

3. Defendant, America's MHT, Inc. ("MHT") is a corporation existing under the laws of the State of Texas with a principal place of business located at 1575 Heritage Dr., Ste 200 McKinney, TX 75069. MHT has designated, as its Registered Agent for Service, Shelley Molge, America's MHT, Inc., 1575 Heritage Dr., Ste 200, McKinney, TX 75069.

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

5. Defendant, Ascentium Capital, LLC ("Ascentium") is a Delaware limited liability company with a principal place of business located at 23970 Highway 59 North Kingwood, TX 77339. Ascentium has designated, as its Registered Agent for Service CT Corporation System, 1999 Bryan St., Ste. 900, Dallas, TX 75201.

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

JURISDICTION & VENUE

7. 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.

8. Plaintiffs allege 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, Plaintiffs are citizens of North Carolina and South Carolina, and Defendants, including MHT, Scott Postle, and Cliff McKenzie can be considered citizens of Texas. Defendant Ascentium is a citizen of both Texas and Delaware.

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).

9. On information and belief, Defendants have effectively engaged in an unlawful scheme that has been perpetrated on Plaintiffs 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).

10. The Defendant corporations have designated agents for service of process in Texas and have committed fraudulent acts in Texas. The individual Defendants also have committed fraudulent acts in Texas. In accordance with 18 U.S.C. § 1965(a) and (b), the Defendants are subject to this Court's jurisdiction in that they "transact affairs" in the Northern District of Texas, and "the ends of justice require that other parties residing in any other district be brought before the Court, the Court may cause such parties to be summoned, and process for the purpose may be served in any judicial district of the United States by the marshal thereof." 18 U.S.C. § 1965(a), (b) and (c).

11. 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. Plaintiffs are citizens of North Carolina and South Carolina respectively because that is where they are domiciled. Upon

information and belief, none of the Defendants are citizens of either North Carolina or South Carolina. Moreover, the damages Plaintiffs seek to recover in this action greatly exceed \$75,000.

12. The Court also has jurisdiction over this action under 28 U.S.C. § 1331 as it presents one or more federal questions and 28 U.S.C. § 1337 because it concerns the regulation of commerce.

13. Venue is proper in this District and this Court has personal jurisdiction over the Defendants pursuant to 18 U.S.C. § 1965(a) and 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

14. Vijay Kumar and Donnielle Green, and those similarly situated, are medical doctors practicing throughout the United States.

15. They have 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. MHT and Postle pocket that \$300,000 and deliver nothing.

16. Ascentium'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.

17. 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 Ascentium Scheme in Operation

18. 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 Ascentium.

19. On June 1, 2012, McKenzie sold his company, FinanciaLogic, Inc., to Ascentium. In connection with that transaction, Ascentium hired McKenzie as a Senior Vice President-Sales.

20. As an officer of Ascentium, McKenzie conspired with Postle to create the MHT Program, which is the enterprise upon which this Complaint is based.

21. 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.

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

23. 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.

24. 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.

25. In its sales pitch to physicians like Plaintiffs, 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.

26. MHT’s salespeople represent that (a) start-up costs (sometimes referred as a line of credit) are offered by Paul Allen’s Ascentium, (MHT’s financial partner), 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 (d) there are NO fees or interest associated with the acquisition of the license.

27. 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”).

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

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

30. 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.”

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

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

33. Ascentium, the “financial partner,” allows and encourages MHT to pressure physicians to sign “Installment Payment Agreements” (“IPAs”) with Ascentium through which the \$300,000 payments are made to MHT on behalf of the Artificial LLC.

34. In some cases Ascentium also allows and encourages MHT to sign the IPAs on behalf of physicians through APM.

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

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

37. Ascentium and McKenzie tailor-made this 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%).

38. In addition, the funds transfers from Ascentium 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.

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

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

41. MHT, Ascentium, and many persons acting on each company’s behalf, misrepresent the nature of documents that they present to these physicians.

42. 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 Ascentium 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.

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

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

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

46. The problem, however, is that the Ascentium 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 Ascentium is not a loan and is not subject to any rate of interest.

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

48. Many of the MHT and Ascentium agreements or related documents were executed without the authorization of the physician.

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

50. 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.

51. Other physicians were given contracts to sign but the terms including the personally guaranteed payment obligations Ascentium were never disclosed.

