IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

STEVEN A. ARMATAS, INDIVIDUALLY, and

as PERSONAL MEDICARE REPRESENTATIVE FOR ALEXANDER E. ARMATAS, and

as EXECUTOR OF THE ESTATE OF ALEXANDER E. ARMATAS
7690 Bucknell Circle N.W.
North Canton, Ohio 44720

PLAINTIFFS,

vs.

AULTMAN HEALTH FOUNDATION
c/o Statutory Agent
MARK N. ROSE, ESQ.
2600 Sixth Street S.W.
Canton, Ohio 44710

and

AULTMAN HOSPITAL
c/o Statutory Agent
MARK N. ROSE, ESQ.
2600 Sixth Street S.W.
Canton, Ohio 44710

and

AULTCARE INSURANCE COMPANY
c/o Statutory Agent
MARK N. ROSE, ESQ.
2600 Sixth Street S.W.
Canton, Ohio 44710

and

CASE NO: 5:19 CV 349

JUDGE: JUDGE LIOI

MAG. JUDGE BURKE

CIVIL COMPLAINT FOR:

1. **MEDICAL MALPRACTICE;**
2. **WRONGFUL DEATH;**
3. **BREACH OF CONTRACT;**
4. **VIOLATIONS OF THE FEDERAL MEDICARE ACT AND FEDERAL MEDICARE ADVANTAGE REGULATIONS;**
5. **NEGLIGENT HIRING AND SUPERVISION;**
6. **FRAUD;**
7. **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;**
8. **INTERFERENCE WITH BUSINESS RELATIONS;**
9. **DENIAL OF COURT;**
10. **VIOLATION OF FEDERAL CIVIL RIGHTS;**
11. **CIVIL CONSPIRACY; and**
12. **VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT PRACTICES ACT ("R.I.C.O.")**

PAID $400.00 on 2/15/19 - JT
RECEIPT # 54660006931

OHIO PHYSICIANS
PROFESSIONAL CORPORATION
d/b/a Surgical Associates of Canton
of OPPC
c/o Statutory Agent
MARK N. ROSE, ESQ.
2600 Sixth Street S.W.
Canton, Ohio 44710

and

M. RICHARD STJERNHOLM, D.O.
2600 Tuscarawas Street West
Suite 620
Canton, Ohio 44708

and

PULMONARY PHYSICIANS, INC.
OF CANTON, OHIO
c/o Statutory Agent
JEFFREY B. MILLER, M.D.
2600 Tuscarawas Street West
Suite 100
Canton, Ohio 44708

and

EYAD NASHAWATI, M.D.
2600 Tuscarawas Street West
Suite 100
Canton, Ohio 44708

and

NIHAD M. BOUTROS, M.D.
2600 Tuscarawas Street West
Suite 100
Canton, Ohio 44708

and

JEFFREY B. MILLER, M.D.
2600 Tuscarawas Street West
Suite 100
Canton, Ohio 44708

and

CHADI E. BOUSERHAL, M.D.
2600 Tuscarawas Street West
Suite 100
Canton, Ohio 44708
and

MATTHEW F. KNOCH, M.D.
2600 Tuscarawas Street West
Suite 100
Canton, Ohio 44708

and

MARK N. ROSE, Individually
c/o Aultman Hospital
2600 Sixth Street S.W.
Canton, Ohio 44710

and

GREGORY HABAN, M.D.,
c/o Family Physicians, Inc.
4860 Frank Avenue N.W.
North Canton, Ohio 44720

and

TIMOTHY REGULA
c/o Aultman Hospital
2600 6th Street S.W.
Canton, Ohio 44710

DEFENDANTS

NOW COME PLAINTIFFS, STEVEN A. ARMATAS, Individually, and as the duly designated "Personal Representative" (as such term is defined under federal Medicare regulations) for ALEXANDER E. ARMATAS, deceased, and the duly appointed Executor of the Estate of

ALEXANDER E. ARMATAS, deceased (collectively, for ease of reference, the "Plaintiff"), by and through undersigned counsel, and for their Civil Complaint state as follows:

BACKGROUND

1. On December 28, 2016, Plaintiff filed his original Complaint regarding this matter with the Stark County Court of Common Pleas in Canton, Ohio.

2. Pursuant to Ohio Civ. R. 15(A), on or about January 25, 2017, Plaintiff filed his First Amended and Restated Complaint as a matter of right and without seeking leave of court because such Amended and Restated Complaint was filed within 28 days of Plaintiff's original Complaint.

3. On February 20, 2018, pursuant to Ohio Civ. R. 41(A)(1)(a), and because of various irregularities being promulgated by certain of the Defendants in the litigation, Plaintiff filed a Notice of Voluntary Dismissal of his Stark County Court of Common Pleas lawsuit, in order to remove the action from state court and re-file it in federal court. A copy of such Notice of Voluntary Dismissal is attached hereto as **Exhibit A.**

4. Pursuant to the rights afforded him under R.C. 2305. 19, Plaintiff hereby re-files and re-commences his action against the originally-named defendants in the state court litigation and adds three additional defendants for acts committed by them within the applicable statute of limitations. In accordance with Ohio Civ. R. 10(D)(2), an Affidavit of Merit signed by a qualified physician is also attached hereto as **Exhibit B.**

PARTIES

5. Plaintiff, Steven A. Armatas, is an individual residing at 7690 Bucknell Circle N.W., North Canton, Ohio 44720, which is located in Stark County. Plaintiff is the adult son and only child of Alexander E. Armatas; the duly designated "Personal Representative" (pursuant to federal Medicare regulations) for Alexander E. Armatas; and Executor of the Estate of Plaintiff's Decedent,

Alexander E. Armatas (hereinafter sometimes, "Alexander"), as duly appointed by the Stark County Probate Court on December 15 , 2016, in Case No. 227735.

6. Plaintiff brings this action and the listed claims for relief for the exclusive benefit of the heirs and surviving next of kin of Alexander; namely his wife, Dionyosula A. Armatas, and his son Steven A. Armatas.

7. At all times relevant herein, Defendant, Aultman Health Foundation ("AHF"), is and was a nonprofit corporation, licensed and registered under the laws of State of Ohio, and entitled to Section 501(c)(3) tax status under the Internal Revenue Code. AHF is also the parent corporation and thus exercises dominion and control over the management and operations of Defendant Aultman Hospital and Defendant AultCare Insurance Company

8. At all relevant times herein, Defendant Aultman Hospital (sometimes hereinafter, "Aultman") is and was a non-profit corporation duly licensed and registered under the laws of the State of Ohio. Aultman held itself out to the public, including Plaintiff and decedent, as being sufficiently staffed and equipped with physicians, nurse-practitioners, nurses, technicians, pharmacists, laboratory technicians, and other personnel who were competent and able to provide medical care within the acceptable standards of practice. The medical care Defendant Aultman provided to decedent at issue in this case was rendered while Alexander was hospitalized at Aultman from October 11, 2014 through the date of his death on December 31, 2014.

9. At all relevant times herein, Defendant AultCare Insurance Company ("AultCare"), is and was a corporation duly licensed and registered under the laws of the State of Ohio and the sponsor and operator of PrimeTime Health Care Plan-Timken Company, a Medicare Advantage Plan (the "AultCare MAP"), Alexander's sole health insurance provider.

10. At all relevant times herein, Defendant Ohio Physicians Professional Corporation d/b/a Surgical Associates of Canton of OPPC ("Surgical Associates") is and was a corporation duly

licensed and registered under the laws of the State of Ohio. Surgical Associates held itself out to the public, including Plaintiff and decedent, as being sufficiently staffed and equipped with physicians and other personnel who were competent and able to provide medical care within the acceptable standards of practice. Based upon information and belief, Surgical Associates is the entity which employed Defendant M. Richard Stjernholm, D. O. ("Dr. Stjernholm") and/or of which Dr. Stjernholm was a principal or owner.

11. Based upon information and belief, Dr. Stjernholm, by or through Surgical Associates, was engaged by Aultman Hospital, either as an employee, agent or contractor thereof, and granted privileges at Aultman to provide various diagnostic, treatment, and surgical services to persons seeking Emergency Room care and/or admitted as patients to Aultman Hospital. Dr. Stjernholm held himself out to the public, including Plaintiff and decedent, as a physician capable and qualified to provide standard and acceptable medical care and services. The medical care Dr. Stjernholm provided to decedent at issue in this case was rendered while Alexander was hospitalized at Aultman from October 11, 2014 through the date of his death on December 31, 2014.

12. At all relevant times herein, Defendant Pulmonary Physicians, Inc. of Canton, Ohio ("PPI") is and was a corporation duly licensed and registered under the laws of the State of Ohio. PPI held itself out to the public, including Plaintiff and decedent, as being sufficiently staffed and equipped with physicians and other personnel who were competent and able to provide critical, pulmonary, and related medical care within the acceptable standards of practice.

13. Based upon information and belief, PPI is the entity which employed Defendants Eyad Nashawati, M.D. ("Dr. Nashawati"), Nihad M. Boutros, M.D. ("Dr. Boutros"), Jeffrey B. Miller, M.D. ("Dr. Miller"), Chadi E. Bouserhal, M.D. ("Dr. Bouserhal"), and Matthew F. Knoch,

M.D. ("Dr. Knoch") and/or of which Defendants Drs. Nashawati, Boutros, Miller, Bouserhal, and Knoch were principals or owners.

14. Based upon information and belief, Drs. Nashawati, Boutros, Miller, Bouserhal, and Knoch by or through PPI, were engaged by Aultman Hospital, either as employees, agents or contractors thereof, and granted privileges at Aultman to oversee the medical care and treatment of patients admitted to the Surgical Intensive Care and Medical Intensive Care Units of Aultman Hospital. The medical care Drs. Nashawati, Boutros, Miller, Bouserhal, and Knoch provided to decedent at issue in this case was rendered while Alexander was hospitalized in the Surgical ICU Ward at Aultman from October 11, 2014 through the date of his death on December 31, 2014.

15. At all relevant times herein, Defendant Mark N. Rose was employed by and served as Senior Vice President to AHF, Aultman and AultCare, but is being sued here in his individual capacity for violating Plaintiff's civil rights in contravention of 42. U.S.C. §1983.

16. At all relevant times herein, Defendant Gregory Haban M.D. was employed by and served as Medical Director for AultCare, but is being sued here in his individual capacity for violating Plaintiff's civil rights in contravention of 42. U.S.C. §1983.

17. At all relevant times herein, Defendant Timothy Regula was employed by and served as Chief Compliance Officer for Aultman and AultCare, but is being sued here in his individual capacity for violating Plaintiff's civil rights in contravention of 42. U.S.C. §1983.

JURISDICTION AND VENUE

18. Plaintiff incorporates Paragraphs 1 through 17 above as fully re-written and re-alleged herein.

19. The United States District Court for the Northern District of Ohio has jurisdiction over this action, pursuant to 28 U.S.C. §1331, and because all of the actions of Defendants alleged

herein took place within Stark County, Ohio and Plaintiff's damages are above and beyond the jurisdictional minimum for this Court.

20. This action is properly venued in the United States District Court for the Northern District of Ohio pursuant to 28 U.S.C. §1391(b) because Stark County, Ohio lies within the judicial district of this Honorable Court, and (a) all the medical care and treatment at issue in this case occurred in Stark County, Ohio; (b) each of the various corporate Defendants' statutory agents maintains a business address in Stark County, Ohio; (c) all of the medical facilities where Alexander received care and treatment are located in Stark County, Ohio ; (d) the individual Defendant doctors named herein all hold themselves out as physicians practicing in Stark County, Ohio; and (e) the remaining individual defendants work and conduct their business in Stark County, Ohio.

STATEMENT OF FACTS

21. Plaintiff incorporates Paragraphs 1 through 20 above as if fully re-written and re-alleged herein.

22. The decedent, Alexander E. Armatas, was born in Fterno, Lefkada, Greece on March 10, 1917, and immigrated to the United States in November of 1951, whereupon he subsequently gained full U.S. Citizenship in October of 1956.

23. At the time of his hospitalization at Aultman, Alexander was 97 years old. Despite his advanced age, prior to the events described herein, Alexander was a lively, mentally alert, physically active, self-sufficient person. Among other things, Alexander routinely (a) clothed and bathed himself; (b) ate all his meals (after sometimes preparing them himself) without any assistance or direction; (c) took regular unassisted walks around the block; (d) spoke directly and on the telephone with his relatives and friends; (e) regularly attended church and social or family gatherings; and (f) read the newspaper and watched cable news programs daily so as to stay abreast of current events.

