IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, *et al.*, Appellees/Cross-Appellants, v. KISLING, NESTICO & REDICK, LLC, *et al.*, Appellants/Cross-Appellees.	Case Nos. CA-31007 and CA-31008 On Appeal from Common Pleas Case No. CV-2016-09-3928 **Appellees' Brief** **ORAL ARGUMENT REQUESTED**

Peter Pattakos (0082884)
Zoran Balac (0100501)
Gregory Gipson (0089340)
THE PATTAKOS LAW FIRM LLC
101 Ghent Rd., Fairlawn, OH 44333
P: 330.836.8533 | F: 330.836.8536
peter@pattakoslaw.com
zbalac@pattakoslaw.com
ggipson@pattakoslaw.com

Attorneys for Appellees/Cross-Appellants

James M. Popson (0072773)
Sutter O'Connell
1301 East 9th St.
3600 Erieview Tower
Cleveland, OH 44114
T: 216.928.2200
F: 216.928.4400
jpopson@sutter-law.com

Thomas P. Mannion (0062551)
Lewis Brisbois Bisgaard & Smith LLP
1375 E. 9th St., Suite 2250
Cleveland, OH 44114
T: 216.344.9467
F: 216.344.9241
tom.mannion@lewisbrisbois.com

Attorneys for Appellants Kisling, Nestico & Redick LLC, Rob Nestico, and Robert Redick

Bradley J. Barmen (0076515)
Lewis Brisbois Bisgaard & Smith LLP
1375 E. 9th St., Suite 2250
Cleveland, OH 44114
T: 216.344.9422/F:216.344.9421
Brad.Barmen@lewisbrisbois.com
Arthur.Kostendt@lewisbrisbois.com

Attorneys for Appellant Sam N. Ghoubrial

R. Eric Kennedy (0006174)
Daniel P. Goetz (0065549)
Weisman Kennedy & Berris Co. LPA
101 W. Prospect Avenue
1600 Midland Building
Cleveland, OH 44115
T: 216.781.1111
F: 216.781.6747
dgoetz@weismanlaw.com
ekennedy@weismanlaw.com

Attorneys for Appellants Kisling, Nestico & Redick LLC, Rob Nestico, and Robert Redick

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I. Assignments of Error

Ghoubrial Assignment of Error 1: The trial court erred in failing to undertake a rigorous analysis of appellees' class-certification theory, despite this Court's specific order on remand pursuant to Civ.R. 23.

Ghoubrial Assignment of Error 2: The trial court erred in certifying Class A ("the Price Gouging Class") on Claims One (Fraud), Three (Unjust Enrichment), and Four (Unconscionable Contract) of the Sixth Amended Complaint.

KNR Assignment of Error 1: The trial court abused its discretion in recertifying Class A without conducting the rigorous analysis required by Civ. R. 23 as mandated by this Court in *Williams I* and *Williams II*.

KNR Assignment of Error 2: The trial court abused its discretion in recertifying Class A with respect to the KNR Defendants because, under any theory of liability, KNR's responsibility for the charges of Dr. Ghoubrial cannot be determined by evidence common to all Class Members in a single adjudication.

KNR Assignment of Error 3: The trial court abused its discretion in failing to comply with the law of the case doctrine and the appellate mandate rule.

II. Issues Presented

1. Was the trial court correct to certify a class based on ample record evidence showing that numerous KNR clients were injured by a common price-gouging scheme whereby Defendants conspired to overcharge KNR clients exorbitant and unconscionable rates for suspect medical services by Defendant Ghoubrial?

2. Does the trial court's modification of Class A's membership to remove those alleged victims who received a reduction of their medical bills or fees and/or those alleged victims who were told not to use available health insurance for Dr. Ghoubrial's medical services moot any outstanding objections to class certification raised in prior appeals, especially when the record evidence shows that there are still numerous victims that meet the criteria of the trial court's certified class?

3. Whether the holding in *Felix v. Ganley Chevrolet, Inc.* regarding "injury-in-fact"

applies to the claims in this case, which, unlike *Felix*, are not based on the OCSPA, or whether the courts should instead apply the well-established doctrine that so-called "discounts" or "offsets" given to victims of price-gouging or price-fixing schemes do not undo the "injury-in-fact" arising from having been subject to the scheme in the first place, and therefore do not defeat class-certification.

4. Whether KNR's responsibility for the overcharges can be determined by common evidence when KNR's fees were directly tied to the amount of overcharge for medical services, and newly discovered evidence shows that Defendant Ghoubrial gave illegal kickbacks of his medical fees to KNR attorneys, thereby confirming the appropriateness of disgorgement as a remedy.

III. Introduction and Summary of Argument

December 17, 2019, the trial court entered a well-reasoned and highly detailed 56-page order certifying Plaintiffs' proposed "price-gouging" class (Class A), based on ample evidence in the record that Defendants KNR and Ghoubrial engaged in a common conspiracy to overcharge KNR clients for suspect medical care. The trial court determined that existence of this common scheme or conspiracy could be determined in a single adjudication as well as the fact that all putative class members were subjected to this common scheme. The trial court also rejected Defendants' arguments that individual issues predominate because the class members had varying insurance coverage and received varying discounts to their original overcharges. Specifically, the trial court found these arguments unpersuasive, citing *Vinci v. American Can Co.*, 9 Ohio St. 3d 98 (1984) and *Mozingo v. Gaslight Ohio, LLC*, 2016-Ohio-4828, which hold that the "overwhelming body of law" indicates that potential dissimilarities among class members is only a factor to be considered in the predominance inquiry but does not

prevent certification of a class action. In *Mozingo*, this Court recognized that various mobile home park residents were all subjected to the same wrongful overcharging policy, which was a significant aspect of the case and predominated over other minor differences among the class members.

On appeal (*Williams v. Kisling, Nestico, & Redick, LLC*, 9th Dist. Summit Nos. 29630, 29636, 2022-Ohio-1044) (hereinafter, "*Williams I*"), this Court took no issue with the trial court's finding of a common scheme or conspiracy. Instead, the Court only raised a narrow concern regarding Civ.R. 23's predominance requirement in light of the fact that members of Class A had varying health insurance coverage and received varying "discounts" of their bills, and remanded the case for a more rigorous analysis of these issues. On this remand, Plaintiffs pointed the trial court to a well-reasoned and well-developed body of law establishing that so-called "discounts" or "offsets" given to victims of price-gouging or price-fixing schemes do not undo the "injury-in-fact" arising from having been subject to the scheme in the first place, and therefore do not defeat class-certification. The trial court did not address this body of law but instead re-certified the class by dividing Class A into multiple sub-classes. After a second appeal (*Williams v. Kisling Nestico & Redick*, LLC, 9th Dist. Summit Nos. 30602, 30604, 2023-Ohio-4510) (hereinafter, "*Williams II*"), this Court again found the trial court's analysis lacking and concluded that subdivision of the class was not an adequate substitute for conducting the "rigorous analysis" previously mandated by the Court.

