IN THE CIRCUIT COURT OF ADAIR COUNTY, MISSOURI

THE COLLISION COMPANY, LLC,
301 N. Marion
Kirksville, Missouri 63501

Plaintiff,

vs.

Case No. 20AR-CV00726

STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY,
Serve: Registered Agent,
CSC-Lawyers Incorporating Service Company
221 Boliver St.
Jefferson City, Missouri 65101

Jury Trial Demanded

and

Missouri Director of Insurance,
Attn. Chlora Lindley-Myers DIFP
Truman State Office Bldg. Room 530
Jefferson City, Missouri 65102

and

RACQUEL SCHEMPP,
Individually and as an Agent for
State Farm Mutual Automobile Insurance
Company
102 S. Baltimore Street
Kirksville, Missouri 63501

and

CHAD DAVIS,
Individually and as an Agent for
State Farm Mutual Automobile Insurance
Company
111 W. Jefferson Street
Kirksville, Missouri 63501

and

AUDRA JACKSON-HARRIS,)
Individually and as an Agent for)
State Farm Mutual Automobile Insurance)
Company)
2121 N. Baltimore Street)
Kirksville, Missouri 63501)
)
Defendant.)

FIRST AMENDED PETITION

1. Plaintiff, The Collision Company, LLC, is a Missouri limited liability company with its principle place of business in Kirksville, MO and is authorized to transact auto collision repair business in the State of Missouri.

2. Defendant State Farm Mutual Automobile Insurance Company is an Illinois insurance company with its principle place of business in Bloomington, IL. Defendant State Farm Mutual Automobile Insurance Company is registered with the Missouri Department of Insurance and is licensed to do business and is doing business within the State of Missouri. Pursuant to M.R.S. § 357.261, Defendant State Farm Mutual Automobile Insurance Company may be served with process through the Missouri Director of Insurance, 301 W. High Street, Room 530, Jefferson City, MO 65101.

3. Defendant State Farm Fire and Casualty Company is an Illinois insurance company with its principle place of business in Bloomington, IL. Defendant State Farm Fire and Casualty Company is registered with the Missouri Department of Insurance and is licensed to do business and is doing business within the State of Missouri. Pursuant to M.R.S. § 357.261, Defendant State Farm Fire and Casualty Company may be served with process through the Missouri Director of Insurance, 301 W. High Street, Room 530, Jefferson City, MO 65101.

4. Defendant, Racquel Schempp is, and during all times mentioned herein was, a resident of Adair County, Missouri and is a captured insurance agent for Defendant, State Farm Mutual Insurance Company with her principal place of business being located in Kirksville, Adair County, Missouri.

5. Defendant, Chad Davis is, and during all times mentioned herein was, a resident of Adair County, Missouri and is a captured insurance agent for Defendant, State Farm Mutual Insurance Company with his principal place of business being located in Kirksville, Adair County, Missouri.

6. Defendant, Audra Jackson is, and during all times mentioned herein was, a resident of Adair County, Missouri and is a captured insurance agent for Defendant, State Farm Mutual Insurance Company with her principal place of business being located in Kirksville, Adair County, Missouri.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the subject matter of this action pursuant to Section 478.070 and Mo. Const. Art. 5, Section 14(a), because Plaintiff's claims arise under Missouri law.

8. Venue in this Court is proper under Section 508.010 RSMo., because a substantial part of the events or omissions giving rise to the claims alleged in this Complaint occurred in Adair County, Missouri.

9. Plaintiff demands a jury trial on all issues triable by jury in this matter.

FACTS

10. During the time period of March, 2012 until August, 2019, Plaintiff was in the business of repairing collision damage to motor vehicles.

11. During that same time period, Plaintiff provided motor vehicle collision repair services to both insureds of Defendants (hereinafter "insureds) and to those making claims against Defendants' insureds (hereinafter "claimants").

12. Each individual Defendant is an insurer providing automobile policies to consumers throughout the State of Missouri and Plaintiff has performed repairs for each individual Defendant's insureds/claimants within the County of Adair, State of Missouri.

13. During the time period including March, 2013 to May, 2018, Defendants paid in full the repair invoices of Plaintiff after vehicle collision repairs were completed on both insured and claimants' motor vehicles by Plaintiff.

14. During the time period including March, 2013 to August, 2019, Defendants paid in full the invoices presented by Plaintiff for insureds and claimants' vehicles that were deemed a "total loss" by Defendants.

