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Attorney for Plaintiffs

SUPERIOR COURT OF WASHINGTON FOR SPOKANE COUNTY

RAYMOND SUMERLIN JR. and MARYANN SUMERLIN, a married couple, MARTIN WHITNEY and SHERRYL WHITNEY, a married couple, VASHON COE, and RACHELLE LLOYD, and others similarly situated, Plaintiffs. v. MULTICARE HEALTH SYSTEM also d/b/a: *MULTICARE DEACONESS HOSPITAL* and *MULTICARE ROCKWOOD CLINIC NEUROSURGERY & SPINE and MULTICARE VALLEY HOSPITAL*; and JASON A. DREYER, DO, and JANE DOE DREYER, husband and wife and the marital community thereof; and, JOHN/JANE DOES 1-5 and any marital communities thereof, Defendants.	NO. 23-2-01703-32 PLAINTIFFS' CLASS ACTION COMPLAINT (THIRD AMENDED)

Plaintiffs allege:

I. INTRODUCTION

1.1. This case arises from a fraudulent financial scheme played out within the MULTICARE HEALTH SYSTEM (also d/b/a: MULTICARE DEACONESS HOSPITAL and

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MULTICARE ROCKWOOD CLINIC NEUROSURGERY & SPINE) (hereinafter "MultiCare*")*. The scheme originated with neurosurgeon, Dr. JASON A. DREYER, DO, who engaged in a pattern of performing medically unnecessary or otherwise improper spine procedures to increase MultiCare's profits and pad their own pockets with bonus money and the proceeds of false healthcare proceeds. In carrying out this scheme, this physician intentionally, negligently, recklessly, and needlessly harmed "hundreds" of patients.

1.2. This scheme was uncovered and disclosed initially within Providence Health Systems Washington (Providence) in Walla, Walla, Washington, where neurosurgeons Dr. Dreyer and Dr. Eskens engaged in the same pattern of false health claims to generate unlawful proceeds for themselves and for Providence. Ultimately a third Providence neurosurgeon colleague reported his personal concerns that DREYER and Elskens were performing these improper procedures and otherwise misleading patients and defrauding insurance providers. Providence allowed the two physicians to resign rather than report them to the Washington State Department of Health's Medical Quality Assurance Commission (MQAC) or the National Practitioner Data Bank (NPDB), as required under the law. This cover up and failure to report was intended to, and did, facilitate the rogue neurosurgeons moving on to new jobs.

1.3. Dr. JASON A. DREYER, DO "resigned" from Providence on or about November 13, 2018. Soon thereafter, Dr. DREYER landed a job with MULTICARE HEALTH SYSTEM (also d/b/a: MULTICARE DEACONESS HOSPITAL and MULTICARE ROCKWOOD CLINIC NEUROSURGERY & SPINE) (Herein after "*MULTICARE*"). According to MULTICARE staff, MULTICARE was acutely aware of Dr. DREYER's history of high-volume production and accusations of performing medically unnecessary and otherwise improper procedures. It was the

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high-volume billing MULTICARE was focused upon. High volume in the neurosurgical suite means high profits.

1.4. After he was hired by MULTICARE, Dr. DREYER continued his pattern and practice of negligent, violative, unethical, and fraudulent treatment practices, including by performing and billing for surgical procedures at the 96th through 99 percentiles nationwide. MultiCare Qui Tam Complaint, ¶¶ 150-56.[1] Dreyer's continued generation of unlawful health care claim proceeds was promoted by the fact that MultiCare, like Providence, provided uncapped incentive compensation that financially rewarded higher volume and complexity surgeries. At Providence, Dreyer had manipulated this productivity incentive system to make himself one of the highest paid medical employees in its 50+ hospital chain. MultiCare was aware of this history because, *inter alia*, when it was recruiting Dreyer and negotiating his contract, MultiCare and Dreyer negotiated for MultiCare's ongoing equipment financing with a manufacturer using Dreyer's productivity history at Providence for more favorable terms. In addition, during MultiCare's recruitment of Dr. Dreyer, it was told of Dreyer's questionable work at Providence by his fellow Providence neurologist, Dr. Yam. Dr. Yam disclosed to MultiCare Dr. Dreyer's over-operating on patients and billing misconduct, and advised MultiCare against hiring Dreyer because of this. Nonetheless, upon then hiring Dreyer, MultiCare accelerated Dreyer's eligibility for its volume incentive compensation system. Dr. Dreyer once again began performing overly complex, unindicated, medically unnecessary and otherwise improper surgeries to maximize revenue for MULTICARE and to maximize his resulting bonuses. As a result of this pattern and practice of MULTICARE, and its bonus scheme, in 2020 (the only year where he worked at MULTICARE

[1] This complaint was filed by the government on or about January 26, 2024, regarding Dr. Dreyer surgeries while employed at MultiCare. A link to the complaint is: https://www.justice.gov/usao-edwa/media/1335396/dl?inline

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for a full year), Dr. DREYER became the highest producing physician in the entire MULTICARE medical system across the Pacific Northwest. The fraud and unnecessary mutilation of patients continued until Dr. DREYER's license was restricted in March 2021 as a result of a MQAC investigation triggered by a complaint from a spine surgeon in another hospital.[2] This lawsuit is filed on behalf of the class of patients who were harmed as a result of acts or omissions of MULTICARE and Dr. JASON A. DREYER as set forth herein.

1.5. Medically unnecessary services include any surgical intervention that is either not needed, not indicated, or not in a patient's best interest when weighed against other available options, including conservative measures. While medically unnecessary services fall below the medical standard of care, they independently violate federal and Washington law when they are presented or certified for a claim for government or private insurer reimbursement. Such health care reimbursement claims require certifications of medical necessity by the provider, and these express or implied certifications of medical are material representations for purposes of making a false claim under federal and Washington law. *See, e.g.*, 42 U.S.C. § 1395y(a); 42 C.F.R. § 424.10(a); RCW 48.80.030(2) ("No person shall knowingly present to a health care payer a claim for a health care payer that false represents that the goods or services were medically necessary in accordance with professionally accepted standards."). *See also* MultiCare *qui tam* complaint, ¶¶ 45-48 (MultiCare required to certify medical necessity to present claims). In addition, such unnecessary or improper surgeries generate false records to implement and to conceal the fraudulent nature of the presented claims, the resulting reimbursement, and the investment of their

[2] In or around November 17, 2023, Dr. DREYER agreed to a lifetime relinquishment of his medical license in the state of Washington to resolve that investigation; in April 2023, Dr. DREYER agreed to forfeit over $1.1 million to the U.S. and Washington state governments to resolve allegations that he submitted false health care claims for surgeries during his time at MultiCare (May 3, 2019 through March, 2021).

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unlawful proceeds. The creation or use of false medical records constitutes a false claim under federal and state law. *See, e.g*., MultiCare Quit Tam Complaint, ¶¶ 30-31; RCW 74.66.030(1). These false records complicate further patient medical care because their false nature is undisclosed. Separately, presentation of claims to federal programs requires certifications not only of medical necessity but also that the records used to make claims are themselves truthful and not false. *Cf*. MultiCare *qui tam* complaint, ¶6 (alleging MultiCare used "accompanying false records and statements that that MultiCare knowingly made and sued, material to [Dryers' false and fraudulent claims").

1.6. Performing unnecessary surgery on a patient without that patient's knowledge that the surgery is unnecessary is a deviation from the standard of care that requires physicians to possess and apply the degree of skill, knowledge and care that a reasonably qualified physician in the same or similar community would apply. It also violates the fiduciary duty of disclosure, and the federal and state standards for making health care insurance claims.

1.7. Every surgery conducted by Dr. Dreyer (475 at MULTICARE, upon information and belief) was a part of the fraudulent scheme; and every surgery conducted resulted in damage to the person creating, at a minimum, severe emotional distress for having been a part of the concealed unlawful scheme.

1.8. At no time was any MultiCare patient adequately informed of the risks associated with surgery by Dr. Dreyer, including without limitation that no patient was informed (before or after surgery) that a surgery by him involved the high risk of having a medically unnecessary procedure performed for which the motive was financial gain and not proper medical treatment, or breached the sacred trust between physician or doctor.

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II. PARTIES

2.1 Plaintiffs, on behalf of themselves and those similarly situated members of the Class(es), reallege and incorporate by reference Section I as if fully set forth herein.

2.2 Plaintiffs RAYMOND SUMERLIN JR. and MARYANN SUMERLIN, representing themselves and the Class(es), were at all times relevant hereto a married couple, residing in Walla Walla County, Washington.

2.3 Plaintiffs MARTIN WHITNEY and SHERRYL WHITNEY, representing themselves and the Class(es), were at all times relevant hereto a married couple, residing in Stevens County, Washington.

2.4 Plaintiff VASHON COE, representing herself and the Class(es), was, at all times relevant hereto, residing in Spokane County.

2.5 Plaintiff RACHELLE LLOYD, representing herself and the Class(es), was, at all times relevant hereto, residing in Spokane County.

2.6 PLAINTIFFS, on behalf of themselves, and those similarly situated class members, bring this action against DEFENDANTS for violations of:

- RCW 9A.82.080 and 9A.82.100 (Criminal Profiteering)
- RCW 19.86 et seq. (Unfair Business Practices/Consumer Protection) ("CPA")
- RCW 7.70 et seq. ("Actions for Injuries Resulting from Health Care"), and
- Tort actions, including, without limitation, corporate negligence, breach of fiduciary duty, unjust enrichment, consent / informed consent, fraud, negligent and intentional emotional distress, and related claims, as set forth below.

2.7 At all relevant times, each PLAINTIFF, named and unnamed, was "a person who sustain[ed] injury to his or her person, business, or property by an act of criminal profiteering

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that is part of a pattern of criminal profiteering activity, or by an offense defined in" RCW 9A.82.080. *See* RCW 9A.82.100.

2.8 At all relevant times, each Plaintiff, named and unnamed, was a "person who was injured in his or her business or property" by a violation of the CPA. See RCW 19.86.090.

2.9 At all relevant times, each Plaintiff, named and unnamed, was a person to whom DEFENDANTS owed a duty, either through RCW 7.70, corporate negligence, or through common law/statute, *e.g.*, RCW 70.41.210, which requires hospitals to report to the Department of Health, any restriction or termination of the practice of a health care practitioner while the practitioner is, *inter alia*, under investigation or in return for the hospital not taking action.

2.10 Defendant MULTICARE HEALTH SYSTEM also d/b/a: MULTICARE DEACONESS HOSPITAL and MULTICARE ROCKWOOD CLINIC NEUROSURGERY & SPINE and MULTICARE VALLEY HOSPITAL (collectively *MULTICARE*) is a Washington State nonprofit corporation with its primary place of business located at 315 Martin Luther King Jr. Way, Tacoma, WA 98415, which is geographically situated in Pierce County, Washington. MULTICARE maintains medical facilities for treating patients in cities across Washington.

2.11 At all times relevant hereto, Defendant JASON A. DREYER, DO was a licensed physician, and citizen of Washington residing in, or practicing medicine in Spokane County, Washington, as an employee or ostensible agent of MULTICARE. At all times relevant hereto, JASON A. DREYER, DO held himself out to be a medical care provider whose services were offered to the public for compensation. JASON A. DREYER, D.O. is married to LAURA DREYER; all acts or omissions committed by JASON A. DREYER, DO were done both for, and on behalf of, the community composed of JASON A. DREYER, DO and his wife, LAURA DREYER.

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2.12 Upon information and belief, JOHN / JANE DOE are employees or agents of MULTICARE (and any spouses/marital communities thereof) reside and/or work in the State of Washington.

III. JURISDICTION AND VENUE

3.1 Plaintiffs, on behalf of themselves and those similarly situated members of the Class(es), reallege and incorporate by reference paragraphs 1 through 2.12 as if fully set forth herein.

3.2 The State of Washington has subject matter jurisdiction over this action pursuant to RCW 2.08.010 because most alleged acts occurred in this State. In addition, upon information and belief, most members of the proposed class are citizens of the State of Washington.

3.3 Jurisdiction and venue are proper in and for the Superior Court of Washington for Pierce County because at all times relevant hereto, Defendant MULTICARE's controlling business offices were located in Pierce County, Washington. By order dated April 14, 2023, the Pierce County Superior Court transferred this matter to Spokane County Superior Court.

IV. FACTS

4.1 Plaintiffs, on behalf of themselves and those similarly situated members of the Class(es), reallege and incorporate by reference paragraphs 1 through 3.3 as if fully set forth herein.

4.2 MULTICARE is a regional health systems provider based in Pierce County, Washington.

4.3 According to recent figures published by Dun & Bradstreet, MULTICARE sees annual revenues in the range of $3.82 billion.

4.4 MULTICARE's Mission Statement follows:

> Our Mission: Partnering for healing and a healthy future.
> Our Vision: MultiCare will be the Pacific Northwest's highest value system of

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health.

Our Values: Our values serve as our guiding principles and impact every aspect of our organization, including how we provide patient care and what we expect from each other. Every decision at MultiCare will be made through the prism of our values.

- Respect: We affirm the dignity of each person and treat each individual with care and compassion.
- Integrity: We speak and act honestly to build trust.
- Stewardship: We develop, use and preserve our resources for the benefit of our customers and community.
- Excellence: We hold ourselves accountable to excel in quality of care, personal competence and operational performance.
- Collaboration: We work together recognizing that the power of our combined efforts will exceed what we can accomplish individually.
- Kindness: We always treat everyone we come into contact with as we would want to be treated.

4.5 These representations were and are designed to entice the public to rely upon MULTICARE for medical care and integrity without reservation or concern.

4.6 Dr. JASON A. DREYER, D.O. went to work for MULTICARE as a neurosurgeon in or around May 2019.

4.7 Prior to being hired by MULTICARE, Dr. DREYER was employed by Providence and performed surgeries at Providence St. Mary Medical Center in Walla Walla Washington.

4.8 Dr. DREYER resigned from Providence on or about November 13, 2018.

4.9 While employed by Providence, Dr. DREYER was accused by a fellow neurosurgeon of conducting medically unnecessary, overly complex, and otherwise improper procedures with the intent of increasing his productivity, thereby increasing his incentive bonus.

4.10 A Providence neurosurgeon, Dr. David Yam, reported concerns about Dr. DREYER to Providence Administration on or about November 2017, and again on or about April 2018.

4.11 On January 10, 2020, a qui tam (false claims act) complaint was filed under seal by Dr. David Yam as Relator in the United States District Court for the Eastern District of

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Washington. That complaint named Providence as a defendant and alleged five causes of action, including government insurance fraud. The claims were based upon the medically unnecessary and otherwise improper procedures.

4.12 According to the fact pattern set forth in the 2020 qui tam complaint, Dr. Yam reviewed sample records of Dr. DREYER's patients. As Dr. Yam alleged in the complaint:

> Dr. Yam's review of Dr. Dreyer proved troubling. The review revealed that Providence (through Dr. Dreyer) was billing the federal government for medical services which neither Dr. Dreyer nor Providence performed. In addition, Dr. Dreyer was fabricating patient diagnoses and treatments to justify complex operations and to increase the billing and reimbursement of both himself and Providence.
>
> For example, in January 2017, Dr. Dreyer claimed to perform fusion and decompression surgeries on a patient's L1-L2 spinal segments, and prepared records which, on information and belief, Providence used to bill the federal government for those services. Providence's purposeful submission of those records to the federal government amounts to a false claim for payment because Dr. Dreyer did not perform decompression surgery on the patient's L1 or L2 spinal segments. This false-billing incident caused the federal government to pay Providence sums likely exceeding $150,000 for unnecessary and unperformed work.
>
> Similarly, in December 2017, Dr. Dreyer reported performing fusion surgery on a patient's L-3 and L-4 spinal segments, and prepared records which, on information and belief, Providence used to bill the federal government for those services. Providence's purposeful submission of those records to the federal government amounts to a false claim for payment because Dr. Dreyer did not fuse those spinal segments together-they had already been fused together through prior surgeries. This false-billing incident caused the federal government to pay Providence significant sums for work which Providence never performed.

4.13 Dr. Yam further alleged:

> Other Providence documents establish that Providence's submission of those false claims for payment were not unintentional isolated mistakes, but instead shed light on a purposeful, improper, and pervasive Providence practice. The contents of those documents, which Dr. Yam reviewed … reveal that Providence, through Dr. Dreyer, would knowingly, and routinely, falsify patient medical records to justify as medically necessary certain expensive surgical procedures for which the federal government

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> would accept financial responsibility. Doctor Yam alleges that Providence and Dr. Dreyer carried out this improper practice by subjecting patients to risky procedures that were legitimized through fraudulent diagnoses. In one instance, for example, Providence and Dr. Dreyer claimed a patient receiving federally funded medical treatment suffered from a severe deformity that required complex surgery, which Dr. Dreyer performed at great risk to the patient when, in fact, the deformity was documented not to exist in the patient. Doctor Yam believes, and therefore alleges, that Dr. Dreyer's improper practices provided a windfall to Providence at the federal government's expense which likely amounts to tens of millions of dollars and likely more.