The trial court's most recent certification order, which both Defendants and Plaintiffs have appealed, has modified Class A to include "only those patients and clients of the defendants who were alleged victims of the price gouging scheme who did not receive a reduction of their medical bills or fees and were told not to use their health

insurance carriers to avoid scrutiny of these charges and fees." (R. 5523: 1/26/2024 Decision, p. 2.) Not only does this order overlook the fact, which is well-established in the record, that Ghoubrial refused to accept health insurance as payment for his services to KNR clients, (*see* R. 3844: Plaintiffs' Mot. for Class-Action Certification, pp.28–29; R. 3845–3850, Ghoubrial Tr. 35:4–36:19, 278:15–279:5), it also allows the Defendants to escape liability for devising a price-gouging scheme against their clients by giving piece-meal, after-the-fact discounts that—according to the record evidence—does not come close to offsetting the amounts fraudulently overcharged.

While Plaintiffs have addressed these flaws in the trial court's recent certification order in their cross-appeal, the fact remains that there is no remaining justification to decertify Class A, even as improperly limited by the trial court, and Defendants' assignments of error should therefore be rejected even if this Court were not to find Plaintiffs' cross-appeal to be well-taken.

To wit, Defendants now argue that the newly certified class cannot exist since it includes "zero" members. This is contradicted by the record itself, which shows numerous putative class members who satisfy the trial court's modified definition of Class A. The only evidence that Defendants offer to the contrary is Defendant Ghoubrial's self-serving testimony that all identified class members received a reduction in their charges before they were satisfied. The trial court was well within its rights to disregard this "evidence," especially in light of other record evidence, including settlement statements, showing that numerous identified class members received no reduction in their medical expenses. The record also contains a spreadsheet from Defendant Ghoubrial's billing system showing upwards of a thousand entries for services where no discount or "adjustment" was applied to Ghoubrial's charges. From

this evidence, the trial court could certainly have found that the modified class that it certified still met Civ.R. 23's "numerosity" requirement.

However, as set forth fully in Plaintiffs' cross-appeal, even if every putative class member did, in fact, receive a reduction in their bills before they were satisfied, this would not be a reason to decertify the class. Defendants argue that their so-called "discounts" make it impossible to determine, on a class-wide basis, that each class member suffered an "injury in fact," citing *Felix v. Ganley Chevrolet, Inc.*, 145 Ohio St.3d 329, 2015-Ohio-3430, 49 N.E.3d 1224. Applying *Felix* to the facts of this case is problematic for multiple reasons.

First, *Felix* apparently applies only to claims brought under the Ohio CSPA, which are not at issue in this case.

Second, even if *Felix* applies to other types of class-action claims outside the context of the CSPA, it still only applies to cases in which there is no injury in the first place. In this case, the Defendants orchestrated a fraudulent scheme whereby abused their positions of authority to injure thousands of their unsuspecting clients by overcharging them for medical services, and now purport to have "undone" the injury by giving so-called "discounts" after the fact. *Felix* does not stand for the proposition that a fraudster can "undo" an injury in fact. Moreover, the record evidence shows that even after Defendants' "discounts" were applied, most of Defendants victims still ended up paying unreasonable and excessive amounts for the dubious treatment they received.

Third, even if every class member theoretically received a complete offset of their overcharges, they would still have a claim for unjust enrichment and disgorgement against Defendants for the ill-gotten profits of the fraudulent scheme. Defendants' interpretation of *Felix* would effectively preclude any class action based on unjust

enrichment or disgorgement, which is contrary to established precedent and would be an absurd result.

Finally, KNR separately argues that its own responsibility for Defendant Ghoubrial's overcharges cannot be determined by common evidence in a single adjudication. On the contrary, the record evidence shows that KNR's fees were calculated as a defined percentage of their clients' total settlements, which went to compensate KNR's clients for their medical expenses and pain and suffering. Because Ohio law considers these to be two independent types of damage, a reduction in medical expenses would necessarily reflect a proportional reduction in KNR's fees, and thus the amount of KNR's ill-gotten profits can be calculated with the same common evidence from which Ghoubrial's overcharges are calculated. Furthermore, such calculations would not even be necessary if it is determined that KNR must disgorge its entire fee for any client that was involved in Defendants' fraudulent scheme.

In sum, the trial court was correct to certify Class A, insofar as it recognized that Defendants' common fraudulent scheme justified implementation of class-wide equitable relief, particularly so as to deter future wrongdoing. The true error was that the trial court *under*-certified the class by excluding members that should rightly have been included. That is the subject of Plaintiffs' separate cross-appeal, but as far as *Defendants'* appeals are concerned, the trial court committed no reversible error, and Defendants' appeals should be denied.

IV. Statement of Facts

Plaintiffs hereby incorporate sections II.A. and II.B. of their 05/15/2019 motion

for class-action certification filed in the trial court (R. 3844),[1] which sets forth the common and predominant evidence showing the following: (1) KNR operates a high-volume "settlement mill" whose business model places the firm's interests fundamentally at odds with those of its unwitting clients; (2) To exploit and sustain its settlement mill, KNR conspires with Defendant Ghoubrial to defraud its clients with a price-gouging scheme for healthcare that the clients are pressured to accept; (3) Pursuant to this scheme, Defendants charged class-members unconscionable rates, pursuant to standard billing codes and procedures, for certain healthcare supplies and services—including TENS units, and back braces, and trigger-point injections that are serially administered in systematic disregard for less-expensive and less-invasive modes and sources of treatment; (4) Defendants also coerced the KNR clients to forego coverage from their health-insurance providers in order to avoid scrutiny of, and obtain higher fees for, their fraudulent healthcare services; And (5) KNR continued to direct its clients to treat with Ghoubrial despite knowing that the auto-insurance carriers responsible for paying the clients' claims view his treatment as fraudulent and unworthy of compensation. This evidence is discussed in more specific detail below in specifically addressing its relevance to the instant appeal.

Plaintiffs further offer the additional facts regarding the deposition transcript of Julie Ghoubrial, as set forth in their Cross-Appellants' Merit Brief, which was filed in this matter on August 8, 2024.

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[1] R. 3844, Plaintiffs' 05/15/2019 Motion for Class-Action Certification, can be accessed at the following link to the Summit County Clerk of Courts' online docket: https://clerkweb.summitoh.net/PublicSite/Documents/sumzzzn8000003EA.pdf

V. Law and Argument

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

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

Ritt v. Billy Blanks Enter., 171 Ohio App. 3d 204, 2007-Ohio-1695, 870 N.E.2d 212, ¶ 32–¶ 33 (8th Dist.). Consistent with the "spirit" of Civ.R.23, courts must not "so narrowly apply[] Civ.R. 23 to substantially hinder the remedial purpose of the rule[.]" *Ojalvo v. Bd. of Trustees*, 12 Ohio St.3d 230, 236, 466 N.E.2d 875 (1984); C*arder Buick-Olds Co. v. Reynolds & Reynolds*, 148 Ohio App.3d 635, 2002-Ohio-2912, 775 N.E.2d 531, ¶31 (2d Dist.) ("[C]ertification should not be denied based on an overly narrow construction of Civ.R.23(B)(3).").

