

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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GINARTE GALLARDO GONZALEZ
& WINOGRAD, LLP

Index No: _____

Plaintiff,

COMPLAINT

-against-

WILLIAM SCHWITZER, WILLIAM SCHWITZER
& ASSOCIATES, P.C., GIOVANNI C. MERLINO,
BARRY AARON SEMEL-WEINSTEIN,
BETH MICHELLE DIAMOND, RENE G. GARCIA,
THE GARCIA LAW FIRM, P.C.,
MIGNOLIA PENA, AND JANILDA GOMEZ,

Defendants.

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Plaintiff GINARTE GALLARDO GONZALEZ & WINOGRAD, LLP (“Plaintiff” or
“Ginarte”), complaining of defendants WILLIAM SCHWITZER (“Mr. Schwitzer”), WILLIAM
SCHWITZER & ASSOCIATES, P.C. (the “Schwitzer Law Firm”), GIOVANNI C. MERLINO
 (“Mr. Merlino”), BARRY AARON SEMEL-WEINSTEIN (“Mr. Semel-Weinstein”), BETH
MICHELLE DIAMOND (“Ms. Diamond”), RENE G. GARCIA (“Mr. Garcia”), THE GARCIA
LAW FIRM, P.C. (the “Garcia Law Firm”), MIGNOLIA PENA (“Ms. Pena”), and JANILDA
GOMEZ (“Ms. Gomez”) (together, “Defendants”), alleges as follows upon information and
belief:

NATURE OF THE ACTION

1. Ginarte, a highly-regarded personal-injury law firm with a long history of
successfully representing clients in the New York/New Jersey area, brings this action for tortious
interference with contract, violation of New York Judiciary Law § 487, defamation, unfair
competition, Civil RICO, conspiracy, unjust enrichment, and a permanent injunction against

Defendants, to redress Defendants' orchestrated conspiracy to illegally solicit and steal present clients from Ginarte and, in the process, tarnish Ginarte's stellar professional reputation.

2. Mr. Schwitzer led this conspiracy in which Defendants and other unnamed co-conspirators engaged in a scheme involving classic ambulance-chasing; showing up at doctors' offices, offering patients/clients cash to retain Defendants as substitute counsel for Ginarte in their personal-injury cases, and falsely denigrating Ginarte's skills, abilities, experience, honesty and integrity as part of a high-pressure sales pitch to vulnerable and seriously-injured people. As discussed *infra*, this is not the first time that Defendants have engaged in unlawful and unethical conduct.

3. Although blatant ambulance-chasing of this kind strikes at the heart of the legal profession as a whole, Defendants' unlawful, coordinated and elaborate scheme is not only damaging to the profession but has inflicted serious financial harm upon Ginarte and threatens to continue to do so in the immediate and foreseeable future. To date, Defendants and other unnamed co-conspirators have used these conspiratorial tactics and false statements to steal from Ginarte several high-value cases arising under the New York Labor Law, and on information and belief have the intent and are in the process of stealing more.

4. Defendants should be enjoined from improperly soliciting any more of Ginarte's clients, and held accountable for their unlawful and unethical tactics that give the entire legal profession a black eye.

THE PARTIES

5. Ginarte is a law firm registered with the New York Department of State, Division of Corporations as a Foreign Registered Limited Liability Partnership, with its New Jersey principal place of business located at 400 Market Street, Newark, NJ and offices in New York,

New York, Jackson Heights, New York, Union City, New Jersey, Elizabeth, New Jersey, Clifton, New Jersey and Perth Amboy, New Jersey.

6. Upon information and belief, Mr. Schwitzer is an attorney licensed to practice law in the State of New York, and the principal of the Schwitzer Law Firm. Mr. Schwitzer's New York attorney registration indicates an address at 820 2nd Avenue, 10th Floor, New York, New York 10017.

7. The Schwitzer Law Firm is a New York Domestic Professional Corporation registered in New York County, New York. Upon information and belief, it is a personal-injury law firm, with its principal place of business located at 112 Madison Avenue, New York, New York 10016, and offices located at 820 2nd Avenue, 10th Floor, New York, New York 10017.

