

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
22ND JUDICIAL DISTRICT
DIVISION _____

TOM SWEARINGEN,

**Plaintiff, Individually and on behalf of all
similarly situated,**

v.

**HAGYARD DAVIDSON MCGEE
ASSOCIATES, PLLC; DEAN DORTON
ALLEN FORD, PLLC; DR. MICHAEL T.
HORE; DR. ROBERT J. HUNT; DR. DWAYNE
RODGERSON; DR. MICHAEL SPIRITO; and
JOHN DOES 1-100,**

Defendants.

Serve:

**Hagyard Davidson McGee Assoc., PLLC
c/o: Benjamin Stivers, DVM
4250 Iron Works Pike
Lexington, Kentucky 40511**

**Dean Dorton Allen Ford, PLLC
c/o: David C. Bundy
106 West Vine Street, Ste. 600
Lexington, Kentucky 40507**

**Dr. Michael T. Hore
1705 Lakewood Lane
Lexington, Kentucky 40502**

**Dr. Robert J. Hunt
413 Craig Lane
Georgetown, Kentucky 40324**

**Dr. Dwayne Rodgerson
9 Deepwood Drive**

Case No. _____

CLASS ACTION COMPLAINT

<p>Lexington, Kentucky 40505</p> <p>Dr. Michael Spirito 14 Deepwood Drive Lexington, Kentucky 40505</p>	
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The Plaintiff, Tom Swearingen, through counsel, individually and on behalf of all similarly situated, for his Class Action Complaint against Defendants Hagyard Davidson McGee Assoc., PLLC, Dean Dorton Allen Ford, PLLC, Dr. Michael T. Hore, Dr. Robert J. Hunt, Dr. Dwayne Rodgerson, and Dr. Michael Spirito, states as follows:

Introduction

1. This complaint centers around the horse sales at Keeneland. Each year at those annual horse sales, approximately a half-billion dollars of thoroughbreds are purchased, and \$25+ million of commissions and fees are paid to the consignors, sellers, veterinarians and sales agency itself. This complaint concerns the multi-year practice and pattern of intentional forgery and alteration of the x-rays of those horses that the buyers rely upon and which have been placed in the repository run by Keeneland in order to induce buyers to purchase horses.

2. Specifically, as agent for sellers and consignors, the veterinarians at Hagyard Davidson McGee have, for over a decade, engaged in the practice of intentionally altering the dates on which digital x-rays of horses for sale were taken, in order to make it appear the x-rays were taken within three weeks of the sale. In fact, those x-rays were older than that. The original digital x-rays files were then intentionally destroyed and deleted from the mobile radiograph machines by those same veterinarians.

3. Those fraudulently altered x-rays were then placed in the repository at Keeneland - - the same repository the purpose of which, in Keeneland's own words, is to provide "transparency and buyer confidence" - - and they were placed there in order to induce potential buyers to review the x-rays, rely on those x-rays, and purchase a horse. In connection with placing those x-rays in the repository, the consignor affirmatively and expressly warrants the accuracy, authenticity and validity of those x-rays in all respects. That warranty has been breached, and it has been breached as the result of intentional fraud.

4. The fraudulently altered x-rays accurately depict the condition of the horse at the time at which they were taken, as to that there is no dispute. But on what date were they taken? No one will ever know, because the Defendants destroyed the evidence. And it is equally true that the x-rays - by definition - do not depict the condition of the horse on the date on which they were falsely claimed to be taken, which is the entire point of the repository.

5. The collective enterprise of the parties involved - a repository and sales agency run by Keeneland, a set of x-rays placed into that repository by consignors in order to induce buyers to purchase their horses at those sales, and the fraudulent alteration of those records - has allowed billions of dollars of horses to be sold that otherwise would not have qualified for to be sold with radiographs in the repository, and it has produced hundreds of millions of dollars of commissions for consignors, and correspondingly exorbitant fees for the veterinarians involved, some of which have served on the various integrity and ethics boards of Keeneland itself. Indeed, based on information and belief,

the fraud has involved tens of thousands of radiographs, although the exact number will never be known because the Defendants intentionally destroyed the evidence. Thousands of buyers have participated in a sale based upon their reasonable belief that the repository contained authentic records, and had they known it was a sham, they never would have participated in the sale in the first place. This complaint seeks recovery for all of those defrauded victims.

The Parties, Jurisdiction and Venue

6. Defendant Hagyard Davidson McGee Associates, PLLC (“Hagyard”) is a Kentucky professional limited liability company with its principal place of business located at 4250 Iron Works Pike, Lexington, Kentucky 40511. The sole member of Hagyard is HDM Holdings Merger Sub, Inc., a Kentucky corporation. Hagyard is therefore a citizen of the Commonwealth of Kentucky.

7. Defendant Dean Dorton Allen Ford PLLC (“DDAF”) is a Kentucky professional limited liability company with its principal place of business located at 106 Vine Street, Ste. 600, Lexington, Kentucky 40507. Based on information and belief, the members of DDAF are all citizens and residents of Kentucky, and therefore DDAF is a citizen of the Commonwealth of Kentucky.

8. Defendant Michael T. Hore, MVB (“Hore”) is a veterinarian and partner at Hagyard and a citizen and resident of the Commonwealth of Kentucky. On April 5, 2018, Hore self-reported to the Kentucky Board of Veterinary Examiners (“KBVE”) that he modified the dates on radiographs submitted to the Keeneland repository.

9. Defendant Robert J. Hunt, DVM (“Hunt”) is a veterinarian and partner at Hagyard and a citizen and resident of the Commonwealth of Kentucky. On April 9, 2018, Hunt self-reported to the KBVE that he modified the dates on vinyl and digital radiographs submitted to the Keeneland repository.

10. Defendant Dwayne Rodgerson, DVM (“Rodgerson”) is a veterinarian and partner at Hagyard and a citizen and resident of the Commonwealth of Kentucky. On April 4, 2018, Rodgerson self-reported to the KBVE that he modified the dates on vinyl and digital radiographs submitted to the Keeneland repository.

11. Defendant Michael Spirito, DVM (“Spirito”) is a veterinarian and partner at Hagyard and a citizen and resident of the Commonwealth of Kentucky. On April 5, 2018, Spirito self-reported to the KBVE that he modified the dates on vinyl and digital radiographs submitted to the Keeneland repository.

12. Collectively, the individual veterinarians at Hagyard that are Defendants herein are referred to as the “Defendant Veterinarians”.

13. Defendant John Does 1-100 are the as-of-yet unidentified sellers and consignors of horses sold at Keeneland with respect to which fraudulently altered x-rays were placed in the repository as described in more detail below.