24. Notwithstanding his advanced age, and prior to the events described herein, Alexander (a) enjoyed remarkably good health, (b) possessed a fabulous memory, (c) was not on any prescribed medications, (d) had never undergone major surgery, (e) was not receiving treatment for any known medical condition or malady, (f) had never been diagnosed with cancer, Alzheimer's, heart disease, diabetes, high blood pressure, or any other life-threatening condition, and (g) had passed his last routine medical examination with flying colors.

25. On October 11, 2014, Alexander was rushed by ambulance to Aultman after suffering a cardiac episode shortly after midnight at Plaintiff's home (where Alexander resided) and promptly admitted to the Emergency Room where Dr. Stjernholm and other emergency room personnel worked to intubate and stabilize him and place him on a respirator.

26. A few hours after his admission, Dr. Stjernholm and another emergency room physician, Dr. Randy Johnson ("Dr. Johnson"), met with Plaintiff and advised him that Alexander had suffered "catastrophic" injuries and because of his advanced age would likely die within the next three hours.

27. Together, both Doctors Stjernholm and Johnson advised Plaintiff that his father was suffering from bleeding on the brain (hematoma); pneumonia in his lungs; a broken neck or severed spine; cracked vertebrae; a brain contusion; dying bowel syndrome; and that Alexander was probably paralyzed and had very likely suffered a stroke or heart attack. Other than a C2 fracture which was subsequently treated with a stabilizing collar, all these diagnoses proved to be incorrect.

28. While a CT Scan was performed on Alexander in the Emergency Room, no MRI was ever ordered and, despite Aultman Hospital being designated a Level II Trauma Center, no neurologist or neurosurgeon was brought in to personally examine Alexander during his time in the Emergency Room.

29. In light of their diagnosis, both Doctors Stjernholm and Johnson strongly recommended Alexander not be afforded any further life-saving treatment and be removed from the respirator in order to effectuate his death. Plaintiff refused to accede to these recommendations. Both Doctors Stjernholm and Johnson became visibly perturbed and annoyed with Plaintiff's decision.

30. In the early morning hours of Saturday, October 11, 2016, Alexander was transferred from the Emergency Room to the Surgical Intensive Care Unit ("ICU") of Aultman. At approximately 8:00 a.m. that morning, Dr. Boutros, who was the attending Surgical ICU physician for the day, spoke with Plaintiff and advised him that his father would most likely die within the next 48 hours because Dr. Boutros believed Alexander had suffered an anoxic cerebral injury resulting from his brain having been deprived of oxygen for some indeterminate amount of time during his cardiac incident.

31. In light of his observations and Alexander's advanced age, Dr. Boutros recommended Alexander be removed from life support, or at the very minimum, immediately be designated a DNR. Plaintiff refused to accede to these recommendations, whereupon Dr. Boutros said: "Well, we'll give another 24 hours and see."

32. Despite both Dr. Stjernholm's and Dr. Boutros' prediction of imminent death, Alexander remained in relatively stable condition in the Surgical ICU Ward of Aultman for another 11 weeks and showed improvement until his unexpected death on December 31, 2014.

33. During the course of his stay at Aultman, Alexander's attending physicians prepared and compiled daily progress reports regarding Alexander's condition, diagnosis and prognosis. All such reports began with a recitation of Alexander's age and several recommended withdrawal of life support based solely on his age.

34. Within several days of Alexander's admission to Aultman, Plaintiff noticed a slight discoloration developing on his father's right toes which seemed to gradually be expanding. Dr. Knoch made a similar observation and recorded same in his patient progress notes chart for Tuesday, October 14, 2014.

35. Over the next several days and weeks, Plaintiff routinely shared his observations and concerns regarding such discoloration with Dr. Stjernholm, who was the "admitting physician" for Alexander and Drs. Boutros, Miller, Nashawati, Bouserhal, and Knoch who were the rotating ICU physicians in charge of Alexander's care during his confinement in the ICU (hereinafter, collectively, the "ICU Doctors"). All such concerns and statements by Plaintiff went unheeded by Alexander's doctors because of Alexander's advanced age and/or because these physicians assumed Alexander would die very shortly from his cerebral injury.

36. Despite being admitted to Aultman on October 11, 2014, Alexander was not furnished with his "Notice of Medicare Rights" statement within 48 hours of admission, as required by federal law.

37. In addition, during his 82 days in the Aultman Surgical ICU, neither Alexander nor Plaintiff received any notice of or information regarding their rights to file complaints or seek review of Alexander's medical care as provided by federal Medicare law.

38. During the entire period Alexander was hospitalized, Plaintiff was exposed to relentless, overbearing pressure by the named-Defendant physicians and other Aultman personnel to sign a DNR and/or immediately remove Alexander from life support so as to allow him to perish of natural causes, even though he was fully insured and improving during this period of time. Plaintiff never agreed nor acceded to any of these recommendations.

39. In addition, Plaintiff was persistently goaded to meet with Aultman's "palliative care" specialists, Dr. Stephen Grossman ("Dr. Grossman") and Dr. Jeffrey Marsh ("Dr. Marsh"),

who would "oversee" Alexander's death, and within the first week of Alexander's admission, the matter was submitted by Dr. Boutros and his colleagues to the Aultman Hospital Ethics Committee in an overt attempt to override Plaintiff's wishes that his father continue to receive "full-code" medical treatment.

40. Even though Alexander had been diagnosed in the Emergency Room and subsequently in the ICU with some type of brain injury and brain swelling, a neurologist was not brought in to consult on his case until six days after his admission, and Alexander was not personally examined by a neurologist until several weeks thereafter.

41. Based on information and belief, shortly before Alexander's admission to Aultman Hospital, Aultman and AHF had abruptly terminated their long-term relationship with NeuroCare, a local neurological practice group, which had staffed Aultman's neurological needs for many years, and instead retained and were relying on a small group of temporary *ad locum* physicians who were from outside the area, understaffed, and lacked the proper credentialing and licensing in the State of Ohio at the time of treating Plaintiff's father.

42. One such *ad locum* neurologist, Dr. Ammar El-Nachef, who resided in Omaha, Nebraska, was initially assigned to Alexander's case. Dr. El-Nachef never personally examined Alexander, but instead cursorily reviewed his medical records and, without the benefit of his own independent neurological evaluation, or ever speaking with Plaintiff or his family, concurred with Dr. Stjernholm's and the ICU Doctors' original recommendation that all treatment for Alexander be withdrawn.

43. A day or so after reviewing Alexander's records and rendering such diagnosis, Dr. El-Nachef went back to his home in Omaha whereupon he never returned to Aultman, and despite repeated requests by Plaintiff, was never made available to speak to Plaintiff regarding his father's condition.

44. Several weeks later, a second *ad locum* neurologist, Nancy Juopperi, D.O., was brought in on Alexander's case. Dr. Juopperi was based in Wyandotte, Michigan, was not licensed to work in Ohio as a physician during her time at Aultman, and went home to Michigan shortly after examining Alexander, also never to return.

45. When directly questioned about her credentials by Plaintiff, Dr. Juopperi informed Plaintiff she was a "long-time Aultman employee" even though, as it turns out, she had never been employed by Aultman and was merely a short-term independent contractor.

46. Neither Dr. El-Nachef nor Dr. Juopperi ever ordered an MRI be performed on Alexander or made any effort to address Alexander's brain swelling, and neither was available for follow-up care and/or to consult with Plaintiff or his family following their departure from Aultman Hospital.

47. When Plaintiff inquired of several of Alexander's doctors about the abrupt dismissal of NeuroCare by Aultman Hospital and AHF and their ensuing use of a small group of out-of-town *ad locum* physicians to administer neurological care for a hospital as large as Aultman, one doctor described the conditions as "appalling," a second as "quite disturbing," and a third as being "utterly shocked by situation."

48. As referenced in ¶39 above, during this same period of time, Dr. Boutros and Dr. Nashawati, because Plaintiff was still refusing to follow their recommendations that his father be removed from life support, referred the matter to the Aultman Hospital Ethics Committee for a determination of whether Alexander should continue to be treated.

49. At the initial hearing before the Ethics Committee, which was chaired by Dr. Stephen Grossman, and included as members, among others, Ms. Sally Paumier, the ICU Patient Liaison for Aultman Hospital; Ms. Sheila Nalawadi, then the Assistant General Counsel for Aultman Hospital; and Dr. Jason Bertram, a physician then employed by Internal Medicine

Associates of Canton, Ohio, Inc., Alexander's personal family physician group; Dr. Nashawati made materially misleading statements regarding Alexander's current medical condition in order to convince the Ethics Committee that Alexander should be removed from life support.

50. After separately addressing the Committee, during which Plaintiff spoke about Alexander's lack of any prior major health problems and the consistent improvement he was observing in his father's condition, the Ethics Committee voted to ***reject*** the recommendations of Dr. Boutros and Dr. Nashawati and to allow Alexander to keep receiving full-code medical treatment for an indefinite period of time while continuing to monitor the situation.

51. Shortly thereafter, Plaintiff was informed by Dr. Nashawati that a "trach and peg" procedure had been scheduled to be performed on his father by Dr. Albertson so that the breathing tube could be removed from Alexander's mouth and a ventilator inserted through an opening in his throat. Dr. Nashawati indicated such surgery was necessary because the intubation tube in Alexander's mouth was not designed to last for weeks and would likely malfunction soon. Plaintiff refused to permit the procedure because of the potential danger it posed to his father.

52. Several weeks before Alexander passed away, Dr. George Kefalas, an Aultman pulmonologist who covered rounds for the ICU Doctors during holidays and vacation periods, inadvertently informed Plaintiff that Dr. Albertson had not, in fact, performed "trach and peg" procedures for many years and would not have done so in Alexander's case even if Plaintiff had requested it. Such disclosure, of course, indicated the previous statements made by Dr. Nashawati to Plaintiff were false.

53. In addition, the breathing tube which supposedly needed to be replaced, because it was not designed to last for more than a few weeks, was never replaced, never malfunctioned

during the 82 days Alexander was on it, and was removed by the attending nurse in fully functional condition shortly after Alexander's death on December 31, 2014.

54. Aside from the neurological issues facing his father, Plaintiff frequently and continually voiced concerns and verbal protests over the growing discoloration in his father's right toes, which discoloration had by then spread into his right leg.

55. Despite such protests, the named Defendant physicians took no action to address, remediate, treat or rectify such condition because of Alexander's advanced age and/or because these physicians erroneously assumed Alexander would soon pass as a result of his cerebral injury.

56. More specifically, on or about October 31, 2014, Plaintiff became so alarmed by the growing discoloration on his father's right foot and leg that he requested Alexander's attending nurse for the day, named Linda, contact Dr. Stjernholm and have him bring in a vascular surgeon to consult on Alexander's leg. Nurse Linda informed Plaintiff several hours later that she had indeed reached Dr. Stjernholm, but he had refused to accede to Plaintiff's request that a vascular specialist be summoned and consulted.

57. Later that evening, Plaintiff telephoned Dr. Grossman, in his capacity as chairman of the Aultman Hospital Ethics Committee, to complain about Dr. Stjernholm's decision to not seek a vascular specialist. Dr. Grossman concurred a vascular surgeon should be consulted, because "if there was a problem," he said, he "would like be informed about it sooner rather than later," but also told Plaintiff that, pursuant to Aultman Hospital protocols, he did not have the authority to overrule Dr. Stjernholm.

58. On Saturday morning, November 1, 2016, Alexander was seen for the first time by Dr. Jeffrey B. Miller, one of the rotating ICU physicians, who requested Plaintiff step out of

his father's room briefly so that Dr. Miller could conduct his examination. Dr. Miller was accompanied by ICU nurse Joseph Jackson and Dr. Miller's assistant, Kara.

59. Several minutes later, upon exiting Alexander's hospital room and entering the hallway next to the nurses' station where Plaintiff was standing, Dr. Miller, in the presence of the nursing staff and other patients and their families who were in adjoining rooms, began screaming at Plaintiff in a very loud and confrontational manner. Dr. Miller yelled: "What the hell are you doing?! What the hell are you doing?! You are torturing this man, you are torturing your own father!? What type of person are you?! My mother lived to be 93 and I would never have treated her this way!" No mention of these remarks was entered in Alexander's daily progress notes chart for that day, or if entered, was subsequently deleted.