15. Beginning in November of 2018 and during the time period of January 1, 2019 through May 1, 2019, Defendants Schempp, Davis and Jackson-Harris, their agents and employees, have engaged in an ongoing, concerted and intentional course of action and conduct with Defendants State Farm Mutual Automobile Insurance Company and State Farm Fire and Casualty Company (collectively, "State Farm") acting as the spearhead to improperly and illegally control and depress automobile damage repair costs to the detriment of the Plaintiff and for the substantial profit of the Defendants.

16. One of the methods by which the Defendants exert control over Plaintiff is by way of entering program agreements with individual body shops. Although each Defendants' program agreements have unique titles, such agreements are known generally and generically within the collision repair industry as direct repair programs ("DRPs").

17. DRPs are presented to body shops as a mutually beneficial opportunity. In exchange for providing certain concessions of price, priority and similar matters, the Defendants would list a body shop as a preferred provider.

18. Plaintiff is not, and was not during all times mentioned herein, a DRP of Defendants. As such, Defendants had no control over the labor rates, part profit margins, storage fees and/or any other fees that would be charged by Plaintiff to timely and correctly repair insureds and claimants' motor vehicles to their pre-collision condition.

19. As a result of Plaintiff not being a DRP, Defendants engaged in an ongoing pattern and practice of coercion and implied threats to insureds and claimants who had entered into collision repair contracts with Plaintiff and to insureds and claimants who were considering using Plaintiff's vehicle collision repair services all to the detriment of Plaintiff's pecuniary health in order to force those consumers to either use a DRP of Defendants or another vehicle repair facility that will accept Defendants estimates of repairs.

20. For example, Defendants would inform insureds and/or claimants that if they used the services of Plaintiff, the insureds and/or claimants would have "out of pocket expenses" that they would not have if they used one of Defendants' DRP facilities.

As a direct and proximate result of these representations, several insureds and/or claimants removed their vehicles from Plaintiff's repair shop although they had entered into a written contract with Plaintiff to repair their vehicle to its pre-collision condition.

21. Although on numerous occasions Defendants would pay Plaintiff's repair invoices in full as plead above, Defendants began a system of dealing with Plaintiff in such a manner that insureds and/or claimants' vehicles would be at Plaintiff's shop for a longer period of time before Defendants would agree to the repairs identified by Plaintiff as needed to put an insureds and/or claimants vehicle into its pre-collision condition. As a result of this extended period of time, Defendants would then represent to insureds and/or claimants that taking their motor vehicle to Plaintiff's repair shop would result in them being without their vehicle for a longer period of time than they would be if their vehicle was taken to one of Defendants' DRP facilities. As a direct and proximate result of these representations, insureds and/or claimants that had scheduled an appointment with Plaintiff to have their vehicle repaired canceled their appointments and did not bring their vehicle to Plaintiff for repairs.

22. In addition to delaying the claims made by Plaintiff to Defendants on motor vehicles that Defendants' insurance coverage was involved with, Defendants would require Plaintiff to "aftermarket and/or imitation" parts during the repair process. Defendants would require Plaintiff to use these parts even though Plaintiff would inform Defendants that such parts were not of like, kind and quality as required by Missouri Law. Upon Plaintiff proving to Defendants that these aftermarket and/or imitation parts were not of like, kind and quality, then Defendants would authorize Plaintiff to use

original equipment manufactured by the vehicles maker, thus creating unreasonable delays in delivering the repaired motor vehicle to the insured and/or claimant.

23. On or about October 13, 2017, Plaintiff purchased Loren Hatfield Body and Frame, which was also a motor vehicle repair facility. From the date Plaintiff purchased Loren Hatfield Body and Frame until December 31, 2017, Plaintiff repaired twenty-nine (29) motor vehicles that involved Defendants' insurance coverage. During the calendar year 2018, Plaintiff repaired forty-four (44) motor vehicles that involved Defendants' insurance coverage. From January 1, 2019 to May 1, 2019, Plaintiff only repaired ten (10) motor vehicles that involved Defendants' insurance coverage.

24. Since refusing to repair damaged vehicles in the manner and for the costs unilaterally established by Defendants, Plaintiff saw an approximate forty-percent (40%) decline in the amount of work relating to Defendants' insured and/or claimants vehicles for whom Defendants are responsible for repair payment.