8. Upon information and belief, Mr. Merlino is an attorney licensed to practice law in the State of New York. Mr. Merlino's New York attorney registration indicates an address at the Schwitzer Law Firm, 820 2nd Avenue, 10th Floor, New York, New York 10017.

9. Upon information and belief, Mr. Semel-Weinstein is an attorney licensed to practice law in the State of New York. Mr. Semel-Weinstein's New York attorney registration indicates an address at the Schwitzer Law Firm, 820 2nd Avenue, 10th Floor, New York, New York 10017.

10. Upon information and belief Ms. Diamond is an attorney licensed to practice law in the State of New York. Ms. Diamond's New York attorney registration indicates an address at the Schwitzer Law Firm, 820 2nd Avenue, 10th Floor, New York, New York 10017.

11. Upon information and belief, Mr. Garcia is an attorney licensed to practice law in the State of New York, the principal of the Garcia Law Firm, and a sole practitioner. His New

York attorney registration indicates an address at 243 5th Avenue #313, New York, New York 10016.

12. The Garcia Law Firm is a New York Domestic Professional Corporation registered in Nassau County, New York. Upon information and belief, it is a personal-injury law firm with its principal place of business located at 170 Old County Road, Suite 311, Mineola, New York 11501, and offices located at 243 5th Avenue, #313, New York New York 10016.

13. Upon information and belief, Ms. Pena is an individual residing at 41 Whipple Street, Apt. 2B, Brooklyn, New York 11206.

14. Upon information and belief, Ms. Gomez is an individual residing at 101 S. 3rd Street, Apt. 6F, Brooklyn, New York 11249.

JURISDICTION AND VENUE

15. Jurisdiction is proper in this Court because all transactions complained of herein occurred in the State of New York.

16. Venue is proper in New York County because Plaintiff maintains its New York principal place of business in New York County, the Schwitzer Law Firm maintains its principal place of business in New York County, and the transactions complained of herein occurred in New York County.

FACTUAL BACKGROUND

17. Ginarte's team of over 30 attorneys has over 150 years of combined experience helping injured clients navigate the legal system and obtain the compensation they deserve for construction and motor-vehicle accidents, medical malpractice, premises liability, workers' compensation, Social Security Disability and other personal-injury matters. Ginarte has won over \$1,000,000,000 for its clients.

18. Ginarte has over 100 support staff at seven office locations throughout the New York-New Jersey metropolitan area.

19. Ginarte's founder, principal and senior partner, Joseph A. Ginarte, Esq. ("Mr. Ginarte"), has been practicing law for 36 years and is admitted in New York, New Jersey and the District of Columbia. He has served on the Board of Directors for the New York Academy of Trial Lawyers and is a member of the New York State Trial Lawyers Association. In 2013 and 2014, he was listed as one of the Top 100 Trial Lawyers by the National Trial Lawyers, and received the Legal Marketing Rock Star Award from the Personal Injury Lawyers Marketing & Management Association in 2014. He has also received the Lawyer of the Year Award from Voice Publishing, Inc. and Tribune Publishing.

20. Ginarte's annual budget for the costs and expenses associated with litigating personal-injury claims, including disbursements, is very substantial. In addition, Ginarte spends millions of dollars to advertise and market its services to potential clients, and do so in a manner consistent with the guidelines for attorney advertising set forth in Rule 7.1 the New York Rules of Professional Conduct. Ginarte's investment in its business, its attorneys and staff, its clients, and its future, is considerable.

21. Upon information and belief, Mr. Schwitzer is an attorney who was admitted to practice law in 1985. The Schwitzer Law Firm was formerly known as Dinkes & Schwitzer, P.C. and was founded in or around February 2006.

