

1 Robert E. Barnes, Esq. SBN: 235919
2 Douglas M. Hanchar, Esq. SBN: 262509
3 BARNES LAW
4 601 South Figueroa Street, Suite 4050
5 Los Angeles, California 90017
6 Telephone: (310) 510-6211
7 Facsimile: (310) 510-6225
8 E-mail: robertbarnes@barneslawllp.com
9 E-mail: doughanchar@barneslawllp.com

7 Douglas P. Dehler – WI Bar: 1000732
8 Laura J. Lavey – WI Bar: 1079346
9 O’NEIL, CANNON, HOLLMAN, DEJONG & LAING, S.C.
10 111 East Wisconsin Avenue, Suite 1400
11 Milwaukee, Wisconsin 53202-4870
12 Telephone: (414) 276-5000
13 Facsimile: (414) 276-6581
14 E-mail: doug.dehler@wilaw.com
15 E-mail: laura.lavey@wilaw.com

13 Brian H. Mahany – WI Bar: 1065623
14 MAHANY LAW
15 8112 West Bluemound Road
16 Suite 101
17 Wauwatosa, WI 53213
18 Telephone: (414) 258-2375
19 Facsimile: (414) 777-0776
20 E-mail: brian@mahanylawn.com

21 Attorneys for Plaintiffs
22 Manuel I. Figueroa, M.D. et al.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT – CENTRAL CIVIL WEST

1 MANUEL I. FIGUEROA, M.D., Individually
and on Behalf of All Others Similarly Situated,

2 Plaintiff,

3 v.

4 MOLINA HEALTHCARE OF CALIFORNIA,
5 INC.; and DOES 1-50, inclusive,

6 Defendants.
7
8

) Case No.

) **CLASS ACTION**

) **COMPLAINT FOR DAMAGES:**

- 1. **Violation of California Unfair Competition Law (Bus. & Prof Code § 17200, et seq.)**
- 2. **Conversion**
- 3. **Unjust Enrichment**
- 4. **Interference with Prospective Economic Advantage**
- 5. **Breach of Fiduciary Duty**

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11 COMES NOW, Plaintiff Manuel I. Figueroa, M.D., on behalf of himself and all others
12 similarly situated, hereby files this Class Action Complaint against Defendant Molina
13 Healthcare of California, Inc. pursuant to Cal.C.C.P. § 382, and alleges and states as follows:

14 **PARTIES**

15
16 1. Plaintiff Manuel I. Figueroa, M.D. (“Dr. Figueroa”) is a physician licensed to
17 practice medicine in the State of California. Dr. Figueroa is a citizen of the State of California,
18 and a member of an independent physician association known as the Associated Hispanic
19 Physicians of Southern California IPA (hereinafter, the “IPA”).

20
21 2. Defendant Molina Healthcare of California, Inc. (“Molina”) is a corporation that
22 contracts with the State of California and serves as a health plan, providing health care services to
23 families and individuals who qualify for government-sponsored programs, including Medicaid.

24 **JURISDICTION AND VENUE**

25
26 3. This Court has subject matter jurisdiction over this matter as the aggregate amount
27 of the claims of all class members exceeds \$25,000.
28

1 4. The Court has personal jurisdiction over Molina pursuant to Code of Civil
2 Procedure § 410.10 because Molina is domiciled in California and engages in substantial and not
3 isolated activities in California. Upon information and belief, Molina is a citizen of the State of
4 California.

5
6 5. Venue is proper in this judicial district, pursuant to Cal. Bus. & Prof. Code § 17203,
7 Civil Code § 1780, and Code of Civil Procedure §§ 395(a) and 395.5. Molina has its corporate
8 headquarters and primary place of business at 200 Oceangate, Suite 100, Long Beach, California.

9 **FACTUAL BACKGROUND**

10
11 6. This case arises from Molina’s failure to comply with its obligations pursuant to
12 Section 1202 of the Patient Protection and Affordable Care Act (hereinafter, the “ACA”), which
13 at all relevant times required Molina to reimburse qualified medical providers for covered
14 Medicaid services.