4.14 According to Dr. Yam, following his initial report, Providence assured him it was going to take action:

> When Dr. Yam initially reported his concerns to Providence in November 2017, Providence assured him action would be taken. Providence's response was nevertheless insufficient, and, for this reason, Dr. Yam alleges that the response was designed to allow Providence to continue to benefit from the aforementioned windfall. Indeed, Dr. Dreyer continued his same pattern and practice on Providence's behalf until Dr. Yam again complained in April 2018, explicitly using the words "fraud," "malpractice," and "harm" in emails to key providence administrators in Walla Walla, in Spokane, and in Renton.

4.15 According to the 2020 qui tam complaint, Providence responded to these renewed allegations by conducting a flawed investigation which, Dr. Yam was told, revealed no evidence of false billing, yet Providence administrators also allowed for the voluntary suspension of Dr. DREYER that limited his ability to practice at SMMC.

4.16 According to the Federal Government's investigation undertaken in response to Dr. Yam's lawsuit, Providence was fully aware of, and designed, the ongoing scheme, and encouraged Dr. JASON A. DREYER, DO and Dr. Daniel Elskens, DO to conduct unsupervised spine surgeries at high-volume rates using a productivity metric scheme with no cap on compensation that provided the neurosurgeons financial incentives to perform a high volume of surgical procedures of greater complexity. In short, "Providence paid the neurosurgeons in a manner that incentivized

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them to perform too many overly complex surgeries too quickly, despite being warned that it was endangering patient lives and safety."

4.17 Also according to the Federal Government's investigation undertaken in response to Dr. Yam's lawsuit, Providence allowed Dr. Dreyer to resign with a publicly clean record and without reporting him to NPDB or MQAC.

4.18 To implement this scheme, it is alleged that PROVIDENCE used a two-tier compensation bonus structure, paying a dollar-rate-per-wRVU amount for work that brought the Doctors up to the median annual national production level of neurosurgeons, and a higher dollar-rate-per-RVU for aggregate work greater than median national production levels.

4.19 That is, Dr. Dreyer (among others) was incentivized to reach production levels higher than the median national annual performance thresholds for neurosurgeons, and this was intended to, and did, result in him billing at volumes placing him in the 99th percentile of neurology wRVUs, nationally, for years.

4.20 As a result of this pattern and practice, Dr. JASON A. DREYER, DO became one of the highest producing neurosurgeons in the entire Providence system, earning between $2.5 and $2.9 million a year for the years he was employed; at one point making him the second highest paid employee in all of Providence, with only the CEO of the entire 51-hospital Providence organization earning more.

4.21 Billing practices required to be in place, including extensive internal controls and use of a compliance officer to ensure, *inter alia*, quality, safe care for patients, would have resulted in removal of a surgeon engaging in medically unnecessary, improper surgeries like Dr. Dreyer.

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4.22 Yet Providence continued approving claims for submission to government and private health care insurers for these improper surgeries. This pattern confirms that Providence was performing below the standard of care, either inadvertently or on purpose.

4.23 The ongoing, detailed failure of PROVIDENCE / ST MARY MC to undertake a review of the source of Dr. Dreyer's national outlier wRVU numbers, his nationally high resulting compensation, his disproportionate generation of overall ST MARY MC revenue, and his insurance denials demonstrates, at a minimum, PROVIDENCE'S reckless disregard, willful ignorance, and lack of caution for patient safety and for clinical integrity.

4.24 Dr. Yam was not the only Physician to note, and report Dr. DREYER's misconduct. The scheme was also noted confidentially to MQAC by a spine surgeon in a hospital in a neighboring county. This surgeon was being referred patients who had been treated by Dr. DREYER and were having complications from the surgeries. After reviewing patient files and finding a pattern of unethical and substandard care, this surgeon confidentially reported to MQAC in March 2019 the following patterns in respect to Dr. DREYER's care of these patients:

4.24.1 A pattern of misleading patients regarding stability vs instability in spine imaging – exaggerating patient conditions and what procedures were needed to justify extensive spine surgeries and manipulate patients to encourage them to agree to unnecessary surgery(s);

4.24.2 A pattern of misleading or inaccurate reporting in the medical record of what was actually done during surgery;

4.24.3 A pattern of cut and paste templated formatting and wording in clinical notes, H&Ps, and operative notes, suggesting a cut and paste process used to cover up what is actually found on an exam, reviewed, or performed

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with a patient.

4.25 Upon reviewing patient cases and discovering these patterns of behavior, this surgeon opined, "The motivating factor here in these cases, in my opinion, is pure and simple greed." Going on to note: "The contracts of the neurosurgeons in Walla Walla are well known to be RVU based incentive contracts with high reimbursement per RVU (>80)."

4.26 Based upon this complaint, and further investigation, Dr. DREYER was charged with unprofessional conduct and his license to practice was restricted by the MQAC by Order dated April 26, 2021.

4.27 On April 12, 2022, Providence announced a settlement with the United States Department of Justice ("DOJ") for $22.7 million, to resolve allegations that Providence fraudulently billed Medicare, Medicaid, the Washington Health Care Authority, and other government health care programs for neurosurgery procedures by Dr. JASON A. DREYER, DO and Dr. Daniel Elskens that did not meet criteria for reimbursement, that were medically unnecessary, or that were otherwise improper.

4.28 In January 2024, the Justice Department filed its *qui tam* health care fraud lawsuit against MultiCare Health Systems ("MultiCare") based on Dr. Dreyer's surgeries, *see* ¶ 1.4 *supra,* alleging that MultiCare "knowingly submitted materially false claims" to federal health care programs for Dreyer surgeries, including after being informed by the government that Dreyer "endangered" his patients at Providence, and after MultiCare medical providers had raised concerns "that Dr. Dreyer was conducting medically unnecessary spinal surgeries and endangering patients*."* 2024 Complaint, ¶¶ 3, 5, 72, 132-33 (quoting government notification to MultiCare). MultiCare did this, according to the government, "in order to generate revenue for itself and for its officers and executives, by allowing and incentivizing Dr. Dreyer to perform a high volume of

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complex spinal surgeries operating on hundreds of unsuspecting patients and putting financial considerations in front of the safety and health of those patients…." *Id*. ¶4. In support, the government MultiCare complaint cited Providence's prior admissions regarding Dr. Dreyer[3] during its settlement with the DOJ back in 2022 to include claims regarding "negative outcomes," of "permanent injury," and "death" and that Dr. Dreyer:

> knowingly and inappropriately completed billing sheets and other documentation that caused Medicare and other health insurance programs to be falsely and fraudulently billed for medically unnecessary and inappropriate neurosurgical services.

2024 Complaint, ¶ 72; *see* ¶ 74 ("Providence admitted to facts including the facts alleged supra at paragraphs 71 & 72").

4.29 The concerns listed in the 2022 Providence Settlement and the 2024 DOJ *qui tam* complaint against MultiCare regarding Providence's actions were not created in a vacuum but rather in the context of contemporaneous reports from at least two Providence neurosurgeons, namely Dr. Yam and Dr. Fewel as described above.

4.30 Dr. Fewel reported there would be "hundreds of similar cases" to the "11 most egregious" examples that he had gathered.

4.31 Dr. Yam opined that "greater than 80 percent" of Dr. Dreyer's surgeries that he reviewed in November 2017 to February 2018 contained major issues, including without limitation:

4.31.1 Dr. Dreyer was exaggerating and overstating patients' medical conditions, as well as charting patient conditions that the patient did not have;

4.31.2 Dr. Dreyer was performing surgeries that were not medically necessary;

[3] Dr. Dreyer was employed by MultiCare in 2019-2021, making his background at Providence relevant.

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4.31.3 Dr. Dreyer was over-operating – that is, performing a surgery in greater complexity and charting patient conditions and symptoms that the patient did not have;

4.31.4 Dr. Dreyer caused "harm" to patients by performing overly complex or unnecessary surgeries, which harm could increase later;

4.31.5 Dr. Dreyer created potential for "harm" because of, e.g., "re-operations that will likely occur" to the same group of patients in the future;

4.31.6 The "harm" caused by Dr. Dreyer included "suicide attempts, death, permanent nerve injury, increased cancer risk, and severe chronic irreversible pain for a large number of Dr. Dreyer's patients;"

4.31.7 Dr. Dreyer performed surgeries to maximize billing;

4.31.8 Dr. Dreyer performed surgeries on certain patients who were not proper candidates for surgery, given their medical histories; and

4.31.9 Complications caused by Dr. Dreyer surgeries resulted in increased hospital stays and extended care, all of which financially benefitted Providence.

4.31.10 As a part of this investigation, Dr. Yam estimated in writing that, since 2013, Dr. Dreyer was involved in more than 2,000 instances of fraud, patient harm, and abuse at Providence, and the financial amount of fraud "may be in excess of $300 million."

4.32 Per stipulation and order dated in or around November 17, 2023, Dr. DREYER's license to practice medicine in Washington was permanently suspended in Washington, and the permanent suspension will be reported to the National Practitioner Data Base.

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FROM PROVIDENCE TO MULTICARE

4.33 JASON A. DREYER, DO resigned from PROVIDENCE on or about November 13, 2018.

4.34 Thereafter he was hired by MULTICARE, where he began seeing patients, upon information and belief, in approximately June or July 2019.

4.35 Upon information and belief, MULTICARE was aware from the outset of the employment relationship that Dr. JASON A. DREYER, DO posed a risk to MULTICARE patients' health and safety.

4.36 Upon information and belief, when it hired Dr. JASON A. DREYER, DO, MULTICARE was aware of reports that Dr. DREYER was one of the highest producing neurosurgeons in the Providence system.

4.37 Upon information and belief, when it hired Dr. JASON A. DREYER, DO, MULTICARE was aware that, while he was employed by Providence, Dr. DREYER had been accused of conducting overly complex, medically unnecessary, and otherwise improper procedures that were not indicated with the goal of increasing his RVU production and thereby increasing his bonus income.

4.38 Upon information and belief, when it hired Dr. JASON A. DREYER, DO, MULTICARE was aware that Dr. DREYER had not conducted surgeries for about a year.

4.39 Upon information and belief, when it hired Dr. JASON A. DREYER, DO, MULTICARE was aware that Dr. DREYER was accused of committing billing fraud.

4.40 Upon information and belief, when it hired Dr. DREYER, DO, MULTICARE informed medical staff working with DR. DREYER that there were existing concerns about Dr. DREYER.

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4.41 Upon information and belief, when it hired Dr. DREYER, DO, MULTICARE informed medical staff working with DR. DREYER that Dr. DREYER was a high-volume surgeon and this equated to higher profits, which meant higher bonuses for medical staff working with him.

4.42 In sum, MULTICARE hired Dr. JASON A. DREYER, DO knowing he posed a risk to patients – but accepted the risk with an eye on DREYER's ability to manage a volume surgical practice and raise MULTICARE's bottom line.

4.43 Interestingly, one of the first questions Dr. Dryer asked of MULTICARE was "*Do you happen to know what the RVU conversion rate is? In Walla Walla it was (redacted) per RVU up to (redacted), then (redacted) per RVU for the rest of the year. Is there a similar tiered system at Multicare*?" This is an indication that Dr. Dreyer had every intention of continuing his scheme of defrauding insurance companies while conning patients into surgeries they did not need so that he could maximize his wRVU bonus share.

4.44 Dr. Dreyer signed a prospective employment agreement with MULTICARE on May 3, 2019. Upon information and belief, this triggered the credentialing process.

4.45 Upon information and belief, a proper credentialing background investigation undertaken between November 2018 and June 2019 would have revealed that Dr. DREYER was under investigation by Providence when he resigned. Without limitation, the ongoing investigation would have included reports of:

4.45.1 Dr. DREYER had a history of using imaging studies and medical history to mislead patients regarding stability vs instability in their spine and the risks this posed;

4.45.2 Dr. DREYER had a history of exaggerating patient conditions and what procedures were necessary in order to justify extensive spine surgeries.

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4.45.3 Dr. DREYER had a history of ignoring conservative treatment protocols.

4.45.4 Dr. DREYER had a history of conducting medically unnecessary or otherwise improper surgeries;

4.45.5 Dr. DREYER had a fairly extensive failure rate among his patients.

4.45.6 Dr. DREYER had a history of making false / misleading reports;

4.45.7 Dr. DREYER had a history of using cut and paste templated formatting and wording in clinical notes, H&Ps, and operative notes. A pattern that suggested deceit.

4.45.8 Dr. DREYER had a history of conducting high risk procedures which were not indicated;

4.45.9 Dr. DREYER had a history of conducting multiple procedures on repeat patients;

4.45.10 Dr. DREYER had the highest Medicare and Medicaid reimbursement figures in the entire Providence system;

4.45.11 Dr. DREYER had a history of billing for surgeries he did not conduct;

4.45.12 Dr. Dreyer had a history of performing surgeries that were not consented to by patients.

4.46 Dr. Dreyer was ultimately hired by MULTICARE on contract May 3, 2019, and he began work on or about June 19, 2019, with surgeries beginning in or around July 2019. Providence's separation file for Dr. Dreyer reflects a determination that he was not eligible for rehire at Providence, but this information is not contained in MultiCare's credentialing files for Dr. Dreyer.

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4.47 Upon information and belief, after he was hired by MULTICARE, Dr. DREYER promptly began the same pattern and practice that he displayed at Providence - performing overly complex, medically unnecessary, and otherwise improper procedures, for financial gain. MultiCare accelerated Dr. Dreyer's incentive compensation eligibility by making him eligible retroactively on October 1, 2019.

4.48 Upon information and belief, between June and September 2019, there were numerous incidents and reports to MULTICARE regarding this behavior of Dr. DREYER.

4.49 Internal complaints to MULTICARE, including senior officers, were registered within weeks of Dr. Dreyer's start date, that he was repeating his PROVIDENCE behaviors and questionable ethics, conducting medically unnecessary, overly complex, and otherwise improper surgeries, all of which was jeopardizing patients' safety and health care – as an audition to be put on MULTICARE's wRVU uncapped incentive bonus program. These complaints were not heeded, and the staff making those complaints were either terminated from the neurosurgery department or voluntarily resigned rather than work with Dr. Dreyer due to his lack of ethics.

4.50 Within two months of Dr. Dreyer's start with surgeries, despite these internal complaints of his repeating his PROVIDENCE behaviors of conducting medically unnecessary, overly complex, and otherwise improper surgeries for financial gain, and Dr. DREYER having successfully auditioned for the ability to be moved to the uncapped incentive program, MULTICARE began the process of implementing Dr. Dreyer to a wRVU pay scale system, with a retroactive start date of October 1, 2019, similar to the system utilized by PROVIDENCE when Dr. Dreyer was in its employ, with both systems being uncapped. Yet again, now through MULTICARE rather than PROVIDENCE, Dr. Dreyer was officially incentivized to conduct

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medically unnecessary, overly complex, or otherwise improper surgeries for financial gain. And he did.

4.51 As with PROVIDENCE, MULTICARE was required to put appropriate billing practices in place, including extensive internal controls and use of a compliance officer to ensure, *inter alia*, quality, safe care for patients, would have resulted in removal of a surgeon engaging in medically unnecessary, improper surgeries like Dr. Dreyer.

4.52 Yet MULTICARE continued approving claims for submission to government and private health care insurers for these improper surgeries. This pattern confirms that MULITCARE was performing below the standard of care, either inadvertently or on purpose.

4.53 The ongoing, detailed failure of MULTICARE to undertake a review of the source of Dr. Dreyer's national outlier wRVU numbers and his nationally high resulting compensation despite all the warnings, described herein, of his patient care, demonstrates, at a minimum, MULTICARE's reckless disregard, willful ignorance, and lack of caution for patient safety and for clinical integrity.

4.54 As noted above, on March 4, 2019, Dr. Matthew Fewel, then a PROVIDENCE employed Neurosurgeon, filed an extensive complaint with the Washington State Department of Health Medical Quality Assurance Commission setting out a detailed summary of patient care concerns involving numerous patients treated by Dr. Dreyer. This complaint triggered a major investigation into Dr. Dreyer.

4.55 A DOH Investigator was assigned the case and notice was sent to Dr. Dreyer on May 6, 2019 that he was officially under investigation.

4.56 The Fewel Complaint alleged Dr. Dreyer did not provide adequate care to several patients, which resulted in the patients needing additional treatment; that Dr. Dreyer repeatedly

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overstated or exaggerated dynamic instability to justify fusion surgeries; that Dr. Dreyer in general overstated what was actually carried out in the procedures; that Dr. Dreyer's clinical notes, history & physicals, and operative notes are worded in a nearly identical format.

4.57 The DOH Investigator noted in his summary (in relevant part):

> On June 3, 2019, a Letter of Representation from attorney, Ryan Beaudoin, was received (p.128).
> On June 3, 2019, the signed Whistleblower waiver was received from the Complainant (p. 127).
> On July 10, 2019, I called the Complainant and we discussed his detailed complaint letter; he stated that he had no further information and believes his letter points out the issues he has seen with the Respondent's treatment of patients.
> On July 16, 2019, a Letter of Cooperation was sent to the Respondent and his attorney, Ryan Beaudoin (pp. 129-132).
> On July 17, 2019, I received an extension request and a public disclosure request from Mr. Beaudoin (pp. 133-138). A 30 day extension was granted and an extension letter was sent. The public disclosure was forwarded and a copy of the case file was forwarded to PDRC. A second extension letter was sent on July 18, clarifying that the extension and due date apply to the records request portion of the Letter of Cooperation (p. 139).
> On September 29, 2019, the 11 patient records from the Respondent were received on a flash drive (pp. I 46-148).
> On September 30,2019, Mr. Beaudoin, advised he hoped to have the Respondent's written response in by mid-November.

