IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DR. JAIDEEP PATEL individually and on behalf of all others similarly situated **Plaintiff,** **v.** **SCOTT POSTLE, BALBOA CAPITAL CORPORATION, and CLIFF MCKENZIE** **Defendants.**	§ § § § § § § § § § § § § § §	**Case No. 3:17-cv-963**

CLASS ACTION COMPLAINT

TO THE HONORABLE COURT

Plaintiff, Dr. Jaideep Patel ("Plaintiff") by and through his undersigned counsel, hereby files this Class Action Complaint, individually, and on behalf of all others similarly situated—and makes these allegations based on information and belief and/or which allegations have or are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery—against Scott Postle, Balboa Capital Corporation, and Cliff McKenzie (collectively, "Defendants"), as follows:

PARTIES

1. Plaintiff, Dr. Jaideep Patel is a natural person residing in Athens, Georgia.

2. Scott Postle is a natural person who resided in McKinney, Collin County, Texas when Plaintiff's causes of action accrued.

3. Defendant, Balboa Capital Corporation ("Balboa") is a California corporation with a principal place of business located at 575 Anton Boulevard, 12th Floor, Costa Mesa, CA 92626.

Balboa has a Texas registered agent for service at Registered Agent Solutions, Inc., 1701 Directors Blvd., Suite 300, Austin, TX 78744.

4. Defendant Cliff McKenzie is a natural person who resided in Collin County, Texas when Plaintiff's causes of action accrued.

JURISDICTION & VENUE

5. This Court has jurisdiction over the subject matter presented by this Complaint because it is a class action arising under the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1332(d), which explicitly provides for the original jurisdiction of the Federal Courts of any class action in which any member of the plaintiff class is a citizen of a state different from any Defendant, and in which the matter in controversy exceeds in the aggregate the sum of $5,000,000.00, exclusive of interest and costs.

6. Plaintiff alleges that the total claims of the individual members of the Plaintiff Class in this action are in excess of $5,000,000.00 in the aggregate, exclusive of interest and costs, as required by 28 U.S.C. § 1332(d)(2), (5). As set forth below, Plaintiff is a citizen of Georgia, and Defendants, including Scott Postle and Cliff McKenzie can be considered citizens of Texas. Defendant Balboa is a citizen of California. Therefore, diversity of citizenship exists under CAFA and diversity jurisdiction, as required by 28 U.S.C. §§ 1332(a)(1), (d)(2)(A). Furthermore, Plaintiffs allege on information and belief that more than two-thirds of all the members of the proposed Plaintiff Class in the aggregate are citizens of a state other than Texas, where this action is originally being filed, and that the total number of members of the proposed Plaintiff Class is greater than 100, pursuant to 28 U.S.C. § 1332(d)(5)(B).

7. On information and belief, Defendants have effectively engaged in an unlawful scheme that has been perpetrated on Plaintiff and members of the putative class throughout the United States. Defendants' fraud and violations of law have taken place in this judicial district. All

Defendants are residents of Texas, and more than one of them is a resident of this District. Defendants are subject to this Court's personal jurisdiction with respect to this action, and accordingly, venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b)(1) and (2).

8. The Court also has jurisdiction over this action under 28 U.S.C. § 1332(a). All Plaintiffs and all Defendants are citizens of different states. Plaintiff is a citizen of Georgia because that is where he is domiciled. Upon information and belief, none of the Defendants are citizens of Georgia. Moreover, the value of the relief that Plaintiff seeks in this action greatly exceeds $75,000.

9. Venue is proper in this District and this Court has personal jurisdiction over the Defendants pursuant to 28 U.S.C. § 1391(b) as the Defendants are citizens of, residents of, are found within, have agents within, are doing business in, and/or transact their affairs in this District, and the activities of the Defendants which gave rise to the claims for relief occurred in this District.

BACKGROUND

10. Plaintiff is a medical doctor practicing throughout the United States, as are those similarly situated.

11. He has been duped like hundreds of others through Defendants' fraudulent enterprise in which each doctor unknowingly has bought typically $300,000 worth of (a) "licenses" to start an MHT medical practice that never became profitable (and usually not even operational), and (b) "software" that was generic and never put to use. Postle, and his company, America's MHT, Inc. ("MHT") pocket that $300,000 and deliver nothing.

12. Balboa's role is to fund the purchase, and, in return, it gets an installment payment plan calling for a personally guaranteed $158,136 return on its $300,000 expenditure over the course of five and a half years.

13. Defendants reap these rewards purely through deception because not one of the hundreds of victims has agreed to their terms in the full light of day.

The MHT and Balboa Scheme in Operation

14. Since at least 2012, MHT and its officers have been in the business of operating a scheme to defraud physicians across the United States ("the Scheme") with the participation of McKenzie and Balboa.

15. MHT purports to operate a network of patient-recruitment coordinators and other administrative staff, as well as nurse practitioners in cities throughout the United States who perform visits to patients in their homes.

16. MHT induces physicians with the fictional opportunity to expand their practice with minimal investment and minimal time commitment.

17. MHT represents to physicians that it sells a Medical Home Team Services Program ("MHT Program"), through which physicians can supervise nurse practitioners making house calls in the physician's region.