22. In or around March 2013 William R. Hamel ("Mr. Hamel"), an attorney at the Schwitzer Law Firm, was convicted upon his plea of guilty to the reduced charge of criminal facilitation in the fourth degree, a class A misdemeanor, in violation of Penal Law § 115.00(1), and was sentenced to a one-year conditional discharge, a \$300,000 settlement in lieu of a fine,

forfeiture or restitution, 150 hours of community service, and mandatory surcharges. *See Matter of Hamel*, 121 A.D.3d 332 (1st Dep't 2014), a copy of which is annexed hereto as Exhibit 1.

23. In or around August 2013 the Appellate Division, First Department, deemed Mr. Hamel's conviction a "serious crime" and referred the matter to the Departmental Disciplinary Committee for a sanction hearing. *Id.* In May 2014, the Appellate Division, First Department, suspended Mr. Hamel from the practice of law for four months based upon his plea allocution in which he acknowledged that "in 2007, in the Bronx, after an injured patient was accepted as a personal injury client, [I] paid an employee at Lincoln Hospital for [] disclosing the patients information to [me]." *Id.* At the sanctions hearing, Mr. Hamel testified, *inter alia*, that while he was working for the Schwitzer Law Firm, William Dinkes became involved in a scheme of paying hospital employees \$500 for referrals. *Id.*

24. Upon information and belief, and as evidenced by the Schwitzer Law Firm's website (www.wsatlaw.com), Mr. Merlino, Mr. Semel-Weinstein and Ms. Diamond are attorneys associated with the Schwitzer Law Firm.

25. Upon information and belief, Mr. Garcia is a sole practitioner who was initially admitted to practice law in 1997. The Garcia Law Firm was founded in or around March 2001.

26. In or around November 2017, Mr. Garcia was charged with professional misconduct by the New York State Grievance Committee of the Second Judicial Department.

27. On March 24, 2009, Mr. Garcia was suspended from the practice of law by order of the Appellate Division, Second Department dated one month prior, based on a Special Referee's report sustaining ten (10) charges of professional misconduct, including *inter alia* converting client and escrow funds to his own use, failing to promptly pay clients their shares of personal-injury settlements, failing to keep proper records for his attorney trust account, and

failing to file Closing Statements with the Office of Court Administration. *See Matter of Garcia*, 61 A.D.3d 169 (2d Dep't 2009), a copy of which is annexed hereto as Exhibit 2. His reinstatement was held in abeyance and referred to the Committee on Character and Fitness to investigate and report on his fitness to practice as an attorney. *See* 2010 WL 775016 (2d Dep't Mar. 9, 2010), a copy of which is annexed hereto as Exhibit 3. He was reinstated on October 12, 2010. *See* 77 A.D.3d 750 (2d Dep't 2010), a copy of which is annexed hereto as Exhibit 4.

28. Mr. Garcia and the Garcia Law Firm have a business relationship with Mr. Schwitzer and the Schwitzer Law Firm, and maintain an office at the Schwitzer Law Firm.

29. Upon information and belief, Ms. Pena is a non-lawyer "case runner" who is associated with and/or employed by the Schwitzer Law Firm.

30. Upon information and belief, Ms. Gomez is a non-lawyer "case runner" who is associated with and/or employed by the Schwitzer Law Firm.

DEFENDANTS' UNLAWFUL AND UNETHICAL SCHEME

31. In or around June 2018, the Garcia Law Firm was substituted for Ginarte in one of its clients' cases. Although the substitution letter signed by client indicated that the (s)he retained the Garcia Law Firm, it showed the address of the Schwitzer Law Firm.

32. In or around September 2018, Ginarte began receiving additional substitution letters from the Garcia Law Firm and the Schwitzer Law Firm relating to Ginarte's clients, indicating that the clients have retained those Defendants as substitute counsel for Ginarte in their respective personal-injury cases.

33. As of the date of this Complaint, Ginarte has received substitution letters from the Garcia Law Firm and the Schwitzer Law Firm in several more of its clients' cases. Although some of the substitution letters signed by the clients indicated that they retained the Garcia Law

Firm, they also showed the address of the Schwitzer Law Firm.