52. Moreover, Ascentium and MHT exchanged funds over license sales premised on agreements unsigned by the physicians listed in the sales agreements.

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

54. 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.

55. 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 Ascentium to MHT in at least one fiscal year for MHT, and possibly more for the duration of the scheme.

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

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

58. McKenzie, on behalf of Ascentium, had so aggressively pursued MHT IPAs that by December of 2016 MHT had sold over \$40 million in licenses to approximately 200 of unsuspecting physicians.

The Scheme Ensnares the Plaintiffs

59. Dr. Kumar was caught in the Scheme in the fall of 2015 after being approached by Bradley Leire, an MHT salesperson. Leire exchanged many telephone calls and emails with Dr.

Kumar (in North Carolina) about MHT's purported business plan, which were then followed by in-person visits and face-to-face meetings.

60. During these many communications and meetings, Leire claimed that practice would cost Dr. Kumar nothing, because Ascentium, "Paul Allen's company" would take care of that. In fact, there is no evidence known to Plaintiffs that Paul Allen ever had any active role or knowledge of the enterprise in which Defendants were engaged. Instead, Defendants referenced Paul Allen's alleged involvement as a means to lend credibility to their unlawful enterprise.

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

62. Dr. Kumar had no idea he was being presented with a personal guaranty.

63. Dr. Kumar was not told by Leire or anyone else at MHT that Ascentium stood to make substantial interest as a result of and under the IPA.

64. Dr. Kumar has found that although the Kumar Transitions MHT PLLC was created for his benefit in November 2015, he has had no control over this entity and has come to learn that Ascentium transferred funds for its licenses directly to MHT, thus bypassing the bank account purportedly set up for Kumar Transitions MHT PLLC.

65. In January of 2016, Dr. Kumar was informed that new entities needed to be created for his practice that were North Carolina entities, as opposed to South Carolina entities for which he originally signed paperwork.

66. Dr. Kumar never signed paperwork associated with these North Carolina entities, and believes his name was forged to create them.

67. Put differently, although Ascentium is pursuing a claim against Dr. Kumar as an alleged guarantor to loans Ascentium made an Artificial LLCs that bears his name ("Kumar Transitions

MHT PLLC”), Dr. Kumar did not execute any IPAs or related materials through which he authorized or consented to the execution of these documents.

68. Yet in December of 2016, Ascentium began making personal demand on Dr. Kumar to honor the IPAs.

69. Dr. Kumar’s practices never became operational.

70. Dr. Green was ensnared in the Scheme in May of 2015, after attending a dinner featuring by Dr. Nhue Ho, a physician who is also MHT’s president.

71. Dr. Ho gave Dr. Green substantially the same sales the pitch that Leire gave Dr. Kumar. It is the same sales pitch MHT gives every physician in an effort to bring in new cash and new “loans” from Ascentium.

72. After hearing Dr. Ho’s pitch, Brad Leire provided Dr. Green the specific details of the agreements at issue and the lucrative “practice” Dr. Green could have if he signed up with MHT.

73. Dr. Green enrolled in MHT’s program but his promised practice never became fully operational, let alone profitable.

74. Then, in mid 2016, Dr. Green began receiving delinquency notices from Ascentium on IPAs she did not know existed. After all, MHT and its representatives (e.g. Dr. Ho and Leire) told Dr. Green that only MHT was responsible for making payments to Ascentium.

75. As with so many other doctors across the country, Ascentium has recently begun demanding that Dr. Green satisfy her personal guaranty on the loans made to the Artificial LLC bearing her name.

The Scheme begins to Unravel

76. Unbeknownst to Plaintiffs 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 far behind on the payments it had been making to Ascentium.

77. 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.

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

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

80. MHT, Postle, Ascentium 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.

81. This misconduct continued despite the fact that sometime around March of 2016, MHT granted Ascentium's Chief Executive Officer and Chief Credit Officer—at their and Ascentium's request—ongoing access to MHT's financial information and substantial details about the Artificial LLCs and their purported practices (despite those LLCs purported "separate" existence).

82. The detailed information that MHT provided Ascentium showed unequivocally that the medical practices MHT was supposedly creating for participating physicians could not, and would likely never, be operational.

83. As a result of Ascentium's findings from its independent investigation of the Scheme, Ascentium, MHT, Scott Postle, and Cliff McKenzie in the scope of his employment with

Ascentium conspired to find new financing sources to place some portion of new licensing loans with financial entities other than Ascentium.