15
16 7. Pursuant to Section 1202 of the ACA, qualified medical providers are entitled to be
17 paid one hundred percent of the Medicare allowable payment rate for certain Medicaid primary
18 care services and vaccinations (“E&M Services”) listed in 42 C.F.R. Parts 438, 441 and 447, with
19 dates of service between January 1, 2013 through December 31, 2014 (“Enhanced Payments” or
20 “Bump Payments”).

21
22 8. The purpose of the ACA’s Bump Payments was to enhance the Medicaid payments
23 being made to primary care physicians who were providing E&M Services to Medicaid patients
24 during 2013 and 2014. In short, the Enhanced Payments were meant to increase the payments
25 made for E&M Services under Medicaid so that the payments equaled the amount paid for these
26 same services under Medicare.
27
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1 9. To receive Enhanced Payments, medical providers needed to practice in a covered
2 specialty or subspecialty—including family medicine, general internal medicine, or pediatric
3 medicine, and subspecialties of those areas—and specify through a self-attestation process that
4 they were either Board-certified in the eligible specialty or subspecialty or that at least 60 percent
5 of their Medicaid claims during the relevant years were for the E&M Services identified in the
6 federal regulations.

8 10. At all relevant times, Dr. Figueroa was properly qualified to receive Enhanced
9 Payments because he practiced in the area of family medicine and E&M Services comprised more
10 than 60% of his Medicaid claims. Furthermore, Dr. Figueroa provided the appropriate self-
11 attestation showing he was qualified to receive Enhanced Payments by completing the ACA’s Self
12 Attestation Application and submitting it to the California Department of Health Care Services.

14 11. Under Section 1202 of the ACA, Dr. Figueroa was entitled to receive Enhanced
15 Payments from Molina for the eligible E&M Services he provided between January 1, 2013 and
16 December 31, 2014.

18 12. Molina acknowledged that Dr. Figueroa was eligible and entitled to receive
19 Enhanced Payments under Section 1202 of the ACA and paid him a portion of the Enhanced
20 Payments for the eligible E&M Services he provided *during part of 2014*. However, despite
21 demand, Molina has not made all of the Enhanced Payments owed to Dr. Figueroa for E&M
22 Services provided during 2013 and the remainder of 2014.

24 13. Despite Dr. Figueroa’s undisputed qualification to receive Enhanced Payments
25 under Section 1202 of the ACA, Molina failed and refused to fully reimburse Dr. Figueroa for
26 E&M Services he provided to Molina’s health plan members.
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1 14. Before April 2016, the only Enhanced Payment that Dr. Figueroa received from
2 Molina was a single payment made by a check dated August 18, 2015 for \$80.18, which was
3 apparently for E&M Services provided by Dr. Figueroa on December 2, 2014.

4 15. On April 25, 2016, after Dr. Figueroa retained counsel to confront Molina about its
5 refusal to make the required Enhanced Payments, Molina suddenly issued a check payable to the
6 IPA for Enhanced Payments due to various IPA medical providers, including Dr. Figueroa. The
7 amount paid to Dr. Figueroa as the result of Molina's belated payment to the IPA was \$16,336.08.
8

9 16. Molina's April 25, 2016 payment to the IPA included payments owed to other IPA
10 physicians, who, like Dr. Figueroa, were entitled to Enhanced Payments for E&M Services
11 provided to Medicaid patients during 2013 and 2014. However, like Dr. Figueroa, many of these
12 other physicians did not receive the full amount of Enhanced Payments owed to them under
13 Section 1202 of the ACA. Indeed, some physicians did not receive *any* Enhanced Payments from
14 Molina, despite clearly being entitled to them.
15
16

17 17. The physicians from Dr. Figueroa's IPA were not the only California medical
18 providers shortchanged by Molina. Upon information and belief, there are hundreds or thousands
19 of other California medical providers who did not receive the Enhanced Payments they were
20 entitled to receive from Molina.
21

22 18. Molina's in-house attorney, John Rosenthal, attempted to explain Molina's failure
23 to make the required Enhanced Payments to Dr. Figueroa, asserting that Molina had no deadline
24 to make the Enhanced Payments. So, according to Molina's in-house counsel, it did not matter
25 whether Molina delayed making Enhanced Payments to Dr. Figueroa and other California
26 physicians until 2016 (or, presumably, 2017 or 2018) even though the E&M Services at issue were
27 provided years earlier, in 2013 and 2014. Molina took this position even though other health plans
28

1 (including Anthem and Blue Cross California) did, in fact, make their required Enhanced
2 Payments to Dr. Figueroa and other California physicians in a timely fashion. Unlike Molina,
3 these other health plans did not unjustifiably delay for years before making their required
4 Enhanced Payments.

