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KEVIN STOCK
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

GASTROENTEROLOGY ASSOCIATES
CLINICAL PRACTICE PLLC, a
Washington professional limited liability
company,

Plaintiff,

v.

WASHINGTON GASTROENTEROLOGY,
PLLC, a Washington professional limited
liability company,

Defendant.

NO. _____

COMPLAINT

COMES NOW Plaintiff, Gastroenterology Associates Clinical Practice PLLC, by and through its attorneys of record, Mark A. Peternell and John A Kesler III of the law firm of Bean, Gentry, Wheeler & Peternell, PLLC, and for causes of action against Defendant, Washington Gastroenterology, PLLC, alleges as follows:

I. PARTIES

1.1 Plaintiff, Gastroenterology Associates Clinical Practice PLLC, ("GA") is a Washington professional limited liability company, which at all times material hereto had its principal place of business in Thurston County, Washington.

1.2 GA is an active professional limited liability company and all of its taxes and fees

COMPLAINT- 1

Bean, Gentry, Wheeler & Peternell, PLLC
910 Lakeridge Way SW
Olympia, WA 98502
(360) 357-2852
Fax (360) 786-6943

1 are paid up to date.

2 1.3 Defendant, Washington Gastroenterology, PLLC, (“WAGI”) is a Washington
3 professional limited liability company, which at all times material hereto had its principal place of
4 business in Pierce County, Washington.

5 1.4 WAGI was formed with the Washington Secretary of State’s office on June 14,
6 2016.

7 1.5 A Professional Limited Liability Company Agreement of [WAGI] dated January 1,
8 2018 (hereinafter, the “Operating Agreement”) set forth the members of WAGI as of January 1,
9 2018, which were: (1) Digestive Health Specialists, P.S.; (2) Northwest Gastroenterology
10 Associates, Inc., P.S.; and (3) GA.

11 1.6 The three members of WAGI, as identified in paragraph 1.5 above, were each
12 affiliated with an ambulatory surgery center and/or other side ventures that supported the provision
13 of gastrointestinal medicine to the patients of the members of WAGI.

14 1.7 The purpose of WAGI as stated in Article IV (Section 4) of the Operating
15 Agreement was to operate a medical and surgical practice specializing in gastroenterology and
16 associated surgical care, and ancillary services in connection therewith.

17 1.8 WAGI does not own the ambulatory surgery centers affiliated with its members,
18 but provides practice management services to the ambulatory surgery centers of its members.

19 1.9 GA is affiliated with Gastroenterology Associates, LLC Endoscopy Center in
20 Olympia, Washington.

21 1.10 GA provided notice to WAGI on March 29, 2019, of its intent to withdraw as a
22 member of WAGI effective 11:59 p.m. on December 31, 2019.

23 1.11 WAGI and GA were parties to a Membership Unit Redemption Agreement
24 (hereinafter, the “Redemption Agreement”), which detailed the parties’ benefits and obligations
25 related to GA’s withdrawal as a member of WAGI.

26 ///

1 **II. JURISDICTION AND VENUE**

2 2.1 Jurisdiction is proper in this Court pursuant to RCW 2.08.010 and pursuant to the
3 provisions of the Operating Agreement and Redemption Agreement.

4 2.2 Venue is proper in this Court pursuant to RCW 4.12.025 and pursuant to the
5 provisions of the Operating Agreement and Redemption Agreement.

6 2.3 Section 21 of the Redemption Agreement states the applicable law and venue is
7 governed by the Operating Agreement.

8 2.4 Section 15 of the Redemption Agreement states disputes shall be resolved pursuant
9 to Article XX of the Operating Agreement.

10 2.5 Article XX of the Operating Agreement requires GA and WAGI to attempt to
11 resolve any dispute between themselves during a thirty (30)-day “Good Faith Period.” If the
12 dispute is not resolved within the thirty (30)-day Good Faith Period, GA and WAGI are required
13 to attempt mediation with Judicial Arbitration and Mediation Services, Inc. (“JAMS”) within thirty
14 (30) days of the end of the Good Faith Period. If mediation is unsuccessful, GA and WAGI are
15 required to submit their dispute(s) to binding arbitration to be conducted in Pierce County,
16 Washington.