14. Plaintiff, Tom Swearingen, individually and for all similarly situated individuals, is horse buyer and trainer, and a citizen and resident of the State of Illinois. Mr. Swearingen has purchased horses at the Keeneland horse sales since the institution of the digital repository.

15. Jurisdiction is proper in this Court because the Defendants conduct business in the Commonwealth of Kentucky and the acts giving rise to harm in this case took place in the Commonwealth of Kentucky and caused injury in the Commonwealth of Kentucky.

16. Venue is proper in the Fayette Circuit Court pursuant to the provisions of KRS §§ 452.450, 452.460 and 452.480.

Class Action Allegations

17. Plaintiff brings this Complaint individually and on behalf of a class of similarly situated individuals (the "Class"). The Class shall be defined as those individuals who purchased one or more horses at Keeneland horse sales since the implementation of the digital Repository (as defined below), who reviewed digital x-rays in the Repository (either individually or by one of their agents) prior to bidding on such horses and who, if it had been disclosed in advance to them that some portion of the x-rays in the Repository had fraudulently altered dates, the number of which and the identity of which could not be determined, would not have purchased such horses at the sale(s) in the first instance.

18. The Class is so numerous that joinder of all members is impracticable, as the aforementioned sales involve thousands of buyers since 2006 who are eligible for inclusion in the Class.

19. There are questions of both law and fact common to all Class members, both with respect to the specific facts set forth below concerning the Defendants' actions and the legal claims asserted therefrom.

20. The claims of the Plaintiff are representative and typical of the claims asserted on behalf of all Class members.

21. The Plaintiff will fairly and adequately protect the interests of the class.

22. The prosecution of separate actions by or against individual members of the Class would (a) create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the Class, both as to the facts asserted below and/or the specific legal claims asserted, or, adjudications with respect to individual members of the Class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or (b) there are questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

The History of the Repository at Keeneland

23. Prior to the late 1990s, horse sales at Keeneland did not have the benefit of a central repository of information about the horses upon which buyers could rely. Instead, buyers would be required to each perform their own x-rays and endoscopic exams of horses. As a result, those horses - especially young ones, which were already skittish and under fair amount of stress from the change of surroundings in the routine of an auction - were placed under substantial further stress compounded by multiple examinations and multiple x-rays during the short sales session.

24. Likewise, the lack of a central repository, maintained and catalogued by Keeneland itself, left buyer confidence lacking, as buyers – particularly those without “deep pockets” – would have to rely on their own physical inspection of horses, the word of sellers and consignors, and potentially purchase horses without the benefit of reviewing a full set of radiographs. Consequently, given the perceived higher risk involved, buyers necessarily bid less for horses.

25. As a result, in 1996, the repository at Keeneland (the “Repository”) was established. In Keeneland’s own words, “due to inefficiencies attendant to multiple x-rays of sale horses and due to potential harm from multiple endoscopic examinations of sale horses, and for other reasons, Keeneland has established a repository where consignors may place certain information applicable to the sale of horses.” The Repository became a central “library” in which, among other things, a complete set of x-rays of each horse could be viewed by every buyer and their veterinarian before bidding on a horse.

26. Prior to establishing the Repository, Keeneland consulted with numerous industry professionals, including veterinarians and veterinary organizations, to determine the scope and nature of the rules that would govern the Repository. Among other rules as to which those veterinarians and veterinary groups had input were the rules setting forth the deadlines by which radiographs must be submitted to the Repository. As discussed in more detail below, currently radiographs must be submitted 21 days before a horse is sold at the fall yearling sale and 15 days before a horse is sold at the other sales.

27. Initially, the Repository housed physical x-ray films of the radiographs of the horses for sale. However, in the mid-2000s, the Repository shifted to the use of digital radiographs. Keeneland was the first horse sales company in the world to use digitalized repository for pre-sale inspections. For the purpose of this Complaint, the terms x-ray and radiograph are used interchangeably.

28. Defendant HDM was one of the earliest proponents of the digitization of the Repository, and has, since its inception, been one of the largest depositors of digital x-rays into the Repository. As HDM's former CEO explained in 2006, "Hagyard was among the earliest in the nation to adopt digital radiography technology and we have subsequently grown to ten Eklin DR systems in preparation for Keeneland's implementation of a Digital Repository."

29. Keeneland provides the infrastructure that operates the Repository – the computers, the physical building, the employees (of which there are 17) – for free, and Keeneland also pays all of the operating costs associated with the Repository. It does so because Keeneland markets and promotes the Repository as a "vital aspect of what we offer at Keeneland for transparency and buyer confidence" and as a "key tool for buyers and sellers." Keeneland's own webpage describes themselves as the "most trusted and professional auction team in the industry." As a result of that reputation, in part derived from the existence of the Repository, as well as the "buyer confidence" the Repository inspires, the Keeneland horse sales are the largest horse sales, by volume, in the world, and the prices reflect the buyer confidence engendered by the Repository. Indeed,

Keeneland is the preeminent thoroughbred horse sales company in the world, and its reputation is an important thing for it to maintain and preserve.

30. Prior to the institution of the Repository, the Plaintiff and buyers similarly situated would either (a) purchase horses privately "off the farm" instead of purchasing horses at auction, and in doing so would have their own veterinarians x-ray the horses before buying them, or (b) have their own veterinarians x-ray horses at the Keeneland auction the day or two prior to the horse being sold. In either case, the Plaintiff and buyers similarly situated would rely on the x-rays taken by their own veterinarians, the recency of which was verifiable and reliable. However, both options were time consuming and expensive: in either case, a buyer would be forced to do dozens, perhaps hundreds, of x-rays of potential horses in which they were interested, and also travel from farm to farm to look at those horses.

31. However, upon the development of the Repository, the Plaintiff and similarly situated buyers were presented with a third option: one that was substantially more efficient, and upon which they thought they could rely. Now, instead of travelling from farm to farm with a veterinarian and inspecting each horse one by one and taking x-rays, or spending the entire sale at Keeneland having their own veterinarian take individual x-rays of every horse in which they were potentially interested, the Plaintiff and similarly situated buyers could have their veterinarian simply review all of the x-rays placed in the repository at any time prior to the sale, in a single location, with the reasonable belief that those x-rays were valid and taken within timeframe required by the rules. In Keeneland's own words - - and as has been acknowledged by certain of the Defendant Veterinarians

under oath -- Keeneland, in conjunction with consignors and the veterinarian associations and practices, had succeeded in developing the Repository as a "vital aspect of what we offer at Keeneland for transparency and buyer confidence" and as a "key tool for buyers and sellers." Or so we all thought.