4.58 The above is clear evidence that Dr. Dreyer and his legal counsel, Ryan Beaudoin, were acutely aware that MQAC was investigating Dr. Dreyer for specific allegations of ethics and patient care/safety concerns prior to and during the MULTICARE credentialing process for Dr. Dreyer.

4.59 According to Dr. Dreyer, MULTICARE Neuroscience Department head Dr. John Demakas was alerted to the DOH investigation by Dr. Dreyer. Despite MultiCare agents, including Dr. Demakas who sat on the Credentialing Committee, having knowledge of the DOH investigation and prior concerns regarding Dr. Dreyer's patient care at PROVIDENCE ST MARY MC, Dr. Dreyer was granted full membership to the MULTICARE medical staff and granted

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(509) 321-0750 • FAX (509) 343-3315

hospital privileges for Deaconess Hospital on July 23, 2019 – 428 days after Dr. Dreyer was placed on administrative leave by PROVIDENCE; 253 days after Dr. Dreyer submitted his resignation to PROVIDENCE; and 79 days after MQAC put Dreyer on notice of the Fewel complaint.

4.60 Those privileges were required to be reviewed and re-issued on or before August 1, 2020.

4.61 On or about February 15, 2020, the U.S. Attorney notified MultiCare, advising them the USAO had significant concerns regarding safety of Dr. Dreyer's patients as well as regarding the potential falsification of medical documentation, and that the United States was investigating those concerns. The USAO provided MultiCare with detailed information, including allegations of fraudulent billing, falsified documentation, medically unnecessary procedures, and patient harm as to specific, anonymized patients. The USAO attached what is now known to be Dr. Yam's report, which is summarized at paragraph 4.31 above. Despite these stark and detailed government warnings about the danger to "patient safety" posed by Dr. Dreyer, his supervisor at MultiCare, Dr, Demakas, was not provided copies of this government-provided patient safety information, and was not informed about Dreyer's falsifying medical records, diagnoses, and billings. MultiCare Qui Tam Agent Ryonair Declaration, ¶ 18. And while MultiCare claims that it asked Dr. Demakas to monitor Dr. Dreyer, it withheld from him the internal MultiCare recommendation (SBAR) that was formulated as a result of this government warning. *Id.*

4.62 Upon information and belief, despite direct contact and notice from the USAO, MultiCare continued to allow Dr. Dreyer to conduct spine surgeries on patients.

4.63 Upon information and belief, reports of suspected unethical and substandard patient care and billing practices were not properly addressed, as Dr. DREYER continued to work at MULTICARE unabated, becoming the highest paid surgeon at MULTICARE during the year 2020

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(the only year where he worked 12 months for MULTICARE), just as he had been the highest paid surgeon at Providence.

4.64 MULTICARE did re-certify Dr. Dreyer's credentials and privileges in or around August 2020, that is, six months after the DOJ put MULTICARE on notice that Dr. Dreyer posed a patient safety risk; and after Dr. Dreyer was allegedly placed on a proctoring program requiring Dr. Demakas to review all of his proposed surgical cases pre-operatively and post-operatively. Without benefit of the detailed written government warnings about the danger to patient safety posed by Dr. Dreyer, including about Dreyer falsifying his own medical and billing records, Dr. Demakas initially went over Dr. Dreyer's patient files perioperatively in what can best be described as a cursory form – relying on Dr. Dreyer's own imaging reads, and diagnosis as true in fact. This soon tapered off into conducting no perioperative reviews at all. This allowed Dr. Dreyer to continue deceiving patients and defrauding insurers while conducting unnecessary / excessive surgeries.

4.65 The MULTICARE order that created the proctor requirements by Dr. Demakas also called for an outside review of a number of Dr. Dreyer's prior surgical patient files, to be conducted as soon as practical. That review was not conducted until approximately 18 months later – after Dr. Dreyer resigned. When informed of Dr. Demakas' failure to continue perioperative review of Dr. Dreyer's patient files, and MULTICARE's failure to follow through with an outside patient file review for Dr. Dreyer's surgical patients, MultiCare Rockwood Clinic Chief Medical Officer, Dr. Geoff Swanson testified: "I would have -- I think I feel accountability because that should have been reviewed. That was the process that we put in place. If people failed in their jobs to accomplish that process, there is accountability for those folks who did not do their jobs."

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MultiCare Senior Vice President & Chief Executive, Inland Northwest and Yakima Regions, Alex Jackson agreed.

4.66 While MULTICARE was pushing forward with hiring, credentialing, incentivizing and ultimately allowing Dr. Dreyer to continue destroying patient lives and defraud insurance providers for profit (both his and theirs) all while failing (intentionally or negligently) to oversee and supervise him as this occurred, the Washington DOH retained neurosurgeon Abhineet Chowdhary, MD FAANS to review the cases submitted by Dr. Fewel.

4.67 On January 1, 2021, Dr. Chowdhary reported that in seven Dreyer patient reviews, he concluded: "based on the records that are provided, departure from the standard of care for performing extensive spine surgery without clear indications."

4.68 Despite overwhelming evidence suggesting otherwise, MULTICARE has formally denied in the past that it had any knowledge of concerns about Dr. Dreyer's patient care or ethics prior to hiring him in, or about, May, 2019. The Providence relator, Dr. Yam, however, has testified that while Dreyer was being recruited by MultiCare he told a MultiCare neurosurgeon about Dr. Dreyer's misconduct at Providence and advised MultiCare not to hire Dr. Dreyer. That is, the senior Providence neurosurgeon at its Walla Walla hospital told MultiCare not to hire Dr. Dreyer because of his misconduct, and MultiCare hired him anyway. This hiring warning was not reflected in the application or credentialing files of Dr. Dreyer.

4.69 In contrast to MULTICARE's previous denials, MULTICARE employees have come forward and stated that MULTICARE was fully aware of the concerns about Dr. Dreyer's patient care or ethics – both before he was hired, shortly thereafter, and throughout his tenure. One surgical assistant walked out of a Dreyer surgery on ethical grounds, and was promptly transferred by MultiCare in response, and another quit rather than participate in Dreyer surgeries.

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4.70 Based on the above, at the time MULTICARE hired DR. JASON A. DREYER DO it knew, or in the exercise of reasonable care should have known, that Dr. DREYER posed a substantial risk to patient safety; that he was ethically challenged; and that he habitually made patient care decisions based upon personal financial recovery rather than medical necessity, including to manipulate the uncapped financial incentive program which both MULTICARE and PROVIDENCE used to increase their revenue. Despite knowing this, MULTICARE hired Dr. DREYER and allowed him to treat patients and conduct surgeries without supervision or proper oversight. As a result, patients were permanently injured, disfigured, and defrauded. DEFENDANTS are now responsible for their choices in this regard – they are jointly and severally liable for all damages suffered as a result.

4.71 MULTICARE profited by allowing, and through its failure to act, sanctioning Dr. DREYER to conduct unnecessary surgeries, operate below the standard of care, and bill for these surgeries.

4.72 During the period that MULTICARE was working through the formalities of completing the hiring and credentialing process for Dr. DREYER, Dr. Dreyer had: (1) been accused of ethics violations and substandard patient care; placed on administrative leave pending investigation by PROVIDENCE; resigned from his position with PROVIDENCE; been given notice by the Washington DOH/MQAC that he was under formal investigation by the MQAC; hired an attorney to represent him in response to these issues. Ergo, Dr. Dreyer was clearly aware of allegations raised regarding his substandard patient care and professional ethics before he began the process of applying for employment with MULTICARE, and became more aware of these allegations during the credentialing / hiring process – with FULL knowledge of the allegations presented before he was awarded privileges and credentials by MULTICARE.

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4.73 As a board-certified Doctor of Osteopathic Medicine and neurosurgeon in Washington state, the rules of professional conduct and ethics governing Dr. Dreyer required him to self-report to his employer or governing body when he was notified of these allegations – at a minimum, he would have been required to disclose the negative history and ongoing investigation(s) to any prospective employer – and patients if asked.

4.74 Dr. Dreyer's credentialing file is void of any reference to any discussion or other form of notice from Dr. Dreyer regarding any of the history of allegations of negligence, misconduct, and ongoing investigations.

4.75 Dr. Dreyer's credentialing file is void of any indication of Dr. Dreyer's PROVIDENCE-complaint history, allegations of misconduct and substandard patient care, ongoing investigations, administrative leave (suspension); or his November, 2018 resignation.

4.76 It is also disingenuous of MULTICARE to suggest it had no knowledge of the ever-expanding allegations of ethical misconduct and substandard patient care by Dr. Dreyer prior to hiring him and awarding him full medical staff credentials and privileges.

4.77 Further evidence of the underlying dishonesty of MULTICARE in respect to who knew what when is an email dated March 28, 2019, exchanged between MULTICARE agent/employee Mark Donaldson and MULTICARE neurosurgeon John Demakas (ultimately Dr. Dreyer's supervisor at MULTICARE) wherein Mr. Donaldson states he had "met with Globus Reps" who relayed that Dr. DREYER "had been exonerated of the issues in Walla Walla," and "Apparently, Dr Yem *(sic)* has left Walla Walla as well, so their program is floundering. Our opportunity for gain. I believe we should still interview him." This is direct evidence that EVERYONE knew what was going on before MULTICARE even interviewed Dr. Dreyer. This

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is bolstered by Dr. Demakas' response to this email: "I agree with still interviewing. But he'll need to explain."

4.78 Sadly, what this email makes clear is "opportunity for gain" – or *profit over patient safety/care* – was the driving force behind all of this.

4.79 MULTICARE competes directly with PROVIDENCE. Upon information and belief, the Spokane market for these two entities is extremely competitive. The comment "our opportunity for gain" by Mr. Donaldson articulates the attitude of these medical corporations as they compete for patient and insurance industry dollars.

4.80 MULTICARE had a non-delegable duty to its patients to undertake a reasonable investigation of Dr. Jason A. Dreyer, D.O. to ensure he was a competent, and honest physician. This duty is similar to the duty of employers to not hire an individual whom they knew, or should have known after reasonable investigation, to have propensities which create a foreseeable risk of injury to another. When hospitals allow dangerous physicians to practice surgery, these actions create a foreseeable risk of injury to patients. This duty is indisputably grounded in the standards of hospital accreditation formulated by the Medicare Conditions of Participation, and state licensing laws.

4.81 Based upon the facts known at this time, MULTICARE either did not conduct a reasonable and thorough investigation prior to the decision to hire/credential Dr. Dreyer; or they were aware of concerns about Dr. Dreyer's patient care and professional ethics while at PROVIDENCE, and ignored it.

4.82 If MULTICARE now admits it was aware of allegations of substandard patient care and professional ethics concerns directed at Dr. Dreyer prior to making the decision to hire him,

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SPOKANE, WA 99201
(509) 321-0750 • FAX (509) 343-3315

then MULTICARE made a conscious choice to overlook the risk of having a reckless spine surgeon on staff if that surgeon could increase the profit margin for MULTICARE.

4.83 As described herein, agents of the U.S. DOJ investigating the False Claims Act claims against PROVIDENCE notified MULTICARE of the ongoing investigation and concerns about Dr. Dreyer as early as February, 2020 – seven months before Dr. Palmer's surgery that their investigation of Dr. Dreyer at Providence had revealed "patient safety" issues, and provided details. Despite this, MULTICARE took no steps to protect patients from Dr. Dreyer – he was not placed on administrative leave; he was not placed under an effective monitoring program; and neither patients nor the public were notified of concerns about the allegations.

4.84 Despite all of the above, MULTICARE has continued to assert in the past that it had no knowledge of any issues or concerns with Dr. Dreyer until the SA became public in April, 2022.

4.85 Even though MULTICARE was aware of these medical negligence, criminal fraud, and professional ethics violations, it failed to report Dr. Dreyer to the NPDB or the Washington Department of Health, Medical Quality Assurance Commission as required. *see* 42 U.S.C. § 11133(a)(1) and_RCW 70.41.210, and its failure to report resulted in MULTICARE patients suffering permanent, debilitating harm as a result of continuing negligent, violative, unethical, and fraudulent treatment practices undertaken by Dr. Dreyer, D.O. after he was hired by MULTICARE.

4.86 On or about April 24, 2023, the United State DOJ made public that Dr. Dreyer had entered into a Settlement Agreement (Dreyer SA) with the United States Government and the State of Washington in April 2023 with regard to illegal or unethical conduct related to surgeries conducted at MULTICARE (*i.e.,* for the time period of May 3, 2019 and November 18, 2021).

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SPOKANE, WA 99201
(509) 321-0750 • FAX (509) 343-3315

The Dreyer SA requires Dr. Dreyer to pay a total of $1,174,849.00; described a payment compensation and bonus scheme at MULTICARE that was similar to the payment compensation and bonus scheme used by PROVIDENCE (including wRVUs) that had no cap; and prohibits Dr. DREYER from billing Medicare, Medicaid, and other governmental health insurance programs for nine years.

4.87 In response to the pattern of negligent, violative, unethical, and fraudulent treatment practices of Dr. JASON A. DREYER, DO under the direct authority of MULTICARE, and fraudulent concealment thereof by all DEFENDANTS, including John and Jane Does, this cause of action is brought by the class of patients whose lives have been forever changed as a result of the actions or omissions of the DEFENDANTS herein named.

4.88 MULTICARE, by and through its employees and agents, violated its duty of care owed to Plaintiffs and proposed class members, as outlined below, by *e.g.,* engaging in an unlawful health care fraud scheme and concealing its existence; by mishandling its duty to protect the public and patients from a rogue physician; by aiding and abetting Dr. Dreyer's false health care claims, by failing to follow national standards of practice governing retention and oversight of physicians; by hiring Dr. Dreyer and allowing him to treat patients unencumbered and unsupervised after discovering, and while knowing, he had a propensity to unnecessarily harm patients; by failing to obtain inform Plaintiffs and proposed class members of risks, including but not limited to the risk of medically unnecessary procedures for which motive was financial gain and not proper medical treatment; and by engaging in the pattern of criminal profiteering acts alleged herein, all resulting in the defrauding of patients and their insurance companies for personal gain of Dr. Dreyer and MULTICARE.

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4.89 Dr. Dreyer violated duties owed to Plaintiffs and proposed class members by: failing to report ongoing concerns regarding his ethics and patient care at PROVIDENCE during the hiring process with MULTICARE; fraudulently enticing Plaintiffs and proposed class members to commit to an unnecessary, overly complex, and otherwise improper surgeries; secreting the fact that he was under investigation for numerous ethics violations and patient care concerns; failing to properly educate Plaintiffs and proposed class members regarding their actual condition/diagnosis prognosis, and care options, including the option of doing nothing at all; conducting improper, unnecessary, and/or overly complex surgeries for financial gain; failing to take appropriate steps to protect Plaintiffs and proposed class members from known risks of the improper / unnecessary / overly complex surgeries, including by failing to inform Plaintiffs or any proposed class member that the risk included an overly complex or unnecessary surgery.

4.90 Dr. Demakas and other employees, including without limitation, executive level employees of MULTICARE were negligent by, without limitation: failing to follow industry standards for hiring and credentialing when they ignored obvious concerns about Dr. Dreyer's employment history with Providence, including known issues with patient selection and care concerns; failing to follow industry standards when they recredentialed Dr. Dreyer despite knowing of serious concerns regarding his propensity for conducting unnecessary/excessive surgeries; failing to follow industry standards when they recredentialed Dr. Dreyer despite his license being restricted by the State of Washington; knowing of serious concerns regarding his propensity for conducting unnecessary/excessive surgeries but failing to act upon information that Dr. Dreyer was engaging in surgical practices that included excessive and unnecessary surgeries despite multiple warnings, including internal complaints from mid-level providers, and the direct warning from the DOJ; failing to protect Plaintiffs and proposed class members from Dr. Dreyer

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after being put on notice that Dr. Dreyer was conducting unnecessary / excessive surgeries and committing billing fraud; participating in that billing fraud; failing to inform Plaintiffs and proposed class members of risks, including but not limited to the risk of medically unnecessary procedures for which motive was financial gain and not proper medical treatment; failing to report Dr. Dreyer to the NPDB and Washington State DOH (MQAC) when they placed Dr. Dreyer on a proctoring program; and again, when they placed him on administrative leave; and again when he resigned while his license was restricted.

4.91 Filed as a Class Action, this Cause captures the broad body of patients and their families impacted by the negligent, violative, unethical, and fraudulent treatment practices of Dr. JASON A. DREYER, DO under the direct authority of MULTICARE, and fraudulent concealment thereof by all DEFENDANTS, and allows for redress of those named and unnamed members of the Class.

4.92 The Class Action allegations assert claims on behalf of the MULTICARE patients who suffered damages due to DEFENDANTS' negligent, violative, unethical, and fraudulent treatment practices which DEFENDANTS concealed from, *inter alia*, Plaintiffs for their financial gain, in violation of the law.

