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<p>CIPRIANI &amp; WERNER, P.C.,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>MEDICAL RECORDS ONLINE, INC. (d/b/a "MRO"),</p> <p style="text-align: right;">Defendant</p>	<p>SUPERIOR COURT OF NEW JERSEY CAMDEN COUNTY DOCKET NO.</p> <p><b>CLASS ACTION COMPLAINT AND JURY DEMAND</b></p>
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**INTRODUCTION**

1. This is a class action, brought under New Jersey law, on behalf of a class composed of the persons and entities defined in N.J.A.C. 8:43G-15.3(e) – consisting primarily of defense attorneys and insurance companies in civil cases– who purchased copies of electronically stored New Jersey hospital records from MRO between September 1, 2015 and February 29, 2020.

2. As outlined in greater detail herein, MRO charged these class members a fee for copies of such hospital records which far exceeded the maximum limits on such fees allowed by New Jersey law during the class period.

3. Plaintiff brings New Jersey state law claims exclusively against MRO, on behalf of itself and the class, including:

- a. A claim for declaratory relief under the New Jersey Declaratory Judgment Act, N.J.S.A. 2A:16-51, et seq., declaring the fees charged by MRO during the class period to be unlawful;

- b. A claim under New Jersey common law for unjust enrichment and disgorgement based on the amounts collected by MRO in excess of the lawful copy fee limits;
- c. A claim under the New Jersey Consumer Fraud Act (“CFA”), in that MRO’s uniform billing policy and billing practice as described herein constitutes and unconscionable commercial practices which violate N.J.S.A. 56:8-2; and
- d. A claim under New Jersey common law for breach of contract for violation of the implied covenant of good faith and fair dealing.

#### JURISDICTION AND VENUE

4. The New Jersey Superior Court has exclusive subject matter jurisdiction over the claims alleged herein in that all claims pleaded are New Jersey state law claims and the total amount in controversy, including attorney’s fees, is far less than \$5 million.

5. Venue is proper in Camden County in that Plaintiff purchased copies of patient hospital records relating to, inter alia, patients treated at Cooper Hospital in Camden County, New Jersey, the hospital records purchased by Plaintiff discussed in this Complaint were records created at, inter alia, Cooper Hospital in Camden County, New Jersey, and the activities by MRO complained of occurred in, inter alia, Camden County, New Jersey.

#### PARTIES

6. Plaintiff is a New Jersey licensed professional corporation which has offices in Mt. Laurel and Woodbridge, New Jersey. Like all class members, Plaintiff was victimized by the uniform MRO policy alleged herein and was charged more by MRO for electronic copies of patient hospital records than N.J.A.C. 8:43G-15.3(e) allows.

7. Defendant MRO is a Pennsylvania Corporation with its primary place of business located in King of Prussia, Pennsylvania. According to the New Jersey Division of Commercial Recording, MRO’s registered agent in New Jersey is National Corporate Research, LTD, 14 Scenic Drive, Dayton, New Jersey 08810.

**MRO'S UNIFORM POLICY OF VIOLATING THE COPY FEE LIMITS SET FORTH IN N.J.A.C. 8:43G-15.3(e)**

8. MRO is an information management company which provides medical record storage and management services to, inter alia, hospitals.
9. MRO itself is not a health care provider, but rather is an unlicensed entity hired by hospitals to store and manage medical records relating to the hospital's patients and to provide copies of hospital records to purchasers upon request.
10. Among the duties which MRO contractually assumes for its hospital clients is the duty to respond to requests for copies of patient hospital records made by, inter alia, defense attorneys in civil actions and insurance companies.
11. Under its contract with New Jersey hospitals, MRO becomes the exclusive provider of copies of patient medical records generated by that hospital. Thus, if a requester wants copies of a patient's hospital records, they must obtain them from MRO.
12. MRO charges fees to such requesters whenever MRO provides them with copies of patient hospital records.
13. The fees which are charged by MRO for such copies are determined, not by the hospital, but by MRO, and such fees are paid directly to MRO and retained by MRO; not the hospitals serviced by MRO.
14. New Jersey state law limits the fees which a records provider may charge for providing copies of patient hospital records.
15. For the time period from September 1, 2015 until February 29, 2020, N.J.A.C. 8:43G-15.3(d) and (e) were the binding legal authority which governed the fees which could be charged during that period for copies of New Jersey hospital records.

16. During this time period, N.J.A.C. 8:43G-15.3 imposed two different sets of fee limits, depending on who was requesting copies of a patient's hospital records.

17. The fees that could lawfully be charged to a patient, a patient's legally authorized representative, or a patient's attorney were governed by N.J.A.C. 8:43G-15.3(d)

18. The complaint in the case at bar does not involve such fees and such persons are excluded from the proposed class defined herein.

19. Rather, the case at bar relates solely to the fees charged by MRO to persons or entities other than the patient, the patient's attorney or the patient's legal representative who, pursuant to a release of records signed by the patient, purchased New Jersey hospital records from MRO.

20. In practical terms, such persons and entities consisted primarily of defense attorneys and insurance companies who, while defending a civil lawsuit, obtained a release of records signed by a patient and purchased electronic copies of the patient's electronic hospital records from MRO.