5
6 19. Furthermore, in an e-mail dated May 23, 2016, Molina's in-house counsel stated
7 that Molina believed it had no obligation to pay any interest on the funds it withheld from
8 California medical providers, in some cases for years. In short, Molina took the position it was
9 entitled to hold onto all of the federal money allocated to it by the government for these Enhanced
10 Payments for as long as it wanted, without ever needing to pay interest.

11
12 20. If Dr. Figueroa had not complained to Molina in April 2016, it appears that Molina
13 simply would not have made the Enhanced Payments it clearly owed to Dr. Figueroa and other
14 California physicians. Indeed, Molina *still* has not made required Enhanced Payments to
15 California physicians, even though these payments are owed for medical services provided years
16 ago, in 2013 and 2014. Molina's failure and refusal to make the required Enhanced Payments to
17 Dr. Figueroa and other California medical providers in a timely manner is inexcusable, particularly
18 where other health plans had no difficulty making Enhanced Payments to medical providers in a
19 timely manner.
20

21
22 21. Despite making an additional \$16,336.08 in Enhanced Payments to the IPA for Dr.
23 Figueroa's benefit in April 2016, Molina still owes Dr. Figueroa additional Enhanced Payments
24 for E&M Services provided to Molina health plan members during 2013 and part of 2014.

25
26 22. By filing this case as a putative class action, Dr. Figueroa seeks to represent a
27 proposed class (defined in greater detail below) of similarly situated medical providers who were
28

1 also harmed by Molina's failure to make Enhanced Payments as required by Section 1202 of the
2 ACA.

3 **CLASS ACTION ALLEGATIONS**

4 23. Dr. Figueroa brings this class action on behalf of himself and all other members of
5 a proposed class defined as follows:
6

7 All California medical providers qualified to receive
8 Enhanced Payments under Section 1202 of the ACA
9 who provided E&M Services to Molina's health plan
members during 2013 and 2014 and who did not
receive Enhanced Payments from Molina for some or
all of those services.

10 24. This case may be maintained as a class action under Cal. Civ. Code § 382 because
11 there is an ascertainable class, a well-defined community of interest, and the Class is so numerous
12 as to make it impracticable to bring all of its members before the Court. In addition, the
13 adjudication of this action as a class action is a superior method of resolving this controversy, and
14 substantial benefits will accrue to members of the Class, the public and the Court by proceeding
15 with this litigation as a class action. All of the prerequisites for class certification are satisfied in
16 this case.
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18

19 **Numerosity of the Class**

20 25. The members of the Class are so numerous that joinder in one action is
21 impracticable. While the exact number of Class members can only be ascertained through
22 discovery, it is believed that there are hundreds or thousands of members of the proposed Class.
23

24 **Existence and Predominance of Common Questions of Law and Fact**

25 26. There are questions of law and fact common to all Class members and these
26 common questions predominate over any questions that may affect individual Class members, as
27 Molina engaged in a common course of conduct in dealing with the Class members and acted in
28

1 a manner generally applicable to the entire Class. The common questions include, *inter alia*, the
2 following:

- 3 a. The nature of the legal duties owed by Molina to Dr. Figueroa and other Class
4 members;
- 5 b. Whether Molina breached legal duties owed to Dr. Figueroa and other Class
6 Members;
- 7 c. Whether Molina is liable for damages suffered by Dr. Figueroa and other
8 Class Members due to its failure to provide timely Enhanced Payments;
- 9 d. Whether the conduct complained of constitutes unlawful, unfair or fraudulent
10 business practices, in violation of the Cal. Bus. & Prof. Code § 17200, *et*
11 *seq.*; and
- 12 e. The appropriate relief available to Dr. Figueroa and other Class members
13 with respect to the legal claims alleged herein.