4.93 Set forth herein below, named Plaintiffs designated in Section II as class representatives ("Class Plaintiffs") bring claims individually and on behalf of the Class.

4.94 For purposes of the causes of action, damages, and relief requested in this lawsuit, all Plaintiffs are referred to collectively, as they have all been the victims of the same course of conduct by DEFENDANTS detailed below.

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COMMON FACTS TO IMPROPER BILLING

4.95 MultiCare was well aware, or should have been well aware, of the false and fraudulent billing taking place with regard to Dr. Dreyer's surgeries under its billing system. MultiCare financially benefited from this pattern of false health care claims by presenting false claims, receiving payer reimbursement, and investing the unlawful proceeds in itself and its compensation system.

4.96 In a hospital system where the hospital employs a surgeon (in this case, Dr. Dreyer), the hospital will bill the payor for the surgeon's services (typically a private or government insurance company) and then pay the surgeon on some sort of system.

4.97 Upon information and belief, the billings at MULTICARE would have been generated via a combination of Dr. Dreyer reporting his services provided and the billing department generating codes.

4.98 This is a highly complex process without a specific checks-and-balances system in the day-to-day billing process. Individuals in the billing department who are generating the bill may not themselves have sufficient knowledge to challenge or refute the billing claimed.

4.99 To ensure that appropriate bills and codes are used, a hospital such as MULTICARE DEACONESS or MULTICARE VALLEY hospital provides oversight and audits.

4.100 For example, physicians have complexity ratings, known as "intensity" criteria, that they use within their charting both in the patient's medical records and in the back-end billing records that are sent to billing department coders for bill creation. Sometimes there is a discrepancy between what a physician writes in chart notes and the "intensity," or the complexity assigned to what he or she sends to the coder. This potential anomaly between services provided compared with the higher complexity billed requires internal audits of the complexity billed versus services

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SPOKANE, WA 99201
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rendered to make sure the medical records support the level of complexity ("intensity"). Audits should occur periodically in order to ensure that the billing sent out is correct.

4.101 This means that every hospital must have some type of internal audit program and give feedback to medical providers regarding their billing and whether their documentations support the complexity of the procedure for billing purposes.

4.102 To avoid and analyze billing errors (inadvertent or deliberate), a hospital such as MULTICARE DEACONESS or MULTICARE VALLEY hospitals will have extensive internal controls in place, including with the use of a compliance officer (sometimes called a chief operations officer) whose job includes reviewing and analyzing billing.

4.103 Failure to have such controls, or audit processes, in place will allow improper billing to flourish.

4.104 In addition, when a bonus system is in place (such as the uncapped wRVU program that was in place here), it is imperative that there be a checks and balances system in place to ensure that a medical provider (here, a spine surgeon) is not reducing the standard of care or providing less than quality care. This involves an integrated program that includes leadership. If bonus programs (like the wRVU program) is in place, there must be a strong peer review and regulatory review process in place to protect patients.

4.105 If a medical provider is generating wRVUs at a rate higher than average, there must be a billing or compliance process in place to ensure quality, safe care within the standard of care. A physician or surgeon who is the top earner in a hospital system, second only to the hospital system's CEO, will raise the kind of red-flag profile requiring an audit of records.

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4.106 It is a breach of the standard of care for a hospital such as MULTICARE DEACONESS or MULTICARE VALLEY hospitals to provide medically unnecessary and/or overly complex surgeries, and certainly it is a breach to do so for the purpose of generating funds.

4.107 It is also a breach of the standard of care for a hospital such as these not to have an audit compliance program sufficient to ensure that these kinds of anomalies are detected and stopped.

4.108 It further is a breach of the standard of care for a hospital such as these to not reimburse, in a timely fashion, any wrongfully-earned funds due to billing errors or overbilling (inadvertent or deliberate).

4.109 Adherence to proper billing and audit processes will result, on a more likely than not basis, in the removal of a medical provider who engages in medically unnecessary, overly complex, or other improper surgeries as a part of his or her ongoing practice.

4.110 Here, upon information and belief, because removal of Dr. Dreyer did not occur in a timely manner, even after reports of misconduct, either MULTICARE hospitals did not have appropriate audit and billing review processes in place (which is below the standard of care) or they failed to adhere to those processes (which is also below the standard of care), or they deliberately chose to overlook and/or encourage the improper billings for financial purposes (which is both below the standard of care and unlawful), or some combination of the above.

4.111 All of this points to a financial incentive system that was driving higher volumes of surgery at higher claim reimbursement levels that were resulting in medically unnecessary, overly complex, or otherwise improper spine surgeries. The repeated, and continuous, nature of these results should have been obvious to hospital managers. Yet MULTICARE continued approving claims for submission to government and private health care insurers. Upon information

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and belief, this pattern confirms that the hospital system was performing below the standard of care, either inadvertently or on purpose.

4.112 A material condition for reimbursement for neurosurgery services and procedures under each federal health care program is that the services be medically necessary. 42 U.S.C. § 1395y(a). As a material condition for payment of a claim, Providers must certify they have or will provide medically necessary services, that meet professional health care standards which are supported by evidence of medical necessity, including to the government's standards of necessity. 42 U.S.C. 1320c-5(a); 42 U.S.C. § 1395f(a). Making a false certification constitutes a false claim. A false claim of medical necessity is a crime under RCW 48.89.030(2), as is knowingly causing the presentation of a false claim "for a health care payment" under 48.89.030(1), and knowingly making "a false statement or false representation of a material fact to a health care payer for use in determining rights to a health care payment" under RCW 48.80.030(3).

4.113 The ongoing, detailed failure of MULTICARE to undertake a review of the source of Dr. Dreyer's national outlier RVU numbers, his nationally high resulting compensation, and his disproportionate generation of overall hospital revenue demonstrates, at a minimum, MULTICARE's reckless disregard, willful ignorance, and lack of caution for patient safety and for clinical integrity. For its part, MULTICARE has both admitted knowledge of the misconduct and denied any such knowledge. The sustained internal evidence of MULTICARE's notice of Dr. Dreyer's ongoing false claims, however, demonstrates, at a minimum, MULTICARE's willful blindness to the false claims it was incentivizing, processing, and profiting from.

4.114 Given the escalating information known by MULTICARE management with regard to Dr. Dreyer, including via concerns expressed by MULTICARE staff, the evidence is that

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MULTICARE's participation in the fraudulent scheme was also knowing and willful, and also constituted a ratification and adoption of this misconduct for MULTICARE's financial benefit.

AIDING AND ABETTING ACCOMPLICE LIABILITY

4.115 Due to their actions and inactions as described herein, Defendants are liable for the harms to plaintiffs under common law aiding and abetting and pursuant to RCW 9A.08.020.

4.116 Under Washington law, a defendant is liable "[f]or harm resulting to a third person from the tortious conduct of another" and one is subject to liability if he:

(a) does a tortious act in concert with another or pursuant to a common design by him; or

(b) knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself; or

(c) gives substantial assistance to the other in accomplishing a tortious result and his own conduct, separately considered, constitutes a breach of duty to the third person.

4.117 All three types of aiding and abetting common law liability apply here to render Defendants liable for their concerted actions, and their substantial assistance or encouragement of the tortious conduct of each other.

4.118 Liability as an accomplice apples if: "(3) With knowledge that it will promote or facilitate the commission of the crime, he or she: (a) Solicits, commands, encourages, or requests such other person to commit it; or (b) Aids or agrees to aid such other person in planning or committing it; or (c) His or her conduct is expressly declared by law to establish his or her complicity. RCW 9A.08.020(3).

4.119 Washington law also provides for liability for complicity in offenses under RCW 9A.08.020.

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4.120 Defendant's conduct, as alleged herein, renders them liable under Washington common and statutory law for the crimes and torts alleged herein as aiders and abettors, accomplices, and persons legally accountable for each other's tortious and criminal conduct.

V. INDIVIDUAL PLAINTIFFS / CLASS REPRESENTATIVES

5.1 Plaintiffs, on behalf of themselves and those similarly situated members of the Class(es), reallege and incorporate by reference paragraphs 1 through 4.120 as if fully set forth herein.

5.2 All surgery patients of Dr. DREYER at MULTICARE who were subject to the RVU compensation scheme in connection with their treatment are proposed Class Members, whether or not they also were victims of an unnecessary or otherwise improper surgery.

5.3 This means that all surgery patients of Dr. DREYER at MULTICARE are potential class members due to the fact that they either (a) had surgeries with associated RVU billing or (b) had surgeries in which Dr. Dreyer was auditioning to be a candidate for RVU bonuses.

5.4 All surgery patients of the Dr. DREYER at MULTICARE suffered violation of their person with the surgery incision as part of the fraudulent scheme. All of these surgery patients of Dr. DREYER suffered anxiety, emotional injury, economic damage, and physical damage as a result of being subjected to the fraudulent scheme of the Defendants.

5.5 Because the financial scheme was broad and repeated, done with the purpose of conducting medically unnecessary, improper surgeries for financial benefit, upon information and belief, a vast majority of proposed class members are also victims of unnecessary or overly complex surgeries, including the Plaintiffs listed below, whose experiences, and surgeries, are typical of those experiences, and surgeries, listed in this Complaint.

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5.6 Each of the below-listed Plaintiff Representatives was targeted in the fraudulent scheme and practice of profit above patient safety conspiracy that is the subject of the claims pled herein below.

5.7 As a result of being victimized by Dr. DREYER in the care of MULTICARE, as set forth and supported by the factual allegations above and claims pled herein below, the below-listed Plaintiffs suffered permanent damages, to include, without limitation: emotional distress, economic loss, disfigurement, bone structural damage, pain, suffering, and loss of enjoyment of life.

5.8 Where the below-listed Plaintiffs have spouses, and/or where a proposed class member has a spouse, their spouses have suffered damages in the form of the loss of consortium, love, compassion, and companionship as a result of their spouse being victimized by Defendants.

5.9 Where the below-listed Plaintiffs (and/or where proposed class members) are representatives of the estate and/or have a survivor action due to having lost a loved one who was a victim of the Doctors' surgeries, they also have suffered damages as a result of their loved one being victimized by Defendants.

5.10 None of the below Plaintiffs (and, upon information and belief, none of the proposed class members) gave informed consent to any surgery conducted because, at a minimum, none were informed that a surgery by Dr. Dreyer was part of a pattern of false claims by Defendants and, as a result, involved a high risk of having a medically unnecessary procedure performed upon them for which the motive was financial gain and not proper medical treatment, and other deficiencies.

5.11 Facts associated with individual class representatives as set forth below are representative of medical negligence, and deceptive patterns and practices employed by

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DEFENDANTS, to entice patients into agreeing to medically unnecessary or otherwise improper surgical procedures and related medical care.

RAYMOND SUMERLIN JR.

5.12 Plaintiff RAYMOND SUMERLIN JR, now 63 years old, is married to Plaintiff MARYANN SUMERLIN, and was a patient of Dr. DREYER, DO after he left Providence and began practicing at MULTICARE in Spokane, Washington. Mr. SUMERLIN's insurance was at all relevant times Humana.

5.13 Prior to surgical procedures performed by DR. DREYER, Mr. SUMERLIN's personal medical history included comorbidity conditions that are generally considered contraindications when contemplating spine surgery, including that he had hypertension, sleep apnea, high cholesterol, and a history of renal failure and smoking.

5.14 In or around January 2019, Mr. SUMERLIN had undergone cervical surgery with MULTICARE surgeon Brent Morgan in which Dr. Morgan removed some hardware from a previous surgery and performed a laminectomy at L5.

5.15 On January 19, 2020, Mr. SUMERLIN returned to MULTICARE due to neck and arm pain. Dr. Morgan no longer was a surgeon at MULTICARE and Mr. SUMERLIN consulted with Dr. JASON DREYER instead, with his wife present.

5.16 At the consultation, Dr. DREYER showed Mr. SUMERLIN an isolated place on his images as causing the issue. Dr. DREYER proposed surgery the next day, with no discussion on conservative care options and despite the fact that there was no emergent situation requiring immediate surgery. Based on Dr. DREYER's description, Mr. SUMERLIN understood the surgery to be a simple procedure.

5.17 After the consultation, as MARYANN SUMERLIN and the PA-C were exiting the

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room, Dr. DREYER asked to speak to Mr. SUMERLIN privately. He firmly told Mr. SUMERLIN that there were more problems with his spine and that he, Dr. DREYER, wanted to take care of them now so that Mr. SUMERLIN would not have to return. Mr. SUMERLIN believed he had to do the surgery because Dr. DREYER was so firm about it. Dr. DREYER did not inform Mr. SUMERLIN that this additional surgery would result in the fusion of six levels, C3 through T1, both anterior and posterior. Dr. DREYER did not discuss conservative care options and proposed surgery the next day despite the fact there was no emergent situation requiring immediate surgery.

5.18 Mr. SUMERLIN was handed an informed consent form to sign but no medical professional, including Dr. DREYER, reviewed the form with Mr. SUMERLIN.

5.19 Based on, and in reliance of, the advice and stated opinion of Dr. DREYER, and without understanding the extent of the surgery, Mr. SUMMERLIN agreed to the surgery.

5.20 Mr. SUMERLIN's cervical surgery took place on January 20, 2020. It was a five-hour surgery, anterior only. According to operating room notes, the O-Arm (a mechanical device used by Dr. DREYER in surgeries) malfunctioned and Dr. DREYER ultimately halted the surgery midway through, accomplishing the anterior portion of the surgery only. This long surgery put Mr. SUMERLIN at greater risk for infection.

5.21 Mr. SUMERLIN's cervical surgery continued on January 22, 2020, to accomplish the posterior portion of the surgery, again putting Mr. SUMERLIN at greater risk for infection.

5.22 Upon information and belief, these were medically unnecessary or otherwise improper procedures that was part of a pattern and practice of MULTICARE via its agent / employee JASON A. DREYER, DO, to perform such unnecessary/improper procedures for the purpose of financial gain, resulting in foreseeable, permanent damages to Mr. SUMERLIN.

5.23 Upon information and belief, these medically unnecessary or otherwise improper

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procedures more likely than not were a proximate cause of a MRSA infection subsequently suffered by Mr. SUMERLIN (as described below) and further, that the MRSA infection went undiagnosed and untreated for months due to Dr. DREYER's improper actions and inactions.

5.24 After surgery, Mr. SUMERLIN returned to Dr. DREYER to remove staples. When the staples were removed, Mr. SUMERLIN had significant seepage and drainage coming from the wound. Mr. SUMERLIN's wound did not heal and he returned to Dr. DREYER to seek treatment. Upon information and belief, Dr. DREYER failed to obtain a formal infectious disease referral which would have resulted in proper cultures being taken and Mr. SUMERLIN would have been diagnosed at an earlier stage as having the highly dangerous MRSA[4] (which he had). Instead, Dr. DREYER attempted debridements and treated what he called a "seroma" (accumulation of fluid under the skin) with antibiotics (even though seromas are generally not treated that way) and he also prescribed Keflex (which is not effective against MRSA). Dr. DREYER's treatment of Mr. SUMERLIN's infection fell below the standard of care. Mr. SUMERLIN's wound continued not to heal.

5.25 September 28, 2020, Mr. SUMERLIN was finally diagnosed with MRSA, and this was done in a clinic in Walla Walla, Washington, where he lived, upon Mr. SUMERLIN's insistence, and not by Dr. DREYER. The failure to follow proper infectious disease care protocols and obtain cultures of the wound, resulted in the late diagnosis which more likely than not resulted in a greater infection that was left to fester and grow all summer.

5.26 Upon the MRSA diagnosis, Mr. SUMERLIN returned immediately to Spokane (since he located no surgeon in Walla Walla who was willing to take on treating the MRSA

[4] MRSA stands for Methicillin-resistant staphylococcus aureus. Left untreated, MRSA infections can become severe and cause sepsis.

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infection in his spine) and Dr. DREYER again performed surgery to remove the infected issue/ MRSA, thereby removing a large chunk of Mr. SUMERLIN's neck and vertebrae in the process.

5.27 Prior to agreeing to his surgery, Mr. SUMERLIN was unaware of JASON A. DREYER, DO's history.

5.28 Mr. SUMERLIN was unaware that MULTICARE was aware that Dr. DREYER, DO had a history of conducting unnecessary surgeries, operating below the standard of care, and submitting fraudulent billing.

5.29 Mr. SUMERLIN was unaware that MULTICARE medical staff had complained about Dr. JASON A. DREYER, DO conducting unnecessary or otherwise improper surgeries, and/or committing billing fraud.

5.30 Upon information and belief, DEFENDANTS submitted billing that falsely stated the surgeries were medically necessary and otherwise proper.

5.31 As a result of the unnecessary and otherwise improper surgeries in January 2020, as well as subsequent improper care, Mr. SUMERLIN has suffered and continues to suffer general and special permanent damages, including but not limited to: a great divot permanently exists in the back of his neck where Dr. DREYER performed surgery to remove the MRSA; this divot is quite tender and hurts on a daily basis; he has an ongoing, extreme pain on the right side of his neck, from top to bottom, as if his neck is in a vice; he has difficulty with choking when he eats and has problems swallowing at times; if he coughs too much, he gets a massive amount of phlegm in his throat and his nose drains excessively; it affects his ability to drive because he cannot move his head to watch for traffic; he has depression and anxiety as a result of this, and is on anti-depressants.