34. Each of the foregoing clients has a common link: Ginarte referred each client to a pain management specialist, hereinafter referred to as “Dr. X”.

35. On information and belief, starting in or around September 2018 Defendants, including Ms. Pena, Ms. Gomez and other unnamed co-conspirators, met with each of the foregoing clients of Ginarte at, or in front of, Dr. X’s office, enticing each to retain Defendants as substitute counsel for Ginarte by doing any or all of the following:

- a. offering the client approximately \$2,000 or \$3,000 in cash;
- b. offering to obtain financing for the case, and advising the client that (s)he would not have to pay back any loans previously taken out;
- c. verbally denigrating Ginarte specifically, telling the client *inter alia* that:
 - i. Ginarte is ill-equipped and/or incompetent to handle the case, that its attorneys lack the necessary expertise, experience, and/or interest in the client’s legal rights and personal well-being, despite the fact that Ginarte employs a team of over 30 attorneys, has handled countless cases arising under the New York Labor Law, and has won over \$1,000,000,000 for its clients;
 - ii. Ginarte is a “thief” or “the biggest thief”;

- iii. Ginarte lies to its clients about the status of their cases and potential recoveries;
 - iv. Ginarte steals money from clients by taking more money out of a recovery than the client receives;
 - v. Ginarte, as a law firm, is analogous to “doctors that kill you.”
- d. offering to provide transportation via Uber to an attorney’s office on 2nd Avenue in New York City;
 - e. offering to find a separate Workers’ Compensation lawyer for the client, at the same address, on the same day;
 - f. offering to provide transportation via Uber between the doctor’s and attorney’s offices, and between the attorney’s office and the client’s home;
 - g. advising the client that an individual (including, on information and belief, Ms. Pena’s daughter) will meet the client upon arrival at the attorney’s office to take him “upstairs”; and
 - h. advising the client to “always tell the doctors that you’re in pain”.

36. On information and belief, if the targeted Ginarte client agreed while present at or in front of Dr. X’s office to meet with substitute counsel, immediately or at a later date and time, the targeted client would be provided with transportation via Uber to Mr. Schwitzer’s office and then back home. When the Uber vehicle picked up the targeted client, Ms. Pena, Ms. Gomez and

other unnamed co-conspirators accompanied the client to the Schwitzer Law Firm.

37. On information and belief, when the targeted Ginarte's client arrived at the Schwitzer Law Firm, he or she would be greeted by an employee of the Schwitzer Law Firm who then directed him or her into a conference room where Mr. Merlino, Mr. Semel-Weinstein, Ms. Diamond, and/or other unnamed co-conspirators were present. Mr. Merlino, Mr. Semel-Weinstein, Ms. Diamond and/or other unnamed co-conspirators would then proceed to confront the targeted Ginarte client with high-pressure sales tactics, including but not limited to the extravagant promises and denigration of Ginarte described above, in an effort to persuade the client to retain substitute counsel. If the client did not initially agree, Defendants would persist in applying additional high-pressure sales tactics and persuasion, including further defamation of Ginarte.

38. On information and belief, once the targeted Ginarte client agreed to retain Defendants as substitute counsel for Ginarte, Defendants gave him or her \$2,000 or \$3,000 in cash and immediately paid off any loans the client had previously taken out, refinancing those loans via a funding company affiliated with Defendants at a higher interest rate, all to the detriment of the client.

39. On information and belief, Mr. Schwitzer kept a briefcase full of cash in his office, from which he made the foregoing cash payments to the targeted Ginarte clients.

40. On information and belief, Mr. Schwitzer also paid the "case runners" in cash.

41. On information and belief, Defendants and other unnamed co-conspirators have in recent months been in the habit of meeting with Ginarte clients at or around Dr. X's office, for the purpose of soliciting them to substitute Defendants for Ginarte as their legal counsel, in the foregoing fashion.

42. On information and belief, Defendants and other unnamed co-conspirators intend to continue meeting with Ginarte clients at doctors' offices, including but not limited to Dr. X's office, for the purpose of soliciting them to substitute Defendants for Ginarte as their legal counsel.