The Consignors' Role and Rules of the Repository

32. From the inception of the Repository to the present, it has always been the responsibility of the consignors to place the radiographs in the Repository. Although a consignor is not required to place any information in the Repository at all in order to sell a horse at the Keeneland sales, the overwhelming majority do, as it is a critical element to create confidence and interest in their horses. Put differently, buyers have very little interest or trust in a horse for which radiographs have not been placed in Repository.

33. The Keeneland Conditions of Sale and Consignor Contract set forth the rules that govern the Repository. In the event a consignor elects to submit radiographs to the Repository, the consignor must submit a complete set, meaning 36 different "views" as it pertains to yearlings and 38 views as it relates to horses of racing age.

34. As noted above, Keeneland also has very specific rules about the dates on which radiographs must be taken if they are to be submitted to the Repository. Specifically, if a consignor submits a radiograph for a yearling to be sold at the September sale, that radiograph must be taken within 21 days of the date on which that horse is auctioned. Likewise, for the November and January sales, the radiographs must be taken within 15 days of the date on which that horse is auctioned.

35. The reason such deadlines exist are self-evident: the recency of the images is important. The more current the radiographs are, the more useful and reliable the information will be to the buyers, which in turn enhances buyer confidence. Perhaps more importantly, the buyers at the Keeneland sales have an expectation that the x-rays will be either 15 or 21 days old at the time of sale, and rely on such expectation. In fact, with respect to the yearlings, the recency, authenticity and validity of the x-rays are of particular importance to buyers, because such horses are generally being purchased for the purpose of racing, and therefore their physical condition is of paramount importance.

36. Section 21 of the Conditions of Sale provides in relevant part that “all Purchasers shall inspect fully each horse that they may purchase.... It shall be the sole responsibility of the Purchaser to determine the sufficiency, quality and completeness of the available inspection; however, full inspection shall include a review of all Repository information for each horse.” As a result, from Keeneland’s perspective, as a condition of its sales, any prospective buyer is not only expected, but is in fact required, to review the information in the Repository before purchasing a horse.

37. The Conditions of Sale further imposes on the consignor the obligation to make a number of warranties as to the information placed in the Repository. Specifically, it states that “Keeneland will not review the Repository information and makes no warranty or assurance of any kind concerning the authenticity, sufficiency, quality, completeness or accuracy of the Repository information, all of which shall be the responsibility of the Consignor.” It further states that “In the event Consignor elects to place information in the Repository for any sale conducted by Keeneland, Consignor

warrants that Consignor has deposited in the Repository all of the required views Consignor further warrants the authenticity and validity of the views. With respect to other Repository information, Consignor warrants the accuracy, validity and authenticity in all material respects of the Repository information placed by Consignor in the Repository.”

38. The Conditions of Sale also set forth a remedy in the event of a breach of terms of the Conditions of Sale by a consignor. Specifically, it provides that “in the event it should be determined that Consignor has placed views in the Repository that are not authentic and valid, and/or information in the Repository that is not accurate, valid or authentic in all material respects... then the sale is subject to Rejection at the option of the Purchaser and Consignor. In that event, Consignor shall (i) refund the purchase price to Purchaser together with any proper and reasonable expenses incurred by Keeneland including interest at the rate of 12% per annum, and (ii) pay Keeneland’s entry fees and commission as if the sale had been final.” By definition, fabricating the date of a radiograph and submitting to the Repository would make that radiograph not accurate, valid and/or authentic.

The Multi-Year Practice of Intentionally Fabricating the Dates of X-Rays Submitted to the Repository

39. Notwithstanding the express terms of the Conditions of Sale and Consignor Contract, certain veterinarians at Hagyard Davidson McGee have admitted to engaging in the practice for over a decade of intentionally altering the dates on which digital x-rays of horses for sale were taken, in order to make it appear the x-rays were taken within three weeks of the sale. In fact, those x-rays were older than that. The original digital x-rays

files were then intentionally destroyed and deleted from the mobile radiograph machines by those same veterinarians.

40. In April 2018, the Defendant Veterinarians all turned themselves into the Kentucky Board of Veterinary Examiners for having either intentionally engaging in the above-referenced fraudulent and unethical practice, or having known their partners were doing so and doing nothing about it. As discussed in detail below, this practice goes back to the very inception of the digital Repository.

41. Since 2004, Defendant DDAF has provided all of the computer and information technology services to Hagyard. They have done so for a flat monthly fee, and have provided a DDAF employee who works full-time at Hagyard's facility.

42. In Fall 2006, DDAF and Hagyard began work on a project to prepare for the upcoming use of the digital repository at the annual Keeneland yearling sale. In doing so, DDAF's employee that worked full-time at Hagyard became aware that certain surgeons at Hagyard were intentionally altering the dates of the digital radiographs they were taking in order to fraudulently make it appear the x-rays were taken within the time period required by Keeneland's rules, when in fact the x-rays were actually older.

43. After discovering the fraudulent practice in which the surgeons were engaged, and given the obvious concerns it raised, the DDAF employee reported the fraudulent practice to his superior – Jason Miller, the DDAF partner in charge of the IT consulting division. Faced with the red flags of fraud, Jason Miller promptly contacted Andy Clark, Hagyard's CEO, and Lisa Floyd, Hagyard's Director of Operations, and reported to Mr. Clark and Mrs. Floyd that the surgeons at Hagyard were intentionally altering the

dates of the digital radiographs they were taking in order to fraudulently make it appear the x-rays were taken within the time period required by Keeneland's rules, when in fact the x-rays were actually older.

44. Upon discovering that surgeons at Hagyard were fraudulently altering the dates of radiographs for use at Keeneland's horse sales, Hagyard's CEO, in consultation with Hagyard's Director of Operations, instructed DDAF to develop and implement a solution that would prevent any further fraudulent mis-dating of x-rays. DDAF promptly did so, and over the course of a number of days, they installed a software solution that prevented Hagyard's veterinarians from altering any further radiographs.

45. However, no sooner than DDAF had "locked down" the radiograph machines so that dates could not be fraudulently altered, one or more veterinarians at Hagyard confronted DDAF's employee on-site and demanded he "unlock" the machines so that they could promptly resume their fraudulent practice of altering the dates of radiographs for use at Keeneland's horse sales. Faced with a demand from the partners at Hagyard and the red flags it presented, the DDAF employee reported the demand to DDAF management – Jason Miller – who in turn relayed the demand and the concerns it presented to Hagyard's CEO and/or Director of Operations.