60. Plaintiff responded to Dr. Miller's caustic and ear-shattering diatribe in a calm, respectful and courteous manner, and explained he believed he was acting in his father's best interests and that his concerns over his father's leg were being ignored by the other doctors. After several more minutes of restrained colloquy, Dr. Miller relented and instructed his assistant Kara to contact Dr. Brett Butler ("Dr. Butler"), the vascular surgeon on call for that weekend, in order to render a consultation regarding Plaintiff's father. Such directive was followed by Kara.

61. Later that afternoon, Dr. Butler arrived at the ICU, introduced himself to Plaintiff, and conducted a physical examination of both of Alexander's legs. Dr. Butler informed Plaintiff the discoloration he had observed was dry gangrene setting in which had the potential of turning into a very serious infection, but had not done so yet.

62. Plaintiff then asked Dr. Butler: "Do you think you weren't called in earlier because any treatment for my father's leg might have been dangerous or because he was just old and doctors thought he would die soon anyway?" Dr. Butler then candidly responded: "It's probably a little bit of both."

63. Dr. Butler then went on to clarify and indicate openly to Plaintiff that perhaps some minimally invasive procedures or drugs could have been administered to ward off the problem if he had been consulted earlier, but such a course of action would have depended on a fuller study of Alexander's then-existing and prior medical history, as well as some preliminary diagnostic testing.

64. Over the next several weeks, Plaintiff continued to be pressured by his father's doctors to remove Alexander from life support and permit him to die of natural causes. In that regard, Dr. Marsh, Aultman's palliative care specialist; and Ms. Sally Paumier, the family liaison for both the Medical and Surgical ICU Wards at Aultman, strongly urged Plaintiff to terminate his father's life as soon as possible. Noting continuous improvement in his father's condition, Plaintiff refused to follow such recommendations.

65. During this same period of time, Plaintiff was told by one of the ICU nurses caring for his father that the age of a patient played a major role with several of the ICU Doctors in terms of their course of treatment and the aggressiveness, or lack thereof, they would exhibit in rendering patient care. Plaintiff responded that based upon what he had seen with his own eyes, he was not surprised at all by such statement.

66. In light of such conversation, and based on Plaintiff's own personal observations gleaned from spending 10 to 12 hours per day, seven days a week, in his father's room, Plaintiff became increasingly worried and developed serious concerns regarding the nature, scope, thoroughness, and depth of the care his father was receiving. In light of such concerns, Plaintiff began to reach out to specialist physicians outside the local community and the Aultman Hospital Network in order to obtain a second medical opinion regarding his father's diagnosis and prognosis.

67. In that regard, on or about November 3, 2014, Plaintiff contacted University Hospitals Case Western Reserve Medical Center (hereinafter, "UH") to request to be placed in contact with a UH neurologist or neurosurgeon who could render an advisory or "second" opinion regarding Plaintiff's father.

68. On or about November 6, 2014, Dr. Michael DeGeorgia ("Dr. DeGeorgia"), a neurosurgeon for UH and Professor of Neurosurgery at Case Western Reserve Medical School, contacted Plaintiff by telephone and sought some background information regarding the circumstances involving Alexander's injury and condition.

69. During such telephone conversation, Dr. DeGeorgia agreed to review the relevant medical records of Alexander, provided Plaintiff could obtain copies thereof, send them to him, and pay any fees charged by UH for providing such advisory services.

70. Plaintiff immediately agreed to these terms and conditions and, on or about November 10, 2014, arranged for the Medical Records Organization of Aultman Hospital (the "Aultman MRO") to telefax those documents to Dr. DeGeorgia's medical office.

71. On or about November 13, 2014, Dr. DeGeorgia telephoned Plaintiff to acknowledge he had received and reviewed such records and began to give his advisory opinion regarding same. Before such opinion could be rendered in full; however, Dr. DeGeorgia was suddenly paged and called into the Stroke Center of UH to attend to a critically ill patient.

72. During that same November 13, 2014 telephone conversation, Plaintiff requested and Dr. DeGeorgia agreed their conversation could be completed in person at Dr. DeGeorgia's medical office at a later date. Dr. DeGeorgia then instructed Plaintiff to "call the same number" that he had before and arrange with Dr. DeGeorgia's administrative assistant, Noel, for such follow-up meeting.

73. On or about November 17, 2014, Plaintiff telephoned Dr. DeGeorgia's assistant, Noel, to schedule such meeting. Plaintiff was informed by Noel that Dr. DeGeorgia was "rounding" for the next two weeks and, as such, would not be available to meet.

74. Between his initial contact with UH on November 3, 2014 and November 21, 2014, Plaintiff remained under constant pressure by Dr. Stjernholm and the ICU Doctors to terminate his father's life. Plaintiff deflected such pressure by informing these physicians he was seeking a second medical opinion from a renowned specialist and would not be making any final decisions until he had done so. Despite several requests, Plaintiff would not reveal the name of the specialist to Aultman personnel, but did reveal he was affiliated with UH in Cleveland.

75. Based on information and belief, one or more of the ICU Doctors, or a member of their staff, ascertained the name of Plaintiff's specialist by seeking the telefax information previously supplied by Plaintiff to the Aultman MRO in order that a very small portion of his father's medical records could be sent to UH on November 10, 2014.

76. On or about November 18, 2014, Dr. Bouserhal, without Plaintiff's knowledge, consent, or permission, and in direct conflict with Plaintiff's wishes, attempted to contact Dr. DeGeorgia by telephone, but was not able to reach him. Dr. Bouserhal made a note of such failed attempt to reach Dr. DeGeorgia in Alexander's daily progress notes chart.

77. On or about Friday, November 21, 2014, Dr. Bouserhal, without Plaintiff's knowledge, consent, or permission, and in direct conflict with Plaintiff's wishes, again attempted to reach Dr. DeGeorgia at his office by telephone, and this time was successful.

78. During such telephone conversation, Dr. Bouserhal made knowingly false and misleading statements to Dr. DeGeorgia, including, but not limited to, telling Dr. DeGeorgia that Plaintiff had previously informed the ICU Doctors Dr. DeGeorgia had personally agreed to take over his father's care and oversee Alexander's transfer to UH; statements which Plaintiff never

made directly or indirectly to anyone. Dr. Bouserhal also informed Dr. DeGeorgia that Plaintiff was an attorney, that he was difficult to deal with, and strongly suggested that Dr. DeGeorgia not involve himself with either Plaintiff or his father's case.

79. Despite the significance of such telephone conversation as it related to Alexander's condition and hopes for recovery, no record of Dr. Bouserhal's second telephone call to Dr. DeGeorgia or the nature or content of their conversation was ever entered into Alexander's daily progress notes chart, or if entered, was subsequently deleted.

80. Not knowing anything about Dr. Bouserhal's 11/21/2014 telephone conversation with Dr. DeGeorgia, on or about November 24, 2014, Plaintiff again called Dr. DeGeorgia's assistant, Noel, to arrange a meeting with Dr. DeGeorgia for the week after Thanksgiving. Plaintiff was then informed by Noel that Dr. DeGeorgia did not wish to meet with Plaintiff as previously agreed, and that the matter had been referred to Ms. Tracy Grishkow, Dr. DeGeorgia's office manager, for handling.

81. After leaving Ms. Grishkow a voicemail message later on November 24, 2014, on or about November 26, 2014, Plaintiff received a telephone call from Ms. Jane Reiss, who identified herself as an attorney from the UH Legal Department (when she in fact was only a paralegal there). Ms. Reiss informed Plaintiff that neither Dr. DeGeorgia nor anyone else from UH was any longer willing to speak to him regarding the condition or prognosis for his father.

82. At approximately 5:00 p.m. on the same day Dr. Bouserhal had spoken to Dr. DeGeorgia, namely Friday November 21, 2014; Plaintiff received a telephone call from Dr. Grossman on his cellular phone while Plaintiff was in the Aultman Hospital cafeteria eating a slice of pizza. Dr. Grossman asked Plaintiff to come to the ICU ward for a meeting to discuss his father's situation. Plaintiff promptly returned to Surgical ICU where he was quickly ushered

into a small conference room with Dr. Grossman, Dr. Nashawati and Ms. Paumier. No other persons, including Alexander's attending nurses for the day, were present.

83. As soon as Plaintiff sat down, Dr. Nashawati began berating him in a loud and threatening manner. Dr. Nashawati angrily told Plaintiff: "This situation with your father has gone on long enough. Before the end of this weekend, you need to either remove your father from life support or have him transferred to another hospital. Otherwise, first thing Monday morning, the Aultman Hospital Legal Department has authorized a lawsuit be filed in Probate Court against you and your mother for the purpose of removing you and her as caretakers and appointing a guardian *ad litem* to assume responsibility for your father's care."

84. Aghast and horrified by this unexpected and shocking development, Plaintiff asked Dr. Nashawati to identify by name the person in the Aultman Hospital Legal Department who had authorized this course of action. At such point, Dr. Nashawati became evasive, refused to answer, and simply reiterated it was "the Aultman Legal Department."

85. Angered, agitated and physically and mentally upset over such unprofessional behavior on the part of Dr. Nashawati, Plaintiff immediately stood up and excused himself from the meeting.

86. Despite such specific and overt threats of legal action being taken against him by Aultman Hospital, Plaintiff and his mother were never sued by Aultman Hospital, or anyone else, regarding any matters related to his father.

87. Based on information and belief, Plaintiff hereby alleges that Dr. Nashawati never obtained the consent of the Aultman Hospital Legal Department to sue Plaintiff or his mother, and that, in fact, such discussions never took place, and that at no time was such legal action ever authorized by Aultman Hospital, AHF or anyone else.

88. Based on information and belief, Plaintiff hereby alleges the statements made by Dr. Nashawati to him on November 21, 2014, were knowingly and intentionally false and uttered for the purpose of intimidating Plaintiff and frightening him into doing what Dr. Nashawati, Dr. Stjernholm and the other ICU Doctors wanted; namely for Plaintiff to remove his father from life support in order for Alexander to die before sepsis could develop in his right leg, thus covering up such Defendants' negligence regarding the treatment of his leg.

89. Despite the importance and nature of this meeting between Plaintiff and Dr. Nashawati, Dr. Grossman and Ms. Paumier, no record of its occurrence or the matters discussed thereat were entered into the daily progress report charts for Alexander, or if so entered, were later deleted.

90. During the ensuing weekend, comprised of Saturday, November 22, 2014, and Sunday, November 23, 2014, Plaintiff, in his capacity as Alexander's "Personal Representative" under federal Medicare laws, prepared a typed, five-page, single-spaced "grievance" (as such term is defined under the federal Medicare regulations) to submit to both the AultCare MAP and the Aultman Hospital Patient Advocacy Group (the "Aultman PAG"), more commonly known as the Aultman Hospital Complaint Department, so as to bring the aforementioned improprieties to the attention of those authorities required under federal Medicare law to investigate such misconduct.

91. On Monday, November 24, 2014, Plaintiff attempted to personally submit his grievance to a representative of the AultCare MAP, who refused to accept it or initiate any inquiry into Plaintiff's allegations on the grounds that any such grievance had to be submitted and signed by the patient himself, i.e. Alexander.

92. Since Plaintiff's father had remained in a coma from the moment he was admitted to Aultman Hospital through the date of his death, obtaining his signature was not possible.

When Plaintiff made this fact known to the AultCare MAP representative, and instructed her that as Alexander's Personal Representative under federal Medicare regulations, he had full power and authority to submit the aforesaid grievance on Alexander's behalf, such representative shrugged and dispassionately said there was nothing she could do to assist Plaintiff.

93. On that same day, Monday, November 24, 2014, Plaintiff also personally visited the offices of the Aultman PAG in order to submit a copy of his grievance to such department as well. During his visit, Plaintiff spoke to an employee of such group, named Jenny, who said she would review that matter as required by Aultman Hospital policy and "get back to [him]."

94. On or about November 30, 2014, Plaintiff delivered a slightly revised and corrected version of his original grievance to both the AultCare MAP and the Aultman PAG.

95. On or about December 2, 2014, Plaintiff received an unsigned letter from the AultCare MAP informing him the MAP could not "process" a grievance submitted by a non-enrollee, unless the patient had designated that person in writing as his Power of Attorney ("POA"). At all relevant times herein, the position taken by the AultCare MAP in such letter was in direct contradiction to federal Medicare regulations.

96. Subsequent to receiving such letter, Plaintiff contacted the office of U.S. Representative, the Honorable James S. Renacci, and proceeded to explain the situation regarding his father. Plaintiff brought to the attention of the Congressman's office and supplied supporting documentation that federal Medicare regulations specifically permitted Plaintiff to submit a grievance to the AultCare MAP and that the AultCare MAP was in turn legally obligated to accept it, conduct an inquiry, and report its results to Plaintiff within thirty (30) days.