Accordingly, it is well-settled that, "'[a] trial judge has broad discretion in determining whether a class action may be maintained and that determination will not be disturbed absent a showing of an abuse of discretion.'" *Stammco, L.L.C. v. United Tel. Co. of Ohio*, 136 Ohio St.3d 231, 2013-Ohio-3019, 994 N.E.2d 408, ¶25, quoting *Marks v. C.P. Chem. Co.*, 31 Ohio St.3d 200, 201, 509 N.E.2d 1249. Reversal of an order certifying a class requires "more than an error of law or judgment; rather it is a finding that the trial court's attitude is unreasonable, arbitrary, or unconscionable." *Rimedio v. Summacare*, 172 Ohio App.3d 639, 2007-Ohio-3244, 876 N.E.2d 986, ¶9 (9th Dist.),

citing *Baughman v. State Farm Mut. Automobile Ins. Co.*, 88 Ohio St.3d 480, 482–483, 2000-Ohio-397, 727 N.E.2d 1265. Thus, "an appellate court may not merely substitute its judgment for that of the trial court" (*Rimedio*, 2007-Ohio-3244, ¶9), and "remains bound to affirm [the trial court's] determination absent a showing of an abuse of discretion." *Baughman*, 88 Ohio St.3d 480, 483.

Class certification generally becomes appropriate where "standardized practices and procedures" of the defendant affect multiple victims in the same way. *Cope v. Metropolitan Life Ins. Co.*, 82 Ohio St. 3d 426, 437, 1998-Ohio-405, 696 N.E.2d 1001. Plaintiffs must prove the appropriateness of class certification by a preponderance of the evidence, and the trial court is required to conduct a "rigorous analysis" of the prerequisites under Civ. R. 23 in assessing whether the plaintiffs have carried this burden. *Warner v. Waste Mgmt.*, 36 Ohio St. 3d 91, 94, 521 N.E.2d 1091 (1988); *Baughman*, 88 Ohio St. 3d 480, 483. In conducting this analysis, "[a]ny doubts … as to whether the elements of class certification have been met should be resolved in favor of upholding the class, subject to the trial court's authority to amend or adjust its certification order as developing circumstances demand." *Rimedio v. Summacare*, 172 Ohio App.3d 639, 2007-Ohio-3244, 876 N.E.2d 986, ¶12 (9th Dist.), citing *Baughman*, 88 Ohio St. 3d 480, 487.

A. The trial court was right to certify Class A, insofar as it recognized that class-wide equitable relief is appropriate to address Defendants' common, fraudulent price-gouging scheme. By eliminating from the class any victims who received so-called "discounts" or were advised not to use health insurance, the trial court rendered moot any objections to certification that were raised in previous appeals.

As a threshold matter, Plaintiffs must point out that neither this Court, the trial court, nor any other court has held that Class A, the Price-Gouging Class, *cannot* be

certified to include members that had varying insurance or received varying so-called "discounts" of their medical expenses. Instead, in both *Williams I* and *Williams II*, this Court simply required the trial court to perform a more rigorous analysis of these issues before certifying the entirety of Plaintiffs' proposed Class A. Instead of performing that analysis, the trial court simply avoided the issue entirely by excluding those class members who received "discounts" or were told not to use their medical insurance. While Plaintiffs assign error to this radical redefinition of Class A, which is the subject of their separate cross-appeal, Defendants have no cause to complain because the modified class certified by the trial court no longer requires any rigorous analysis of issues that no longer affect the class. By redefining the class as it did, the trial court rendered moot the issues that Defendants base their appeal on.

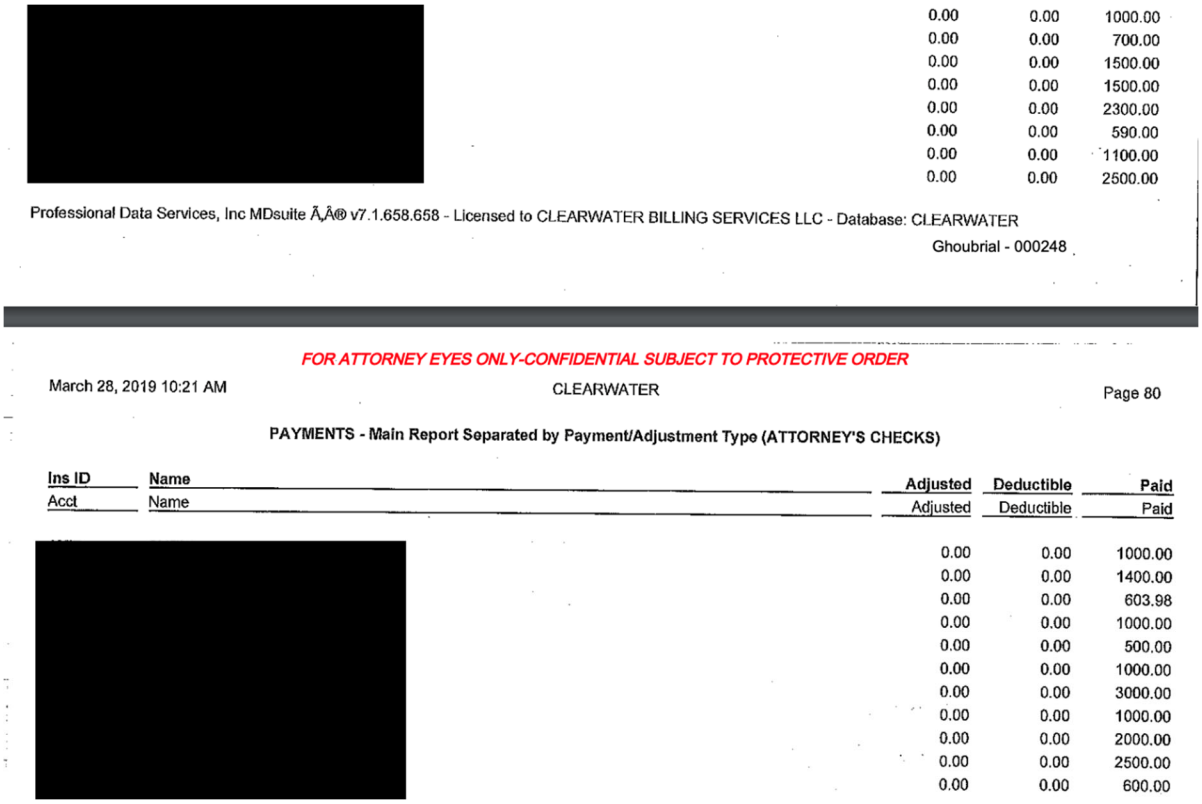
This is the third appeal on class certification in this case, and ever since Class A was initially certified in December of 2019, no court has taken issue with the appropriateness of class relief in this case, which presents an illegal price-gouging scheme that affected thousands of individual clients of the KNR firm. The trial court's original 56-page certification order lays out in extensive detail why class relief is appropriate in this case. This Court has never reversed or challenged the trial court's class certification analysis, except for the narrow issues regarding variations in health insurance and "discounts." With those specific matters no longer at issue in the trial court's latest class-certification order, there is no basis to decertify the current Class A based on an alleged lack of "rigorous analysis." Therefore, Ghoubrial's Assignment of Error 1 and KNR's Assignment of Error 1 should both be overruled.