18. MHT represents that it handles every aspect of the practice in full compliance with all applicable rules and regulations from marketing to patient care to billing to administrative management, and that the practice will generate a profit for each physician of hundreds of thousands of dollars per year.

19. In its sales pitch to physicians like Plaintiff, MHT represents that it sells licenses for each "practice" MHT promises to create for the physician with a goal of growing to four "practices" per physician. Each practice is comprised of a nurse practitioner and the associated administration of that nurse's rendering of health care services.

20. MHT's salespeople represent that (a) start-up costs (sometimes referred as a line of credit) are offered by Paul Allen's venture capital group, (MHT's financial partner[1]), in the amount $75,000 per practice; (b) until the first "practice" is up and running these costs (or line of credit) do not extend beyond the $75,000; (c) no physician ever has to make payment on these costs or any line; (d) a license can be returned at any time through a "novation" in which it is resold to another willing participant; (e) MHT handles everything other than supervising the medical treatment; (f) proprietary software is included due to CMS requirements; and (g) there are NO fees or interest associated with the acquisition of the license.

21. As a further part of the Scheme, MHT offers to simplify the process for the physicians by creating limited liability companies in the names of the physicians and then opens bank accounts in the names of those entities ("Artificial LLCs").

22. When MHT creates these Artificial LLCs, it lists each doctor as the entity's sole member.

23. However, Plaintiff and those similarly situated have no actual relationship with or control over the Artificial LLCs bearing their name.

24. In each case, MHT creates the Artificial LLC as a *manager-managed* LLC. MHT then names Accountable Practice Management, Inc. ("APM"), as the LLC's sole "manager."

25. APM is owned and controlled by Postle and MHT.

26. Once an Artificial LLC is created, MHT then causes APM to take action as sole manager without the physicians' knowledge and consent.

[1] The "financial partners" known about include Balboa, Univest Capital, Inc., and MHT's most frequent collaborator, Ascentium Capital, LLC.

27. Balboa, one of the "financial partners," allows and encourages MHT to pressure physicians to sign "Installment Payment Agreements" ("IPAs") with Balboa through which the $300,000 payments are made to MHT on behalf of the Artificial LLC.

28. In some cases, Balboa also allows and encourages MHT to sign the IPAs on behalf of physicians through APM.

29. In no case are the physicians informed of essential elements of the IPAs, much less have physicians offered informed consent to any such arrangements.

30. For instance, the IPAs purport to contain a personal guarantee from the individual physician for the payments.

31. McKenzie tailor-made the financial vehicle for MHT, which MHT then uses to coerce, mislead, deceive or otherwise fail to properly and lawfully disclose the purported agreements' terms and conditions, specifically including extraordinarily high rates of interest (e.g., greater than 20%).

32. In addition, the funds transfers from Balboa to MHT, that were represented to be start-up costs or lines of credit to the Artificial LLCs or to MHT, are broken into four separate funds transfers, each typically less than $100,000.

33. To facilitate and further the conspiracy, MHT tells physicians that anti-kickback laws prevent MHT from entering into the IPA directly with Balboa.

34. But MHT also tells physicians that MHT will fully fund any payments that may be due to Balboa, and that, therefore, there is no risk the physicians will have to repay Balboa a cent.

35. MHT, Balboa, and many persons acting on each company's behalf, misrepresent the nature of documents that they present to these physicians.

36. The physicians who fall victim to the Scheme rarely, if ever, authorize or consent to the execution of the IPAs or similar documents upon which Balboa later relies to pursue and collect on personal guarantees that each physician is purported to have executed in connection with the loans MHT (through APM) incurs in the Artificial LLCs' names.

37. These Defendants—MHT, and persons acting on its behalf, and Cliff McKenzie and others acting within the scope of their employment with Balboa—conspire to and actually transfer funds from Balboa directly to MHT with respect to hundreds of IPAs.

38. These funds are deposited directly into MHT accounts. Other MHT employees or officers, such as Postle, then promptly absconded with the funds.

39. Meanwhile Balboa charges the Artificial LLCs—through MHT's oversight and participation—an exorbitant rate of interest set at up to twenty-four percent (24%).

40. The problem, however, is that the Balboa IPA discloses no interest rates. And, to make matters worse, MHT, on its behalf and on behalf of its co-conspirators, represents to their physician-victims that its Agreement with Balboa is not a loan and is not subject to any rate of interest.

41. Defendants' practices in confecting agreements with physicians went well beyond the typical puffery that is sales talk.

42. Many of the MHT and Balboa agreements or related documents were executed without the authorization of the physician.

43. Employees of MHT were asked to forge—and did forge—physician signatures to documents.

44. Other physicians were presented blank signature pages to sign by the aggressive MHT sales team, including MHT's Bradley Leire, but without being provided with the terms to which

they were signing. MHT's sales people would instead represent false terms and assure the signing physicians that they had nothing to worry about.

45. Other physicians were given contracts to sign but the terms including the personally-guaranteed payment obligations to Balboa were never disclosed.

46. Moreover, the financial partners and MHT exchanged funds over license sales premised on agreements unsigned by the physicians listed in the sales agreements.

