IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

In re:

Laser Spine Institute, LLC	Case No. 2019-CA-2762
CLM Aviation, LLC	Case No. 2019-CA-2764
LSI HoldCo, LLC	Case No. 2019-CA-2765
LSI Management Company, LLC	Case No. 2019-CA-2766
Laser Spine Surgery Center of Arizona, LLC	Case No. 2019-CA-2767
Laser Spine Surgery Center of Cincinnati, LLC	Case No. 2019-CA-2768
Laser Spine Surgery Center of Cleveland, LLC	Case No. 2019-CA-2769
Laser Spine Surgical Center, LLC	Case No. 2019-CA-2770
Laser Spine Surgery Center of Pennsylvania, LLC	Case No. 2019-CA-2771
Laser Spine Surgery Center of St. Louis, LLC	Case No. 2019-CA-2772
Laser Spine Surgery Center of Warwick, LLC	Case No. 2019-CA-2773
Medical Care Management Services, LLC	Case No. 2019-CA-2774
Spine DME Solutions, LLC	Case No. 2019-CA-2775
Total Spine Care, LLC	Case No. 2019-CA-2776
Laser Spine Institute Consulting, LLC	Case No. 2019-CA-2777
Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2780
Assignors,	Consolidated Case No: 2019-CA-2762

To:

Soneet Kapila,

Assignee	Division L

_____/

LASERSCOPIC SPINAL CENTERS OF AMERICA, INC., LASERSCOPIC MEDICAL CLINIC, LLC AND LASERSCOPIC SPINE CENTERS OF AMERICA, INC.'S RESPONSE IN LIMITED OPPOSITION TO SONEET KAPILA, AS ASSIGNEE'S MOTION FOR ENTRY OF AN ORDER PURSUANT TO FLA. STAT. § 727.109(15): (I) AUTHORIZING THE USE OF CASH COLLATERAL; (II) PROVIDING ADEQUATE PROTECTION TO LENDERS; (III) ESTABLISHING A LIEN CHALLENGE DEADLINE; AND (IV) GRANTING RELATED RELIEF

Laserscopic Spinal Centers Of America, Inc. ("LSCA"), Laserscopic Medical Clinic, LLC ("LMC") and Laserscopic Spine Centers of America, Inc. ("Spine") (collectively the "Laserscopic Claimants"), acting by and through the undersigned counsel, file their Response in Limited Opposition to the "*Motion for Entry of an Order Pursuant to Fla. Stat. §727.109 (15):*

(I) Authorizing the Use of Cash Collateral; (II) Providing Adequate Protection to Lenders; (III) Establishing a Lien Challenge Deadline; and (IV) Granting Related Relief" (the "Motion"). In support, the Laserscopic Claimants allege and state as follows:

SUMMARY

The Laserscopic Claimants represent the largest claimants against the Laser Spine Institute, LLC ("LSI") Assignment for the Benefit of Creditors estate (the "LSI Estate"). The Laserscopic Claimants filed Proofs of Claim totaling over $372,000,000.00. By their response, the Laserscopic Claimants object to:

(1) the LSI Estate's proposal to grant the Texas Capital Bank (the "Bank") a lien against tort litigation proceeds; and,

(2) the Assignee's request to establish a lien challenge deadline as to the Bank's claim that is prior to any obligation of the Bank to file its Proofs of Claim.

The Laserscopic Claimants expressly object to such relief being afforded to the Bank and respectfully request that the Motion be denied on these points.

As detailed below, tort litigation proceeds are not part of the security interest held by the Bank. Even if that were not the case, the Bank waived any interest in the same. The Laserscopic Claimants also object to the establishment of a Lien Challenge Deadline that will expire prior to the deadline for filing Proofs of Claim against the LSI Estate, especially since the Bank has yet to file a Proof of Claim. The LSI Estate has failed to provide sufficient information to the unsecured creditors to support these particular requests and, based upon information available, it appears that the Bank is not entitled to such relief. Further, the Assignment for the Benefit of the Creditors statutes do not directly provide the Assignee with authority to grant the Bank a lien against the litigation proceeds in any event. For these reasons,

such relief in favor of the Bank is inappropriate and, accordingly, the Motion should be denied in these points.

STATEMENT OF THE CASE

1. LSCA and LMC have actual damage claims of $264,000,000 plus interest in the amount of $87,976,680, for a total compensatory damages award of $351,976,680; LSCA and LMC were also awarded punitive damages in the amount of $5,000,000 plus interest of $1,666,225, for a total award of $6,666,225 in punitive damages against the LSI Estate. See Attached Exhibits "A" and "B."

2. Spine holds a claim for $6,831.172 plus interest of $2,266,066 or $9,097,238 total against the LSI Estate. See Attached Exhibit "C." The Laserscopic Claimants' claims are based upon the Opinion entered by the Second District Court of Appeals. See Attached Exhibit "D." The hearing concerning the entry of the applicable judgment resulting from the decision of the Second DCA is set for July 2, 2019 before the trial court. A copy of the Mandate and the proposed Second Amended Judgment is attached as Exhibits "E" and "F." The Laserscopic Claimants are aware of no opposition to their Proofs of Claim filed against the LSI Estate.

3. Under the decision of the Second DCA, the Mandate, and the soon to be entered Second Amended Final Judgment (the "Final Judgment"), the Laserscopic Claimants have varying claims against the following Defendants, which includes Laser Spine Institute, LLC:

a. James S. St. Louis, D.O.;
b. EFO Holdings, L.P.;
c. EFO Genpar, Inc.;
d. EFO Laser Spine Institute, Ltd;
e. Laser Spine Institute, LLC;
f. Laser Spine Medical Clinic, LLC;
g. Laser Spine Physical Therapy, LLC; and
h. Laser Spine Surgical Center, LLC

(collectively for these purposes the "Bailey Defendants").

4. The Second DCA granted the Laserscopic Claimants disgorgement awards against the Bailey Defendants in an amount "…based on the total value of LSI in 2009 combined with the total of the distribution to the owners of LSI between 2005 and 2009" (according to Footnote No. 4, the proper amount to be between $264,000,000 and $265,000,000).

5. The Bailey Defendants are required to disgorge the amounts determined to be owed to them as outlined herein. The filing of the ABC by LSI requires the Laserscopic Claimants to look to the LSI Estate for recovery as to LSI, but they are simultaneously entitled to seek disgorgement from the non-LSI Bailey Defendants. The Laserscopic Claimants are also entitled to seek disgorgement from recipients of transfers from LSI and from the non-LSI Bailey Defendants.

6. The Laserscopic Claimants also have fraudulent conveyance claims against recipients of any fraudulent transfers from LSI or the non-LSI Bailey Defendants. However, the LSI Estate also holds fraudulent transfer claims against the recipients of transfers from LSI that occurred within the applicable fraudulent transfer periods under Florida law. Therefore, as to fraudulent conveyance claims relating to transfers made by LSI, the LSI Estate and the Laserscopic Claimants have competing claims.

7. At least two (2) of the Bailey Defendants, namely EFO Laser Spine Institute, Ltd. ("EFO Laser Spine") and James S. St. Louis, D.O., are subject to the disgorgement and fraudulent transfer claims of the Laserscopic Claimants AND are also subject to fraudulent transfer claims of the LSI Estate for transfers made by LSI to them.

8. The Assignee's request for authority to grant the Bank a lien on litigation proceeds directly conflicts with the rights of the Laserscopic Claimants, as well as the other unsecured creditors of the LSI Estate. As to fraudulent transferee targets against which the Assignee has claims, excluding EFO Laser Spine and Dr. St. Louis from this discussion, the

normal course of an ABC proceeding would be for the Assignee to pursue and recover on such claims. Then the Assignee would distribute such litigation proceeds, less costs of collection, pro rata to the unsecured claimants of the LSI Estate. The unsecured claimants against the LSI Estate will include the Laserscopic Claimants (holding approximately 3/5 (or more) of all unsecured claims), *may* include the Bank (but only to the extent it did not already release any claims) and will include other unsecured claimants. The Assignee's Motion seeks to trample the rights of the Laserscopic Claimants by prioritizing the claims of the Bank over their claims by granting the Bank a lien on all litigation proceeds notwithstanding the fact that its lending documents do not afford the Bank such a right. Additionally, to the extent that the Bank seeks any right to assert a claim against the litigation proceeds as an unsecured creditor, it waived those rights by executing various agreements including those executed in or around November 18, 2016.

9. The Assignee's request to grant the Bank a lien on litigation proceeds relating to fraudulent transfer claims against EFO Laser Spine and Dr. St. Louis is even more damaging for the Laserscopic Claimants. The Laserscopic Claimants hold disgorgement claims against EFO Laser Spine and Dr. St. Louis; but the Assignee does not have such disgorgement claims. As such, both the Laserscopic Claimants (disgorgement) and the LSI Estate (fraudulent transfer) can independently pursue claims against EFO Laser Spine and Dr. St. Louis. Instead of pursuing such claims independently, it would be in the best interests of the Laserscopic Claimants and the LSI Estate to work cooperatively to collect on such claims. However, the grant of a lien in favor of the Bank will disrupt the ability of the parties to cooperate effectively.

10. The Laserscopic Claimants currently have the right to collect against EFO Laser Spine and Dr. St. Louis in two ways. First, as the holder of claims under the Final Judgment that are independent of the claims of the LSI Estate. Second, pro rata as the largest unsecured

claimants of the LSI Estate. If the Assignee is allowed to grant the Bank a lien against the litigation proceeds of EFO Laser Spine and Dr. St. Louis, then the Laserscopic Claimants' rights as an independent judgment holder and as the largest unsecured creditors of the LSI Estate are vitiated and subordinated to the Bank's lien.

11. Additionally, the LSI Estate and the Laserscopic Claimants have competing fraudulent transfer claims against EFO Laser Spine and Dr. St. Louis. Absent the Assignee's request to grant the Bank lien against such litigation proceeds, the Laserscopic Claimants and the LSI Estate would likely reach a compromise for the allocation of collected litigation proceeds and such allocation would benefit all of the unsecured claimants of the LSI Estate. The Assignee's request to grant the Bank a lien disrupts the normal distribution priorities between the creditors by subordinating the claims of the unsecured creditors to the Bank's claim. Absent the granting of a lien in its favor, the Bank, at best, would be an unsecured creditor as to the EFO Laser Spine and Dr. St. Louis litigation proceeds and it would share pro rata with the other unsecured creditors. As noted above, however, in all likelihood the Bank may not even be allowed to participate in the distribution of the proceeds from litigation against EFO Laser Spine and Dr. St. Louis given the documents it freely executed.

12. The Assignee's request to grant a lien on the litigation proceeds should be denied for the following, non-exclusive, list of reasons:

a. There is no direct authority under the Florida Assignment for the Benefit of the Creditors statutes to allow the Assignee to grant the Bank a lien against the litigation proceeds;

b. The granting of a lien in the litigation proceeds, is inequitable and damaging to the unsecured creditors of the LSI Estate;

c. The Assignee has not provided a budget and therefore the amount which the LSI Estate seeks to collateralize for the Bank's benefit is undisclosed;

d. The Bank has yet to file a Proof of Claim;

e. The request to grant a lien to the Bank is to cover "any diminution in value of its interests in the Collateral since the filing of the Assignment cases . . ." but the value of the Bank's Collateral as of the filing date is unknown and unspecified;

f. On or around November 18, 2016, the Bank executed a Limited Waiver and First Amendment to Credit Agreement and a Release Agreement, the combined effect of which is, arguably, that the Bank waived or released its rights to make claims against potential fraudulent transferees and in Section 2 of the Release the Bank granted the LSI investors (as defined in the Release and hereafter the "LSI Investors") a covenant not to commence litigation. See, attached Exhibits "G" and "H."

13. The Assignee references the Texas Capital Credit Agreement dated July 2, 2015 as being the basis for the Bank's lien claim as to assets of the Assignors. Upon information, the majority of the loan proceeds received from the Bank under the Credit Agreement in the amount of nearly $120 million were distributed by the Assignors to the LSI Investors. These distributions to the LSI Investors following the July 2, 2015 Credit Agreement constitute the bulk of the fraudulent transfer actions which the Laserscopic Claimants expect would be targeted by the Assignee. Ironically, the Bank waived the existing defaults under the Credit Agreement and executed a Covenant Not to Commence Litigation against the LSI Investors in the Limited Waiver and Release. Agreements of November 18, 2016. See Attached Exhibits "G" and "H."

14. Moreover, the Bank's Covenant Not to Commence Litigation against the LSI Investors under the Release may trigger defenses to the Assignee's fraudulent transfer claims if the Assignee is authorized to grant the Bank a lien on the litigation proceeds. The Assignee's fraudulent transfer claims will be brought, at least in part, against the LSI Investors. Section 2 of the Release broadly defines the "Action" which the Bank is prohibited from engaging in and defines the covenant granted to the LSI Investors "…as a full and complete defense to any action which may be commenced by the Administration contained herein." The Assignee's granting

the Bank a lien against the litigation proceeds of any claims against the LSI Investors may therefore inadvertently trigger a complete defense for those parties as fraudulent transfer targets.

15. For these reasons, and other to the extent applicable, the Assignee's request for authority to grant a lien against litigation proceeds in favor of the Bank must be denied.

16. The Assignee also requests that a "lien challenge deadline" be approved as to the Bank such that upon the expiration of the deadline without objection, the Bank's claims under the "Loan Documents" shall be deemed to be "…valid, perfected, and enforceable as to all creditors and parties-in-interest, and shall be subject to no further challenge…" absent the commencement of a challenge within forty (40) days of the entry of an Order granting the Assignee's Motion.

17. As a practical matter, establishing this deadline through this Motion is prejudicial from a timing perspective. The Bank has yet to file a Proof of Claim and the deadline for filing Proofs of Claim is not until July 12, 2019. The hearing on this Motion is scheduled for July 2, 2019. Simply put, the interplay of the filing of the Motion, the lack of a claim being filed by the Bank, the July 2nd hearing date and the July 12th Proof of Claim deadline places an impossible burden on any party wanting to make a good faith inquiry or challenge to any claim of the Bank.

18. Finally, and as a general proposition, the unsecured creditors of the LSI Estate were provided insufficient information in the Motion. The extent of the Bank's claim that the Assignee seeks to collateralize is not adequately defined or specified in the Motion. The value of the Bank's collateral, or even what the Bank is claiming as collateral is undefined, at least until it files a Proof of Claim. Moreover, the Bank voluntarily waived any claim against the assets (the litigation proceeds) which it is now seeking to obtain a lien on through the Assignee. Under these circumstances the granting of a lien against the litigation proceeds is highly prejudicial and damaging to the unsecured creditors of the LSI Estate.

WHEREFORE, the Laserscopic Claimants pray for an Order of this Court denying the Motion as to the limited issues of Assignee's request for authority to grant the Bank a lien on all litigation proceeds and also denying the Assignee's request for a lien challenge deadline to be established for the benefit of the Bank; and for such other relief as this Court may equitably grant the Laserscopic Claimants.

Dated: June 11, 2019.

/s/ Jennifer G. Altman
Jennifer G. Altman, Esq.
Florida Bar No. 881384
Pillsbury Winthrop Shaw Pittman LLP
600 Brickell Avenue
Suite 3100
Miami, FL 33131
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Attorneys for Judgment Creditors, Joe Samuel Bailey, Mark Miller, Ted Suhl, Laserscopic Spinal Centers Of America, Inc., Laserscopic Medical Clinic, LLC, Laserscopic Surgery Center Of Florida, LLC, Laserscopic Diagnostic Imaging And Laserscopic Physical Therapy, LLC, Laserscopic Spinal Center Of Florida, LLC, And Tim Langford

/s/ Kenneth G. M. Mather
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Attorneys for Judgment Creditors, Joe Samuel Bailey, Mark Miller, Ted Suhl, Laserscopic Spinal Centers Of America, Inc., Laserscopic Medical Clinic, LLC, Laserscopic Surgery Center Of Florida, LLC, Laserscopic Diagnostic Imaging And Laserscopic Physical Therapy, LLC, Laserscopic Spinal Center Of Florida, LLC, And Tim Langford

CERTIFICATE OF SERVICE

I CERTIFY that on June 11, 2019 a true and correct copy of the foregoing has been electronically filed with the Clerk of Court through the Florida Courts E-Filing Portal, which will send a Notice of Electronic Filing to all counsel of record.

/s/ Kenneth G. M. Mather
Kenneth G. M. Mather, Esq.

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

LASER SPINE INSTITUTE, LLC

Case No.: 2019-CA-002762

Assignor

v.

SONEET KAPILA

Assignee.

_____/

NOTICE OF PROOF OF CLAIM OF
LASERSCOPIC SPINAL CENTERS OF AMERICA, INC.

LASERSCOPIC SPINAL CENTERS OF AMERICA, INC., by and through its undersigned counsel, and pursuant to §727.112, Florida Statutes, hereby files (with supporting documents) and gives notice of its Proof of Claim against Assignor, LASER SPINE INSTITUTE, LLC, by delivering the Proof of Claim, attached hereto as **Exhibit A**, upon the Assignee, Soneet Kapila and Edward J. Peterson, Esquire of Stichter, Riedel, Blain & Postler, P.A.

DATE: May 8, 2019.

/s/ Kenneth G. M. Mather
William J. Schifino, Jr., Esq.
Florida Bar Number 564338
Kenneth G.M. Mather, Esq.
Florida Bar Number 619647
Justin P. Bennett, Esq.
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Email- kmather@gunster.com
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Exhibit "A"

Attorneys for Judgment Creditors, Joe Samuel Bailey, Mark Miller, Ted Suhl, Laserscopic Spinal Centers Of America, Inc., Laserscopic Medical Clinic, LLC, Laserscopic Surgery Center Of Florida, LLC, Laserscopic Diagnostic Imaging And Laserscopic Physical Therapy, LLC, Laserscopic Spinal Center Of Florida, LLC, And Tim Langford

CERTIFICATE OF SERVICE

I CERTIFY that on May 8, 2019 a true and correct copy of the foregoing has been electronically filed with the Clerk of Court through the Florida Courts E-Filing Portal, which will send a Notice of Electronic Filing to all counsel of record.

/s/ Kenneth G. M. Mather
Kenneth G. M. Mather, Esq.

Exhibit A

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

In re:

Laser Spine Institute, LLC	Case No. 2019-CA-2762
CLM Aviation, LLC	Case No. 2019-CA-2764
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Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2780
Assignors,	Consolidated Case No.
To:	2019-CA-2762
Soneet Kapila,	Division L
Assignee	

_____/

PROOF OF CLAIM

TO RECEIVE ANY DIVIDEND IN THESE PROCEEDINGS (THE "ASSIGNMENT CASES"), YOU MUST COMPLETE THIS PROOF OF CLAIM AND DELIVER IT TO THE ASSIGNEE, OR THE ASSIGNEE'S COUNSEL, NO LATER THAN:

JULY 12, 2019

THE ASSIGNEE'S NAME AND ADDRESS ARE AS FOLLOWS:
SONEET KAPILA, ASSIGNEE
1000 SOUTH FEDERAL HIGHWAY, SUITE 200
FORT LAUDERDALE, FL 33316

ASSIGNEE'S COUNSEL IS:
EDWARD J. PETERSON, ESQUIRE
STICHTER, RIEDEL, BLAIN & POSTLER, P.A.
110 E. MADISON ST., SUITE 200
TAMPA, FL 33602

1. **PLEASE SPECIFY THE ASSIGNOR AGAINST WHICH YOU ASSERT A CLAIM:** Laser Spine Institute, LLC – Case No. 2019-CA-2762 .
(IF YOU HAVE A CLAIM AGAINST MORE THAN ONE ASSIGNOR, YOU MUST FILE A SEPARATE CLAIM AGAINST EACH ASSIGNOR).

2. **CREDITOR NAME (Your name):** Laserscopic Spinal Centers of America, Inc.
ADDRESS: c/o Kenneth G. M. Mather, Esquire, Gunster, Yoakley & Stewart, P.A.
ADDRESS: 401 E. Jackson Street, Suite 2500
CITY, STATE, ZIP: Tampa, FL 33602
TELEPHONE NUMBER: (813) 222-6630
E-MAIL ADDRESS: kmather@gunster.com

Please be sure to notify us if you have a change of address.

Check box if address on claim differs from address to which this notice was sent: [ ]

3. **BASIS FOR CLAIM:**

[ ] Goods Sold	[ ] Wages, Salaries and Compensations	[ ] Secured Creditor
[ ] Services Performed	[ ] Taxes	
[ ] Money Loaned	[ ] Customer Deposit	
[ ] Shareholder	[X] Other: see attached Exhibit "A"	

4. **DATE DEBT WAS INCURRED:** Please see attached Second District Court of Appeals Orders dated December 28, 2019 and April 8, 2019, attached hereto as Exhibits "A" and "B" and the proposed Second Amended Final Judgment as Exhibit "C."

5. **AMOUNT OF CLAIM:** Principal amount of $264,000,000, plus interest of $87,976,680, plus the principal amount of $5,000,000, plus interest of $1,666,225, for an overall total of $358,642,905, plus attorneys' fees and costs as to be determined. (**Note**: Separate Claims are being filed by each of the judgment creditors identified in Exhibits "A", "B" and "C", but such judgment creditors are entitled to one recovery for the applicable amounts).

6. Does Claim amend, replace, or supplement a prior claim? If so, please state the date and amount of the prior claim(s): **No**

7. **SUPPORTING DOCUMENTS:** **Attach copies of supporting documents,** such as promissory notes, purchase order, invoices, itemized statement of running accounts, court judgments, or evidence of security interests. If the documents are not available, explain. If the documents are voluminous, attach a summary.

8. **SIGNATURE:** Sign and print name and title, if any, of the creditor or other person authorized to file this claim:

As required by law, the proof of claim and any supporting documentation you submit shall become a part of the public record related to the Assignment Cases. As a result, the Assignee and his professionals shall be permitted, and may be directed by the Court, to include such documentation, including to the extent provided, protected health information, in any subsequent pleading, notice, document, list, or other public disclosure made in connection with the Assignment Cases. Such inclusion by the Assignee and his professionals shall not constitute a "wrongful disclosure" under HIPAA, the Florida Information Protection Act of 2014, or any regulations promulgated thereunder.

Laserscopic Spinal Centers of America, Inc.

DATED: 5-7-2019

BY: _____
Signature of Claimant or Representative

JOE S. BAILEY, CEO
Print Name and Title Here

For Assignee's Use Only:
Claim Number: _____
Date: _____

Exhibit A

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

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Soneet Kapila,	Division L
Assignee	

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FORT LAUDERDALE, FL 33316

ASSIGNEE'S COUNSEL IS:
EDWARD J. PETERSON, ESQUIRE
STICHTER, RIEDEL, BLAIN & POSTLER, P.A.
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TAMPA, FL 33602

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ADDRESS: 401 E. Jackson Street, Suite 2500
CITY, STATE, ZIP: Tampa, FL 33602
TELEPHONE NUMBER: (813) 222-6630
E-MAIL ADDRESS: kmather@gunster.com

Please be sure to notify us if you have a change of address.