97. Following such request for assistance by Plaintiff, Representative Renacci's office contacted the AultCare MAP who quickly reversed its initial decision and had one of its

representatives, named Stacy, telephone Plaintiff, on or about December 4, 2014, to inform him his grievance would be accepted and processed.

98. Sometime during the day on December 17, 2014, Plaintiff was advised by Dr. Miller, in the presence of one of his assistants, named Jared, that because Plaintiff's father had not been on the verge of death for some time and since his condition had remained generally stable for many weeks, Alexander's care was being transferred to the supervision of his personal family physicians, Internal Medicine Associates of Canton, Inc., then comprised of Dr. Robert Sabota, Dr. Kevin Hill, and Dr. Jason Bertram (collectively, the "Family Doctors").

99. Dr. Miller further advised Plaintiff the ICU doctors would remain as consultants on Alexander's case, that Alexander would remain in the same ICU room and be cared for by the same ICU nurses, and that Alexander's quality of care would not be affected by such transition.

100. During this conversation, Jared noted that such transition would also result in a cost savings to Plaintiff because his father would no longer be charged ICU rates for his bed, but instead a regular patient rate; to which Dr. Miller quickly responded: "Hell, we're way past the reimbursement amount for this guy anyway."

101. On the evening of December 17, 2014, Plaintiff, with the assistance of a semi-professional photographer, had several color photographs taken of his father's right leg and foot which captured and highlighted the rapidly expanding nature of his dry gangrene. Such activity by Plaintiff and the photographer was duly noted by Alexander's attending nurse for the evening, nicknamed "Army Joe."

102. On the following morning, December 18, 2014, even though he and the other ICU Doctors had been replaced as Alexander's primary attending physicians by the Family Doctors, Dr. Boutros made an unscheduled and unexpected visit to Alexander's room.

103. After conducting a cursory examination of Plaintiff's father, Dr. Boutros, in the presence of Plaintiff's godfather, Mr. Gust Contos, and close to a dozen other physicians, nurses and medical staff who were rounding with Dr. Boutros that morning, began screaming at Plaintiff to the effect that: "You say you are this man's son, you should be ashamed calling yourself this man's son, you should be ashamed of yourself; you are a terrible son; look at this man's eyes, he is dead; you should be ashamed to call yourself this man's son."

104. After Plaintiff facetiously, yet calmly, thanked Dr. Boutros' for his insight on the matter, Plaintiff said to Dr. Boutros that "your comments have been duly recorded." Dr. Boutros, apparently taking Plaintiff's remarks literally and believing he was somehow being tape recorded, began screaming at Plaintiff; "Are you threatening me now?! Are you threatening me?! I have witnesses here that you are threatening me. You heard him threatening me. I'm going to call security to have you removed from the hospital!"

105. After Plaintiff assured Dr. Boutros he was not being "recorded" but instead that Plaintiff had used the term ***recorded*** as a synonym for "noted;" as in "your comments have been duly noted;" Dr. Boutros cursed at Plaintiff and left Alexander's hospital room yelling: "I'm never coming back to his room; I'm never coming back to this room!" Not surprisingly, Aultman Hospital security was never called by Dr. Boutros nor anyone else regarding such exchange.

106. Shortly following this incident, Plaintiff once again typed up a report describing Dr. Boutros' unprofessional conduct and defamatory remarks directed at Plaintiff and submitted it to the AultCare MAP for review and as a supplement to his original grievance.

107. Despite the importance and nature of this "encounter" between Plaintiff and Dr. Boutros, no specific record of its occurrence or Dr. Boutros' defamatory remarks directed at Plaintiff were entered into the daily progress report charts for Alexander, or if so entered, were later deleted.

108. At approximately 11:00 a.m. on that same day, December 18, 2014, Dr. Bertram arrived to examine Alexander pursuant to his daily rounds as one of the Family Doctors to whom his care had been transferred.

109. After having been rebuffed by Dr. DeGeorgia as a result of Dr. Bouserhal's venal and self-serving interference into the doctor-patient relationship, Plaintiff reached out to another neurosurgeon, Dr. Mark Hoeprich of Akron General Hospital, on or about November 28, 2014, to obtain a second medical opinion regarding his father's diagnosis and prognosis.

110. During a telephone conversation between Plaintiff and Dr. Hoeprich, Dr. Hoeprich agreed to review Alexander's medical records in order to render such opinion. Dr. Hoeprich asked Plaintiff if he could first speak to one of the ICU Doctors to gain some additional background on Alexander's case, to which Plaintiff agreed. Dr. Hoeprich indicated his assistant would contact Plaintiff within a week or so to schedule a consultation with him.

111. When Plaintiff did not hear from Dr. Hoeprich during the ensuing week, he telephoned his assistant and was told Dr. Hoeprich no longer wished to assist him regarding Alexander's case, and therefore would not be rendering a second opinion as promised.

112. Based on information and belief, Plaintiff hereby alleges that during the telephone conversation between Dr. Hoeprich and the ICU Doctor he spoke to [whom Plaintiff believes to be Dr. Knoch], Dr. Knoch made disparaging remarks about Plaintiff, and informed Dr. Hoeprich that Plaintiff was an attorney by profession and was difficult to deal with.

113. After spending most of the day on December 30, 2014, next to his father's bedside, Plaintiff and his mother left Alexander's ICU room at approximately 8:45 p.m. to return home. At approximately 10:30 p.m., Plaintiff received a telephone call from Dr. Bertram, Alexander's attending physician for the evening. Dr. Bertram informed Plaintiff that

Alexander's dry gangrene had developed into sepsis and that the infection was affecting his bloodstream and vital organs, and that Alexander's death could be imminent.

114. Plaintiff and his mother immediately rushed back to his father's bedside and remained with him through the night. Despite the best efforts of Dr. Bertram to treat and fight off the infection via ordering a series of tests and administering various antibiotics, Alexander succumbed to the infection at 4:34 a.m. on the morning of December 31, 2014, while being held by Plaintiff and Plaintiff's mother, Dionysoula D. Armatas, Alexander's wife of 56 years. Alexander was buried in Forest Hill Cemetery in Canton, Ohio on January 7, 2015.

115. On or about January 9, 2015, Plaintiff received an unsigned one-page letter from the AultCare MAP informing him its unnamed "Medical Director" [whom Plaintiff subsequently discovered to be Defendant Gregory Haban, M.D.] had spoken with certain unidentified individuals from Aultman Hospital, and that the AultCare MAP had thus completed its federally-mandated investigation of Plaintiff's grievance, but was unable to share the results thereof with him (or anyone else) because all such information was deemed "peer review" and therefore "confidential."

116. After sending the AultCare MAP a letter explaining such explanation was not satisfactory, Plaintiff received a second letter from the AultCare MAP, dated February 20, 2015, offering to "extend a hand and work with you to continue any necessary communications including a formal response to your grievance," provided Plaintiff first submit additional "documentation or information" confirming he was the appropriate legal representative of his father's affairs. Plaintiff was not obligated to provide any such documentation under federal Medicare laws and was only given that "excuse" in order for the AultCare MAP to avoid speaking with him.

117. Plaintiff never received a response regarding the copy of his grievance submitted to the Aultman PAG, even though the initial representative he had spoken with promised to review his submission and "get back to [him]." Plaintiff also never received a copy of the investigative report which the AultCare MAP was required by federal law to provide him with.

118. On or about February 17, 2015, Plaintiff sent a letter to the AultCare MAP requesting a complete report of the MAP's grievance and appeals data for its most recent reporting period, as permitted by federal Medicare regulations which require all Medicare Advantage plans to compile and disclose this information to any Plan member who requests it.

119. The AultCare MAP ***again*** refused to provide this information to Plaintiff on the ridiculous basis that they were no longer certain Plaintiff was his father's true representative, even though the doctors and staff at Aultman Hospital had dealt with Plaintiff exclusively regarding all decisions concerning his father's treatment for close to three months, and Plaintiff was Alexander's "Personal Representative" under federal Medicare regulations.

120. Frustrated by such response, and in order to save time and effort, on or about March 24, 2015, Plaintiff mailed a separate request for such data on behalf of his mother, who was then (and still is) enrolled in the same health care plan as his father. Plaintiff did not receive the requested statistics from the AultCare MAP (the "AultCare Report") until May 12, 2015, almost a full seven weeks after his second inquiry.

121. Apart from the unwarranted delay in receiving it, after reviewing the AultCare Report in detail, Plaintiff discovered it did not comply with federal Medicare regulations because it failed to include the most recent data available and contained untrue statements of material fact and omissions to state a material fact necessary in order to make the statements, in light of the circumstances under which they were made, not misleading.

122. On May 27, 2015, Plaintiff personally visited Aultman Hospital to inquire about

the status of his complaint as submitted to the Aultman PAG, follow up with the AultCare MAP, and initiate the process of retrieving his father's medical records from the Aultman MRO.

123. The Aultman Hospital representative who was sent out to meet Plaintiff in the lobby, named Kathy, was pleasant and appeared to know who Plaintiff was even though the two had never met. After Plaintiff inquired about the status of his complaint and the procedure to obtain his father's medical records, Kathy informed Plaintiff she could not discuss these issues with him because she said all Aultman personnel had been instructed by Senior Vice President Mark N. Rose not to speak to or assist Plaintiff under any circumstances. Plaintiff was then asked to leave the premises.

124. Shortly thereafter, Plaintiff received a letter from Defendant Mark Rose informing him that any future attempt by Plaintiff to speak with ***any*** Aultman employee about ***anything*** concerning his father Plaintiff would result in Plaintiff being sued, even though Plaintiff had not sued, contemplated suing, nor threatened to sue anyone from Aultman at that time, and no lawsuit was filed until nearly ***two years later***.

125. In response to such clear and impending threat by AHF to sue him simply for entering the hospital to seek his own father's medical records, Plaintiff filed a declaratory judgment action against AHF in the Stark County Court of Common Pleas on or about September 23, 2015, and pursuant thereto, was eventually able to obtain a Judgment Entry on or about June 6, 2016 ordering the release of his father's medical records to him, immediately and without cost.

126. On or about April 4, 2017, Plaintiff formed a reasonable belief that Aultman and/or AultCare had released his father's medical records to its counsel shortly after Plaintiff filed his initial lawsuit in state court, and then either directed its counsel to pretend, or subsequently discovered its lawyers were pretending, not to have the records for over one year in

order to engage Plaintiff in vexatious litigation regarding obtaining those records (which they already possessed) through a court order.

127. Based upon such reasonable belief and suspicion that defense counsel had obtained Alexander's medical records from its clients, and then proceeded for over one year to pretend, with its clients' knowledge and consent, not to have them, on or about July 16, 2018, Plaintiff, in his capacity as Executor of the Estate of Alexander Armatas, sent a letter to the Aultman Medical Records Department requesting an accounting of his father's private health information (or "PHI") for the period from January 1, 2015 through June 30, 2018.

128. Under HIPAA, every patient or his representative has the ***right*** to receive an accounting of any disclosures of a patient's PHI to a third party. Such accounting covers disclosures up to six years prior to the individual's request date and must include all disclosures to or by any business associates of the covered entity. See 45 CFR §164.528. A "business associate" is defined under 45 CFR §160.103 to include, among other things, any entity which provides ***legal***, actuarial, accounting, consulting, data aggregation services to a covered entity.

129. Despite the fact that, under HIPAA, such accounting requests must elicit a reply within 28 days, Plaintiff did not receive a response from Aultman or its Chief Compliance Officer, Defendant Timothy Regula, until January 31, 2019, a full five months after Plaintiff's request.

130. Despite the fact that such accounting requires the reporting to Plaintiff of any disclosures made by Aultman to any entity providing legal services to it, Aultman's accounting failed to report the disclosure of Alexander's medical records to either Reminger & Co. or Milligan Pusateri Co., L.P.A., the two law firms rendering services to AHF, Aultman and AultCare during such request period.

131. After receiving Alexander's medical records from Aultman, Aultman's attorneys,

at Aultman's direction and/or with Aultman's knowledge, continued to falsely represent to Plaintiff and various courts presiding over the litigation that they did not possess such records and still needed to have them released via court order, without any HIPAA privacy protections attached, for the sole purpose of hindering and delaying Plaintiff's prosecution of his case.

COUNT I

Medical Malpractice

132. Plaintiff incorporates paragraphs 1 through 131 above as if fully re-alleged and re-written herein.

133. This Count I is asserted against all named Defendants, except AultCare, Tim Regula, Gregory Haban M.D., and Mark N. Rose (the "Count I Defendants").