25. According to the Missouri Department of Insurance's 2013 Market Share Report, State Farm captured 22.88% of the private passenger automobile insurance business within Missouri. The market share for its closest competitor, American Family Mutual Insurance Company, was 12.68%.

26. Collectively, the Defendants accounted for more than 85% of the private passenger insurance market in Missouri in 2013. *Id.*

27. Based upon the most recent information available, it is clearly apparent that Defendants hold the unchallenged dominant position within the automobile insurance industry in the Missouri market, including that of Adair County, Missouri.

28. The vast majority of Plaintiff's business was generated by customers for whom the Defendants are responsible to pay repair costs. The insurance-paying customers account for between seventy and ninety-five percent of Plaintiff's revenue. Courts have acknowledged the significant role played by insurance companies in funding automobile collision repairs, as well as the ability and market power to exert substantial influence and control over where consumers will take a wrecked car for repairs. See, e.g., *Allstate Ins. Co. v. Abbott*, 2006 U.S. Dist. LEXIS 9342 (N.D. Tex. 2006) (*aff'd, Allstate ins. co. v. Abbott*, 2007 U.S. App. LEXIS 18336 (5th Cir. 2007).

29. In addition to delaying the repairs of insureds and/or claimants motor vehicles due to estimates and part issues as set forth above, Defendants began to refuse to pay Plaintiff's established labor rates as Defendants claimed Plaintiff's labor rates were higher than market rates for the Kirksville, Missouri area.

30. As a general proposition, each DRP agreement contains a general statement that the body shop will charge the respective insurance company no more in labor rates for any particular repair than is the going market rate in the market area. However, DRP body shops are not permitted to set their own labor rates.

31. Defendants utilize "surveys" to establish a "market labor rate" in any particular market area. The geographical boundaries of the market area for the surveys are wholly within the control and direction of Defendants.

32. Under the terms of its DRP, Defendants are not required to disclose any of the methods by which it establishes the market area, the market rate, or any other factual bases for its determination of the "market rate." The agreement contains no provisions

for independent and neutral verification of the data utilized, nor any oversight not directly within the control and direction of Defendants. The shops, regardless of whether it is a DRP shop, are simply required to blindly accept Defendants' pronouncements regarding these matters.

33. Previously Defendants' survey was conducted by sending written documents to the individual body shops. The owner or designated representative of the body shop would fill out the survey and return it to Defendants. In recent years, this process has been transferred to an electronic forum, Defendants' Business to Business portal, whereby the body shops go online to complete the survey.

34. Defendants do not perform a survey in the traditional scientific sense, where information is obtained and results produced, establishing a baseline of all the body shops' information. With respect to labor rates, for example, Defendants' methodology does not represent what the majority of shops in a given area charge. Quite the contrary: Defendants' methodology lists the shops in a given market (as determined by Defendants) with the highest rates submitted at the top of the list and descending to the least expensive hourly rates at the bottom.

35. Defendants then list how many technicians a shop employs or the number of work bays available, whichever is lesser. Those are then totaled, and Defendants employ their "half plus one" method. If, for example, a State Farm determined market area has a total of fifty (50) technicians or work bays, State Farm's "half plus one" math equals twenty-six (26). With that number, starting at the bottom of the shop list, State Farm counts each shops' technicians or work bays until the "half plus one" number is

reached—twenty-six in this example—and whatever that shop's rate happens to be is declared the market rate.

36. There could, arguably, be some validity to this method if it accounted for the variance in shop size, skill of technicians and other quality variables; however, it does not. The greatest problem with this method is that Defendants can and do alter the labor rates that the body shops input, decreasing those arbitrarily deemed too high or higher than Defendants wish to pay.

37. By altering the rates entered, particularly those of the larger shops (i.e., those with the most technicians and/or work bays), Defendants manipulate the results to achieve a wholly artificial "market rate." The results are therefore not that of an actual survey reflecting the designated market area but created from whole cloth by Defendants, particularly since Defendants determine the market area to be included.

38. Furthermore, Defendants do not publish or otherwise publicly disclose the "market rate" they create. Defendants attempt to prohibit repair facilities, like Plaintiff, from discussing with each other the information each has entered into the survey, asserting any discussion may constitute illegal price fixing. Meanwhile, Defendants select the geographical boundaries of the survey, retains the right to alter the survey results and do, in fact, alter the survey results. All without disclosure or oversight and thereby artificially creating a "market labor rate" used to deny paying Plaintiffs repair bills related to the repair of insureds and/or claimants.