84. Toward that end, Ascentium, MHT and Scott Postle positioned Defendant Cliff McKenzie to aggressively market the placement of new loans, which would also be paid directly to MHT.

85. Ascentium and MHT, and persons acting on their behalf had extensive use of wire and U.S. mail modalities to transfer the financial and other information that Ascentium independently sought from MHT and marketed to others.

86. In an effort to limit its own risk, Ascentium entered into a written agreement with MHT by which MHT agreed to be principally responsible for the loans if any of the Artificial LLCs failed to fund them.

87. In this agreement, labeled a "Vendor Agreement," Ascentium agreed to give a discount to MHT for loans that MHT repaid in the amount of 4 percentage points, creating a new interest rate of twenty (20%) percent for MHT's benefit.

88. Ascentium knew that MHT's entire program was a scam that would never be profitable but continued to enter into IPAs with victimized physicians, and it continued to extend credit to MHT, through October of 2016 and even after it entered into the Vendor Agreement with MHT.

89. With all of the information in their possession, Ascentium and MHT knew that even if any of the Artificial LLCs began generating any, such revenue would be insufficient to cover the LLC's overhead (e.g. salaries, equipment costs) much less to repay the funds under the IPAs.

90. 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.

91. 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.

92. 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."

93. Despite this, but in furtherance of the Scheme, sometime in 2016, MHT began paying McKenzie \$20,000 per month on top of an additional and exorbitant finder's fee for placing new loans with lenders other than Ascentium. This was fully consistent with Ascentium and MHT's plan and conspiracy, hatched sometime in or around March 2016, to begin placing new loans with other financing sources outside of Ascentium. Moreover, and consistent with this approach, MHT documents reveal that Ascentium continued to pay a salary and bonus to McKenzie for his efforts throughout 2016.

94. Even worse, MHT prioritized paying McKenzie over paying its own employees, and was often late on making its payroll as a result. MHT and Ascentium's Scheme was so prevalent and pervasive that MHT provided payments to McKenzie and Ascentium, while at the same time MHT reportedly failed to withhold employee tax payments, medical insurance and other employee benefit payments, even though these funds were supposedly withheld from MHT employee's paychecks.

95. As the Scheme collapsed, in furtherance of the conspiracy and fraud to enrich Defendants, Ascentium has made efforts to collect against Plaintiffs and other similarly situated physicians.

96. The Plaintiffs and those similarly situated began to receive demand letters and phone calls from Ascentium. For many of the Plaintiffs and those similarly situated, this was the first

contact that they had received from anyone related to MHT since signing certain documents with MHT.

97. To do so, Ascentium engages in extensive use of telephone and email communication, which constitutes use of wire, as well as the U.S. mail system.

98. 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 Ascentium, including making payments.

99. In contrast, Ascentium has begun directly contacting Plaintiffs and multiple similarly situated persons, explicitly urging them to disregard MHT's instructions and to pay the amounts currently due under the IPAs.

100. Plaintiffs 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.

101. 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.

102. 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. Ascentium and McKenzie facilitated these transactions hooking replacement victims.

103. Ascentium has demanded repayment of sums these physicians are not able to pay. This is the case with rapidly increasing numbers of physicians.

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

105. 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.

106. 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."

107. 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.

108. 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 mail 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 jin 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...”

109. In a December 29, 2016 email from Dr. Nhue Ho to Scott Postle entitled “Balboa Capitol” Ho states “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.”

110. 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.”

111. 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.”

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

113. 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.

114. On Friday evening, March 3, 2017, Dr. Ho emailed many physician victims of the scheme. That email establishes that Ascentium intends to pursue individual doctors as alleged guarantors. See Exhibit G.

115. McKenzie held the position of Senior Vice President-Sales with Ascentium until January of 2017. However, sometime on or before March 3, 2017, McKenzie appears to have taken a position with a new company, and as a result of lawsuits against Defendants, the MHT and Ascentium relationship appear to be strained.

116. However, Plaintiffs and those similarly situated remain trapped in Defendants’ conspiracy and scheme, and they are allegedly indebted to Ascentium for hundreds of thousands of dollars, cumulatively tens of millions of dollars. Plaintiffs have still received little or nothing of value from Defendants.