21. From September 1, 2015 until February 29, 2020, N.J.A.C. 8:43G-15.3(e) was the governing New Jersey law on the copy fees that could be charged to persons or entities other than the patient, the patient's attorney or the patient's legal representative.

22. Specifically, N.J.A.C. 8:43G-15.3(e) limited the fees that could be charged by MRO to the class as follows: **"The fee for copying medical records shall be based on actual costs, which in no case shall exceed \$ 1.00 per page and \$ 10.00 per search, in the case of the following: 1. Where the patient has authorized release of his or her medical record to a person or entity other than those identified in (d) above"** (emphasis added).

23. The plain language of N.J.A.C. 8:43G-15.3(e) prohibited MRO

from charging fees for copies of patient hospital records to the class which were higher than MRO's "actual costs" in making and delivering such copies.

24. The "\$1.00 per page" language of the regulation set forth an absolute cap on such fees, but, where a copy provider's "actual costs" were lower than \$1.00 per page, N.J.A.C. 8:43G-15.3(e) clearly limited copy fees to "actual costs."

25. Thus, the plain wording of N.J.A.C. 8:43G-15.3(e) required class members to be charged a copy fee that was the lower of MRO's actual costs in making and delivering the copies or \$1 per page.

26. The fee limits in N.J.A.C. 8:43G-15.3(e) applied to both the hospitals themselves and any records management and copy companies – such as MRO – who contract with the hospital to respond to requests for copies of patient hospital records. See Attachment A, Opinion Letter by New Jersey Department of Health dated July 11, 2012, stating: "**The Department would apply the requirements of N.J.A.C. 8:43G-15.3 to a vendor acting as the agent of a hospital in the provision of medical records to patients.**" (emphasis added).

27. The "actual costs" incurred by MRO in furnishing and delivering copies of patient hospital records vary depending on the type of media used to make the copies and the manner in which the copies are delivered to the purchaser.

28. For example, MRO's costs in making actual paper copies of paper records is much higher, in terms of both labor, paper, copier toner and postage, than the cost incurred by MRO when it merely saves copies of electronically stored records onto some sort of electronic media, such as on a hard drive, server or CD.

29. These days, virtually all hospital records are electronically stored, because the American Recovery and Reinvestment Act of 2009 required all public and private healthcare

providers, including hospitals, to adopt the use of electronically stored hospital records by January 1, 2014.

30. As a result, the hospitals serviced by MRO, including, inter alia, Cooper Hospital, had all adopted the use of electronically stored hospital records by January 1, 2014.

31. The abandonment of paper hospital records in favor of electronically stored records greatly reduced the cost of making and producing copies of such records.

32. Thus, the elimination of paper hospital records, and the use of electronically stored hospital records, had a drastic effect on the actual costs incurred by MRO in collecting and producing copies of a patient's hospital records.

33. Before the implementation of mandatory electronically stored hospital records in 2014, collecting and producing copies of a patient's hospital records was more labor intensive and involved the use of raw materials such as copy toner and copy paper.

34. With the switch to electronically stored hospital records, however, MRO incurred far lower costs in making and delivering electronic copies of a hospital patient's records to a purchaser.

35. In particular, the mandatory use of electronically stored hospital medical records made the number of "pages" of records being copied and sent to purchasers irrelevant to the costs incurred by MRO in making and transferring copies of such records.

36. Prior to January 1, 2014, MRO had to go through a fairly labor intensive process of locating and manually copying each page of the paper records.

37. Under this process, the amount of labor required to make paper copies of paper records was directly proportional to how many pages of records needed to be copied. Put simply, the more pages of paper records that needed to be located and copied, the higher the labor costs

incurred in making the requested copies, the higher the cost of buying the paper and toner needed to make the copies, and the higher the postage costs used in mailing such paper copies.

38. With the rise of electronically stored hospital records, however, the cost to MRO of producing and transferring copies of hospital patient records no longer varied according to the number of pages of records which needed to be copied and transferred.

39. Regardless of whether MRO was providing copies of only a few pages of records, or hundreds of pages, the cost to MRO of copying electronically stored records and transmitting them to the purchaser took the same amount of time and effort.

40. Indeed, MRO can electronically copy thousands of pages of electronically stored hospital records in less than five minutes.

41. During the class period, MRO offered those who purchased hospital records from MRO the opportunity to buy electronic copies of hospital records in two ways.

42. Under the first method, MRO would save the requested electronically stored hospital records onto a CD and then mail that CD to the purchaser through the mail.

43. Under the second method, MRO allowed a party requesting copies of patient hospital records to download an electronic copy of the requested records in PDF format, directly onto the requesting party's own computer, via an internet portal established by MRO known as **"PDF E-delivery."**

44. Both methods greatly reduced the actual costs incurred by MRO in making and delivering copies of patient hospital records to a requesting party, as compared to providing paper copies of paper records.

45. Under either of these two methods, MRO did not need to purchase any copy paper or toner in making copies.

46. Also, under either of these two methods, MRO had far lower labor costs compared to having an employee manually locate and manually copy paper records. Indeed, an MRO employee can electronically search for, locate, and make an electronic copy of thousands of pages of electronically stored hospital records in less than five minutes, whereas locating and manually making paper copies of paper records would take far longer.