134. At all relevant times herein, the Count I Defendants had the duty of exercising such degree of professional care, skill, and diligence in their treatment of Alexander ordinarily exercised by other reasonably trained and prudent health care providers under the same or similar circumstances, and were otherwise negligent in the care and treatment of Alexander by failing to properly examine, test, diagnose, prescribe medications for, manage, monitor and/or treat the medical conditions of decedent.

135. As a direct and proximate result of such breach of duty and the negligence of and deviations from the accepted standards of care by the Count I Defendants, Alexander sustained damages in the form of, among other things, increased chance of harm, unnecessary pain and suffering, discomfort, anguish, loss of chance of recovery or survival, impairment of activities, and untimely death.

136. Further, as the direct and proximate result of the negligence of the Count I Defendants, Plaintiff, as the representative for the Estate of Alexander E. Armatas, incurred medical and hospital expenses.

137. Further, as a direct and proximate result of the negligence of the Count I Defendants, Plaintiff, as the representative for the Estate of Alexander E. Armatas, incurred funeral and burial expenses.

138. Further, as a direct and proximate result of the negligence of the Count I Defendants, Plaintiff and the decedent's next of kin have incurred the loss of Alexander's support from his reasonably expected earnings capacity; as well as the loss of his services, maintenance, society, companionship, consortium, cheer, assistance, attention, protection, advice, guidance, counsel, instruction, training, and education; and have further incurred mental anguish and emotional distress.

139. At all relevant times, the named Defendant physicians herein were, either directly or through their respective corporate practice groups, engaged by Aultman Hospital as employees, agents or contractors thereof, and granted privileges at Aultman to oversee the medical care and treatment of patients admitted thereto.

140. Under the doctrine of *respondeat superior*, Defendant AHF and Defendant Aultman are jointly and severally liable to Plaintiff for Alexander's damages and wrongful death inasmuch as those damages and death were proximately caused by the medical negligence and reckless conduct of said named Defendant physicians.

141. At all relevant times, the named Defendant physicians herein and Defendants AHF and Aultman all represented to the public, including Plaintiff and decedent, that such doctors were affiliated with Aultman Hospital.

142. Accordingly, Defendants AHF and Aultman are also liable for the medical negligence and reckless conduct of the named Defendant physicians herein under the doctrine of agency by estoppel as set forth by the Ohio Supreme Court in *Clark v. Southview Hospital & Family Health Center* (1994), 68 Ohio St.3d 435.

143. The Count I Defendants' conduct, as set forth above, was engaged in with actual malice and/or reckless disregard for the rights, health, safety, and well-being of Alexander while he was under the Count I Defendants' care, therefore entitling Plaintiff to an award of punitive damages.

COUNT II

Wrongful Death

144. Plaintiff incorporates paragraphs 1 through 143 above as if fully re-alleged and re-written herein.

145. This Count II is asserted against all named Defendants except AultCare, Mark N. Rose, Gregory Haban, M.D. and Tim Regula (the "Count II Defendants").

146. The Count II Defendants failed to exercise such degree of care, skill, and diligence in their treatment of Alexander ordinarily exercised by other reasonably trained and prudent medical care providers under the same or similar circumstances, and were otherwise negligent in their care and treatment of Alexander by failing to properly examine, test, diagnose, prescribe medications for, manage, monitor and/ or treat the medical conditions of Alexander.

147. As a direct and proximate result of the negligence and deviations from the accepted standards of care by the Count II Defendants, Alexander died from a septic infection in his right leg. Such death was a wrongful death inasmuch as it was directly and proximately caused by the negligence of the Count II Defendants.

148. This Count II is brought pursuant to Section 2125.02 of the Ohio Revised Code for the benefit of the heirs and surviving next of kin of Alexander, and all others who may have a legal claim as a result of his death, including, but not limited to Plaintiff, being Alexander's sole surviving child and duly appointed Executor for the Estate of Alexander E. Armatas.

149. As a direct and proximate result of the Count II Defendants' negligent care, monitoring, and treatment of Alexander, Plaintiff, as Executor for the Estate of Alexander E Armatas, suffered damages including funeral and burial expenses.

150. Further, as a direct and proximate result of the negligence of the Count II Defendants causing the wrongful death of Alexander, the beneficiaries of Alexander suffered damages pursuant to Ohio law, including being deprived of decedent's support, maintenance, services, society, companionship, consortium, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, education, and loss of prospective inheritance; and further suffered mental anguish and emotional distress.

151. At all relevant times, the named Defendant physicians herein were, either directly or through their respective corporate practice groups, engaged by Aultman Hospital as employees, agents or contractors thereof, and granted privileges at Aultman to oversee the medical care and treatment of patients admitted thereto.

152. Under the doctrine of *respondeat superior*, Defendant AHF and Defendant Aultman are jointly and severally liable to Plaintiff for Alexander's damages and wrongful death inasmuch as those damages and death were proximately caused by the medical negligence and reckless conduct of said named Defendant physicians.

153. At all relevant times, the named Defendant physicians herein and Defendants AHF and Aultman all represented to the public, including Plaintiff and decedent, that such doctors were affiliated with Aultman Hospital.

154. Accordingly, Defendants AHF and Aultman are also liable for the medical negligence and reckless conduct of the named Defendant physicians herein under the doctrine of agency by estoppel as set forth by the Ohio Supreme Court in *Clark v. Southview Hospital & Family Health Center* (1994), 68 Ohio St.3d 435.

155. The Count II Defendants' conduct, as set forth above, was engaged in with actual malice and/or reckless disregard for the rights, health, safety, and well-being of Alexander while he was under the Count II Defendants' care, therefore entitling Plaintiff to an award of punitive damages.

COUNT III

Breach of Contract

156. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in paragraphs 1 to 155 above as though fully set forth herein.

157. This Count III is asserted against Defendant AultCare and Defendant AHF (the "Count III Defendants").

158. As an enrollee in "Primetime Health Care Plan-Timken Company, a Medicare Advantage Plan, offered by AultCare Insurance Company (HMO-POS)" (hereinafter, the "AultCare MAP"), Alexander was entitled to all the benefits, rights and privileges granted under the contract or contracts entered into by and among AultCare, the Timken Company, the Secretary of Health and Human Services, and certain other parties establishing the AultCare MAP, and was subject to all the terms, conditions, and obligations set forth therein applicable to participants in such plan.

159. All material terms, conditions, obligations, benefits, rights and privileges applicable to Alexander and contained in such contract were set forth and described in the 2014 Annual Notice of Change and Evidence of Coverage Booklet as prepared by the AultCare MAP and supplied to Alexander and all other enrollees sometime in December, 2013 or January, 2014 (the "AultCare MAP Contract").

160. Chapter 8 of the AultCare MAP Contract sets forth the "rights and responsibilities" of each AultCare MAP participant. At all relevant times, Alexander and

Plaintiff performed any and all conditions and obligations precedent to and in accordance with the AultCare MAP Contract.

161. Chapter 8, Section 1.2 of the AultCare MAP Contract specifically provides: "We must treat you with fairness and respect and all times;" with the term ***we*** defined as "AultCare Insurance Company."

162. Defendant AultCare committed a breach of the provision cited in the immediately preceding paragraph, as more fully described in paragraphs 1through 155 above, by (a) exposing Alexander and Plaintiff to incessant pressure and goading so as to effectuate Alexander's withdrawal from life support; and (b) permitting (i) Dr. Miller to verbally and maliciously attack Plaintiff on or about November 1, 2014, (ii) Dr. Nashawati to verbally and maliciously attack Plaintiff on or about November 21, 2014, and (iii) Dr. Boutros to verbally and maliciously attack Plaintiff on or about December 18, 2014; respectively, regarding Plaintiff's decision to not terminate Alexander's life.

163. Chapter 8, Section 1.2 of the AultCare MAP Contract further provides: "Our plan must obey laws that protect you from discrimination or unfair treatment. We do not discriminate based on a person's race, ethnicity, national origin, religion, gender, ***age***, mental or physical disability, health status,... ***evidence of insurability***, or geographic location within our service area," with the term "Our" meaning "AultCare Insurance Company" and that word "plan" defined as "PrimeTime Health Plan-Timken Company (HMO-POS)," i.e. the AultCare MAP.

164. Defendant AultCare committed a breach of the provision cited in the immediately preceding paragraph by permitting Aultman and the Defendants physicians named herein to "write off" Alexander as someone undeserving of treatment because of his advanced age and, as more specifically described in paragraph 100 above, because Alexander had exceeded the

reimbursement fees to which Aultman Hospital and such doctors were entitled to under Federal Medicare rules and regulations.

165. Chapter 8, Section 1.6 of the AultCare MAP Contract specifically provides: "According to law, no one can deny you care or discriminate against you based on whether or not you have signed an advance directive."

166. As more specifically described in paragraphs 90 to 97 above, Defendant AultCare committed a breach of the provision cited in the immediately preceding paragraph by wrongfully refusing to allow Plaintiff to submit a complaint to the AultCare MAP on behalf of his father on the grounds Alexander (while in a coma) had not executed a power of attorney ("POA") prior to falling into a coma.

167. Chapter 8, Section 1.7 of the AultCare MAP Contract specifically provides: "You have the right to get a summary of information about the appeals and complaints that other members have filed against the plan in the past."

168. As more specifically described in paragraphs 118 to 121 above, Defendant AultCare committed a breach of the provision cited in the immediately preceding paragraph by initially refusing to provide Plaintiff with such information and ultimately submitting data to him which was outdated and not in compliance with federal Medicare regulations.

169. Chapter 9, Section 7.1 of the AultCare MAP Contract specifically provides: "During your hospital stay, you will be given a written notice called 'An important message from Medicare about your rights…' Someone at the hospital (for example, a caseworker or nurse) must give it to you within two days after you are admitted." Defendant AultCare committed a breach of such provision by not timely providing either Alexander or Plaintiff with a copy of such notice.

170. Chapter 9, Section 10.1 of the AultCare MAP Contract specifically grants each enrollee therein the right to make complaints regarding, among other things, "the quality of the patient's medical care, disrespect, poor customer service, or other negative behaviors."

171. Chapter 9, Section 10.2 of the AultCare MAP Contract provides the formal name for "making a complaint" is "filing a grievance," and that "what this section calls a 'complaint' is also called a 'grievance.'"

172. Chapter 9, Section 10.3 of the AultCare MAP Contract provides: "Most complaints are answered in 30 calendar days. If we need more information and the delay is in your best interests… we can take up to 14 more calendar days to answer your complaint."

173. Chapter 9, Section 10.3 of the AultCare MAP Contract further provides: "If we do not agree with some or all of your complaint or don't take responsibility for the problem you are complaining about, we will let you know. Our response will include all our reasons for this answer. We must respond whether we agree with the complaint or not."

174. As more specifically described in paragraphs 115 to 116 above, Defendant AultCare breached the provision cited in the immediately preceding paragraph by providing Plaintiff with a one-page, unsigned letter on the 29th day following the acceptance of Plaintiff's complaint which failed to (a) identify the Medical Director who supposedly conducted such investigation; (b) describe who, if anyone, at Aultman Hospital was spoken to; (c) identify which, if any, documents were reviewed, (d) agree or disagree with the allegations contained in Plaintiff's complaint, (e) directly or indirectly address any of the allegations contained therein; (f) take or not take responsibility for the problems complained about; and (g) contain any reasons for the answers given.

175. Chapter 8, Section 1.4 of the AultCare MAP Contract specifically provides: "You have the right to look at your medical records held at the plan, and to get a copy of your records."

176. As more specifically described in paragraphs 122 to 124 above, Defendant AultCare breached the provision referenced in the immediately preceding paragraph by refusing to allow Plaintiff to obtain copies of his father's medical records until after Plaintiff had to resort to filing a declaratory judgment action against Defendant AultCare's parent corporation, Defendant AHF.

177. After a series of pleadings, motions, and various appeals were submitted, exchanged, and considered, on June 6, 2016, AHF was ultimately ordered to provide all of Alexander's medical records to Plaintiff, immediately and without cost, by Judge H.F. Inderlied, Jr. of the Stark County Court of Common Pleas.

178. As a direct and proximate result of the breaches of the AultCare MAP Contract committed by Defendant AultCare as described in this Count III, Plaintiff has suffered damages in excess of $25,000.00. Plaintiff will seek leave of court to amend his Complaint to set forth the full amount of damages he has incurred when such amount is ascertained.