AS AND FOR A FIRST CAUSE OF ACTION
FOR WHICH AN ANSWER IS DEMANDED
(Tortious Interference with Contract)

43. Ginarte repeats, reiterates and realleges each and every allegation made in paragraphs 1 through 42, *supra*, as if more fully set forth herein.

44. Ginarte has or had valid and enforceable contracts with its clients (hereinafter the "Clients").

45. Defendants and their unnamed co-conspirators are/were aware that Ginarte has/had valid and enforceable contracts with the Clients.

46. Defendants and their unnamed co-conspirators induced the Clients to breach the contracts using wrongful means, including but not limited to:

- a. offering the client approximately \$2,000 or \$3,000 in cash;
- b. offering to obtain financing for the case, and advising the client that (s)he would not have to pay back any loans previously taken out;
- c. verbally denigrating Ginarte specifically, telling the client *inter alia* that:
 - i. Ginarte is ill-equipped and/or incompetent to handle the case, that its attorneys lack the necessary expertise, experience, and/or interest in the client's

- legal rights and personal well-being, despite the fact that Ginarte employs a team of over 30 attorneys, has handled countless cases arising under the New York Labor Law, and has won over \$1,000,000,000 for its clients;
- ii. Ginarte is a “thief” or “the biggest thief”;
 - iii. Ginarte lies to its clients about the status of their cases and potential recoveries;
 - iv. Ginarte steals money from clients by taking more money out of a recovery than the client receives;
 - v. Ginarte, as a law firm, is analogous to “doctors that kill you.”
- d. offering to provide transportation via Uber to an attorney’s office on 2nd Avenue in New York City;
 - e. offering to find a separate Workers’ Compensation lawyer for the client, at the same address, on the same day;
 - f. offering to provide transportation via Uber between the doctor’s and attorney’s offices, and between the attorney’s office and the client’s home;
 - g. advising the client that an individual (including, on information and belief, Ms. Pena’s daughter) will meet the client upon arrival at the attorney’s office to take him “upstairs”; and

h. advising the client to “always tell the doctors that you’re in pain”.

47. Defendants and their unnamed co-conspirators induced the Clients to breach their respective retainer agreements, by retaining and substituting Defendants as counsel in place of Ginarte, without justification.

48. As a result of the foregoing conduct, Ginarte lost its representation of several of its clients. Such includes the loss of potential contingency fees as well as costs, disbursements and expenditures incurred to date.

49. As a result of Defendants’ and their unnamed co-conspirators’ conduct in conspiring to procure the Clients’ breach of their respective retainer agreements, as part of their coordinated scheme involving classic ambulance-chasing tactics, Ginarte has been damaged in an amount to be determined at trial, but not less than ten million dollars (\$10,000,000).

50. As a result of Defendants’ and their unnamed co-conspirators’ wanton, knowing and willful conduct alleged herein, Ginarte seeks all damages which would flow from such conduct, including but not limited to, punitive damages.

**AS AND FOR A SECOND CAUSE OF ACTION
FOR WHICH AN ANSWER IS DEMANDED
(Violation of New York Judiciary Law § 487)**

51. Ginarte repeats, reiterates and realleges each and every allegation made in paragraphs 1 through 50, *supra*, as if more fully set forth herein.

52. In soliciting and conspiring to solicit several of Ginarte’s clients by showing up at their doctor’s office, offering them cash, financing, loan forgiveness and transportation, and verbally denigrating Ginarte, with the intent to continue doing so, while having been suspended from the practice of law for professional misconduct in the past, Defendants and their unnamed

co-conspirators have engaged in a pattern of wrongdoing and deceit that is both chronic and extreme in nature.

53. As a direct and proximate result of Defendants' and their unnamed co-conspirators' chronic and extreme pattern of wrongdoing and deceit, including *inter alia* their coordinated scheme to use classic ambulance-chasing tactics and false statements to improperly solicit Ginarte's clients, Ginarte has incurred damages in an amount to be determined at trial but not less than ten million dollars (\$10,000,000), and is entitled to treble damages.