47. With the “**PDF-E-delivery**” method, MRO’s costs were even lower than when copies are produced on CD, because “**PDF E-delivery**” did not require MRO to pay postage or buy a blank CD. The purchaser simply downloaded the records from the MRO website directly onto their own computer.

48. Moreover, with “**PDF E-delivery**”, MRO’s labor costs were lower, since the purchaser did much of the actual labor. The requesting party simply submitted a records release form signed by the patient and paid the fee demanded by MRO for the records, went online and entered a password provided by MRO. The requesting party was then allowed by MRO to download the entire requested patient hospital records directly onto the requesting party’s own computer.

49. Needless to say, the actual cost to MRO of providing copies of electronically stored hospital records in this manner were a fraction of the actual costs of providing paper copies of paper records.

50. In the fall of 2015, the New Jersey Department of Health, the administrative body which drafted N.J.A.C. 8:43G-15.3(e), and which has been charged with the interpretation of this regulation, issued an interpretation of the regulation which recognized that a fee “**based on actual costs**” is far lower when copies of electronic medical records are copied and delivered to the requesting party in electronic format.



51. Specifically, in September of 2015, the New Jersey Department of Health issued a memorandum opinion outlining the fees that may lawfully be charged under the regulation in the sale of electronically stored hospital records, finding that the term a fee **“based on actual costs”** in N.J.A.C. 8:43G-15.3(e) means that any fee charged by a seller of hospital record copies – such as MRO – shall consist of only three elements: a \$10 “search fee”, the actual cost of any portable media used to make the copy (i.e., the cost of the blank CD, flash drive, etc.) and the actual cost of postage if the copies are sent by mail.

52. The 2015 NJ DOH memorandum opinion, which is entitled **“Fees for Copies of Electronic Medical Records”** is attached hereto as Attachment B, and provides:

**“SUBJECT: Fees for Copies of Electronic Medical Records**

**The Department of Health (Department) has received numerous requests for an interpretation of the rules governing the fees hospitals are permitted to charge for providing a copy of an electronic medical record (EMR). While N.J.A.C. 8:43G-15.3(d) and (e) do not expressly reference a fee for the copying of an EMR, the subsections provide that hospitals may charge a ‘fee based on actual costs.’**

**Therefore, the Department is interpreting N.J.A.C. 8:43G-15.3(d) and (e) to permit the following fees ‘based on actual costs’ to be charged for a medical records request that involved an EMR:**

- **a search fee of no more than \$10.00;**
- **the actual cost of the portable media used to copy the electronic records (e.g., CD, film, flash drive); and**
- **the actual cost of postage.”**

53. It should be noted that this NJ DOH memorandum opinion does not allow a seller of hospital records to count the cost of non-portable media – such as the computer system or servers used to store electronic records – as part of its **“actual costs”** for the purposes of N.J.A.C. 8:43G-15.3(e). Rather, this NJ DOH memorandum opinion specifically allows only the

cost of “portable media” used, which the NJ DOH opinion defines as “CD, film, flash drive”.

54. The September 2015 NJ DOH memorandum entitled “Fees for Copies of Electronic Medical Records” stated on its face that this written NJ DOH interpretation was sent by NJ DOH to every hospital in New Jersey. See Attachment B.

55. The September 2015 NJ DOH memorandum entitled “Fees for Copies of Electronic Medical Records” does not purport to amend N.J.A.C. 8:43G-15.3(e).

56. Indeed, the regulatory phrase which limited sellers of patient hospital records to a fee “based on actual costs” originates in N.J.A.C. 8:43G-15.3(e) itself and such language existed in that regulation for many years before 2015.

57. The September 2015 NJ DOH memorandum entitled “Fees for Copies of Electronic Medical Records” stated on its face – in at least two places – that this document is an interpretation by NJ DOH of the existing regulatory term a fee “based on actual costs” in N.J.A.C. 8:43G-15.3(e). See Attachment B.

58. The NJ DOH clearly had the legal authority to interpret the regulatory phrase “based on actual costs” in N.J.A.C. 8:43G-15.3. See Boldt v. Correspondence Mgmt., Inc., 320 N.J. Super. 74, 86 (App. Div. 1999), where the New Jersey Appellate Division specifically held that when it comes to the interpretation of the term “actual costs” in N.J.A.C. 8:43G-15.3, a court should defer to the NJ DOH interpretation of that regulatory term, stating:

**“The concept of ‘actual costs’ is part of a regulatory scheme adopted by the Department of Health and is within its expertise to interpret and administer.” (emphasis added)**

59. MRO has at all times been fully aware that it was legally bound by the NJ DOH interpretation of the regulatory term “actual costs” in N.J.A.C. 8:43G-15.3.

60. In fact, in prior lawsuits accusing MRO of overcharging for copy fees, MRO itself

filed submissions with the New Jersey Superior Court arguing that, under the Appellate Division opinion in Boldt, the Court must defer to the NJ DOH interpretation of the regulatory phrase “actual costs” in N.J.A.C. 8:43G-15.3.