179. Because AultCare is a wholly-owned, managed and controlled subsidiary of AHF, and because AultCare and AHF share substantially the same board of trustees, corporate officers, and business objectives, and because AHF's control over AultCare was exercised so as to commit a fraud, an illegal act, or a similar unlawful act against Plaintiff, AHF if is hereby jointly and severally liable for all the actions, omissions, and misdeeds of AultCare referenced in this Count III.

COUNT IV

Violations of the Federal Medicare Advantage Act and Medicare Advantage Act Regulations

180. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in paragraphs 1 to 179 above as though fully set forth herein.

181. This Count IV is asserted against Defendant AultCare, Defendant Aultman, and Defendant AHF (the "Count IV Defendants").

182. Medicare is a federal health insurance program principally available to persons aged sixty-five and older. Eligible individuals may elect to receive their "Medicare" benefits in either of two ways. First, they can select the traditional Medicare option under Part A (basic in-patient benefits) and Part B (voluntary supplemental benefits) of the Medicare Act.

183. Second, and alternatively, eligible individuals can receive Medicare benefits by enrolling in a "Medicare Advantage" plan under Part C of the Medicare Act. 42 U.S.C. § 1395w-21(a). The eligible individual selects Medicare Advantage ("MA") during an annual enrollment period. As of December 2009, nearly 11 million—one in four—Medicare beneficiaries were enrolled in approximately 4,700 plans offered by 188 MA organizations throughout the United States.

184. Each Medicare Advantage Plan ("MAP") contracts with the Secretary of Health and Human Services (the "HHS Secretary") to deliver the benefits provided under Medicare Parts A and B, in exchange for a per-capita fee from the government. 42 U.S.C. § 1395w-23. The MAP also makes available supplemental benefits. *Id.* § 1395w-21. As with traditional Medicare, MA is underwritten by the Medicare Trust Funds. 42 U.S.C. § 1395w-23(f).

185. The Medicare Act contains a "broad delegation of authority," *Shalala v. Guernsey Mem'l Hosp.*, 514 U.S. 87, 96 (1995), to the HHS Secretary to both "prescribe such regulations as may be necessary to carry out the administration of [Medicare] insurance programs," 42 U.S.C. § 1395hh(a)(1), and also to "establish by regulation . . . standards . . . for [Medicare Advantage] organizations and plans," *id.* § 1395w-26(b)(1). The HHS Secretary has in turn delegated such responsibility to the Centers for Medicare and Medicaid Services ("CMS").

186. As a participant in the AultCare MAP, Alexander was entitled, as are all persons enrolled in MAPs throughout the United States, to all the benefits, rights and privileges granted under the Medicare Act and Chapter 42 of the Code of Federal Regulations, part 422, specifically pertaining to benefits and protections afforded to those enrolled in Medicare Advantage plans (the "Federal MAP Regulations").

187. The CMS's prior and current interpretation of the Federal MAP Regulations are contained in the Medicare Managed Care Manual (the "Manual") which is prepared, compiled, updated, and made available by the U.S. Government online for the benefit of all MAP enrollees and their representatives throughout the United States.

188. The Federal MAP Regulations as referenced in the Manual are enforceable by the federal government through its various administrative agencies and departments, including, but not limited to, HHS, CMS, and the U.S. Department of Justice; ***and pursuant to private rights of action*** granted to persons aggrieved by violations thereof.

189. Chapter 13, Section 10.4.1 of the Manual specifically provides that "individuals who represent enrollees may either be appointed or authorized… to act on behalf of the enrollee in filing a grievance…" and that "a representative (surrogate) may be authorized by the court or act in accordance with State law to act on behalf of an enrollee. A surrogate could include, but is not limited to, a court appointed guardian, an individual who has Durable Power of Attorney, or a health care proxy, or a person designated under a health care consent statute."

190. As Alexander's only child and the sole member of Alexander's immediate two-person family educated in the United States and fluent in English, Plaintiff assumed the role as the "Personal Representative" for Alexander for purposes of the Federal MAP Regulations, and was at Alexander's bedside for 10 to 12 hours per day, 7 days per week, for the entire 82 days during which Alexander remained in the ICU.

191. Defendants AultCare and Aultman violated the regulation cited in paragraph 189 by (a) wrongfully refusing to accept Plaintiff's grievance on or about November 24, 2014, as described in paragraphs 90 to 116 above; and (b) wrongfully refusing to meet with Plaintiff on or about February 20, 2015, to discuss the results all of their investigation with him.

192. Chapter 4, Section 200.8 of the Manual provides "an MAO [short for a Medicare advantage organization, another acronym for a Medicare advantage plan or "MAP"] may not condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive."

193. As more specifically described in paragraphs 90 to 116 above, Defendants Aultman and AultCare violated the regulation referenced in the immediately preceding paragraph by (a) wrongfully refusing to accept Plaintiff's grievance on the basis Alexander had not previously signed a POA; and (b) refusing to meet with Plaintiff to discuss the results of their investigation on the basis Plaintiff had not presented evidence to them that he was Alexander's duly-appointed administrator or executor.

194. Chapter 13, Section 30.1 of the Manual (42 CFR 422.402) specifically provides that: "The scope of federal pre-emption his broad. MA standards set forth in 42 CFR 422 supersede any state laws, regulations, contract requirements, or other standards that would otherwise apply to MA plans…"

195. As more specifically described in paragraphs 90 to 116 above, Defendants AultCare and Aultman violated the regulation referenced in the immediately preceding paragraph by asserting in their letter to Plaintiff, dated January 9, 2015, that they were unable to discuss the results of their inquiry into Plaintiff's grievance because such investigation was protected by the Ohio peer review statute, a creation of state law.

196. Chapter 13, Section 20.3 of the Manual further provides that any MAP "must provide meaningful procedures for timely hearing and resolving both standard and expedited grievances."

197. As more specifically described in paragraphs 90 to 116 above, Defendants AultCare and Aultman violated the regulation cited in the immediately preceding paragraph by, on or about January 9, 2015, sending Plaintiff a one-page, unsigned letter in response to his five-page, single-spaced grievance, which failed to describe any of the measures taken to investigate Plaintiff's grievance, including omitting any discussion of (a) who conducted such investigation, (b) which Aultman Hospital personnel, if any, were questioned or spoken to, (c) what records, if any, were reviewed, (d) what conclusions, if any, were drawn, (e) what facts, if any, were discerned, (f) what remedial measures, if any, were instituted, or (g) even whether Plaintiff's serious allegations were found to be accurate or not; hence rendering such response neither "meaningful" nor a good-faith attempt at "resolving" such matter with Plaintiff as required by the Federal MAP Regulations.

198. Chapter 13, Sections 10.3.1 and 170 of the Manual require every MAP to compile a complete report of such plan's grievance and appeals submissions data for every six months in existence, and to promptly disclose such information to any plan member who requests it.

199. As more specifically described in paragraphs 90 to 116 above, Defendants Aultman and AultCare violated the regulation cited in the immediately preceding paragraph by (a) wrongfully refusing to provide such report to Plaintiff on the basis that he had no authority to request it; (b) submitting such report to Plaintiff almost seven (7) weeks after his second request; (c) issuing a report which contained outdated information and thus failed to include the data Plaintiff was entitled to receive; and (d) rendering a report which contained untrue statements of

material fact and omissions to state material facts necessary in order to make statements, in light of the circumstances under which they were made, not misleading.

200. As a direct and proximate result of the violations of the Federal MAP Regulations cited this Count IV, Plaintiff has suffered damages in excess of $25,000.00. Plaintiff will seek leave of court to amend his Complaint to set forth the full amount of damages he has incurred when such amount is ascertained.

201. Because AultCare and Aultman are wholly-owned, managed and controlled subsidiaries of AHF, and because AultCare, Aultman and AHF share substantially the same board of trustees, corporate officers, and business objectives, and because AHF's control over AultCare and Aultman was exercised in order to commit a fraud, an illegal act, or a similar unlawful act against Plaintiff, AHF is hereby jointly and severally liable for all the actions, omissions, and misdeeds of AultCare and Aultman referenced in this Count IV.

COUNT V

Negligent Hiring and Supervision

202. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in paragraphs 1 to 201 above as though fully set forth herein.

203. This Count V is asserted against Defendant AultCare, Defendant Aultman and Defendant AHF (the "Count V Defendants").

204. At all relevant times herein, Defendant Aultman employed and/or engaged as employees, agents or independent contractors on a short-term basis, certain *ad locum* physicians, including Ammar El-Nachef, M.D. and Nancy Juopperi, D. O., to provide neurological and other medical care and treatment to patients who had been admitted to Aultman Hospital.

205. At all relevant times herein, Doctors El-Nachef and Juopperi represented themselves to be skilled in the diagnosis and treatment of neurological injury, illness, and disease.

206. At all relevant times herein, Defendant Aultman had a duty to its patients, including Plaintiff's father, to hire, engage, and/or retain a sufficient number of competent, licensed and qualified neurologists to service the needs of admitted patients suffering from neurological injuries, diseases or disorders.

207. At all relevant times herein, Doctors El-Nachef and Juopperi did render neurological and/or medical care and treatment to Alexander during the time Alexander was a patient in the Surgical ICU ward of Aultman Hospital within the course and scope of their employment and/or agency with Aultman Hospital, and in furtherance of Aultman's business.

208. At all relevant times herein, Defendant Aultman had a duty to exercise reasonable care and diligence in the selection, screening, and monitoring of the neurologists it employed or engaged to provide neurological and/or other medical care and treatment to its patients.

209. Based on information and belief, Plaintiff hereby alleges that Defendant Aultman knew, or in the exercise of reasonable care should have known, that replacing the NeuroCare Group comprised of over 10 full-time neurologists serving Aultman Hospital's neurological needs with three part-time, out-of-state physicians would significantly diminish patient care and place the lives of neurological patients at greater risk.

210. Based on information and belief, Plaintiff hereby alleges that because of such significantly reduced number of qualified neurologists, Plaintiff's father, who had been diagnosed with an anoxic brain injury shortly after his arrival in the emergency room on October 11, 2014, was not personally examined by a licensed neurologist until 16 days after his admission to the Hospital.

211. Based upon information and belief, Plaintiff also hereby alleges that Dr. El-Nachef, who recorded certain comments in Alexander's progress notes chart, never personally examined Alexander, but simply reviewed his medical records prior to rendering a diagnosis which mirrored the suggestion of the ICU Doctors to terminate Alexander's life.

212. Based on information and belief, Plaintiff hereby alleges that both Doctors El-Nachef and Juopperi failed to order an MRI, which is standard procedure in the case of potential brain injuries, and both failed to notice or correspondingly treat the swelling that had been detected in Alexander's brain, which treatments may have significantly aided in his recovery.

213. Based on information and belief, Plaintiff hereby alleges that (a) one of Defendant Aultman Hospital's *ad locum* neurologists only reviewed Alexander's previous medical records in order to diagnose him; (b) the other only personally examined him once; (c) both departed the area shortly after rendering their "services" to go back to their out-of-state homes, (d) neither ever returned to Aultman; (e) neither made themselves available for follow-up care or consultation; and (f) neither ever conferred with Alexander's family, Defendant Dr. Stjernholm, or the ICU Doctors regarding Alexander's diagnosis or prognosis. In light thereof, Plaintiff further alleges that Aultman Hospital failed to provide the degree of professional care as is customarily exercised by reasonably prudent medical providers and institutions.

214. As a direct and proximate result of Defendant Aultman's negligent termination of the NeuroCare Group with its 10+ neurologists and subsequent negligent hiring, retention, and supervision of Doctors El-Nachef and Juopperi to replace them, Alexander suffered (a) physical pain and discomfort, (b) increased risk of harm, (c) the loss of chance of recovery or survival, and (d) untimely death on December 31, 2014.

215. As a direct and proximate result of such negligent hiring and supervision, Plaintiff has suffered damages in excess of $25,000.00. Plaintiff will seek leave of court to amend his

Complaint to set forth the full amount of damages he has incurred when such amount is ascertained.

216. Because Aultman is a wholly-owned, managed and controlled subsidiary of AHF, and because Aultman and AHF share substantially the same board of trustees, corporate officers, and business objectives, and because AHF's control over Aultman was exercised so as to commit a fraud, an illegal act, or a similar unlawful act against Plaintiff, AHF if is hereby jointly and severally liable for all the actions, omissions, and misdeeds of Aultman referenced in this Count V.

COUNT VI

Fraud

217. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in paragraphs 1 to 216 above as though fully set forth herein.

218. This Count VI is asserted against Defendant Dr. Nashawati, Defendant PPI, Defendant Aultman, Defendant AultCare and Defendant AHF (together, the "Count VI Defendants").

219. As more fully described in paragraphs 88 through 89 above, on or about November 21, 2014, Defendant Dr. Nashawati told Plaintiff that unless he removed his father from life support or transferred him to another hospital within the next 48 hours, Aultman Hospital would commence a lawsuit in the Stark County Probate Court "first thing on Monday" to have Plaintiff and his mother removed as his father's caretakers and be replaced by a guardian *ad litem*. Based on information and belief, Plaintiff hereby alleges no such a lawsuit had ever been discussed between Dr. Nashawati and the Aultman Hospital Legal Department and no such legal action had ever been contemplated, discussed or authorized by Aultman or AHF.

220. In making such threats, Dr. Nashawati made misstatements of material fact, which he knew to be false, on which Dr. Nashawati intended for Plaintiff to rely, on which Plaintiff did justifiably rely, and pursuant to which Plaintiff was harmed by his reliance thereon.

221. As more fully described in paragraphs 115 through 116 above, on or about January 9, 2015, Defendant AultCare sent Plaintiff a letter regarding the results of its "investigation" into Plaintiff's grievance. Based on information and belief, Plaintiff hereby alleges that (a) no such investigation was ever performed; (b) no records were ever reviewed; (c) no Aultman Hospital doctors, nurses or staffers were ever questioned or spoken to regarding the full nature and scope of Plaintiff's grievance; and (d) no report was ever prepared regarding same.

222. In sending such a letter to Plaintiff, Defendant AultCare made misstatements of material fact which AultCare knew to be false and misleading; upon which Defendant AultCare intended for Plaintiff to rely; on which statements Plaintiff did justifiably rely; and pursuant to which Plaintiff was harmed by his reliance thereon.

223. As a direct and proximate cause of the fraudulent statements made to Plaintiff by Dr. Nashawati and AultCare as described in this Count VI, Plaintiff has suffered damages in excess of $25,000.00. Plaintiff will seek leave of court to amend his Complaint to set forth the full amount of damages he has incurred when such amount is ascertained.

224. Based on information and belief, at all relevant times herein, Dr. Nashawati was serving (a) as an employee, agent, director, and/or officer of PPI, (b) within the scope of his employment and/or duties with PPI, (c) for the purpose of bringing about a benefit to PPI, and (d) in furtherance of PPI's business. As such, pursuant to the theory of *respondeat superior*, Defendant PPI is jointly and severally liable for the acts of Dr. Nashawati.

225. Because AultCare is a wholly-owned, managed and controlled subsidiary of AHF, and because AultCare and AHF share substantially the same board of trustees, corporate officers, and business objectives, and because AHF's control over AultCare was exercised so as to commit a fraud, an illegal act, or a similar unlawful act against Plaintiff, AHF if is hereby jointly and severally liable for all the actions, omissions, and misdeeds of AultCare referenced in this Count VI.

226. Because the actions of Defendants Dr. Nashawati and AultCare demonstrated malice or aggravated or egregious fraud and/or such Defendants knowingly authorized, participated in, or ratified actions that were malicious or egregious, Plaintiff hereby seeks punitive and exemplary damages against the Count VI Defendants in such amount as Ohio law may allow.

COUNT VII

Intentional Infliction of Emotional Distress

227. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in paragraphs 1 to 226 above as though fully set forth herein.

228. This Count VII is asserted against Defendants Dr. Nashawati, Dr. Miller, Dr. Boutros, PPI, Aultman Hospital, and AHF (together, the "Count VII Defendants").

229. As more fully described in paragraphs 88 through 89 above, Dr. Nashawati made certain false statements to Plaintiff shortly after 5:00 p.m. on November 21, 2014 in the presence of Dr. Grossman and Ms. Paumier regarding Aultman Hospital's alleged imminent plans to sue Plaintiff and his mother in order to have them removed as Alexander's caretakers and replaced with a guardian *ad litem*.

230. Based on information and belief, Plaintiff hereby alleges that (a) by making such statements, Dr. Nashawati intended to cause emotional distress to Plaintiff; (b) Dr. Nashawati's

conduct was so extreme and outrageous as to go beyond the bounds of decency and was such that the conduct can be considered utterly intolerable in a civilized society; (c) Dr. Nashawati's threats and statements were the proximate cause of Plaintiff's mental anguish; and (d) the mental anguish suffered by Plaintiff is so serious and of a nature no reasonable person could be expected to endure.

231. As more fully described in paragraphs 58 to 60 above, on November 1, 2014, Dr. Miller made certain loud, insulting, and inflammatory statements to Plaintiff, in the presence of nurses, related medical staff, and other patients and their family members, accusing Plaintiff of "torturing his own father."

232. Based on information and belief, Plaintiff hereby alleges that (a) by making such statements, Dr. Miller intended to cause emotional distress to Plaintiff; (b) Dr. Miller's conduct was so extreme and outrageous as to go beyond the bounds of decency and was such that the conduct can be considered utterly intolerable in a civilized society; (c) Dr. Miller's statements were the proximate cause of Plaintiff's mental anguish; and (d) the mental anguish suffered by Plaintiff is so serious and of a nature no reasonable person could be expected to endure.

233. As more fully described in paragraphs 102 to 107 above, on or about December 18, 2014, Dr. Boutros made certain loud, insulting and inflammatory statements to Plaintiff in the presence of Plaintiff's godfather and several other physicians, nurses, administrators and other medical staff, to the effect that Plaintiff should be ashamed to call himself Alexander's son.

234. Based on information and belief, Plaintiff hereby alleges that (a) by making such statements, Dr. Boutros intended to cause emotional distress to Plaintiff; (b) Dr. Boutros' conduct was so extreme and outrageous as to go beyond the bounds of decency and was such that the conduct can be considered utterly intolerable in a civilized society; (c) Dr. Boutros' remarks were the proximate cause of Plaintiff's mental anguish; and (d) the mental anguish

suffered by Plaintiff is so serious and of a nature no reasonable person could be expected to endure.

235. As a direct and proximate result of the insulting, fraudulent, and inflammatory statements made to Plaintiff by Dr. Miller, Dr. Nashawati, and Dr. Boutros, respectively, as described in this Count VII, Plaintiff has suffered damages in excess of $25,000.00. Plaintiff will seek leave of court to amend his Complaint to set forth the full amount of damages he has incurred when such amount is ascertained.

236. Based on information and belief, and at all relevant times herein, each of Doctors Nashawati, Miller and Boutros were serving, respectively (a) as an employee, agent, director, and/or officer of PPI, (b) within the scope of his employment and/or duties with PPI, (c) for the purpose of bringing about a benefit to PPI, and (d) in furtherance of PPI's business. Accordingly, pursuant to the theory of *respondeat superior*, Defendant PPI is jointly and severally liable for the acts of Dr. Nashawati, Dr. Miller and Dr. Boutros as described in this Count VII.

237. At all relevant times herein, Doctors Miller, Nashawati, and Boutros all represented to the public, including Plaintiff and decedent, that such doctors were affiliated with Aultman Hospital. Accordingly, Defendant Aultman Hospital is also jointly and severally liable for the conduct of such physicians under the doctrine of agency by estoppel as set forth by the Ohio Supreme Court in *Clark v. Southview Hospital & Family Health Center* (1994), 68 Ohio St. 3d 435.

238. Because Aultman is a wholly-owned, managed and controlled subsidiary of AHF, and because Aultman and AHF share substantially the same board of trustees, corporate officers, and business objectives, and because AHF's control over Aultman was exercised so as to commit a fraud, an illegal act, or a similar unlawful act against Plaintiff, AHF if is hereby jointly and

severally liable for all the actions, omissions, and misdeeds either committed by or attributable to Aultman as referenced in this Count VII.

239. Because the actions of the Count VII Defendants demonstrated malice or aggravated or egregious fraud and/or such Defendants knowingly authorized, participated in, or ratified actions that were malicious or egregious, Plaintiff hereby seeks punitive and exemplary damages against the Count VII Defendants in such amount as Ohio law may allow.

COUNT VIII

Interference With Business Relations

240. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in paragraphs 1 to 239 above as though fully set forth herein.

241. This Count VII is asserted against Defendants Dr. Bouserhal, Dr. Knoch, PPI, Aultman Hospital, and AHF (together, the "Count VII Defendants").

242. As more fully described in paragraphs 66 to 78 above, on or about November 21, 2014, Defendant Dr. Bouserhal spoke by telephone with Dr. DeGeorgia, without the knowledge, consent or permission of Plaintiff, and in direct contravention of Plaintiff's wishes, during which telephone call Dr. Bouserhal made false and misleading statements to Dr. DeGeorgia as well as disparaging remarks about Plaintiff in a concerted and willful effort to dissuade Dr. DeGeorgia from rendering a second medical opinion regarding Alexander's diagnosis and prognosis.

243. Based on information and belief, and as more fully described in paragraphs 109 to 113 above; on or about November 28, 2014, after Plaintiff had also contacted Dr. Mark Hoeprich, a neurosurgeon affiliated with Akron General Hospital, in order to obtain a second medical opinion from him regarding his father, Defendant Dr. Knoch spoke with Dr. Hoeprich by telephone.

244. Based on information and belief, Plaintiff hereby alleges that during such telephone conversation, Dr. Knoch made false and disparaging comments about Plaintiff, informed Dr. Hoeprich that Plaintiff was an attorney by profession and that he was a difficult person to deal with; and strongly suggested that Dr. Hoeprich not become involved in Alexander's case.

245. After a contract or valid business expectancy had been formed by and between (a) Plaintiff and Dr. DeGeorgia (the "DeGeorgia Contract"), and (b) Plaintiff and Dr. Hoeprich (the "Dr. Hoeprich Contract"); which Defendants Dr. Bouserhal and Dr. Knoch, respectively, had gained knowledge of in some manner; a breach of the DeGeorgia Contact was induced or caused by Dr. Bouserhal without justification; and a breach of the Dr. Hoeprich Contract was induced or caused by Dr. Knoch without justification.

246. As a direct and proximate result of Dr. Bouserhal's and Dr. Knoch's malicious interference with Plaintiff's efforts to obtain a second medical opinion from Dr. DeGeorgia and Dr. Hoeprich, respectively, as described in this Count VIII, Plaintiff has suffered damages in excess of $25,000.00. Plaintiff will seek leave of court to amend his Complaint to set forth the full amount of damages he has incurred when such amount is ascertained.

247. Based on information and belief, and at all relevant times herein, Doctors Bouserhal and Knoch were each serving, respectively (a) as an employee, agent, director, and/or officer of PPI, (b) within the scope of his employment and/or duties with PPI, (c) for the purpose of bringing about a benefit to PPI, and (d) in furtherance of PPI's business. Accordingly, pursuant to the theory of *respondeat superior*, Defendant PPI is jointly and severally liable for the acts of Dr. Bouserhal and Dr. Knoch as described in this Count VIII.

248. At all relevant times herein, Doctors Bouserhal and Knoch represented to the public, including Plaintiff and decedent, that they were affiliated with Aultman Hospital.

Accordingly, Defendant Aultman Hospital is also jointly and severally liable for the conduct of such physicians under the doctrine of agency by estoppel as set forth by the Ohio Supreme Court in *Clark v. Southview Hospital & Family Health Center* (1994), 68 Ohio St. 3d 435.

249. Because Aultman is a wholly-owned, managed and controlled subsidiary of AHF, and because Aultman and AHF share substantially the same board of trustees, corporate officers, and business objectives, and because AHF's control over Aultman was exercised so as to commit a fraud, an illegal act, or a similar unlawful act against Plaintiff, AHF if is hereby jointly and severally liable for all the actions, omissions, and misdeeds either committed by or attributable to Aultman as referenced in this Count VIII.

250. Because the actions of the Count VIII Defendants demonstrated malice or aggravated or egregious fraud and/or such Defendants knowingly authorized, participated in, or ratified actions that were malicious or egregious, Plaintiff hereby seeks punitive and exemplary damages against the Count VIII Defendants to the maximum extent permitted by Ohio law.

COUNT IX

Denial of Court and Abuse of Process

251. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in paragraphs 1 to 250 above as though fully set forth herein.

252. This Count IX is asserted against Defendants AultCare, Aultman, and AHF (together, the "Count IX Defendants").

253. As more fully described in paragraphs 82 through 115 above, on or about January 9, 2015, Plaintiff received a letter from AultCare which failed to disclose the results of its federally-mandated investigation into the allegations raised in Plaintiff's grievance(s) filed on behalf of his father on or about November 24, 2014, November 30, 2014, and December 18, 2014.