AS AND FOR A THIRD CAUSE OF ACTION
FOR WHICH AN ANSWER IS DEMANDED
(Defamation)

54. Ginarte repeats, reiterates and realleges each and every allegation made in paragraphs 1 through 53, *supra*, as if more fully set forth herein.

55. Defendants and their unnamed co-conspirators made false statements about Ginarte to the Clients including, *inter alia*, that:

- a. Ginarte is ill-equipped and/or incompetent to handle the case, that its attorneys lack the necessary expertise, experience, and/or interest in the client's legal rights and personal well-being, despite the fact that Ginarte employs a team of over 30 attorneys, has handled countless cases arising under the New York Labor Law, and has won over \$1,000,000,000 for its clients;
- b. Ginarte is a "thief" or "the biggest thief";
- c. Ginarte lies to its clients about the status of their cases and potential recoveries;

d. Ginarte steals money from clients by taking more money out of a recovery than the client receives;

e. Ginarte, as a law firm, is analogous to “doctors that kill you.”

56. Defendants and their other unnamed co-conspirators made and/or published the foregoing statements with knowledge that they were false and/or without regard to their truth or falsity.

57. Defendants and their unnamed co-conspirators made and/or published the foregoing statements without privilege or authorization from Ginarte.

58. The foregoing statements constitute defamation *per se* in that they tend to injure Ginarte in its trade, business or profession.

59. The Defendants’ and their unnamed co-conspirators’ making and/or publication of the foregoing statements did in fact injure Ginarte in its trade, business or profession, in that it lost its representation of several of its clients, including the loss of potential contingency fees as well as costs, disbursements and expenditures incurred to date, and had its reputation damaged among clients, potential clients and the legal community in a manner whose full nature and extent is not yet known.

60. As a result of Defendants’ and their unnamed co-conspirators’ conduct in making and/or publishing the foregoing false and defamatory statements, as part of their coordinated scheme to use classic ambulance-chasing tactics to solicit and steal Ginarte’s clients, Ginarte has been damaged in an amount to be determined at trial, but not less than ten million dollars (\$10,000,000).

61. As a result of Defendants’ and their unnamed co-conspirators’ wanton, knowing and willful conduct alleged herein, Ginarte seeks all damages which would flow from such

conduct, including but not limited to, punitive damages.

**AS AND FOR A FOURTH CAUSE OF ACTION
FOR WHICH AN ANSWER IS DEMANDED
(Unfair Competition)**

62. Ginarte repeats, reiterates and realleges each and every allegation made in paragraphs 1 through 61, *supra*, as if more fully set forth herein.

63. By virtue of the conduct alleged herein, Defendants and their unnamed co-conspirators have intentionally, knowingly and maliciously competed unfairly with Ginarte, and continue to do so.

64. By improperly soliciting Ginarte's clients using a coordinated scheme of classic ambulance-chasing tactics and false statements, Defendants and their unnamed co-conspirators have misappropriated Ginarte's labors, skills, expenditures and good will, and have done so in bad faith.

65. As a result of Defendants' and their unnamed co-conspirators' conduct in improperly soliciting Ginarte's clients via a coordinated scheme to use classic ambulance-chasing tactics and false statements, Ginarte has been damaged in an amount to be determined at trial, but not less than ten million dollars (\$10,000,000).

66. As a result of Defendants' and their unnamed co-conspirators' wanton, knowing and willful conduct alleged herein, Ginarte seeks all damages which would flow from such conduct, including but not limited to, punitive damages.

**AS AND FOR A FIFTH CAUSE OF ACTION
FOR WHICH AN ANSWER IS DEMANDED
(Unjust Enrichment)**

67. Ginarte repeats, reiterates and realleges each and every allegation made in paragraphs 1 through 66, *supra*, as if more fully set forth herein

68. As alleged herein, Defendants and their unnamed co-conspirators have been enriched by reaping the benefits of Ginarte's extraordinary efforts and costs as to marketing and advertising, client intake, fact investigation, legal research, staffing, etc. which led to the relationships that Ginarte had developed with its clients.