47. MHT instructed its employees to ignore requests from physicians for contract documents when those documents were unsigned.

48. Our Medical Home Team, LLC ("OMHT") is a Texas LLC, and it is a separate juridical entity that is controlled by, and exists for the benefit of Scott Postle, and his spouse, Judy Postle.

49. OMHT has siphoned off three million ($3,000,000.00) from MHT for each "license" fee MHT received in the form of cash sent by financial partners to MHT in at least one fiscal year for MHT, and possibly more for the duration of the scheme.

50. Scott Postle, and numerous other MHT representatives and employees have been similarly enriched by this scheme perpetrated on Plaintiffs and those similarly situated.

51. Postle in fact has diverted money out of MHT to pay substantial amounts of real estate for himself.

52. McKenzie had so aggressively pursued MHT IPAs that by December of 2016 MHT had sold over $40 million in licenses to approximately 200 unsuspecting physicians.

53. Dr. Patel was caught in the Scheme in October 2016 after being approached by Bradley Leire, an MHT salesperson. Leire exchanged many telephone calls and emails with Dr. Patel (in Georgia) about MHT's purported business plan, which were then followed by in-person visits and face-to-face meetings.

54. During these many communications and meetings, Dr. Patel inquired about physicians in Atlanta whom Dr. Patel had heard recently signed up with the MHT Program. Dr. Patel requested to be put in touch with those physicians to discuss their experience with MHT. Leire claimed that he could not put Dr. Patel in contact with those physicians because, Leire represented, those physicians had signed up with MHT through another salesperson. Dr. Patel later discovered that Leire was the salesperson who signed up those Atlanta physicians, but that, by October 2016, on information and belief, those physicians were gravely disappointed with the MHT Program had requested that MHT release them from their obligations.

55. Further, when Leire met with Dr. Patel in Athens to have Dr. Patel sign the MHT contract documents, Leire only produced the signature pages, not the complete documents. Dr. Patel has never received the full set of signed MHT contracts. When Leire emailed them to Dr. Patel in late October, nearly all of the documents were not signed and at least one was dated by someone other than Dr. Patel.

56. Neither Leire nor anyone else at MHT, disclosed that Dr. Patel could be held responsible for the payments which MHT was supposed to make.

57. Neither Leire nor anyone else at MHT told Dr. Patel that Balboa stood to make substantial interest as a result of and under the IPA.

58. Dr. Patel has found that although the Patel Transitions MHT LLC was created for his benefit, he has had no control over this entity and has come to learn that Balboa transferred funds for its licenses directly to MHT, thus bypassing the bank account purportedly set up for Patel Transitions MHT LLC.

59. Put differently, although Balboa has represented its intention to treat Dr. Patel as an alleged guarantor to loans Balboa made an Artificial LLCs that bears his name (“Patel Transitions

MHT LLC"), Dr. Patel did not authorize the creation of an LLC over which he had no control nor the immediate transfer of all funds, over which again he would never have control.

60. Dr. Patel's practices never became operational.

The Scheme begins to Unravel

61. Unbeknownst to Plaintiff and similarly situated persons, but as Defendants were fully aware, because the MHT Scheme is akin to a pyramid or Ponzi scheme, it was inevitable that it would fail. In or around August 2016, MHT began to fall behind on the payments it had been making to financial partners, like Ascentium, Univest, and Balboa.

62. By that point, MHT had failed utterly to support the practices it promised to so many physicians it would provide (e.g., by providing the patient-recruitment coordinators, administrative staff, nurse practitioners, or software needed to run the practice), or to make those practices operational or profitable.

63. This is because, as shown above, MHT derives its revenue stream not from patient care but by loans from financial partners like Balboa and MHT's continued sales of worthless licenses for worthless medical practices—a scheme akin to a pyramid or Ponzi scheme.

64. Upon information and belief, very few, if any, of the Artificial LLCs were ever fully operational. None of them operated at a profit.

65. MHT, Postle, Balboa, and McKenzie used the agreements they created or obtained, through coercion, misrepresentation, and other deceptive acts to enrich themselves and persons acting on their behalf and to defraud and harm unsuspecting physicians.

66. MHT has never had sufficient operational cash flow to support day-to-day operations. Instead, the means of financial support MHT utilized was from proceeds from license sales. And without license sales, MHT has not and cannot meet its basic financial obligations.

67. MHT and the Scheme survives only on the sale of expensive licenses to physicians, who are then encouraged, through referral bonuses, to enlist additional physicians to purchase more licenses.

68. So stark was the fraudulent nature of the Scheme that by the Fall of 2016, even MHT's own officers and managers openly referred to MHT's Program as a "Ponzi scheme."

69. On information and belief, as the Scheme collapsed, in furtherance of the conspiracy and fraud to enrich Defendants, Balboa has made efforts to collect against similarly situated physicians.

70. On information and belief, similarly situated physicians have begun to receive demand letters and phone calls from Balboa. For many of those similarly situated, this was the first contact that they had received from anyone related to MHT since signing certain documents with MHT.