46. Then Hagyard's management did the unthinkable. Hagyard's CEO and/or Director of Operations requested that DDAF assist the fraud by "unlocking" any radiograph machine so that dates could be fraudulently altered upon receipt of such a demand from a Hagyard veterinarian. Equally unthinkable, DDAF agreed to utilize its expertise and IT skills to "unlock" those machines, despite knowing that the purpose was

to facilitate the fraudulent alteration of radiograph dates for use at Keeneland's horse sales.

47. At that point the stone had been cast. Since 2006, the veterinarians at Hagyard have fraudulently altered the dates of tens of thousands of radiographs that were submitted to the Repository, knowing that the x-rays would be relied upon by the Plaintiff and similarly situated buyers. Not only is doing so fraudulent, it is also a violation of the Repository rules, the ethical rules governing veterinary practice as established by the various professional bodies in the profession, and even Kentucky statute.

48. Why would the Defendants engage in such blatant, unethical and widespread fraud? For the oldest reason known: money and greed. Hagyard's veterinarians are compensated by being paid a substantial percentage of the dollars generated by the veterinary work they "produce." In other words, for every radiograph taken by the Defendant Veterinarians, they are paid a percentage of the amount billed to the client. In a given 10 hour day, assuming 3-4 sets of radiographs could be taken per hour, that "cut" could amount to *\$4000-\$6000 per day for each veterinarian involved*. By fraudulently altering radiograph dates it allowed those veterinarians to control and claim all the radiograph work for themselves; had they performed their work ethically and honestly, they would have been required to travel between multiple farms on numerous days, and never would have been able to take all the sales-related x-rays themselves. Instead, they would have been forced to share that work with other Hagyard veterinarians or other veterinary practices.

49. Those Defendant Veterinarians that did not personally engage in the practice of fraudulently altering the dates of x-rays for submission to the Repository, but were aware of it and did nothing, they too profited financially from the practice. Hagyard's other partners shared equally in the portion of the fees not paid to the unscrupulous veterinarian shooting the x-rays, and as long as none of the partners at Hagyard were concerned about the Repository rules and deadlines, there was no need to send that work to another veterinary practice in order to have it done in time.

50. Unfortunately, even certain of the consignors and/or sellers were aware of, and either explicitly approved of or implicitly condoned the Defendant Veterinarians fraudulent alteration of the dates of x-rays they themselves were warranting as authentic and correct in all respects. The specific identify of the Defendant John Does 1-100 are not presently known but will be identified through discovery. And those complicit consignors and sellers benefited from having extra time to prep and work their horses for sale, perhaps causing undetectable injuries to them while in such intensive prep work, the same of which would remain undisclosed by virtue of the misdated x-rays.

51. Collectively the actions of the Defendants have resulted in the submission of tens of thousands of fraudulent radiographs to the Repository where buyers like the Plaintiff, relying on the alleged integrity of the Repository and the reasonable belief that the rules were being followed, acted and bid with the confidence Keeneland sought to inspire, as reflected in the substantial prices commanded by a process which was believed to be "lower risk" by virtue of the Repository. In fact, beneath the surface that

was clearly not the case, and the Repository engendered nothing more than false confidence as a result of the Defendants' actions.

The Defendants Admit Their Wrongful Conduct Under Oath

52. Certain of the Defendants and other agents of Hagyard have already admitted, under oath, many of the salient allegations of this Complaint. As noted above, they self-reported their wrongful conduct to the Kentucky Board of Veterinary Examiners in mid-2018. As a result, the KBVE conducted an investigation and in connection with that investigation, they obtained sworn statements from certain individuals.

53. Specifically, Dr. Hore has admitted, under oath:

- a. That at least 5% of the total radiographs he took were intentionally altered;
- b. That the date was many times changed such that it varied by approximately 20% of what was required by the repository and what was warranted to be accurate by the consignors and sellers;
- c. That by intentionally and fraudulently changing the dates, he could earn up to \$12,000 *per day*, and those sales radiographs could account for up to 40% of his total income;
- d. That every single farm for which he took sale radiographs – the consignors – were aware of the practice (and therefore aware they were intentionally making false representations concerning the warranties they provided) and did not care;
- e. That he and others intentionally and willfully either discarded and/or failed to preserve any of the evidence that would allow someone to determine the

actual date on which a fraudulently altered radiograph had been taken, the effect of which means the fraud was intentionally concealed and probative evidence was destroyed; and

- f. That not a single buyer such as the Plaintiff could have discovered the Defendants' fraud, regardless of the amount of diligence exerted, because the Defendants had destroyed all of the evidence of their wrongful conduct.
54. Similarly, Dr. Spirito has admitted under oath:
- a. That as many as 10% of the x-rays he took for sale purposes were intentionally and fraudulently altered to give the impression that they were taken closer to the sale date than they actually were;
 - b. That in some instances that fraudulently altered date could be off by as much as seven days, which with respect to certain sales, is over a 50% variance from what is required and warranted;
 - c. That over the course of his career he personally has submitted over half a million radiograph films to the repository, and in fact at least half of the x-rays in the repository at any given sale were taken by the Defendants; and
 - d. That the majority of the consignors, owners and farms for which these 500,000+ radiographs were taken were well aware and approved of the practice of fraudulently altering the dates before submitting them to the repository and warranting that the dates were accurate.
55. Not surprisingly, Dr. Andrew Clark, the former CEO of Hagyard and now the president of the American Veterinary Medical Association Professional

Liability Insurance Trust, the largest professional liability insurer in the industry, has admitted under oath:

- a. That he and the others at Hagyard, as well as representatives of DDAF, were aware that the practice of fraudulently altering the dates of radiographs for use at thoroughbred sales was occurring as early as 2006;
- b. That he sought to take affirmative steps to implement changes that would prohibit the altering of dates on them radiograph machines owned by Hagyard, but the defendant veterinarians intentionally rolled back those changes so that they could continue the practice even after being instructed not to do so; and
- c. That the practice is material and a “big deal”, in his words, because it involves the intentional alteration of the dates of medical records for use at a public auction.

56. A “big deal” it is. Based solely on the sworn admissions of the aforementioned defendants, it is a proven fact that up to 10% of the radiographs submitted by Hagyard and the guilty veterinarians, which represents at least half of the radiographs present in the repository at any given sale, have had the date intentionally and fraudulently altered, sometimes by up to 50% of what the rules allow, with the express knowledge and approval of the consignors and sellers who all the while were warranting to the general public at the auction that the dates were accurate. Those same defendant veterinarians then intentionally deleted the records from their machines so that the true date could never be determined by anyone, including the Plaintiff and this Court. It is

fraud, it is appalling, and it is an intentional attack on the very reason the repository was established in the first place: in the words of Keeneland, to create “transparency and buyer confidence.”