69. Ginarte conferred a benefit on Defendants and their unnamed co-conspirators by putting forth the effort and expense of marketing and advertising, client intake, fact investigation, legal research, staffing, etc. which led to the relationships that Ginarte had developed with its clients, and to the investigation, preparation and filing of their respective lawsuits.

70. Defendants' and their unnamed co-conspirators' benefit was at Ginarte's expense because as to the cases in which Defendants and their unnamed co-conspirators improperly solicited the clients and have been substituted as attorneys, at a minimum, Ginarte's marketing and advertising costs are not recoverable.

71. Defendants' and their unnamed co-conspirators' actions were unjust because they improperly solicited Ginarte's clients using a coordinated scheme of classic ambulance-chasing tactics and false statements.

72. It is against equity and good conscience to allow Defendants and their unnamed co-conspirators to retain the benefit of Ginarte's extraordinary marketing efforts.

73. As a result of Defendants' and their unnamed co-conspirators' improper solicitation of Ginarte's clients using a coordinated scheme of classic ambulance-chasing tactics and false statements, Defendants and their unnamed co-conspirators have been unjustly enriched at Ginarte's expense in an amount to be determined at trial, but not less than ten million dollars (\$10,000,000).

74. As a result of Defendants' and their unnamed co-conspirators' wanton, knowing and willful conduct alleged herein, Ginarte seeks all damages which would flow from such conduct, including but not limited to, punitive damages.

AS AND FOR A SIXTH CAUSE OF ACTION
FOR WHICH AN ANSWER IS DEMANDED
(Civil Rico)

75. Ginarte repeats, reiterates and realleges each and every allegation made in paragraphs 1 through 74, *supra*, as if more fully set forth herein.

76. All of the above conduct alleged herein sets forth all of the essential elements of CIVIL RICO and Defendants and their unnamed co-conspirators have violated the Civil RICO Act 18 U.S.C.A. § 1962.

77. Defendants and their unnamed co-conspirators have committed predicate acts within the last ten years, *inter alia*, mail fraud and wire fraud.

78. Defendants and their unnamed co-conspirators used some or all of these predicate acts in their dealing with Ginarte.

79. The activities alleged herein demonstrate that Defendants' and their unnamed co-conspirators' actions constitute a pattern of racketeering activity and that the individual Defendants were directly interested in, maintain and interest in, and participated in the enterprise (i.e., the Schwitzer Law Firm and the Garcia Law Firm) with a common purpose.

80. Defendants and their unnamed co-conspirators created and ongoing structure and organization (i.e., the Schwitzer Law Firm and the Garcia Law Firm) with continuing functions or duties with the common purpose of defrauding Ginarte.

81. Defendants and their unnamed co-conspirators used the telephone, internet, facsimile machine, and the U.S. mail as vehicles to assist them in perpetrating a fraud on Ginarte.

82. Other predicate acts of Defendants and their unnamed co-conspirators exist and will be determined during the discovery process of this action.

83. As a result of Defendants' and their unnamed co-conspirators' conduct, Ginarte has been damaged in an amount to be determined at trial, but not less than ten million dollars (\$10,000,000), and is entitled to treble damages.

**AS AND FOR A SEVENTH CAUSE OF ACTION
FOR WHICH AN ANSWER IS DEMANDED
(Conspiracy)**

84. Ginarte repeats, reiterates and realleges each and every allegation made in paragraphs 1 through 83, *supra*, as if more fully set forth herein.

85. Using a coordinated scheme of classic ambulance-chasing tactics and false statements Defendants and their unnamed co-conspirators engaged in a conspiracy to improperly solicit Ginarte's clients.

86. As a result of Defendants' and their unnamed co-conspirators' conduct, Ginarte has been damaged in an amount to be determined at trial, but not less than ten million dollars (\$10,000,000).