1. The certified Class A complies with Rule 23, and the record evidence shows that there are indeed numerous class members who did not receive any so-called "discounts."

Defendants now shift gears and allege that the modified class A, which was certified by the trial court, technically contains "zero" members. Setting aside the absurdity of alleging that the trial court—which is well acquainted with the record—would have certified a class that it knows has no members, Plaintiffs point to the following record evidence to show that there are clearly numerous class members that justify creation of the price-gouging class, even as limited by the trial court:

Notwithstanding Defendant Ghoubrial's self-serving testimony that all of his patients received discounts, this is conclusively shown to be false based on the documentary evidence in the record. For example, the "Settlement Memoranda" for numerous clients, including specifically Taijuan Carter, Monique Norris, and Richie Harbor, all show the amounts paid to Defendant Ghoubrial (either directly or through his billing company Clearwater Billing Services) were not discounted at all. (*See* R. 3844: Plaintiffs' Mot. for Class-Action Certification, Exhibits 9, 11, 14.)

The conclusion supported by these settlement memoranda are further confirmed by a billing report produced by Ghoubrial in discovery, which shows that approximately 2,500 KNR clients who had Ghoubrial's fees paid through their settlements received no "adjustment" or "discount" at all from Ghoubrial. Approximately 50 entries per page on 50 pages of this spreadsheet (Ghoubrial 000167 – 000217) reflect that Ghoubrial was paid (*i.e.*, received "attorney's checks") on approximately 2,500 of these client files (50 pages multiplied by 50 entries per page, without any "adjustment" or "discount" to these payments.



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0.00	0.00	590.00
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Ghoubrial - 000248

FOR ATTORNEY EYES ONLY-CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

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PAYMENTS - Main Report Separated by Payment/Adjustment Type (ATTORNEY'S CHECKS)

Ins ID / Acct	Name / Name	Adjusted / Adjusted	Deductible / Deductible	Paid / Paid
		0.00	0.00	1000.00
		0.00	0.00	1400.00
		0.00	0.00	603.98
		0.00	0.00	1000.00
		0.00	0.00	500.00
		0.00	0.00	1000.00
		0.00	0.00	3000.00
		0.00	0.00	1000.00
		0.00	0.00	2000.00
		0.00	0.00	2500.00
		0.00	0.00	600.00

From this evidence, the trial court could properly conclude that even excluding anyone who received a "discount" from Class A, there would still be numerous remaining class members to justify formation of the price-gouging class. Therefore, Defendants' challenges to the price-gouging class based on Civ.R. 23's numerosity requirements must fail.

2. The KNR Defendants' Third Assignment of Error should be overruled because it is based on the false premise that this Court previously held that the Price-Gouging Class cannot be certified in accordance Civ.R. 23.

In their third assignment of error, the KNR Defendants request that this Court "put an end" to the numerous appeals that have come out of this case. Specifically, the KNR Defendants request that this Court effectively order the trial court to not attempt any further certification of Class A based on the "law of the case" and "appellate mandate rule." Even assuming this Court, as a court of review, had the power usurp the

trial court's broad discretion over class certification matters and order it to make particular rulings, there is no basis for such an order in this case because this Court has never held that Class A *cannot* be certified. In both *Williams I* and *Williams II*, this Court merely requested a more rigorous analysis of the appropriateness of a disgorgement remedy in light of class members' varying health insurance and so-called "discounts." Instead, the KNR Defendants falsely assert that "This Court has twice held that there are no grounds or theories of generalized proof identified for class treatment based on a 'disgorgement' of KNR's fee." That is certainly not what this Court has held, and this false premise undermines KNR's Third Assignment of Error entirely.

Plaintiffs do however agree that the "endless stream of appeals" that KNR complains of should cease, and that this Court should offer guidance to the trial court in order to help avoid future unnecessary appeals. For the reasons offered in Plaintiffs' cross-appeal, the Court's ruling on this appeal should include a discussion of why certification of the price-gouging class would be appropriate in this case, notwithstanding variations in health insurance and "discounts," so that the trial court can focus its rigorous analysis on the determinative issues.

B. *Felix v. Ganley Chevrolet* is inapplicable to the claims and facts of this case and does not mandate decertification of Class A.

Defendants argue that their so-called "discounts" make it impossible to determine, on a class-wide basis, that each class member suffered an "injury in fact," citing *Felix v. Ganley Chevrolet, Inc.*, 145 Ohio St.3d 329, 2015-Ohio-3430, 49 N.E.3d 1224. However, *Felix* is inapplicable to the facts and claims of this case. Not only does this case not involve any claims under the Ohio CSPA, but even if *Felix* applies to other types of class-action claims, its holding regarding "injury in fact" does not contemplate a

fraudster's attempt to "undo" an actual injury after the fact through the use of "discounts" or "offsets." Defendants' arguments otherwise have been rejected by numerous courts nationwide.

1. This case does not present claims under the Ohio Consumer Sales Practices Act.

Felix involved "a class of customers who signed purchase agreements" with an auto dealer "that included an arbitration provision" that was found by the trial court to be unconscionable. *Felix*, 2015-Ohio-3430 ¶ 14, ¶ 18, ¶ 20. The trial court found that under Ohio's Consumer Sales Practices Act ("OCSPA"), an award of damages for the auto dealer's inclusion of the unconscionable clause in its purchase agreements was "at least permitted, and perhaps required," and cited its "discretion" in awarding $200 per transaction to each class member. *Id*. at ¶ 18. The Eighth District rejected the auto dealer's appeal, but "did so without squarely addressing the crux of [the auto dealer's] claim, *i.e.*, that there was no showing that all class members had suffered damages." *Id*. at ¶ 20–¶ 21.

In reversing the Eighth District's affirmation of class-certification, the Supreme Court of Ohio first observed that while "the OCSPA authorized class actions, it limited the scope of damages that were available in them." *Id*. at ¶ 29. More specifically, the Court explained that while "treble and statutory damages" were available to individual plaintiffs under the OCSPA, they "were not available in class-action claims brought under the [statute]," which "limit[s] the damages available in class actions to *actual damages*." *Id*. (emphasis added), citing *Washington v. Spitzer Mgt., Inc.*, 8th Dist. Cuyahoga No. 81612, 2003-Ohio-1735, ¶ 33. The Court thus affirmed that, "Plaintiffs

bringing OCSPA class-action suits must allege and prove that *actual damages* were proximately caused by the defendant's conduct." *Id.* at ¶ 31.

Importantly, the Court then went on to explain that "the inquiry into whether there is *damage-in-fact* is distinct from the inquiry into *actual damages*." *Id.* at ¶ 34 (emphasis added). Specifically, as the Court stated,

> the *fact of damage pertains to the existence of injury*, as a predicate to liability; *actual damages involves the quantum of injury*, and relate to the appropriate measure of individual relief. ... When evaluating damages in the predominance inquiry, the *amount of damages* is invariably an individual question and does not defeat class action treatment. ... While *determining the amount of damages does not defeat the predominance inquiry*, a proposed class action requiring the court to determine individualized *fact of damages* does not meet the predominance standards of Rule 23(b)(3).

Id. (emphasis added, internal citations and quotations omitted). In other words, while "[p]laintiffs in class-action suits must demonstrate that they can prove, through common evidence, that all class members were *in fact injured by* the defendant's actions," differences among class members in the quantum of individual damages or "*actual damages*" will generally not defeat class-certification. *Id.* at ¶ 32–¶ 33 (emphasis added). Accordingly, the *Felix* court additionally affirmed that, as with any class-action in Ohio, "all members of a class ... alleging violations of the [Ohio Consumer Sales Practices Act ("OCSPA")] must have *suffered injury* as a result of the conduct challenged in the suit." *Id.* at ¶ 36 (emphasis added).

Based on these standards, the *Felix* court ultimately found that "the class, as certified, fails" because "there is absolutely no showing that all of the consumers who purchased vehicles through a contract with the offensive arbitration provision were injured by it *or* suffered any damages." *Id.* at ¶ 37 (emphasis added).

This Court, in *Strickler v. First Ohio Banc & Lending, Inc.*, 9th Dist. Lorain No. 17CA011117, 2018-Ohio-3835, ¶ 23, has since, notably, interpreted *Felix*. *Strickler* involved a defendant bank that was found by the trial court to have violated the Ohio Mortgage Broker Act ("OMBA") by having failed to include required disclosures in its standard mortgage-loan forms. *Id.* at ¶ 4. The trial court certified a class including "all persons who purchased services from [the bank] related to a mortgage loan" during the period at issue, finding that the statute "provide[d] for a minimum damage award for [the] violation [at issue]," and that "[s]ome amount of damages must be assumed in order to effectuate the purpose of the statute to provide disclosure of necessary information to the consumer." *Id.* at ¶ 4–¶ 5. This Court affirmed. *Id.* at ¶ 7.

The defendant bank later moved to decertify the class based on *Felix*, arguing that the decision constituted "new controlling case law" mandating that the "loss of information" suffered by the plaintiffs as a result of the missing disclosures was, as a matter of law, insufficient to support a finding of class-wide injury. *Id.* at ¶ 16, ¶ 21. This Court rejected this argument, noting that "the Mortgage Broker Act, … most significantly, does not contain any similar provision to OCSPA language limiting recovery of damages in a class action." *Id.* at ¶ 24. In reaching this result, this Court concluded that *Felix* "did not announce a new rule of law, but rather clarified the law respecting class action damages under OCSPA," and further stated that "we are not persuaded that the Supreme Court intended to extend its holding in *Felix* to apply, not only to OCSPA class actions, but also to other types of class actions."

Thus, *Strickler* further clarifies that *Felix's* holding that class-action Plaintiffs under the OCSPA are required to show, for all class-members, *both* proof of actual injury ("injury-in-fact") *and* a particular quantum of damage resulting from that injury

("actual damages") (*See Felix* at ¶ 31, ¶ 34, ¶ 36), that requirement does not extend beyond the context of the OCSPA. Accordingly, *Felix* cannot apply to defeat certification of Class A here, where all class-members can show they have been injured-in-fact by having been defrauded into both incurring and paying a substantial portion of Defendant Ghoubrial's standard exorbitant charges for healthcare.

2. All KNR clients who incurred charges at Defendant Ghoubrial's standard exorbitant rates —*i.e.*, all Class A members—suffered injury-in-fact as a result, regardless of the impact that any subsequent "reductions" or "discounts" had on the "quantum of damages" or "actual damages" incurred by each class-member.

The Class A representatives in this case have submitted evidence showing that the Defendants misled all similarly situated KNR clients (the Class A members) them into signing so-called "letters of protection" ("LOPs") by which they unknowingly waived their health-insurance benefits and granted Ghoubrial the entitlement to collect his fees for his medical services directly from the clients' settlement funds. R. 3844, Pl's 05-15-2019 Mot. for Class Certification at 28–31, 76–79, 10–44 (citing evidence). By the time the clients first saw the amount of these charges, which are uniformly exorbitant and unconscionable, they are already legally obligated by the LOPs to pay these rates—rates that Ghoubrial had previously represented in the LOPs to be "fair and reasonable." *Id*. at 76–79 (citing evidence); *See also id*. at Ex. 8, Reid Aff., ¶ 8, ¶ 16–17; Ex. 11, Norris Aff., ¶ 6–¶ 7, ¶ 9–¶ 10, ¶ 12; Ex. 14, Harbour Aff., ¶ 7–¶ 8, 11; ¶ 15–¶ 16, ¶ 19; Ex. 9, Carter Aff., ¶ 6–¶ 7, ¶ 10–¶ 11, ¶ 14–¶ 15, ¶ 18–¶ 19; Ex. 10, Beasley Aff., ¶ 6–¶ 7, ¶ 9, ¶ 13–¶ 17, ¶ 19–¶ 20. At this point, if the clients do not agree to pay these charges by approving the "settlement memorandum" submitted to them by KNR, they will not obtain their settlement funds. *Id*.; *see also* R. 3851, Nestico Tr. at 171:21–175:2; 175:24–177:7; R. 3833, Petti Tr. at 103:15–104:25; 134:5–12; 503:16–510:21; R. 3833, Phillips

Tr. 242:10–252:20. It is from these exorbitant rates that Ghoubrial and KNR then sometimes offer to reduce or write down the amounts that Ghoubrial will accept as payment in full of his invoice, as well as the amounts owed to KNR and the conspiring chiropractor. *Id*.

It is important to note that the class-members never had any opportunity to approve or negotiate over these rates before they became legally obligated to pay them. They were instead directed by their KNR attorney and conspiring chiropractor to treat with Ghoubrial, who himself admits that he never discusses the cost of care with these patients but nevertheless proceeds to obtain an LOP before treatment that obliges each client to pay his rates, which are never discussed apart from the fraudulent representation contained in Ghoubrial's LOPs that they are "fair and reasonable." *See* R. 3844, Pl's 05-15-2019 Mot. for Class Certification at 27–31, citing, *inter alia*, Ghoubrial Tr. at 296:11–24, 314:14–23. The clients thus had no meaningful opportunity to bargain over these rates, regardless of any reduction Ghoubrial might have agreed to accept after the fact.

a. Defendants' subsequent offers to "reduce" the amounts accepted to satisfy Ghoubrial's fraudulently inflated bills could only at most serve to offset the "quantum of damages" incurred, but not to negate the "actual injury" sustained.

Thus, all Class A members are injured-in-fact regardless of any reduction Ghoubrial or KNR might have agreed to accept in payment, and any such reductions could only at most serve to offset the amounts by which the class-members have been damaged by having incurred Ghoubrial's exorbitant and unconscionable charges. In other words, any subsequent offer by Ghoubrial to accept a reduced payment only mitigated or set off a class-member's damages, it did not negate the injury-in-fact

sustained in becoming obligated to pay his fraudulent rates. The quantum of damages for each individual client is easily calculated by reference to the amount overbilled from prevailing market or insurance rates, less the percentage of any reduction provided, which is information that is readily available in each KNR client file.