Check box if address on claim differs from address to which this notice was sent: [ ]

3. **BASIS FOR CLAIM:**

[ ] Goods Sold	[ ] Wages, Salaries and Compensations	[ ] Secured Creditor
[ ] Services Performed	[ ] Taxes	
[ ] Money Loaned	[ ] Customer Deposit	
[ ] Shareholder	[X] Other: see attached Exhibit "A"	

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6. Does Claim amend, replace, or supplement a prior claim? If so, please state the date and amount of the prior claim(s): **No**

7. **SUPPORTING DOCUMENTS:** **Attach copies of supporting documents,** such as promissory notes, purchase order, invoices, itemized statement of running accounts, court judgments, or evidence of security interests. If the documents are not available, explain. If the documents are voluminous, attach a summary.

8. **SIGNATURE:** Sign and print name and title, if any, of the creditor or other person authorized to file this claim:

As required by law, the proof of claim and any supporting documentation you submit shall become a part of the public record related to the Assignment Cases. As a result, the Assignee and his professionals shall be permitted, and may be directed by the Court, to include such documentation, including to the extent provided, protected health information, in any subsequent pleading, notice, document, list, or other public disclosure made in connection with the Assignment Cases. Such inclusion by the Assignee and his professionals shall not constitute a "wrongful disclosure" under HIPAA, the Florida Information Protection Act of 2014, or any regulations promulgated thereunder.

Laserscopic Spinal Centers of America, Inc.

DATED: 5-7-2019

BY: _____
Signature of Claimant or Representative

JOE S. BAILEY, CEO
Print Name and Title Here

For Assignee's Use Only:
Claim Number: _____
Date: _____

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

JOE SAMUEL BAILEY, LASERSCOPIC SPINAL CENTERS OF AMERICA, INC.; LASERSCOPIC MEDICAL CLINIC LLC; LASERSCOPIC DIAGNOSTIC IMAGING AND PHYSICAL THERAPY LLC; LASERSCOPIC SPINAL CENTER OF FLORIDA, LLC; and LASERSCOPIC SURGERY CENTER OF FLORIDA,

Appellants/Cross-Appellees,

v.

JAMES S. ST. LOUIS, D.O.; MICHAEL W. PERRY, M.D.; EFO HOLDINGS L.P.; EFO GENPAR, INC.; EFO LASER SPINE INSTITUTE, LTD.; LASER SPINE INSTITUTE, LLC; LASER SPINE MEDICAL CLINIC, LLC; LASER SPINE PHYSICAL THERAPY, LLC; and LASER SPINE SURGICAL CENTER, LLC,

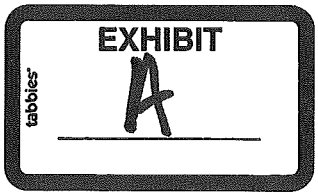
Appellees/Cross-Appellants.

Case No. 2D17-895

Opinion filed December 28, 2018.

Appeal from the Circuit Court for Hillsborough County; Richard A. Nielsen, Judge.

William J. Schifino of Burr & Forman LLP Tampa; Stuart C. Markman, Kristin A.



Norse, and Robert W. Ritsch of Kynes, Markman & Felman, P.A., Tampa; Jennifer G. Altman and Shani Rivaux of Pillsbury Winthrop Shaw, Pittman LLP, Miami, for Appellants/Cross-Appellees.

Stacey D. Blank and Joseph H. Varner, III of Holland & Knight LLP, Tampa, for Appellees/Cross-Appellants.

KELLY, Judge.

This is the second appeal from a final judgment entered in favor of the appellants/cross-appellees in an action against the appellees/cross-appellants for breach of fiduciary duty, conspiracy, defamation, slander per se, tortious interference, and violation of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). The factual background underlying this litigation is fully set forth in Bailey v. St. Louis, 196 So. 3d 375 (Fla. 2d DCA 2016) (Bailey I), and repeating it here is unnecessary. In Bailey I, we affirmed the final judgment but reversed the damages awarded by the trial court. On remand, with the exception of adding an award for punitive damages, the trial court awarded the same damages this court had previously reversed. Again, we reverse those awards. As to the remaining issues raised in the appeal and in the cross-appeal, we affirm without further comment.

In Bailey I, the appellants had prevailed on claims for breach of fiduciary duty, conspiracy, slander per se, tortious interference, and violation of FDUTPA. We reversed the damages awarded for everything but slander per se because, as explained in our opinion, we could not square the awards with the evidence or the trial court's findings, which were quite limited with respect to damages. See 196 So. 3d at 377. We

also reversed the trial court's decision not to award monetary damages for the appellees' FDUTPA violations and not to award punitive damages. See id. We determined that the trial court incorrectly ruled that it could not award monetary damages under FDUTPA and that it also erroneously found that the facts did not support an award of punitive damages. See id.

There were two components to the total damage award of $1,600,000 at issue in Bailey I. The first was an award of $300,000 to Laserscopic Spine Centers of America, Inc. (Spine), for out-of-pocket damages for tortious inference. With respect to this award we stated, "In its order, the trial court accepted the calculations of only one of the experts 'as to out of pocket losses,' and it found that the expert testified that the Appellants suffered out-of-pocket damages of $6,831,172." 196 So. 3d at 377 (footnote omitted). Yet, the *total* award of damages was only $1,600,000. The trial court offered no explanation as to how it ended up entering a total award that was less than one-fourth of the amount it cited for out-of-pocket damages alone, and the record provided no insight into the basis for the award.[1]

On remand, the trial court again awarded $300,000. By way of explanation, the court stated that it had rejected the appellants' expert's testimony as to out-of-pocket losses. However, as explained in Bailey I, the trial court had expressly accepted the expert's calculation regarding out-of-pocket losses. The court purports to

[1]The appellees' argument to the trial court was not helpful in terms of understanding the award. Their approach to damages had been to simply argue that the appellants had not proved they suffered *any* damages as a result of the appellees' conduct. They did not challenge the appellants' out-of-pocket figure, nor did they offer any alternative theory upon which the trial court might have based its award of $300,000.

explain how it determined that $300,000 was the proper award. Its reasoning, however, is nearly a verbatim repeat of the arguments the appellees unsuccessfully urged us to accept in Bailey I. Moreover, the court's explanation rests on the flawed premise that it had rejected the expert's calculations. Accordingly, we again reverse the trial court's award to Spine and remand for entry of an award in the amount of $6,831,172, which is the amount the trial court found was established by the appellants' expert's testimony.

The remaining $1,050,000 of the damage award was the second component at issue in Bailey I. Appellant Laserscopic Spinal Centers of America, Inc. (Spinal), was awarded damages for breach of fiduciary duty, conspiracy, and tortious interference, while appellant Laserscopic Medical Clinic, LLC (LMC), received an award on a claim for breach of fiduciary duty. The appellants had sought damages under various theories, including disgorgement. On appeal, the appellants argued that the trial court had awarded no disgorgement damages, while the appellees argued that the entire $1,050,000 was an award of "lost profits measured by the yardstick of [Laser Spine Institute's] allegedly ill-gotten profits, which [it] was similarly required to disgorge." Because of the way the trial court had prepared its order, it was not possible to determine with certainty whether all or a portion of the award was for disgorgement. What we could determine, however, was that if it was for disgorgement, it was "grossly insufficient." Id. at 378.

The appellants had sought disgorgement of approximately $264,000,000. This figure represented the value of Laser Spine Institute (LSI) in 2009 plus $77.5

million in distributions paid to the owners between 2005 and 2009.[2] In their argument to the trial court, the appellees had taken the position that even if the court found some wrongdoing, any profits LSI earned were attributable solely to the efforts of management and not to any wrongdoing; therefore, the court should not award anything to the appellants.[3] Because it was their position that the appellants were not entitled to any damages, the appellees did not put on any evidence as to what amount of LSI's profits short of $264,000,000 could be attributed to their wrongful conduct.

On appeal, and without explaining how the court might have arrived at $1,050,000 rather than $264,000,000, the appellees argued the award reflected the trial court's conclusion that only this portion of LSI's profits was attributable to the appellees' wrongdoing. In support of this, the appellees pointed to the "Damages" section of the trial court's order and specifically to the trial court's citation to Pidcock v. Sunnyland America, Inc., 854 F. 2d 443, 447-48 (11th Cir.1988). The trial court cited Pidcock for the proposition that a plaintiff may only recover profits attributable to the underlying

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[2]While the parties have referred to the recovery the appellants sought as disgorgement of profits, it would be more accurate to describe it as disgorgement of the appellees' wrongful gain. See Restatement (Third) of Restitution and Unjust Enrichment § 3 (Am. Law. Inst. 2011). A conscious wrongdoer is liable for the "net profit attributable to the underlying wrong." Restatement (Third) of Restitution and Unjust Enrichment § 51(4). As used in section 51(4), "[p]rofit includes any form of use value, proceeds, or consequential gains." Restatement (Third) of Restitution and Unjust Enrichment § 51(5)(a). The appellees have not challenged, nor have we considered, the use of these particular elements to calculate "profit" for the purposes of disgorgement. Nor have they challenged the accuracy of the amounts testified to by the appellants' expert. At trial they offered no alternative method by which to calculate the amount of profits subject to disgorgement because it was their position that *none* of the profits LSI earned were subject to disgorgement.

[3]In Bailey I we discussed at length the trial court's findings regarding the appellees' wrongful conduct. 196 So. 3d at 377-78. When we reference "wrongdoing" in this opinion we are referring to the conduct we detailed in Bailey I.

wrong and not profits attributable to a defendant's "special or unique efforts" and that "aggressive or enterprising" management activities "may break the causal chain" between the wrongdoing and the defendant's profits. This, according to the appellees, was the reason the trial court limited the award. We will not repeat our discussion of Pidcock here. Suffice it to say that we thoroughly analyzed its applicability to the facts as found by the trial court, and we concluded that the limiting principles Pidcock discusses were inapplicable. See Bailey I, 196 So. 3d at 378. Thus, we held that if the award was for disgorgement, it was "grossly insufficient." See id.

Although we did not address it in our opinion, the appellees also argued that "in cases involving the misappropriation of proprietary information, a court will limit the disgorgement of a defendant's profits 'to the amount of time it would have taken the defendant to independently develop its product without the benefit of the plaintiff's trade secrets—in other words, the "head start" period.'" Thus, they argued that the trial court awarded "lost profits/disgorgement damages in an amount equal to the profits LSI derived from this head start." However, the trial court had found the appellants' misappropriation claims were barred by the statute of limitations. Further, at trial the appellants' did not seek to recover lost profits, instead focusing on disgorgement, business destruction damages, and out-of-pocket damages. Accordingly, we rejected this argument as well.

On remand, the trial court confirmed it was awarding disgorgement damages but then entered the same award we had reversed as "grossly inadequate." This appears to have happened because the appellees convinced the trial court that we had not actually found the award to be inadequate, we had simply found it to be

inadequately explained. And as was the case with the out-of-pocket award, the appellees apparently convinced the trial court it could explain its award by adopting the arguments the appellees had made and we had rejected in Bailey I.

In explaining the award on remand, the trial court's overarching focus is on why it believed Spinal was not successful, which as we explain below, is not part of the equation for determining the degree to which a wrongdoer's profits are attributable to its wrongful conduct. First, the trial court points to the appellants' "lack of business skills" and states that because of their lack of skill and poor business decisions they "should not be awarded disgorgement damages beyond the amounts in the final judgment." It also states it is rejecting the appellants' demand for disgorgement damages equal to all the profits earned by LSI because there is no causal relationship between the appellees' tortious conduct and all the profits. The court elaborates, stating that the appellees succeeded because of a "unique combination of individual, skilled medical doctors; highly effective and inventive executives, managers and administrators; creative marketing and advertising programs; and the availability and use of proper capital" and that even though Spinal "followed the same business model, it was not able to succeed."

The trial court's focus on the appellants' supposed lack of business skills as a basis to limit disgorgement shows a complete misapprehension of the principles applicable to disgorgement. Disgorgement is a remedy designed to deter wrongdoers by making it unprofitable to engage in the wrongful behavior. See Duty Free World, Inc. v. Miami Perfume Junction, Inc., 253 So. 3d 689, 698 (Fla. 3d DCA 2018) ("'Disgorgement is an equitable remedy intended to prevent unjust enrichment.'"

(quoting S.E.C. v. Monterosso, 757 F. 3d 1326, 1337 (11th Cir. 2014))); Restatement (Third) of Restitution and Unjust Enrichment § 1 (Am. Law Inst. 2011) ("A person who is unjustly enriched at the expense of another is subject to liability in restitution."); Restatement (Third) of Restitution and Unjust Enrichment § 3 ("A person is not permitted to profit by his own wrong."). The point of disgorgement is to deter wrongdoers by stripping them of the gains from their conduct:

> Restitution requires full disgorgement of profit by a conscious wrongdoer, not just because of the moral judgment implicit in the rule of this section, but because any lesser liability would provide an inadequate incentive to lawful behavior. If A anticipates (accurately) that unauthorized interference with B's entitlement may yield profits exceeding any damages B could prove, A has a dangerous incentive to take without asking—since the nonconsensual transaction promises to be more profitable than the forgone negotiation with B. The objective of that part of the law of restitution summarized by the rule of § 3 is to frustrate any such calculation.

Id. § 3 cmt. c; see also § 51 cmt. e ("The object of the disgorgement remedy—to eliminate the possibility of profit from conscious wrongdoing—is one of the cornerstones of the law of restitution and unjust enrichment.").

This case is a classic example of what this comment from the Restatement describes. As we detailed in Bailey I, when the appellants did not accept the appellees' offer to invest in Spinal, the appellees told them "you're going to accept this offer or we're going to take your doctors and we're going to take your company. And we're going to go up the street and we're going to do it ourselves." 196 So. 3d at 380. When threatened with litigation, the appellees said they were not concerned because the business would make ten times whatever damages they might have to pay in a lawsuit. See id. at 380-81.

Had the appellants been limited to recovering under a lost profits theory, that prediction would unquestionably be accurate. However, the measure of damages for disgorgement is not the profits the appellants might have made absent the wrongdoing—the measure of damages for conscious wrongdoing is the appellees' "net profit attributable to the underlying wrong." Restatement (Third) of Restitution and Unjust Enrichment § 51(4); see also Duty Free, 253 So. 3d at 698 ("The equitable remedy of disgorgement is measured by the defendant's ill-gotten profits or gains rather than the plaintiff's losses."). "When the defendant has acted in conscious disregard of the claimant's rights, the whole of the resulting gain is treated as unjust enrichment, even though the defendant's gain may exceed" the claimant's loss. Restatement (Third) of Restitution and Unjust Enrichment § 3 cmt. c. In fact, disgorgement may be awarded even if the claimant has not sustained any loss. Restatement (Third) of Restitution and Unjust Enrichment § 3, reporter's note a. ("[I]t is clear not only that there can be restitution of wrongful gain exceeding the plaintiff's loss, but that there can be restitution of wrongful gain in cases where the plaintiff has suffered an interference with protected interests but no measurable loss whatsoever."). The trial court's comments regarding the appellants' business acumen are misplaced in determining a disgorgement award.

To the extent the trial court's order can be read to rely on the limiting principles articulated in Pidcock, we specifically considered and rejected the applicability of those principles in Bailey I. See 196 So. 3d at 378-79. Our rejection of this as a basis to limit the award of disgorgement was the law of the case, and the trial court was bound by our determination. See Specialty Rests. Corp. v. Elliott, 924 So. 2d 834, 837 (Fla. 2d DCA 2005) ("[Q]uestions of law that have actually been decided on appeal must

govern the case in the same court and in the trial court through all subsequent stages of the proceedings."). Moreover, the "business model" to which the court attributes the appellees' success is the one it stole from the appellants along with its doctors, key employees, and everything else. In other words, what the trial court said amounts to a finding that the appellees' success was in fact attributable to their wrongdoing.

Lastly, the trial court sets out the reasoning it used to arrive at the figure of $1,050,000. However, it relies on the "head start" formula the appellees unsuccessfully argued in support of the award in Bailey I. As explained above, we rejected that argument as inapposite. Further, the trial court took this "head start" concept and more or less turned it on its head. The trial court reasoned that Spinal's operations were interrupted for approximately six months; therefore, the appellants were only entitled to six months of LSI's profits. Again, the trial court misapprehends the nature of the disgorgement remedy by measuring the award based on what the *appellants lost*—six months of profits—not what the appellees gained. See Guyana Tel. & Tel. Co., Ltd. v. Melbourne Int'l Commc'ns, Ltd., 329 F. 3d 1241, 1249 (11th Cir. 2003) (reversing where a jury was instructed to measure the plaintiff's right to restitution in terms of its loss rather than the benefit conferred on the defendants because "[r]estitution is a remedy that is often available to victims of a wrong. Restitution measures a plaintiff's recovery according to the defendant's, rather than the plaintiff's, rightful position").

Accordingly, we again reverse the awards for breach of fiduciary duty, conspiracy, and tortious interference and remand for the court to enter an award of disgorgement. Because the only testimony regarding the manner in which the disgorgement award should be measured came from the appellants' expert, the award

should be calculated according to the formula he proposed. Specifically, the court should enter an award based on the total value of LSI in 2009 combined with the total of the distributions to the owners of LSI between 2005 and 2009.[4] We also reverse the award for out-of-pocket damages and remand for entry of an award of $6,831,172.

Reversed and remanded for entry of a judgment in accordance with this opinion.

CASANUEVA and CRENSHAW, JJ., Concur.

[4]It appears from the evidence in the record that the proper amount of the award at a minimum falls between $264,000,000 and $265,000,000.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

April 08, 2019

CASE NO.: 2D17-0895
L.T. No.: 06-CA-008498

JOE SAMUEL BAILEY, ET AL	v.	JAMES S. ST. LOUIS, ET AL
Appellant / Petitioner(s),		Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellees' motion for rehearing is denied.
Appellees' motion for rehearing en banc is denied.
Appellees' motion to certify questions of great public importance is denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Louis X. Amato, Esq.
Stacy D. Blank, Esq.
Kristin A. Norse, Esq.
Robert W. Ritsch, Esq.
Justin P. Bennett, Esq.
Pat Frank, Clerk
Stuart C. Markman, Esq.
Jennifer G. Altman, Esq.
J. Troy Andrews, Esq.
William J. Schifino, Jr., Esq.
Shani Rivaux, Esq.
Joseph H. Varner, Esq.
Bradford D. Kimbro, Esq.
Robert V. Williams, Esq.
Phillip J. Duncan, Esq.

mep

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk

DISTRICT COURT OF APPEAL · SECOND DISTRICT · STATE OF FLORIDA

EXHIBIT B
tabbies

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT

IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

CIVIL DIVISION

JOE SAMUEL BAILEY, *et al.*,

Plaintiffs,

vs.

JAMES S. ST. LOUIS, *et al.*,

Defendants.

_____/

Case No. 06-08498

Division L

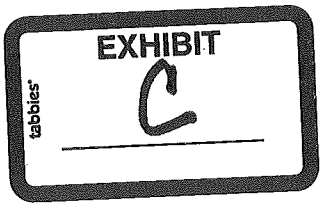
SECOND AMENDED FINAL JUDGMENT

Pursuant to the Court's Order on Non-Jury Trial dated October 9, 2012:

It is ADJUDGED that:

1. Plaintiff Joe Samuel Bailey, whose address is 308 Wallick Drive, Cotter, AR 72626, does have and recover from Defendants James S. St. Louis, D.O., whose address is 4728 N. Habana Avenue, Suite 202, Tampa, FL 33614; Michael W. Perry, M.D., whose address is 5332 Avion Park Drive, Tampa, FL 33607; EFO Holdings L.P., whose principal address is 2828 Routh Stet, Suite 500, Dallas, TX 75201; EFO Genpar, Inc., whose principal address is 500 N Akard Street, Suite 1500, Dallas, TX 75201; and EFO Laser Spine Institute, Ltd., whose principal address is 2828 Routh Stet, Suite 500, Dallas, TX 75201, jointly and severally, the sum of $250,000, **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH.**

2. Plaintiff Joe Samuel Bailey does have and recover from Defendants James S. St. Louis, D.O.; Michael W. Perry, M.D.; EFO Holdings L.P.; EFO Genpar, Inc.; and EFO Laser Spine Institute, Ltd., jointly and severally, the sum of $750,000 in punitive damages, **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH.**



3. Plaintiffs Laserscopic Spinal Centers of America, Inc., whose address 308 Wallick Drive, Cotter, AR 72626, and Laserscopic Medical Clinic, LLC, whose address is 308 Wallick Drive, Cotter, AR 72626, do have and recover from Defendants James S. St. Louis, D.O.; EFO Holdings L.P.; EFO Genpar, Inc.; EFO Laser Spine Institute, Ltd.; Laser Spine Institute, LLC, who address is 5332 Avion Park Drive, Tampa, FL 33607; Laser Spine Medical Clinic, LLC, whose address is 3001 N. Rocky Point Drive E, Suite 380, Tampa, FL 33607; Laser Spine Physical Therapy, LLC, whose address is 3001 N. Rocky Point Drive E, Suite 380, Tampa, FL 33607; and Laser Spine Surgical Center, LLC, whose address is 5332 Avion Park Drive, Tampa, FL 33607, jointly and severally, the sum of $264,000,000, **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH.**

4. Plaintiffs Laserscopic Spinal Centers of America, Inc., and Laserscopic Medical Clinic, LLC, do have and recover from Defendants James S. St. Louis, D.O.; EFO Holdings L.P.; EFO Genpar, Inc.; EFO Laser Spine Institute, Ltd.; Laser Spine Institute, LLC; Laser Spine Medical Clinic, LLC; Laser Spine Physical Therapy, LLC; and Laser Spine Surgical Center, LLC, jointly and severally, the sum of $5,000,000 in punitive damages, **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH.**

5. Plaintiff Laserscopic Spine Centers of America, Inc., whose address is 308 Wallick Drive, Cotter, AR 72626, does have and recover from Defendants EFO Holdings, L.P.; EFO Genpar, Inc.; James S. St. Louis, D.O.; EFO Laser Spine Institute, Ltd.; Laser Spine Institute, LLC; Laser Spine Medical Clinic, LLC; Laser Spine Physical Therapy, LLC; and Laser Spine Surgical Center, LLC, jointly and severally, the sum of $6,831,172, **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH.**

6. These sums shall bear interest at the rate of 4.75% from October 9, 2012 to December 31, 2016; 4.97% from January 1, 2017 through December 31, 2017; and, 5.72% from January 1, 2018 through December 31, 2018 in accordance with Florida Statute §55.03. Thereafter, on January 1st of each succeeding year until the judgment is paid, the interest rate will adjust in accordance with Florida Statute § 55.03.