71. MHT, through Scott Postle, instructed the physicians to ignore the demands from the financial institution and take no action, including making any payments on behalf of the Artificial LLCs created by MHT. Instead, MHT assured that it would handle all issues associated with Balboa, including making payments.

72. Plaintiff and those similarly situated began to make requests to MHT to release them from alleged obligations with MHT and, to the extent any obligation existed, with the financial institutions.

73. When certain, few individual doctors, complained to MHT that MHT had failed to provide the promised services, MHT advised the doctors that it would "resell" those doctors' "licenses" to other unsuspecting class members. Many, if not most complaints to MHT and resulting communications among MHT and a complaining physician occurred by wire or U.S. mail, including telephone and e-mail communications modalities. When MHT "resold" the

licenses, the scheme was perpetuated, additional victims were duped and the size of the putative class grew.

74. MHT represented that it would release certain physicians from their obligations on a first-come-first-served basis, on the condition that MHT or the physician could find another physician to purchase that physician's software licenses, thus perpetuating and furthering the scheme, possibly duping those unwitting physicians to participate in the scheme and victimize yet additional doctors and expanding the number of class members. McKenzie facilitated these transactions hooking replacement victims.

75. On information and belief, Balboa has demanded repayment of sums, and these physicians are not able to pay the sums demanded by Balboa that were never received by the physicians.

76. MHT's own officers and employees have offered dour prognostications of its financial viability.

77. In the fall of 2016, Joseph West and Bradley Nurkin were contracted to consult with MHT. Shortly thereafter, MHT designated West and Nurkin to serve as interim Chief Executive Officer and Chief Operations Officer, beginning November 21, 2016.

78. Within a matter of weeks, West and Nurkin issued an internal memorandum to the MHT "Medical Advisory Board" entitled "Immediate Concerns for Financial Operations of America's MHT, Inc." In the memorandum, West and Nurkin observed "We are very concerned that the singular revenue stream of physician-credited licenses has not exceeded or even met expenses in any month during 2016."

79. West and Nurkin concluded:

> It is our position that America's MHT, Inc. cannot meet its financial obligations and most likely will not survive. With this understanding, we believe it is necessary to immediately halt the process of selling franchise licenses to physicians that will have credit obligations to support America's MHT, Inc. We cannot support this process with the clear understanding we now have of the company's financial problems, nor can we let it continue.

80. Rather than heed this advice, MHT doubled down. It continued to approach its current physicians with a reorganization plan promising them equity but pleading with them to recruit other unsuspecting victims. In a December 29, 2016 email from Scott Postle to Dr. Nhue Ho, entitled "re "Business Plan to be sent to all MHT Physicians", Postle revealed the strategy to perpetuate the Scheme, as follows:

> As long as our doctors are only thinking of MHT as a local success or failure, then they will be missing the steps to their ultimate retirement…. We need to have all of our participating doctors immediately start referring local colleagues to build their MHT Physician Network and in the IPA so we can represent MHT as a national solution for payors and post-acute providers and suppliers…. Our doctors **must refer** their colleagues significantly in January and we will overcome our current financial situation. I have a conference call with Balboa Capital to prepare them for an increase in funding …

81. In a December 29, 2016 email from Dr. Nhue Ho to Scott Postle entitled "Balboa Capitol," Ho stated "I would prefer that we take care of Balboa money before Ascentium once we have some cash. The docs who are under Balboa are our current referral source." Postle responded to Dr. Ho's December 29, 2016 email referenced directly above as follows: "Absolutely. They want as much good press about MHT to pass along to their investor groups to keep the funds flowing as we grow to 1200 doctors, 4800 Care Teams and 3 Billion in revenues. They want to be our strategic financing partner to make it happen."

82. On December 29 and 30, Scott Postle and Dr. Ho engaged in an email conversation concerning the significant payroll tax indebtedness facing the company in which Postle stated:

"We have to set aside 10 doctor sales (@300K x 10) in January to bring our IRS and State withholding payments current to allow us to file buy January 30th…. That's why we need a lot of our doctors engaged in referring their local networking doctors in early January….We need to rev-up our physician sales team…." Postle also notes that it is incumbent as "part of the push" to convince "the McAllen doctors" who sued Postle and MHT to "cancel their lawsuit and stay the course for at least 6 months."

83. Dr. Ho offered in response: "I am not sure if we can reach that many licenses. That is 40 licenses for the IRS, another 10 to 12 licenses for payroll and another 10 to 12 for Ascentium and Balboa. That is 60 licenses. I think if we can get 30, we will be fortunate. I just do not see doctors referring a lot of their friends."

84. Later, Postle revealed by email communication to multiple persons that MHT payroll would not be met in January.

85. In transmitting the message to the MHT physicians, Dr. Ho assured the physicians that the shortfall was attributable in part to a delay in receiving sales revenue.

86. However, Plaintiff and those similarly situated remain trapped in Defendants' conspiracy and scheme, and they are allegedly indebted to Balboa for hundreds of thousands of dollars, cumulatively tens of millions of dollars. Plaintiff has still received little or nothing of value from Defendants.

87. At all pertinent times, through its agent, McKenzie, Balboa has known about—and accepted and kept the benefits resulting from—the Scheme. In addition, Balboa obtained independent knowledge of the conspiracy and scheme as a result of its investigation into the MHT's practice.