5.32 Upon information and belief, on a more likely than not basis, the damage done by

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MULTICARE and JASON A. DREYER, DO to Mr. SUMERLIN is permanent and irreversible.

MARTIN WHITNEY

5.33 Plaintiff MARTIN WHITNEY, 76 years old, married to Plaintiff SHERRYL WHITNEY, was a patient of Dr. DREYER, DO after he left Providence and began practicing at MULTICARE in Spokane, Washington. Mr. WHITNEY's insurance was at all relevant times through the Veteran's Administration.

5.34 Prior to surgical procedures performed by DR. DREYER, Mr. WHITNEY's personal medical history included comorbidity conditions that are generally considered contraindications when contemplating spine surgery, including that he had hypertension, diabetes, diabetic neuropathy, hyperlipidemia, sleep apnea, oxygen dependent at night, seizures, fatigue, high cholesterol, obesity, and a history of MRSA in 2018.

5.35 In or around February 2019, Mr. WHITNEY had undergone lumbar surgery with MULTICARE surgeon Dr. Brent Morgan due to an injury to his back from moving furniture. In this surgery, Dr. Morgan performed decompressions as well as posterior fusion on levels L3 through to S1. After ongoing low back pain and consultation with the VA medical providers, the VA medical providers referred Mr. WHITNEY to Dr. JASON DREYER in or around the summer of 2019 due to a concern by those medical providers that the surgery by Dr. Morgan had to be repaired.

5.36 At the consultation, Dr. DREYER informed the WHITNEYs that he could redo the surgery done by Dr. Morgan and that he could heal Mr. WHITNEY within six months.

5.37 Based on, and in reliance of, the advice and stated opinion of Dr. DREYER, Mr. WHITNEY agreed to the first surgery by Dr. DREYER believing it was necessary due to hardware failure at L5-S1.

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5.38 On or about August 28, 2019, Dr. DREYER redid Dr. Morgan's original surgery removing all the hardware, and he then conducted a fusion that was both anterior and posterior for Levels L3 through S1, even though only L5-S1 was the concerning level. The extent of hardware removed and the further hardware placement both anterior and posterior were not necessary. This resulted in an extensive surgery that was not fully indicated.

5.39 After this August 28, 2019, surgery by Dr. DREYER, Mr. WHITNEY's condition worsened, although he was still able to do some activities occasionally, like driving a tractor, hunting, and fishing.

5.40 Dr. DREYER informed the WHITNEYs that he could fix the issues that arose with this 8/28/2019 surgery (Dr. DREYER's first surgery).

5.41 Based on, and in reliance of, the advice and stated opinion of Dr. DREYER, Mr. WHITNEY agreed to a second surgery by Dr. DREYER on February 24, 2020.

5.42 On or about February 24, 2020, Dr. DREYER again removed and replaced screws and also decompressed L2-L3 with plate placement at L2-L3, even though the imaging did not indicate a need for removal and replacement of hardware/screws, nor a need for L2-L3 decompression with plate placement.

5.43 After this second surgery by Dr. DREYER on 2/24/2020, Mr. WHITNEY was mostly bedridden, though he could still drive himself to appointments.

5.44 On or about July 20, 2020, Dr. DREYER recommended and performed his third surgery to remove the L2-L3 plate/hardware that he had placed unnecessarily during the February 24, 2020, surgery.

5.45 Based on, and in reliance of, the advice and stated opinions of Dr. DREYER, Mr. WHITNEY agreed to the July 20, 2020 surgery by Dr. DREYER, believing it was necessary.

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5.46 After the July 20, 2020 surgery by Dr. DREYER, Mr. WHITNEY was bedridden and could not even drive himself to appointments.

5.47 Upon information and belief, all these surgeries were overly extensive, medically unnecessary or otherwise improper procedures that was part of a pattern and practice of MULTICARE via its agent / employee JASON A. DREYER, DO, to perform such unnecessary / improper procedures for the purpose of financial gain, resulting in foreseeable, permanent damages to Mr. WHITNEY, with all work by Dr. DREYER other than L5-S1 revision on 8/28/2019 surgery and especially taking into account numerous multiple level fusions both anterior and posterior approaches, in a patient with Mr. WHITNEY's comorbidities.

5.48 Prior to agreeing to his surgery, MR. WHITNEY was unaware of JASON A. DREYER, DO's history.

5.49 Mr. WHITNEY was unaware that MULTICARE was aware that Dr. DREYER, DO had a history of conducting unnecessary surgeries, operating below the standard of care, and submitting fraudulent billing.

5.50 Mr. WHITNEY was unaware that MULTICARE medical staff had complained about Dr. JASON A. DREYER, DO conducting unnecessary or otherwise improper surgeries, and/or committing billing fraud.

5.51 Upon information and belief, DEFENDANTS submitted billing that falsely stated the surgeries were medically necessary and otherwise proper.

5.52 As a result of these overly complex, unnecessary and otherwise improper surgeries, Mr. WHITNEY has suffered and continues to suffer general and special permanent damages, including but not limited to: he is primarily bedridden; he no longer drives himself to 90 percent of his medical appointments; he no longer goes to the Rock & Gym Club in Chewelah, even just

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to watch his friends; he walks with a cane or uses a scooter; he no longer can go hunting or fishing or use his tractor; he no longer can engage in other hobbies such as repairing vehicles; he is on heavy pain medication daily, including buprenorphine naloxone and muscle relaxers, to try to manage the pain; his son has moved to Chewelah from Florida to help his parents because his wife, SHERRYL WHITNEY is unable to manage Mr. WHITNEY's care alone.

5.53 Upon information and belief, on a more likely than not basis, the damage done by MULTICARE and JASON A. DREYER, DO to Mr. WHITNEY is permanent and irreversible.

VASHON COE

5.54 Plaintiff VASHON COE, now 49 years old, was a patient of Dr. DREYER, DO after he left Providence and began practicing at MULTICARE in Spokane, Washington. Ms. Coe's insurance was Medicaid. She was injured in her home when turning awkwardly which resulted in a sharp pain in her neck, her shoulder was in great pain, and her right hand had tingling.

5.55 Prior to surgical procedures performed by DR. DREYER, Ms. COE's personal medical history included comorbidity conditions that are generally considered contraindications when contemplating spine surgery, including that she had asthma, atrial fibrillation, bursitis, gout, heart disease, hypothyroidism, sleep apnea, and diabetes type 2.

5.56 After her injury at her home, she participated in physical therapy and ultimately was scheduled for an MRI to be taken on September 17, 2019.

5.57 After obtaining results from the MRI, Ms. COE's primary care physician contacted Dr. JASON A. DREYER, DO, who contacted Ms. COE directly by phone.

5.58 Dr. DREYER told Ms. COE that her primary care physician referred him to her; that he had reviewed her MRI; that her injury was severe, and that she needed surgery immediately or she risked being paralyzed, with no discussion of conservative care options; and that she would

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have to meet him at the emergency room to have the surgery because her insurance would not pay for the surgery otherwise.

5.59 Based on, and in reliance of, the advice and stated opinion of Dr. DREYER, Ms. COE agreed to meet Dr. DREYER, and did meet him on September 19, 2019, at the emergency room at Deaconess Hospital and had Dr. DREYER perform cervical surgery upon her.

5.60 Ms. COE's cervical surgery took place on September 19, 2019. Medical records state that the surgery was performed on levels C4-C6.

5.61 Upon information and belief, this surgery was overly extensive, medically unnecessary, or otherwise improper and was part of a pattern and practice of MULTICARE and its agent / employee JASON A. DREYER, DO, to perform such unnecessary / improper procedures for the purpose of financial gain, resulting in foreseeable, permanent damages to Ms. COE.

5.62 Prior to her surgery, Ms. COE was unaware of JASON A. DREYER's history.

5.63 Ms. COE was unaware that MULTICARE was aware that Dr. DREYER, DO had a history of conducting unnecessary surgeries, operating below the standard of care, and submitting fraudulent billing.

5.64 Ms. COE was unaware that MULTICARE medical staff complained about Dr. JASON A. DREYER, DO conducting unnecessary or otherwise improper surgeries and/or committing billing fraud.

5.65 Upon information and belief, DEFENDANTS submitted billing that falsely stated the surgery was medically necessary and otherwise proper.

5.66 As a result of the unnecessary and otherwise improper surgery in September 2019, Ms. COE has suffered and continues to suffer general and special permanent damages, including but not limited to: ongoing, extreme pain in her neck; difficulty swallowing; chronic inflammation;

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SPOKANE, WA 99201
(509) 321-0750 • FAX (509) 343-3315

chronic muscle spasms; numbness in her hands when lying on her back at night; radiating pain down her spine between her shoulder blades; nerve pain; dizziness/vertigo when turning her neck; daily headaches; jaw pain; significant difficulty dressing and taking care of hygiene and other adult daily living tasks; inability to work, including at her occupation as a licensed therapist; and suffers from depression.

5.67 Upon information and belief, on a more likely than not basis, the damage done by MULTICARE and JASON A. DREYER, DO to Ms. COE is permanent and irreversible.

RACHELLE LLOYD

5.68 RACHELLE LLOYD, now 53 years old, was a patient of Dr. DREYER DO after he left Providence and began practicing at MULTICARE in Spokane, Washington. Ms. LLOYD's insurance was Molina. Ms. LLOYD, a former hairdresser, was having problems with stiffness and electric shock down her legs and was having difficulty walking and with incontinence.

5.69 Prior to surgical procedures performed by Dr. DREYER, Ms. LLOYD's personal medical history included comorbidity conditions that are generally considered contraindications when contemplating spine surgery, including that she had type 2 diabetes (insulin dependent), congestive heart failure, dystonia, gastroesophageal reflux disease (GERD), hypertension, PTSD, hyperlipidemia, narcolepsy, sleep apnea, and was overweight and a smoker with a history of anxiety and depression.

5.70 To address her symptoms, she participated in water therapy and stretching at St. Luke's Rehabilitation Center in Spokane, Washington. She was referred to the MultiCare Rockwood Clinic (Deaconess) in August 2019 with Dr. DREYER conducting the consultation.

5.71 In consulting with Ms. LLOYD, Dr. DREYER told Ms. LLOYD that she needed cervical surgery first because the surgery was related to her leg, and that he would follow with

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SPOKANE, WA 99201
(509) 321-0750 • FAX (509) 343-3315

lumbar surgery. Dr. DREYER told Ms. LLOYD that he didn't understand how she was able to walk, given her spine issues.

5.72 Based on, and in reliance of, the advice and stated opinion of Dr. DREYER, Ms. LLOYD agreed to the cervical surgery on October 23, 2019 and the lumbar surgery on October 5, 2020, believing they were necessary.

5.73 Ms. LLOYD's cervical surgery took place on October 23, 2019. Medical records state that the surgery was performed on levels C2 through T2.

5.74 Ms. LLOYD's lumbar surgery took place on October 5, 2020. Medical records state that the surgery was performed on levels L2 through S1.

5.75 Upon information and belief, these surgeries were overly extensive, medically unnecessary, or otherwise improper and was part of a pattern and practice of MULTICARE and its agent / employee JASON A. DREYER DO to perform such unnecessary / improper procedures for the purpose of financial gain, resulting in foreseeable, permanent damages to Ms. LLOYD.

5.76 Prior to her surgeries, Ms. LLOYD was unaware of JASON DREYER's history.

5.77 Ms. LLOYD was unaware that MULTICARE was aware that Dr. DREYER had a history of conducting unnecessary surgeries, operating below the standard of care, and submitting fraudulent billing.

5.78 Ms. LLOYD was unaware that MULTICARE medical staff complained about Dr. JASON DREYER conducting unnecessary or otherwise improper surgeries and/or committing billing fraud.

5.79 Upon information and belief, DEFENDANTS submitted billing that falsely stated the surgeries were medically necessary and otherwise proper.

5.80 As a result of the unnecessary and otherwise improper surgeries in October 2019

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SPOKANE, WA 99201
(509) 321-0750 • FAX (509) 343-3315

and October 2020, Ms. LLOYD has suffered and continues to suffer general and special permanent damages, including but not limited to: paresthesia and peripheral neuropathy, requiring her to walk with a cane; numbness across her chest and collarbone, particularly on the surgical scar; incontinence and bowel problems; significant and chronic difficulty in turning her neck, with her neck often getting stuck in one position with fluid crunching sounds, requiring her to turn her whole body when turning and to sleep with a heating pad, and impacting her ability to sleep through the night; chronic migraines; inability to work, including at her previous occupations as a hairdresser and telemarketer; inability to do anything athletic, like boating, swimming, playing softball, or snow skiing, her previous activities; inability to drive; difficulty with showering, hair care or other daily activities; and she suffers from depression.

5.81 Upon information and belief, on a more likely than not basis, the damage done by MULTICARE and JASON A. DREYER to Ms. LLOYD is permanent and irreversible.

VI. MAINTENANCE OF THE CLASS

6.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1 through 5.81 as if fully set forth herein.

6.2 **Patient Class Definition**: Plaintiffs bring this Class action pursuant to Washington CR 23(b)(2), (b)(3), and (c)(4) on behalf of the Class defined as follows: *All patients treated surgically by* Dr. JASON A. DREYER, DO while Dr. DREYER was an employee or agent of MULTICARE *who, by definition, suffered special and/or general injury or damages from medical procedures, including those that were overly complex, medically unnecessary, negligent, or otherwise improper.*

6.3 Plaintiffs reserve the right to modify or amend the definitions of the proposed Class and/or to add Subclasses, if necessary, before the Court determines whether certification is

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appropriate and as the Court may otherwise allow, including a subclass of vulnerable adults and/or for estates and/or survival actions (claims already preserved herein).

6.4 **Numerosity**: MultiCare has withheld the identities of Dreyer's patient under a claim of HIPAA privacy. However, upon information and belief, Dr. DREYER conducted spine surgeries on at least 475 individuals at MultiCare; as such, upon information and belief, the Class is so numerous that joinder of all members is impracticable.

6.5 The cost of each surgery is unknown but, upon information and belief, it can be estimated on average to be at least over $100,000.00 per patient. The subject loss here also can be measured by the payment of Dr. DREYER of over $1.1 million in his April 2023 settlement with the DOJ, confirming that the Class is so numerous that joinder of all members is impracticable.

6.6 Upon information and belief, a substantial majority of the patient class is comprised of residents of the state of Washington, that is, more than two-thirds of the patients; and their principal injuries resulted from conduct of the DEFENDANTS which conduct, and resulting injuries occurred within the state of Washington; claims are based upon state law, and defendants were at all times relevant, citizens of Washington state.

6.7 **Commonality**: This action involves common questions of law and fact which predominate over any questions affecting individual Class members, and which justify damages relief under Rule 23(b)(3), equitable relief under Rule 23(b)(2), and the resolution of particular issues under Rule 23(c)(4), including but not limited to:

6.7.1 Whether DEFENDANTS have engaged in criminal profiteering activity via multiple predicate acts of criminal profiteering under 9A.82.010(4), for financial gain actionable under RCW 9A.82.100 (Criminal Profiteering) or RCW 9A.82.080 including but not limited to:

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6.7.1.1 false health care claims as defined in RCW 48.80.030 (RCW 9A.82.010(hh));

6.7.1.2 money laundering offenses as defined in RCW 9A.83.020 (RCW 9A.82.010(t)) by conducting or attempting to conduct a financial transaction involving the proceeds of specified unlawful activity under RCW 9A.83.010(7), and knowing the property are the proceeds of specified unlawful activity or that the transaction is designed in whole or in part to conceal the nature, location, source, ownership, or control of the proceeds, and acted recklessly as to whether the property is the proceeds of specified unlawful activity.

6.7.1.3 The specified unlawful activity for which Defendants engaged in the laundering of proceeds includes (as further alleged herein): i. false health care claims (RCW 48.80.030)); ii. false health care claims as defined in 18 U.S.C. § 1347, and false claims as defined in 18 U.S.C. § 287, including liability under 18 U.S.C. § 2; and RCW 9A.08.020; iii. further federal money laundering offenses under 18 U.S.C. §§ 1956 & 1957 by transferring proceeds for compensation and operational uses; and iv. theft by deception as defined/applied in RCW 9A.56 (RCW 9A.82.010(e)) and RCW 9A.08.020, including the intentional use of a common scheme or plan of deception to deprive plaintiffs of their property or services, including earned entitlement to health care benefits and to payments of $250 or more.