7. This Court reserves jurisdiction to award attorney's fees and costs to Plaintiffs.

8. It is further ordered and adjudged that the judgment debtors shall complete under oath Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet), including all required attachments, and serve it on the judgment creditor's attorney, or the judgment creditor if the judgment creditor is not represented by an attorney, within 45 days from the date of this final judgment, unless the final judgment is satisfied or post-judgment discovery is stayed. Jurisdiction of this case is retained to enter further orders that are proper to compel the judgment debtors to complete form 1.977, including all required attachments, and serve it on the judgment creditor's attorney, or the judgment creditor if the judgment creditor is not represented by an attorney.

9. The Court retains jurisdiction over this action to enter further Orders that are proper and to award further relief, including without limitation, equitable relief, writs of possession, and to conduct proceedings supplementary, to implead third parties, as this Court deems just, equitable, and proper.

DONE AND ORDERED in Chambers in Hillsborough County, Florida, this ____ day of January, 2019.

_____
Judge Richard Nielsen

cc: All Counsel of Record

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

LASER SPINE INSTITUTE, LLC

Case No.: 2019-CA-002762

Assignor

v.

SONEET KAPILA

Assignee.

_____/

NOTICE OF PROOF OF CLAIM OF
LASERSCOPIC MEDICAL CLINIC, LLC

LASERSCOPIC MEDICAL CLINIC, LLC, by and through its undersigned counsel, and pursuant to §727.112, Florida Statutes, hereby files (with supporting documents) and gives notice of its Proof of Claim against Assignor, LASER SPINE INSTITUTE, LLC, by delivering the Proof of Claim, attached hereto as **Exhibit A**, upon the Assignee, Soneet Kapila and Edward J. Peterson, Esquire of Stichter, Riedel, Blain & Postler, P.A.

Date: May 8, 2019.

/s/ Kenneth G. M. Mather
William J. Schifino, Jr., Esq.
Florida Bar Number 564338
Kenneth G.M. Mather, Esq.
Florida Bar Number 619647
Justin P. Bennett, Esq.
Florida Bar Number 112833
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Email- jbennett@gunster.com
Attorneys for Judgment Creditors, Joe Samuel Bailey, Mark Miller, Ted Suhl, Laserscopic Spinal Centers Of America, Inc., Laserscopic Medical Clinic, LLC, Laserscopic Surgery Center Of

Exhibit "B"

Florida, LLC, Laserscopic Diagnostic Imaging And Laserscopic Physical Therapy, LLC, Laserscopic Spinal Center Of Florida, LLC, And Tim Langford

CERTIFICATE OF SERVICE

I CERTIFY that on May 8, 2019 a true and correct copy of the foregoing has been electronically filed with the Clerk of Court through the Florida Courts E-Filing Portal, which will send a Notice of Electronic Filing to all counsel of record.

/s/ Kenneth G. M. Mather
Kenneth G. M. Mather, Esq.

Exhibit A

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

In re:

Laser Spine Institute, LLC	Case No. 2019-CA-2762
CLM Aviation, LLC	Case No. 2019-CA-2764
LSI HoldCo, LLC	Case No. 2019-CA-2765
LSI Management Company, LLC	Case No. 2019-CA-2766
Laser Spine Surgery Center of Arizona, LLC	Case No. 2019-CA-2767
Laser Spine Surgery Center of Cincinnati, LLC	Case No. 2019-CA-2768
Laser Spine Surgery Center of Cleveland, LLC	Case No. 2019-CA-2769
Laser Spine Surgical Center, LLC	Case No. 2019-CA-2770
Laser Spine Surgery Center of Pennsylvania, LLC	Case No. 2019-CA-2771
Laser Spine Surgery Center of St. Louis, LLC	Case No. 2019-CA-2772
Laser Spine Surgery Center of Warwick, LLC	Case No. 2019-CA-2773
Medical Care Management Services, LLC	Case No. 2019-CA-2774
Spine DME Solutions, LLC	Case No. 2019-CA-2775
Total Spine Care, LLC	Case No. 2019-CA-2776
Laser Spine Institute Consulting, LLC	Case No. 2019-CA-2777
Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2780
Assignors,	Consolidated Case No.
To:	2019-CA-2762
Soneet Kapila,	Division L
Assignee	

_____/

PROOF OF CLAIM

TO RECEIVE ANY DIVIDEND IN THESE PROCEEDINGS (THE "ASSIGNMENT CASES"), YOU MUST COMPLETE THIS PROOF OF CLAIM AND DELIVER IT TO THE ASSIGNEE, OR THE ASSIGNEE'S COUNSEL, NO LATER THAN:

JULY 12, 2019

THE ASSIGNEE'S NAME AND ADDRESS ARE AS FOLLOWS:
SONEET KAPILA, ASSIGNEE
1000 SOUTH FEDERAL HIGHWAY, SUITE 200
FORT LAUDERDALE, FL 33316

ASSIGNEE'S COUNSEL IS:
EDWARD J. PETERSON, ESQUIRE
STICHTER, RIEDEL, BLAIN & POSTLER, P.A.
110 E. MADISON ST., SUITE 200
TAMPA, FL 33602

1. **PLEASE SPECIFY THE ASSIGNOR AGAINST WHICH YOU ASSERT A CLAIM:** Laser Spine Institute, LLC – Case No. 2019-CA-2762.
(IF YOU HAVE A CLAIM AGAINST MORE THAN ONE ASSIGNOR, YOU MUST FILE A SEPARATE CLAIM AGAINST EACH ASSIGNOR).

2. **CREDITOR NAME (Your name):** Laserscopic Medical Clinic, LLC
ADDRESS: c/o Kenneth G. M. Mather, Esquire, Gunster. Yoakley & Stewart, P.A.
ADDRESS: 401 E. Jackson Street, Suite 2500
CITY, STATE, ZIP: Tampa, FL 33602
TELEPHONE NUMBER: (813) 222-6630
E-MAIL ADDRESS: kmather@gunster.com

Please be sure to notify us if you have a change of address.

Check box if address on claim differs from address to which this notice was sent: [ ]

3. **BASIS FOR CLAIM:**

[ ] Goods Sold	[ ] Wages, Salaries and Compensations	[ ] Secured Creditor
[ ] Services Performed	[ ] Taxes	
[ ] Money Loaned	[ ] Customer Deposit	
[ ] Shareholder	[X] Other: see attached Exhibit "A"	

4. **DATE DEBT WAS INCURRED:** Please see attached Second District Court of Appeals Orders dated December 28, 2019 and April 8, 2019, attached hereto as Exhibits "A" and "B" and the proposed Second Amended Final Judgment as Exhibit "C."

5. **AMOUNT OF CLAIM:** Principal amount of $264,000,000, plus interest of $87,976,680, plus the principal amount of $5,000,000, plus interest of $1,666,225, for an overall total of $358,642,905, plus attorneys' fees and costs as to be determined. (**Note:** Separate Claims are being filed by each of the judgment creditors identified in Exhibits "A", "B" and "C", but such judgment creditors are entitled to one recovery for the applicable amounts).

6. Does Claim amend, replace, or supplement a prior claim? If so, please state the date and amount of the prior claim(s): **No**

7. **SUPPORTING DOCUMENTS:** **Attach copies of supporting documents,** such as promissory notes, purchase order, invoices, itemized statement of running accounts, court judgments, or evidence of security interests. If the documents are not available, explain. If the documents are voluminous, attach a summary.

8. **SIGNATURE:** Sign and print name and title, if any, of the creditor or other person authorized to file this claim:

As required by law, the proof of claim and any supporting documentation you submit shall become a part of the public record related to the Assignment Cases. As a result, the Assignee and his professionals shall be permitted, and may be directed by the Court, to include such documentation, including to the extent provided, protected health information, in any subsequent pleading, notice, document, list, or other public disclosure made in connection with the Assignment Cases. Such inclusion by the Assignee and his professionals shall not constitute a "wrongful disclosure" under HIPAA, the Florida Information Protection Act of 2014, or any regulations promulgated thereunder.

Laserscopic Medical Clinic, LLC

DATED: 5-7-2019

BY: Joe S. Bailey

Signature of Claimant or Representative

Joe S. Bailey, Managing Member

Print Name and Title Here

For Assignee's Use Only:
Claim Number: _____
Date: _____

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

JOE SAMUEL BAILEY, LASERSCOPIC SPINAL CENTERS OF AMERICA, INC.; LASERSCOPIC MEDICAL CLINIC LLC; LASERSCOPIC DIAGNOSTIC IMAGING AND PHYSICAL THERAPY LLC; LASERSCOPIC SPINAL CENTER OF FLORIDA, LLC; and LASERSCOPIC SURGERY CENTER OF FLORIDA,

Appellants/Cross-Appellees,

v.

JAMES S. ST. LOUIS, D.O.; MICHAEL W. PERRY, M.D.; EFO HOLDINGS L.P.; EFO GENPAR, INC.; EFO LASER SPINE INSTITUTE, LTD.; LASER SPINE INSTITUTE, LLC; LASER SPINE MEDICAL CLINIC, LLC; LASER SPINE PHYSICAL THERAPY, LLC; and LASER SPINE SURGICAL CENTER, LLC,

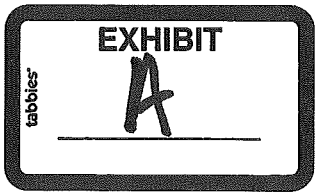
Appellees/Cross-Appellants.

Case No. 2D17-895

Opinion filed December 28, 2018.

Appeal from the Circuit Court for Hillsborough County; Richard A. Nielsen, Judge.

William J. Schifino of Burr & Forman LLP Tampa; Stuart C. Markman, Kristin A.



Norse, and Robert W. Ritsch of Kynes, Markman & Felman, P.A., Tampa; Jennifer G. Altman and Shani Rivaux of Pillsbury Winthrop Shaw, Pittman LLP, Miami, for Appellants/Cross-Appellees.

Stacey D. Blank and Joseph H. Varner, III of Holland & Knight LLP, Tampa, for Appellees/Cross-Appellants.

KELLY, Judge.

This is the second appeal from a final judgment entered in favor of the appellants/cross-appellees in an action against the appellees/cross-appellants for breach of fiduciary duty, conspiracy, defamation, slander per se, tortious interference, and violation of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). The factual background underlying this litigation is fully set forth in Bailey v. St. Louis, 196 So. 3d 375 (Fla. 2d DCA 2016) (Bailey I), and repeating it here is unnecessary. In Bailey I, we affirmed the final judgment but reversed the damages awarded by the trial court. On remand, with the exception of adding an award for punitive damages, the trial court awarded the same damages this court had previously reversed. Again, we reverse those awards. As to the remaining issues raised in the appeal and in the cross-appeal, we affirm without further comment.

In Bailey I, the appellants had prevailed on claims for breach of fiduciary duty, conspiracy, slander per se, tortious interference, and violation of FDUTPA. We reversed the damages awarded for everything but slander per se because, as explained in our opinion, we could not square the awards with the evidence or the trial court's findings, which were quite limited with respect to damages. See 196 So. 3d at 377. We

also reversed the trial court's decision not to award monetary damages for the appellees' FDUTPA violations and not to award punitive damages. See id. We determined that the trial court incorrectly ruled that it could not award monetary damages under FDUTPA and that it also erroneously found that the facts did not support an award of punitive damages. See id.

There were two components to the total damage award of $1,600,000 at issue in Bailey I. The first was an award of $300,000 to Laserscopic Spine Centers of America, Inc. (Spine), for out-of-pocket damages for tortious inference. With respect to this award we stated, "In its order, the trial court accepted the calculations of only one of the experts 'as to out of pocket losses,' and it found that the expert testified that the Appellants suffered out-of-pocket damages of $6,831,172." 196 So. 3d at 377 (footnote omitted). Yet, the *total* award of damages was only $1,600,000. The trial court offered no explanation as to how it ended up entering a total award that was less than one-fourth of the amount it cited for out-of-pocket damages alone, and the record provided no insight into the basis for the award.[1]

On remand, the trial court again awarded $300,000. By way of explanation, the court stated that it had rejected the appellants' expert's testimony as to out-of-pocket losses. However, as explained in Bailey I, the trial court had expressly accepted the expert's calculation regarding out-of-pocket losses. The court purports to

[1]The appellees' argument to the trial court was not helpful in terms of understanding the award. Their approach to damages had been to simply argue that the appellants had not proved they suffered *any* damages as a result of the appellees' conduct. They did not challenge the appellants' out-of-pocket figure, nor did they offer any alternative theory upon which the trial court might have based its award of $300,000.

explain how it determined that $300,000 was the proper award. Its reasoning, however, is nearly a verbatim repeat of the arguments the appellees unsuccessfully urged us to accept in Bailey I. Moreover, the court's explanation rests on the flawed premise that it had rejected the expert's calculations. Accordingly, we again reverse the trial court's award to Spine and remand for entry of an award in the amount of $6,831,172, which is the amount the trial court found was established by the appellants' expert's testimony.

The remaining $1,050,000 of the damage award was the second component at issue in Bailey I. Appellant Laserscopic Spinal Centers of America, Inc. (Spinal), was awarded damages for breach of fiduciary duty, conspiracy, and tortious interference, while appellant Laserscopic Medical Clinic, LLC (LMC), received an award on a claim for breach of fiduciary duty. The appellants had sought damages under various theories, including disgorgement. On appeal, the appellants argued that the trial court had awarded no disgorgement damages, while the appellees argued that the entire $1,050,000 was an award of "lost profits measured by the yardstick of [Laser Spine Institute's] allegedly ill-gotten profits, which [it] was similarly required to disgorge." Because of the way the trial court had prepared its order, it was not possible to determine with certainty whether all or a portion of the award was for disgorgement. What we could determine, however, was that if it was for disgorgement, it was "grossly insufficient." Id. at 378.

The appellants had sought disgorgement of approximately $264,000,000. This figure represented the value of Laser Spine Institute (LSI) in 2009 plus $77.5

million in distributions paid to the owners between 2005 and 2009.[2] In their argument to the trial court, the appellees had taken the position that even if the court found some wrongdoing, any profits LSI earned were attributable solely to the efforts of management and not to any wrongdoing; therefore, the court should not award anything to the appellants.[3] Because it was their position that the appellants were not entitled to any damages, the appellees did not put on any evidence as to what amount of LSI's profits short of $264,000,000 could be attributed to their wrongful conduct.

On appeal, and without explaining how the court might have arrived at $1,050,000 rather than $264,000,000, the appellees argued the award reflected the trial court's conclusion that only this portion of LSI's profits was attributable to the appellees' wrongdoing. In support of this, the appellees pointed to the "Damages" section of the trial court's order and specifically to the trial court's citation to Pidcock v. Sunnyland America, Inc., 854 F. 2d 443, 447-48 (11th Cir.1988). The trial court cited Pidcock for the proposition that a plaintiff may only recover profits attributable to the underlying

---

[2]While the parties have referred to the recovery the appellants sought as disgorgement of profits, it would be more accurate to describe it as disgorgement of the appellees' wrongful gain. See Restatement (Third) of Restitution and Unjust Enrichment § 3 (Am. Law. Inst. 2011). A conscious wrongdoer is liable for the "net profit attributable to the underlying wrong." Restatement (Third) of Restitution and Unjust Enrichment § 51(4). As used in section 51(4), "[p]rofit includes any form of use value, proceeds, or consequential gains." Restatement (Third) of Restitution and Unjust Enrichment § 51(5)(a). The appellees have not challenged, nor have we considered, the use of these particular elements to calculate "profit" for the purposes of disgorgement. Nor have they challenged the accuracy of the amounts testified to by the appellants' expert. At trial they offered no alternative method by which to calculate the amount of profits subject to disgorgement because it was their position that *none* of the profits LSI earned were subject to disgorgement.

[3]In Bailey I we discussed at length the trial court's findings regarding the appellees' wrongful conduct. 196 So. 3d at 377-78. When we reference "wrongdoing" in this opinion we are referring to the conduct we detailed in Bailey I.

wrong and not profits attributable to a defendant's "special or unique efforts" and that "aggressive or enterprising" management activities "may break the causal chain" between the wrongdoing and the defendant's profits. This, according to the appellees, was the reason the trial court limited the award. We will not repeat our discussion of Pidcock here. Suffice it to say that we thoroughly analyzed its applicability to the facts as found by the trial court, and we concluded that the limiting principles Pidcock discusses were inapplicable. See Bailey I, 196 So. 3d at 378. Thus, we held that if the award was for disgorgement, it was "grossly insufficient." See id.

Although we did not address it in our opinion, the appellees also argued that "in cases involving the misappropriation of proprietary information, a court will limit the disgorgement of a defendant's profits 'to the amount of time it would have taken the defendant to independently develop its product without the benefit of the plaintiff's trade secrets—in other words, the "head start" period.'" Thus, they argued that the trial court awarded "lost profits/disgorgement damages in an amount equal to the profits LSI derived from this head start." However, the trial court had found the appellants' misappropriation claims were barred by the statute of limitations. Further, at trial the appellants' did not seek to recover lost profits, instead focusing on disgorgement, business destruction damages, and out-of-pocket damages. Accordingly, we rejected this argument as well.

On remand, the trial court confirmed it was awarding disgorgement damages but then entered the same award we had reversed as "grossly inadequate." This appears to have happened because the appellees convinced the trial court that we had not actually found the award to be inadequate, we had simply found it to be

inadequately explained. And as was the case with the out-of-pocket award, the appellees apparently convinced the trial court it could explain its award by adopting the arguments the appellees had made and we had rejected in Bailey I.

In explaining the award on remand, the trial court's overarching focus is on why it believed Spinal was not successful, which as we explain below, is not part of the equation for determining the degree to which a wrongdoer's profits are attributable to its wrongful conduct. First, the trial court points to the appellants' "lack of business skills" and states that because of their lack of skill and poor business decisions they "should not be awarded disgorgement damages beyond the amounts in the final judgment." It also states it is rejecting the appellants' demand for disgorgement damages equal to all the profits earned by LSI because there is no causal relationship between the appellees' tortious conduct and all the profits. The court elaborates, stating that the appellees succeeded because of a "unique combination of individual, skilled medical doctors; highly effective and inventive executives, managers and administrators; creative marketing and advertising programs; and the availability and use of proper capital" and that even though Spinal "followed the same business model, it was not able to succeed."

The trial court's focus on the appellants' supposed lack of business skills as a basis to limit disgorgement shows a complete misapprehension of the principles applicable to disgorgement. Disgorgement is a remedy designed to deter wrongdoers by making it unprofitable to engage in the wrongful behavior. See Duty Free World, Inc. v. Miami Perfume Junction, Inc., 253 So. 3d 689, 698 (Fla. 3d DCA 2018) ("'Disgorgement is an equitable remedy intended to prevent unjust enrichment.'"

(quoting S.E.C. v. Monterosso, 757 F. 3d 1326, 1337 (11th Cir. 2014))); Restatement (Third) of Restitution and Unjust Enrichment § 1 (Am. Law Inst. 2011) ("A person who is unjustly enriched at the expense of another is subject to liability in restitution."); Restatement (Third) of Restitution and Unjust Enrichment § 3 ("A person is not permitted to profit by his own wrong."). The point of disgorgement is to deter wrongdoers by stripping them of the gains from their conduct:

> Restitution requires full disgorgement of profit by a conscious wrongdoer, not just because of the moral judgment implicit in the rule of this section, but because any lesser liability would provide an inadequate incentive to lawful behavior. If A anticipates (accurately) that unauthorized interference with B's entitlement may yield profits exceeding any damages B could prove, A has a dangerous incentive to take without asking—since the nonconsensual transaction promises to be more profitable than the forgone negotiation with B. The objective of that part of the law of restitution summarized by the rule of § 3 is to frustrate any such calculation.

Id. § 3 cmt. c; see also § 51 cmt. e ("The object of the disgorgement remedy—to eliminate the possibility of profit from conscious wrongdoing—is one of the cornerstones of the law of restitution and unjust enrichment.").

This case is a classic example of what this comment from the Restatement describes. As we detailed in Bailey I, when the appellants did not accept the appellees' offer to invest in Spinal, the appellees told them "you're going to accept this offer or we're going to take your doctors and we're going to take your company. And we're going to go up the street and we're going to do it ourselves." 196 So. 3d at 380. When threatened with litigation, the appellees said they were not concerned because the business would make ten times whatever damages they might have to pay in a lawsuit. See id. at 380-81.

Had the appellants been limited to recovering under a lost profits theory, that prediction would unquestionably be accurate. However, the measure of damages for disgorgement is not the profits the appellants might have made absent the wrongdoing—the measure of damages for conscious wrongdoing is the appellees' "net profit attributable to the underlying wrong." Restatement (Third) of Restitution and Unjust Enrichment § 51(4); see also Duty Free, 253 So. 3d at 698 ("The equitable remedy of disgorgement is measured by the defendant's ill-gotten profits or gains rather than the plaintiff's losses."). "When the defendant has acted in conscious disregard of the claimant's rights, the whole of the resulting gain is treated as unjust enrichment, even though the defendant's gain may exceed" the claimant's loss. Restatement (Third) of Restitution and Unjust Enrichment § 3 cmt. c. In fact, disgorgement may be awarded even if the claimant has not sustained any loss. Restatement (Third) of Restitution and Unjust Enrichment § 3, reporter's note a. ("[I]t is clear not only that there can be restitution of wrongful gain exceeding the plaintiff's loss, but that there can be restitution of wrongful gain in cases where the plaintiff has suffered an interference with protected interests but no measurable loss whatsoever."). The trial court's comments regarding the appellants' business acumen are misplaced in determining a disgorgement award.

To the extent the trial court's order can be read to rely on the limiting principles articulated in Pidcock, we specifically considered and rejected the applicability of those principles in Bailey I. See 196 So. 3d at 378-79. Our rejection of this as a basis to limit the award of disgorgement was the law of the case, and the trial court was bound by our determination. See Specialty Rests. Corp. v. Elliott, 924 So. 2d 834, 837 (Fla. 2d DCA 2005) ("[Q]uestions of law that have actually been decided on appeal must

govern the case in the same court and in the trial court through all subsequent stages of the proceedings."). Moreover, the "business model" to which the court attributes the appellees' success is the one it stole from the appellants along with its doctors, key employees, and everything else. In other words, what the trial court said amounts to a finding that the appellees' success was in fact attributable to their wrongdoing.

Lastly, the trial court sets out the reasoning it used to arrive at the figure of $1,050,000. However, it relies on the "head start" formula the appellees unsuccessfully argued in support of the award in Bailey I. As explained above, we rejected that argument as inapposite. Further, the trial court took this "head start" concept and more or less turned it on its head. The trial court reasoned that Spinal's operations were interrupted for approximately six months; therefore, the appellants were only entitled to six months of LSI's profits. Again, the trial court misapprehends the nature of the disgorgement remedy by measuring the award based on what the *appellants lost*—six months of profits—not what the appellees gained. See Guyana Tel. & Tel. Co., Ltd. v. Melbourne Int'l Commc'ns, Ltd., 329 F. 3d 1241, 1249 (11th Cir. 2003) (reversing where a jury was instructed to measure the plaintiff's right to restitution in terms of its loss rather than the benefit conferred on the defendants because "[r]estitution is a remedy that is often available to victims of a wrong. Restitution measures a plaintiff's recovery according to the defendant's, rather than the plaintiff's, rightful position").

