovered to show four widespread schemes by the firm and various conspirators to defraud the firm's clients.

13. Intervening Parties admit the allegations contained in Paragraph 13 of the Complaint.

14. Intervening Parties admit that Judge Quinn approved an agreed Protective Order in the Domestic Relations Case on August 23, 2018, but deny that this Protective Order applied broadly to all "testimony." Rather, as is made clear from the text of Paragraph 1 of the Protective Order itself (attached as Exhibit C to Relators' Complaint), the Order only applies to the "testimony" of the "Third-Party Defendant business entities" who were subject to the action, and not to the testimony of Julie or Sam Ghoubrial themselves, or any other testifying non-party.

15. Intervening Parties admit that they sought leave to file a Fourth Amended Complaint in the underlying lawsuit on September 6, 2018 that included claims against Dr. Ghoubrial relating to a conspiracy between Dr. Ghoubrial and KNR to overcharge KNR's clients for medical services. Intervening Parties otherwise deny the allegations contained in Paragraph 15 of the Complaint.

16. Intervening Parties admit the allegations contained in Paragraph 16 of the Complaint.

17. Intervening Parties admit the allegations contained in Paragraph 17 of the Complaint.

18. Answering Paragraph 18 of the Complaint, Intervening Parties admit that Judge Quinn issued an order on January 25, 2019 and that order speaks for itself. Intervening Parties further state that Dr. Ghoubrial sought to obtain this order on illegitimate grounds and for illegitimate reasons; namely, to obstruct discovery in the underlying civil case.

19. Answering Paragraph 18 of the Complaint, Intervening Parties admit that Judge Brogan

issued an order on February 5, 2019 and that order speaks for itself.

20. Intervening Parties admit the allegations contained in Paragraph 20 of the Complaint.

21. Intervening Parties admit the allegations contained in Paragraph 21 of the Complaint.

22. Intervening Parties admit that they served a subpoena on Julie Ghoubrial in the civil case on April 3, 2019, attached as Exhibit G to the Complaint, and otherwise deny the allegations contained in Paragraph 22 of the Complaint.

23. Intervening Parties admit the allegations contained in Paragraph 23 of the Complaint.

24. Intervening Parties admit the allegations contained in Paragraph 24 of the Complaint.

25. Intervening Parties admit the allegations contained in Paragraph 25 of the Complaint.

26. Intervening Parties deny that as of April 23, 2019 specific time was "allotted for supplemental briefing" as to Julie's deposition transcript, the production of which Intervening Parties had moved to compel on December 21, 2018, and state that the Magistrates April 23, 2019 Order speaks for itself. Intervening Parties otherwise admit the allegations contained in Paragraph 26 of the Complaint.

27. Intervening Parties admit the allegations contained in Paragraph 27 of the Complaint.

28. Intervening Parties admit the allegations contained in Paragraph 28 of the Complaint.

29. Answering Paragraph 29 of the Complaint, Intervening Parties deny that they "conceded the deposition transcript was not relevant to their pending class certification motion," and deny that they "sought immediate production for the sole purpose of improperly influencing [Judge Brogan's] decision on [class-action] certification." Intervening Parties further admit that Ghoubrial filed a motion to stay on May 22, 2019 and that motion speaks for itself.

30. Intervening Parties admit the allegations contained in Paragraph 30 of the Complaint.

31. Answering Paragraph 31 of the Complaint, Intervening Parties deny that the Respondents or anyone ever "admitted" or otherwise suggested that "the transcript is irrelevant at the certification

stage of the proceedings, is likely prejudicial to those proceedings, and if a class action is certified, may never become relevant." Intervening Parties admit that Respondents issued an order on May 31, 2019 and that order speaks for itself.

32. Intervening Parties admit that the Ghoubrials filed a "motion for clarification" on June 5, 2019, and further state that this motion speaks for itself.

33. Intervening Parties deny that the domestic relations division has any jurisdiction over discovery in the underlying civil case, admit that Respondents issued an order on June 18, 2019, and that this order speaks for itself.

34. Intervening Parties admit that they have issued public communications about the underlying lawsuit, consistent with Ohio law, which have resulted in coverage at local news outlets and led to the discovery of critical evidence and participation in the lawsuit by defrauded KNR clients and other key witnesses to the fraudulent conduct at issue. Intervening Parties otherwise deny the allegations contained in Paragraph 34 of the Complaint.

35. Intervening Parties hereby incorporate by reference their answer to all previous paragraphs of this Answer as if fully written herein.

36. Intervening Parties admit the allegations contained in Paragraph 36 of the Complaint.

37. Intervening Parties admit the allegations contained in Paragraph 37 of the Complaint.

38. Intervening Parties admit the allegations contained in Paragraph 38 of the Complaint.

39. Intervening Parties state that the *Keen v. Keen* decision speaks for itself, and deny that the quoted portion has any application to this action for a writ of prohibition.

40. Intervening Parties deny the allegations contained in Paragraph 40 of the Complaint.

41. The allegations contained in Paragraph 41 are vague, general, circular, and conclusory, and Intervening Parties deny that they have any application to this action for a writ of prohibition.

42. Intervening Parties deny that the "jurisdictional priority rule" applies to either this action for

a writ of prohibition or to the underlying lawsuit, and otherwise state that the caselaw cited in Paragraph 42 of the Complaint speaks for itself.

43. Intervening Parties deny the allegations contained in Paragraph 43 of the Complaint.

WHEREFORE, Relators are not entitled to any of the relief they have requested in their Complaint, and should be sanctioned by this Court under Civ.R. 11 and R.C. 2323.51 for knowingly filing this action despite its utter meritlessness.

Respectfully submitted,

/s/ Peter Pattakos
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Certificate of Service

The foregoing document was served by operation of the Court's e-filing system on July 11, 2019.

/s/ Peter Pattakos
Attorney for Intervening Parties Member Williams, Thera Reid, Monique Norris, and Richard Harbour