39. Another electronic page on State Farm's business portal is known as the Dashboard/Scorecard.

40. The Dashboard has substantive impact on several levels. It serves as the record of an individual shop's survey responses. It also provides a "report card" and rating of the individual shop based primarily upon three criteria: quality, efficiency and competitiveness.

41. Within the quality criterion, the shop's reported customer satisfaction, customer complaints, and quality issues identified by an audit are scored.

42. The efficiency criterion evaluates repair cycle time, number of days a vehicle is in the shop, utilizing information input by the shops on the car's drop-off and pickup dates.

43. The competitiveness criterion analyzes the average estimate for each State Farm repair, the cost of parts, whether a vehicle is repaired or replacement parts are utilized, the number of hours required to complete repair and similar matters. *See, e.g.*, Exhibit 2, at 2.

44. In rating an individual shop, a total score of 1000 is possible. But State Farm is under no obligation to disclose the weight or total number of points possible given to each factor included in reaching the score, particularly those factors included under the competitiveness criterion. In fact, State Farm has refused to disclose its method of determining competitiveness even to its own team leaders.

45. Due to this opacity, State Farm maintains complete and unsupervised authority to determine an individual shop's rating. It is therefore possible for a shop to have no customer complaints, high customer satisfaction, no issues identified on an audit, complete compliance with all repair cycle time and efficiency expectations and yet still

have a low rating. It is also possible for a shop to have multiple customer complaints, poor customer satisfaction, numerous issues identified on audit and complete failure to meet efficiency expectations and yet have a very high rating.

46. The Dashboard rating is very important as a shop's rating determines its position on the list of preferred providers. When a customer logs on to the State Farm website seeking a repair shop, those shops with the highest ratings are displayed first. A shop with a low rating will be at the bottom of the list often pages and pages down, making it difficult for a potential customer to find it. If a customer calls State Farm, the representative provides the preferred shops beginning with those holding the highest rating.

47. The Defendants regularly and routinely engage in "steering" in order to punish the noncompliant shops, including Plaintiff's repair facility. Through several common methods, the Defendants will steer insureds and/or claimants to favored, compliant DRPs or other compliant repair facilities through misrepresentation, insinuation, and casting aspersions upon the business integrity and quality of disfavored repair centers, including Plaintiff's repair facility.

48. Examples of this practice include advising that a Plaintiff's repair facility is not on the preferred provider list, advising that quality issues have arisen with Plaintiff's repair facility, that complaints have been received about Plaintiff's repair facility from other insureds and/or claimants, that Plaintiff's repair facility charges more than any other repair facilities in the area and these additional costs will have to be paid by the insured and/or claimant, that repairs at the Plaintiff's repair facility will take much

longer than at other preferred facilities and that the insured and/or claimant will be responsible for rental car fees beyond a certain date, and that the Defendant cannot guarantee Plaintiff's work as it can at other facilities.

49. These statements have been made about Plaintiff without any attempt to ascertain the truth thereof. Additionally, some of the ills recited, which implicitly criticize Plaintiff, are wholly attributable to the Defendants themselves. The statement that repairs will take longer, for instance, is made without informing the insured that the delay in beginning repairs is due to the Defendants' decision to delay sending an adjuster/appraiser to evaluate the damage, which is a decision that is completely and wholly within the control of the Defendants. Asserting that Plaintiff charges more than other shops is often not a function of what the shop actually charges but is the result of the Defendants' refusal to pay, also a factor wholly and completely within the control of the respective Defendants. Yet each of the Defendants convey such statements to insureds and claimants as problems that are entirely the fault of Plaintiff.

50. The most egregious of these statements, that the Defendant cannot guarantee Plaintiff's work, is particularly misleading as none of the Defendants offer a guarantee for repair work. Instead, the Defendants require body shops to provide a limited lifetime guarantee on work performed. In the event additional work is required, Plaintiff is required to do so without any additional payment, or to indemnify the insurer for costs if work is performed at another shop.

51. Thus, while it may be a facially truthful statement that Defendants cannot guarantee the work of a particular shop, the clearly understood inference is that it can and will guarantee the work of another, favored shop, which is simply not true.

52. After October 2017, Defendants failed to pay Plaintiff in full for the repair work and instead switched to the "market rate," as further described above.