61. For example, in MRO’s brief dated February 13, 2012 in Atkinson v. MRO, Superior Court of New Jersey, Camden County, Docket No. CAM-L-4311-11 at Page 14-15, MRO argued to the New Jersey Superior Court that the court must defer to the NJ DOH interpretation of the regulatory term “actual costs” in N.J.A.C. 8:43G-15.3, with MRO stating:

**“plaintiffs disregard the central holding of Boldt, which required DHSS [i.e. NJ DOH] intervention because ‘agency expertise is required to resolve the question presented.’ 320 N.J.Super. at 83. DHSS [i.e. NJ DOH] review can provide the parties with guidance on how the ‘actual costs’ language in the regulation should be interpreted, as well as on such related questions as whether the regulation applies to other hospitals and licensees. There is no sound reason why deference to DHSS’s primary jurisdiction was appropriate in Boldt but is not here, and the Court should refer this matter to DHSS if it is not dismissed.”**  
(emphasis added)

62. It is specifically alleged that MRO has been aware of, and has possessed a copy of, the September 2015 NJ DOH memorandum entitled “**Fees for Copies of Electronic Medical Records**” since the date it was issued.

63. Indeed, MRO has admitted on the record in court proceedings on August 30, 2019 that MRO was aware of the contents of the September 2015 NJ DOH memorandum entitled “**Fees for Copies of Electronic Medical Records**” and that, despite such knowledge, MRO chose not to take that September 2015 NJ DOH memo “**seriously**”.

64. Instead, MRO made a conscious, knowing and deliberate decision in September 2015 to ignore the regulatory interpretation by the NJ DOH contained in the September 2015 NJ DOH memorandum entitled “**Fees for Copies of Electronic Medical Records**” and to continue

to charge fees to class members which were many times higher than what N.J.A.C. 8:43G-15.3(e), as interpreted by this written NJ DOH interpretation of N.J.A.C. 8:43G-15.3(e), allowed.

65. The complaint in the case at bar deals exclusively with the fees for electronic hospital records charged by MRO to persons and entities covered by N.J.A.C. 8:43G-15.3(e), which applies to purchasers of patient records who were not the patient, the patient's attorney or the patient's legal representative.

66. MRO is fully aware of which copy purchasers fit within this category.

67. Both the written request for copies of records, and the release form signed by the patient allowing such records to be released to the purchaser, state when the party purchasing copies of records is a defense attorney or insurance company. See Attachment C, sample written request for hospital records by Cipriani & Werner, stating "**I represent defendant Kohl's Department store**", and Attachment D, sample records release form signed by patient, stating that the records are going to "**the above defense counsel...**".

68. MRO receives copies of both the written request for records and the signed release of records form and then stores these documents on the MRO data base. See e.g. Attachment G, request for copies of Cooper Hospital patient records by Cipriani & Werner dated February 7, 2017, which bears an MRO stamp showing the date MRO received a copy of the request, stating: "**MRO FEB 10 2017**".

69. Moreover, the plain language of N.J.A.C. 8:43G-15.3(d) absolutely bars MRO from charging any copy fee to a patient, a patient's attorney, or the patient's legal representative that exceeds a total of \$200. N.J.A.C. 8:43G-15.3(e), on the other hand, has no such limit.

70. In order to comply with this \$200 limit, MRO must track the relationship between the party ordering copies of patient records and the patient and MRO did, in fact, track that

relationship.

71. Indeed, whereas MRO limited any copy charges to patients, patients' attorneys and patients' legal representatives to no more than \$200, the fees charged by MRO to Plaintiff and the proposed class frequently exceeded \$200 by a substantial margin. This shows that MRO knew full well that these class members were not patients, patient attorneys or patient legal representatives and thus were not subject to the \$200 limit. See e.g. Attachment E, MRO bill to Cipriani & Werner dated July 16, 2019 for hospital records for **"\$528.00"**.

72. The fact that MRO routinely charged Plaintiff and the class fees which exceeded \$200 shows that MRO was fully aware they were not covered by N.J.A.C. 8:43G-15.3(d) (i.e., were not a patient, a patient's attorney or a patient's legal representative) and were instead covered by N.J.A.C. 8:43G-15.3(e) (i.e., that they were a defense attorney, insurance company and anyone else who did not fall under N.J.A.C. 8:43G-15.3(d)).

73. Despite the foregoing, throughout the class period, MRO ignored both the plain language of N.J.A.C. 8:43G-15.3(e), and the 2015 NJ DOH interpretation of the regulatory term **"based on actual costs"** in N.J.A.C. 8:43G-15.3(e), in determining the fees charged whenever MRO sold copies of electronically stored hospital records to class members via the internet or on CD.

74. In doing so MRO employed a uniform policy of imposing what MRO itself admits was a uniform per-page rate of \$1 per page whenever MRO sold copies of electronically stored hospital records to class members covered by N.J.A.C. 8:43G-15.3(e) via the **"PDF-E-delivery"** system or on CD between September 1, 2015 and February 29, 2020.

75. Such a uniform per-page rate of \$1 per page is plainly barred by the September 2015 NJ DOH interpretation of the regulatory term **"based on actual costs"** in N.J.A.C. 8:43G-

15.3(e). That September 2015 NJ DOH interpretation plainly does not allow any per-page rates for copies of electronically stored medical records. See Attachment B, September 2015 NJ DOH memo entitled **“Fees for Copies of Electronic Medical Records.”**

76. Moreover, even without considering the September 2015 NJ DOH memo, MRO’s policy of charging uniform, per-page rates of \$1 per page for copies of electronic records greatly exceeded MRO’s actual costs in copying and delivering those electronic records to the requesting party, thereby violating the **“actual costs”** legal limits imposed on such fees by N.J.A.C. 8:43G-15.3(e).