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17 **Typicality of Claims**

18 27. Dr. Figueroa's claims are typical of those of the Class members he seeks to represent
19 as all of their claims arise out of the same unlawful conduct by Molina, and Dr. Figueroa has the
20 same interests in these claims as the other Class members. Dr. Figueroa and other Class members
21 have been damaged and sustained harm as a direct result of the unlawful conduct alleged herein,
22 and they are all entitled to appropriate relief.

23
24 **Adequacy of Class Representative**

25 28. Dr. Figueroa is committed to prosecuting this class action and has retained
26 competent counsel experienced in litigation of this nature. Dr. Figueroa is an adequate
27

1 representative of the Class and will fairly and adequately protect the interests of the Class he seeks
2 to represent.

3 **Superiority of Class Action**

4 29. Class action treatment is superior to any alternative and will best ensure the fair and
5 efficient adjudication of the controversy alleged herein. Class action treatment of this case will
6 permit a large number of similarly situated individuals to prosecute common claims in a single
7 forum simultaneously, efficiently and without duplication of effort and expense. Moreover,
8 prosecuting separate legal actions brought by individual members of the proposed Class would
9 create the risk of inconsistent or varying adjudications with respect to the claims alleged herein.
10 No difficulties are likely to be encountered in the management of this class action that would
11 preclude its being handled as a class action, and no superior alternative exists for the fair and
12 efficient adjudication of this controversy.
13
14

15 **FIRST CLAIM FOR RELIEF**
16 **Violation of Cal. Unfair Competition Law**
17 **(Cal. Bus. & Prof. Code § 17200, et seq.)**

18 30. Dr. Figueroa incorporates by reference the statements and allegations contained in
19 the paragraphs above as if fully set forth herein.

20 31. California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.* (the
21 “UCL”), prohibits any “unlawful, unfair or fraudulent business act or practice . . .”
22

23 32. Dr. Figueroa brings this cause of action on behalf of himself and others similarly
24 situated pursuant to §§ 17203 and 17204 of the UCL.

25 33. Molina violated the UCL by engaging in unlawful, unfair, and fraudulent business
26 acts or practices, including but not limited to its failure to make timely Enhanced Payments to
27 Dr. Figueroa and other Class members when due, as required by Section 1202 of the ACA.
28

1 34. As a direct and proximate result of Molina’s misconduct and its knowing and willful
2 violations of the UCL, Dr. Figueroa and other Class members have lost money and suffered harm.

3 35. Pursuant to § 17203 of the UCL, Dr. Figueroa for himself, and for all members of
4 the Class, seeks (a) restitution for all monies, reimbursements and other benefits due pursuant to
5 Section 1202 of the ACA, which Molina unlawfully withheld; (b) the disgorgement of all other
6 benefits and ill-gotten gains obtained by Molina as a result of its conduct in violation of the UCL
7 and Section 1202 of the ACA; and (c) an order enjoining Molina from continuing to engage in the
8 acts set forth in this Complaint, which constitute violations of the UCL.
9

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11 **SECOND CLAIM FOR RELIEF**
12 **Conversion**

13 36. Dr. Figueroa incorporates by reference the statements and allegations contained in
14 the paragraphs above as if fully set forth herein.

15 37. Molina intentionally interfered with the rights of Dr. Figueroa and other Class
16 members to personal property, including the money due to them for Enhanced Payments under
17 Section 1202 of the ACA.

18 38. Molina wrongly took possession and asserted dominion over the Enhanced
19 Payments that were owed to Dr. Figueroa and other Class members, without their knowledge or
20 consent. In this regard, Molina’s actions were inconsistent with the rights of Dr. Figueroa and
21 other Class members to be paid the Enhanced Payments. As a result, Molina intentionally and
22 wrongfully deprived Dr. Figueroa and other Class members of their property, namely, their
23 Enhanced Payments.
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1 39. Molina's intentional misconduct in wrongfully taking the Enhanced Payments owed
2 to Dr. Figueroa and other Class members resulted in serious and complete interference with their
3 rights to possess those Enhanced Payments.