6.7.2 Whether DEFENDANTS' profiteering activity via these multiple predicate

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(509) 321-0750 • FAX (509) 343-3315

acts demonstrates a "pattern" of profiteering activity, as defined in RCW 9A.82.010(12), in connection with the violations of RCW 9A.82.100 and RCW 9A.08.020, undertaken for financial gain, including:

6.7.2.1 Actions taken having the same/similar intent – the intent was to achieve and/or maintain financial gain, and the pattern of actions taken include, upon information and belief, e.g.:

6.7.2.1.1 submitting hundreds of false health care claims;

6.7.2.1.2 accepting hundreds of payments for those claims;

6.7.2.1.3 using or investing these unlawful proceeds, directly or indirectly, for the acquisition of rights or interests in real estate or the establishment or operation of an enterprise, violation of 9A.82.080;

6.7.2.1.4 concealing Defendants' actions taken to obtain and use these funds, including failing to disclose that the hundreds of medical necessity certifications provided by Defendants were false, either to patients or payers;

6.7.2.1.5 failing to repay any of the funds received; and

6.7.2.1.6 failing to report Dr. Dreyer to NPDB or WDOH as required by law (which would have resulted in disgorgement of funds received);

6.7.2.2 Actions taken have the same or similar outcome / result; here the result was to keep the funds obtained and conceal the bad acts of Dr. Dreyer (by, inter alia, failing to return funds or report him to NPDB

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or WDOH), which resulted in continued and perpetual harm to unsuspecting past and future patients;

6.7.2.3 Same or similar accomplices – here, the DEFENDANTS;

6.7.2.4 Same or similar principals – here, the DEFENDANTS;

6.7.2.5 Same or similar victims – here, unsuspecting and trusting individuals in need of specialized and honest health care treatment;

6.7.2.6 Same or similar methods of commission – here, the same pattern and practice repeated itself for the entire relevant time period(s) consistently and throughout;

6.7.2.7 Otherwise interrelated by distinguishing characteristics, including nexus to the same enterprise – here, (1) one distinguishing characteristic includes a requirement in the medical profession, when seeking insurance coverage, to verify under penalties (including license revocation penalties) that the proposed medical procedures are medically necessary or are otherwise proper; and (2) The enterprises to which the "nexus" exists, see RCW 9A.82.010(8), are (i) governmental health care payee entities like, *inter alia*, Medicare/Medicaid (which require the above-described assurances), and/or the health care insurance industry, including private insurance companies (which also require such assurances) with respect to the violations of RCW 9A.82.100 or (ii) MULTICARE with respect to the violations of RCW 9A.82.080.

6.7.3 Whether MULTICARE is liable for Dr. DREYER's false claims because it

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was committed by the conduct of another person for which MULTICARE was legally accountable, including as an accomplice. *See* RCW 9A.08.020.

6.7.4 Whether MULTICARE provided substantial assistance to Dr. DREYER in presenting his false claims to health insurers, or otherwise is liable for conduct as an accomplice or aider and abetter.

6.7.5 Whether Defendants' scheme to commit and to conceal the presentation of false health care claims to health benefit program insurers constitutes health care fraud, in violation of RCW 48.80.030, 18 U.S.C. § 1347 or 18 U.S.C. § 287, including as proscribed by 18 U.S.C. § 2 or RCW 9A.08.020.

6.7.6 Whether DEFENDANTS' failure (MULTICARE's failure in particular) to report the malfeasance of Dr. DREYER pursuant to RCW 70.41.210 was a violation of a statutory or common law duty to Plaintiffs resulting in general/special damages;

6.7.7 Whether MULTICARE owed a common law or statutory duty of care to all patients to report the actions of Dr. DREYER pursuant to RCW 70.41.210;

6.7.8 Whether MULTICARE breached its duty to comply with the standard of care of a hospital or the applicable government standard of care for claims;

6.7.9 Whether DEFENDANTS exercised the requisite degree of skill, care and learning expected of a reasonably prudent hospital/healthcare provider;

6.7.10 Whether DEFENDANTS fell below their professional standard of care;

6.7.11 Whether DEFENDANTS failed to obtain consent/informed consent that surgery would not occur in a safe environment and that it included medically unnecessary or otherwise improper procedures;

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6.7.12 Whether Defendant violated the Consumer Protection Act (RCW 19.86);

6.7.13 Whether Defendant violated the Criminal Profiteering Act (RCW 9A.82.100 and/or 9A.82.080 in connection with RCW 9A.08.020);

6.7.14 Whether Defendants concealed evidence forming the basis of this action from its patients and from the public during the relevant time period;

6.7.15 Whether nonmonetary relief is required to compensate Class members, including disgorgement, forfeiture, restitution, divestment, injunctions, and civil penalties that are appropriate to be brought or maintained as a class action under Rule 23(b)(2),

6.7.16 The nature and extent of Class-wide injury and the measure of compensation for such injury.

6.7.17 The aforementioned common issues present particular questions appropriate to be brought or maintained as a class action under Rule 23(c)(4). In particular, the following issues are suitable for class management and thereby materially advance the resolution of this case, including:

Whether MULTICARE performed, or failed to perform, on an ongoing basis, proper background, hiring, credentialing, privileging, supervision and performance review of Dr. DREYER.

Whether MULTICARE failed to take any timely action to supervise, prevent, or discipline Dr. DREYER's misconduct, including by continuing to file false health care claims to promote and to conceal such misconduct, and by failing to create or to maintain any system to detect and prevent such false claims.

Whether Plaintiffs' and Class Members' increased risk of exposure to a pattern of associated false claim billing, was caused either by MULTICARE's negligence or by MULTICARE's deliberate action.

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Whether MULTICARE is liable for Dr. DREYER's false claims because it was committed by the conduct of another person for which MULTICARE was legally accountable, including as an accomplice. See RCW 9A.08.020.

Whether MULTICARE provided substantial assistance to Dr. DREYER in presenting his false claims to health insurers.

Whether MULTICARE used appropriate standard of care practices to hire DR. DREYER and his affiliated supervisors and subordinates to monitor and supervise Dr. DREYER's activity, including his use, dependence upon, and misuse of MULTICARE's wRVU incentive bonuses.

Whether MULTICARE timely detected DREYER's misconduct in conducting high numbers of medically unnecessary or otherwise improper surgeries and the danger that they posed to patients at the hospital, and/or whether MULTICARE knew, or should have known, of that danger but continued to incentivize the behavior despite professionally known and obvious risks to patients.

Whether MULTICARE intended the unlawful consequences of Dr. DREYER's actions, and implemented them for its financial gain.

Whether DEFENDANTS violated their fiduciary dutes and responsibilities.

Whether all DEFENDANTS engaged in a pattern of criminal profiteering activity through false claims, money laundering and theft by deception.

Whether the pattern of false claims was caused by MULTICARE's RVU compensation plan designed, supervised, implemented by MULTICARE for its profit, and for purposes of incentivizing the commission of false claims by Dr. DREYER.

Whether DEFENDANTS knew that the proceeds of the submitted false claims were unlawful proceeds and engaged in financial transactions with them.

Whether the criminal profiteering unlawful proceeds which were invested by the Defendants in the operation of the Enterprise(s) or were used to conceal and to promote their pattern of false claims profiteering activity.

Whether, under the Consumer Protection Act, an injunction against MultiCare's incentive compensation system is justified to protect the public interest.

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SPOKANE, WA 99201
(509) 321-0750 • FAX (509) 343-3315

6.8 **Typicality:** Class Plaintiffs' claims are typical of the claims of other members of the Class and Class Plaintiffs are not subject to any atypical claims or defenses. Their "typicality" includes (a) they were surgical patients of Dr. DREYER, qualifying them as a potential class member based on that status alone; (b) the manner in which their surgeries were conducted, which follow the pattern listed in Recital D of the Settlement Agreement (a pattern which is supported by the evidence to include "hundreds" of patients); (c) Defendants submitted false billings in connection with their surgeries; (d) they were not informed their surgeries would be conducted by surgeons performing high numbers of medically unnecessary or otherwise improper surgeries, resulting in a lack of informed consent; (e) each of their surgeries was done with intent to commit a felony (*e.g.*, health care fraud, theft by deception, and/or money laundering), either by, *e.g.,* submission of false billing to insurance companies and/or to cover up the financial scheme to submit false billings; (f) each relied to their detriment on MULTICARE's self-promoted reputation for providing proper and safe health care to patients; (g) Defendants owed a fiduciary duty, and other duties, to them each; and (h) they each suffered typical damages, *e.g.*, that of emotional, economic, and physical damage.

6.9 In sum, the named Plaintiffs, and the proposed class members, have the same or similar injuries based upon conduct that is not unique to the named Plaintiffs, and the proposed class members have been injured by the same course conduct as the named Plaintiffs as articulated herein. The purpose of the wRVU scheme was to treat each class member the same under the wRVU scheme so as to maximize the financial benefits falsely accruing to the Defendants to the prejudice and harm of the class members.

6.10 Upon information and belief, DEFENDANTS did not take reasonable steps to ensure that medically unnecessary or otherwise improper procedures did not occur;

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SPOKANE, WA 99201
(509) 321-0750 • FAX (509) 343-3315

DEFENDANTS sought/received payments for medically unnecessary and other improper procedures; to further this fraudulent scheme, DEFENDANTS concealed their wrongdoing by e.g., (a) failing to reimburse the enterprise health care industry and/or Medicare/Medicaid for payments for procedures that did not meet criteria for reimbursement, were medically unnecessary, or were otherwise improper; and (b) failing to report Dr. JASON A. DREYER, DO to the NPBD or the WDOH (which would have resulted in disgorgement), to any health care organization or to his patients; DEFENDANTS failed to advise Plaintiffs of medically unnecessary surgeries and otherwise improper procedures to which they were subjected; DEFENDANTS took repeated, similar actions as outlined herein-above. Plaintiffs underwent similar medically unnecessary or otherwise improper procedures due to the schemes of DEFENDANTS that went unabated due to DEFENDANTS' actions, negligence and concealment. Plaintiffs' claims, like those of the Class, arise out of the same common course of conduct by Defendants directed toward Plaintiffs and the Class and are based on the same legal and remedial theories.

6.11 **Adequacy:** Class-Plaintiffs will fairly and adequately represent the Class, as they are committed to prosecuting this action, have no conflicts of interest, and have retained competent counsel who are experienced civil trial lawyers with significant experience in complex litigation and trial, including medical negligence, general tort, and class litigation. Plaintiffs have no conflicts because none have any financial or other relationship with Defendants that would give them an interest in Defendants prevailing in this action. Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of the Class(es) and have the financial resources to do so. Plaintiffs' counsel REED has experience as lead counsel in class actions and has experience prosecuting and defending cases under the Racketeer Influenced and Corrupt Organization Act. Neither Plaintiffs nor their counsel have interests that are contrary to or that conflict with those of

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SPOKANE, WA 99201
(509) 321-0750 • FAX (509) 343-3315

the proposed Class. Defendants have not alleged such conflicts of interest for any Plaintiff. Any such allegation can be, and will be, refuted as necessary in the scheduled class certification proceedings.

6.12 **Predominance:** The common issues predominate over any individualized issues. Certain commonalities are articulated in detail in Section IV, *supra*, with some of them summarized below to exemplify how they predominate over any individual question of law or fact

6.13 Adjudication of these common issues in a single action has important and desirable advantages of judicial economy. The predominant legal and factual issues are described in the itemization of the essential elements of each claim *infra*, including as to causation, and the common proof and predominant factual issues which are described herein; along with the common proof which proves them, which are incorporated herein.

6.14 Common issues include:

- Whether Defendants' fraudulent representations and omissions causing the legal claims by plaintiffs herein can be established by common proof, including:
    - Whether Defendants violated their fiduciary duties (*i.e.,* duty of care, candor, and loyalty to patients, exercising the utmost good faith and loyalty in dealing with them), thus eliminating any burden to establish individual reliance, making causation provable on a classwide basis and thus meeting predominance;
    - Whether Defendants' fiduciary duty to Plaintiffs creates a presumption of reliance or justified common sense inference of reliance, also eliminating any burden to establish individual reliance, especially given that Defendants violated this duty by failing to disclose their scheme;
    - Whether the materiality of Defendants' misrepresentations and omissions can establish class reliance upon them because reasonable persons would not submit to surgery for purposes of creating false claims, beginning with the legal requirement that providers certify the necessity of medical care and the truth of the claims presented, and is further supported by (i) the false claims standard; (ii) the fiduciary context governing this process; and (iii) the government medical standards of patient safety, e.g., the two *qui tam* complaints;
    - Whether Defendants' actions and inactions create a presumption of reliance or a justify a common sense inference of reliance by the nature of the claims, even absent the fiduciary duty admittedly owed by Defendants to Plaintiffs, thus

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satisfying predominance;

- Whether reliance is even necessary for the profiteering (RICO) claims, and alternatively whether third party reliance (here, the insurer payors' reliance on the Defendants' false claims establishes such third party reliance) is sufficient for predominance for a class civil RICO claim.
- Whether reliance can be presumed for the Consumer Protection Act claim.
- Whether patient reliance is necessary for health care fraud (18 U.S.C. §1347).

- Whether the existence, scope, pattern, and course of conduct of Defendants' use of MULTICARE's wRVU compensation system to submit a pattern of false health care claims for Defendants' financial gain and not for the medical wellbeing of patients (for which every Plaintiff and proposed Class Member was a victim) predominates;
- Whether MULTICARE is liable for Dr. DREYER's false claims because it was committed by the conduct of another person for which MULTICARE was legally accountable, including as an accomplice. *See* RCW 9A.08.020;
- Whether MULTICARE provided substantial assistance to Dr. DREYER in presenting his false claims to health insurers under common law or statutory aiding and abetting law;
- Whether the corporate negligence regarding the facts and law associated with MULTICARE's duties, actions and inactions, with liability turning on the details of MULTICARE's action and knowledge predominates, including:
  - Whether permitting Dr. DREYER to engage in a pattern of false claims using MULTICARE's patients constitutes corporate negligence;
  - Whether incentivizing and participating in a pattern of criminal profiteering acts using MULTICARE's patients constitutes corporate negligence;
  - Whether MULTICARE performed, or failed to perform, on an ongoing basis, a proper background, credentialing, privileging, supervision and performance review of Dr. DREYER;
  - Whether MULTICARE failed to take timely action to supervise, prevent, or discipline Dr. DREYER's conduct, including by filing false health care claims to promote and conceal misconduct, and by failing to create, maintain, or implement any system to detecting and preventing such false claims;
  - Whether patients' increased risk of exposure to a medically unnecessary or otherwise improper surgery, or associated false claim billing, was caused by MULTICARE's negligence or deliberate action;
  - Whether MULTICARE used appropriate standard of care practices for hiring, supervising, monitoring, or using the wRVU incentive bonuses;
  - Whether MULTICARE timely detected Dr. DREYER's conduct and properly had in place and/or applied regulations, laws, rules and the like when hiring, supervising, and monitoring;

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- Whether details of this evidence show MULTICARE intended unlawful consequences of Dr. DREYER's actions and implemented them for its own financial gain;
- The adequacy and appropriateness of MULTICARE's response to patients' pre-exposure and post-exposure to the Dr. DREYER's surgeries;
- The nature and extent of legal claims available to patients as a result of the patient endangerment;
- Whether MULTICARE acted in concert with Dr. DREYER;
- Whether MultiCare violated its detailed institutional responsibilities, including of its Governing Board, in hiring credentialing, privileging, and supervising Dr. Dreyer, and/or violated those standards of care;
- Whether the items enumerated here and in Exhibit 1 predominate;

- Whether Defendants' course of conduct violated the Consumer Protection Act predominates;
- Whether Defendants' failure to adequately warn patients of the risk of medically unnecessary surgery and details therein predominates;
- How each MULTICARE class member was subject to severe emotional distress upon discovery of the pattern of false claims by Dr. Dreyer; and
- Whether Defendants intended, knew, or recklessly disregarded that the proceeds used to further the fraudulent scheme were derived from illegal activity, to wit, false claims.

6.15 **Superiority:** Class-Plaintiffs and Class members have suffered and will continue to suffer harm and damages as a result of DEFENDANTS' actions. Absent a Class action, Class members likely would find the cost of litigating their claims prohibitive and/or may not even become informed of their causes of action due to HIPAA confidentialities. Class treatment is superior to multiple individual suits or piecemeal litigation because it conserves judicial resources, promotes consistency and efficiency of adjudication, and provides a forum for all claims, which number in the "hundreds" (according to the Department of Justice). There will be no significant difficulty in the management of this case as a Class action. The identity of each Class member is readily identifiable from DEFENDANTS' own records. Unless this matter proceeds as a Class action, many patients who were injured by these DEFENDANTS may not otherwise learn how or why they were injured.

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VII. CAUSE OF ACTION: CRIMINAL PROFITEERING [RCW 9A.82.100 AND 9A.82.080]

7.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1 through 6.15 as if fully set forth herein.

7.2 Plaintiffs herein set forth their claim for damages resulting from DEFENDANTS' violations of the Washington Criminal Profiteering Act, 9A.82.100 and 9A.82.080.

7.3 Each DEFENDANT is a "person" within the meaning of RCW 9A.04.110(17), and under RCW 9A.82100(1)(a), and RCW 9A.82.080(1)(a).

7.4 To carry out their criminal profiteering scheme, the Defendants had to complete a course of separate actions which were themselves offenses, and to keep these offenses and their relationship to each other concealed throughout. First, the defendants had to perform a patient surgery, which entailed convincing the patient to undergo the surgery without disclosing the scheme. Second, they had to create the false documentation necessary to present a convincing but false healthcare claim to state, federal and private insurers. Finally, they had to deposit the proceeds of their false claims into their financial accounts without detection of their false origins to pay the ongoing and promotional costs of the profiteering scheme and to generate unlawful proceeds for themselves.