Accordingly, we again reverse the awards for breach of fiduciary duty, conspiracy, and tortious interference and remand for the court to enter an award of disgorgement. Because the only testimony regarding the manner in which the disgorgement award should be measured came from the appellants' expert, the award

should be calculated according to the formula he proposed. Specifically, the court should enter an award based on the total value of LSI in 2009 combined with the total of the distributions to the owners of LSI between 2005 and 2009.[4] We also reverse the award for out-of-pocket damages and remand for entry of an award of $6,831,172.

Reversed and remanded for entry of a judgment in accordance with this opinion.

CASANUEVA and CRENSHAW, JJ., Concur.

[4]It appears from the evidence in the record that the proper amount of the award at a minimum falls between $264,000,000 and $265,000,000.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

April 08, 2019

CASE NO.: 2D17-0895
L.T. No.: 06-CA-008498

JOE SAMUEL BAILEY, ET AL	v.	JAMES S. ST. LOUIS, ET AL
Appellant / Petitioner(s),		Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellees' motion for rehearing is denied.
Appellees' motion for rehearing en banc is denied.
Appellees' motion to certify questions of great public importance is denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Louis X. Amato, Esq.
Stacy D. Blank, Esq.
Kristin A. Norse, Esq.
Robert W. Ritsch, Esq.
Justin P. Bennett, Esq.
Pat Frank, Clerk
Stuart C. Markman, Esq.
Jennifer G. Altman, Esq.
J. Troy Andrews, Esq.
William J. Schifino, Jr., Esq.
Shani Rivaux, Esq.
Joseph H. Varner, Esq.
Bradford D. Kimbro, Esq.
Robert V. Williams, Esq.
Phillip J. Duncan, Esq.

mep

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk

DISTRICT COURT OF APPEAL · SECOND DISTRICT · STATE OF FLORIDA

EXHIBIT B
tabbies

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT

IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

CIVIL DIVISION

JOE SAMUEL BAILEY, *et al.*,

Plaintiffs,

vs.

JAMES S. ST. LOUIS, *et al.*,

Defendants.

_____/

Case No. 06-08498

Division L

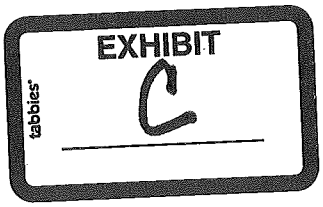
SECOND AMENDED FINAL JUDGMENT

Pursuant to the Court's Order on Non-Jury Trial dated October 9, 2012:

It is ADJUDGED that:

1. Plaintiff Joe Samuel Bailey, whose address is 308 Wallick Drive, Cotter, AR 72626, does have and recover from Defendants James S. St. Louis, D.O., whose address is 4728 N. Habana Avenue, Suite 202, Tampa, FL 33614; Michael W. Perry, M.D., whose address is 5332 Avion Park Drive, Tampa, FL 33607; EFO Holdings L.P., whose principal address is 2828 Routh Stet, Suite 500, Dallas, TX 75201; EFO Genpar, Inc., whose principal address is 500 N Akard Street, Suite 1500, Dallas, TX 75201; and EFO Laser Spine Institute, Ltd., whose principal address is 2828 Routh Stet, Suite 500, Dallas, TX 75201, jointly and severally, the sum of $250,000, **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH.**

2. Plaintiff Joe Samuel Bailey does have and recover from Defendants James S. St. Louis, D.O.; Michael W. Perry, M.D.; EFO Holdings L.P.; EFO Genpar, Inc.; and EFO Laser Spine Institute, Ltd., jointly and severally, the sum of $750,000 in punitive damages, **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH.**



3. Plaintiffs Laserscopic Spinal Centers of America, Inc., whose address 308 Wallick Drive, Cotter, AR 72626, and Laserscopic Medical Clinic, LLC, whose address is 308 Wallick Drive, Cotter, AR 72626, do have and recover from Defendants James S. St. Louis, D.O.; EFO Holdings L.P.; EFO Genpar, Inc.; EFO Laser Spine Institute, Ltd.; Laser Spine Institute, LLC, who address is 5332 Avion Park Drive, Tampa, FL 33607; Laser Spine Medical Clinic, LLC, whose address is 3001 N. Rocky Point Drive E, Suite 380, Tampa, FL 33607; Laser Spine Physical Therapy, LLC, whose address is 3001 N. Rocky Point Drive E, Suite 380, Tampa, FL 33607; and Laser Spine Surgical Center, LLC, whose address is 5332 Avion Park Drive, Tampa, FL 33607, jointly and severally, the sum of $264,000,000, **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH.**

4. Plaintiffs Laserscopic Spinal Centers of America, Inc., and Laserscopic Medical Clinic, LLC, do have and recover from Defendants James S. St. Louis, D.O.; EFO Holdings L.P.; EFO Genpar, Inc.; EFO Laser Spine Institute, Ltd.; Laser Spine Institute, LLC; Laser Spine Medical Clinic, LLC; Laser Spine Physical Therapy, LLC; and Laser Spine Surgical Center, LLC, jointly and severally, the sum of $5,000,000 in punitive damages, **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH.**

5. Plaintiff Laserscopic Spine Centers of America, Inc., whose address is 308 Wallick Drive, Cotter, AR 72626, does have and recover from Defendants EFO Holdings, L.P.; EFO Genpar, Inc.; James S. St. Louis, D.O.; EFO Laser Spine Institute, Ltd.; Laser Spine Institute, LLC; Laser Spine Medical Clinic, LLC; Laser Spine Physical Therapy, LLC; and Laser Spine Surgical Center, LLC, jointly and severally, the sum of $6,831,172, **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH.**

6. These sums shall bear interest at the rate of 4.75% from October 9, 2012 to December 31, 2016; 4.97% from January 1, 2017 through December 31, 2017; and, 5.72% from January 1, 2018 through December 31, 2018 in accordance with Florida Statute §55.03. Thereafter, on January 1st of each succeeding year until the judgment is paid, the interest rate will adjust in accordance with Florida Statute § 55.03.

7. This Court reserves jurisdiction to award attorney's fees and costs to Plaintiffs.

8. It is further ordered and adjudged that the judgment debtors shall complete under oath Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet), including all required attachments, and serve it on the judgment creditor's attorney, or the judgment creditor if the judgment creditor is not represented by an attorney, within 45 days from the date of this final judgment, unless the final judgment is satisfied or post-judgment discovery is stayed. Jurisdiction of this case is retained to enter further orders that are proper to compel the judgment debtors to complete form 1.977, including all required attachments, and serve it on the judgment creditor's attorney, or the judgment creditor if the judgment creditor is not represented by an attorney.

9. The Court retains jurisdiction over this action to enter further Orders that are proper and to award further relief, including without limitation, equitable relief, writs of possession, and to conduct proceedings supplementary, to implead third parties, as this Court deems just, equitable, and proper.

DONE AND ORDERED in Chambers in Hillsborough County, Florida, this ____ day of January, 2019.

_____
Judge Richard Nielsen

cc: All Counsel of Record

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

LASER SPINE INSTITUTE, LLC

Case No.: 2019-CA-002762

Assignor

v.

SONEET KAPILA

Assignee.

_____/

NOTICE OF PROOF OF CLAIM OF
LASERSCOPIC SPINE CENTERS OF AMERICA, INC.

LASERSCOPIC SPINE CENTERS OF AMERICA, INC., by and through its undersigned counsel, and pursuant to §727.112, Florida Statutes, hereby files (with supporting documents) and gives notice of its Proof of Claim against Assignor, LASER SPINE INSTITUTE, LLC, by delivering the Proof of Claim, attached hereto as **Exhibit A**, upon the Assignee, Soneet Kapila and Edward J. Peterson, Esquire of Stichter, Riedel, Blain & Postler, P.A.

DATE: May 8, 2019.

/s/ Kenneth G. M. Mather
William J. Schifino, Jr., Esq.
Florida Bar Number 564338
Kenneth G.M. Mather, Esq.
Florida Bar Number 619647
Justin P. Bennett, Esq.
Florida Bar Number 112833
GUNSTER, YOAKLEY & STEWART P.A.
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Email- kmather@gunster.com
Email- jbennett@gunster.com
Attorneys for Judgment Creditors, Joe Samuel Bailey, Mark Miller, Ted Suhl, Laserscopic Spinal

Exhibit "C"

Centers Of America, Inc., Laserscopic Medical Clinic, LLC, Laserscopic Surgery Center Of Florida, LLC, Laserscopic Diagnostic Imaging And Laserscopic Physical Therapy, LLC, Laserscopic Spinal Center Of Florida, LLC, And Tim Langford

CERTIFICATE OF SERVICE

I CERTIFY that on May 8, 2019 a true and correct copy of the foregoing has been electronically filed with the Clerk of Court through the Florida Courts E-Filing Portal, which will send a Notice of Electronic Filing to all counsel of record.

/s/ Kenneth G. M. Mather
Kenneth G. M. Mather, Esq.

Exhibit A

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

In re:

Laser Spine Institute, LLC	Case No. 2019-CA-2762
CLM Aviation, LLC	Case No. 2019-CA-2764
LSI HoldCo, LLC	Case No. 2019-CA-2765
LSI Management Company, LLC	Case No. 2019-CA-2766
Laser Spine Surgery Center of Arizona, LLC	Case No. 2019-CA-2767
Laser Spine Surgery Center of Cincinnati, LLC	Case No. 2019-CA-2768
Laser Spine Surgery Center of Cleveland, LLC	Case No. 2019-CA-2769
Laser Spine Surgical Center, LLC	Case No. 2019-CA-2770
Laser Spine Surgery Center of Pennsylvania, LLC	Case No. 2019-CA-2771
Laser Spine Surgery Center of St. Louis, LLC	Case No. 2019-CA-2772
Laser Spine Surgery Center of Warwick, LLC	Case No. 2019-CA-2773
Medical Care Management Services, LLC	Case No. 2019-CA-2774
Spine DME Solutions, LLC	Case No. 2019-CA-2775
Total Spine Care, LLC	Case No. 2019-CA-2776
Laser Spine Institute Consulting, LLC	Case No. 2019-CA-2777
Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2780
Assignors,	Consolidated Case No.
To:	2019-CA-2762
Soneet Kapila,	Division L
Assignee	

_____/

PROOF OF CLAIM

TO RECEIVE ANY DIVIDEND IN THESE PROCEEDINGS (THE "ASSIGNMENT CASES"), YOU MUST COMPLETE THIS PROOF OF CLAIM AND DELIVER IT TO THE ASSIGNEE, OR THE ASSIGNEE'S COUNSEL, NO LATER THAN:

JULY 12, 2019

THE ASSIGNEE'S NAME AND ADDRESS ARE AS FOLLOWS:
SONEET KAPILA, ASSIGNEE
1000 SOUTH FEDERAL HIGHWAY, SUITE 200
FORT LAUDERDALE, FL 33316

ASSIGNEE'S COUNSEL IS:
EDWARD J. PETERSON, ESQUIRE
STICHTER, RIEDEL, BLAIN & POSTLER, P.A.
110 E. MADISON ST., SUITE 200
TAMPA, FL 33602

1. **PLEASE SPECIFY THE ASSIGNOR AGAINST WHICH YOU ASSERT A CLAIM:** Laser Spine Institute, LLC – Case No. 2019-CA-2762.
(IF YOU HAVE A CLAIM AGAINST MORE THAN ONE ASSIGNOR, YOU MUST FILE A SEPARATE CLAIM AGAINST EACH ASSIGNOR).

2. **CREDITOR NAME (Your name):** Laserscopic Spine Centers of America, Inc.
ADDRESS: c/o Kenneth G. M. Mather, Esquire, Gunster. Yoakley & Stewart, P.A.
ADDRESS: 401 E. Jackson Street, Suite 2500
CITY, STATE, ZIP: Tampa, FL 33602
TELEPHONE NUMBER: (813) 222-6630
E-MAIL ADDRESS: kmather@gunster.com

Please be sure to notify us if you have a change of address.

Check box if address on claim differs from address to which this notice was sent: [ ]

3. **BASIS FOR CLAIM:**

[ ] Goods Sold	[ ] Wages, Salaries and Compensations	[ ] Secured Creditor
[ ] Services Performed	[ ] Taxes	
[ ] Money Loaned	[ ] Customer Deposit	
[ ] Shareholder	[X] Other: see attached Exhibit "A"	

4. **DATE DEBT WAS INCURRED:** Please see attached Second District Court of Appeals Orders dated December 28, 2019 and April 8, 2019, attached hereto as Exhibits "A" and "B" and the proposed Second Amended Final Judgment as Exhibit "C."

5. **AMOUNT OF CLAIM:** Principal amount of $6,831,172, plus interest of $2,266,066, for total of $9,097,238, plus attorneys' fees and costs as to be determined.

6. Does Claim amend, replace, or supplement a prior claim? If so, please state the date and amount of the prior claim(s): **No**

7. **SUPPORTING DOCUMENTS:** **Attach copies of supporting documents,** such as promissory notes, purchase order, invoices, itemized statement of running accounts, court judgments, or evidence of security interests. If the documents are not available, explain. If the documents are voluminous, attach a summary.

8. **SIGNATURE:** Sign and print name and title, if any, of the creditor or other person authorized to file this claim:

As required by law, the proof of claim and any supporting documentation you submit shall become a part of the public record related to the Assignment Cases. As a result, the Assignee and his professionals shall be permitted, and may be directed by the Court, to include such documentation, including to the extent provided, protected health information, in any subsequent pleading, notice, document, list, or other public disclosure made in connection with the Assignment Cases. Such inclusion by the Assignee and his professionals shall not constitute a "wrongful disclosure" under HIPAA, the Florida Information Protection Act of 2014, or any regulations promulgated thereunder.

Laserscopic Spinal Centers of America, Inc.

DATED: 5-7-2019

BY: Joe S. Bailey
Signature of Claimant or Representative
JOE S. BAILEY, CEO
Print Name and Title Here

For Assignee's Use Only:
Claim Number: _____
Date: _____

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

JOE SAMUEL BAILEY, LASERSCOPIC SPINAL CENTERS OF AMERICA, INC.; LASERSCOPIC MEDICAL CLINIC LLC; LASERSCOPIC DIAGNOSTIC IMAGING AND PHYSICAL THERAPY LLC; LASERSCOPIC SPINAL CENTER OF FLORIDA, LLC; and LASERSCOPIC SURGERY CENTER OF FLORIDA,

Appellants/Cross-Appellees,

v.

JAMES S. ST. LOUIS, D.O.; MICHAEL W. PERRY, M.D.; EFO HOLDINGS L.P.; EFO GENPAR, INC.; EFO LASER SPINE INSTITUTE, LTD.; LASER SPINE INSTITUTE, LLC; LASER SPINE MEDICAL CLINIC, LLC; LASER SPINE PHYSICAL THERAPY, LLC; and LASER SPINE SURGICAL CENTER, LLC,

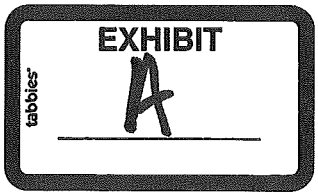
Appellees/Cross-Appellants.

Case No. 2D17-895

Opinion filed December 28, 2018.

Appeal from the Circuit Court for Hillsborough County; Richard A. Nielsen, Judge.

William J. Schifino of Burr & Forman LLP Tampa; Stuart C. Markman, Kristin A.



Norse, and Robert W. Ritsch of Kynes, Markman & Felman, P.A., Tampa; Jennifer G. Altman and Shani Rivaux of Pillsbury Winthrop Shaw, Pittman LLP, Miami, for Appellants/Cross-Appellees.

Stacey D. Blank and Joseph H. Varner, III of Holland & Knight LLP, Tampa, for Appellees/Cross-Appellants.

KELLY, Judge.

This is the second appeal from a final judgment entered in favor of the appellants/cross-appellees in an action against the appellees/cross-appellants for breach of fiduciary duty, conspiracy, defamation, slander per se, tortious interference, and violation of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). The factual background underlying this litigation is fully set forth in Bailey v. St. Louis, 196 So. 3d 375 (Fla. 2d DCA 2016) (Bailey I), and repeating it here is unnecessary. In Bailey I, we affirmed the final judgment but reversed the damages awarded by the trial court. On remand, with the exception of adding an award for punitive damages, the trial court awarded the same damages this court had previously reversed. Again, we reverse those awards. As to the remaining issues raised in the appeal and in the cross-appeal, we affirm without further comment.

In Bailey I, the appellants had prevailed on claims for breach of fiduciary duty, conspiracy, slander per se, tortious interference, and violation of FDUTPA. We reversed the damages awarded for everything but slander per se because, as explained in our opinion, we could not square the awards with the evidence or the trial court's findings, which were quite limited with respect to damages. See 196 So. 3d at 377. We

also reversed the trial court's decision not to award monetary damages for the appellees' FDUTPA violations and not to award punitive damages. See id. We determined that the trial court incorrectly ruled that it could not award monetary damages under FDUTPA and that it also erroneously found that the facts did not support an award of punitive damages. See id.

There were two components to the total damage award of $1,600,000 at issue in Bailey I. The first was an award of $300,000 to Laserscopic Spine Centers of America, Inc. (Spine), for out-of-pocket damages for tortious inference. With respect to this award we stated, "In its order, the trial court accepted the calculations of only one of the experts 'as to out of pocket losses,' and it found that the expert testified that the Appellants suffered out-of-pocket damages of $6,831,172." 196 So. 3d at 377 (footnote omitted). Yet, the *total* award of damages was only $1,600,000. The trial court offered no explanation as to how it ended up entering a total award that was less than one-fourth of the amount it cited for out-of-pocket damages alone, and the record provided no insight into the basis for the award.[1]

On remand, the trial court again awarded $300,000. By way of explanation, the court stated that it had rejected the appellants' expert's testimony as to out-of-pocket losses. However, as explained in Bailey I, the trial court had expressly accepted the expert's calculation regarding out-of-pocket losses. The court purports to

[1]The appellees' argument to the trial court was not helpful in terms of understanding the award. Their approach to damages had been to simply argue that the appellants had not proved they suffered *any* damages as a result of the appellees' conduct. They did not challenge the appellants' out-of-pocket figure, nor did they offer any alternative theory upon which the trial court might have based its award of $300,000.

explain how it determined that $300,000 was the proper award. Its reasoning, however, is nearly a verbatim repeat of the arguments the appellees unsuccessfully urged us to accept in Bailey I. Moreover, the court's explanation rests on the flawed premise that it had rejected the expert's calculations. Accordingly, we again reverse the trial court's award to Spine and remand for entry of an award in the amount of $6,831,172, which is the amount the trial court found was established by the appellants' expert's testimony.

The remaining $1,050,000 of the damage award was the second component at issue in Bailey I. Appellant Laserscopic Spinal Centers of America, Inc. (Spinal), was awarded damages for breach of fiduciary duty, conspiracy, and tortious interference, while appellant Laserscopic Medical Clinic, LLC (LMC), received an award on a claim for breach of fiduciary duty. The appellants had sought damages under various theories, including disgorgement. On appeal, the appellants argued that the trial court had awarded no disgorgement damages, while the appellees argued that the entire $1,050,000 was an award of "lost profits measured by the yardstick of [Laser Spine Institute's] allegedly ill-gotten profits, which [it] was similarly required to disgorge." Because of the way the trial court had prepared its order, it was not possible to determine with certainty whether all or a portion of the award was for disgorgement. What we could determine, however, was that if it was for disgorgement, it was "grossly insufficient." Id. at 378.

The appellants had sought disgorgement of approximately $264,000,000. This figure represented the value of Laser Spine Institute (LSI) in 2009 plus $77.5

million in distributions paid to the owners between 2005 and 2009.[2] In their argument to the trial court, the appellees had taken the position that even if the court found some wrongdoing, any profits LSI earned were attributable solely to the efforts of management and not to any wrongdoing; therefore, the court should not award anything to the appellants.[3] Because it was their position that the appellants were not entitled to any damages, the appellees did not put on any evidence as to what amount of LSI's profits short of $264,000,000 could be attributed to their wrongful conduct.

On appeal, and without explaining how the court might have arrived at $1,050,000 rather than $264,000,000, the appellees argued the award reflected the trial court's conclusion that only this portion of LSI's profits was attributable to the appellees' wrongdoing. In support of this, the appellees pointed to the "Damages" section of the trial court's order and specifically to the trial court's citation to Pidcock v. Sunnyland America, Inc., 854 F. 2d 443, 447-48 (11th Cir.1988). The trial court cited Pidcock for the proposition that a plaintiff may only recover profits attributable to the underlying

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[2]While the parties have referred to the recovery the appellants sought as disgorgement of profits, it would be more accurate to describe it as disgorgement of the appellees' wrongful gain. See Restatement (Third) of Restitution and Unjust Enrichment § 3 (Am. Law. Inst. 2011). A conscious wrongdoer is liable for the "net profit attributable to the underlying wrong." Restatement (Third) of Restitution and Unjust Enrichment § 51(4). As used in section 51(4), "[p]rofit includes any form of use value, proceeds, or consequential gains." Restatement (Third) of Restitution and Unjust Enrichment § 51(5)(a). The appellees have not challenged, nor have we considered, the use of these particular elements to calculate "profit" for the purposes of disgorgement. Nor have they challenged the accuracy of the amounts testified to by the appellants' expert. At trial they offered no alternative method by which to calculate the amount of profits subject to disgorgement because it was their position that *none* of the profits LSI earned were subject to disgorgement.

[3]In Bailey I we discussed at length the trial court's findings regarding the appellees' wrongful conduct. 196 So. 3d at 377-78. When we reference "wrongdoing" in this opinion we are referring to the conduct we detailed in Bailey I.

wrong and not profits attributable to a defendant's "special or unique efforts" and that "aggressive or enterprising" management activities "may break the causal chain" between the wrongdoing and the defendant's profits. This, according to the appellees, was the reason the trial court limited the award. We will not repeat our discussion of Pidcock here. Suffice it to say that we thoroughly analyzed its applicability to the facts as found by the trial court, and we concluded that the limiting principles Pidcock discusses were inapplicable. See Bailey I, 196 So. 3d at 378. Thus, we held that if the award was for disgorgement, it was "grossly insufficient." See id.

Although we did not address it in our opinion, the appellees also argued that "in cases involving the misappropriation of proprietary information, a court will limit the disgorgement of a defendant's profits 'to the amount of time it would have taken the defendant to independently develop its product without the benefit of the plaintiff's trade secrets—in other words, the "head start" period.'" Thus, they argued that the trial court awarded "lost profits/disgorgement damages in an amount equal to the profits LSI derived from this head start." However, the trial court had found the appellants' misappropriation claims were barred by the statute of limitations. Further, at trial the appellants' did not seek to recover lost profits, instead focusing on disgorgement, business destruction damages, and out-of-pocket damages. Accordingly, we rejected this argument as well.