57. Based on information and belief, those same Defendant Veterinarians, the ones who self-reported to the KBVE allegedly because it was “the right thing to do”, turned around and threatened to sue the KBVE and its members unless the KBVE agreed to let them keep their licenses and only impose a nominal fine. Once again, the Defendant Veterinarians used their power and leverage for their own self-serving ends.

58. On December 31, 2017, the Defendant Veterinarians, together with their partners at Hagyard, sold their practice for a handsome bounty at a value of almost \$40 million in a merger to/with Mixed Animal Veterinary Associates North America, Inc. (“MAVANA”). Despite knowing of its subsidiary’s conduct for over a year, at no time has MAVANA come forward to report or otherwise reprimand the Defendant Veterinarians’ conduct.

The Plaintiff and Similarly Situated Buyers

59. Mr. Swearingen is a long-time thoroughbred owner and trainer. He has, both before the inception of the Repository and thereafter, purchased horses at Keeneland at public auction. Prior to purchasing any horse at Keeneland, Mr. Swearingen would review or have his agents review the radiographs of such horse.

60. At all relevant times, Mr. Swearingen relied upon the representations and warranties made by the consignors that the radiographs placed in the repository were authentic and accurate, both with respect to the content shown (i.e., the condition of the

horse) and the date on which it was taken (i.e., within 21 or 15 days of the date of sale depending on the specific session).

61. Furthermore, Mr. Swearingen relied upon the express representation made by the consignors who placed radiographs in the repository that “the radiographs were taken within 21 days prior to the horse selling.”

62. The aforementioned reliance was reasonable; indeed, it was the very stated purpose of the creation of the digital repository to create transparency and buyer confidence. In fact, the Defendants have testified under oath that many buyers do not even bother looking at the date of radiographs in the repository. Obviously, that was because they knew that they must have been taken within 21 days of the sale. Or so they thought.

63. Since the inception of the digital repository, the Plaintiff purchased the following horses at public horse sales at Keeneland:

Sale	Horse Name	Sale Price
Sep-16	P R Radio Star	\$ 19,500
Sep-15	Coca Kota	\$ 35,000
Sep-14	Big Taco	\$ 50,000
Sep-14	Wonderful Finish	\$ 37,000
Jan-14	Belle Royale	\$ 14,000
Jan-14	Hypatia	\$ 22,000
Jan-14	Summer Appeal	\$ 27,000
Sep-13	Rock My Dreams	\$ 40,000
Sep-12	My Deposition	\$ 17,000
Sep-09	Bellamy Lass	\$ 1,200
Sep-09	Oh Golly Ms Molly	\$ 1,000
Sep-08	Duke of Dittman	\$ 1,200
Sep-08	Dramatic Finish	\$ 1,200
Sep-08	Ask Eddy	\$ 33,000
Sep-08	Marcus Aurelius	\$ 6,000
Sep-08	Ubriaco	\$ 9,500
Sep-08	Cataguska	\$ 10,000
Sep-08	Au Eleni	\$ 8,500
Sep-07	Not Souh	\$ 2,200
Sep-07	Devils Feather	\$ 32,000
Sep-07	Monashee Song	\$ 10,000
Sep-07	Noble Line	\$ 42,000
Sep-07	Earthquake Lass	\$ 11,000
Jan-07	Press My Five	\$ 3,500

64. In fact, had it been disclosed to the Plaintiff prior to the sale that the Repository contained a number of fraudulently altered x-rays, the specific ones of which could not be identified, and even worse, the number of which could not be determined because the Defendants had destroyed any evidence of their fraud, the Plaintiff would not have participated in the Keeneland sale in the first place and never would have bought any of the aforementioned horses.

65. Indeed, had the truth been disclosed, bidding on horses at the Keeneland sale was, in essence, the functional equivalent of playing Russian Roulette: the Plaintiff would be bidding on horses not knowing if they were subject to fraudulent x-rays, and not

knowing if those x-rays affected one horse or a hundred horses. Needless to say, it is self-evident that had the true facts been disclosed, the Plaintiff and other similarly situated buyers never would have played such a game of Russian Roulette given the substantial dollars involved, and the Plaintiff would not have bought any horses at the sale.

66. Moreover, had it been disclosed to the Plaintiff and other buyers that not only had one of Kentucky's largest and oldest equine veterinary practices had been involved in the fraudulent practice of altering x-ray dates for over a decade, but in addition that they had been intentionally deleting the original radiograph files on their mobile machines, forever destroying any possible evidence from which their true dates could be derived, there is no question the Plaintiff and other buyers would not have participated in the sales. The Defendants' actions did more than just eliminate the buyer confidence and high prices created by the invention of the Repository; instead, it actually created a fraudulent and intentionally manipulated marketplace -- an auction which was worse and less reliable than even the pre-Repository days. Simply put, no buyer would purchase horses at an auction if they knew it was being intentionally and fraudulently manipulated. The Defendants' actions have undermined decades of work the Thoroughbred industry has undertaken to improve the integrity and honesty of the system.

Count I

Fraudulent Inducement and/or Fraudulent Misrepresentation

(Defendants Hagyard, Hore, Hunt, Rodgerson, Spirito and certain John Does 1-100)

67. The Plaintiff incorporates the allegations of paragraphs 1 through 66 as if fully stated herein.

68. Defendants Hagyard, Hore, Hunt, Rodgerson and Spirito each made material misrepresentations concerning the date on which they took certain radiographs of horses for sale at Keeneland. Specifically, the aforementioned Defendants intentionally misrepresented that the dates on which they took certain radiographs for submission to the Repository were within the applicable time periods established by the rules, when in fact, such radiographs were taken outside the required time window.

69. The aforementioned Defendants knew such representations were false at the time they were made, as evidenced by the fact it required them to affirmatively and intentionally change the date, and also by virtue of the fact they then intentionally deleted and destroyed the original radiograph files from their mobile radiograph machines. Likewise, certain of Defendants John Does 1-100 possessed the same knowledge at the time they submitted the radiographs to the Repository.

70. The fraudulently altered radiographs were submitted to the Repository with the knowledge and intention that they would be relied upon by the Plaintiff and other similarly situated buyers as authentic and valid radiographs that complied with the Repository Rules, and also that they complied with applicable veterinary practice laws, regulations and statutes, in order to induce the Plaintiff to purchase horses at the Keeneland sale.

71. The Plaintiff did in fact review x-rays in the Repository before purchasing the above-referenced horses, and relied upon the alleged integrity of the x-rays present in the Repository based upon the reasonable belief that the rules of the Repository had been

followed and all of the x-rays present had been submitted in strict compliance with the applicable rules.