53. The Defendants specifically and maliciously targeted Plaintiff as retribution for noncompliance with the fixed prices and "market rates" unilaterally imposed by the Defendants. The actions are intentional, improper and conducted with deliberate malice.

INTENTIONAL NATURE OF DEFENDANTS' CONDUCT

54. In 1963, a consent decree was entered in *United States vs. Association of Casualty and Surety Companies*, et al, Docket No. 3106, upon a complaint filed in the Southern District of New York. The allegations of that complaint included violations of Sections 1 and 3 of the Sherman Act, also known as the Sherman Antitrust Act. A copy of this Decree is attached hereto as Exhibit 4.

55. Specific actions supporting those allegations included: (l) requiring repair rather than replacement of damaged parts; (2) replacing damaged parts with used rather than new parts: (3) obtaining discounts on new replacement parts: (4) establishing strict labor time allowances; (5) suppressing the hourly labor rate; (6) channeling auto repairs to those repair shops which would abide by the insurer estimates and boycotting those which refused. The complaint further alleged a conspiracy and combination in unreasonable restraint of trade and commerce for these practices.

56. The Consent Decree order provided the following relief: (1) enjoined the defendants from placing into effect any plan, program or practice which has the purpose or effect of (a) directing, advising or otherwise suggesting that any person or firm do business or refuse to do business with any independent or dealer franchised automotive repair shop with respect to the repair of damage to automobile vehicles; (2) exercising any control over the activities of any appraiser of damages to automotive vehicles; (3) fixing, establishing, maintaining or otherwise controlling the prices to be charged by independent or dealer franchised automotive repair shops for the repair of damage to automotive vehicles or for replacement parts or labor in connection therewith, whether by coercion, boycott or intimidation or by the use of flat rate or parts manuals or otherwise.

57. Whether or not any current Defendants are legally bound by this Decree, the actions described in the present cause fall squarely within those prohibited by the Decree. The Decree has been "on the books" for fifty years and is well-known within the insurance industry. Despite this, the Defendants have willfully ignored actual knowledge of the terms of the Consent Decree.

58. Being known, it can only be said that Defendants were fully aware their actions, plans, programs, and combinations and/or conspiracy to effectuate the same prohibited actions have been willful, intentional and conducted with complete and reckless disregard for the rights of the Plaintiff.

COUNT I - TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS

59. Tortious interference with a business relation occurs where a plaintiff has a valid contractual relationship or business expectancy, defendant knows of the relationship or expectancy, and defendant intentionally interferes with the relationship or expectancy causing a breach or termination that results in damages to the party whose relationship or expectancy has been disrupted. *Nazeri v. Missouri Valley Coll.*, 860 S.W.2d 303, 316 (Mo. 1993); *Clinch v. Heartland Health*, 187 S.W.3d 10, 14 (Mo. Ct. App. 2006).

60. The Defendants, knowing of Plaintiff's valid business relations and prospective business relations, intentionally engaged in actions and a course of conduct designed to interfere with and injure Plaintiff's valid business relations and prospective business relations. The Defendants knowingly and intentionally steered and attempted to steer customers away from Plaintiff through their repeated campaign of misrepresentation of facts, failure to verify facts that damage or tend to cause damage to the Plaintiff's business reputations before conveying the same to members of the public, implications of poor quality, poor efficiency, poor business ethics and practices, and unreliability.

61. There is no justification for Defendants' conduct. But the purpose of these actions was twofold: to punish the Plaintiff who complained about or refused to submit to the various oppressive and unilateral price ceilings the Defendants were enforcing upon it, and to direct potential customers of the Plaintiff to other vendors who would comply with the maximum price ceilings unilaterally imposed by the Defendants.

62. Plaintiff has been damaged by Defendants' malicious and intentional actions. Plaintiff is therefore entitled to compensation for these damages.

63. Defendant's conduct herein was willful, intentional and outrageous, in that Defendant made false and misleading statements concerning Plaintiffs ability to perform its business, thereby evidencing evil motive or reckless indifference to the rights of other, warranting punitive damages in the sum of $10,000,000.00.

PRAYER FOR RELIEF

64. As a result of the Defendants' actions, Plaintiff has been substantially harmed and will continue to suffer unless the relief requested herein is granted. Plaintiff therefore prays for the following relief:

a. Compensatory damages for all non-payment and underpayment for work completed on behalf of the Defendants' insureds and claimants as determined by a jury.

b. Compensation for the lost revenue through artificial suppression of labor rates as determined by a jury.