On remand, the trial court confirmed it was awarding disgorgement damages but then entered the same award we had reversed as "grossly inadequate." This appears to have happened because the appellees convinced the trial court that we had not actually found the award to be inadequate, we had simply found it to be

inadequately explained. And as was the case with the out-of-pocket award, the appellees apparently convinced the trial court it could explain its award by adopting the arguments the appellees had made and we had rejected in Bailey I.

In explaining the award on remand, the trial court's overarching focus is on why it believed Spinal was not successful, which as we explain below, is not part of the equation for determining the degree to which a wrongdoer's profits are attributable to its wrongful conduct. First, the trial court points to the appellants' "lack of business skills" and states that because of their lack of skill and poor business decisions they "should not be awarded disgorgement damages beyond the amounts in the final judgment." It also states it is rejecting the appellants' demand for disgorgement damages equal to all the profits earned by LSI because there is no causal relationship between the appellees' tortious conduct and all the profits. The court elaborates, stating that the appellees succeeded because of a "unique combination of individual, skilled medical doctors; highly effective and inventive executives, managers and administrators; creative marketing and advertising programs; and the availability and use of proper capital" and that even though Spinal "followed the same business model, it was not able to succeed."

The trial court's focus on the appellants' supposed lack of business skills as a basis to limit disgorgement shows a complete misapprehension of the principles applicable to disgorgement. Disgorgement is a remedy designed to deter wrongdoers by making it unprofitable to engage in the wrongful behavior. See Duty Free World, Inc. v. Miami Perfume Junction, Inc., 253 So. 3d 689, 698 (Fla. 3d DCA 2018) ("'Disgorgement is an equitable remedy intended to prevent unjust enrichment.'"

(quoting S.E.C. v. Monterosso, 757 F. 3d 1326, 1337 (11th Cir. 2014))); Restatement (Third) of Restitution and Unjust Enrichment § 1 (Am. Law Inst. 2011) ("A person who is unjustly enriched at the expense of another is subject to liability in restitution."); Restatement (Third) of Restitution and Unjust Enrichment § 3 ("A person is not permitted to profit by his own wrong."). The point of disgorgement is to deter wrongdoers by stripping them of the gains from their conduct:

> Restitution requires full disgorgement of profit by a conscious wrongdoer, not just because of the moral judgment implicit in the rule of this section, but because any lesser liability would provide an inadequate incentive to lawful behavior. If A anticipates (accurately) that unauthorized interference with B's entitlement may yield profits exceeding any damages B could prove, A has a dangerous incentive to take without asking—since the nonconsensual transaction promises to be more profitable than the forgone negotiation with B. The objective of that part of the law of restitution summarized by the rule of § 3 is to frustrate any such calculation.

Id. § 3 cmt. c; see also § 51 cmt. e ("The object of the disgorgement remedy—to eliminate the possibility of profit from conscious wrongdoing—is one of the cornerstones of the law of restitution and unjust enrichment.").

This case is a classic example of what this comment from the Restatement describes. As we detailed in Bailey I, when the appellants did not accept the appellees' offer to invest in Spinal, the appellees told them "you're going to accept this offer or we're going to take your doctors and we're going to take your company. And we're going to go up the street and we're going to do it ourselves." 196 So. 3d at 380. When threatened with litigation, the appellees said they were not concerned because the business would make ten times whatever damages they might have to pay in a lawsuit. See id. at 380-81.

Had the appellants been limited to recovering under a lost profits theory, that prediction would unquestionably be accurate. However, the measure of damages for disgorgement is not the profits the appellants might have made absent the wrongdoing—the measure of damages for conscious wrongdoing is the appellees' "net profit attributable to the underlying wrong." Restatement (Third) of Restitution and Unjust Enrichment § 51(4); see also Duty Free, 253 So. 3d at 698 ("The equitable remedy of disgorgement is measured by the defendant's ill-gotten profits or gains rather than the plaintiff's losses."). "When the defendant has acted in conscious disregard of the claimant's rights, the whole of the resulting gain is treated as unjust enrichment, even though the defendant's gain may exceed" the claimant's loss. Restatement (Third) of Restitution and Unjust Enrichment § 3 cmt. c. In fact, disgorgement may be awarded even if the claimant has not sustained any loss. Restatement (Third) of Restitution and Unjust Enrichment § 3, reporter's note a. ("[I]t is clear not only that there can be restitution of wrongful gain exceeding the plaintiff's loss, but that there can be restitution of wrongful gain in cases where the plaintiff has suffered an interference with protected interests but no measurable loss whatsoever."). The trial court's comments regarding the appellants' business acumen are misplaced in determining a disgorgement award.

To the extent the trial court's order can be read to rely on the limiting principles articulated in Pidcock, we specifically considered and rejected the applicability of those principles in Bailey I. See 196 So. 3d at 378-79. Our rejection of this as a basis to limit the award of disgorgement was the law of the case, and the trial court was bound by our determination. See Specialty Rests. Corp. v. Elliott, 924 So. 2d 834, 837 (Fla. 2d DCA 2005) ("[Q]uestions of law that have actually been decided on appeal must

govern the case in the same court and in the trial court through all subsequent stages of the proceedings."). Moreover, the "business model" to which the court attributes the appellees' success is the one it stole from the appellants along with its doctors, key employees, and everything else. In other words, what the trial court said amounts to a finding that the appellees' success was in fact attributable to their wrongdoing.

Lastly, the trial court sets out the reasoning it used to arrive at the figure of $1,050,000. However, it relies on the "head start" formula the appellees unsuccessfully argued in support of the award in Bailey I. As explained above, we rejected that argument as inapposite. Further, the trial court took this "head start" concept and more or less turned it on its head. The trial court reasoned that Spinal's operations were interrupted for approximately six months; therefore, the appellants were only entitled to six months of LSI's profits. Again, the trial court misapprehends the nature of the disgorgement remedy by measuring the award based on what the *appellants lost*—six months of profits—not what the appellees gained. See Guyana Tel. & Tel. Co., Ltd. v. Melbourne Int'l Commc'ns, Ltd., 329 F. 3d 1241, 1249 (11th Cir. 2003) (reversing where a jury was instructed to measure the plaintiff's right to restitution in terms of its loss rather than the benefit conferred on the defendants because "[r]estitution is a remedy that is often available to victims of a wrong. Restitution measures a plaintiff's recovery according to the defendant's, rather than the plaintiff's, rightful position").

Accordingly, we again reverse the awards for breach of fiduciary duty, conspiracy, and tortious interference and remand for the court to enter an award of disgorgement. Because the only testimony regarding the manner in which the disgorgement award should be measured came from the appellants' expert, the award

should be calculated according to the formula he proposed. Specifically, the court should enter an award based on the total value of LSI in 2009 combined with the total of the distributions to the owners of LSI between 2005 and 2009.[4] We also reverse the award for out-of-pocket damages and remand for entry of an award of $6,831,172.

Reversed and remanded for entry of a judgment in accordance with this opinion.

CASANUEVA and CRENSHAW, JJ., Concur.

[4]It appears from the evidence in the record that the proper amount of the award at a minimum falls between $264,000,000 and $265,000,000.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

April 08, 2019

CASE NO.: 2D17-0895
L.T. No.: 06-CA-008498

JOE SAMUEL BAILEY, ET AL	v.	JAMES S. ST. LOUIS, ET AL
Appellant / Petitioner(s),		Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellees' motion for rehearing is denied.
Appellees' motion for rehearing en banc is denied.
Appellees' motion to certify questions of great public importance is denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Louis X. Amato, Esq.
Stacy D. Blank, Esq.
Kristin A. Norse, Esq.
Robert W. Ritsch, Esq.
Justin P. Bennett, Esq.
Pat Frank, Clerk
Stuart C. Markman, Esq.
Jennifer G. Altman, Esq.
J. Troy Andrews, Esq.
William J. Schifino, Jr., Esq.
Shani Rivaux, Esq.
Joseph H. Varner, Esq.
Bradford D. Kimbro, Esq.
Robert V. Williams, Esq.
Phillip J. Duncan, Esq.

mep

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk

DISTRICT COURT OF APPEAL · SECOND DISTRICT · STATE OF FLORIDA

EXHIBIT B
tabbies

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT

IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

CIVIL DIVISION

JOE SAMUEL BAILEY, *et al.*,

Plaintiffs,

vs.

JAMES S. ST. LOUIS, *et al.*,

Defendants.

_____/

Case No. 06-08498

Division L

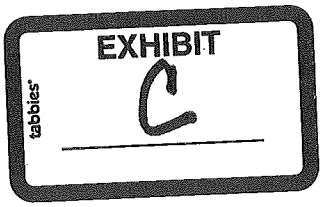
SECOND AMENDED FINAL JUDGMENT

Pursuant to the Court's Order on Non-Jury Trial dated October 9, 2012:

It is ADJUDGED that:

1. Plaintiff Joe Samuel Bailey, whose address is 308 Wallick Drive, Cotter, AR 72626, does have and recover from Defendants James S. St. Louis, D.O., whose address is 4728 N. Habana Avenue, Suite 202, Tampa, FL 33614; Michael W. Perry, M.D., whose address is 5332 Avion Park Drive, Tampa, FL 33607; EFO Holdings L.P., whose principal address is 2828 Routh Stet, Suite 500, Dallas, TX 75201; EFO Genpar, Inc., whose principal address is 500 N Akard Street, Suite 1500, Dallas, TX 75201; and EFO Laser Spine Institute, Ltd., whose principal address is 2828 Routh Stet, Suite 500, Dallas, TX 75201, jointly and severally, the sum of $250,000, **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH.**

2. Plaintiff Joe Samuel Bailey does have and recover from Defendants James S. St. Louis, D.O.; Michael W. Perry, M.D.; EFO Holdings L.P.; EFO Genpar, Inc.; and EFO Laser Spine Institute, Ltd., jointly and severally, the sum of $750,000 in punitive damages, **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH.**



3. Plaintiffs Laserscopic Spinal Centers of America, Inc., whose address 308 Wallick Drive, Cotter, AR 72626, and Laserscopic Medical Clinic, LLC, whose address is 308 Wallick Drive, Cotter, AR 72626, do have and recover from Defendants James S. St. Louis, D.O.; EFO Holdings L.P.; EFO Genpar, Inc.; EFO Laser Spine Institute, Ltd.; Laser Spine Institute, LLC, who address is 5332 Avion Park Drive, Tampa, FL 33607; Laser Spine Medical Clinic, LLC, whose address is 3001 N. Rocky Point Drive E, Suite 380, Tampa, FL 33607; Laser Spine Physical Therapy, LLC, whose address is 3001 N. Rocky Point Drive E, Suite 380, Tampa, FL 33607; and Laser Spine Surgical Center, LLC, whose address is 5332 Avion Park Drive, Tampa, FL 33607, jointly and severally, the sum of $264,000,000, **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH.**

4. Plaintiffs Laserscopic Spinal Centers of America, Inc., and Laserscopic Medical Clinic, LLC, do have and recover from Defendants James S. St. Louis, D.O.; EFO Holdings L.P.; EFO Genpar, Inc.; EFO Laser Spine Institute, Ltd.; Laser Spine Institute, LLC; Laser Spine Medical Clinic, LLC; Laser Spine Physical Therapy, LLC; and Laser Spine Surgical Center, LLC, jointly and severally, the sum of $5,000,000 in punitive damages, **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH.**

5. Plaintiff Laserscopic Spine Centers of America, Inc., whose address is 308 Wallick Drive, Cotter, AR 72626, does have and recover from Defendants EFO Holdings, L.P.; EFO Genpar, Inc.; James S. St. Louis, D.O.; EFO Laser Spine Institute, Ltd.; Laser Spine Institute, LLC; Laser Spine Medical Clinic, LLC; Laser Spine Physical Therapy, LLC; and Laser Spine Surgical Center, LLC, jointly and severally, the sum of $6,831,172, **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH.**

6. These sums shall bear interest at the rate of 4.75% from October 9, 2012 to December 31, 2016; 4.97% from January 1, 2017 through December 31, 2017; and, 5.72% from January 1, 2018 through December 31, 2018 in accordance with Florida Statute §55.03. Thereafter, on January 1st of each succeeding year until the judgment is paid, the interest rate will adjust in accordance with Florida Statute § 55.03.

7. This Court reserves jurisdiction to award attorney's fees and costs to Plaintiffs.

8. It is further ordered and adjudged that the judgment debtors shall complete under oath Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet), including all required attachments, and serve it on the judgment creditor's attorney, or the judgment creditor if the judgment creditor is not represented by an attorney, within 45 days from the date of this final judgment, unless the final judgment is satisfied or post-judgment discovery is stayed. Jurisdiction of this case is retained to enter further orders that are proper to compel the judgment debtors to complete form 1.977, including all required attachments, and serve it on the judgment creditor's attorney, or the judgment creditor if the judgment creditor is not represented by an attorney.

9. The Court retains jurisdiction over this action to enter further Orders that are proper and to award further relief, including without limitation, equitable relief, writs of possession, and to conduct proceedings supplementary, to implead third parties, as this Court deems just, equitable, and proper.

DONE AND ORDERED in Chambers in Hillsborough County, Florida, this ____ day of January, 2019.

_____
Judge Richard Nielsen

cc: All Counsel of Record

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

JOE SAMUEL BAILEY, LASERSCOPIC SPINAL CENTERS OF AMERICA, INC.; LASERSCOPIC MEDICAL CLINIC LLC; LASERSCOPIC DIAGNOSTIC IMAGING AND PHYSICAL THERAPY LLC; LASERSCOPIC SPINAL CENTER OF FLORIDA, LLC; and LASERSCOPIC SURGERY CENTER OF FLORIDA,

Appellants/Cross-Appellees,

v.

JAMES S. ST. LOUIS, D.O.; MICHAEL W. PERRY, M.D.; EFO HOLDINGS L.P.; EFO GENPAR, INC.; EFO LASER SPINE INSTITUTE, LTD.; LASER SPINE INSTITUTE, LLC; LASER SPINE MEDICAL CLINIC, LLC; LASER SPINE PHYSICAL THERAPY, LLC; and LASER SPINE SURGICAL CENTER, LLC,

Appellees/Cross-Appellants.

Case No. 2D17-895

Opinion filed December 28, 2018.

Appeal from the Circuit Court for Hillsborough County; Richard A. Nielsen, Judge.

William J. Schifino of Burr & Forman LLP Tampa; Stuart C. Markman, Kristin A.

Exhibit "D"

Norse, and Robert W. Ritsch of Kynes, Markman & Felman, P.A., Tampa; Jennifer G. Altman and Shani Rivaux of Pillsbury Winthrop Shaw, Pittman LLP, Miami, for Appellants/Cross-Appellees.

Stacey D. Blank and Joseph H. Varner, III of Holland & Knight LLP, Tampa, for Appellees/Cross-Appellants.

KELLY, Judge.

This is the second appeal from a final judgment entered in favor of the appellants/cross-appellees in an action against the appellees/cross-appellants for breach of fiduciary duty, conspiracy, defamation, slander per se, tortious interference, and violation of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). The factual background underlying this litigation is fully set forth in Bailey v. St. Louis, 196 So. 3d 375 (Fla. 2d DCA 2016) (Bailey I), and repeating it here is unnecessary. In Bailey I, we affirmed the final judgment but reversed the damages awarded by the trial court. On remand, with the exception of adding an award for punitive damages, the trial court awarded the same damages this court had previously reversed. Again, we reverse those awards. As to the remaining issues raised in the appeal and in the cross-appeal, we affirm without further comment.

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also reversed the trial court's decision not to award monetary damages for the appellees' FDUTPA violations and not to award punitive damages. See id. We determined that the trial court incorrectly ruled that it could not award monetary damages under FDUTPA and that it also erroneously found that the facts did not support an award of punitive damages. See id.

There were two components to the total damage award of $1,600,000 at issue in Bailey I. The first was an award of $300,000 to Laserscopic Spine Centers of America, Inc. (Spine), for out-of-pocket damages for tortious inference. With respect to this award we stated, "In its order, the trial court accepted the calculations of only one of the experts 'as to out of pocket losses,' and it found that the expert testified that the Appellants suffered out-of-pocket damages of $6,831,172." 196 So. 3d at 377 (footnote omitted). Yet, the *total* award of damages was only $1,600,000. The trial court offered no explanation as to how it ended up entering a total award that was less than one-fourth of the amount it cited for out-of-pocket damages alone, and the record provided no insight into the basis for the award.[1]

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explain how it determined that $300,000 was the proper award. Its reasoning, however, is nearly a verbatim repeat of the arguments the appellees unsuccessfully urged us to accept in Bailey I. Moreover, the court's explanation rests on the flawed premise that it had rejected the expert's calculations. Accordingly, we again reverse the trial court's award to Spine and remand for entry of an award in the amount of $6,831,172, which is the amount the trial court found was established by the appellants' expert's testimony.

The remaining $1,050,000 of the damage award was the second component at issue in Bailey I. Appellant Laserscopic Spinal Centers of America, Inc. (Spinal), was awarded damages for breach of fiduciary duty, conspiracy, and tortious interference, while appellant Laserscopic Medical Clinic, LLC (LMC), received an award on a claim for breach of fiduciary duty. The appellants had sought damages under various theories, including disgorgement. On appeal, the appellants argued that the trial court had awarded no disgorgement damages, while the appellees argued that the entire $1,050,000 was an award of "lost profits measured by the yardstick of [Laser Spine Institute's] allegedly ill-gotten profits, which [it] was similarly required to disgorge." Because of the way the trial court had prepared its order, it was not possible to determine with certainty whether all or a portion of the award was for disgorgement. What we could determine, however, was that if it was for disgorgement, it was "grossly insufficient." Id. at 378.

The appellants had sought disgorgement of approximately $264,000,000. This figure represented the value of Laser Spine Institute (LSI) in 2009 plus $77.5

million in distributions paid to the owners between 2005 and 2009.[2] In their argument to the trial court, the appellees had taken the position that even if the court found some wrongdoing, any profits LSI earned were attributable solely to the efforts of management and not to any wrongdoing; therefore, the court should not award anything to the appellants.[3] Because it was their position that the appellants were not entitled to any damages, the appellees did not put on any evidence as to what amount of LSI's profits short of $264,000,000 could be attributed to their wrongful conduct.

On appeal, and without explaining how the court might have arrived at $1,050,000 rather than $264,000,000, the appellees argued the award reflected the trial court's conclusion that only this portion of LSI's profits was attributable to the appellees' wrongdoing. In support of this, the appellees pointed to the "Damages" section of the trial court's order and specifically to the trial court's citation to Pidcock v. Sunnyland America, Inc., 854 F. 2d 443, 447-48 (11th Cir.1988). The trial court cited Pidcock for the proposition that a plaintiff may only recover profits attributable to the underlying

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[2]While the parties have referred to the recovery the appellants sought as disgorgement of profits, it would be more accurate to describe it as disgorgement of the appellees' wrongful gain. See Restatement (Third) of Restitution and Unjust Enrichment § 3 (Am. Law. Inst. 2011). A conscious wrongdoer is liable for the "net profit attributable to the underlying wrong." Restatement (Third) of Restitution and Unjust Enrichment § 51(4). As used in section 51(4), "[p]rofit includes any form of use value, proceeds, or consequential gains." Restatement (Third) of Restitution and Unjust Enrichment § 51(5)(a). The appellees have not challenged, nor have we considered, the use of these particular elements to calculate "profit" for the purposes of disgorgement. Nor have they challenged the accuracy of the amounts testified to by the appellants' expert. At trial they offered no alternative method by which to calculate the amount of profits subject to disgorgement because it was their position that *none* of the profits LSI earned were subject to disgorgement.

[3]In Bailey I we discussed at length the trial court's findings regarding the appellees' wrongful conduct. 196 So. 3d at 377-78. When we reference "wrongdoing" in this opinion we are referring to the conduct we detailed in Bailey I.

wrong and not profits attributable to a defendant's "special or unique efforts" and that "aggressive or enterprising" management activities "may break the causal chain" between the wrongdoing and the defendant's profits. This, according to the appellees, was the reason the trial court limited the award. We will not repeat our discussion of Pidcock here. Suffice it to say that we thoroughly analyzed its applicability to the facts as found by the trial court, and we concluded that the limiting principles Pidcock discusses were inapplicable. See Bailey I, 196 So. 3d at 378. Thus, we held that if the award was for disgorgement, it was "grossly insufficient." See id.

Although we did not address it in our opinion, the appellees also argued that "in cases involving the misappropriation of proprietary information, a court will limit the disgorgement of a defendant's profits 'to the amount of time it would have taken the defendant to independently develop its product without the benefit of the plaintiff's trade secrets—in other words, the "head start" period.'" Thus, they argued that the trial court awarded "lost profits/disgorgement damages in an amount equal to the profits LSI derived from this head start." However, the trial court had found the appellants' misappropriation claims were barred by the statute of limitations. Further, at trial the appellants' did not seek to recover lost profits, instead focusing on disgorgement, business destruction damages, and out-of-pocket damages. Accordingly, we rejected this argument as well.

On remand, the trial court confirmed it was awarding disgorgement damages but then entered the same award we had reversed as "grossly inadequate." This appears to have happened because the appellees convinced the trial court that we had not actually found the award to be inadequate, we had simply found it to be

inadequately explained. And as was the case with the out-of-pocket award, the appellees apparently convinced the trial court it could explain its award by adopting the arguments the appellees had made and we had rejected in Bailey I.

In explaining the award on remand, the trial court's overarching focus is on why it believed Spinal was not successful, which as we explain below, is not part of the equation for determining the degree to which a wrongdoer's profits are attributable to its wrongful conduct. First, the trial court points to the appellants' "lack of business skills" and states that because of their lack of skill and poor business decisions they "should not be awarded disgorgement damages beyond the amounts in the final judgment." It also states it is rejecting the appellants' demand for disgorgement damages equal to all the profits earned by LSI because there is no causal relationship between the appellees' tortious conduct and all the profits. The court elaborates, stating that the appellees succeeded because of a "unique combination of individual, skilled medical doctors; highly effective and inventive executives, managers and administrators; creative marketing and advertising programs; and the availability and use of proper capital" and that even though Spinal "followed the same business model, it was not able to succeed."

The trial court's focus on the appellants' supposed lack of business skills as a basis to limit disgorgement shows a complete misapprehension of the principles applicable to disgorgement. Disgorgement is a remedy designed to deter wrongdoers by making it unprofitable to engage in the wrongful behavior. See Duty Free World, Inc. v. Miami Perfume Junction, Inc., 253 So. 3d 689, 698 (Fla. 3d DCA 2018) ("'Disgorgement is an equitable remedy intended to prevent unjust enrichment.'"