72. Had had it been disclosed to the Plaintiff prior to the sale that the Repository contained a number of fraudulently altered x-rays, the specific ones of which could not be identified, and even worse, the number of which could not be determined because the Defendants had destroyed any evidence of their fraud, the Plaintiff would not have participated in the Keeneland sale in the first place and never would have bought the aforementioned horses. Moreover, had it been disclosed to the Plaintiff and other buyers that not only had one of Kentucky's largest and oldest equine veterinary practices had been involved in the fraudulent practice of altering x-ray dates for over a decade, but in addition that they had been intentionally deleting the original radiograph files on their mobile machines, forever destroying any possible evidence from which their true dates could be derived, the Plaintiff and other buyers would not have participated in the sales.

73. Likewise, had had it been disclosed to the Plaintiff prior to the sale that the Repository contained a number of fraudulently altered x-rays, the specific ones of which could not be identified, and even worse, the number of which could not be determined because the Defendants had destroyed any evidence of their fraud, the Plaintiff would not have agreed to Conditions of Sale which sought to impose any limitation on a time limit to exercise any available remedies, and therefore the same was fraudulently induced and subject to rescission.

74. As the direct and proximate result of the misrepresentations made by the aforementioned Defendants, the Plaintiff and others similarly situated participated in the

Keeneland horse sales as buyers, and purchased horses at such sales that they would not otherwise have purchased had the true facts been disclosed, and as a result, they entitled to rescission of the transactions at issue.

75. In addition, as the aforementioned Defendants' actions were taken with oppression, fraud and/or malice, the Plaintiff and others similarly situated are entitled to the recovery of punitive damages in excess of the jurisdictional requirements of this Court.

Count II
Breach of Express Warranty
(Defendants John Does 1-100)

76. The Plaintiff incorporates the allegations of paragraphs 1 through 75 as if fully stated herein.

77. Defendants John Does 1-100, pursuant to the Conditions of Sale, warranted the accuracy, validity and authenticity in all material respects of the Repository information placed by Consignor in the Repository.

78. By virtue of the consignor's contract that each Defendant John Doe 1-100 executed, express warranties were provided, to wit: "Consignor warrants the authenticity and validity of the views placed by Consignor in the Repository, and further warrants the accuracy, validity and authenticity in all material respects of all other information placed by Consignor in the Repository. Breach of the aforestated warranties may result in Rejection of the sale and return of the horse, all as provided in the Conditions of Sale. Consignor acknowledges that pursuant to the Conditions of Sale, any Veterinary

Radiographic Report distributed or shared by Consignor may form the basis for Rejection of the sale by Purchaser.”

79. The Keeneland Repository rules further state that “Consignor warrants the radiographs were taken within 21 days prior to the horse selling.”

80. By definition, the fraudulently altered x-rays were not accurate or authentic, and were not taken within 21 days prior to the horse selling.

81. The express warranty of description has also been breached insofar as the horses purchased by Plaintiff and others similarly situated were described to be those identified and represented by x-rays dated within the applicable time window, and such horses, as purchased, did not fit that description.

82. Accordingly, The Conditions of Sale provide that “in the event it should be determined that Consignor has placed views in the Repository that are not authentic and valid, and/or information in the Repository that is not accurate, valid or authentic in all material respects... then the sale is subject to Rejection at the option of the Purchaser and Consignor. In that event, Consignor shall (i) refund the purchase price to Purchaser together with any proper and reasonable expenses incurred by Keeneland including interest at the rate of 12% per annum, and (ii) pay Keeneland’s entry fees and commission as if the sale had been final.”

83. As the direct and proximate result of Defendants’ John Does 1-100’s breaches of express warranties, the Plaintiffs have suffered damages and are entitled to the recovery of compensatory damages in excess of the jurisdictional limits of this Court.

84. In the alternative, as the direct and proximate result of Defendants' John Does 1-100's breaches of express warranties, the Plaintiffs have suffered damages and are entitled to rescind the transactions which are the subject matter of this Complaint.

Count III
Civil Conspiracy
(Defendants Hore, Hunt, Rodgerson, Spirito, DDAF and certain of John Does 1-100)

85. The Plaintiff incorporates the allegations of paragraphs 1 through 84 as if fully stated herein.

86. Defendants Hagyard, Hore, Hunt, Rodgerson, Spirito, DDAF and those certain John Does 1-100 that were aware of the other Defendants' activities entered into a corrupt and unlawful combination in agreement to engage in concerted action to commit a tortious act, namely defrauding the Plaintiff and others similarly situated.

87. The aforementioned Defendants engaged in a series of concerted acts to defraud the Plaintiff, including but not limited to:

- intentionally misrepresented that the dates on which they took certain radiographs for submission to the Repository were within the applicable time periods established by the rules, when in fact, such radiographs were taken outside the required time window;
- affirmatively taking such steps to alter or otherwise "unlock" the radiograph machines so that dates could be fraudulently altered, and doing so despite knowing that the purpose was to facilitate the fraudulent alteration of radiograph dates for use at Keeneland's horse sales;

- intentionally taking such steps to conceal the fraud by destroying the original radiographs and keeping only the fraudulently altered ones, the effect of which was to make it impossible to detect their fraud;
- requesting Defendants Hore, Hunt, Rodgerson, and Spirito take radiographs and alter the dates such radiographs of horses they owed and/or consigned to a sale;
- affirmatively warranting to the Plaintiffs and others that the dates of the radiographs were accurate, when they knew at the time such radiograph dates had been falsified; and
- failing to disclose their actions in violation applicable professional rules until at least late Spring 2018.

5. By virtue of the above described fraud and/or aiding and abetting such fraud, the Plaintiff and others similarly situated have suffered harm and injury, which therefore constitutes injury from the civil conspiracy of the matter of law.

6. The acts giving rise to the conspiracy to commit fraud commenced shortly after the digital repository was established at Keeneland and continued up to and including late Spring 2018 as described above.

88. As a direct and proximate consequence of the Defendants' conduct, the Plaintiff as suffered harm for which he is entitled to recover compensatory damages, the exact amount of which shall be determined at trial.

89. As a direct and proximate result of the Defendants' wrongful, willful and malicious conduct, the plaintiff has suffered harm for which he is entitled to recover punitive damages, the exact amount of which shall be determined at trial.