77. Such uniform per-page rates of \$1 per page were imposed on every single class member by MRO, without exception, and without MRO undertaking any type of individualized analysis or calculation of the actual costs incurred by MRO in producing and delivering such records.

78. The uniform per-page rates charged by MRO for the sale of copies of electronically stored hospital records to class members via **“PDF-E-delivery”** or on CD are many times higher than MRO’s actual costs in providing such copies and far exceed the limits set forth in the 2015 NJ DOH interpretation of N.J.A.C. 8:43G-15.3(e).

79. Thus, between September 1, 2015 and February 29, 2020, MRO illegally earned a profit on the sale of electronically stored hospital records which were sold to class members via **“PDF-E-delivery,”** and/or on CD, in direct violation of N.J.A.C. 8:43G-15.3(e) and the 2015 NJ DOH interpretation of that regulation.

80. What happened to proposed class representative Cipriani & Werner, P.C. illustrates the unlawful MRO policy which is the subject of this litigation.

81. Cipriani & Werner is a law firm which frequently represents defendants in

personal injury lawsuits. As such, Cipriani & Werner routinely ordered electronic copies of patient hospital records from MRO, pursuant to a written release of records executed by the patient. Cipriani & Werner purchased electronic copies of such records via MRO's "**PDF-E Delivery**" system and on CD during the class period.

82. In each such transaction, Cipriani & Werner was clearly not the patient, the patient's attorney or the patient's legal representative.

83. These facts were made clear by Cipriani & Werner in the written requests for patient hospital records, and the written release of records forms, submitted by Cipriani & Werner, each of which was shared with MRO.

84. As such, Cipriani & Werner was clearly legally entitled to the fee protections set forth in N.J.A.C. 8:43G-15.3(e) and MRO was fully aware of this at all times.

85. Yet, during each transaction when Cipriani & Werner purchased copies of electronic hospital records from MRO during the class period, MRO demanded that, before any such records were provided, Cipriani & Werner had to first pay fees to MRO, calculated at a uniform per-page rate of \$1 per page; rates which were far higher than MRO's actual costs in making and delivering copies of such records; rates which were far higher than the fee limits imposed by N.J.A.C. 8:43G-15.3(e) and the September 2015 NJ DOH memo interpreting that regulation which is embodied in the NJ DOH memo entitled "**Fees for Copies of Electronic Medical Records**".

86. Indeed, from 2017 to 2019 alone, MRO charged Cipriani & Werner, P.C. over \$8,000 for less than 8,000 pages of electronically stored New Jersey hospital records sent via the "**PDF E-Delivery**" system and on CD.

87. Typical of these was on June 13, 2019, when Cipriani & Werner submitted a

written request for electronic copies of New Jersey hospital records relating to a patient, along with a written release of records form signed by the patient, authorizing the release of these hospital records directly to Cipriani & Werner. See Attachments C and D.

88. Both the request for records and the release form made clear on their face that Cipriani & Werner was a defense attorney representing a defendant in an action brought by the patient, and thus MRO knew therefore that Cipriani & Werner was not the patient, the patient's attorney, or the patient's legal representative. See Attachment C, written request by Cipriani & Werner dated June 13, 2019, indicating "**I represent defendant Kohl's Department store**" in an action brought by the patient, and Attachment D, sample release form submitted by Cipriani & Werner, stating that the records are going to "**the above defense counsel...**"

89. MRO received copies of both the letter request by Cipriani & Werner and the signed release of records form executed in favor of Cipriani & Werner.

90. Pursuant to MRO's contract with its client hospital, MRO responded to Cipriani & Werner's request for medical records on or about July 16, 2019, by sending an MRO bill addressed to Cipriani & Werner for records to be downloaded from MRO's "**PDF E-delivery**" portal. See Attachment E, MRO Bill Dated July 16, 2019 to "**Cipriani & Werner – Mt. Laurel/PORTAL**".

91. That MRO bill was for "**\$528,**" for what was described by the MRO bill itself as "**Number of Pages: 518**" of medical records. See Attachment E, MRO Bill Dated July 16, 2019.

92. As stated on this MRO bill, the fee for these records consisted of a "**Search & Retrieval Fee: \$10.00**" and an additional \$518 fee based on "**Number of Pages: 518**" (i.e. \$1 per page). Id.

93. As reflected on that bill, MRO required prepayment of that amount prior to



producing the records. See Attachment E, MRO Bill Dated July 16, 2019, which states at the center top portion of the document “**PREPAYMENT REQUIRED**”.

94. Cipriani & Werner paid the \$528 fee demanded by MRO because it had no choice. MRO demanded prepayment as a condition of providing the requested records, MRO was the exclusive source of these hospital records, and Cipriani & Werner needed those records in order to represent its client.

95. After payment, Cipriani & Werner received a statement from MRO which listed the code for downloading the requested files from the internet via the “**PDF E-delivery**” portal. See Attachment F, MRO document confirming records were “**VIA PORTAL**”.