117. At all pertinent times, McKenzie acted in the course and scope of his employment with Ascentium. Moreover, at all pertinent times, through its agent, McKenzie, Ascentium has known about—and accepted and kept the benefits resulting from—the Scheme. In addition, Ascentium

obtained independent knowledge of the conspiracy and scheme as a result of its investigation into the MHT's practice.

118. Because MHT has employed the Scheme in various states across the country, including North and South Carolina, MHT, Ascentium and persons acting on their behalf actively and consistently used the U.S. mail and electronic transmissions across state lines to create the Artificial LLCs in the various states where they are supposed to operate.

119. The IPA documents and the funds transfers, including ones containing unauthorized signatures, were transmitted among the parties, or in some instances among Defendants, involved extensive use of wire and U.S. mail.

120. The false communications to induce Plaintiffs into these agreements and to placate them, involved extensive use of wire and U.S. mail.

121. The coordination of the conspiracy to perpetuate the Scheme between Defendants also involved extensive use of wire and U.S. mail.

122. 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.

123. 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 Ascentium was well aware 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 Ascentium funded a significant number of loans 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 Proceeding

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

125. 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.

126. The *Melby* plaintiffs did not and have not asserted any 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, as more fully set forth below, is sought pursuant to CAFA and Fed. R. Civ. Proc. 23(B)(3).

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

CLASS ACTION ALLEGATIONS

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

129. 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 Ascentium Capital, LLC ("Ascentium") claims that the Physician is obligated as a guarantor of any indebtedness to Ascentium.

130. Plaintiffs reserve 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.

131. 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.

132. 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.

133. 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, and certainly exceed one hundred (100) in number.

134. 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;
- 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 misrepresented profitability of the MHT Program and/or the nature of the contractual arrangements between MHT, the related co-conspirator entities, Ascentium, the Artificial LLCs, and the Plaintiffs and class members;
- d. Whether Defendants disclosed or concealed essential terms of purported loan agreements and/or guarantee agreements, including the rate of interest;

- e. Whether the Defendants were operating a pyramid, Ponzi or otherwise unlawful scheme;
- f. Whether Defendants have maintained an interest in, or controlled an enterprise through a pattern of racketeering activity;
- g. Whether Defendants have participated in the affairs of an enterprise through a pattern of racketeering activity;
- h. Whether Defendants used or invested racketeering income;
- i. Whether class members paid money to the Defendants in exchange for (1) the right to participate in the MHT program and (2) the right to receive, in return for recruiting others into the Program, rewards which were unrelated to the sale of the product to retail patients;
- j. Whether class members were required to make an investment into the unlawful Scheme;
- k. Whether the Defendants engaged in acts of mail and/or wire fraud in direct violation of RICO; and,
- l. Whether and to what extent the Defendants' conduct has caused injury to the business or property of the plaintiffs and the class.

135. The claims asserted by Plaintiffs 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.

136. Plaintiffs' limit their damage claims to those damages provided by the Racketeering Influenced and Corrupt Organizations Act 18 U.S.C. § 1961, et seq. including treble damages,

costs, interest and payment of attorney's fees pursuant to RICO. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Plaintiff Class and any subclasses.

137. Class representatives will be formally designated consistent with scheduling orders entered by the Court.

138. Plaintiffs have retained counsel competent and experienced in class action litigation.

139. Certification of this class action is appropriate under Federal Rule of Civil Procedure 23(B)(3) 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.

140. This predominance makes class litigation superior to any other method available for a fair and efficient decree of the claims. See *Torres v. S.G.E. Mgmt., L.L.C.*, 838 F.3d 629, 632 (5th Cir. 2016)(affirming class certification in a civil RICO action involving a fraudulent pyramid scheme)(application certiorari pending).

141. Absent a class action, it would be highly unlikely that the representative Plaintiffs 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 Plaintiffs are unable to seek uniform resolution of their claims.

142. 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, individual Plaintiffs lack the financial resources to vigorously prosecute separate lawsuits against large and well-resourced 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, Plaintiffs intend to send notice to the proposed Rule 23 Class to the extent required by Fed. R. Civ. P. 23(c).

143. 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.

144. 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

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

146. The Scheme is an Enterprise, here, a group of individuals associated in fact. All Defendants, while not gathered under any single legal entity, together operate the Scheme by drawing in new victims to invest in the Program and by reaping the benefits from the old victims.