(quoting S.E.C. v. Monterosso, 757 F. 3d 1326, 1337 (11th Cir. 2014))); Restatement (Third) of Restitution and Unjust Enrichment § 1 (Am. Law Inst. 2011) ("A person who is unjustly enriched at the expense of another is subject to liability in restitution."); Restatement (Third) of Restitution and Unjust Enrichment § 3 ("A person is not permitted to profit by his own wrong."). The point of disgorgement is to deter wrongdoers by stripping them of the gains from their conduct:

> Restitution requires full disgorgement of profit by a conscious wrongdoer, not just because of the moral judgment implicit in the rule of this section, but because any lesser liability would provide an inadequate incentive to lawful behavior. If A anticipates (accurately) that unauthorized interference with B's entitlement may yield profits exceeding any damages B could prove, A has a dangerous incentive to take without asking—since the nonconsensual transaction promises to be more profitable than the forgone negotiation with B. The objective of that part of the law of restitution summarized by the rule of § 3 is to frustrate any such calculation.

Id. § 3 cmt. c; see also § 51 cmt. e ("The object of the disgorgement remedy—to eliminate the possibility of profit from conscious wrongdoing—is one of the cornerstones of the law of restitution and unjust enrichment.").

This case is a classic example of what this comment from the Restatement describes. As we detailed in Bailey I, when the appellants did not accept the appellees' offer to invest in Spinal, the appellees told them "you're going to accept this offer or we're going to take your doctors and we're going to take your company. And we're going to go up the street and we're going to do it ourselves." 196 So. 3d at 380. When threatened with litigation, the appellees said they were not concerned because the business would make ten times whatever damages they might have to pay in a lawsuit. See id. at 380-81.

Had the appellants been limited to recovering under a lost profits theory, that prediction would unquestionably be accurate. However, the measure of damages for disgorgement is not the profits the appellants might have made absent the wrongdoing—the measure of damages for conscious wrongdoing is the appellees' "net profit attributable to the underlying wrong." Restatement (Third) of Restitution and Unjust Enrichment § 51(4); see also Duty Free, 253 So. 3d at 698 ("The equitable remedy of disgorgement is measured by the defendant's ill-gotten profits or gains rather than the plaintiff's losses."). "When the defendant has acted in conscious disregard of the claimant's rights, the whole of the resulting gain is treated as unjust enrichment, even though the defendant's gain may exceed" the claimant's loss. Restatement (Third) of Restitution and Unjust Enrichment § 3 cmt. c. In fact, disgorgement may be awarded even if the claimant has not sustained any loss. Restatement (Third) of Restitution and Unjust Enrichment § 3, reporter's note a. ("[I]t is clear not only that there can be restitution of wrongful gain exceeding the plaintiff's loss, but that there can be restitution of wrongful gain in cases where the plaintiff has suffered an interference with protected interests but no measurable loss whatsoever."). The trial court's comments regarding the appellants' business acumen are misplaced in determining a disgorgement award.

To the extent the trial court's order can be read to rely on the limiting principles articulated in Pidcock, we specifically considered and rejected the applicability of those principles in Bailey I. See 196 So. 3d at 378-79. Our rejection of this as a basis to limit the award of disgorgement was the law of the case, and the trial court was bound by our determination. See Specialty Rests. Corp. v. Elliott, 924 So. 2d 834, 837 (Fla. 2d DCA 2005) ("[Q]uestions of law that have actually been decided on appeal must

govern the case in the same court and in the trial court through all subsequent stages of the proceedings."). Moreover, the "business model" to which the court attributes the appellees' success is the one it stole from the appellants along with its doctors, key employees, and everything else. In other words, what the trial court said amounts to a finding that the appellees' success was in fact attributable to their wrongdoing.

Lastly, the trial court sets out the reasoning it used to arrive at the figure of $1,050,000. However, it relies on the "head start" formula the appellees unsuccessfully argued in support of the award in Bailey I. As explained above, we rejected that argument as inapposite. Further, the trial court took this "head start" concept and more or less turned it on its head. The trial court reasoned that Spinal's operations were interrupted for approximately six months; therefore, the appellants were only entitled to six months of LSI's profits. Again, the trial court misapprehends the nature of the disgorgement remedy by measuring the award based on what the *appellants lost*—six months of profits—not what the appellees gained. See Guyana Tel. & Tel. Co., Ltd. v. Melbourne Int'l Commc'ns, Ltd., 329 F. 3d 1241, 1249 (11th Cir. 2003) (reversing where a jury was instructed to measure the plaintiff's right to restitution in terms of its loss rather than the benefit conferred on the defendants because "[r]estitution is a remedy that is often available to victims of a wrong. Restitution measures a plaintiff's recovery according to the defendant's, rather than the plaintiff's, rightful position").

Accordingly, we again reverse the awards for breach of fiduciary duty, conspiracy, and tortious interference and remand for the court to enter an award of disgorgement. Because the only testimony regarding the manner in which the disgorgement award should be measured came from the appellants' expert, the award

should be calculated according to the formula he proposed. Specifically, the court should enter an award based on the total value of LSI in 2009 combined with the total of the distributions to the owners of LSI between 2005 and 2009.[4] We also reverse the award for out-of-pocket damages and remand for entry of an award of $6,831,172.

Reversed and remanded for entry of a judgment in accordance with this opinion.

CASANUEVA and CRENSHAW, JJ., Concur.

[4]It appears from the evidence in the record that the proper amount of the award at a minimum falls between $264,000,000 and $265,000,000.

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M A N D A T E

from

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

SECOND DISTRICT

THIS CAUSE HAVING BEEN BROUGHT TO THIS COURT BY APPEAL, AND AFTER DUE CONSIDERATION THE COURT HAVING ISSUED ITS OPINION;

YOU ARE HEREBY COMMANDED THAT SUCH FURTHER PROCEEDINGS BE HAD IN SAID CAUSE, IF REQUIRED, IN ACCORDANCE WITH THE OPINION OF THIS COURT ATTACHED HERETO AND INCORPORATED AS PART OF THIS ORDER, AND WITH THE RULES OF PROCEDURE AND LAWS OF THE STATE OF FLORIDA.

WITNESS THE HONORABLE EDWARD C. LAROSE CHIEF JUDGE OF THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, SECOND DISTRICT, AND THE SEAL OF THE SAID COURT AT LAKELAND, FLORIDA ON THIS DAY.

DATE: May 06, 2019

SECOND DCA CASE NO. 17-0895

COUNTY OF ORIGIN: Hillsborough

LOWER TRIBUNAL CASE NO. 06-CA-008498

CASE STYLE: JOE SAMUEL BAILEY, ET AL v. JAMES S. ST. LOUIS, ET AL

Mary Elizabeth Kuenzel

Mary Elizabeth Kuenzel
Clerk

cc:
Stuart C. Markman, Esq.
Jennifer G. Altman, Esq.
William J. Schifino, Jr., Esq.
Joseph H. Varner, Esq.
Kristin A. Norse, Esq.
Shani Rivaux, Esq.
Pat Frank, Clerk
Stacy D. Blank, Esq.
Robert W. Ritsch, Esq.

Exhibit "E"

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT

IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

CIVIL DIVISION

JOE SAMUEL BAILEY*, et al*.,

Plaintiffs,

vs.

JAMES S. ST. LOUIS, *et al*.,

Defendants.

_____/

Case No. 06-08498

Division L

SECOND AMENDED FINAL JUDGMENT

Pursuant to the Court's Order on Non-Jury Trial dated October 9, 2012:

It is ADJUDGED that:

1. Plaintiff Joe Samuel Bailey, whose address is 308 Wallick Drive, Cotter, AR 72626, does have and recover from Defendants James S. St. Louis, D.O., whose address is 4728 N. Habana Avenue, Suite 202, Tampa, FL 33614; Michael W. Perry, M.D., whose address is 5332 Avion Park Drive, Tampa, FL 33607; EFO Holdings L.P., whose principal address is 2828 Routh Street, Suite 500, Dallas, TX 75201; EFO Genpar, Inc., whose principal address is 500 N. Akard Street, Suite 1500, Dallas, TX 75201; and EFO Laser Spine Institute, Ltd., whose principal address is 2828 Routh Street, Suite 500, Dallas, TX 75201, jointly and severally, the sum of $250,000.00, **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH**.

Exhibit "F"

2. Plaintiff Joe Samuel Bailey does have and recover from Defendants James S. St. Louis, D.O.; Michael W. Perry, M.D.; EFO Holdings L.P.; EFO Genpar, Inc.; and EFO Laser Spine Institute, Ltd., jointly and severally, the sum of $750,000.00 in punitive damages, **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH**.

3. Plaintiffs Laserscopic Spinal Centers of America, Inc., whose address 308 Wallick Drive, Cotter, AR 72626, and Laserscopic Medical Clinic, LLC, whose address is 308 Wallick Drive, Cotter, AR 72626, do have and recover from Defendants James S. St. Louis, D.O.; EFO Holdings L.P.; EFO Genpar, Inc.; EFO Laser Spine Institute, Ltd.; Laser Spine Institute, LLC, who address is 5332 Avion Park Drive, Tampa, FL 33607; Laser Spine Medical Clinic, LLC, whose address is 3001 N. Rocky Point Drive E, Suite 380, Tampa, FL 33607; Laser Spine Physical Therapy, LLC, whose address is 3001 N. Rocky Point Drive E, Suite 380, Tampa, FL 33607; and Laser Spine Surgical Center, LLC, whose address is 5332 Avion Park Drive, Tampa, FL 33607, jointly and severally, the sum of $264,000,000.00, **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH**.

4. Plaintiffs Laserscopic Spinal Centers of America, Inc., and Laserscopic Medical Clinic, LLC, do have and recover from Defendants James S. St. Louis, D.O.; EFO Holdings L.P.; EFO Genpar, Inc.; EFO Laser Spine Institute, Ltd.; Laser Spine Institute, LLC; Laser Spine Medical Clinic, LLC; Laser Spine Physical Therapy, LLC; and Laser Spine Surgical Center, LLC, jointly and severally, the sum of $5,000,000.00 in punitive damages, **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH**.

5. Plaintiff Laserscopic Spine Centers of America, Inc., whose address is 308 Wallick Drive, Cotter, AR 72626, does have and recover from Defendants EFO Holdings, L.P.; EFO Genpar, Inc.; James S. St. Louis, D.O.; EFO Laser Spine Institute, Ltd.; Laser Spine Institute, LLC; Laser Spine Medical Clinic, LLC; Laser Spine Physical Therapy, LLC; and Laser Spine Surgical Center, LLC, jointly and severally, the sum of $6,831,172.00, **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH**.

6. These sums shall bear interest at the rate of 4.75% from October 9, 2012 to December 31, 2016; 4.97% from January 1, 2017 through December 31, 2017; and, 5.72% from January 1, 2018 through December 31, 2018 in accordance with Florida Statute §55.03. Thereafter, on January 1st of each succeeding year until the judgment is paid, the interest rate will adjust in accordance with Florida Statute § 55.03. Accordingly, the prejudgment interest through April 30, 2019 is as follows:

a. On the slander per se claim the damage awarded to Plaintiff Bailey was $250,000, and the amount of prejudgment interest that has accrued is $83,311.00. Plaintiff Bailey was awarded punitive damages in the amount of $750,000.00, and the prejudgment interest on that amount is $249,934.00. Accordingly, the amount of the final judgment with prejudgment interest through April 30, 2019 to Plaintiff Bailey is **$1,333,245.00**, which shall continue to accrue statutory interest. **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH.**

b. On the claims in favor of Plaintiffs Laserscopic Spinal Centers of America, Inc. and Laserscopic Medical Clinic, LLC, they were awarded $264,000,000.00, which has accrued prejudgment interest through April 30, 2019 of $87,976,680.00. Plaintiffs Laserscopic Spinal Centers of America, Inc. and Laserscopic Medical Clinic, LLC

were also awarded punitive damages in the amount of $5,000,000.00, and the prejudgment interest on that amount through April 30, 2019 is $1,666,225.00. Accordingly, the amount of the final judgment with prejudgment interest through April 30, 2019 to Plaintiffs Laserscopic Spinal Centers of America, Inc. and Laserscopic Medical Clinic, LLC is **$358,642,905.00**, which shall continue to accrue statutory interest. **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH.**

c. On the claims in favor of Laserscopic Spine Centers of America, Inc., it was awarded $6,831,172.00; the prejudgment interest through April 30, 2019 on this amount is $2,266,066.00. Accordingly, the amount of the final judgment with prejudgment interest to Plaintiff Laserscopic Spine Centers of America, Inc. through April 30, 2019 is **$9,097,238.00**, which shall continue to accrue statutory interest. **ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH.**

7. This Court reserves jurisdiction to award attorney's fees and costs to Plaintiffs.

8. It is further ordered and adjudged that the judgment debtors shall complete under oath Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet), including all required attachments, and serve it on the judgment creditor's attorney, or the judgment creditor if the judgment creditor is not represented by an attorney, within 45 days from the date of this final judgment, unless the final judgment is satisfied or post-judgment discovery is stayed. Jurisdiction of this case is retained to enter further orders that are proper to compel the judgment debtors to complete form 1.977, including all required attachments, and serve it on the judgment creditor's attorney, or the judgment creditor if the judgment creditor is not represented by an attorney.

9. The Court retains jurisdiction over this action to enter further Orders that are proper and to award further relief, including without limitation, equitable relief, writs of possession, and to conduct proceedings supplementary, to implead third parties, as this Court deems just, equitable, and proper.

DONE AND ORDERED in Chambers in Hillsborough County, Florida, this ____ day of May, 2019.

_____
CIRCUIT COURT JUDGE

cc: All Counsel of Record

EXECUTION VERSION

LIMITED WAIVER AND FIRST AMENDMENT TO CREDIT AGREEMENT

This LIMITED WAIVER AND FIRST AMENDMENT TO CREDIT AGREEMENT (this "Amendment") is entered into as of November 18, 2016 (the "First Amendment Effective Date"), between LASER SPINE INSTITUTE, LLC, a Florida limited liability company, LSI MANAGEMENT COMPANY, LLC, a Florida limited liability company, LASER SPINE INSTITUTE CONSULTING, LLC, a Delaware limited liability company, and MEDICAL CARE MANAGEMENT SERVICES, LLC, a Delaware limited liability company (collectively, the "Borrowers" and each individually, a "Borrower"), the lenders party hereto, and TEXAS CAPITAL BANK, NATIONAL ASSOCIATION, as administrative agent for the Lenders (in such capacity, the "Administrative Agent"). Capitalized terms used but not defined in this Amendment shall have the meanings given them in the Credit Agreement (defined below).

RECITALS

A. The Borrowers, the Lenders from time to time party thereto (the "Lenders") and Administrative Agent entered into that certain Credit Agreement dated as of July 2, 2015 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement");

B. Borrowers have informed Administrative Agent that the Defaults and Events of Default identified on Schedule 1 attached hereto have occurred prior to the First Amendment Effective Date and are continuing under the Loan Documents (the "Specified Defaults");

C. As of October 31, 2016, Borrowers were indebted to Lenders pursuant to the Loan Documents for the Obligations (including the Loans in the amount of $175,982,050.70, consisting of (i) principal in the amount of $40,097,747.36, and accrued and unpaid interest (including interest at the Default Interest Rate) in the amount of $81,803.38, in respect of the Revolving Credit Facility (ii) principal in the amount of $135,000,000, and accrued and unpaid interest (including interest at the Default Interest Rate) in the amount of $802,500, in respect of the Term Loan), plus fees and costs incurred by the Administrative Agent and the Lenders that are reimbursable by Borrowers pursuant to the Credit Agreement.

D. As of the date hereof, the Specified Defaults are continuing and the Borrowers have requested that the Administrative Agent and the Lenders (i) waive the Specified Defaults and any other Defaults and Events of Default existing as of the date hereof and (ii) amend the Credit Agreement in certain respects, including the requirement set forth in Section 7.12(b) of the Credit Agreement, in part, to allow for payment of certain fees and expenses and other general corporate purposes as more particularly set forth below; and

E. The Administrative Agent and the Required Lenders have agreed to (i) waive the Specified Defaults and any other Defaults and Events of Default existing as of the date hereof and (ii) amend the Credit Agreement in certain respects, including the requirement set forth in Section 7.12(b) of the Credit Agreement, in each case, upon and subject to the terms and conditions set forth in this Amendment.

NOW, THEREFORE, in consideration of the premises herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

Exhibit "G"

ARTICLE I
Limited Waiver; Certain Agreements

1.01 Limited Waiver. In reliance upon the representations, warranties and covenants of the Borrowers contained in this Amendment and subject to the terms and conditions of this Amendment and any document or instrument executed in connection herewith, the Administrative Agent and the Lenders hereby agree to (i) waive the Specified Defaults and any other Default or Event of Default existing as of the date hereof, (ii) waive all Default Interest accruing on outstanding Loans from and after October 11, 2016, and (iii) (x) waive, in part, the requirement to maintain the Cash Reserve Account pursuant to Section 7.12(b) of the Credit Agreement such that from and after the date hereof (and after giving effect to the terms hereof), the minimum balance in the Cash Reserve Account shall be not less than $2,606,202.46, and (y) transfer an amount equal to $1,143,797.54 from the Cash Reserve Account to the Borrowers' primary operating account maintained with Agent (the "Partial Cash Reserve Release"); provided that, the limited waiver set forth in this Section 1.01 is expressly limited as follows: (i) such waiver shall not apply with respect to any other violation or breach of Section 7.12(b) of the Credit Agreement or any other violation or breach of the Credit Agreement that may occur from time to time hereafter, (ii) such waiver is limited solely to the Specified Defaults and any other Default or Event of Default existing as of the date hereof and the Partial Cash Reserve Release and (iii) such waiver is a limited one-time waiver. Except for the consent and waivers expressly provided in this Section 1.01 and the amendments and other matters expressly provided for in this Amendment, nothing contained herein shall be deemed a consent to, or waiver of, any other action or inaction of Borrowers or the other Obligated Parties which constitutes (or would constitute) a violation of any provision of the Credit Agreement or any other Loan Document, or which constitutes (or would constitute) a Default or Event of Default arising after the date hereof. The Borrowers acknowledge and agree that, except as expressly set forth herein, nothing herein shall be construed as a continuing consent to or waiver of any provisions of the Credit Agreement or any other Loan Document. Neither the Lenders nor the Administrative Agent shall be obligated to grant any future waivers, consents or amendments with respect to any other provision of the Credit Agreement or any other Loan Document.

1.02 Binding Effect of Documents. Except as limited and/or modified by this Amendment and by the documents executed in connection herewith, the Loan Documents, shall be deemed to be in full force and effect, and all provisions of the Loan Documents relating to the rights and remedies of the Administrative Agent and the Lenders shall continue to be in effect until such time as all Obligations have been finally paid in full in cash. Borrowers further acknowledge, confirm and agree that the Administrative Agent (for the benefit of the Lenders) has an shall continue to have valid, enforceable and perfected first-priority (subject to Permitted Liens) liens upon and security interests in the Collateral heretofore granted to the Administrative Agent pursuant to the Credit Agreement and the other Loan Documents or otherwise granted to or held by the Administrative Agent (for the benefit of the Lenders).

ARTICLE II
Amendments to Credit Agreement

Subject to the satisfaction or waiver in writing of each condition precedent set forth in Article IV of this Amendment, and in reliance on the representations, warranties, covenants and agreements contained in this Amendment, the Credit Agreement shall be amended in its entirety to read in the form of Exhibit A attached hereto.

ARTICLE III

Amendments to Security Agreement

Subject to the satisfaction or waiver in writing of each condition precedent set forth in Article IV of this Amendment, and in reliance on the representations, warranties, covenants and agreements contained in this Amendment, the Security Agreement shall be amended as set forth in this Article III.

3.01 Amendment to Section 3.12. Section 3.12 of the Security Agreement shall be and it hereby is amended and restated in its entirety to read as follows:

> *3.12 **Accounts.** Each Account to Grantor's actual knowledge (i) is genuine and in all respects what it purports to be, and is not evidenced by a judgment, (ii) arises out of a completed, bona fide sale and delivery of goods or rendition of services in the ordinary course of business, and substantially in accordance with any purchase order, contract or other document relating thereto and (iii) is payable solely to the Borrowers or any Subsidiary and, other than Accounts from any Government Debtor, no purchase order, agreement, document or applicable Law restricts assignment of such Account to Administrative Agent (regardless of whether, under the UCC, the restriction is ineffective).*

3.02 Amendment to Schedules. Schedules 3.5, 3.6, 3.10 and 3.17 to the Security Agreement shall be amended and restated in their entireties with Schedules 3.5, 3.6, 3.10 and 3.17 set forth on Schedule 2 to this Amendment.

ARTICLE IV

Conditions Precedent and Additional Covenants

4.01 Conditions to Effectiveness. Notwithstanding anything herein to the contrary, the limited waiver set forth in Article I hereof, the amendments to the Credit Agreement set forth in Article II hereof and the amendments to the Security Agreement set forth in Article III hereof, in each case, shall be effective upon the satisfaction of all of the conditions set forth in this Section 4.01:

(a) The Administrative Agent, the Lenders and the Borrowers shall have executed and delivered this Amendment;

(b) The Borrowers shall have paid (i) to the Administrative Agent for the benefit of the Lenders, an amendment fee in an aggregate amount equal to $750,000, which fee shall be paid with the proceeds of the Partial Cash Reserve Release and (ii) all outstanding professional fees, retainers and expenses that have been incurred by the Administrative Agent and the Lenders and the Administrative Agent's consultants, attorneys and financial advisors, including without limitation Deloitte and Norton Rose Fulbright US LLP, on and prior to the date hereof that are required to be reimbursed by the Borrowers under the Credit Agreement, in the amounts invoiced on or prior to the date hereof, which fees, retainers and expenses shall be paid with the proceeds of the Partial Cash Reserve Release;

(c) The Administrative Agent shall have received evidence reasonably satisfactory to it that Borrowers have received at least $50,000,000 of gross cash proceeds from the incurrence of Subordinated Debt and/or issuance of equity during the period from June 30, 2016 through and including the First Amendment Effective Date, including an amount equal to or greater than $37,000,000 on the First Amendment Effective Date (the "Equity Investment"), and in each case, on terms and conditions reasonably acceptable to the Administrative Agent;

(d) The Borrowers shall have repaid outstanding Revolving Credit Loans in an aggregate amount equal to at least $37,000,000 with the proceeds of the Equity Investment;

(e) The Borrowers shall have executed and delivered amended and restated Revolving Credit Notes;

(f) The Borrowers shall have delivered a certificate of a Responsible Officer of the Borrower Representative certifying to, among other things, the material Equity Investment documents, including documents evidencing the Subordinated Debt issued in connection therewith;

(g) The Borrowers shall have delivered a certificate of an authorized officer of the Borrowers certifying that the Constituent Documents of Borrowers and each Subsidiary have not changed since the Closing Date, except as set forth therein;

(h) The Borrowers shall have delivered an incumbency certificate and certified resolutions of the Board of Managers of Parent signed by an authorized officer of Parent and Borrowers authorizing the execution, delivery, and performance of this Amendment and such other Loan Documents by Parent and Borrowers and accompanied by a certificate, signed by an authorized officer of Parent and Borrowers and such other Person, setting forth the current members of the Board of Managers of Parent;

(i) The Administrative Agent shall have received the Consent and Agreement attached hereto, executed by each of the Guarantors;

(j) The Administrative Agent shall have received evidence reasonably satisfactory to it that Borrowers have restructured the tenant improvement payments due to Highwoods Realty Limited Partnership on terms and conditions reasonably acceptable to the Administrative Agent and the Lenders;

(k) The Administrative Agent shall have received a Borrowing Base Certificate prepared as of September 30, 2016; and

(l) The Administrative Agent shall have received such other instruments and documents incidental and appropriate to this Amendment and the transactions provided for herein as the Administrative Agent or its special counsel may reasonably request, and all such documents shall be in form and substance satisfactory to the Administrative Agent.