96. Shortly thereafter, Cipriani & Werner downloaded the requested records onto its own computer via the MRO “**PDF E-delivery**” system.

97. The \$528 was paid by Cipriani & Werner directly to MRO and was retained by MRO.

98. There were no postage costs incurred by MRO in this transaction, because Cipriani & Werner downloaded the records from the MRO website directly onto Cipriani & Werner’s own computer.

99. The actual labor cost incurred by MRO in allowing Cipriani & Werner to download 518 pages of electronically stored hospital records from the MRO portal onto Cipriani & Werner’s own computer via the internet was nowhere near \$528. Nor were such MRO costs anywhere near the uniform \$1 per page rate charged by MRO for the 518 pages.

100. In actuality, the costs incurred by MRO in producing these electronic records to Cipriani & Werner via internet download was no more than \$10. Thus, the illegal overcharge imposed by MRO in that instance was \$518.

101. As another example, on February 7, 2017, Cipriani & Werner submitted a written request for electronic copies of Cooper Hospital records relating to a patient, along with a written release signed by the patient, authorizing the release of these medical records directly to Cipriani & Werner. See Attachments G and H.

102. The letter requesting records made clear that Cipriani & Werner was a defense attorney representing a defendant in an action brought by the patient, and therefore the request plainly showed that Cipriani & Werner was not the patient, the patient's attorney, or the patient's legal representative. See Attachment G, written Cipriani & Werner request for records dated February 7, 2017, indicating **"Be advised that this office represents the Employer/ Respondent..."**

103. MRO received a copy of the Cipriani & Werner letter requesting medical records. In fact, this document bears a stamp on it, showing it was received by MRO. See Attachment G, written Cipriani & Werner request for records dated February 7, 2017, which bears an MRO stamp on the right hand side stating **"MRO FEB 10 2017"**.

104. Pursuant to MRO's contract with its client hospital, MRO responded to Plaintiff's request for medical records on or about April 24, 2017, by sending an MRO bill addressed to Cipriani & Werner for copies of the requested Cooper Hospital records on CD. See Attachment I, MRO Bill Dated April 24, 2017 to **"Cipriani & Werner"**.

105. That MRO bill was for **"\$143.19"**, for what was described by the MRO bill itself as **"Number of Pages 132"**. See Attachment I, MRO Bill Dated April 24, 2017.

106. As stated on this MRO invoice, the fee for these records consisted of a **"Search & Retrieval Fee: \$10.00"**, a \$1.19 charge for **"Postage"** and additional \$132 fee based on **"Number of Pages 132."** (i.e. \$1 per page) Id.

107. As reflected on that bill, MRO required prepayment of that amount prior to producing the records. See Attachment I, MRO Bill Dated April 24, 2017, which states at the center top portion of the document **“PREPAYMENT REQUIRED”**.

108. Cipriani & Werner paid the \$143.19 fee demanded by MRO because it had no choice.

109. MRO demanded prepayment as a condition of providing the requested records, MRO was the exclusive source of these hospital records, and Cipriani & Werner needed those records in order to represent its client.

110. After payment, Cipriani & Werner received a CD from MRO containing the requested records. See Attachment J, photocopy of CD bearing MRO logo.

111. The \$143.19 was paid by Cipriani & Werner directly to MRO and was retained by MRO.

112. The actual labor cost incurred by MRO in saving a copy of 132 pages of electronically stored hospital records onto a CD and then mailing that CD to Cipriani & Werner was far less than \$143.19.

113. In actuality, the actual costs incurred by MRO in producing these electronic records to Cipriani & Werner on CD, including postage and the cost of the blank CD, was no more than \$30. Thus, the illegal overcharge imposed by MRO in that instance was \$113.19.

114. What happened to Cipriani & Werner, P.C. in these instances was not an isolated incident or an accident.

115. Rather, it was the result of MRO’s deliberate, knowing, and intentional policy.

116. The MRO policy challenged in the case at bar was in direct violation of the limits on patient hospital record copy fees set forth in N.J.A.C. 8:43G-15.3(e) and the regulatory

interpretation contained in the NJ DOH Memorandum Opinion of September 2015 (Attachment B), because they resulted in class members having to pay far more for copies of electronically stored hospital records than the actual costs incurred by MRO in copying and transferring those copies to the purchaser.

117. As a company specializing in the management and provision of electronically stored medical records, MRO is subject to an irrebuttable presumption that MRO is familiar with the laws and regulations governing the provision of electronically stored medical records which were in effect between September 1, 2015 and February 29, 2020.

118. MRO has also been sued on several occasions in New Jersey, for charging more for copies of hospital and other medical records than the law allows.

119. This includes Console v. MRO, New Jersey Superior Court, Camden County, Docket No. CAM-L-2133-18, a lawsuit currently pending against MRO on behalf of a certified class of attorneys representing patients, based on violations of N.J.A.C. 8:43G-15.3(d).

120. Indeed, the New Jersey Superior Court in the Console matter granted partial summary judgment to the Console class of patients' attorneys on August 30, 2019, holding that the Court was required by the Appellate Division opinion in Boldt to defer to, and adopt, the NJ DOH interpretation of a fee "**based on actual costs**" which is contained in the September 2015 NJ DOH memo entitled "**Fees for Copies of Electronic Medical Records**". See Attachment K, Console Order Granting Partial Summary Judgment dated August 30, 2019.