87. As a result of Defendants' and their unnamed co-conspirators' wanton, knowing and willful conduct alleged herein, Ginarte seeks all damages which would flow from such conduct, including but not limited to, punitive damages.

**AS AND FOR AN EIGHTH CAUSE OF ACTION
FOR WHICH AN ANSWER IS DEMANDED
(Permanent Injunction)**

88. Ginarte repeats, reiterates and realleges each and every allegation made in paragraphs 1 through 87, *supra*, as if more fully set forth herein.

89. Defendants and their unnamed co-conspirators have been soliciting and continue to solicit clients of Ginarte, specifically those clients with high-value cases arising under the New York Labor Law.

90. The clients and matters that Defendants and their unnamed co-conspirators have solicited and continue to solicit were originated by Ginarte.

91. Defendants and their unnamed co-conspirators had no prior relationship with the clients of Ginarte that they are soliciting and were not actively involved in their representation prior to such solicitation.

92. Defendants and their unnamed co-conspirators have been contacting the clients of Ginarte, including but not limited to showing up at Dr. X's office for the clients' appointments to improperly solicit their business, and providing transportation via Uber between Defendants' and unnamed co-conspirators' offices, doctors' offices, and clients' homes.

93. In its efforts to solicit Ginarte's clients, Defendants and their unnamed co-conspirators are misleading those clients.

94. Defendants and their unnamed co-conspirators did not give Ginarte notice that they would be contacting the clients of Ginarte.

95. Should Defendants and their unnamed co-conspirators continue to solicit Ginarte's clients in the manner set forth herein, they will be interfering with and/or damaging Ginarte's business relations with its clients.

96. For the above reasons, the Court should issue a permanent injunction enjoining Defendants and their unnamed co-conspirators from having any further contact with Ginarte's current or former clients.

97. Ginarte has no other adequate remedy at law for this cause of action.

WHEREFORE, Ginarte demands judgment be entered as follows:

- (a) On the First Cause of Action for Tortious Interference with Contract, awarding damages in an amount to be determined at trial but not less than ten million dollars (\$10,000,000), and all damages which would flow from Defendants' and their unnamed co-conspirators' conduct, including but not limited to, punitive damages;
- (b) On the Second Cause of Action for Violation of New York Judiciary Law § 487, awarding damages in an amount to be determined at trial but not less than ten million dollars (\$10,000,000), and awarding treble damages;
- (c) On the Third Cause of Action for Defamation, awarding damages in an amount to be determined at trial but not less than ten million dollars (\$10,000,000), and all damages which would flow from Defendants' and their unnamed co-conspirators' conduct, including but not limited to, punitive damages;
- (d) On the Fourth Cause of Action for Unfair Competition, awarding damages in an amount to be determined at trial but not less than ten million dollars (\$10,000,000), and all damages which would flow from Defendants' and their unnamed co-conspirators' conduct, including but not limited to, punitive damages;
- (e) On the Fifth Cause of Action for Unjust Enrichment, awarding damages in an amount to be determined at trial but not less than ten million dollars (\$10,000,000), and all damages which would flow from Defendants' and their unnamed co-conspirators' conduct, including but not limited to, punitive damages;
- (f) On the Sixth Cause of Action for Civil RICO, awarding damages in an amount to be determined at trial but not less than ten million dollars (\$10,000,000), and awarding treble damages;
- (g) On the Seventh Cause of Action for Conspiracy, awarding damages in an amount to be determined at trial but not less than ten million dollars (\$10,000,000), all damages which would flow from Defendants' and their unnamed co-conspirators' conduct, including but not limited to, punitive damages, of which Defendants are jointly and severally liable;
- (h) On the Eighth Cause of Action, granting a permanent injunction enjoining Defendants and their unnamed co-conspirators from having any further contact with any current or former client of Ginarte; and
- (i) Such other and further relief as his Court deems just, equitable, and proper.

Dated: Uniondale, New York
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