88. MHT's officers and employees are exiting MHT in droves as a result of this and the persistent fraudulent activity MHT is promulgating to sustain itself.

89. Many former MHT employees and contractors have provided declarations for the purposes of putting an end to it. See Declarations Stephen Murdoch (Exhibit A)(former MHT Executive Financial Consultant attesting that the revenue stream generated by any practices that were actually operational were insufficient to even pay for nurse salaries); Christopher Cervantes (Exhibit B)(former MHT Vice President of Human Resources attesting to MHT's fraudulent sales, Postle's condoning of forgery, and McKenzie's role in creating the financial vehicle for the Scheme for his own immense profit); Scott Hensley (Exhibit C)(former MHT salesperson attesting to the misrepresentations made to physicians as to the nature of the IPA, the need for software, and the viability of Practices); Connie Elwood (Exhibit D)(former executive assistant to Scott Postle attesting that a significant number of loans funded for which there were no signed documents and that MHT instructed her to ignore and mislead any physicians with unsigned contracts who requested a copy of his contract.); Emily Jordan (Exhibit E)(former MHT's former director of credentialing attesting to witnessing forgery of physician signatures and MHT's knowledge that it was a Ponzi Scheme); and, Paige Segovia (Exhibit F)(former MHT billing manager attesting to unauthorized signatures and MHT's knowledge that it was operating a Ponzi Scheme).

Related Proceedings

90. On January 17, 2017, undersigned counsel filed a Class Action Complaint for Declaratory and Injunctive Relief in this Judicial District, which is captioned *Melby, et al v. America's MHT, Inc., et al,* 3:17-cv-155. In that Complaint, named Plaintiffs, on their own behalf and on behalf of similarly situated plaintiffs sought class wide relief for a declaration that the agreements between them and MHT and a financial partner like Balboa named Ascentium Capital,

LLC are null and void and for an order enjoining MHT and Ascentium from seeking to enforce those agreements.

91. Plaintiffs in the *Melby* complaint specifically did not seek or request money damages on their own behalf, pursuant to the legal causes of action pled in that matter. Rather, plaintiffs sought to reserve those claims for other proceedings, and instead sought class wide relief solely under FR Civ. Pro 23(b)(1)(A); 23(b)(1)(B) and 23(b)(2), along with a claim for attorneys' fees and costs, and other related relief. See ¶70-72. In the alternative, if the Court would not permit such a reservation of damages claims, plaintiffs alleged a claim for damages and treble damages under the Texas Deceptive Trade Practices Act, See ¶91.

92. On March 13, 2017, undersigned counsel filed a Class Action Complaint in this Judicial District, which is captioned *Kumar, et al v. America's MHT, Inc., et al,* 3:17-cv-732 for claims for damages or other relief pursuant to RICO. In this matter, Plaintiffs, for their own behalf and on behalf of the class of similarly situated doctors are specifically seeking money damages pursuant to RICO, as well as other related relief as set out below. Class certification is sought pursuant to CAFA and Fed. R. Civ. Proc. 23(B)(3).

93. On March 28, 2017, undersigned counsel filed a Class Action Complaint in this Judicial District, which is captioned *Bhagia, et al v. America's MHT, Inc., et al,* 3:17-cv-868. In that Complaint, named Plaintiff, on her own behalf and on behalf of similarly situated plaintiffs, sought class wide relief for a declaration that the agreements between her and MHT and a financial partner like Balboa named Univest Capital, Inc. are null and void and for an order enjoining MHT and Univest from seeking to enforce those agreements.

94. Consistent with Fed. R. Civ. Proc. 42 and Local Rule 3.3, Plaintiff acknowledges that this case is related to the *Melby, Kumar,* and *Bhagia* cases, and respectfully submit that transfer and pre-trial consolidation of the cases would be appropriate.

CLASS ACTION ALLEGATIONS

95. Plaintiffs re-allege and incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

96. Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs bring this class action and seek certification of the claims and certain issues in this action on behalf of a Class defined as:

> All United States Physicians who are claimed to have entered into any MSA, licensing, or business associate agreements with America's MHT, Inc. or related entities and for whom Balboa Capital Corporation ("Balboa") claims that the Physician is obligated as a guarantor of any indebtedness to Balboa.

97. Plaintiff reserves the right, with leave of Court if required, to amend the Class definition if further investigation and discovery indicates that the Class definition should be narrowed, expanded, or otherwise modified. Excluded from the Class of Plaintiffs are governmental entities; the Defendants; any entity in which Defendants have a controlling interest; and Defendants' officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded from the Class is any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

98. Defendants' practices and omissions were applied uniformly to all members of the Class, so that the questions of law and fact are common to all members of the Class and any subclasses the Court might find to be appropriate.

99. All members of the Class and any subclasses were and are similarly affected by the Defendants' acts and omissions, and the relief sought herein is for the benefit of Plaintiffs and members of the Class and any subclasses.

100. Based on the past annual sales of the MHT Programs, it is apparent that the number of physicians in both the Class and any subclass is so large as to make joinder impractical, if not impossible.