Count IV
Aiding and Abetting Civil Conspiracy
(Defendant DDAF)

90. The Plaintiff incorporates the allegations of paragraphs 1 through 89 as if fully stated herein.

91. Defendants Hore, Hunt, Rodgerson, Spirito, DDAF and those certain John Does 1-100 that were aware of the other Defendants' activities entered into a corrupt and unlawful combination in agreement to engage in concerted action to commit a tortious act, namely defrauding the Plaintiff and others similarly situated.

92. The aforementioned Defendants engaged in a series of concerted acts to defraud the Plaintiff, including but not limited to:

- intentionally misrepresented that the dates on which they took certain radiographs for submission to the Repository were within the applicable time periods established by the rules, when in fact, such radiographs were taken outside the required time window;
- affirmatively taking such steps to alter or otherwise "unlock" the radiograph machines so that dates could be fraudulently altered, and doing so despite knowing that the purpose was to facilitate the fraudulent alteration of radiograph dates for use at Keeneland's horse sales;

- intentionally taking such steps to conceal the fraud by destroying the original radiographs and keeping only the fraudulently altered ones, the effect of which was to make it impossible to detect their fraud;
- requesting Defendants Hore, Hunt, Rodgeron, and Spirito take radiographs and alter the dates such radiographs of horses they owed and/or consigned to a sale;
- affirmatively warranting to the Plaintiffs and others that the dates of the radiographs were accurate, when they knew at the time such radiograph dates had been falsified; and
- failing to disclose their actions in violation applicable professional rules until at least late Spring 2018.

93. By virtue of the above described fraud and/or aiding and abetting such fraud, the Plaintiff and others similarly situated have suffered harm and injury, which therefore constitutes injury from the civil conspiracy of the matter of law.

94. Defendant DDAF, Hagyard's sole IT consultant, provider and vendor, aided and abetted the aforementioned civil conspiracy. Specifically, DDAF learned of the fraud and civil conspiracy to commit the same in late 2006, and in doing so, reported such activities to Andy Clark, Hagyard's CEO, and Lisa Floyd, Hagyard's Director of Operations.

95. DDAF specifically reported to Mr. Clark and Mrs. Floyd that the surgeons at Hagyard were intentionally altering the dates of the digital radiographs they were taking in order to fraudulently make it appear the x-rays were taken within the time period required by Keeneland's rules, when in fact the x-rays were actually older.

96. Upon discovering that surgeons at Hagyard were fraudulently altering the dates of radiographs for use at Keeneland's horse sales, Hagyard's CEO, in consultation with Hagyard's Director of Operations, instructed DDAF to develop and implement a solution that would prevent any further fraudulent mis-dating of x-rays. DDAF promptly did so, and over the course of a number of days, they installed a software solution that prevented Hagyard's veterinarians from altering any further radiographs.

97. However, no sooner than DDAF had "locked down" the radiograph machines so that dates could not be fraudulently altered, one or more veterinarians at Hagyard confronted DDAF's employee on-site and demanded he "unlock" the machines so that they could promptly resume their fraudulent practice of altering the dates of radiographs for use at Keeneland's horse sales. Faced with a demand from the partners at Hagyard and the red flags it presented, DDAF relayed the demand and the concerns it presented to Hagyard's CEO and/or Director of Operations.

98. Hagyard's CEO and/or Director of Operations then requested that DDAF assist the fraud by "unlocking" any radiograph machine so that dates could be fraudulently altered upon receipt of such a demand from a Hagyard veterinarian.

99. DDAF then agreed to utilize its expertise and IT skills to "unlock" those machines, despite knowing that the purpose was to facilitate the fraudulent alteration of radiograph dates for use at Keeneland's horse sales, thus aiding and abetting the aforementioned civil conspiracy.

95. DDAF has been aware of the aforementioned civil conspiracy, fraudulent conduct, and destruction of evidence since 2006 and has neither reported such conduct, nor taken any steps to prevent such conduct.

96. Defendant DDAF was aware that the aforementioned Defendants' actions constituted fraud, but nonetheless substantially assisted and/or encouraged such primary tortfeasors in the achievement of such fraud.

97. Based on information and belief, DDAF provides professional services to Keeneland, including accounting services, but has failed to disclose the fraud occurring at the Keeneland sales to its client.

100. As a direct and proximate consequence of the Defendant's conduct, the Plaintiff as suffered harm for which he is entitled to recover compensatory damages, the exact amount of which shall be determined at trial.

101. As a direct and proximate result of the Defendant's wrongful, willful and malicious conduct, the plaintiff has suffered harm for which he is entitled to recover punitive damages, the exact amount of which shall be determined at trial.

Count V
Aiding and Abetting Fraud
(Defendant DDAF)

102. The Plaintiff incorporates the allegations of paragraphs 1 through 101 as if fully stated herein.

103. Defendants Hagyard, Hore, Hunt, Rodgerson and Spirito each made material misrepresentations concerning the date on which they took certain radiographs of horses for sale at Keeneland. Specifically, the aforementioned Defendants

intentionally misrepresented that the dates on which they took certain radiographs for submission to the Repository were within the applicable time periods established by the rules, when in fact, such radiographs were taken outside the required time window.

104. The aforementioned Defendants committed numerous acts of fraud, including but not limited to:

- intentionally misrepresented that the dates on which they took certain radiographs for submission to the Repository were within the applicable time periods established by the rules, when in fact, such radiographs were taken outside the required time window;
- affirmatively taking such steps to alter or otherwise “unlock” the radiograph machines so that dates could be fraudulently altered, and doing so despite knowing that the purpose was to facilitate the fraudulent alteration of radiograph dates for use at Keeneland’s horse sales;
- intentionally taking such steps to conceal the fraud by destroying the original radiographs and keeping only the fraudulently altered ones, the effect of which was to make it impossible to detect their fraud; and
- failing to disclose their actions in violation applicable professional rules until at least late Spring 2018.

105. Defendant DDAF, Hagyard’s sole IT consultant, provider and vendor, aided and abetted the aforementioned fraud. Specifically, DDAF learned of the fraud in late 2006, and in doing so, reported such activities to Andy Clark, Hagyard’s CEO, and Lisa Floyd, Hagyard’s Director of Operations.

106. DDAF specifically reported to Mr. Clark and Mrs. Floyd that the surgeons at Hagyard were intentionally altering the dates of the digital radiographs they were taking in order to fraudulently make it appear the x-rays were taken within the time period required by Keeneland's rules, when in fact the x-rays were actually older.

107. Upon discovering that surgeons at Hagyard were fraudulently altering the dates of radiographs for use at Keeneland's horse sales, Hagyard's CEO, in consultation with Hagyard's Director of Operations, instructed DDAF to develop and implement a solution that would prevent any further fraudulent mis-dating of x-rays. DDAF promptly did so, and over the course of a number of days, they installed a software solution that prevented Hagyard's veterinarians from altering any further radiographs.