4 40. Molina acted maliciously and with an intentional disregard for the rights of Dr.
5 Figueroa and other Class members.
6

7 41. As a direct and proximate result of Molina's misconduct, as alleged and described
8 in greater detail above, Dr. Figueroa and other Class members have suffered harm and sustained
9 monetary damages in an amount to be determined at trial.
10

11 **THIRD CLAIM FOR RELIEF**
12 **Unjust Enrichment**

13 42. Dr. Figueroa incorporates by reference the statements and allegations contained in
14 the paragraphs above as if fully set forth herein.

15 43. At Molina's request and with Molina's full knowledge, Dr. Figueroa and other Class
16 members provided E&M Services to Molina health plan members under circumstances where Dr.
17 Figueroa and other Class members reasonably expected that they would receive appropriate
18 payment for those services consistent with all legal mandates and requirements.
19

20 44. Molina was unjustly enriched when it knowingly received and accepted the benefit
21 of Medicaid funds that it was obligated to use to make the required Enhanced Payments to
22 California physicians, including Dr. Figueroa and other Class members. Unlike Dr. Figueroa and
23 other Class members, who earned the Enhanced Payments by providing E&M Services to
24 Medicaid patients, Molina did nothing to earn the Enhanced Payments it wrongfully withheld
25 from Dr. Figueroa and other Class members.
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1 45. Molina accepted and wrongfully retained the benefit of Medicaid funds that should
2 have been paid to Dr. Figueroa and other Class members for providing E&M Services to Molina's
3 health plan members.

4 46. Molina did not pay Dr. Figueroa and other Class members the full value of the
5 benefits it received, and allowing Molina to retain those benefits without paying for them would
6 be inequitable.
7

8 47. Dr. Figueroa and other Class members are entitled to recover from Molina the
9 reasonable value of the services provided to Molina's health plan members, together with interest
10 that is owed based on the delayed payments. One measure of the value of the E&M Services that
11 Dr. Figueroa and other Class members provided is the amount of the Enhanced Payments that
12 Molina was obligated to pay those medical providers under Section 1202 of the ACA.
13

14 **FOURTH CLAIM FOR RELIEF**
15 **Interference with Prospective Economic Advantage**

16 48. Dr. Figueroa incorporates by reference the statements and allegations contained in
17 the paragraphs above as if fully set forth herein.

18 49. Before engaging in the wrongful conduct described above, Molina was fully aware
19 that Dr. Figueroa and other Class members had relationships with Molina health plan members,
20 and that those relationships provided certain economic benefits to Dr. Figueroa and other Class
21 members.
22

23 50. Molina engaged in the misconduct described above with the wrongful intent to
24 interfere with and/or deprive Dr. Figueroa and other Class members of the economic benefits they
25 lawfully derived by providing medical services to Molina's health plan members.
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1 51. As a result of Molina's misconduct described above, Dr. Figueroa and other Class
2 Members' relationships with these Molina health plan members were disrupted and continue to
3 be disrupted.

4 52. Molina acted maliciously and with intentional disregard for the rights of Dr.
5 Figueroa and other Class members. Molina's misconduct was independently wrongful because,
6 among other things, it violated Molina's duties to make Enhanced Payments in a timely manner
7 consistent with the law, including but not limited to California common law governing the
8 obligations of parties holding funds in a common law or constructive trust for the benefit of others,
9 as well as Section 1202 of the ACA.
10

11
12 53. As a direct and proximate result of Molina's misconduct, Dr. Figueroa and other
13 Class members have suffered harm and sustained damages in amount to be determined at trial.
14

15 **FIFTH CLAIM FOR RELIEF**
16 **Breach of Fiduciary Duty**

17 54. Dr. Figueroa incorporates by reference the statements and allegations contained in
18 the paragraphs above as if fully set forth herein.