For example, as set forth in Plaintiffs' 07-22-2019 reply brief at 14–15, it may be readily determined by reviewing the settlement memorandum and Form 1500 from Plaintiff Thera Reid's KNR file (R. 3844 Pls' Mot. for Class-Cert, at 60–61, Ex. 8 (Reid Aff., ¶ 15, Ex. E (settlement memorandum), Ex. 32 (Form 1500s)), that Ms. Reid, who was billed $3,460 by Ghoubrial and had insurance coverage through Medicaid, was overbilled by $3,054.56 from what she would have otherwise paid for the same "care" under Medicaid's standard reimbursement rates.[2] While Ghoubrial reduced his

[2] These documents show that Reid was billed $3,460.00 by Ghoubrial's practice, broken down as follows: Three $800 charges for trigger-point injections under code 20553, one $300 charge for an initial office visit under code 99203, four $150 charges for follow-up office visits under code 99213, and three $40 charges and one $80 charge for the kenalog steroid used for her trigger-point injections under codes J1030 and J1040 respectively. Medicaid would have only reimbursed Ghoubrial a maximum of $405.44 for the "care" he delivered to Reid: $43.48 for each round of the trigger-point injections (again, assuming these injections were legitimately delivered despite that they were not), $75 for the initial office visit, $50 for each follow up office visit, and nothing for the kenalog, for which Medicaid does not reimburse separately from the injections. Pls' Mot. at 17 (citing Ghoubrial Tr. 256:22–258:3, Ex. 25), 25 (citing Ghoubrial Tr. 269:22–271:14, Ex. 27).

massively inflated bill by $460 in ultimately collecting $3,000 from Ms. Reid's settlement, which amounts to 87% of the amount billed, this adjustment can simply be deducted from the amount overcharged in an amount proportional to the reduction. In other words, because Ghoubrial collected 87% of what he billed Ms. Reid, 87% of the $3,046.56 that he overbilled her—$2650.51—would constitute her damages.

The same calculation applies for former KNR client Chetoiri Beasley. While KNR handled two cases for Ms. Beasley and subjected her to Ghoubrial's "treatment" in both cases, Ghoubrial only wrote down his fees in one of these two cases, by $650, from $2,150 to $1,500. (R. 3844, Pls' Mot. for Class-Cert, Ex. 10 (Beasley Aff., ¶ 16, Ex. H (settlement memorandum)), Ex. 32 (Form 1500s)). Record evidence shows that this initial $2,150 bill was inflated by at least $1,590 over what Beasley would have been charged by her insurer for the same care and supplies.[3] Thus, as with Reid, the so-called "discount" Ghoubrial provided to Ms. Beasley only amounted to a small fraction of the

[3] These documents show that Ghoubrial charged Beasley $300 for an initial office visit under code 99203, $500 for a TENS unit under E0730, $1,000 for TPIs under 20553, $50 for Kenalog under J1030, and $150 each for two follow-up office visits under 99213. R. 3844, Mot. for Class Cert., Ex. 32 (Form 1500 for Beasley). According to Plaintiffs' expert Michael Walls MD, these rates are far in excess of the reimbursement he would expect to receive from an insurance carrier ($50 to $70 for each round of trigger-point injections, $100 to $170 for each new patient office visit, and $70 to $110 for follow-up office visits), or the readily available market price for a TENS unit, the majority of which, according to Dr. Walls, "can be found for less than $100." *Id.*, Ex. 15 (Walls Affidavit), ¶¶ 5–8.

overcharges. And likewise, Beasley's damages may easily be calculated by deducting the percentage of the "discount" from her overall bill ($650/$2,150 = 30%) from the amount she was overcharged ($1,590 overcharge reduced by 30% = $1,113 in damages).

This straightforward calculation could be applied for every KNR client who received treatment from Ghoubrial pursuant to his standard rates during the class period, with easy reference to the same documents (settlement memoranda and Forms 1500) that are available in every KNR client file, and evidence of prevailing reimbursement rates used by insurance companies. *In re Restasis (Cyclosporine Opthalmic Emulsion) Antitrust Litigation*, 335 F.R.D. 1, 31 (E.D.N.Y.2020) ("Individualized damages calculations will not qualitatively outweigh the plaintiffs' reliance on common proof" in cases involving overcharges for medical services where "average price[s]" can be calculated for such services, including by common evidence of "copay and coinsurance amounts."), citing *In re Air Cargo Shipping Servs. Antitrust Litigation*, E.D.N.Y. No. MDL No. 1775, 2014 U.S. Dist. LEXIS 180914, *61–62 (Oct. 15, 2014) (collecting cases in which "courts have permitted the use of averages to calculate overcharges"). *See also* Section V.B.2.b., below (citing cases). That is, if Ghoubrial reduced any given bill by a certain percentage, the quantum of individual damages is easily calculated by applying the same percentage of reduction to the amount overcharged.

Whether or not *Felix* was intended to apply beyond the context of the OCSPA, it would be a perversion of law and justice to read the decision as allowing defendants—especially those in fiduciary positions like the doctors and lawyers—to escape class-wide liability for intentional misconduct merely because they offered to accept "reductions" of their fraudulently inflated bills after their clients were already legally obligated to pay

them. *See Cardinal Health Solutions, Inc. v. Valley Baptist Med. Ctr.*, S.D.Tex. No. 1:07-CV-111, 2009 U.S. Dist. LEXIS 3909, at *54-57 (Jan. 21, 2009) ("Plaintiff cites no authority suggesting that offset can be used to defeat the injury element of a fraud claim, and the Court has found none."); *Jordache Ents., Inc. v. Brobeck, Phleger & Harrison*, 18 Cal.4th 739, 759, 76 Cal.Rptr.2d 749, 958 P.2d 1062 (1998) ("The court rejected this 'novel and unsupported argument' that actual injury can be negated by some form of offset."), citing *Sirott v. Latts*, 6 Cal.App.4th 923, 928, 8 Cal.Rptr.2d 206 (1992) ("A client suffers damage when he is compelled, as a result of the attorney's error, *to incur or* pay attorney fees.") (emphasis added).

b. Courts nationwide consistently reject Defendants' argument that a showing of injury-in-fact caused by unlawful billing or pricing schemes can be negated by subsequent discounts, reductions, or offsets to amounts overcharged, and this Court should do the same.