101. Questions of law and fact common to the Plaintiff Class and any subclasses exist that predominate over questions affecting only individual members, including, inter alia:

a. Whether the Defendants, or any of them, have engaged in or furthered an illegal scheme, prohibited by applicable law, including, but not limited to the Texas Deceptive Trade Practices Act;

b. If the Court determines the Defendants, or any of them, have in fact engaged in or furthered an illegal scheme, whether an injunction should be issued ordering those Defendants to cease and desist any and all actions or behaviors in furtherance of the scheme;

c. Whether Defendants disclosed or concealed essential terms of purported loan agreements and/or guarantee agreements, including the rate of interest;

d. Whether the essential elements of offer, acceptance and consideration were present in purported loan agreements and/ or purported guarantee agreements for those alleged agreements to be enforceable against either the Artificial LLCs or the Plaintiff;

e. Whether the Plaintiff should have any legal liability, obligation, responsibility or accountability for obligations, indebtedness, acts or omissions of or by the Artificial LLCs;

f. Whether MHT and/or persons acting on its behalf, were the real parties in interest in loan transactions among Balboa and purported borrowers and/or purported guarantors of loans by Balboa;

g. The nature and extent of Balboa's role, including person(s) acting on its behalf, if any, in the scheme;

h. Whether Balboa should be ordered to cease and desist efforts to enforce the purported loan agreements against either the Artificial LLCs or the Plaintiff;

i. Whether Balboa, or persons acting on its behalf, should be enjoined from communicating with Plaintiffs;

j. Whether Defendants should be enjoined from communicating any information to third parties regarding Plaintiff's payment history or any other information that could negatively reflect on Plaintiff's credit standing, including, but not limited to, negative information reporting to credit reporting agencies such as Equifax, Experian, and Transunion;

k. To the extent that any Defendant has reported any information to any credit reporting agency regarding any Plaintiff, whether those Defendants should be ordered to make a full retraction of any such credit reporting; and

l. Whether MHT substituted itself under Vendor Agreements to any obligations due Balboa, under the Installment Payment Agreements so as to extinguish any obligations purportedly owed by Plaintiff.

102. The claims asserted by Plaintiff in this action are typical of the claims of the members of the Plaintiff Class and any subclass, as the claims arise from the same course of conduct by

Defendants, and the relief sought within the Class and any subclasses is common to the members of each.

103. Plaintiff, individually and on behalf of the class specifically does not seek to recover money damages for his losses and injuries in this proceeding. Instead, Plaintiff, individually and on behalf of all similarly situated persons, reserves the right and ability to seek damages and monetary remuneration for their losses and injuries on an individual basis, and as he might find to be just and appropriate. This proceeding is limited to requests for injunctive and declaratory relief sought herein, all of which is consistent with class certification under Rule 23 and interpretative jurisprudence.

104. Plaintiff will fairly and adequately represent and protect the interests of the members of the Plaintiff Class and any subclasses.

105. Class representatives will be formally designated consistent with scheduling orders handed down by the Court.

106. Plaintiff has retained counsel competent and experienced in class action litigation.

107. Certification of this class action is appropriate under Federal Rule of Civil Procedure 23 because the questions of law or fact common to the respective members of the Class and any subclasses predominate over questions of law or fact affecting only individual members. This predominance makes class litigation superior to any other method available for a fair and efficient decree of the claims.

108. Absent a class action, it would be highly unlikely that the representative Plaintiff or any other members of the Class or any subclass would be able to protect their own interests because the cost of litigation through individual lawsuits might exceed expected recovery. Moreover, there

is a real and substantial chance of inconsistent verdicts or judgments if Plaintiff are unable to seek uniform resolution of their claims.

109. This action is properly maintainable as a class action under Fed. R. Civ. P. 23(b)(1)(A) because prosecuting separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for Defendants.

110. This action is properly maintainable as a class action under Fed. R. Civ. P. 23(b)(1)(A) because adjudications with respect to individual class members would, as a practical matter, be dispositive of the interests of the other members not parties to the individual adjudications.

111. This action is properly maintainable as a class action under Fed. R. Civ. P. 23(b)(2) because Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

112. Alternatively, this action is properly maintainable as a class action under Fed. R. Civ. P. 23(b)(3) because questions of law or fact predominate over any questions affecting individual class members, and a class action is superior to other methods in order to ensure a fair and efficient adjudication of this controversy because, in the context of wage and hour litigation, individual Plaintiffs lack the financial resources to vigorously prosecute separate lawsuits against large corporate defendants. Class litigation is also superior because it will preclude the need for unduly duplicative litigation resulting in inconsistent judgments pertaining to Defendant's policies and practices. There does not appear to be any difficulties in managing this class action. With leave and approval by the Court, Plaintiff intends to send notice to the proposed Rule 23 Class to the extent required by Fed. R. Civ. P. 23(c).

113. A class action is a fair and appropriate method for the adjudication of the controversy, in that it will permit a large number of claims to be resolved in a single forum simultaneously, efficiently, and without the unnecessary hardship that would result from the prosecution of numerous individual actions and the duplication of discovery, effort, expense and burden on the courts that individual actions would engender.