147. The defendants engaged in a pattern of racketeering activity, including numerous acts of mail and wire fraud as defined by 18 U.S.C. § 1341 and § 1343.

COUNT ONE:

**THE INCOME DERIVED FROM THE PATTERN OF RACKETEERING
ACTIVITY: 18 U.S.C. §§ 1961(5), 1962(a)**

148. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1–123 of this Complaint.

149. Defendants used the mail and interstate wire communications facilities at least two times to facilitate and execute their enterprise—the Scheme.

150. In executing this scheme or enterprise, Defendants engaged in, or affected, interstate commerce.

151. Defendants derived income, directly or indirectly, from a pattern of racketeering activity, namely mail and wire fraud. MHT sells useless licenses and software to the unwitting Plaintiff class and directly receives the financing proceeds from Ascentium or other financial institutions, who know about the Scheme and in turn profit from its execution on unwitting physicians.

152. Postle has derived income from the fraudulent Scheme in that he has minimally taken a salary from MHT. It further believes that he has taken distributions from OMHT the entity collecting “licensing” fees from MHT.

153. McKenzie has derived income from the fraudulent Scheme in that he has minimally taken a salary from Ascentium and/or MHT. He has further received commissions from the transactions involving every unwitting physician recruited into the Scheme through the pattern of racketeering activity and other acts of deception and misrepresentations.

154. Ascentium has derived its income from the fraudulent Scheme in that it claims to have executed multiple IPAs, which were facilitated result of the pattern of racketeering activity and

other acts of deception and Defendants' misrepresentations. As a result, Ascentium received fees and exorbitant interest payments for each transaction.

155. Defendants then invest at least some of their income to facilitate the continued operation of the Scheme or enterprise; specifically, they reinvested loan proceeds and proceeds obtained from fraudulent licenses to further fund the Scheme, and thus allow the Defendants to market to and find other unwitting victims.

156. The racketeering activity involved in this case is mail and wire fraud, as codified 18 U.S.C. §§ 1341 and 1343 respectively. In violation of those sections, the Defendants:

- a. Knowingly created a scheme to defraud, that is they created and implemented their Scheme to dupe unwitting physicians into paying licensing fees, into selling worthless licenses, and into incurring debts under the false and fraudulent circumstances described above;
- b. Acted with a specific intent to defraud Plaintiffs and those similarly situated;
- c. Mailed something, or caused other people to mail something through the United States Postal Service or private or commercial interstate carriers for the purpose of carrying out their Scheme;
- d. Used interstate wire communications facilities, and caused others to use interstate wire communications facilities, for the purpose of carrying out their Scheme; and
- e. Employed false material representations to perpetuate their Scheme; to wit, exchanged false promises that had no business purpose other than to dupe unsuspecting physicians into furthering their Ponzi-like scheme.

157. Defendants committed at least two acts of mail or wire fraud between 2012 and 2016 while executing their Scheme.

158. The Defendants' reinvestment of these ill-gotten gains into the Scheme proximately caused Plaintiffs' injuries, namely the loss of funds paid into the Scheme, greater indebtedness, and other economic and actual damages.

159. Plaintiffs have been injured by each of the Defendants' use and/or investment of this "racketeering income" in that each has contributed the income to further perpetuate the Scheme and maintain the Enterprise with sales of licenses, as opposed to not actual Medicare revenue, which increases Plaintiffs alleged indebtedness and damages.

COUNT TWO:

**CONDUCT AND PARTICIPATION IN A RICO ENTERPRISE THROUGH A
PATTERN OF RACKETEERING ACTIVITY:
18 U.S.C. §§ 1961(5), 1962(c)**

160. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1–123 of this Complaint.

161. Defendants used the mail and interstate wire communications facilities at least two times to facilitate and execute their enterprise—the Scheme.

162. In executing this scheme or enterprise, Defendants engaged in, or affected, interstate commerce.

163. Each of the Scheme Defendants was employed by or associated with the Scheme or enterprise.

164. MHT, Postle, Ascentium, and McKenzie were employed by or associated with an Enterprise, namely MHT itself and the Scheme as described above, and each engaged in the activities referenced above with full knowledge of their purpose to defraud.