17 2.6 The thirty (30)-day Good Faith Period for the disputes alleged in this Complaint
18 began on April 13, 2020.

19 2.7 Disputes in this Complaint include claims that are time sensitive.

20 2.8 Article XX of the Operating Agreement also provides in pertinent part,
21 “[n]otwithstanding the [ADR provisions] each party shall have the right to seek provisional
22 remedies from a court of competent jurisdiction.”

23 2.9 GA demands that WAGI comply with the ADR provisions provided for in the
24 Redemption Agreement and Operating Agreement, but consistent with those documents also files
25 this Complaint with a court of competent jurisdiction to obtain a case number and judicial
26 assignment so as to better secure GA’s right to seek provisional remedies (*e.g.*, a preliminary

1 injunction) in a timely manner if and when GA believes it becomes necessary to seek such
2 provisional remedies.

3 2.10 GA has a reasonable basis to believe WAGI is stalling. For example, on April 16,
4 2020, counsel for GA asked counsel for WAGI to provide available mediation dates in case
5 mediation is required between May 13, 2020, and June 13, 2020. To date, WAGI has refused to
6 specify any dates its decision-makers and counsel are available for mediation with JAMS.

7 2.11 GA may be irreparably harmed if WAGI is allowed to stall.

8 **III. FACTUAL BACKGROUND**

9 **CARES Act Payment**

10 3.1 On March 27, 2020, President Donald Trump signed the bipartisan CARES Act
11 that provided \$100 billion dollars in relief funds to hospitals and other healthcare providers.

12 3.2 The funding referenced in paragraph 3.1 above was intended to be used to “support
13 healthcare-related expenses or lost revenue attributable to COVID-19.”

14 3.3 A healthcare provider obtained funds based on the provider’s billings to Medicare
15 during 2019.

16 3.4 WAGI received CARES Act funds in April 2020, based upon billings to Medicare
17 that were connected to services provided by GA.

18 3.5 Prior to January 1, 2020, GA’s services were billed to Medicare [in appropriate
19 circumstances] through WAGI.

20 3.6 As stated above, GA was previously a member of WAGI. And while GA was a
21 member of WAGI, WAGI provided GA practice management services—this included billing to
22 Medicare, as GA billed under WAGI’s tax identification number.

23 3.7 The payments made to WAGI under the CARES Act attributable to Medicare fee
24 for service reimbursements from GA and WAGI’s other members in 2019 were automatically
25 deposited into a WAGI bank account.

26 3.8 GA had a forty-three percent (43%) Medicare payor mix, while the other two

1 members of WAGI had only twenty to thirty percent (20-30%) Medicare payor mix.

2 3.9 Based on Medicare payor mix percentages, a large percentage of CARES Act funds
3 received by WAGI related to Medicare fees for services is attributable to work provided by GA in
4 2019.

5 3.10 Section 8(e) of the Redemption Agreement states:

6 Revenue, refunds, reimbursements, and/or lingering profits other
7 than A/R (“Refunds”) received by WAGI after Closing that would
8 have been attributable to GA when GA was a member of WAGI,
9 including but not limited to Refunds received from participation in
10 the MultiCare Accountable Care Organization (“ACO”) during the
11 years 2018 and 2019, shall be paid by WAGI to GA, net of applicable
12 costs. WAGI shall notify GA promptly upon receipt of the Refunds
13 and shall pay to GA its allocable share, net of applicable costs, within
14 ten (10) days of receipt of the Refunds by WAGI.

15 3.11 The funds WAGI received under the CARES Act based on work provided by GA
16 is due to WAGI under the Redemption Agreement.

17 3.12 Further, WAGI has been unjustly enriched by receipt of funds that are linked to
18 work previously provided by GA.

19 3.13 WAGI was required to pay GA’s share of the funds that WAGI obtained under the
20 CARES Act attributable to GA’s work within ten (10) days of WAGI receiving the funds, and
21 WAGI has failed to pay such funds within the required time period.