114. The benefits of proceeding as a class action, including providing a method for obtaining redress for claims that would not be practical to pursue individually, outweigh any difficulties that might be argued with regard to the management of this class action.

CAUSES OF ACTION

TEXAS DECEPTIVE TRADE PRACTICES ACT

115. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1–94 of this Complaint.

116. Plaintiff, and those similarly situated, now seeks a full and complete rescission of all contracts between them and Defendants, and any of them, and especially any loan guaranty or other indebtedness or alleged indebtedness as a result of the deceptive trade practices of Scott Postle, Balboa, and Cliff McKenzie. Specifically, Defendants have committed numerous prohibited actions in the Texas Deceptive Trade Practices Act ("Texas DTPA"), Tex. Bus. & Com. Code §17.46(b).

117. In this connection, Plaintiff, and those similarly situated, would show that they are consumers, the Defendants engaged in false, misleading, or deceptive acts as defined under section 17.46(b) of the DTPA, and these acts constituted a producing cause of damages to Plaintiff.

118. Plaintiff, and those similarly situated, would further show that the Defendants' acts were unconscionable.

119. Specifically, Plaintiff and those similarly situated would show as detailed above that these Scott Postle and others acting on behalf of MHT represented that the Medical Home Team Services Program had characteristics which it did not have. Scott Postle and others acting on behalf of MHT represented that the MSA would confer certain rights and benefits which were never provided. Defendants made false representations that the "in home care" medical practice would be a profitable venture. It was certainly not for Plaintiff and those similarly situated.

120. MHT, Scott Postle, and others acting on behalf of MHT represented that the Medical Home Team Services Program, including the software and intellectual property licensed to the Artificial LLCs, was of a high quality when it was not. All of such conduct is a violation of §17.46(b) of the Texas DTPA. Moreover, Plaintiff, and those similarly situated, would show that the conduct of these Defendants was committed knowingly and intentionally.

121. Further, Defendants, including Balboa and Cliff McKenzie, represented that the Installment Payment Agreement had certain characteristics that it did not, including but not limited to, the hidden and exorbitant of rate of interest sought to be charged by Balboa for each agreement.

122. Plaintiff's objective in the transactions at issue was the purchase and/or licensing of software and a medical home care program the medical aspects of which they would supervise. The financing arranged with Balboa was the means of making that purchase. The alleged DTPA violations arose out of these transactions. Balboa and MHT were inextricably intertwined in the financing and sales aspects of the transactions. As such, both Balboa and MHT sought to enjoy the benefits of the transactions, and Plaintiff is consumers as to both.

123. Pursuant to §17.50(b)(3) of the Texas DTPA, Plaintiff, and those similarly situated, seek a judgment and such orders from the Court as may be necessary to restore to them "any money or property, real or personal, which may have been acquired in violation of this subchapter."

Plaintiff and those similarly situated limit this requested relief to rescission of the Installment Payment Agreements to the extent Plaintiff and those similarly situated are alleged to be guarantors or obligors of any loan made by Balboa.

124. Plaintiff seeks an order of a mandatory injunction requiring all Defendants to cease and desist any efforts or practices designed, intended or seeking to collect monies from Plaintiff for loans ostensibly related to licenses issued to the Artificial LLCs.

125. Plaintiff seeks a declaration that they are not guarantors of, and that they have no legal liability, responsibility, or accountability for repayment of any portion of any loans ostensibly related to licenses issued to the Artificial LLCs.

126. This Court should further declare that the LLCs or PLLCs, created and operated by MHT with the purported authorization of the Plaintiff and those similarly situated, were created in violation of the Texas DPTA, and as such create no rights, obligations, or other legal relationship with those particular physicians, but are solely the responsibility of MHT, which created them for operation of its scheme.

127. Additionally, pursuant to Tex. Bus. & Com. Code Ann. §17.50(d), Plaintiff, and those similarly situated, seeks a judgment awarding them their reasonable and necessary attorney's fees incurred in prosecuting this claim.

128. Defendants actions caused actual damages to Plaintiff. However, and for the avoidance of any doubt, Plaintiff represents and avers that he does not seek an award of those damages at this time or in this proceeding. Rather they seek only the injunctive and declaratory relief described in the paragraph above.

129. Plaintiff reserves the right to seek money damages, specifically including but by no means limited to, treble damages as provided by Tex. Bus. & Com. Code Ann. § 17.50(b)(1) at

their discretion, in separate proceedings, which would in fact be superior to requesting that this Court resolve individual and potentially non-common claims for money damages.

130. However, if the Court finds it inappropriate to preserve the right to seek money damages in a separate state court suit, Plaintiff seeks all appropriate damages consistent with this class action, including punitive damages and treble damages as provided by Tex. Bus. & Com. Code Ann. § 17.50(b)(1).

DECLARATION OF EQUITABLE ESTOPPEL

131. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1–94 of this Complaint.

132. Similarly, Plaintiff, on his own behalf and on behalf of the class of those similarly situated individual physicians, seeks a declaration by this Court that he is not and cannot be held responsible or liable, as guarantor or under any other legal theory or cause of action, for the alleged loans provided by Balboa to the Artificial LLCS.

133. Plaintiff and those similarly situated seek a declaratory judgment estopping any enforcement of the Installment Payment Agreements and any other agreement with Balboa or its related entities against Plaintiff and those similarly situated based on equitable estoppel. Plaintiff, and those similarly situated, would show as detailed above that Balboa and Scott Postle and other MHT representatives made material representations to them that they knew or reasonably should have known were false.

134. Accordingly, this Court should declare that Balboa is precluded under the doctrine of equitable estoppel from asserting rights against Plaintiff and those similarly situated under the Installment Payment Agreements.

135. Plaintiff and those similarly situated participated in the Medical Home Team Services Program as a result of these misrepresentations.

136. This Court should further declare that the LLCs or PLLCs, created and operated by MHT with the purported authorization of the Plaintiff and those similarly situated, create no rights, obligations, or other legal relationship with those particular physicians, but are solely the responsibility of MHT, which created them for operation of its scheme.

DECLARATION OF UNENFORCEABILITY OF CONTRACTS

137. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1–94 of this Complaint.

138. Similarly, Plaintiff, on his own behalf and on behalf of those similarly situated, seeks a declaration by this Court that he is not and cannot be held responsible or liable, as guarantor or under any other legal theory or cause of action, for the alleged loans provided by Balboa to the Artificial LLCs.

139. Plaintiff and those similarly situated seek a declaratory judgment that the Installment Payment Agreements and any other agreement with Balboa or its related entities are invalid and unenforceable.

140. A valid contract consists of (1) an offer, (2) an acceptance in strict compliance with the terms of the offer, (3) a meeting of the minds, (4) each party's consent to the terms, and (5) execution and delivery of the contract with the intent that it be mutual and binding.

141. Plaintiff and those similarly situated would show as detailed above that Balboa and Scott Postle and other MHT representatives failed to disclose numerous essential terms to the contracts at issue resulting in a lack of consent and no meeting of the minds.

142. Moreover, a contract must be based upon a valid consideration, and a contract in which there is no consideration from one party lacks mutuality and is unenforceable.

143. Plaintiff and those similarly situated would show as detailed above that Balboa and Scott Postle and other MHT representatives failed to provide any consideration to Plaintiff in the contracts at issue resulting in the unenforceability of the contracts at issue.

144. Accordingly, this Court should declare that Balboa is precluded from asserting rights against Plaintiff and those similarly situated under the Installment Payment Agreements and related agreements.

DECLARATION OF UNCONSCIONABILITY

145. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1–94 of this Complaint.

146. Plaintiff and those similarly situated seek a judgment of the Court declaring the Installment Payment Agreements and any other agreement with Balboa or its related entities are unenforceable as unconscionable, as they pertain to Plaintiff and those similarly situated.

147. A contract is unenforceable if, "given the parties' general commercial background and the commercial needs of the particular trade or case, the clause involved is so one-sided that it is unconscionable under the circumstances existing when the parties made the contract."

148. Plaintiff shows as detailed above that the Installment Payment Agreements are one-sided imposing exorbitant obligations on Plaintiff while requiring very little on the part of Defendants.

JURY DEMAND

149. Plaintiff demands trial by jury on all issues.

PRAYER

150. WHEREFORE Plaintiff, Dr. Jaideep Patel on behalf of himself and all other similarly situated, prays for relief pursuant to each cause of action set forth in this Complaint as follows:

a. For an order certifying that the action may be maintained as a class action, certifying the individuals formally designated (consistent with scheduling orders handed down by the Court) as representative of the Class, and designating him counsel as counsel for the Class;

b. For an award of equitable relief as follows:

i. For a declaration that the LLCs or PLLCs created and operated by MHT with the purported authorization of the Plaintiff and those similarly situated create no rights, obligations, or other legal relationship with those particular physicians, but are solely the responsibility of and/or create obligations solely on behalf of MHT.

ii. For a declaration that MHT's contracts with the Plaintiff and those similarly situated are null and void;

iii. For a declaration that Balboa's contracts with the Plaintiff and those similarly situated are null and void;

iv. Enjoining MHT and Balboa from enforcing their purported agreements with Plaintiff and those similarly situated against the Plaintiff and those similarly situated;

v. Reserving to Plaintiff the right and ability to seek damages and monetary remuneration for their losses and injuries on an individual basis, and as they might find to be just and appropriate, including but not limited to, treble damages under the Texas Deceptive Trade Practices Act.

vi. For reasonable attorney's fees;

vii. For an award of costs;

viii. For any other relief the Court might deem just, appropriate, or proper; and

ix. To the extent that any claims for damages are tried, and damage claims are not reserved, for pre- and post-judgment interest on any amounts awarded.

151. Plaintiff and those similarly situated does not pursue damages for his claims and specifically reserves any action in damages for state court proceedings that have been and may be filed related to the subject matter of this complaint; unless the Court finds it inappropriate to

preserve the right to seek money damages in a separate state court suit, in which case Plaintiff seeks all appropriate damages consistent with this class action, including all available punitive damages and treble damages as provided by Tex. Bus. & Com. Code Ann. § 17.50(b)(1).

Date: April 5, 2017

Respectfully submitted,

/s/ Joshua J. Bennett

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