19 55. In its role as the party responsible for ensuring that Dr. Figueroa and other Class
20 members received the Enhanced Payments as required by law, Molina has been holding funds due
21 to Dr. Figueroa in the capacity of a trustee.

22 56. A fiduciary relationship existed between Molina and Dr. Figueroa and other Class
23 members with regard to the payment and distribution of the Enhanced Payments.
24

25 57. Dr. Figueroa and other Class members were entitled to place their trust and
26 confidence in Molina to pay them the required Enhanced Payments, and Molina voluntarily
27
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1 accepted and assumed the obligation to distribute Enhanced Payments to those Class members
2 eligible to receive them.

3 58. Molina was, at all relevant times, duty bound to act with the utmost good faith for
4 the benefit of Dr. Figueroa and other Class members with regard to the distribution of the
5 Enhanced Payments.
6

7 59. Dr. Figueroa and the Class members (as well as the state and federal government)
8 reasonably relied on the integrity of Molina with regard to its handling and distribution of the
9 Enhanced Payments.
10

11 60. Molina owed fiduciary duties to Dr. Figueroa and other members of the Class,
12 including, *inter alia*, a duty to act with the utmost good faith in ensuring that the government
13 funds provided to Molina for the purpose of making the Enhanced Payments to the members of
14 the Class, who were always intended to be the beneficiaries of the Enhanced Payments.
15

16 61. Molina breached the fiduciary duties it owed to Dr. Figueroa and other Class
17 members by engaging in the wrongful conduct described above, including but not limited to its
18 failure and refusal to make the Enhanced Payments in a timely manner to Dr. Figueroa and other
19 Class members, despite knowing that they were entitled to receive those payments under Section
20 1202 of the ACA.
21

22 62. Molina's misconduct and its breaches of its fiduciary duties as alleged herein were
23 malicious and intentional, and were undertaken by Molina with intentional disregard for the rights
24 of Dr. Figueroa and other Class members.
25

26 63. As a direct and proximate result of Molina's breaches of its fiduciary duties, Dr.
27 Figueroa and other Class members suffered harm and sustained monetary damages in an amount
28 to be determined at trial.

1 WHEREFORE, Plaintiff, on behalf of himself and the Class defined above, respectfully
2 requests that the Court enter an Order:

- 3 a. Certifying the proposed Class pursuant to Cal.C.C.P. § 382 and applicable law;
4 b. Appointing Plaintiff as the representative of the Class and his attorneys as counsel
5 for the Class;
6 c. Entering judgment against Defendant and requiring Defendant to pay appropriate
7 restitution and damages as requested herein, and granting all other appropriate relief
8 to Plaintiff and the Class according to the proof introduced in this matter;
9 d. Awarding Plaintiff and all Class members exemplary and punitive damages;
10 e. Requiring Defendant to pay the attorneys' fees, costs and disbursements of Plaintiff
11 and other Class members in this action; and
12 f. Awarding such other and further relief as the Court may deem just and proper,
13 including but not limited to an appropriate incentive award for the Plaintiff.
14
15
16

17 **PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY.**

18 Dated: December ___, 2016.

Respectfully submitted,

19 O'NEIL, CANNON, HOLLMAN, DEJONG &
20 LAING, S.C., MAHANY LAW, and BARNES
21 LAW
Attorneys for Plaintiff

22 By:
23 Douglas M. Hanchar
24 CA Bar: 262509
25 Barnes Law, LLP
26 601 South Figueroa Street
27 Suite 4050
28 Los Angeles, CA 90017
doughanchar@barneslawllp.com

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By: Douglas P. Dehler
pro hac vice anticipated
State Bar No. 1000732
doug.dehler@wilaw.com
Laura J. Lavey
State Bar No. 1079346
laura.lavey@wilaw.com
111 East Wisconsin Avenue, Suite 1400
Milwaukee, Wisconsin 53202-4870
(414) 276-5000

By: Brian H. Mahany
Mahany Law
pro hac vice anticipated
WI State Bar No. 1000732
brian@mahanylaw.com
P: 414-258-2375
F: 414-777-0776
PO Box 511328
Milwaukee, Wisconsin 53203