By its execution and delivery of its signature page hereto, Administrative Agent and each Lender executing such a signature page confirms that (x) the foregoing conditions have been satisfied and (y) the Equity Investment documents and the documents evidencing the Subordinated Debt issued prior to the date hereof or in connection with the Equity Investment are approved.

4.02 Post-Closing Covenants.

(a) Within forty-five (45) days following the First Amendment Effective Date (or such later date as Administrative Agent may agree in its reasonable discretion), Borrowers shall have delivered a copy of the annual audit report of Parent and its Subsidiaries for the fiscal year ending December 31, 2015 containing, on a consolidated basis, a balance sheet and the related statements of income, members equity and cash flow as of the end of such fiscal year and for the twelve (12) month period then ended, in each case setting forth in comparative form the figures for the preceding fiscal year, all in reasonable detail and audited and certified by RSM US LLP,

to the effect that such report has been prepared in accordance with GAAP and containing no material qualifications or limitations on scope.

(b) On the earlier of (i) the date that is three (3) days after the date Borrowers receive regulatory approval in Pennsylvania for the change of control created by the Equity Investment and (ii) December 31, 2016, the Borrowers shall have delivered written confirmation of the conversion of Subordinated Debt outstanding on or prior to the date hereof to equity of the Borrowers on terms consistent with that certain Summary of Terms for Additional Investment Lead by Sheridan Capital Partners, dated September 21, 2016, in form and substance reasonably satisfactory to Administrative Agent and Required Lenders.

ARTICLE V

No Waiver

Except as expressly set forth herein, nothing contained herein shall be construed as a waiver by the Administrative Agent or any Lender of any covenant or provision of the Credit Agreement, the other Loan Documents, this Amendment, or of any other contract or instrument between the Borrowers, on the one hand, and the Administrative Agent and the Lenders, on the other hand, and the failure by the Administrative Agent or the Lenders at any time or times hereafter to require strict performance by the Borrowers of any provision thereof shall not waive, affect or diminish any right of the Administrative Agent or the Lenders to thereafter demand strict compliance therewith. The Administrative Agent and the Lenders hereby reserve all rights granted under the Credit Agreement, the other Loan Documents, this Amendment and any other contract or instrument between the Borrowers, on the one hand, and the Administrative Agent and the Lenders, on the other hand. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THIS AMENDMENT IS NOT TO BE CONSTRUED AS A CURE, WAIVER OR FORGIVENESS OF ANY DEFAULT OR EVENT OF DEFAULT UNDER AND AS DEFINED IN THE CREDIT AGREEMENT NOW EXISTING OR HEREAFTER ARISING.

ARTICLE VI

Ratifications, Representations and Warranties

6.01 Ratifications. Except with respect to the Defaults and Events of Default waived hereunder or as expressly modified and superseded by this Amendment, the terms and provisions of the Credit Agreement and the other Loan Documents, are ratified and confirmed and shall continue in full force and effect. The Borrowers and Guarantors each hereby agree that the Credit Agreement and the other Loan Documents shall continue to be legal, valid, binding and enforceable in accordance with their respective terms.

6.02 Representations and Warranties. The Borrowers and Guarantors each hereby represent and warrant to the Administrative Agent and the Lenders that (a) the execution, delivery and performance of this Amendment and any and all other Loan Documents executed and/or delivered in connection herewith have been authorized by all requisite organizational action on the part of the Borrowers and Guarantors, respectively, and will not violate the Constituent Documents of the Borrowers or Guarantors, respectively; (b) after giving effect to the waiver contained in Article I hereof, the representations and warranties contained in the Credit Agreement and any other Loan Document are true and correct in all material respects on and as of the date hereof as though made on and as of the date hereof except to the extent that such representation or warranty relates to an earlier date; (c) other than the Specified Defaults, to the knowledge of the Responsible Officers of the Borrower Representative, no Default or Event of Default under and as defined in the Credit Agreement has occurred and is continuing; (d) other than the Specified Defaults as waived hereunder, to the knowledge of the Responsible Officers

of the Borrower Representative, the Borrowers and Guarantors are in full compliance with all covenants and agreements contained in the Credit Agreement and the other Loan Documents, unless such compliance has been specifically waived in writing by the Administrative Agent (with the consent of the Required Lenders); and (e) other than the Specified Default relating to the name change resulting in LSI Flexible Schedule, LLC and as otherwise delivered to Agent in connection with this Amendment, the Borrowers have not amended their Constituent Documents since the date of the Credit Agreement.

ARTICLE VII

Miscellaneous Provisions

7.01 Survival of Representations and Warranties. All representations and warranties made in this Amendment, the Credit Agreement, or any other Loan Document, including, without limitation, any document furnished in connection with this Amendment, shall survive the execution and delivery of this Amendment, and no investigation by the Administrative Agent or any closing shall affect such representations and warranties or the right of the Administrative Agent to rely upon them.

7.02 Reference to Credit Agreement. Each of the Loan Documents, including the Credit Agreement, and any and all other agreements, documents or instruments now or hereafter executed and delivered pursuant to the terms hereof or pursuant to the terms of the Credit Agreement, as amended hereby, are hereby amended so that any reference in such Loan Documents to the Credit Agreement shall mean a reference to the Credit Agreement, as amended hereby.

7.03 Expenses of Administrative Agent. In accordance with Section 12.1 of the Credit Agreement, the Borrowers agree to pay on demand all reasonable costs and expenses incurred by the Administrative Agent and Lenders in connection with the preparation, negotiation and execution of this Amendment and the other Loan Documents executed pursuant hereto and any and all amendments, modifications, and supplements thereto, including, without limitation, the costs and fees of the Administrative Agent's and Lenders' legal counsel, and all costs and expenses incurred by the Administrative Agent and Lenders in connection with the enforcement or preservation of any rights under the Credit Agreement or any other Loan Documents, including, without limitation, the costs and fees of the Administrative Agent's and Lenders' legal counsel and financial advisors.

7.04 Severability. Any provision of this Amendment held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Amendment and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

7.05 Successors and Assigns; No Third Party Beneficiaries. This Amendment is binding upon and shall inure to the benefit of each party hereto and their respective successors and assigns and upon execution by the Required Lenders shall be binding upon Administrative Agent and all Lenders, provided that the Borrowers may not assign or transfer any of their rights or obligations hereunder without the prior written consent of the Administrative Agent and the Lenders. Except as expressly provided in the preceding sentence, neither this Amendment nor any of the provisions hereof shall inure to the benefit of any Person other than the parties hereto.

7.06 Counterparts. This Amendment may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original, but all of which when taken together shall constitute one and the same instrument. Delivery of an executed counterpart to this Amendment by facsimile or other electronic means shall be effective as delivery of a manually executed counterpart to this Amendment.

7.07 **Effect of Waiver.** No consent or waiver, express or implied, by the Administrative Agent or the Lenders to or for any breach of or deviation from any covenant or condition by any Borrower shall be deemed a consent to or waiver of any other breach of the same or any other covenant, condition or duty.

7.08 **Headings.** The headings, captions, and arrangements used in this Amendment are for convenience only and shall not affect the interpretation of this Amendment.

7.09 **APPLICABLE LAW. THIS AMENDMENT AND ANY OTHER LOAN DOCUMENTS EXECUTED PURSUANT HERETO SHALL BE DEEMED TO HAVE BEEN MADE AND TO BE PERFORMABLE IN AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.**

7.10 **RELEASE. AS A MATERIAL PART OF THE CONSIDERATION FOR THE ADMINISTRATIVE AGENT AND THE LENDERS ENTERING INTO THIS AMENDMENT, EACH BORROWER AND EACH GUARANTOR, ON BEHALF OF ITSELF AND EACH OF ITS AFFILIATES, RESPECTIVELY (COLLECTIVELY "RELEASOR") AGREES AS FOLLOWS (THE "RELEASE PROVISION"):**

(A) RELEASOR HEREBY RELEASES AND FOREVER DISCHARGES THE ADMINISTRATIVE AGENT, EACH LENDER, AND THEIR PREDECESSORS, SUCCESSORS, ASSIGNS, OFFICERS, MANAGERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, ATTORNEYS (INCLUDING WITHOUT LIMITATION NORTON ROSE FULBRIGHT US LLP), REPRESENTATIVES, PARENT CORPORATIONS, SUBSIDIARIES, AND AFFILIATES (HEREINAFTER ALL OF THE ABOVE COLLECTIVELY REFERRED TO AS "LENDER GROUP") JOINTLY AND SEVERALLY FROM ANY AND ALL CLAIMS, COUNTERCLAIMS, DEMANDS, DAMAGES, DEBTS, AGREEMENTS, COVENANTS, SUITS, CONTRACTS, OBLIGATIONS, LIABILITIES, ACCOUNTS, OFFSETS, RIGHTS, ACTIONS, AND CAUSES OF ACTION OF ANY NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION FOR CONTRIBUTION AND INDEMNITY ARISING AS A RESULT OF ACTS OR CIRCUMSTANCES EXISTING OR ARISING ON OR PRIOR TO THE DATE HEREOF, WHETHER ARISING AT LAW OR IN EQUITY, WHETHER PRESENTLY POSSESSED OR POSSESSED IN THE FUTURE, WHETHER KNOWN OR UNKNOWN, WHETHER LIABILITY BE DIRECT OR INDIRECT, LIQUIDATED OR UNLIQUIDATED, WHETHER PRESENTLY ACCRUED OR TO ACCRUE HEREAFTER, WHETHER ABSOLUTE OR CONTINGENT, FORESEEN OR UNFORESEEN, AND WHETHER OR NOT HERETOFORE ASSERTED, WHICH RELEASOR MAY HAVE OR CLAIM TO HAVE AGAINST ANY OF LENDER GROUP; PROVIDED, HOWEVER, THAT LENDER SHALL NOT BE RELEASED HEREBY FROM ANY OBLIGATION TO PAY TO RELEASOR ANY AMOUNTS THAT RELEASOR MAY HAVE ON DEPOSIT WITH LENDER, IN ACCORDANCE WITH APPLICABLE LAW AND THE TERMS OF THE LOAN DOCUMENTS AND THE DOCUMENTS ESTABLISHING ANY SUCH DEPOSIT RELATIONSHIP.

(B) RELEASOR AGREES NOT TO SUE ANY OF THE LENDER GROUP OR IN ANY WAY ASSIST ANY OTHER PERSON OR ENTITY IN SUING LENDER GROUP WITH RESPECT TO ANY CLAIM RELEASED HEREIN. THE RELEASE PROVISION MAY BE PLEADED AS A FULL AND COMPLETE DEFENSE TO, AND MAY BE USED AS THE BASIS FOR AN INJUNCTION AGAINST, ANY ACTION, SUIT, OR OTHER PROCEEDING WHICH MAY BE INSTITUTED, PROSECUTED, OR ATTEMPTED IN BREACH OF THE RELEASE CONTAINED HEREIN.

(C) RELEASOR ACKNOWLEDGES, WARRANTS, AND REPRESENTS TO LENDER GROUP THAT:

(I) RELEASOR HAS READ AND UNDERSTANDS THE EFFECT OF THE RELEASE PROVISION. RELEASOR HAS HAD THE ASSISTANCE OF INDEPENDENT COUNSEL OF ITS OWN CHOICE, OR HAS HAD THE OPPORTUNITY TO RETAIN SUCH INDEPENDENT COUNSEL, IN REVIEWING, DISCUSSING, AND CONSIDERING ALL THE TERMS OF THE RELEASE PROVISION; AND IF COUNSEL WAS RETAINED, COUNSEL FOR RELEASOR HAS READ AND CONSIDERED THE RELEASE PROVISION AND ADVISED RELEASOR TO EXECUTE THE SAME. BEFORE EXECUTION OF THIS AGREEMENT, RELEASOR HAS HAD ADEQUATE OPPORTUNITY TO MAKE WHATEVER INVESTIGATION OR INQUIRY IT MAY DEEM NECESSARY OR DESIRABLE IN CONNECTION WITH THE SUBJECT MATTER OF THE RELEASE PROVISION.

(II) RELEASOR IS NOT ACTING IN RELIANCE ON ANY REPRESENTATION, UNDERSTANDING, OR AGREEMENT NOT EXPRESSLY SET FORTH HEREIN. RELEASOR ACKNOWLEDGES THAT LENDER GROUP HAS NOT MADE ANY REPRESENTATION WITH RESPECT TO THE RELEASE PROVISION EXCEPT AS EXPRESSLY SET FORTH HEREIN.

(III) RELEASOR HAS EXECUTED THIS AGREEMENT AND THE RELEASE PROVISION THEREOF AS ITS FREE AND VOLUNTARY ACT, WITHOUT ANY DURESS, COERCION, OR UNDUE INFLUENCE EXERTED BY OR ON BEHALF OF ANY PERSON.

(IV) RELEASOR IS THE SOLE OWNER OF THE CLAIMS RELEASED BY THE RELEASE PROVISION, AND RELEASOR HAS NOT HERETOFORE CONVEYED, ASSIGNED OR ENCUMBERED ALL OR ANY PART OF SUCH CLAIMS OR ANY INTEREST IN ANY SUCH CLAIMS TO ANY OTHER PERSON OR ENTITY.

(D) RELEASOR UNDERSTANDS THAT THE RELEASE PROVISION IS A MATERIAL CONSIDERATION IN THE AGREEMENT OF LENDER GROUP TO ENTER INTO THIS AMENDMENT.

(E) IT IS THE EXPRESS INTENT OF RELEASOR THAT THE RELEASE AND DISCHARGE SET FORTH IN THE RELEASE PROVISION BE CONSTRUED AS BROADLY AS POSSIBLE IN FAVOR OF LENDER GROUP SO AS TO FORECLOSE FOREVER THE ASSERTION BY RELEASOR OF ANY CLAIMS RELEASED HEREBY AGAINST LENDER GROUP.

(F) IF ANY TERM, PROVISION, COVENANT, OR CONDITION OF THE RELEASE PROVISION IS HELD BY A COURT OF COMPETENT JURISDICTION TO BE INVALID, ILLEGAL, OR UNENFORCEABLE, THE REMAINDER OF THE PROVISIONS SHALL REMAIN IN FULL FORCE AND EFFECT.

7.11 FINAL AGREEMENT. THIS AMENDMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE ENTIRE AGREEMENT OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF ON THE DATE THIS AMENDMENT IS EXECUTED. THIS AMENDMENT AND THE OTHER LOAN DOCUMENTS MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. NO MODIFICATION, RESCISSION, WAIVER,

RELEASE OR AMENDMENT OF ANY PROVISION OF THIS AMENDMENT SHALL BE MADE, EXCEPT BY A WRITTEN AGREEMENT SIGNED BY BORROWERS, THE ADMINISTRATIVE AGENT AND THE REQUIRED LENDERS.

7.12 Loan Document. This Amendment shall be deemed to constitute a Loan Document for all purposes and in all respects.

7.13 Additional Documents. The Borrowers, at the Administrative Agent's request, shall promptly execute or cause to be executed and shall deliver to the Administrative Agent, any and all documents, instruments and agreements reasonably requested by the Administrative Agent to give effect to or carry out the terms or intent of this Amendment

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed as of the date first written above.

BORROWERS:

LASER SPINE INSTITUTE, LLC

By:_____
Name: David Pillsbury
Title: Chief Executive Officer

LSI MANAGEMENT COMPANY, LLC

By:_____
Name: David Pillsbury
Title: Chief Executive Officer

LASER SPINE INSTITUTE CONSULTING, LLC

By:_____
Name: David Pillsbury
Title: Chief Executive Officer

MEDICAL CARE MANAGEMENT SERVICES, LLC

By:_____
Name: David Pillsbury
Title: Chief Executive Officer

ADMINISTRATIVE AGENT:

TEXAS CAPITAL BANK, NATIONAL ASSOCIATION

By: _____

Name: Bruce Shilcutt

Title: Executive Vice President

LENDERS:

TEXAS CAPITAL BANK, NATIONAL ASSOCIATION

By:_____
Name: Bruce Shilcutt
Title: Executive Vice President

HEALTHCARE FINANCIAL SOLUTIONS, LLC

By: _____

Name: Thomas Costello

Title: Duly Authorized Signatory

COMPASS BANK D/B/A BBVA COMPASS

By: _____

Name: Albert M Watson

Title: SVP

BMO HARRIS BANK N.A.

By: _____

Name: Sue Blazis

Title: Managing Director

REGIONS BANK

By: _____

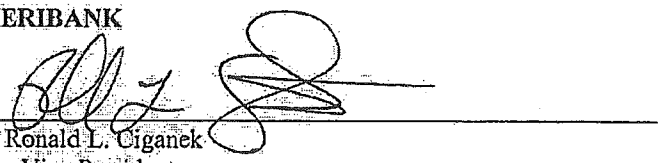
Name: John F. Bohan

Title: Vice President

FLORIDA COMMUNITY BANK, N.A.

By: _____
Name: Irene Marshall
Title: SVP

USAMERIBANK

By: 
Name: Ronald L. Ciganek
Title: Sr. Vice President

BOKF NA, DBA BANK OF OKLAHOMA

By: _____

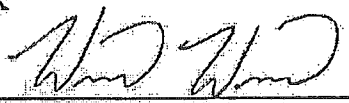
Name: Ryan Kirk

Title: Senior Vice President

CAPSTAR BANK

By: _____
Name: Scott McGuire
Title: VP, Special Assets

CITY BANK

By: 

Name: Wilson Wicks
Title: Senior Vice President

TEXAS SECURITY BANK

By: _____
Name:
Title:

GUARANTORS' CONSENT AND AGREEMENT
TO
LIMITED WAIVER AND FIRST AMENDMENT TO CREDIT AGREEMENT

As an inducement to Administrative Agent and Lenders to execute, and in consideration of Administrative Agent's and Lenders' execution of this Amendment, each of the undersigned hereby consents to this Amendment and agrees that this Amendment shall in no way release, diminish, impair, reduce or otherwise adversely affect the obligations and liabilities of the undersigned under the Guaranty executed by the undersigned in connection with the Credit Agreement, or under any Loan Documents, agreements, documents, or instruments executed by the undersigned to create liens, security interests or charges to secure any of the Obligations, all of which are in full force and effect. Each of the undersigned further represents and warrants to Administrative Agent and the Lenders that (a) the representations and warranties in each Loan Document to which the undersigned is a party are true and correct in all material respects on and as of the date of this Amendment as though made on the date of this Amendment (except to the extent that such representations and warranties speak to a specific date), (b) the undersigned is in full compliance with all covenants and agreements contained in each Loan Document to which it is a party, and (c) no Default or Event of Default has occurred and is continuing. Each Guarantor hereby releases Administrative Agent and Lenders from any liability for actions or omissions in connection with the Loan Documents prior to the date of this Amendment. This Consent and Agreement shall be binding upon the undersigned, and its legal representatives and permitted assigns, and shall inure to the benefit of the Administrative Agent, the Lenders, and their respective successors and assigns.

GUARANTORS:

LSI HOLDCO LLC,
a Delaware limited liability company

By:_____
Name: David Pillsbury
Title: Chief Executive Officer

LASER SPINE SURGICAL CENTER, LLC,
a Florida limited liability company

By:_____
Name: David Pillsbury
Title: Chief Executive Officer

LASER SPINE SURGERY CENTER OF ARIZONA, LLC,
an Arizona limited liability company

By:_____
Name: David Pillsbury
Title: Chief Executive Officer

LASER SPINE SURGERY CENTER OF PENNSYLVANIA, LLC,
a Pennsylvania limited liability company

By:_____
Name: David Pillsbury
Title: Chief Executive Officer

LASER SPINE SURGERY CENTER OF OKLAHOMA, LLC,
an Oklahoma limited liability company

By:_____
Name: David Pillsbury
Title: Chief Executive Officer

LSI FLEXIBLE SCHEDULE, LLC (f/k/a Laser Spine Surgery Center of Tampa, LLC),
a Florida limited liability company

By:_____
Name: David Pillsbury
Title: Chief Executive Officer

LASER SPINE SURGERY CENTER OF CLEVELAND, LLC,
an Ohio limited liability company

By:_____
Name: David Pillsbury
Title: Chief Executive Officer

LASER SPINE SURGERY CENTER OF CINCINNATI, LLC,
an Ohio limited liability company

By:_____
Name: David Pillsbury
Title: Chief Executive Officer

LASER SPINE SURGERY CENTER OF ST. LOUIS, LLC,
a Missouri limited liability company

By:_____
Name: David Pillsbury
Title: Chief Executive Officer

LASER SPINE SURGERY CENTER OF WARWICK, LLC,
a Rhode Island limited liability company

By:_____
Name: David Pillsbury
Title: Chief Executive Officer

CLM AVIATION, LLC,
a Florida limited liability company

By:_____
Name: David Pillsbury
Title: Chief Executive Officer

Schedule 1
Specified Defaults

This Schedule is provided to the Administrative Agent and the Lenders pursuant to the Amendment and Waiver. In some cases, the information and disclosures contained or referenced herein may set forth other items in addition to items the disclosure of which is necessary or appropriate in response to an express disclosure requirement contained in the Amendment and Waiver. No representation, warranty or assurance is given with respect to such items. The information in this Schedule shall not be deemed to expand in any way the scope or effect of any of the representations, warranties or covenants in the Amendment and Waiver, the Credit Agreement or any Loan Document.

The information contained herein is provided solely for purposes of making disclosures to the Administrative Agent and the Lenders under the Amendment and Waiver. In disclosing this information, the disclosing party does not waive any attorney-client privilege associated with such information or any protection afforded by the work-product doctrine with respect to any of the matters discussed or disclosed herein. Any information contained herein shall be subject to the terms of the Amendment and Waiver. Any information contained herein shall be subject to the terms of the Credit Agreement, the Loan Documents and the Amendment and Waiver and any confidentiality provisions thereof. Capitalized Terms used without definition herein shall have the respective meanings set forth in the Credit Agreement or the Amendment and Waiver, as applicable.