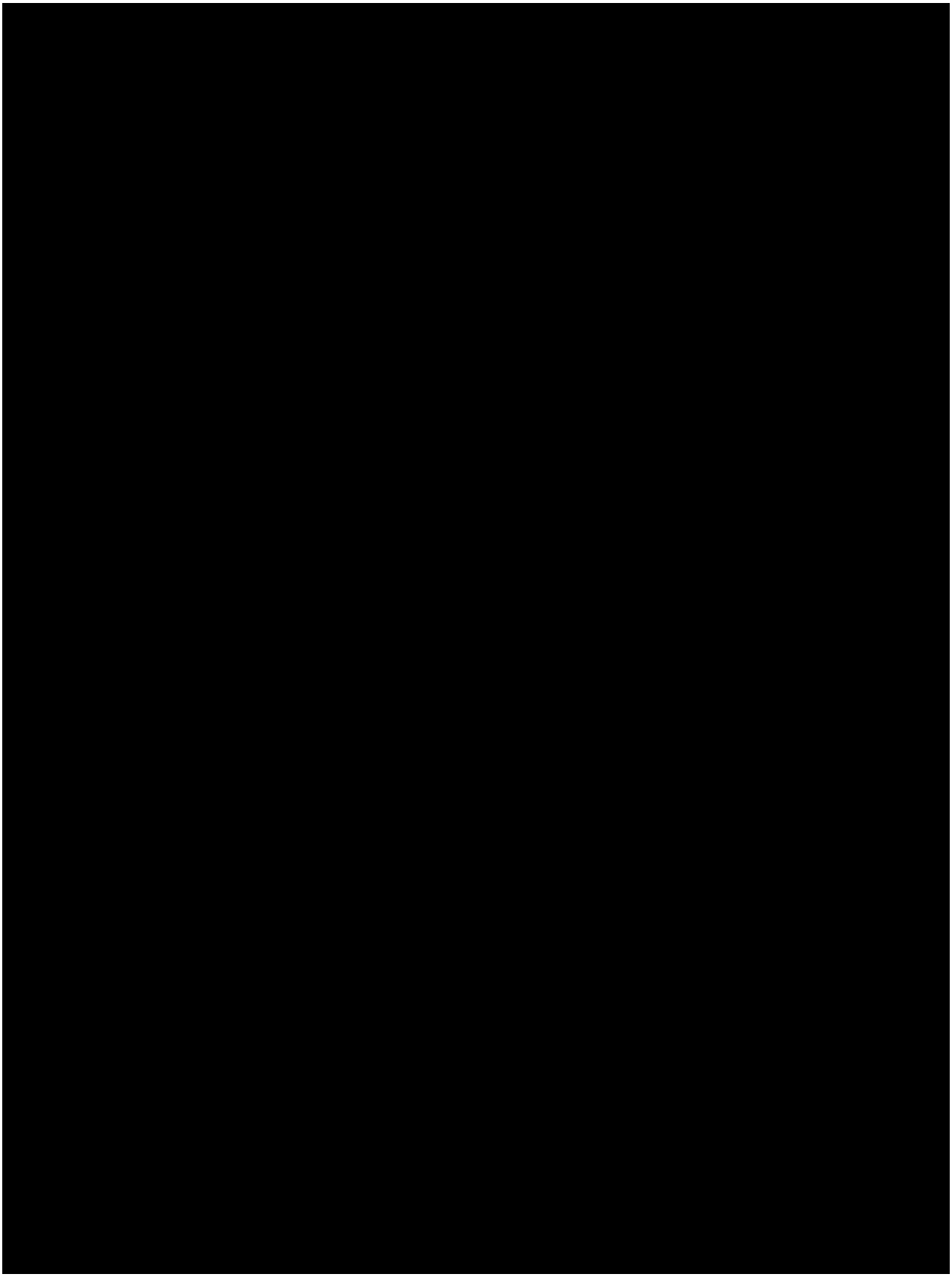
c. Damages sufficient to compensate Plaintiff for lost business opportunities as determined by a jury.

d. Punitive and/or exemplary damages sufficient to punish Defendants for their intentional acts and deter each Defendant and similar entities from pursuing this improper conduct in the future.

e. Pre- and post-judgment interest.

Any additional relief the Court deems just and appropriate.

[redacted]



Respectfully submitted,

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