254. As more fully described in paragraphs 122 to 124 above, on or about May 27, 2015, Plaintiff, while at Aultman Hospital to follow up with representatives of the AultCare MAP and Aultman PAG about his grievance, and to initiate proceedings to retrieve his father's medical records, was informed by an Aultman representative that she and all other Aultman and AultCare employees and staff had been instructed not to speak to or assist Plaintiff with any matters related to his father.

255. As more fully described in paragraph 124 above, on or about May 29, 2015 above, Plaintiff received a letter from Defendant Mark N. Rose directing him to cease and desist from contacting anyone at Aultman regarding anything that had to do with his father.

256. As more fully described in paragraphs 115 to 118 above, Defendant AultCare and Defendant Dr. Haban intentionally failed to comply with federal law by not conducting an investigation and/or not providing Plaintiff with a copy of the investigative report supposedly completed with respect to the grievance reports Plaintiff had previously submitted to AultCare regarding his father's care and the activities of the ICU Defendant-doctors in verbally abusing Plaintiff (the "AultCare Report").

257. Even though at all relevant times described herein, Plaintiff had not filed or even threatened to file any lawsuit against Aultman, AultCare, AHF or any of their respective agents, employees, contractors, staff, directors, trustees, officers or affiliates, Plaintiff was improperly denied access to his father's medical records and the AultCare Report.

258. Even though Plaintiff was not directly aware at such time of any facts or circumstances which may have justified legal action against Aultman Hospital; based on information later developed, Plaintiff hereby alleges that Defendants Aultman and AultCare were both aware of facts discernible from a review of Alexander's medical records and the AultCare

Report that could have resulted in Plaintiff filing a medical negligence or wrongful death suit against Aultman with respect to the care and treatment of his father.

259. Based on information and belief, Plaintiff hereby alleges Aultman and AultCare employed such tactics to deny Plaintiff access to his own father's medical records and the AultCare Report with the aim and intent to thwart or prevent even the possibility Plaintiff could bring a medical negligence claim or wrongful death action against Aultman or any of its affiliated physicians.

260. Based on information and belief, Plaintiff hereby alleges that Aultman and AultCare were well aware that, in Ohio, a medical malpractice action or medical negligence claim has to be brought within one year of the occurrence of the alleged negligent act or omission; and that the legal complaint describing same needs to include an affidavit of merit pursuant to Civ. R. 10(D)(2), which requires such affidavit to include statements that the "qualified medical expert" rendering it (a) has reviewed all medical records reasonably available to him or her, (b) is familiar with the applicable standard of care, and (3) is of the opinion that defendant(s) breached the standard of care and caused the plaintiff's injury.

261. Based on information and belief, Plaintiff hereby alleges that since any affidavit of merit must be based upon a review of the patient's records, Defendant Aultman and AultCare intentionally denied Plaintiff access to such records in order to prevent Plaintiff from having same properly reviewed by a qualified medical expert, thus precluding Plaintiff from meeting the applicable statute of limitations deadline.

262. Based on information and belief, Plaintiff hereby alleges that Defendants Aultman and AultCare were concerned Plaintiff might initiate a medical malpractice claim against the Hospital; and that they consequently engaged in willful and deliberate conduct intended to thwart

or disrupt Plaintiff's ability to bring such action by denying Plaintiff access to his father's medical records and grievance investigation as documented by the AultCare Report.

263. As described in paragraphs 127 to 131 above, on or about January 31, 2019, Defendant Tim Regula, Aultman's Chief Compliance Officer, purposely and knowingly refused to provide Plaintiff with the dates on which, the circumstances regarding how, and names of the law firms to whom, his father's medical records had been released (the "HIPAA Accounting Disclosures"), in order to assist Aultman's legal counsel to perpetrate a fraud upon the Plaintiff and presiding courts by continuing to litigate the appropriate future release of such records when such counsel already had obtained copies thereof.

264. As a direct and proximate result of Defendant Aultman's and Defendant AultCare's wrongful actions to deny Plaintiff access to his father's medical records, the grievance investigation, and the HIPAA Accounting Disclosures, as described in this Count IX, Plaintiff has suffered damages in excess of $25,000.00. Plaintiff will seek leave of court to amend his Complaint to set forth the full amount of damages he has incurred when such amount is ascertained.

265. Because Aultman and AultCare are wholly-owned, managed and controlled subsidiaries of AHF, and because Aultman, AultCare and AHF share substantially the same board of trustees, corporate officers, and business objectives, and because AHF's control over Aultman and AultCare was exercised so as to commit a fraud, an illegal act, or a similar unlawful act against Plaintiff, AHF if is hereby jointly and severally liable for all the actions, omissions, and misdeeds either committed by or attributable to Aultman or AultCare as referenced in this Count IX.

266. Because the actions of the Count IX Defendants demonstrated malice or aggravated or egregious fraud and/or such Defendants knowingly authorized, participated in, or

ratified actions that were malicious or egregious, Plaintiff hereby seeks punitive and exemplary damages against the Count IX Defendants to the maximum extent permitted by Ohio law.

COUNT X

Violation of Federal Civil Rights Statutes

267. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in paragraphs 1 to 266 above as though fully set forth herein.

268. This Count X is asserted against Defendants Mark N. Rose, Gregory Haban, M.D., and Tim Regula (together, the "Count X Defendants").

269. Based on information and belief, Plaintiff hereby alleges that (a) Defendant Mark N. Rose's wrongful actions taken to purposely deprive Plaintiff of access to his own father's medical records for the purpose of thwarting or preventing him from potentially bringing a medical malpractice or wrongful death action against Aultman; (b) Defendant Dr. Gregory Haban's wrongful refusal to either initiate an investigation or render any report to Plaintiff regarding the results of his inquiry into Plaintiff's original grievance for the purpose of thwarting or preventing Plaintiff from potentially bringing a medical malpractice or wrongful death action against Aultman; and (c) Defendant Tim Regula's wrongful actions taken to purposely deprive Plaintiff of access to a full and complete record of who Alexander's medical records had been disclosed to; all constitute violations via the *Bivens* doctrine of Title 42, U.S.C. §1983 which federal statute provides:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the

District of Columbia shall be considered to be a statute of the District of Columbia."

270. Based on information and belief, Plaintiff hereby alleges that the Count X Defendants acting under color of state law deprived Plaintiff of certain rights secured by the Constitution or federal statutes. The Count X Defendants are deemed "state actors" for purposes of this litigation because federal Medicare Advantage Plans are delegated and assigned certain, duties, obligations, and responsibilities by the federal government which are typically reserved for the federal government itself, and when private individuals are endowed by the State with powers or functions governmental in nature, they become agencies or instrumentalities of the State and subject to its Constitutional limitations.

271. As a direct and proximate result of the Count X Defendants violations of Title 42, U.S.C. §1983 as described in this Count X, Plaintiff has suffered compensatory damages in excess of $25,000.00 and seeks punitive damages to the extent the law will allow. Plaintiff will seek leave of court to amend his Complaint to set forth the full amount of damages he has incurred when such amount is ascertained.

COUNT XI

Civil Conspiracy

272. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in paragraphs 1 to 271 above as though fully set forth herein.

273. This Count XI is asserted against Defendants AultCare, Aultman, and AHF (together, the "Count XI Defendants").

274. Based on information and belief, Plaintiff hereby alleges that because Aultman and AultCare are sister corporations owned, managed and operated by same parent, namely AHF; because they share common trustees, directors and officers, and because their business objectives are aligned, it is in the interests of both AHF and AultCare to prevent Aultman

Hospital from being sued and potentially incurring liability from medical malpractice and/or wrongful death claims.

275. Based on information and belief, Plaintiff hereby alleges that the Count XI Defendants with a common objective of avoiding a potential medical malpractice suit being filed against the Hospital by Plaintiff and/or one or more of his family members, had a meeting of the minds regarding such objective or course of action, and committed one or more unlawful acts in the furtherance of such objective; including, but not limited to:

(a) AultCare's actions in wrongfully (i) declining to accept Plaintiff's initial grievance on the basis that Alexander had not previously signed any type of POA; and (ii) refusing to meet with Plaintiff and/or provide him with a written report in order to disclose the results of their federally-mandated and non-privileged investigation regarding his father;

(b) Aultman Hospital's actions taken in wrongfully failing to disclose to Plaintiff his rights under the Federal Medicare Regulations;

(c) Aultman Hospital's actions in wrongfully attempting to deny Plaintiff access to his own father's medical records so as to make it impossible for him to submit an affidavit of merit which, by statute, must be based upon a review of "all medical records reasonably available;" and

(d) AultCare's actions in failing to disclose to Plaintiff the names of the law firms who, and the dates on which they, received the decedent's medical records to prevent Plaintiff from proving in a court of law that such law firms continued to vexatiously litigate to obtain such records when, in fact, they already possessed them.

276. As a direct and proximate result of Defendant Aultman's and Defendant AultCare's wrongful actions to engage in a civil conspiracy with the objective of thwarting or delaying Plaintiff from (a) filing a medical negligence claim against the Hospital, and (b) proving in subsequent litigation that Aultman's counsel was pretending not to have Alexander's medical records escribed in this Count XI, Plaintiff has suffered damages in excess of $25,000.00. Plaintiff will seek leave of court to amend his Complaint to set forth the full amount of damages he has incurred when such amount is ascertained.

COUNT XII

Violation of Section 1962(d) of The Racketeer Influenced and Corrupt Organizations Act

277. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in paragraphs 1 to 276 above as though fully set forth herein.

278. This Count XII is asserted against Defendants AutCare, Aultman, and AHF (together, the "Count XII Defendants").

279. As set forth above, the Count XII Defendants agreed and conspired to violate 18 U.S.C. § 1962(d) for the common objective of avoiding medical malpractice suits being filed against the Hospital by Plaintiff and/or other potential claimants unrelated to Plaintiff; had a meeting of the minds regarding such objective or course of action; and committed one or more unlawful acts in the furtherance of such objective; including, but not limited to:

(a) systematically, deliberately, and wrongfully failing to inform, educate, make aware, and/or disclose to those patients (or their families) admitted to the Hospital and covered under original Medicare or Medicare advantage plans, such patient's federally-guaranteed rights and privileges afforded under Federal Medicare law and the Federal MAP Regulations;

(b) systematically, deliberately, and wrongfully attempting to deny patients (and their families) their federally-protected rights to gain access to such person's medical records so as to make it difficult, if not impossible, for them to submit an affidavit of merit along with their legal malpractice complaint which, by statute, must be based upon a review of "all medical records reasonably available;" and

(c) in the case of patients covered by MAPs sponsored by AultCare, attempting to avoid such MAP's federally-mandated obligation to (i) accept and process grievances submitted by patients (and/or their families) regarding such patient's care and treatment while at Aultman, and (ii) resolve such complaints in a reasonable and meaningful manner; by systematically, deliberately and wrongfully (x) refusing to accept such grievances, (y) failing to conduct such inquiries, and/or (z) failing to disclose the results of such investigations on the basis of state peer review statutes which are superseded by the Federal MAP Regulations.

280. The Count XII Defendants have intentionally conspired and agreed to conduct and participate in the conduct of the affairs of the enterprise through a pattern of racketeering activity and knew that their predicate acts were part of a pattern of racketeering activity, and agreed to the commission of those acts to further the schemes described above. Such conduct constitutes a conspiracy to violate 18 U.S.C. Section 1962(c), in violation of 18 U.S.C. Section 1962 (d).

281. As a direct and proximate result of the Count XII Defendants' conspiracy, the overt acts taken in furtherance of the conspiracy, and violations of 18 U.S.C., Section 1962(d), Plaintiff has been injured in his business and property in an amount in excess of $25,000.00. Plaintiff will seek leave of court to amend his Complaint to set forth the full amount of damages he has incurred when such amount is ascertained.

282. In accordance with 18 U.S.C. Section 1964(c), Plaintiff further seeks such amount in damages as will reasonably compensate him for the losses or injuries caused by the conduct of the Count XII Defendants herein multiplied by three (i.e., treble damages), and such reasonable attorney's fees as necessary to pursue this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment on each of the causes of action alleged herein for general and compensatory damages, punitive damages, and treble damages in such amounts in excess of $25,000 as will be proven at trial, and further prays for an award of reasonable attorneys' fees and costs, together with such other and further relief as may be deemed just, equitable, and proper.

Respectfully submitted,

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