To the extent constituting a Default or Event of Default on or prior to the date hereof under the Credit Agreement or any other Loan Document:

1. The Obligated Parties' failure at any time to pay (a) any amounts by which the Revolving Credit Exposure exceeded the Borrowing Base, (b) Revolving Loans on demand pursuant to the demand letter dated as of June 9, 2016 from the Administrative Agent to the Obligated Parties and (c) any required Excess Cash Flow payment, in each case with respect to payments due and owing or relating to periods ending prior to the First Amendment Effective Date.
2. The issuance of Subordinated Debt to certain members of Parent and their Affiliates on or prior to the date hereof, the execution of and subsequent amendments to the documents governing such Subordinated Debt, and the failure to make any mandatory prepayments required under Section 2.9(d) relating to the proceeds thereof.
3. Borrowers' failure to deliver any item, and Borrowers' delivery of any incorrect or incomplete item, in any case, on or prior to the date hereof, as required under Section 7.1 of the Credit Agreement or any similar provision under any other Loan Document and the failure of any financial information maintained or delivered by the Obligated Parties to comply with GAAP.
4. Borrowers' failure to comply with Section 9.1 and/or Section 9.2 of the Credit Agreement, and any overadvance of Revolving Credit Loans as a result thereof.
5. The Obligated Parties' amendment and/or restatement of their financial results for periods ending on or prior to September 30, 2016, including such amendments and/or restatements resulting from (a) changes in the Obligated Parties' revenue recognition policies and other changes in accounting policies, (b) reductions in the level of reimbursement expected to be received by the Obligated Parties and (c) reductions in the amounts owing on Accounts and/or Receivables, including acceptance of partial payments in satisfaction thereof, and such events themselves.

6. The Borrowers' failure to notify the Administrative Agent of certain trademark applications filed by the Obligated Parties since July 2, 2015, all of which are set forth on Schedule 6.6(b) to the Credit Agreement, as delivered to Agent on the date hereof.

7. The formation of certain inactive Subsidiaries that were dissolved as of July 15, 2016 and failure to have added such Subsidiaries as Guarantors while they existed.

8. Laser Spine Surgery Center of Tampa, LLC changing its name to LSI Flexible Schedule, LLC.

9. William Horne's removal as Chief Executive Officer and replacement by David Pillsbury.

10. Borrowers' receipt of claims for recoupment of approximately $4.2 million in the aggregate by United Healthcare ("UHC") relating to funds previously paid to the Obligated Parties by UHC, based on UHC's allegations that the Obligated Parties did not pursue collection of certain amounts owed to the Obligated Parties by UHC's insureds and improper coding. The Obligated Parties are contesting these allegations and have provided evidence to UHC of appropriate efforts to collect from patients. The Obligated Parties believe that the claim is covered by insurance (which has accepted the claim) and have retained outside counsel to challenge the claim. No known recoupment has occurred as of November 1, 2016.

11. The Obligated Parties' sale of certain patient responsibility receivables to CarePayment, LLC and its Affiliates and a precautionary UCC-1 filing by CarePayment, LLC in connection therewith, and the Obligated Parties' entry into agreements with Healthcare Finance Direct and CareCredit in connection with the processing and financing of patient receivables.

12. The Obligated Parties' receipt of a claim by CarePayment for funds allegedly owed to CarePayment in the approximate amount of $2.02 million arising from the sale of certain receivables to CarePayment and CarePayment's claims that certain of the sold receivables were uncollectable. This claim is contested by Borrowers, is the subject of ongoing discussions between the parties, and the Borrowers have reserved funds in the approximate amount of $1.9 million for payment of any ultimate settlement or liability arising from CarePayment's claims.

13. The Obligated Parties' receipt of a claim by National Medical Billing for funds allegedly owed to National Medical Billing under various contracts between the parties for payment for services rendered by National Medical Billing to the Borrowers in the approximate amount of $450,000. This claim is contested by Borrowers and this matter is the subject of ongoing discussions between the parties.

14. Parent's acquisition and ownership of the assets and entry into the agreements listed on Schedule 8.19 to the Credit Agreement, as delivered to the Agent on the date hereof.

15. To the extent constituting Debt, the incurrence of the Highwoods TI Payments.

16. Any inaccuracy of the representations in Sections 6.15(c) and/or 6.29 of the Credit Agreement arising out of or relating to the Borrowers' revenue cycle management challenges as previously disclosed to the Administrative Agent.

17. The Sale and lease-back transactions with GE and Heartland Business Credit in June 2016 and August 2016, respectively, the material terms and conditions of which have previously been disclosed to the Administrative Agent.

18. Any inability of the Obligated Parties to remain Solvent that may have occurred absent infusion of the proceeds of the Subordinated Debt.

19. The sale of substantially all of the assets of Marodyne Medical, LLC pursuant to that certain Asset Purchase and Sale Agreement, dated as of July 15, 2016, by and between Marodyne Medical, LLC, Marodyne IP, LLC and BTT Melmak Development & Production GmbH, as

opposed to a sale of the equity interests of Marodyne Medical, LLC as would have been permitted under the Credit Agreement.

20. To the extent arising from or relating to one or more items on this schedule, individually or in the aggregate: (a) any inaccuracy in any representation or warranty made, or deemed made, by any Obligated Party prior to, but not including, the date hereof, (b) any failure to update a schedule to any Loan Document or otherwise notify the Administrative Agent or any Lender of such item(s), prior to, but not including, the date hereof, and (c) to the extent deemed to constitute a Material Adverse Event, the occurrence of any such Material Adverse Event, prior to, but not including, the date hereof.

Schedule 2
Security Agreement Schedules

See attached.

EXECUTION VERSION

RELEASE AGREEMENT

November 18, 2016

Reference is made to that certain (i) Credit Agreement dated as of July 2, 2015 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the ***"Credit Agreement"***) by and among Laser Spine Institute, LLC, a Florida limited liability company, LSI Management Company, LLC, a Florida limited liability company, Laser Spine Institute Consulting LLC, a Delaware limited liability company, and Medical Care Management Services, LLC, a Delaware limited liability company (individually and collectively, jointly and severally, the "***Borrowers***" and together with the Guarantors signatory hereto, collectively, the "***Obligated Parties***" and each an "***Obligated Party***"), the lenders party thereto (the "***Lenders***"), and Texas Capital Bank, National Association, a national banking association, as administrative agent (the "***Administrative Agent***"), (ii) Waiver and First Amendment to Credit Agreement dated as of the date hereof (the "***First Amendment***") by and among the Borrowers, the Lenders and the Administrative Agent and acknowledged and consented to by the Guarantors and (iii) Amended and Restated Subordinated Loan Agreement, dated as of November 18, 2016, by and among each of the holders of equity interests in Parent (collectively, the "***Investors***"). Capitalized terms used and not otherwise defined herein shall have the meanings given such terms in the Credit Agreement.

WHEREAS, as a material inducement to the Administrative Agent and Lenders entry into the First Amendment and in reliance thereon, the Investors have agreed to enter into this Release Agreement (this "***Agreement***") to release the Administrative Agent and Lenders from any and all claims now existing in favor of the Investors arising out of or related to the Credit Agreement, as more particularly described in the Release Provision (defined below); and

WHEREAS, in reliance on the Release Provision and subject to the terms and conditions set forth herein, Administrative Agent and Lenders are willing to provide a covenant to not initiate any action related to certain claims that Administrative Agent and Lenders may have against the Investors.

NOW, THEREFORE, in consideration of the premises herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. <u>RELEASE.</u> AS A MATERIAL PART OF THE CONSIDERATION FOR THE ADMINISTRATIVE AGENT AND THE LENDERS ENTERING INTO THE FIRST AMENDMENT AND THIS AGREEMENT, EACH INVESTOR, ON BEHALF OF ITSELF AND EACH OF ITS AFFILIATES (COLLECTIVELY "RELEASOR") AGREE AS FOLLOWS (THE "RELEASE PROVISION"):

(A) RELEASOR HEREBY RELEASES AND FOREVER DISCHARGES THE ADMINISTRATIVE AGENT, EACH LENDER, AND THEIR PREDECESSORS, SUCCESSORS, ASSIGNS, OFFICERS, MANAGERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, ADVISORS, ATTORNEYS (INCLUDING WITHOUT LIMITATION NORTON ROSE FULBRIGHT US LLP), REPRESENTATIVES, PARENT CORPORATIONS, SUBSIDIARIES, AND AFFILIATES (HEREINAFTER ALL OF THE ABOVE COLLECTIVELY REFERRED TO AS "LENDER GROUP") FROM ANY AND ALL CLAIMS, COUNTERCLAIMS, DEMANDS, DAMAGES, DEBTS, AGREEMENTS, COVENANTS, SUITS, CONTRACTS, OBLIGATIONS, LIABILITIES, ACCOUNTS, OFFSETS, RIGHTS, ACTIONS, AND CAUSES OF ACTION OF ANY NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ALL CLAIMS,

Exhibit "H"

DEMANDS, AND CAUSES OF ACTION FOR CONTRIBUTION AND INDEMNITY, WHETHER ARISING AT LAW OR IN EQUITY, WHETHER PRESENTLY POSSESSED OR POSSESSED IN THE FUTURE, WHETHER KNOWN OR UNKNOWN, WHETHER LIABILITY BE DIRECT OR INDIRECT, LIQUIDATED OR UNLIQUIDATED, WHETHER PRESENTLY ACCRUED OR TO ACCRUE HEREAFTER, ARISING AS A RESULT OF ACTS OR CIRCUMSTANCES EXISTING OR ARISING ON OR PRIOR TO THE DATE HEREOF WHETHER ABSOLUTE OR CONTINGENT, FORESEEN OR UNFORESEEN, AND WHETHER OR NOT HERETOFORE ASSERTED, WHICH RELEASOR MAY HAVE OR CLAIM TO HAVE AGAINST ANY OF LENDER GROUP; PROVIDED, HOWEVER, THAT LENDER SHALL NOT BE RELEASED HEREBY FROM ANY OBLIGATION TO PAY TO RELEASOR ANY AMOUNTS THAT RELEASOR MAY HAVE ON DEPOSIT WITH LENDER, IN ACCORDANCE WITH APPLICABLE LAW AND THE TERMS OF THE LOAN DOCUMENTS AND THE DOCUMENTS ESTABLISHING ANY SUCH DEPOSIT RELATIONSHIP.

(B) RELEASOR AGREES NOT TO SUE ANY OF THE LENDER GROUP OR IN ANY WAY ASSIST ANY OTHER PERSON OR ENTITY IN SUING LENDER GROUP WITH RESPECT TO ANY CLAIM RELEASED HEREIN. THE RELEASE PROVISION MAY BE PLEADED AS A FULL AND COMPLETE DEFENSE TO, AND MAY BE USED AS THE BASIS FOR AN INJUNCTION AGAINST, ANY ACTION, SUIT, OR OTHER PROCEEDING WHICH MAY BE INSTITUTED, PROSECUTED, OR ATTEMPTED IN BREACH OF THE RELEASE CONTAINED HEREIN.

(C) RELEASOR ACKNOWLEDGES, WARRANTS, AND REPRESENTS TO LENDER GROUP THAT:

(I) RELEASOR HAS READ AND UNDERSTANDS THE EFFECT OF THE RELEASE PROVISION. RELEASOR HAS HAD THE ASSISTANCE OF INDEPENDENT COUNSEL OF ITS OWN CHOICE, OR HAS HAD THE OPPORTUNITY TO RETAIN SUCH INDEPENDENT COUNSEL, IN REVIEWING, DISCUSSING, AND CONSIDERING ALL THE TERMS OF THE RELEASE PROVISION; AND IF COUNSEL WAS RETAINED, COUNSEL FOR RELEASOR HAS READ AND CONSIDERED THE RELEASE PROVISION AND ADVISED RELEASOR TO EXECUTE THE SAME. BEFORE EXECUTION OF THIS AGREEMENT, RELEASOR HAS HAD ADEQUATE OPPORTUNITY TO MAKE WHATEVER INVESTIGATION OR INQUIRY IT MAY DEEM NECESSARY OR DESIRABLE IN CONNECTION WITH THE SUBJECT MATTER OF THE RELEASE PROVISION.

(II) RELEASOR IS NOT ACTING IN RELIANCE ON ANY REPRESENTATION, UNDERSTANDING, OR AGREEMENT NOT EXPRESSLY SET FORTH HEREIN. RELEASOR ACKNOWLEDGES THAT LENDER GROUP HAS NOT MADE ANY REPRESENTATION WITH RESPECT TO THE RELEASE PROVISION EXCEPT AS EXPRESSLY SET FORTH HEREIN.

(III) RELEASOR HAS EXECUTED THIS AGREEMENT AND THE RELEASE PROVISION THEREOF AS ITS FREE AND VOLUNTARY ACT, WITHOUT ANY DURESS, COERCION, OR UNDUE INFLUENCE EXERTED BY OR ON BEHALF OF ANY PERSON.

(IV) RELEASOR IS THE SOLE OWNER OF THE CLAIMS RELEASED BY THE RELEASE PROVISION, AND RELEASOR HAS NOT HERETOFORE CONVEYED,

ASSIGNED OR ENCUMBERED ALL OR ANY PART OF SUCH CLAIMS OR ANY INTEREST IN ANY SUCH CLAIMS TO ANY OTHER PERSON OR ENTITY.

(D) RELEASOR UNDERSTANDS THAT THE RELEASE PROVISION IS A MATERIAL CONSIDERATION IN THE AGREEMENT OF LENDER GROUP TO ENTER INTO THIS AGREEMENT.

(E) IT IS THE EXPRESS INTENT OF RELEASOR THAT THE RELEASE AND DISCHARGE SET FORTH IN THE RELEASE PROVISION BE CONSTRUED AS BROADLY AS POSSIBLE IN FAVOR OF LENDER GROUP SO AS TO FORECLOSE FOREVER THE ASSERTION BY RELEASOR OF ANY CLAIMS RELEASED HEREBY AGAINST LENDER GROUP.

(F) IF ANY TERM, PROVISION, COVENANT, OR CONDITION OF THE RELEASE PROVISION IS HELD BY A COURT OF COMPETENT JURISDICTION TO BE INVALID, ILLEGAL, OR UNENFORCEABLE, THE REMAINDER OF THE PROVISIONS SHALL REMAIN IN FULL FORCE AND EFFECT.

2. **Covenant Not to Commence Litigation.** In consideration for the above Release Provision, the Administrative Agent and each Lender covenant, on behalf of themselves and the Lender Group, agree that they shall not commence, or directly or indirectly cause or instruct others to commence any Action against any one or more of the Investors with respect to any claims arising out of or related to the Closing Date Distribution, provided however, it is expressly understood and agreed that nothing herein shall be deemed to constitute a waiver, release or modification of (i) any of the rights or remedies of the Administrative Agent and each Lender against the Obligated Parties under the Credit Agreement or otherwise, (ii) in the event of an Action commenced by a third party in respect of the Closing Date Distributions, the rights and remedies of the Administrative Agent and each Lender to assert any right against any Investor by cross-claim, counterclaim, or other third party action or (iii) any defense, or right to assert any right, including any right of indemnity or right of contribution that the Administrative Agent or any Lender may have against any person other than an Investor. The term "Action" as used in this Paragraph 2 means any claim, action, cause of action, demand, lawsuit, arbitration, proceeding, or litigation, whether at law or in equity. The covenant contained in this Paragraph 2 may be pleaded as a full and complete defense to any Action which may be commenced by the Administrative Agent or the Lender Group in breach of the covenant contained herein.

3. **Severability.** Any provision of this Agreement held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Agreement and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

4. **Successors and Assigns; No Third Party Beneficiaries.** This Agreement is binding upon and shall inure to the benefit of each party hereto and their respective successors and assigns. Except as expressly provided in the preceding sentence, neither this Agreement nor any of the provisions hereof shall inure to the benefit of any Person other than the parties hereto.

5. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original, but all of which when taken together shall constitute one and the same instrument. Delivery of an executed counterpart to this Agreement by facsimile or other electronic means shall be effective as delivery of a manually executed counterpart to this Agreement. This Agreement shall bind no party until the Investors, the Administrative Agent and the Lenders shall have each executed a counterpart.

6. APPLICABLE LAW. THIS AGREEMENT SHALL BE DEEMED TO HAVE BEEN MADE AND TO BE PERFORMABLE IN AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

7. FINAL AGREEMENT. THIS AGREEMENT REPRESENTS THE ENTIRE AGREEMENT OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF ON THE DATE THIS AGREEMENT IS EXECUTED. THIS AGREEMENT MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. NO MODIFICATION, RESCISSION, WAIVER, RELEASE OR AMENDMENT OF ANY PROVISION OF THIS AGREEMENT SHALL BE MADE, EXCEPT BY A WRITTEN AGREEMENT SIGNED BY THE INVESTORS, THE ADMINISTRATIVE AGENT AND THE LENDERS.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Release Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

INVESTORS:

SLG LSI INVESTMENT, LLC

By: _____
Name: Jonathan B. Lewis
Title: Member

LSI HOLDCO LLC

By: _____
Name: _____
Title: _____

EFO LSI, LTD

By: _____
Name: _____
Title: _____

HORNE MANAGEMENT, INC.

By: _____
Name: _____
Title: _____

MMPERRY HOLDINGS, LLP

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties hereto have caused this Release Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

INVESTORS:

SLG LSI INVESTMENT, LLC

By: _____
Name: _____
Title: _____

LSI HOLDCO LLC

By: _____
Name: David Pillsbury
Title: Chief Executive Officer

EFO LSI, LTD

By: _____
Name: _____
Title: _____

HORNE MANAGEMENT, INC.

By: _____
Name: _____
Title: _____

MMPERRY HOLDINGS, LLP

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties hereto have caused this Release Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

INVESTORS:

SLG LSI INVESTMENT, LLC

By: _____
Name: _____
Title: _____

LSI HOLDCO LLC

By: _____
Name: _____
Title: _____

EFO LSI, LTD
By: Cypress GP, LLC
By: EFO GP Interests, Inc.
By: Julie Krupalla
Name: Julie Krupalla
Title: Secretary

HORNE MANAGEMENT, INC.

By: _____
Name: _____
Title: _____

MMPERRY HOLDINGS, LLP

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties hereto have caused this Release Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

INVESTORS:

SLG LSI INVESTMENT, LLC

By: _____
Name: _____
Title: _____

LSI HOLDCO LLC

By: _____
Name: _____
Title: _____

EFO LSI, LTD

By: _____
Name: _____
Title: _____

HORNE MANAGEMENT, INC.

By: William E. Horne
Name: William Horne
Title: CEO/President

MMPERRY HOLDINGS, LLP

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties hereto have caused this Release Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

INVESTORS:

SLG LSI INVESTMENT, LLC

By: _____
Name: _____
Title: _____

LSI HOLDCO LLC

By: _____
Name: _____
Title: _____

EFO LSI, LTD

By: _____
Name: _____
Title: _____

HORNE MANAGEMENT, INC.

By: _____
Name: _____
Title: _____

MMPERRY HOLDINGS, LLP

By: _____
Name: Michael Perry
Title: General Partner

DBF-LSI

By: _____
Name: Edward J. DeBartolo, Jr.
Title: Manager

CTS EQUITIES, LP

By: _____
Name: _____
Title: _____

RJPT, LLC

By: _____
Name: _____
Title: _____

RDB EQUITIES, LP

By: _____
Name: _____
Title: _____

WH, LLC

By: _____
Name: _____
Title: _____

By: _____
Dr. James St. Louis

DBF-LSI

By:_____
Name: _____
Title: _____

CTS EQUITIES, LP

By:_____
Name: CHRIS SULLIVAN
Title: PARTNER

RJPT, LLC

By:_____
Name: _____
Title: _____

RDB EQUITIES, LP

By:_____
Name: _____
Title: _____

WH, LLC

By:_____
Name: _____
Title: _____

By:_____
Dr. James St. Louis

DBF-LSI

By: _____
Name: _____
Title: _____

CTS EQUITIES, LP

By: _____
Name: _____
Title: _____

RJPT, ~~LLC~~ LTD. (RTR)

By: _____
Name: Ryan T. Rogers
Title: Manager, RJPT GP, LLC

RDB EQUITIES, LP

By: _____
Name: _____
Title: _____

WH, LLC

By: _____
Name: _____
Title: _____

By: _____
Dr. James St. Louis

DBF-LSI

By:_____
Name: _____
Title: _____

CTS EQUITIES, LP

By:_____
Name: _____
Title: _____

RJPT, LLC

By:_____
Name: _____
Title: _____

RDB EQUITIES, LP

By: Robert D. Bashaw
Name: ROBERT D. BASHAW
Title: Manager

WH, LLC

By:_____
Name: _____
Title: _____

By:_____
Dr. James St. Louis

DBF-LSI

By:_____
Name: _____
Title: _____

CTS EQUITIES, LP

By:_____
Name: _____
Title: _____

RJPT, LLC

By:_____
Name: _____
Title: _____

RDB EQUITIES, LP

By:_____
Name: _____
Title: _____

WH, LLC

By: William E. Horne
Name: William Horne
Title: CEO/President

By:_____
Dr. James St. Louis

DBF-LSI

By:_____
Name: _____
Title: _____

CTS EQUITIES, LP

By:_____
Name: _____
Title: _____

RJPT, LLC

By:_____
Name: _____
Title: _____

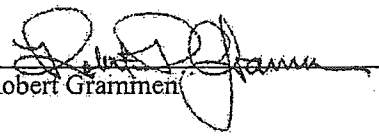
RDB EQUITIES, LP

By:_____
Name: _____
Title: _____

WH, LLC

By:_____
Name: _____
Title: _____

By:_____
Dr. James St. Louis

By: 
Robert Grammen

RELEASED PARTIES:

TEXAS CAPITAL BANK, NATIONAL ASSOCIATION,
as Administrative Agent and a Lender

By:_____
Name: Bruce Shilcutt
Title: Executive Vice President

HEALTHCARE FINANCIAL SOLUTIONS, LLC
as a Lender

By: _____
Name: Thomas Costello
Title: Duly Authorized Signatory

COMPASS BANK D/B/A BBVA COMPASS,
as a Lender

By: _____
Name: Albert M Watson
Title: SVP

BMO HARRIS BANK, N.A.,
as a Lender

By: _____
Name: Sue Blazis
Title: Managing Director

REGIONS BANK,
as a Lender

By: _____
Name: John F. Bohan
Title: Vice President

FLORIDA COMMUNITY BANK, N.A.,
as a Lender

By: _____
Name: Irene Marshall
Title: SVP

USAMERIBANK,
as a Lender

By: _____
Name: Ronald L. Ciganek
Title: Sr. Vice President

BOKF NA, DBA BANK OF OKLAHOMA,
as a Lender

By: _____
Name: Ryan Kirk
Title: Senior Vice President

CAPSTAR BANK,
as a Lender

By: _____
Name: Scott McGuire
Title: VP, Special Assets

CITY BANK,
as a Lender

By: _____
Name: Wilson Wicks
Title: Senior Vice President

TEXAS SECURITY BANK,
as a Lender

By: _____
Name:
Title: