

<p>DISTRICT COURT, LARIMER COUNTY, COLORADO Court Address: Larimer County Courthouse 201 Laporte Avenue Fort Collins, CO 80521</p>	
<p>Plaintiff: ANGELO SCOLARI</p> <p>Defendants: SBH-NORTH DENVER, LLC, a Delaware limited liability company d/b/a CLEAR VIEW BEHAVIORAL HEALTH; STRATEGIC BEHAVIORAL HEALTH, LLC, a Delaware limited liability company; DANIEL ZARECKY; and JASON WEST, D.O.</p>	
<p>Plaintiff's Counsel: LAW OFFICES OF J.M. REINAN, P.C. Jerome M. Reinan, #22031 Jordana Griff Gingrass, #38195 1437 High Street Denver, CO 80218 (303) 894-0383 (303) 894-0384 (FAX) jreinan@reinanlaw.com jgingrass@reinanlaw.com</p>	<p>◆ COURT USE ONLY ◆</p> <hr/> <p>Case No.:</p> <p>Division</p>
<p style="text-align: center;">COMPLAINT AND JURY DEMAND</p>	

COMES NOW the Plaintiff, Angelo Scolari, by and through counsel, the Law Offices of J.M. Reinan, P.C., and for his Complaint and Jury against Defendants SBH Denver, LLC, a foreign limited liability company d/b/a Clear View Behavioral Health; Strategic Behavioral Health, LLC, a Delaware Limited Liability Company; Daniel Zarecky; and Jason West, DO, states and avers as follows:

I. PARTIES AND VENUE

1. Plaintiff Angelo Scolari is a resident of Weld County, Colorado, and was at times relevant a patient of Clear View Behavioral Health, a licensed mental health treatment hospital owned by SBH-North Denver, LLC, a foreign limited liability company. This Defendant shall be herein referred to as “Clear View.”

2. At times relevant, Clear View was owned, operated and controlled by Defendant Strategic Behavioral Health, LLC, “SBH,” a Delaware Limited Liability Company that is based in Memphis, Tennessee.

3. At times relevant, Clear View was located at 4470 Larimer Parkway, Johnstown, Colorado 80534, within Larimer County, Colorado.

4. At times relevant, Clear View’s Administrator was Defendant Daniel Zarecky. Zarecky was a resident of Colorado at times relevant.

5. At times relevant, Defendant Jason West, D.O., was a licensed physician practicing at Clear View and was Plaintiff’s attending physician. West is currently a resident of Colorado.

6. Venue is proper in Larimer County District Court as the acts and omissions complained of herein occurred with Larimer County and because the amount in controversy exceeds the jurisdiction of the county court.

II. FACTUAL BACKGROUND

SBH’s history of grossly substandard care and short staffing across its facilities

7. SBH is a for-profit chain of mental health hospitals based in Memphis, Tennessee.

8. SBH derives its profits from owning and operating its individual mental health hospitals, which in turn bill patients and patients’ insurance companies for room, board, therapies, clinical oversight, medications, supervision and other services.

9. Upon information and belief, SBH controls virtually all aspects of its individual hospitals’ operations including budgeting, finances, policies and procedures, and the hiring and retention of its administrators.

10. Upon information and belief, SBH is aware of each hospital’s daily census; its admissions; its discharges; its planned discharges; and the nature and extent of its involuntary hold and certification patients.

11. Upon information and belief, SBH is aware of each hospital's regulatory issues; health department inspections; deficiency reports; and plans of correction.

12. Most of SBH's inpatient mental health hospitals, including Clear View, act as physical repositories for persons who have been placed on involuntary mental health holds or certifications due to serious mental health issues, suicide threats or self-dangerous behaviors pursuant to state and federal laws, including Colorado's mental health hold statutes, C.R.S. §§ 27-65-105 and 107.

13. Many of SBH's patients are involuntary and forced to endure any substandard or dangerous conditions created by SBH and its subsidiary hospital companies, including Clear View.

14. Many of SBH's hospitals, including Clear View, have had a long and continuing history of serious and sometimes profound staffing, financial and care-related problems caused by SBH's operation and management of these facilities. In particular:

- a. In February 2016, SBH's Peak View facility in Colorado Springs received an immediate jeopardy citation from the Colorado Department of Public Health and Environment, "CDPHE," after inspectors said nursing staff failed to properly assess patients' risk for falls and take steps to prevent falls. Several patients fell multiple times, with one breaking an arm and another sustaining a "big bump" on the head.
- b. In January, 2018, SBH's hospital in Charlotte, NC, received an immediate jeopardy violation from the North Carolina health department for failing to keep the facility secure. Ten patients, ages 12 to 17, escaped through a broken window after some used wooden boards from furniture they destroyed to attack a worker. The ordeal amounted to a "riot," a nurse told inspectors. But staff delayed calling police, even though they said there weren't enough employees to control the situation. "We have been short staffed for two months," one worker said. At least one North Carolina lawmaker called for the health department to revoke SBH's license due to a pattern of poor care and SBH's failure to cure its deficiencies.
- c. In December 2016, SBH's hospital in Garner, NC, received an immediate jeopardy citation for failing to have enough nursing staff to monitor a patient who was possibly sexually assaulted by another patient. Each unit was supposed to have at least one registered nurse. But inspectors found only one registered nurse was scheduled for three units, and that person left in the middle of night, leaving no registered nurse on any unit.

- d. In March 2014, the SBH Garner facility received an immediate jeopardy violation for its handling of three incidents involving teenage patients. Among other things, the facility didn't seek emergency medical help when a code was called; it failed to find a lighter used by a patient to set a fire; and neurological checks were not done after a patient had a head injury.
- e. In October 2015, SBH's hospital in College Station, TX received five immediate jeopardy citations. The Texas health department found that the facility didn't have enough licensed staff.
- f. In January 2017, SBH's Las Vegas hospital got two level three citations for failing to investigate multiple allegations of sexual abuse.
- g. In May, 2019, the SBH Las Vegas hospital received a 79-page deficiency citation for a variety of serious problems including staffing, treatment, treatment planning and environment. In June, 2019, that hospital received a 199-page deficiency report for many of the same areas. After SBH failed to correct those deficiencies, the federal government terminated that hospital's participation in the Medicare and Medicaid programs, which is a very rare and serious sanction.
- h. In December 2015, a New Mexico agency found that SBH's Santa Teresa, NM hospital had 80 incidents of "resident-on-resident violence or aggression," with "numerous injuries," between September 2014 and September 2015, and that the facility provided an "unsafe environment."

Clear View's history of fraud

15. SBH also has a long and continuing history of serious and sometimes profound staffing, regulatory, financial and care-related problems at its Clear View facility.

16. Patients admitted or certified to Clear View – or their insurers -- are billed for the costs of treatment, including the costs of involuntary mental health holds.

17. As a result, SBH has a powerful financial incentive to pressure its individual hospitals, including Clear View, to keep patients in the hospital as long as possible.

18. In the instance of involuntary commitment patients – like Plaintiff – SBH and Clear View are required to follow state and federal laws that prohibit involuntary hospitalization unless the patient is certified as gravely ill or a danger to himself or others.

19. In order to circumvent those commitment laws and standards, SBH has directed or pressured Clear View and its administrators, including Zarecky, to find ways to keep patients hospitalized even though they do not meet objective criteria for hospitalization.

20. In response to these directives and/or the pressure exerted by SBH for longer patient stays, Clear View and its administration, including Zarecky, have engaged in the following fraudulent practices aimed at illegally or tortuously extending the stay of Clear View patients:

- a. Causing the placement of patients on involuntary mental health holds who do not meet the involuntary mental health hold criteria of C.R.S. §§ 27-65-105;
- b. Causing the fabrication of medical and mental health reports to falsely portray involuntary hold patients as meeting involuntary mental health hold criteria of C.R.S. § 27-65-105;
- c. Causing involuntary mental health certifications of patients who do not meet the criteria of C.R.S. §§ 27-65-107;
- d. Causing the fabrication of medical and mental health reports to falsely portray involuntary certification patients as meeting the criteria of C.R.S. § 27-65-107;
- e. Causing the fabrication of medical records and reports to falsely describe a need for continued hospitalization; and
- f. Causing the preparation and transmittal of bills and invoices for services that were unnecessary or not provided.

21. By at least 2018, this pattern of fraudulent commitments and the provision of unnecessary services at Clear View began to capture the attention of state and federal authorities, as well as a team of investigative reporters, including Tony Kovaleski of KMGH-TV Denver, resulting in multiple investigations.

22. In stories broadcast on KMGH in 2019 and republished on the KMGH website, attached hereto as **Exhibits 1-6** and incorporated into this Complaint, KMGH found a disturbing pattern of fraudulent conduct and billing practices at Clear View.

23. A former patient told KMGH that her Clear View records falsely overstated the amount of time she was actually seen by a physician in the facility. She told KMGH that she saw a doctor perhaps twice during her stay at Clear View, for less than 10 minutes. The bills sent by Clear View for her care falsely and fraudulently documented that she saw a doctor each and every day of her stay. This fraud was committed in order to dupe that patient and her insurer into paying for services that were not actually rendered and in order to keep that patient at Clear View longer than was legal or necessary.

24. A former Clear View employee told KMGH that Clear View engaged in unethical and illegal billing practices directed to all third-party payors, including Medicare, Medicaid and private insurance providers.

25. A former Clear View **administrator** told KMGH-TV that “what she witnessed in the facility was unethical at best.” She admitted she personally witnessed many patients held longer than was necessary or lawful.

26. That administrator also told KMGH-TV that some of Clear View’s patients were at the facility for 10-14 days even though they in many cases needed only simple medication adjustments that should not have taken nearly that long.

27. A former Clear View therapist told KMGH-TV that she was “regularly told to deviate from the truth to keep patients longer.” That therapist told KMGH-TV, “Clear View management asked them to lie because...you have to show that a client is a threat to themselves or others on a continuous basis in order for them to stay (involuntarily on a mental health hold).”

28. The same therapist told KMGH that she “witnessed questionable practices at the facility including potential forgery.” She said, “I saw a charge nurse cut and paste a doctor’s signature onto some forms to keep a patient longer on hold and billing for group therapy sessions that never took place.”

29. Another nurse told KMGH that she quit working at Clear View because of the serious ethical breaches that she witnessed. “They are trying to keep people and get more money out of insurance and get more money for services that the patients didn’t need. And that’s just wrong.”

30. The father of a former patient of Clear View told KMGH that Clear View held his son involuntarily on a mental health hold even though his son did not need Clear View’s services. According to the father, his son “was falsely held for insurance money.”

31. The patient’s father reported to KMGH that his son had only met with the Clear View facility physician for a few short minutes prior to keeping him. However, Clear View staff had falsely told the parents that the doctors needed more time to assess the son’s mental state, but that didn’t occur.

32. After Clear View tried to extend the son’s stay, the patient’s concerned father recorded telephone conversations he and his wife had with Clear View staff. In one recorded conversation, a Clear View patient advocate told the father and mother that their son “may not be getting out after the 72-hour hold.”

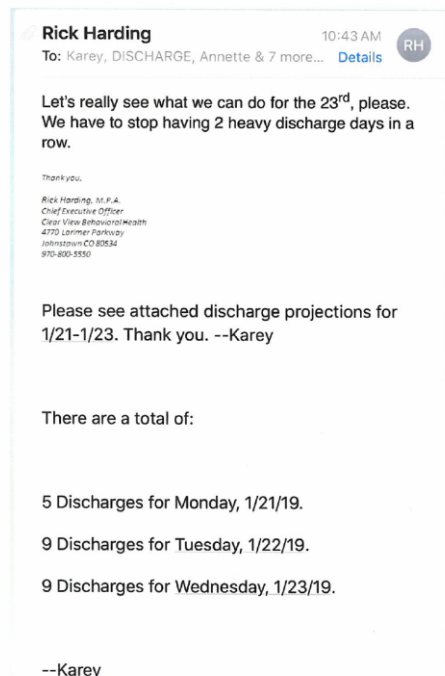
33. The patient advocate told the son’s parents that if their son didn’t sign voluntary admission documents, the Clear View doctor would issue a “certification hold” which would last for weeks and would go on their son’s permanent record.

34. This patient’s parents hired an attorney, and their son was released only after the attorney told Clear View its bill was not going to get paid.

35. Other Clear View employees told KMGH about Clear View’s “inadequate” patient care, short staffing and dangerous working conditions. Both employees encouraged both state and federal investigators to look into “possible insurance fraud.”

36. According to a Clear View employee interviewed by KMGH, the involuntary hold and certification decisions at Clear View were made by Clear View’s administrators, including Defendant Zarecky and his successor, Rick Harding, and not by professional staff or doctors. “One of the former nurses claims that the administrators and brass at Clear View are behind the holds, and that the incentive to continue the holds beyond 72 hours stems from financial incentives. “The administrators are making the decisions and nobody says anything,” she said. “It’s all wrong.””

37. An email sent by Harding to Clear View staff actually directs staff to unlawfully and tortiously delay patient discharges in order to spare Clear View and SBH from the adverse financial consequences of having “2 heavy discharge days in a row:”



38. These directives to delay patient discharges are not based upon the patients’ needs or conditions, but rather based solely upon SBH’s desire to maximize SBH’s profit at the expense of Clear View patients and their insurers.

39. On July 27, 2018, the CDPHE issued a deficiency report that encompassed its months-long investigation into numerous allegations of fraud, wrongdoing and substandard care at Clear View, including periods of time relevant to this Complaint. That report is attached as **Exhibit 7** and incorporated into this complaint.

40. Among the deficiencies cited by the CDPHE was a failure to provide oversight of services provided within Clear View to ensure that they were provided a safe manner. The CDPHE also found an unsafe and unsanitary environment at Clear View. Clear View received a citation for failing to have an appropriate infection control program. Another deficiency was cited for failing to implement a policy regarding patient rights.

41. The CDPHE also cited Clear View with failure to provide enough staff to meet the mental health needs of the facility's psychiatric patients. In particular, the CDPHE found that Clear View did not have enough staff to provide consistent therapy groups to patients; that therapy groups were canceled due to staffing issues; and that overall care was ineffective due to insufficient staff.

42. CDPHE also cited Clear View with deficient practices in regard to nursing assessments and a failure to assess and reassess patients.

43. Despite the severity of the citations cited by the CDPHE against Clear View and Clear View's written promises to correct those deficiencies, Clear View did not in fact correct its deficiencies. Clear View continued to provide dangerous and substandard care with insufficient staff.

44. Finally, in June, 2019, the State of Colorado issued a notice against Clear View's Colorado operating license based on the failures, deficiencies and issues set forth above.

45. By that time, KMGH had released another story documenting the fraudulent and dangerous conduct perpetrated by Clear View and its administration against its patients.

46. KMGH's investigation to this point included 7 months of reporting and interviews of over 60 patients, family members and employees of Clear View.

47. Specific allegations made by these interviewees to KMGH-TV included decisions by senior leadership to keep patients longer than medically necessary; failing to provide the required therapies; short or limited doctors' visits; and the improper billing of private insurance, Medicaid and Medicare.

48. KMGH-TV noted that by July, 2019, Clear View had been cited by the CDPHE for 85 deficiencies and had been out of compliance with state regulations for over 11 months. Clear View's administrators had failed to put Clear View back into compliance.

Facts regarding plaintiff

49. On or about January 7, 2018, Plaintiff developed severe mental health issues, including hallucinations.

50. As a result of these mental health conditions, Plaintiff threatened to harm himself.

51. Plaintiff's family called the police, and the police transported Plaintiff to the Medical Center of the Rockies for treatment and stabilization.

52. A few hours after his admission to Medical Center of the Rockies, Plaintiff was transferred to Clear View and placed on a C.R.S. § 27-65-105 involuntary mental health hold. Pursuant to that statute, Plaintiff was to be held by Clear View for no more than 72 hours.

53. On January 8, 2018, Plaintiff was seen briefly by Defendant West. The visit lasted less than 2 minutes.

54. West asked Plaintiff how he felt and asked Plaintiff if he was feeling suicidal. Plaintiff replied "no."

55. Plaintiff tried to ask West more questions about his stay at Clear View, but West did not participate in the conversation and walked away. West prescribed Plaintiff Zyprexa.

56. West did not provide Plaintiff with any other treatments or advice.

57. January 9, 2018 was Plaintiff's third day at Clear View. West came into see Plaintiff and the visit again lasted approximately 2 minutes or less. The visit consisted primarily of West asking Plaintiff if he was suicidal, which Plaintiff denied.

58. Plaintiff also asked West when he could go home, and West didn't answer. Plaintiff told West that the Zyprexa had knocked him out, so West changed the prescription to Abilify.

59. West did not provide Plaintiff with any other treatments or advice.

60. Plaintiff attended group meetings and meals as instructed.

61. Plaintiff was not gravely ill or a danger to himself or others.

62. January 10, 2018 was Plaintiff's fourth day at Clear View and was the end of the involuntary C.R.S. § 27-65-105 mental health hold.

63. According to the Clear View chart, Plaintiff no longer met the criteria for an involuntary hold. Plaintiff was not suicidal, was not gravely ill, and was not a danger to himself or others.

64. On that day, Plaintiff told a Clear View nurse he wanted to go home. The nurse stated that it was up to the doctor, West.

65. West did not see or evaluate Plaintiff that day.

66. Plaintiff persisted in asking to go home. Clear View staff told Plaintiff that he was being disruptive and that his conduct would merely prolong his stay.

67. Plaintiff threatened to call an attorney and Clear View staff told him in response that he would lose his phone and visitation privileges. Plaintiff persisted and told staff that he was not suicidal and did not have suicidal thoughts.

68. Plaintiff's Clear View chart again documented that Plaintiff was not gravely ill and not a danger to himself or others. Plaintiff was not a high suicide risk.

69. Plaintiff later found a discharge paper he had received from the Medical Center of the Rockies which contained a phone number for the patient advocate. Plaintiff asked Clear View staff to use the phone so that he could call the patient advocate. He was told he could not use the phone.

70. Plaintiff persisted in demanding to be able to use the phone to call either the patient advocate or an attorney. He was finally granted the ability to use the phone. Plaintiff called the patient advocate, but never received a return call, to his knowledge.

71. Despite the fact that Plaintiff's C.R.S. § 27-65-105 hold had expired, and despite the fact that Plaintiff did not meet the criteria for an involuntary hold or short term certification, Plaintiff was not released from Clear View and was told that he would not be released in the near future due to his disruptive behavior, which was nonexistent.

72. Upon information and belief, after the C.R.S. § 27-65-105 involuntary hold elapsed, West and Clear View either filed for a C.R.S. § 27-65-107 certification of Plaintiff using false and fraudulent information and/or failed to file a C.R.S. § 27-65-107 and instead illegally held Plaintiff at Clear View without certification.

73. In either case, Clear View did not maintain a copy of any C.R.S. § 27-65-107 certification, or provide Plaintiff with same, in violation of that statute.

74. Upon information and belief, Zarecky knew about the expiration of Plaintiff's 72-hour hold and knew that Plaintiff was required to be released from Clear View.

75. Upon information and belief, Zarecky caused or pressured Clear View staff, including West, to keep Plaintiff at Clear View after the expiration of his 72-hour hold, even though Plaintiff did not meet statutory criteria for continued involuntary certification.

76. Upon information and belief, Zarecky, Clear View and West had an agreement or meeting of the minds about falsely certifying Plaintiff for involuntary certification.

77. January 11, 2018 was Plaintiff's fifth day at Clear View.

78. Plaintiff again asked to be released from Clear View and again explained to Clear View staff that he was not suicidal, was not a danger to himself and did not meet the criteria for a continued involuntary hold.

79. Plaintiff's medical chart continued to show that he was not suicidal, was not gravely ill, and was not a danger to himself or others.

80. Despite the fact that Plaintiff did not meet the criteria for short-term certification under C.R.S. § 27-65-107, a Clear View staff member told Plaintiff that his involuntary hold or certification had been extended, presumably by West, and that Plaintiff would not be allowed to leave in the near future.

81. Plaintiff demanded access to a phone book and a phone so that he could call an attorney to enforce his right to be released from Clear View.

82. Clear View staff denied Plaintiff access to the phone or a phone book, and thereby an attorney, telling him that if he continued demanding to speak to an attorney his involuntary stay at Clear View would be extended indefinitely and that he would lose all of his privileges within the building.

83. January 12, 2018 was Plaintiff's sixth day at Clear View. Plaintiff's Clear View records again show that he was not gravely ill, not a danger to himself, not a danger to others, and absent of criteria necessary for an involuntary hold or certification.

84. Plaintiff again demanded to be released. Plaintiff's demand was again denied.

85. Plaintiff was allowed to use the phone and make contact with a public defender, who arrived later that evening.

86. Both Plaintiff and the public defender asked the Clear View charge nurse for access to a private room so that Plaintiff and his attorney could discuss his issues privately.

87. Clear View's nurse refused and unlawfully stated that she had to present during Plaintiff's meeting with his attorney.

88. After the attorney made numerous demands for privacy, the Clear View nurse left the room but left the door open and remained close by outside so that she could listen to the conversation.

89. The public defender shut the door to allow privacy, but the nurse opened the door again and tried to listen to the conversation.

90. As a result of the disruption, Plaintiff was not able to tell the public defender his entire story.

91. That evening, Plaintiff was assigned a new roommate, who clogged their shared toilet. Plaintiff complained about the clogged toilet and the fact that his room smelled like feces.

92. Clear View staff did not fix the toilet and Plaintiff's room smelled like feces for the next two days.

93. January 13, 2018 was Plaintiff's seventh day at Clear View. Plaintiff again asked staff for permission to go home and was again threatened with loss of privileges if he did not stop asking to leave. Plaintiff was not given access to or assessed by a physician. Plaintiff again did not meet criteria for an involuntary hold or certification.

94. January 14, 2018 was Plaintiff's eighth day of his involuntary stay at Clear View. By this time, Plaintiff had started telling his wife to look for an attorney to help him leave Clear View.

95. Plaintiff again did not see a physician on this day.

96. January 15, 2018 was Plaintiff's ninth day of his involuntary stay at Clear View. By this time, Plaintiff's threats of hiring an attorney through his wife had caused Clear View to agree to Plaintiff's release.

97. During his entire nine-day stay at Clear View, Plaintiff received a total of 12-15 minutes of physician consult and less than 20 minutes of one on one therapy.

98. Plaintiff's illegal detention at Clear View caused him to suffer from fear, upset, anxiety, depression and hopelessness.

99. Plaintiff and his insurance company were billed a total of \$14,800.00 for his stay at Clear View. Those bills were sent to Plaintiff and to Plaintiff's insurance company through a combination of use of the United States mail and interstate wires.

100. As a result of Defendants' negligent, wrongful, fraudulent and illegal conduct, Plaintiff has suffered and will continue to suffer actual losses and noneconomic damages in an amount to be determined by the jury at trial.

III. FIRST CLAIM FOR RELIEF: NEGLIGENCE
(by Plaintiff against Clear View and West)

101. Plaintiff hereby incorporates each and every averment set forth herein as if each and every averment were set forth verbatim herein.

102. Clear View, acting by and through its licensed and professional staff, owed Plaintiff a duty of due care commensurate with state and local standards of care as well as state and federal regulations. Those duties of care included, *inter alia*:

- A duty to provide reasonable hospital services;
- A duty to provide Plaintiff with all rights and privileges, including access to a phone and access to legal counsel;
- A duty to refrain from holding Plaintiff without just cause;
- A duty to provide reasonable assessments of Plaintiff; and
- A duty to permit Plaintiff to leave the facility upon expiration of any legitimate involuntary mental health hold.

103. Clear View breached the duties of due care it owed to Plaintiff by engaging in the acts and omissions described above and by, *inter alia*:

- Failing to provide Plaintiff with reasonable care and reasonable support services;
- Failing to permit Plaintiff to exercise his legal rights and privileges as accorded him under state and federal law, including access to an attorney and use of a phone;
- Retaliating against Plaintiff for attempting to exert his rights;
- Failing to properly assess Plaintiff; and
- Failing to allow Plaintiff to leave the facility after the expiration of the 72-hour mental hold.

104. West owed Plaintiff a duty of due care commensurate with state and local standards of care as well as state and federal regulations. Those duties of care included, *inter alia*:

- A duty to provide Plaintiff with reasonable care and treatment;
- A duty to properly assess Plaintiff;
- A duty to file accurate and truthful statements regarding Plaintiff's condition with courts and government agents;
- A duty to refrain from certifying Plaintiff for an involuntary hold or certification if Plaintiff did not meet objective criteria.

105. West breached the duties of due care he owed to Plaintiff by engaging in the acts and omissions described above and by, *inter alia*:

- Failing to provide Plaintiff with reasonable care;
- Failing to properly assess Plaintiff;
- Filing statements and certifications for involuntary hold that were false or inaccurate;
- Negligently or falsely certifying Plaintiff's short-term certification;
- Ordering Plaintiff to be held involuntarily absent proper and objective criteria.

106. As a result of the breaches of due care set forth herein, Plaintiff has suffered and will continue to suffer economic and noneconomic injuries, damages and losses as provided for under Colorado law and as to be determined at a jury at trial.

IV. SECOND CLAIM FOR RELIEF: FALSE IMPRISONMENT
(Against Clear View, Zarecky and West)

107. Plaintiff hereby incorporates each and every averment set forth herein as if each and every averment were set forth verbatim herein.

108. Clear View, West and Zarecky, acting individually and in concert with one another, caused Plaintiff's illegal and false imprisonment by engaging in the acts and omissions described above, and by:

- a. Intentionally restricting Plaintiff's freedom of movement;
- b. Causing false or fraudulent holds or certifications to be drafted or filed with a court;
- c. Preventing Plaintiff from leaving Clear View even though he did not meet the criteria for an involuntary hold or certification;
- d. Preventing Plaintiff from exercising his legal rights to access to phones and access to an attorney;
- e. Denying Plaintiff free access to the courts.

109. Defendants' false imprisonment of Plaintiff was undertaken illegally and without justification.

110. Plaintiff knew, believed and understood that he was not free to leave Clear View.

111. As a result of Defendant's false imprisonment of Plaintiff, Plaintiff has suffered actual, economic and noneconomic injuries, damages and losses in an amount to be determined by the jury at trial.

V. THIRD CLAIM FOR RELIEF: VIOLATION OF THE COLORADO ORGANIZED CRIME CONTROL ACT, "COCCA," C.R.S. § 18-17-101 et seq
(Against SBH and Zarecky)

112. Plaintiff hereby incorporates each and every averment set forth herein as if each and every averment were set forth verbatim herein

113. For the purposes for the Colorado Organized Crime Control Act, "COCCA," C.R.S. § 18-17-103(2), Clear View is a COCCA enterprise.

114. Clear View's activities affect interstate commerce.
115. For the purpose of COCCA, the "COCCA persons," or "COCCA defendants," pursuant to C.R.S. § 18-17-103(4) are SBH and Zarecky.
116. At all times relevant SBH was associated with and owned Clear View.
117. At all times relevant, SBH conducted or participated in the affairs of Clear View, either directly or indirectly, through a pattern of racketeering activity, as defined under C.R.S. § 17-103(3) and (5) in violation of C.R.S. § 18-17-104(3).
118. At all times relevant, SBH participated in and/or directed the racketeering conduct described herein.
119. At all times relevant Zarecky was associated with, employed by and was in the position of executive management of Clear View.
120. At all times relevant, Zarecky conducted or participated in the affairs of Clear View, either directly or indirectly, through a pattern of racketeering activity, as defined under C.R.S. § 17-103 (3) and (5) in violation of C.R.S. § 18-17-104(3).
121. At all times relevant, Zarecky participated in and/or directed the racketeering conduct described herein.
122. SBH and Zarecky's pattern of racketeering activity in violation of C.R.S. § 18-17-104(3) includes causing, directing or participating in the following enumerated racketeering acts:
- a) Multiple acts of wire and mail fraud in violation of 18 USC §§ 1341 and 1343 by using the Internet, interstate wires and the US mail for the purposes of advancing, furthering, executing, concealing, conducting, participating in or carrying out a scheme to defraud Plaintiff and others similarly situated by, *inter alia*, using or causing to be used interstate wires for the purposes of sending bills to Plaintiff, Plaintiff's insurance company and the other former Clear View patients identified in the attached KMGH reports as well as the deficiency reports generated by the CDPHE.
 - b) Various acts of cybercrime in violation of C.R.S. § 18-5.5.-102, including:
 - i. Accessing a computer or computer network for the purpose of defrauding Colorado courts in order to certify Plaintiff and others similarly situated for involuntary certifications and holds;
 - ii. Accessing a computer or computer network for the purpose of creating fraudulent medical records;

- iii. Accessing a computer or computer network for the purpose of directing others to carry out the pattern of racketeering acts and fraudulent scheme described herein;
- iv. Accessing a computer for the purpose of defrauding Plaintiff in other similarly situated through false and deceptive advertising and internet advertising and;
- v. Using a computer or computer network for the purpose of generating fraudulent bills and invoices to be sent to Plaintiff, Plaintiff's insurance company and the Plaintiff's and insurance companies identified in the KMGH and CDPHE reports attached to this complaint.

123. SBH's pattern of racketeering activity has continued unabated from at least 2017 until the present.

124. Zarecky's pattern of racketeering activity continued unabated during 2017-2018.

125. Plaintiff was the victim of the acts of racketeering, and the acts of racketeering were otherwise interrelated by distinguishing characteristics and were not isolated events.

126. In particular, as described above, and as set forth in **Exhibits 1-7**, incorporated herein, numerous other Clear View patients were similarly victimized by Defendants' fraudulent scheme and pattern of racketeering acts.

127. Plaintiff was injured for the purposes of COCCA in that the pattern of racketeering acts deprived him of money and property and has caused him to suffer other actual damages including extreme emotional distress.

128. SBH earned significant sums of money through the pattern of racketeering activity, as described herein. In addition to the monetary remedies provided under COCCA, Plaintiff prays that the court enter additional COCCA remedies including injunctive remedies.

129. Plaintiff further claims treble damages and attorneys fees as permitted by COCCA.

**VI. FOURTH CLAIM FOR RELIEF: CONSPIRACY TO VIOLATE COCCA
IN VIOLATION OF C.R.S. § 18-17-104(4)
(Against West Only)**

130. Plaintiff hereby incorporates each and every averment set forth herein as if each and every averment were set forth verbatim herein.

131. As set forth above, Zarecky and/or SBH violated COCCA.

132. West conspired or endeavored with Zarecky to conduct or participate, directly or indirectly in the conduct of the affairs of the enterprise, Clear View, through a pattern of racketeering activity in violation of C.R.S. § 18-17-104(4).

133. In particular, West assisted in and participated in Zarecky's pattern of racketeering conduct by falsely and fraudulently certifying Plaintiff and others similarly situated for involuntary holds or certifications so that Clear View could charge fees for services that were not necessary and which were procured through fraud.

134. West accomplished his conspiracy to violate COCCA through the use of Interstate wires and through the use of computers and computer networks.

135. West also made money by assisting Zarecky and/or SBH in their pattern of racketeering conduct.

136. West's conspiracy to violate COCCA has caused Plaintiff to suffer actual, economic and noneconomic damages in an amount to be determined by the jury at trial.

137. Plaintiff further claims treble damages and attorneys fees as permitted by COCCA.

VII. FIFTH CLAIM FOR RELIEF: EXTREME AND OUTRAGEOUS CONDUCT
(Against Clear View, Zarecky and West)

138. Plaintiff hereby incorporates each and every averment set forth herein as if each and every averment were set forth verbatim herein.

139. Clear View, acting by and through its employees and staff, acted in an extreme and outrageous fashion by engaging in the acts and omissions described above and by, *inter alia*:

- a) Retaliating against Plaintiff for asserting his rights;
- b) Refusing to permit Plaintiff to leave Clear View;
- c) Refusing to allow Plaintiff to use the phone;
- d) Refusing to allow Plaintiff to meet with his attorney in private;
- e) Retaliating against Plaintiff for asserting his legal rights;
- f) Failing to provide Plaintiff with a clean, sanitary and habitable environment; and
- g) Threatening and intimidating Plaintiff.

140. West acted in an extreme and outrageous fashion by engaging in the acts and omissions described above and by falsely and fraudulently certifying Plaintiff as meeting the criteria for an involuntary certification when West knew that Plaintiff did not meet those criteria.

141. Zarecky acted in an extreme and outrageous fashion by engaging in the acts and omissions described above and by causing Plaintiff's involuntary hold when he knew or should have known that Plaintiff did not meet the statutory criteria; by pressuring Clear View staff to involuntarily hold patients, including Plaintiff, without a legitimate basis; by causing Clear View staff to retaliate against Plaintiff for trying to exercise his legal rights; and by operating Clear View in the best interests of SBH's profits, to the detriment of Plaintiff and others similarly situated.

142. Defendants' extreme and outrageous conduct caused Plaintiff to suffer extreme emotional distress.

143. Defendant directed its employees to engage in the extreme and outrageous conduct described herein and/or ratified its employees' extreme and outrageous conduct, thereby rendering Defendant vicariously liable for its employees' intentional and calculated conduct.

144. As a result of Defendant's intentional infliction of emotional distress and extreme and outrageous conduct, Plaintiff has suffered and will continue to suffer injuries, damages and losses in an amount to be determined by a jury at trial.

VIII. SIXTH CLAIM FOR RELIEF: BREACH OF FIDUCIARY DUTY
(Against Clear View, Zarecky and West)

145. Plaintiff hereby incorporates each and every averment set forth herein as if each and every averment were set forth verbatim herein.

146. Since Plaintiff was an involuntary patient at Clear View, and thus completely vulnerable to Defendants and their conduct, Defendants Clear View, Zarecky and West all owed Plaintiff a fiduciary duty.

147. Defendants breached their fiduciary duties to Plaintiff by engaging in the acts and omissions described herein and by otherwise engaging in a fraudulent and intentional course of conduct that favored Defendants' pecuniary interests over Plaintiffs' needs and interests.

148. Defendants' breaches of fiduciary duty were undertaken intentionally and in bad faith.

149. Defendants' breaches of fiduciary duty have caused Plaintiff to suffer actual damages. Plaintiff further claims available attorneys fees.

IX. SEVENTH CLAIM FOR RELIEF: CIVIL CONSPIRACY
(Against ALL Defendants)

150. Plaintiff hereby incorporates each and every averment set forth herein as if each and every averment were set forth verbatim herein.

151. Defendants agreed with one another and with other unnamed staff members of Clear View to engage in the goal of illegally holding Plaintiff as an involuntary patient of Clear View and to engage in other illegal acts and goals as set forth herein.

152. One or more unlawful acts were performed to accomplish the goal.

153. The unlawful acts as described herein caused Plaintiff to suffer actual, economic and noneconomic damages in an amount to be determined by the jury at trial.

X. PRAYER FOR RELIEF

WHEREFORE, for the reasons set forth herein, Plaintiff prays that this Honorable Court enter judgment in his favor and against the Defendants on all claims set forth above and, following trial to a jury, award the following damages:

- a) Economic damages;
- b) Actual damages;
- c) Non-economic loss;
- d) Treble damages;
- e) Attorney's fees;
- f) Pre and post judgment interest;
- g) Court costs;
- h) Plaintiff reserves the right to amend the Complaint to include additional claims, remedies and damages pursuant to Colorado law.

PLAINTIFF DEMANDS TRIAL TO A JURY OF SIX

This matter is exempt from C.R.C.P. 16.1 as the damages claimed herein exceed \$100,000.

Respectfully submitted this 27th day of December, 2019.

LAW OFFICES OF J.M. REINAN, P.C.

s/ Jerome M. Reinan

Jerome Reinan, #22031
Jordana Griff Gingrass, # 38195
1437 High Street
Denver, Colorado 80218-2608
Telephone: (303) 894-0383
Facsimile: (303) 894-0384

Attorneys for the Plaintiff

Plaintiff's Address:

430 Vermilion Peak Drive
Windsor, CO 80550