121. Even after this ruling, however, MRO continued to charge its illegal \$1 per page fees for electronic copies of hospital records to, inter alia, defense attorneys and insurance companies; rates which are plainly barred by the September 2015 NJ DOH written interpretation of N.J.A.C. 8:43G-15.3(e).

122. MRO has thus intentionally and deliberately chose to continue its knowing violations of N.J.A.C. 8:43G-15.3 until March 1, 2020, when N.J.A.C. 8:43G-15.3 will be superseded by a new statute taking effect on March 1, 2020; a new statute which eliminates “actual costs” as a limitation in hospital record copy fees.

123. That new statute, however, is not retroactive. Thus, the charges imposed by MRO before March 1, 2020 violated the law that was in effect during the class period: N.J.A.C. 8:43G-15.3(e).

### CLASS ACTION ALLEGATIONS

124. Plaintiff brings this matter as a class action under R. 4:32 on behalf of a class (hereafter the “PDF E-Delivery Class”) defined as:

**All persons or entities who, between September 1, 2015 and February 29, 2020, who:**

- 1. Submitted a release signed by a patient allowing them to receive copies of the patient’s New Jersey hospital records;**
- 2. Downloaded copies of such New Jersey hospital records electronically via the internet from MRO using the PDF E-Delivery system;**
- 3. Paid the fee demanded by MRO for such records; and**
- 4. Was not the patient, the patient’s attorney, or the patient’s legally authorized representative.**

125. Plaintiff brings this matter as a class action under R. 4:32 on behalf of a class (hereafter the “CD Class”) defined as:

**All persons or entities who, between September 1, 2015 and February 29, 2020, who:**

- 1. Submitted a release signed by a patient allowing them to receive copies of the patient’s New Jersey hospital records;**

2. **Received copies of such New Jersey hospital records on CD from MRO;**
3. **Paid the fee demanded by MRO for such records; and**
4. **Was not the patient, the patient's attorney, or the patient's legally authorized representative.**

126. The members of each proposed class are so numerous that joinder of all members is impracticable and each class consists of at least one hundred persons or entities.

127. The exact number and identities of the persons and entities who fit within each proposed class are contained in MRO's records and can be easily ascertained from those records.

128. The claims in this action arise exclusively from MRO's uniform policies as described herein, and the uniform per-page rates charged by MRO to class members who ordered copies of electronically stored records via internet download through the **"PDF E-Delivery"** system.

129. No violations alleged are a result of any oral communications or individualized interaction between any class member and MRO.

130. There are common questions of law and fact affecting the rights of the class members, including, *inter alia*, the following:

- a. Whether MRO was subject to the legal limits on copy fees set forth in N.J.A.C. 8:43G-15.3(e) when selling copies of electronically stored hospital records to the class during the class period;
- b. Whether the court should defer to and adopt the interpretation of N.J.A.C. 8:43G-15.3(e) set forth in the 2015 NJ DOH memo entitled **"Fees for Copies of Electronic Medical Records"** (Attachment B);
- c. Whether the uniform per-page rates MRO charged to the class for electronic hospital records during the class period violated the legal limits on fees set forth in N.J.A.C. 8:43G-15.3(e);
- d. Whether the uniform MRO policies described herein constituted unconscionable

commercial practices which violated N.J.S.A. 56:8-2 of the New Jersey Consumer Fraud Act;

- e. Whether MRO is liable to the class under New Jersey common law principles relating to unjust enrichment/disgorgement, for collecting fees higher than those allowed by law;
- f. Whether a contract of sale existed between MRO and each class member who purchased electronic copies of patient medical records from MRO;
- g. Whether MRO's violations of the legal price limits set forth in N.J.A.C. 8:43G-15.3(e) during the class period violated the implied covenant of good faith and fair dealing that was part of each such contract of sale; and
- h. Whether Plaintiff and the class are entitled to an order for declaratory relief under the New Jersey Declaratory Judgment Act, N.J.S.A. 2A:16-51, et seq., declaring that MRO's uniform per-page rates during the class period were unlawful.

131. Plaintiff is a member of each class it seeks to represent.

132. The claims of Plaintiff are not only typical of all class members, they are identical in that they arise from uniform policies and standardized uniform per-page billing rates applied by MRO to the both classes, and are based on the same legal theories as all class members.

133. Plaintiff has no interests antagonistic to, or in conflict with, either class.

134. Plaintiff will thoroughly and adequately protect the interests of each class, having retained qualified and competent legal counsel to represent itself and each class.

135. Defendant MRO has acted and refused to act on grounds generally applicable to each class, thereby making appropriate declaratory relief for each class as a whole.

136. The prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications.

137. A class action is superior to other available methods for the fair and efficient adjudication of the controversy in that the out of pocket damages suffered by each class member is less than \$200 per bill, making individual actions to recover such amounts economically

infeasible.

138. Common questions will predominate, and there will be no unusual manageability issues in this case.

**COUNT ONE**

**NEW JERSEY UNIFORM DECLARATORY JUDGEMENT ACT**

**N.J.S.A. 2A:16-51, et seq.**

139. Plaintiff incorporates all preceding paragraphs as though fully set forth at length herein.

140. Plaintiff and the classes need, and are entitled to, a declaration that the MRO billing policies alleged herein were unlawful during the class period and that Defendant was barred by law during the class period from charging class members more for electronic copies of the patient's hospital records than the actual cost incurred by MRO in copying and transferring such data.