7.5 False claims in violation of RCW 48.80.030 fall at the center of this spectrum of profiteering activity, making it a common feature of the pattern of profiteering activity. That statute, RCW 48.80.030, (defined as a profiteering act at RCW 9A.82.010(4)(hh)), states (emphasis added):

> (1) A person shall not make or present or cause to be made or presented to a health care payer a claim for a health care payment knowing the claim to be false.
> (2) No person shall knowingly present to a health care payer a claim for a health care payment that falsely represents that the goods or services were medically necessary in

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> accordance with professionally accepted standards. Each claim that violates this subsection shall constitute a separate offense.
> ….
> (4) …. *A person shall not conceal or fail to disclose any information with intent* to obtain a health care payment to which the person or any other person is not entitled*, or to obtain a health care payment in an amount greater than that which the person or any other person is entitled.*

7.6 The profiteering cycle (the course of conduct) begins with inducing patients to undergo surgery for purposes of making false claims, to wit, false health care claims, theft by deception, and/or money laundering, which themselves are acts of profiteering under RCW 9A.82.010(4)(e), (t), and (aa). The scheme subjected the pre-surgery, the surgery, and the post-op services to increasing patient safety endangerment and injury, without the consent of anyone but Defendants. Dr. Yam, at Providence, chronicled the pattern of patient injuries that this process caused by Dr. Dreyer there, estimating that Dr. Dreyer submitted more than 2,000 false and fraudulent claims at Providence since 2013, no detail of which was shared with the patients. After receiving payments, Defendants then laundered their false claim proceeds through their financial institutions, in violation of Washington and federal money laundering laws (*see* 9A.83.020(1)((a) & (b); 18 U.S.C. § 1957(a)), as part of their continuing pattern of profiteering activity under RCW 9A.82.010(4)(e), (t), and (aa). They then used the resulting unlawful proceeds to promote the scheme and to profit from it, including by engaging in financial transactions to incentivize and to reward Dr. Dreyer.

A. Violation of RCW 9A.82.100

7.7 DEFENDANTS violated RCW 9A82.100, as further alleged herein, by knowingly engaging in a pattern of criminal profiteering activity as set forth in the preceding paragraphs by engaging in the following acts of criminal profiteering activity for financial gain ("predicate acts"), as listed in paragraphs 7.13 to 7.20, which are incorporated herein, with a nexus to the identified

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health care insurance enterprises listed in paragraphs 7.27 to 7.32:

7.7.1 false health care claims as defined in RCW 48.80.030 (profiteeting acts under RCW 9A.82.010(hh) and accomplice liability under RCW 9A.08.020);

7.7.2 money laundering as defined in RCW 9A.83.020 and RCW9A.93.010(7) (RCW 9A.82.010(t)) with the specified unlawful activity being (i) false health care claims under RCW 48.80.030; (ii) theft by deception under RCW 9A.56 and accomplice liability under RCW 9A.08.020; and (iii) the federal offenses of scheming to commit or attempting to commit health care fraud under 18 U.S.C. § 1347, false claims under 18 U.S.C. § 287, and money laundering offenses for conducting transactions in criminally derived property under 18 U.S.C. § 1957(a) involving a Federal health care offense under 18 U.S.C. § 1956(7))(F) and 18 U.S.C. § 24(a), and aiding and abetting liability under 18 U.S.C. § 2;

7.7.3 theft by deception as defined/applied in RCW 9A.56 (RCW 9A.82.010(e) and RCW 9A.08.020).

B. Violation of RCW 9A82.080(1) & (2)

7.8 DEFENDANTS violated RCW 9A82.080(1) & (2), as further alleged herein, by: (1) knowingly and willfully receiving the proceeds, directly or indirectly, from a pattern of criminal profiteering activity and using or investing any part thereof in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of the enterprise MULTICARE, or the alternative enterprise(s) listed in paragraphs 7.27-7.32; and (2) knowingly and willfully acquiring or maintaining, directly or indirectly, an interest in or control of the enterprise or real property through a pattern of criminal profiteering activity. The pattern of profiteering activity is that alleged in paragraph 7.7. & 7.12-7.26, and listed in paragraphs 7.13 to 7.20 *infra*, which are incorporated herein. Plaintiffs have been injured in their persons, property

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SPOKANE, WA 99201
(509) 321-0750 • FAX (509) 343-3315

and business as a result of the DEFENDANTS' knowing receipt of the proceeds from the pattern of criminal profiteering activity and their subsequent use and investment, and concealment of their use and investment, in the establishment or operation of the enterprise of MULTICARE or the alternative enterprises, or for acquiring an interest in real property, including for purposes of maintaining the enterprise(s) to attract patients and submit further false health care claims. For example, MultiCare's payments to Dr. Dreyer to incentivize and to reward the creation and presentment of false claims constitute the use of unlawful proceeds to cause injury to Plaintiffs in their person, business, or property.

C. Violation of RCW 9A82.080(3)

7.9 DEFENDANTS violated RCW 9A82.080(3) and RCW 9A.08.020, as further alleged herein, by knowingly and willfully conspiring or attempting to commit the foregoing criminal profiteering acts and violations of RCW 9A.82.080(1) & (2), in violation of RCW 9A.82.080(3).

7.10 Each plaintiff is a person who sustained injury to his or her person, business, or property by an act of criminal profiteering that is a part of a pattern of criminal profiteering activity under RCW 9A82.100, or by the offenses alleged in RCW 9A82.080(1), (2) & (3).

7.11 Plaintiffs' injuries were directly and proximately caused by Defendants' violations of the aforementioned offenses.

7.12 As to each of the following predicate offenses, failure by DEFENDANTS to return funds obtained as described below is evidence of their intent to commit the predicate act(s) and are part of the pattern of criminal profiteering activity alleged herein.

Predicate Acts
False Health Care Claims, RCW 48.80.030 and RCW 9A.08.020

7.13 As set forth herein above, DEFENDANTS:

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7.13.1 presented and/or caused to be presented to health care payers, including federal health care payors, hundreds (if not thousands) of claims for a health care payment knowing the claim to be false and/or that falsely represented that the goods or services were medically necessary in accordance with professionally standards and/or acted recklessly or with deliberate indifference to whether the claims submitted were false or fictitious;

7.13.2 concealed or failed to disclose information with intent to obtain health care payments to which they were not entitled, including but not limited to false certifications of medical necessity and failure to disclose noncompliance with 42 U.S.C. § 11133(a)(1) of the Healthcare Quality Improvement Act of 1986, and the NPDB guidelines.

7.14 These acts constituted false health care claims in violation of RCW 48.80.030 and 9A.08.020.

Predicate Acts
Money Laundering, RCW 9A.83.020(1)(a) &(b), RCW 9A.83.020(5), and RCW 9A.08.020

7.15 As set forth herein above: DEFENDANTS conducted or attempted to conduct financial transactions (to wit, receiving and depositing health care payments) involving the proceeds of specified unlawful activity (to wit, a scheme to submit false health care claims, in violation of RCW 48.80.030, and theft by deception under RCW 9A.56.030 and 9A.56.040; the federal offenses of scheming to commit or attempt to commit health care fraud under 18 U.S.C. §

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1347;[5] false claims under 18 U.S.C. § 287 for presenting a "false, fictitious, or fraudulent" claim;[6] and money laundering offenses for conducting transactions in criminally derived property under 18 U.S.C. § 1957(a)[7] and promotional money laundering under 18 U.S.C. § 1956(a)(1)(A)(i)[8] involving a Federal health care offense as defined under 18 U.S.C. § 1956(7))(F) and 18 U.S.C. § 24(a), both as principals and as aiders and abettors under 18 U.S.C. § 2 and RCW 9A.08.020, knowing the property was proceeds of that specified unlawful activity and intending to promote the carrying on of specified unlawful activity. The health care fraud specified unlawful activity (18 U.S.C. § 1347) consisted of hundreds of health care claims and therefore separate offenses by Defendants. Each federal felony falls within Washington's money laundering statute's definition of specified unlawful activity under RCW 9A.83.010(7).[9] Further, the use of these unlawful proceeds to purchase real estate violates RCW 9A.82.080(1), as does the investment of these proceeds in the operation of the enterprises, including through medical staff compensation like that of Dr. Dreyer. In addition, Defendants knew that the transactions with Plaintiff's health care payors (*e.g.*, Medicare, etc.) were designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds of specified unlawful activity, and acted recklessly

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[5] The elements of a health care fraud claim are that the defendant: (1) knowingly devised a scheme or artifice to defraud a health care benefit program in connection with the delivery of or payment for health care benefits, items, or services; (2) executed or attempted to execute this scheme or artifice to defraud; and (3) acted with intent to defraud. The defendant "need not have actual knowledge of this section or specific intent to commit a violation of this section." 18 U.S.C. § 1347(b).

[6] The elements of a false claims are: (1) presenting a claim against the United States, and (2) knowing such claim to be false.

[7] The elements of a violation of 18 U.S.C. § 1957 are that a defendant (1) knowingly engaged or attempted to engage in a monetary transaction; (2) knew the transaction involved criminally derived property; (3) that had a value greater than $10,000; and (4) was, in fact, derived from a specified unlawful activity.

[8] The elements of promotional money laundering via 18 U.S.C. §1956(a)(1)(A) are that a defendant (1) knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, (2) conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity, (3) with the intent to promote the carrying on of specified unlawful activity.

[9] Under Washington's money laundering statute, "Proceedings under this chapter shall be in addition to any other criminal penalties, civil penalties, or forfeitures authorized under state law." RCW 9A.83.020(6).

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as to whether the property was proceeds of specified unlawful activity, in violation of RCW 9A.83.020(1)(b).

7.16 In particular, the government and private health care insurers to which Defendants presented, or caused to be presented, false health care claims constitute health care benefit programs pursuant to 18 U.S.C. § 24(b). Defendants knowingly and willfully executed or attempted to execute a scheme or artifice to defraud these health care benefit programs, including but not limited to Medicare, to obtain, by means of false or fraudulent pretenses or representations money or property owned by, or under the custody or control of a health care benefit program in connection with the delivery of, or payment for, health care benefits, items, or services, in violation of 18 U.S.C. § 1347, 18 U.S.C. § 2, and RCW 9A.08.020. Actual knowledge is not required, *id*., and Defendants' affirmative acts of concealment establish their knowledge. Further, deliberate ignorance is sufficient because the known and warned circumstances of the voluminous sustained claim submissions in the late 90% percentiles nationally would have put any reasonable person on notice that there was a high probability that the conduct was illegal. The Defendants' subsequent investment and use of these unlawful proceeds of health care fraud violates RCW 9A.83.020 and RCW 9A.08.020 and 18 U.S.C. § 1957(a).

7.17 These acts constitute money laundering in violation of RCW 9A.83.020(1)(a)&(b), RCW 9A.08.020, and 18 U.S.C. §§ 1956, 1957(a) & 2, with associated remedies *see e.g*., RCW 9A.83.020(5).

Predicate Acts
Theft by Deception, RCW 9A.56.030 & 9A.56.040 & 9A.08.020

7.18 As set forth herein above: DEFENDANTS, used a common scheme and plan knowingly to defraud patient class members, the health insurance programs and/or governmental insurance entities (e.g., Medicare/Medicaid), to wrongfully obtained property (including financial

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SPOKANE, WA 99201
(509) 321-0750 • FAX (509) 343-3315

payments of false health care claims) by knowingly misrepresenting information about the health care provided, the medical necessity of it, and/or other improper issues, with the intent to deprive them of that property. Through a common scheme and plan of false pretenses and material omissions, Defendants intended to, and did, deprive plaintiffs of their property, including payments of money and earned entitlement to health care insurance benefits.

7.19 The property or services described herein exceed $750 in value.

7.20 These acts constituted theft in the first or second degree, in violation of RCW 9A.56.030 & 9A.56.040 & 9A.08.020.

Pattern of Related Profiteering Acts

7.21 DEFENDANTS engaged in a pattern of related criminal profiteering offenses, as described in this claim, repeatedly and continuously during the relevant time period, including three or more acts of profiteering violations of RCW 9A.56.030 & 9A56.040, RCW 48.80.030, and 9A.83.020(1)(a) & (b), and RCW 9A.08.020.

7.22 The multiple acts of profiteering activity had the same or similar intents, results, accomplices, victims, and methods of commission. Alternatively, they are otherwise interrelated by distinguishing characteristics, and/or these characteristics include a nexus to the same enterprises alleged herein of MULTICARE, health care insurance payors, and/or governmental insurance entities. None of the acts of profiteering are isolated incidents.

7.23 The last such criminal profiteering activity occurred within five years after the prior incident of profiteering activity.

7.24 The criminal profiteering acts had similar purposes: *e.g.*, financial gain to the DEFENDANTS.

7.25 Each of the DEFENDANTS' criminal profiteering acts yielded similar results and

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(509) 321-0750 • FAX (509) 343-3315

caused similar injuries to the Plaintiffs to their person, property and/or business, including damage to their physical being and their finances (both as, *inter alia,* to medical expenses and as to lost wages).

7.26 Because of DEFENDANTS' failures to disclose and affirmative acts of concealment, the pattern of criminal profiteering activity was not discoverable until no sooner than April 12, 2022, when the U.S. Attorney publicly announced its investigative findings regarding Dr. JASON A. DREYER, DO's unethical, illegal, or improper conduct undertaken in conjunction with a similar scheme involving Dr. JASON A. DREYER, DO's then employer, Providence.

The Enterprises

7.27 Although an enterprise is not a necessary element of a claim under either RCW 9A.82.100 **or** RCW 9A82.080, to the extent applicable**,** Plaintiffs allege the following enterprises. An enterprise "includes any individual, sole proprietorship, partnership, corporation, business trust, or other profit or nonprofit legal entity, and includes any … group of individuals associated in fact although not a legal entity, and both illicit and licit enterprises and governmental and nongovernmental entities." RCW 9A.82.010(8).

7.28 Enterprises consist of ongoing organizations, formal or informal, with various associates function as a continuing unit. See *Trujillo v. Nw. Tr. Servs., Inc.*, 183 Wn. 2d 820, 839, 355 P.3d 1100 (2015).

7.29 The enterprises used in, and with a nexus to, the pattern of criminal profiteering activity under RCW 9A.82.100 include health care insurance providers for the plaintiff Class(es), including government health care insurers (i.e., "governmental" entities U.S. Department of Health and Human Services (HHS); the Defense Health Agency (DHA), acting on behalf of the TRICARE Program; the Federal Health Benefits Program; the U.S. Department of Veterans Affairs (VA)

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(509) 321-0750 • FAX (509) 343-3315

which administers the VA Community Program, and the Washington Health Care Authority (HCA)) and private insurers whose payments promoted the medically unnecessary surgeries and related health care.

7.30 In the alternative, the enterprise used in, and with a nexus to, the pattern of criminal profiteering under RCW 9A.82.100 is MULTICARE. MULTICARE is a legal corporation or legal entity, making it an enterprise under RCW 9A.82.010(8). Further, MULTICARE is a participating provider in the government and private health care insurer enterprises.

7.31 Independent motives and stakes of Dr. JASON A. DREYER, DO are sufficient to form the basis of an independent conspirator.

7.32 Independent motives and stakes of JANE DOES and JOHN DOES, including in respect to concealment and failing to report, are sufficient to form the basis of an independent conspirator.

Each of these aforementioned enterprises is a legal entity, that is, a partnership, corporation, business trust, or other profit or nonprofit legal entity, governmental and nongovernmental entities, or an association or group of individuals associated in fact although not a legal entity within the meaning of RCW 9A.82.010(8). Each alleged enterprise is an ongoing organization, formal or informal, with various associates functioning as a continuing unit.

Causation / Injury and Remedies

7.33 As a direct and proximate result of DEFENDANTS' acts or omissions discussed herein, Plaintiff Class(es) and individual Plaintiffs have suffered injuries to their person, business, or property including but not limited to economic loss, pain, suffering, emotional distress, and injury to their physical being, including injuries compensable under RCW 9A.82.080 and 9A.82.100. These injuries include damages from the use or investment of proceeds in, or for the

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(509) 321-0750 • FAX (509) 343-3315

maintenance, establishment, or operation of the enterprise under RCW 9A.82.080. For example, MultiCare's payments to Dr. Dreyer to incentive and to reward the creation and presentment of false claims constitute the use of unlawful proceeds to cause injury to Plaintiffs in their person, business, or property.

7.34 Plaintiffs are entitled to an award of damages including but not limited to: compensation for their actual damages; treble damages; a civil penalty of $250,000; injunctive, equitable, disgorgement, and forfeiture relief as set forth in RCW 9A.82.100(2), (3) and (4), and (4)(f); and costs and investigative and attorneys' fees as authorized by RCW 9A.82.100(1)(a).

7.35 The equitable relief includes, but is not limited to, disgorgement of ill-gotten gains obtained from the profiteering in order to prevent, restrain, and deter future unlawful conduct by the Defendants,[10] including by use of the bonus incentive compensation scheme.

VIII. CAUSE OF ACTION: CONSUMER PROTECTION ACT (RCW 19.86)

8.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1 through 7.35 as if fully set forth herein.