108. However, no sooner than DDAF had "locked down" the radiograph machines so that dates could not be fraudulently altered, one or more veterinarians at Hagyard confronted DDAF's employee on-site and demanded he "unlock" the machines so that they could promptly resume their fraudulent practice of altering the dates of radiographs for use at Keeneland's horse sales. Faced with a demand from the partners at Hagyard and the red flags it presented, DDAF relayed the demand and the concerns it presented to Hagyard's CEO and/or Director of Operations.

109. Hagyard's CEO and/or Director of Operations then requested that DDAF assist the fraud by "unlocking" any radiograph machine so that dates could be fraudulently altered upon receipt of such a demand from a Hagyard veterinarian.

110. DDAF then agreed to utilize its expertise and IT skills to “unlock” those machines, despite knowing that the purpose was to facilitate the fraudulent alteration of radiograph dates for use at Keeneland’s horse sales, thus aiding and abetting such fraud.

98. DDAF has been aware of the aforementioned fraudulent conduct and fraudulent concealment since 2006 and has neither reported such conduct, nor taken any steps to prevent such conduct.

99. Defendant DDAF was aware that the aforementioned Defendants’ actions constituted fraud, but nonetheless substantially assisted and/or encouraged such primary tortfeasors in the achievement of such fraud.

111. As a direct and proximate consequence of the Defendant’s conduct, the Plaintiff as suffered harm for which he is entitled to recover compensatory damages, the exact amount of which shall be determined at trial.

112. As a direct and proximate result of the Defendant’s wrongful, willful and malicious conduct, the plaintiff has suffered harm for which he is entitled to recover punitive damages, the exact amount of which shall be determined at trial.

Count VI
Negligence
(Defendant DDAF)

113. The Plaintiff incorporates the allegations of paragraphs 1 through 112 as if fully stated herein.

114. At all relevant times herein, Defendant DDAF owed a duty of care to the Plaintiff and all other similarly situated, in such duty of care includes but is not limited to the duty to render IT services to Hagyard in a manner that such services will not knowingly

be used commit fraud or perpetrate wrongful behavior by its client. Such duty is owed to Plaintiff and other similarly situated because DDAF knew or should have known that the work being performed with respect to the creation of medical records, and particularly radiographs, would be relied upon by third parties at the Keeneland thoroughbred sales.

115. Defendant DDAF owed a separate duty of care to monitor and supervise the actions of its employees in the rendering of services, including those provided to Hagyard as described herein.

116. Defendant DDAF has breached each of the aforementioned duties. Specifically, it affirmatively participated in actions which allowed the intentional and fraudulent alteration of medical records for the sole purpose of submitting them to the repository in violation of the repository rules. Second, Defendant DDAF took no steps, and had no policies in place, to prevent its employees from assisting in such fraud, and specifically to prevent them from affirmatively altering the radiograph machine such that it would allow the dates of radiographs be altered.

117. Defendant DDAF's negligence was the actual and proximate cause of harm to the Plaintiff and other similarly situated.

118. As a direct and proximate consequence of the Defendant's conduct, the Plaintiff as suffered harm for which he is entitled to recover compensatory damages, the exact amount of which shall be determined at trial.

Count VII
Negligence
(Defendant Hagyard)

119. The Plaintiff incorporates the allegations of paragraphs 1 through 118 as if fully stated herein.

120. At all relevant times herein, Defendant Hagyard owed a duty of care to monitor and supervise the actions of its employees in the rendering of services in the performance of professional activities. Such duty includes but is not limited to the duty to monitor and supervise its veterinarians in the manner in which they were taking radiographs for use in submission to the repository at horse sales at Keeneland.

121. Defendant Hagyard has breached its duty of care to monitor and supervise the actions of the Defendant Veterinarians. Such breaches include, but are not limited to: (a) the failure to take steps to implement any controls to prevent the unlawful modification of dates of radiographs taken on radiograph machines; (b) the failure to impose any remedial measures, and/or the removal of such remedial measures, once learning that such fraud was being perpetrated by the intentional alteration of dates of radiographs; (c) the failure to report such misconduct to any governing bodies and/or to Keeneland once they became aware of such conduct; (d) the failure to perform any internal or external investigation into the allegations the possibility that the dates of radiographs were being intentionally altered; (e) the failure to properly train employees assisting the Defendant Veterinarians, such as radiograph tax and others, so as to prevent the intentional alteration of dates of medical records; and (f) the negligent retention of the Defendant Veterinarians after discovering they are committing the aforementioned fraud the effect of which was to allow it to continue to be perpetrated for over a decade.

122. Defendant Hagyard's negligence was the actual and proximate cause of harm to the Plaintiff and other similarly situated.

123. As a direct and proximate consequence of the Defendant's conduct, the Plaintiff as suffered harm for which he is entitled to recover compensatory damages, the exact amount of which shall be determined at trial.

Count VII
Negligence Per Se
(Defendant Hagyard)

124. The Plaintiff incorporates the allegations of paragraphs 1 through 123 as if fully stated herein.

125. The Kentucky Veterinary Practice Act and the Code of Ethical Conduct prohibit the actions taken by the Defendant Veterinarians as described above. Specifically, the aforementioned code prohibits a veterinarian from engaging in "fraud, deceit, or misrepresentation... In the practice of veterinary medicine."

126. As described above in more detail, such actions taken by the Defendant Veterinarians constitutes fraud, deceit and misrepresentation with respect to the intentional changing of dates of medical records.

127. Defendant Hagyard was negligent with respect to supervising such defendants and allowing such conduct to occur in violation of statute.

128. Defendant Hagyard was also negligent with respect to such conduct in violation of the aforementioned statute, because such conduct occurred within the scope of the Defendant Veterinarians' work and therefore renders Defendant Hagyard vicariously liable for such actions.

129. Defendant Hagyard's negligence was the actual and proximate cause of harm to the Plaintiff and other similarly situated.

130. As a direct and proximate consequence of the Defendant's conduct, the Plaintiff as suffered harm for which he is entitled to recover compensatory damages, the exact amount of which shall be determined at trial.

WHEREFORE, Plaintiff respectfully requests:

- A. Judgment on all Counts of the Complaint for both compensatory and punitive damages as applicable, in an amount excess of the minimum jurisdictional limits of this Court;
- B. The certification of the class asserted herein;
- C. A jury trial on all Counts of this Complaint;
- D. A reasonable attorney's fee; and
- E. Any and all other further relief to which the Plaintiff and all others similarly situated may be entitled.

Respectfully submitted,



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