22 3.14 WAGI has repeatedly refused GA’s request that WAGI transfer funds to GA that
23 GA believes it is entitled to under the CARES Act, which WAGI received, and WAGI has also
24 repeatedly refused to set aside funds GA believes it is entitled to for purposes of securing the funds
25 while this dispute is resolved.

26 3.15 Upon information and belief, WAGI has received approximately \$350,000.00 to
27 \$400,000.000 in CARES Act funds that should be transferred to GA. This amount is subject to
further examination as WAGI has heretofore refused to produce financial documents to GA that
GA has requested to determine the amount of CARES Act funds WAGI has received and other
relevant financial information.

1 3.16 Although WAGI refused to transfer appropriate CARES Act funds to GA after
2 WAGI received such funds, WAGI's Director of Finance had previously communicated to GA
3 that WAGI was calculating GA's share of the money.

4 3.17 Although GA first approached WAGI to request that WAGI transfer CARES Act
5 funds to GA that GA believed it was due based on GA's prior work billed through WAGI, after
6 WAGI refused to transfer any funds, GA informed WAGI that GA intended to apply to the
7 government for GA's portion of the funds.

8 3.18 WAGI communicated to GA that WAGI believed the CARES Act funds was only
9 intended for 2020 relief [ignoring the issue that 2020 CARES Act payments are based in part on
10 2019 numbers that GA's work was part of], and WAGI suggested that GA apply to the government
11 for funds, as GA had already stated to WAGI that GA had resorted to do.

12 3.19 GA was not able to apply for the CARES Act funds as the government has not
13 provided an application process.

14 3.20 A UnitedHealth Group representative specifically communicated to GA's
15 representative on the telephone that WAGI was allowed to transfer CARES Act funds to GA given
16 WAGI had received CARES Act funds based on an application that accounted for work provided
17 by GA in 2019.

18 3.21 Upon information and belief, GA may not be able to obtain CARES Act funds
19 [other than through a transform from WAGI] because WAGI has received the funds that would
20 otherwise be due to GA.

21 3.22 Like many other business entities that CARES Act funds were intended for, GA
22 has seen a decline in revenue during the COVID-19 pandemic as a result of restrictions that prevent
23 patients from obtaining certain types of services due to safety precautions against the COVID-19
24 virus.

25 3.23 GA is entitled to a portion of the CARES Act funds received by WAGI, which
26 amount will be proven at the time of trial.

1 3.24 WAGI was not in position to obtain funds related to work provided by GA in 2020
2 as a result of GA’s withdrawal from membership in WAGI effective December 31, 2019.

3 3.25 Despite WAGI not being in position to obtain funds related to GA’s work in 2020,
4 WAGI applied for and received funds from the government that accounted for GA’s work.

5 **Solicitation**

6 3.26 Section 9 of the Redemption Agreement states in pertinent part:

7 9.a. WAGI recognizes that as required by the WAGI Operating
8 Agreement it is required to convey back to GA the assets that GA
9 contributed to WAGI when it joined (“Returned GA Assets”). Said
10 assets included goodwill as well as trade secrets and other
11 confidential information including but not limited to *GA patient*
12 *lists, GA patient contact information, GA patient fee schedules, GA*
13 *contractual arrangements, GA internal memoranda and GA*
14 *marketing and business information (“GA Confidential*
15 *Information”). WAGI recognizes that if it were able to continue to*
16 *use the GA Confidential Information then the value of the Returned*
17 *GA Assets would be significantly reduced. As such WAGI warrants*
18 *that it will keep and will cause its employees, owners, affiliates and*
19 *agents to keep confidential the GA Confidential Information and*
20 *any information of GA which has been entrusted to it or its*
21 *employees or agents during the course of GA’s membership with*
22 *WAGI.*

23 9.c.ii. [The Restricted Parties agree that no Restricted Party shall]
24 Directly solicit any person who was exclusively treated by a division
25 of WAGI other than the Restricted Party’s Division.

26 3.27 Section 10 of the Redemption Agreement states in pertinent part:

27 WAGI [and its members] agree not to directly or indirectly, in any
format or forum: (c) interfere with GA and/or [GA’s affiliated
entity] regarding its relationships or potential relationships with
actual or potential patients, vendors, contractors or employees; or
(d) take any actions that might interfere with GA and/or [GA’s
affiliated entity’s] business activities.