While the facts at issue in this case are certainly unique, courts interpreting "injury in fact" requirements, including in the class-action context, regularly reject the argument advanced by Defendants here. As in the *Restasis* and *Air Cargo Shipping Servs*. cases cited above,, in *In re Plastic Cutlery Antitrust Litigation*, E.D.Pa. No. 96-CV-728, 1998 U.S. Dist. LEXIS 3628, at *18-22 (Mar. 20, 1998), the defendants argued that classwide injury-in-fact was impossible to show by common proof because "rebates and discounting programs caused actual transaction prices to vary according to competitive conditions and the needs of individual customers." The defendants also argued, like the Defendants here, that "determining the hypothetical competitive market price would require individualized calculations involving a multiplicity of market factors during different time periods and tailored to the nature of the class members' respective businesses." *Id*. The court rejected these arguments, noting that,

> in a number of price-fixing cases concerning industries where discounts and individually negotiated prices are common, **courts have certified classes where the plaintiffs have alleged that the defendants conspired to set an artificially inflated base price from which negotiations for discounts began**. The theory that underlies these decisions is, of course, that the negotiated transaction prices would have been lower if the starting point for negotiations had been list prices set in a competitive market. **Hence, if a plaintiff proves that the alleged conspiracy resulted in artificially inflated list prices, a jury could reasonably conclude that each purchaser who negotiated an individual price suffered some injury**.

Id. at 20–22, quoting *In re Industrial Diamonds Antitrust Litig*., 167 F.R.D. 374, 383 (S.D.N.Y. 1996) ("evidence that supracompetitive list prices 'formed the basis for subsequent individualized negotiations' sufficient to satisfy common impact requirement"), citing *Hedges Enters., Inc. v. Continental Group*, 81 F.R.D. 461, 475 (E.D. Pa. 1979) ("proof of inflated base price from which all negotiations began found sufficient to establish fact of damage"). *See also In re Infant Formula Antitrust Litigation*, N.D.Fla. MDL No. 878, 1992 U.S. Dist. LEXIS 21981, at *16 (Jan. 13, 1992) ("Contentions of infinite diversity of product, marketing practices, and pricing have been made in numerous cases and rejected. **Courts have consistently found the conspiracy issue the overriding, predominant question**.") (emphasis added).

Similarly and more recently, a U.S. District Court in the Middle District of Florida held that "even if there is considerable individual variety in pricing because of individual price negotiations, class plaintiffs may succeed in proving classwide impact by showing that the minimum baseline for beginning negotiations, or the range of prices which resulted from negotiation, was artificially raised (or slowed in its descent) by the collusive actions of the defendants." *In re Disposable Contact Lens Antitrust*, 329

F.R.D. 336, 386 (M.D.Fla. 2018), quoting *In re Commercial Tissue Prods.*, 183 F.R.D. 589, 595 (N.D. Fla. 1998) (citing *In re Catfish Litigation*, 826 F. Supp. 1019, 1043 (N.D. Miss. 1993) ("[I]t is recognized that the calculation of ... damages necessarily involves some acceptable retrospective estimations of what market behavior would have been, absent certain factors."); *In re Domestic Air Transp.*, 137 F.R.D. 677, 689 (N.D.Ga.1991) (inflated fares resulted in artificial 'base' price which became benchmark for discounted or negotiated fares)); *In re Infant Formula*, 1992 U.S. Dist. LEXIS 21981 at *16 *In re Nexium Antitrust Litig.*, 777 F.3d 9, 27 (1st Cir. 2015) ("[A]ntitrust injury occurs the moment the purchaser incurs an overcharge, whether or not that injury is later offset. ... [I]f a class member is overcharged, there is an injury, even if that class member suffers no damages."); *Delta/AirTran Baggage Fee*, 317 F.R.D. at 683 ("[A] person suffers a cognizable injury and is impacted by a price-fixing conspiracy at the moment he pays an antitrust overcharge, even if the anticompetitive conduct at issue also results in offsetting benefits such as base-fare reductions or a reduced second-bag fee.")). *See also In re Methionine Antitrust Litigation v. Rhone-Poulenc*, N.D.Cal. No. 99-3491 CRB, MDL 00-1311, 2001 U.S. Dist. LEXIS 13402, at *3-4 (Aug. 24, 2001) ("The statute only requires that a plaintiff, including an indirect purchaser, prove 'injury;' it does not require a plaintiff to prove injury by proving that it somehow 'absorbed' the overcharge."); *Hawaii v. Standard Oil Co. of Cal.*, 405 U.S. 251, 262 n.14, 92 S. Ct. 885, 31 L. Ed. 2d 184 (1972) ("[C]ourts will not go beyond the fact of this injury to determine whether the victim of the overcharge has partially recouped . ..."); *In re Plastic Cutlery* at *22-23 (plaintiffs [prove classwide] impact by generalized proof [including] regression analysis, compar[ing] prices and pricing patterns before and during the relevant time period, ... to determine actual customer prices after controlling for various

characteristics of the market, including regional price differences and various types of rebates."); *Brown v. Electrolux Home Prods., Inc.*, 817 F.3d 1225, 1233-34 (11th Cir. 2016) ("any individualized damages issues cannot reasonably be expected to be 'accompanied by significant individualized questions going to liability' and computation of damages is unlikely to be 'so complex, fact-specific, and difficult that the burden on the court system would be simply intolerable.'"); *Klay v. Humana, Inc.*, 382 F.3d 1241, 1259 (11th Cir. 2004) ("If Plaintiffs prevail on their claim, their damages will be determined in a formulaic manner based on the amount of overcharges paid by class members"); *In re Commercial Tissue Prods.*, 183 F.R.D. 589, 596 (N.D.Fla.1998) ("[T]he methods suggested by [class-action plaintiffs] to determine damages are not so insubstantial and illusive as to amount to no method at all."); *In re NASDAQ Market-Makers Antitrust Litig.*, 169 F.R.D. 493, 517 (S.D.N.Y. 1996) ("It is sufficient to note at this stage that there are methodologies available, and that Rule 23 ... allow[s] ample flexibility to deal with these issues.").

Courts have reached similar results outside of the antitrust context as well, even where the allegedly defrauded consumers—unlike the Class A members here—are in a meaningful position to forgo purchasing the unlawfully priced product or service at issue. This includes cases interpreting consumer-protection statutes where "injury in fact" was found based on the mislabeling of products, or the misrepresentation of a product's "normal price." *See Kwikset Corp. v. Superior Court*, 51 Cal.4th 310, 329-330, 120 Cal.Rptr.3d 741, 246 P.3d 877 (2011) ("For each consumer who relies on the truth and accuracy of a label and is deceived by misrepresentations into making a purchase, the economic harm is the same: the consumer has purchased a product that he or she paid more for than he or she otherwise might have been willing to pay if the product had

been labeled accurately."); *Hinojos v. Kohl's Corp.,* 718 F.3d 1098, 1106 (9th Cir. 2013) ("Misinformation about a product's 'normal' price is … significant to many consumers in the same way as a false product label would be."); *B. Sanfield, Inc. v. Finlay Fine Jewelry Corp.*, 168 F.3d 967, 972 (7th Cir.1999) ("If, on the other hand, the former price being advertised is not bona fide but fictitious—for example, where an artificial, inflated price was established for the purpose of enabling the subsequent offer of a large reduction—the 'bargain' being advertised is a false one; the purchaser is not receiving the unusual value he expects.").

Defendants do not and cannot explain why these sound and well-established principles should not apply with equal if not greater force here, where the putative class-members lacked any meaningful choice as to the pricing scheme fraudulently imposed on them by their trusted doctors, lawyers, and chiropractors.