8.2 Unfair methods of competition and unfair and deceptive acts are prohibited in any trade or commerce under RCW19.86.020. As set forth herein above, DEFENDANTS used false or deceiving marketing practices and otherwise engaged in unfair or deceptive acts or practices to entice Plaintiffs to engage in their services, thereby causing injury to Plaintiff's business or property. These acts were against the public interest because they were committed in course of defendants' business, were part of pattern or generalized course of conduct, were repeated acts

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[10] *See e.g., Creel v. Says, 2022 WL 4490141 (E.D. Tex. Sept. 27, 2022)* (the law does not allow a person to profit from wrongdoing at the expense of another, and disgorgement can be a proper equitable remedy under RICO laws to, *inter alia*, prevent, restrain and deter future unlawful conduct).

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committed prior to their act involving plaintiff, had the real and substantial potential for repetition of conduct, and were likely to affect many consumers. Defendants' pattern of misconduct was deceptive (including breaches of statutory and common law duties) which has had a negative impact upon the public which threatens to continue. This constitutes an unfair or deceptive act or practice, for which suit may be brought for damages, injunctive relief, and the costs of investigation. RCW 19.86.090 & 19.86.093. Specifically, Defendants' deceptive conduct violates the public interest because it injured plaintiffs and/or other patients or had the capacity to do so. Defendants' incentivizing, promoting, and facilitating a pattern of overbilling affects the public interest. Further, by committing statutory criminal offenses, Defendants' conduct is *per se* violative of the public interest, or had the capacity to injure other persons, or has the capacity to injure other persons under RCW 19.86.093.

8.3 By participating in, or approving this pattern of wrongful conduct, Defendants are liable for it.

8.4 These acts or omissions of DEFENDANTS occurred in furtherance of trade or commerce. The Defendant conduct at issue is entrepreneurial.

8.5 The unfair or deceptive act or practice of DEFENDANTS as set forth herein above constitute fraud which affects the public interest and violates the Washington Consumer Protection Act.

8.6 As a direct and proximate result of DEFENDANTS' violations of the Act, as set forth herein above, Plaintiffs suffered damages.

8.7 DEFENDANTS are now liable for those damages in an amount fully set forth at trial, but include damages to property and business, the trebling of same, and reasonable attorney fees and costs.

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8.8 Plaintiffs also seek injunctive relief to prevent future harm to themselves and others, including barring the use of MultiCare's uncapped compensation incentive system.

IX. CAUSE OF ACTION: MEDICAL NEGLIGENCE (RCW 7.70) VS. MULTICARE, AND DR. JASON A. DREYER, DO

9.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1 through 8.8 as if fully set forth herein.

9.2 As health care providers, MULTICARE and Dr. JASON A. DREYER, DO owed Plaintiffs a duty to comply with the standard of care.

9.3 Defendant MULTICARE, through its employees and agents, including Dr. JASON A. DREYER, DO failed to exercise the degree of care, skill, and learning expected of reasonably prudent health care providers in the same profession or class in the State of Washington acting in the same or similar circumstances. Such conduct proximately caused severe injuries and damages to plaintiffs. Defendant's conduct violated RCW 4.24, 13 RCW 7.70, and other applicable law.

9.4 Defendant Dr. JASON A. DREYER, DO failed to exercise the degree of care, skill, and learning expected of reasonably prudent health care providers in the same profession or class in the State of Washington acting in the same or similar circumstances. Such conduct proximately caused severe injuries and damages to plaintiffs. Defendant's conduct violated RCW 4.24, 13 RCW 7.70, and other applicable law.

X. CAUSE OF ACTION FOR LACK OF CONSENT/INFORMED CONSENT

10.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1 through 9.4 as if fully set forth herein.

10.2 As set forth herein above, despite fraudulent reporting otherwise, DEFENDANTS breached their duty to inform plaintiffs of all material facts, including risks and alternatives, which a reasonably prudent patient would need to make an informed decision on whether to consent to

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or reject proposed courses of treatment, including but not limited to the risk of medically unnecessary procedures for which the motive was financial gain and not proper medical treatment. This failure proximately caused injury to plaintiffs.

XI. CORPORATE NEGLIGENCE

11.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1 through 10.2 as if fully set forth herein.

11.2 A medical facility, in this case, MULTICARE, has the following duties: (1) a duty to use reasonable care in the maintenance of safe and adequate facilities and equipment; (2) a duty to select and retain only competent physicians and staff; (3) a duty to oversee all persons who treat patients within its walls as to patient care; and (4) a duty to formulate, adopt and enforce adequate rules and policies to ensure quality care for the patients.

11.3 MULTICARE breached the afore listed duties by, without limitation:

17.3.1 failing to select, retain, and supervise competent staff;

17.3.2 failing to ensure of proper oversight of staff;

17.3.3 failing to assure proper diagnosis and care;

17.3.4 failing to formulate, adopt and enforce adequate rules, policies and/or adopting policing or practices which in themselves created an unnecessary and unreasonable risk to Plaintiff(s);

17.3.5 failing to conduct an adequate credentialing background investigation pursuant to best practice guidelines before hiring Dr. JASON DREYER, and giving him privileges to see patients and perform surgeries at MULTICARE facilities.

11.4 MULTICARE's breach of corporate duties as set forth above directly and proximately led to injuries and damages to the Plaintiffs.

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11.5 MULTICARE is now liable for the injuries and harm suffered by Plaintiffs as a result of its Corporate Negligence

XII. VICARIOUS LIABILITY

12.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1 through 11.5 as if fully set forth herein.

12.2 Upon information and belief, employees and agents of the defendants, implicated in this cause of action were at all times relevant to this cause of action acting within their official capacity and scope of employment with and for MULTICARE.

12.3 Upon information and belief, physicians, employees, or agents alleged to have been negligent in the treatment/care of Plaintiff(s) in this case were either employees, agents in fact, or alternatively, ostensible agents.[11]

12.4 MULTICARE is liable for injuries/damage suffered by Plaintiff(s) as a result of the intentional and negligent acts or omissions of their employees, owners, managers, agents, or ostensible agents under the theory of *Respondeat Superior*.

XIII. BREACH OF FIDUCIARY DUTY / FRAUD / MISREPRESENTATION

13.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1 through 12.4 as if fully set forth herein.

13.2 DEFENDANTS owed a fiduciary duty through the relationship with their patients based upon their position of trust, confidence, greater expertise, duty of candor, and dependence. Specifically, DEFENDANTS had a fiduciary relationship to the patient class members that gave

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[11] *Adamski v. Tacoma General Hospital*, 20 Wn. App. 98, 112, 579 P.2d 970 (1978) (hospitals are liable for the doctors who work at them).

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(509) 321-0750 • FAX (509) 343-3315

rise to a duty of care, candor, and loyalty to them requiring DEFENDANTS to exercise the utmost good faith in dealing with class members, including to fulfill their duty of loyalty to their patients. As a result of this fiduciary duty, Plaintiffs had a right to rely upon Defendants to perform their duties, and this eliminates any burden to establish individual reliance. Alternatively, it creates a presumption of reliance or justified a common sense inference of reliance, especially given that Defendants violated this duty by failing to disclose their scheme to profit from false claims.

13.3 As set forth herein above, DEFENDANTS engaged in acts or omissions breaching these fiduciary duties, which directly and proximately caused damages to Plaintiffs. The patients relied upon DEFENDANTS' fiduciary duties in following their advice on the need for medical treatment.

13.4 DEFENDANTS have statutory and common law duties to inform patients of risks of medical care, and all information needed for patients to make informed healthcare decisions.

13.5 DEFENDANTS were required to inform patients about the substantially increased risk of treatment by Dr. JASON A. DREYER, DO due to their history of performing medically unnecessary and otherwise improper procedures, their submission of false claims to insurers, and the financial incentives created by MULTICARE to promote false claims. Instead, MULTICARE failed to respond to the continuing warnings about Dr. DREYER without disclosure to either patients or federal and state authorities as required by law..

13.6 Without this information, Plaintiffs were deprived of material facts to inform their treatment decisions.

13.7 DEFENDANTS knew that in withholding material facts, they were affirmatively misrepresenting information to Plaintiffs.

13.8 DEFENDANTS intended for Plaintiffs to rely on DEFENDANTS, and

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(509) 321-0750 • FAX (509) 343-3315

DEFENDANTS' concealments, to make informed healthcare decisions.

13.9 Upon information and belief, DEFENDANTS were further engaging in false or misleading reporting in medical reports in an effort to conceal evidence of negligent, violative, unethical, and fraudulent treatment practices.

13.10 Plaintiffs did not know DEFENDANTS were concealing material facts and had the right to and did reasonably rely on DEFENDANTS to meet its statutory and common law duty to inform them of material facts. DEFENDANTS' failure to inform Plaintiffs, in the face of a legal duty to do so, constitutes fraud by concealment, as specifically identified herein.

13.11 Plaintiffs suffered damages as a result of a reasonable reliance on DEFENDANTS' fraud and misrepresentation.

XIV. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS AND OUTRAGE

14.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1 through 13.11 as if fully set forth herein.

14.2 DEFENDANTS owed Plaintiffs a common law duty not to engage in conduct that would cause the Plaintiffs severe emotional distress.

14.3 By misleading Plaintiffs, concealing evidence of negligent, violative, unethical, and fraudulent treatment practices, performing unnecessary and ill-advised medical procedures, and operating below the standard of care, DEFENDANTS negligently inflicted emotional distress upon Plaintiffs.

14.4 Additionally, DEFENDANTS' conduct as set forth herein constituted extreme and outrageous conduct that would shock the conscious of an ordinary, reasonable person; which outrageous conduct resulted in Plaintiffs' suffering severe emotional distress.

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XV. LOSS OF CONSORTIUM/WRONGFUL DEATH/SURVIVOR ACTIONS

15.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1 through 14.4 as if fully set forth herein.

15.2 As a direct and proximate result of DEFENDANTS' negligent and intentional acts or omissions as set forth herein, Plaintiffs' statutorily qualified family members suffered loss of consortium, and special damages if available.

15.3 Further, if Defendants' negligent and intentional acts or omissions as set forth herein resulted in, and/or contributed to the injury and ultimate death of certain claimants, resulting in damages/loss to their estate and to statutorily qualified family members, both individually and/or in their capacity as personal representative of the estate(s), Defendants are liable for those negligent acts or omissions pursuant to Wash. Rev. Code § 4.20.005 (wrongful death and survivor statutes).

XVI. RES IPSA LOQUITUR

16.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1 through 15.3 as if fully set forth herein.

16.2 DEFENDANTS had exclusive control over the actions and omissions which constituted the sum total of the care provided to Plaintiffs during their pre-surgical, surgical, and post-surgical care.

16.3 DEFENDANTS had exclusive control over the actions and omissions which ultimately resulted in the defrauding of Plaintiffs and their medical insurance providers, including Medicare and Medicaid.

16.4 DEFENDANTS acted intentionally to conceal the fraud in respect to regulatory reporting, billing, and patient medical records as set forth herein above.

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16.5 As a result of this concealment and fraud, Plaintiffs had no ability to take action on their own behalf to avert the injuries and damages cause by the DEFENDANTS negligent and intentional acts or omissions which caused Plaintiffs to suffer injuries and damages.

16.6 The injuries and damages sustained by the Plaintiffs here do not occur in the absence of negligence or intentional actions in variance with statute and regulatory authority undertaken by the medical care team.

16.7 DEFENDANTS are now liable for the damages Plaintiff has suffered as a result of their negligence pursuant to the doctrine of res ipsa loquitur.

XVII. UNJUST ENRICHMENT

17.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1 through 16.7 as if fully set forth herein.

17.2 With each and every payment received as described herein, each DEFENDANT received a benefit at a Plaintiff's expense, and the circumstances make it unjust for the DEFENDANT to retain the benefit without payment.

17.3 DEFENDANTS are liable for the damages to Plaintiff for unjust enrichment, including restitution and disgorgement.

XVIII. DISGORGEMENT

18.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1 through 17.3 as if fully set forth herein.

18.2 In violation of their common law, equitable, and statutory duties to Plaintiffs, Defendants profited from their wrongful conduct, and these profits must be disgorged in order to deter the continuation of this wrongful conduct.

18.3 Defendants have obtained ill-gotten profits from their misconduct, including

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(509) 321-0750 • FAX (509) 343-3315

payments from federal and state governments, and from health insurers and patients. These payments are proximately caused by the aforesaid violations, and can be reasonably approximated.

18.4 Disgorgement of these ill-gotten profits is necessary to deter further violations.

XIX. WAIVER OF PRIVILEGE

19.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1 through 18.4 as if fully set forth herein.

19.2 Waiver of the physician-patient privilege under RCW 5.60.060(4)(b) does not waive or release any other rights or privileges, including those related to the physician-patient relationship, other than the privilege set out in the above-cited statute.

XX. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against DEFENDANTS in their favor and in favor of the Class as follows:

20.1. Finding that this action is properly maintainable as a Class action pursuant to CR 23(b)(2), (b)(3), and/or (c)(4), and certifying the Class.

20.2. Finding the Plaintiffs and Class Members are prevailing parties against each DEFENDANT, jointly and severally, for violations of RCW 9A.82.100 and RCW 9A.82.080 (Criminal Profiteering) and award Plaintiffs compensation equal to their actual damages, a tripling of those damages, a civil penalty of $250,000 for each Plaintiff and class member, injunctive and remedial relief as set forth in RCW 9A.82.100(2), (3), and (4), and forfeiture under RCW 9A.82.100(4)(f).

20.3. Awarding Plaintiffs and Class Members reasonable investigative and attorneys' fees and costs under RCW 9A.82.100(1)(a).

20.4. Finding the Plaintiffs and Class Members are prevailing parties against each

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(509) 321-0750 • FAX (509) 343-3315

DEFENDANT, jointly and severally, for violations of RCW 19.86.090 (Consumer Protection Act) and award Plaintiffs damages as allowed under the Act, including trebling of damages and reasonable attorney fees and costs.

20.5. Finding DEFENDANTS were otherwise negligent in their acts as outlined above.

20.6. Finding DEFENDANTS' negligence resulted in injury to each Plaintiff.

20.7. Ordering DEFENDANTS to identify all Class Plaintiffs pursuant to their records.

20.8. For compensatory damages suffered by Plaintiffs and Class resulting from any and all claims pled herein, in amounts to be proven at trial.

20.9. For unjust enrichment, Plaintiffs and Class seek restitution and disgorgement.

20.10. For costs and disbursements.

20.11. For statutory attorney fees.

20.12. For private forfeiture relief, see RCW 9A.82.100(4)(f).

20.13. For disgorgement of ill-gotten gains obtained as a result of Defendants' breach of their duties to the Plaintiffs, including through criminal profiteering, breach of fiduciary or statutory duty, or benefitting from unjust enrichment.

20.14. If Defendant brings any frivolous or unfounded defenses, for attorneys' fees and costs pursuant to RCW 4.84.185 and/or Rule 11 of the Superior Court Civil Rules.

20.15. For statutory interest on the judgment from the date judgment is entered until paid in full.

20.16. For prejudgment interest on the special damages.

20.17. For prejudgment interest on liquidated damages.

20.18. All damages allowed under RCW 4.20.010, RCW 4.20.20, RCW 4.20.046, RCW 4.20.060, and RCW 4.24.010, as applicable.

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20.19. For entry of equitable nonmonetary remedies and a permanent injunction, including but not limited to as authorized in RCW 9A.82.100(2), (3), (4) and (4)(f):

20.19.1. enjoining DEFENDANTS from utilizing any form of productivity bonus metric scheme that encourages surgeons to engage in high volume patient care, or increased complex surgical procedures.

20.19.2. requiring DEFENDANTS to provide open public access to peer review materials and credentialling files for all surgeons.

20.19.3. requiring DEFENDANTS to disclose the names and contact information for putative members of all Classes and/or to assist Plaintiffs' counsel in identifying and notifying class members of their rights under this action;

20.19.4. divesting and disgorging DEFENDANTS of the proceeds of their profiteering activity.

20.20. For such other and further relief as the Court may deem just and equitable.

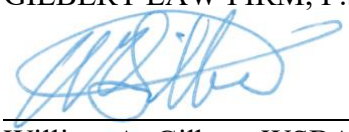
20.21. The Plaintiffs reserve the right to elect remedies if there is a determination of a conflict between claims or remedies.

XXI. DEMAND FOR JURY TRIAL

Plaintiffs hereby demand that all causes of action pled herein be tried to a 12-person jury with sufficient alternates to assure complete justice without interference or delay.

DATED THIS 14th day of July, 2026.

GILBERT LAW FIRM, P.S.



William A. Gilbert, WSBA #30592
Beth M. Bollinger, WSBA #26645
Ashley A. Richards, WSBA #33047
Attorneys for Plaintiffs

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DECLARATION

Pursuant to RCW 7.70A.020, I, William A. Gilbert, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct:

(1) Our law firm represents Plaintiffs, Raymond and Maryann Sumerlin (husband and wife) Martin and Sherryl Whitney (husband and wife), Vashon Coe, and Rachelle Lloyd;

(2) We have shown Plaintiffs a copy of the provisions of law relating to voluntary arbitration; and

(3) Our clients elect not to submit this dispute to arbitration under this law.

Executed this 14th day of July 2026.

GILBERT LAW FIRM, P.S.



William A. Gilbert, WSBA #30592
Attorneys for Plaintiff

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