28 3.28 For several months following GA’s withdrawal as a member of WAGI and the
29 parties’ entering the Redemption Agreement, GA’s patients continued to receive notices from
30 WAGI alerting GA’s patient to “new portal activity” and providing a link to a portal identified as
31 WAGI. These emails further instructed GA’s patients that for “appointment questions or medical

1 questions,” the patients should call one of four different clinics, none of which are GA; instead, all
2 of the clinics listed were part of the WAGI network of clinics.

3 3.29 Following multiple communications from GA’s counsel, on April 16, 2020, WAGI
4 reported they added a footnote at the bottom of email communications stating that GA patients
5 receiving the WAGI emails should contact GA, however, the GA patients should not have been
6 receiving WAGI emails in the first place.

7 3.30 WAGI had the ability to organize its communication system to avoid contacting
8 GA patients, but WAGI failed to take steps ensuring GA patients would not be contacted.

9 3.31 WAGI either intentionally or negligently communicated with GA’s patients.

10 3.32 WAGI’s communications with GA’s patients violated anti-solicitation provisions
11 of the Redemption Agreement.

12 **IV. FIRST CAUSE OF ACTION: BREACH OF CONTRACT**

13 **(CARES ACT FUNDS)**

14 4.1 The Redemption Agreement between GA and WAGI, which included other
15 documents as exhibits such as the Operating Agreement, formed a valid contract between the
16 parties.

17 4.2 WAGI has breached the Redemption Agreement with GA by refusing to pay GA a
18 portion of funds that WAGI obtained via the CARES Act related to GA’s work in 2019.

19 4.3 GA has been damaged in an amount to be proven at the time of trial by WAGI’s
20 breach of contract.

21 **V. SECOND CAUSE OF ACTION: UNJUST ENRICHMENT**

22 **(CARES ACT FUNDS)**

23 5.1 WAGI has received CARES Act funds, a portion of which belongs to GA based on
24 work performed by GA in 2019.

25 5.2 WAGI has been unjustly enriched in an amount to be proven at the time of trial by
26 the CARES Act funds WAGI received attributable to GA’s work.

1 7.3 GA has been damaged in an amount to be proven at the time of trial by WAGI's
2 breach of contract.

3 **VIII. FIFTH CAUSE OF ACTION: INJUNCTIVE RELIEF**

4 8.1 Pierce County Superior Court has the power to grant injunctions pursuant to
5 Chapter 7.40 RCW.

6 8.2 GA is entitled to an injunction enjoining WAGI from communicating with GA's
7 patients in violation of the parties' Redemption Agreement.

8 8.3 GA is entitled to an injunction enjoining WAGI from transferring CARES Act
9 funds WAGI received based on GA's work.

10 **IX. SIXTH CAUSE OF ACTION: DECLARATORY JUDGMENT**

11 9.1 Pierce County Superior Court has the power to declare rights, status and other legal
12 relations where a declaratory judgment is prayed for.

13 9.2 GA prays for declaratory relief pursuant to Chapter 7.24 RCW, in the form of a
14 declaratory judgment decreeing that GA is entitled to a portion of CARES Act funds received by
15 WAGI in an amount to be proven at the time of trial.

16 **X. PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

18 10.1 Awarding Plaintiff judgment against Defendant for damages in an amount to be
19 proven at the time of trial;

20 10.2 Awarding Plaintiff its attorneys' fees, costs and expenses pursuant to contract;

21 10.3 Awarding Plaintiff interest on any judgment amount at the current maximum
22 statutory rate;

23 10.4 Injunctive relief as to the court seems just, equitable, and proper;

24 10.5 Declaratory Judgment decreeing that GA is entitled to a portion of CARES Act
25 funds received by WAGI; and

26 10.6 For any and other such relief as to the court seems just, equitable and proper.

1 DATED this 1st day of May, 2020.

2 **BEAN, GENTRY, WHEELER & PETERNELL, PLLC**
3 Attorneys for Plaintiff

4 */s John A Kesler, III*

5 **MARK A. PETERNELL, WSBA #26975**
6 **JOHN A KESLER III, WSBA #39380**