165. Defendants knowingly and willfully conducted or participated, directly or indirectly, in the conduct of the affairs of the Scheme or enterprise, and did so through a pattern of racketeering activity-mail and wire fraud, as codified in 18 U.S.C. §§ 1341 and 1343 respectively.

166. In violation of those sections, the Defendants:

- a. Knowingly created a scheme to defraud, that is they created and implemented their Scheme to dupe unwitting physicians into paying licensing fees, into selling worthless licenses, and into incurring debts under the false and fraudulent circumstances described above;
- b. Acted with a specific intent to defraud Plaintiffs and those similarly situated;
- c. Mailed something, or caused other people to mail something through the United States Postal Service or private or commercial interstate carriers for the purpose of carrying out their Scheme;
- d. Used interstate wire communications facilities, and caused others to use interstate wire communications facilities, for the purpose of carrying out their Scheme; and
- e. Employed false material representations to perpetuate their Scheme; to wit, exchanged false promises that had no business purpose other than to dupe unsuspecting physicians into furthering their Ponzi-like scheme.

167. Defendants committed at least two acts of mail or wire fraud between 2012 and 2016 while executing their Scheme, as detailed above.

168. MHT, Postle, Ascentium, and McKenzie conducted or participated directly or indirectly, in the conduct of the Scheme's affairs through a pattern of racketeering activity in which all were knowingly engaged.

169. The Defendants' conduct proximately caused Plaintiffs' injuries, namely the loss of funds paid into the Scheme, greater indebtedness, and other economic and actual damages.

170. As a proximate and factual result of the racketeering activity, the Plaintiffs have suffered damages and/or injuries in the form potential indebtedness and lost business opportunities.

**COUNT THREE:
CONSPIRACY TO ENGAGE IN A RICO ENTERPRISE THROUGH A PATTERN OF
RACKETEERING ACTIVITY:
18 U.S.C. §§ 1961(5), 1962(d)**

171. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1–123 of this Complaint.

172. Defendants have participated in a conspiracy to engage in Counts One and Two.

173. Two or more of the Defendants came to a mutual understanding to attempt to accomplish their common and unlawful plan, and to violate 18 U.S.C. § 1962(a) and (c), which affected interstate or foreign commerce, whether directly or indirectly.

174. As stated above, the Defendants' and the Nonparties' creation, support or maintenance of the Scheme is illegal and they have carried it out illegally.

175. As stated above, the Defendants and the Nonparties had a meeting of the minds on the object or course of action, specifically to create, support, and maintain the Scheme for their financial benefit through the sale of useless software and licenses, through the collection of loan fees and exorbitant interest and related commission, and through the active recruitment of further victims into the Scheme.

176. As stated above, each of the Defendants and many of the Nonparties have committed one or more overt acts to achieve or further the unlawful objects and purposes of the Scheme.

177. The Defendants used false and fraudulent pretenses to deceive persons of ordinary prudence and due care, and made material nondisclosures and concealments of fact and information that were important to understand their Scheme.

178. The Defendants conducted their affairs to unlawfully, intentionally, willfully and with intent to defraud, for their own financial gain and benefited and for the financial gain and benefit of others, to the detriment of Plaintiffs.

179. The Defendants' conduct proximately caused Plaintiffs' injuries, namely the loss of funds paid into the Scheme, greater indebtedness, and other economic and actual damages.

JURY DEMAND

180. Plaintiffs request a trial by jury on all issues.

PRAYER

WHEREFORE Plaintiffs, Dr. Vijay Kumar and Dr. Donnielle Green on behalf of themselves and all other similarly situated, pray for the following relief:

- a. Certification of the class followed by due notice to the class of certification and all other issues that the Court may direct;
- b. A judgment against the Defendants;
- c. Damages in the amount of the financial losses incurred by Plaintiffs' Vijay Kumar, Donielle Green and the class as a result of defendants' conduct and for injury to their business and property, all as a result of defendants' violations of 18 U.S.C. § 1962(a), (b), (c) and (d) and that such sum be trebled in accordance with 18 U.S.C. § 1964(c);
- d. The costs of investigation and litigation reasonably incurred, as well as attorney fees in accordance with 18 U.S.C. § 1964(c).
- e. For such other damages, relief and pre- and post-judgment interest as the Court may deem just and proper, consistent with the claims and causes of action set forth in this Complaint.

Date: March 13, 2017

Respectfully submitted,

/s/ Joshua J. Bennett

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