Given the trial court's "considerable discretion" "in equitable matters" "to fashion any remedy necessary and appropriate to do justice," it is plainly within its purview to treat the so-called "reductions" as an offset to the injury-in-fact at issue here, at least as to Plaintiffs' unjust enrichment claims, if not the fraud claims, applying the basic damages calculation described above. *Kayatin v. Petro*, 9th Dist. Lorain No. 06CA008934, 2007-Ohio-334, ¶ 21. That is, to the extent the trial court does not find that all fees collected by the Defendants, self-dealing fiduciaries, pursuant to the price-gouging scheme at issue are subject to disgorgement in their entirety under the well-established principles intended to deter such breaches of loyalty.

In any event, it should be clear that "[t]he difficulties or challenges which may face the court in the damages phase of this litigation, should it proceed that far, are frail obstacles to certification when measured against the substantial benefits of judicial

economy achieved by class treatment of the predominating, common issues." *In re Catfish Litigation*, 826 F. Supp. 1019, 1043.

C. KNR's responsibility for overcharges can be determined by common evidence.

1. A single adjudication can determine whether KNR must disgorge its entire fee for any clients it subjected to Defendants' fraudulent scheme.

The KNR Defendants challenge how the trial court will be able to render a determination of KNR's purported "profits" based on Defendant Ghoubrial's overcharging of KNR clients. However, as a threshold matter, common evidence can plainly support a single adjudication regarding the existence of Defendants' fraudulent price-gouging scheme and KNR's role in it. Upon such a determination, the trial court may determine that such a violation of KNR's professional duties to their clients, and the clear evidence of self-dealing at issue in this case, requires complete disgorgement of any fees earned from any such clients subjected to Defendants' fraudulent scheme. Ample caselaw from Ohio and nationwide supports such a result. *See* Cross-Appellants' Merit Brief, at Section B, fn. 4 (citing cases).

Therefore, to the extent complete disgorgement of KNR's fees from any client subjected to Defendants' fraudulent scheme is warranted, common issues certainly predominate, and KNR's second assignment of error must be overruled.

2. Even if KNR must disgorge only that part of its fee based on Ghoubrial's overcharge, KNR's responsibility can be directly calculated as a percentage of the overcharge based on the same common evidence due to the contingency-fee nature of KNR's representation.

Even if KNR is only required to disgorge only that portion of its fees attributable to Defendant Ghoubrial's overcharging for medical services, such calculations do not

require individualized assessments of any client's particular case other than to determine what percentage of the client's recovery KNR ultimately retained. The record shows that KNR had contingency-fee arrangements with all putative class members. Thus, as the trial court correctly analyzed in its original December 17, 2019 certification order, "if the settlement amount was increased by $4,000.00 in overcharge, and KNR's contingent fee was one-fourth of the recovery, then KNR would have to disgorge $1,000.0 of the fee as to that class member."

The KNR Defendants attempt to muddy this straightforward analysis by claiming that "[t]he factors that lead to the amount of the recovery are countless and factually unique to each and every underlying case. (KNR Appellate Br. 17.) KNR further argues that its reduction of its own legal fee complicates the analysis such that individualized issues will necessarily predominate. Neither argument is persuasive.

First, as to the "countless" factors that affect a client's recovery, Ohio law allows for recovery in personal injury cases for reasonable and necessary medical expenses and damages for pain and suffering as two completely independent types of recovery. *See Brown v. Mariano*, 9th Dist. Lorain No. 05CA008820, 2006-Ohio-6671, ¶ 15. These categories of recovery have nothing to do with each other and have no overlapping proof. *Dyson v. V & V Appliance Parts, Inc.*, 9th Dist. Summit No. 23661, 2008-Ohio-782, ¶ 16 ("It does not follow that in a matter wherein a jury awards damages for medicals that automatically an award for pain and suffering must follow."). Indeed, medical expenses do not affect the amount of pain and suffering, which are subjective feelings that can only be proved by the injured person's testimony. *Youssef v. Jones*, 77 Ohio App.3d 500, 505, 602 N.E.2d 1176, (6th Dist.1991).

Therefore, because these categories of damages are independent from each other, the amount a client was overcharged for medical services necessarily correlates to the amount that same client would have recovered had they been charged a reasonable amount for treatment. In other words, by adjusting down an unreasonable medical expense, one could expect a client's total recovery to be reduced by the same amount and thus KNR's fee would be reduced by a proportionate amount based on their contingency-fee rate for that client.

As to the effect of KNR's discounts of its own fees, this would not create a fail-safe class as the KNR Defendants suggest. Any such "discounts" would simply adjust the percentage used in calculating the amount to be disgorged by KNR. KNR asks how it could be responsible for any disgorgement if, for example, its fee was wrongly increased by $750.00 for a particular plaintiff but if it reduced its fee for that plaintiff by $1,165.00. Simple. The $1,165.00 reduction could represent an adjustment to the contingency fee percentage that was originally agreed to. It is that adjusted percentage that would be applied to the improper $750 overcharge to determine the amount KNR must disgorge. All of this could be easily calculated in a spreadsheet, as set forth above. So long as KNR retained *any* fee from subjecting any particular plaintiff to Defendants' fraudulent scheme, it must be required to disgorge some (easily calculable) percentage of the amount that plaintiff was overcharged for medical services. Thus, no fail-safe class would be created.

VI. Conclusion

There is one thing that all parties to these appeals agree on: the trial court failed to conduct a rigorous analysis of the predominance requirement under Civ.R. 23, and the case should be remanded to the trial court with guidance on how to proceed.

However, this does not lend support to either of Defendants' appeals. The real error committed by the trial court was not in certifying Class A but rather in *under*-certifying the price-gouging class since ample authority supports the conclusion that every KNR client who was subjected to Defendants' fraudulent scheme suffered an injury in fact. To the extent that the trial court certified any class at all, it was correct in doing so, and thus, the Defendants' appeals should be denied. Instead, the Court should grant Plaintiffs' separate cross-appeal and remand this matter to the trial court with instructions to include into Class A all KNR clients who were subjected to Defendants' fraudulent, price-gouging scheme, regardless of their insurance status or any so-called "discounts" received.

Respectfully submitted,

/s/ Peter Pattakos
Peter Pattakos (0082884)
Gregory Gipson (0089340)
Zoran Balac (0100501)
THE PATTAKOS LAW FIRM LLC
101 Ghent Road
Fairlawn, Ohio 44333
P: 330.836.8533/F: 330.836.8536
peter@pattakoslaw.com
ggipson@pattakoslaw.com
zbalac@pattakoslaw.com

Joshua R. Cohen (0032368)
Ellen Kramer (0055552)
COHEN ROSENTHAL & KRAMER LLP
The Hoyt Block Building, Ste. 400
Cleveland, Ohio 44113
P: 216.781.7956/F: 216.781.8061
jcohen@crklaw.com
emk@crklaw.com

Attorneys for Plaintiffs/Appellees/ Cross-Appellants

Certificate of Service

The foregoing document was filed on September 17, 2024, using the Court's electronic-filing system, which will serve copies on all necessary parties.

/s/ Peter Pattakos
Attorney for Plaintiffs/Appellees/Cross-Appellants