141. Plaintiff and the class members have a significant interest in this matter in that each has been or will be subjected to the unlawful policies alleged herein.

142. A justifiable controversy is presented in this case, rendering declaratory judgment appropriate.

**COUNT TWO**

**NEW JERSEY CONSUMER FRAUD ACT**

**N.J.S.A. 56:8-1, et seq.**

143. Plaintiff incorporates all preceding paragraphs as though fully set forth at length herein.

144. Defendant MRO is a seller of goods or services within the meaning of the New



Jersey Consumer Fraud Act.

145. The sale of copies of hospital records by MRO to Plaintiff and each class in exchange for the payment of money was a sale of goods or services.

146. The uniform MRO policies described in this Complaint constitute a sharp, deceptive, misleading and unconscionable commercial practice within the meaning of N.J.S.A. 56:8-2.

147. Such conduct was a per se violation of N.J.S.A. 56:8-2 because it violates statutory and other legal standards.

148. These legal standards during the class period included N.J.A.C. 8:43G-15.3(e), which states that fees for copies of hospital records shall be limited to the provider's "*actual costs*".

149. As outlined herein, MRO violated N.J.A.C. 8:43G-15.3(e), because the fees charged by MRO exceeded legal limits, and the actual cost to MRO of providing copies of electronically stored records to class members were far less than what MRO charged to Plaintiff and the class under the policies and standardized fee formula alleged herein.

150. MRO's conduct also involves omissions of material fact.

151. Specifically, at no time did MRO reveal to Plaintiff or the classes that the fees demanded by MRO exceeded the legal limits on such fees.

152. Nor did MRO ever reveal to Plaintiff or the classes MRO's actual costs, or that the actual costs incurred in copying and transferring such electronic medical records were far less than the fees charged by MRO.

153. Nor did MRO ever reveal to Plaintiff and the classes that MRO was making a profit on the sale of electronically stored hospital records to the classes.

154. Plaintiff and the classes each suffered an ascertainable loss of money and property as a result of Defendant's use of the unconscionable business practice described herein.

**COUNT THREE**

**BREACH OF CONTRACT FOR VIOLATION OF IMPLIED  
COVENANT OF GOOD FAITH AND FAIR DEALING**

155. Plaintiff incorporates all preceding paragraphs of this complaint as if set forth fully herein.

156. By operation of New Jersey law, there existed either an express or implied contract for the sale of copies of hospital records between MRO and each class member who purchased such copies from MRO.

157. By operation of New Jersey law, there existed an implied duty of good faith and fair dealing in each such contract.

158. By the acts alleged herein, MRO violated that duty of good faith and fair dealing, thereby breaching the implied contract between MRO and each class member.

159. Specifically, it was a violation of the duty of good faith and fair dealing for MRO to charge Plaintiff and the classes fees for copies of records which exceeded the maximum legal limit of such fees set by N.J.A.C. 8:43G-15.3(e).

160. As a result of that breach, Plaintiff and each class member suffered damages.

**COUNT FOUR**

**UNJUST ENRICHMENT/DISGORGEMENT  
UNDER NEW JERSEY COMMON LAW**

161. Plaintiff incorporates all preceding paragraphs as though fully set forth at length herein.

162. By the acts alleged herein, Defendant MRO received a benefit from Plaintiff

and the classes in the form of fees paid by Plaintiff and the classes to MRO for electronic copies of hospital records.

163. The retention of that benefit by MRO would be unjust because the amounts collected by MRO exceeded legal and statutory limits.

164. By the facts alleged herein, equity demands that MRO disgorge itself of this benefit and that the unlawful portion of these fees be returned to Plaintiff and the classes.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff asks this court to:

- a. Certify each proposed class under R. 4:32;
- b. Enter an order for declaratory relief as described herein;
- c. Enter judgment in favor of Plaintiff and all class members for damages suffered as a result of the conduct alleged herein, to include interest and pre-judgment interest;
- d. Award Plaintiff reasonable attorneys' fees and costs; and
- e. Grant such other and further legal and equitable relief as the court deems just and equitable.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury as to all issues so triable.

Dated: February 21, 2020

**DeNITTIS OSEFCHEN PRINCE, P.C.**

BY: 

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**CERTIFICATION PURSUANT TO R. 4:5-1**

The matter in controversy is related to the following pending action: Console v. MRO, New Jersey Superior Court, Camden County, Docket No. CAM-L 2133-18, currently pending before Judge Schweitzer, a case involving similar claims brought on behalf of patient's attorneys against MRO. No arbitration proceeding is pending or contemplated. There are no other parties known to Plaintiff at this time who should be joined in this action.

**CERTIFICATION PURSUANT TO N.J.S.A. 56:8-1, et seq.**

The undersigned hereby certify that a copy of this complaint has been forwarded to the Attorney General of the State of New Jersey.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Stephen DeNittis is designated as trial counsel.

Dated: February 21, 2020

**DeNITTIS OSEFCHEN PRINCE, P.C.**

BY: 

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