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**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS  
BOARD REGION 28**

9 KHAVKIN CLINIC, PLLC,  
10 and  
11 MICHAEL SCHNEIER, an Individual

Cases 28-CA-220023  
28-CA-223014

**CHARGING PARTY'S BRIEF TO THE  
ADMINISTRATIVE LAW JUDGE**

**CHARGING PARTY'S BRIEF TO THE ADMINISTRATIVE LAW JUDGE**

14 COMES NOW Michael Schneier, M.D., ("Charging Party" or "Dr. Schneier"), by  
15 and through his attorneys of records, and hereby submits his Brief to The Administrative  
16 Law Judge.<sup>1</sup>

17 DATED this 3rd day of October 2019.

18 Respectfully submitted,

19 GABROY LAW OFFICES

20 By: \_\_\_\_\_  
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<sup>1</sup> Dr. Schneier anticipates General Counsel will also submit a brief to the Administrative Law Judge and hereby incorporates such brief, including all arguments, citations, etc., as if fully set forth herein. Out of respect to the Administrative Law Judge's time and resources, Dr. Schneier respectfully submits this Brief as a supplement to General Counsel's forthcoming brief and, to alleviate the Administrative Law Judge of reviewing potentially duplicative arguments, presents such key points worth highlighting below.

1 **I. INTRODUCTION**

2 As confirmed under oath by Respondent’s own witness, Dr. Schneier  
3 unequivocally engaged in activity protected under the National Labor Relations Act.  
4 Further, as confirmed by Respondent’s sole owner, following such protected activity  
5 Respondent presented Dr. Schneier with an inaccurate termination notice. Indeed,  
6 Respondent’s reasoning for terminating Dr. Schneier has continued to shift. Taken as a  
7 whole, the evidence demonstrates Dr. Schneier’s termination was the result of these  
8 federally-protected complaints.

9 **II. STATEMENT OF BACKGROUND FACTS**

10 Respondent is a neurosurgical practice focusing on inpatient and outpatient  
11 surgeries. Tr. 63.<sup>2</sup> According to Respondent’s own witness, Dr. Schneier spoke out  
12 about “the way [Respondent’s sole owner] treated some of the staff at the office.” Tr.  
13 555-56. Such protected activity would occur “[e]very other week or so.” Tr. 562.

14 On or about November 21, 2017, Respondent presented Dr. Schneier with a letter  
15 regarding “Termination of Employment.” GSX 8. Respondent’s sole owner testified that  
16 such letter withheld at least one reason for termination over concern with what he could  
17 “use...as a reason for the termination.” Tr. 157.

18 **III. RESPONDENT TERMINATED THE CHARGING PARTY IN RETALIATION FOR  
19 HIS CONTINUOUS PROTECTED ACTIVITY**

20 **A. FACTS**

21 As set forth above, Respondent’s own witness confirmed that Dr. Schneier  
22 engaged in protected activity at least “[e]very other week or so.” Tr. 562. Respondent  
23 has also admitted to the lack of veracity regarding its stated reason for termination. Tr.  
24 157.

25 **B. ARGUMENT**

26 Section 8(a)(1) of the National Labor Relations Act prohibits employer  
27

28 <sup>2</sup> References to the Transcript are Tr. \_\_\_, showing page or pages. GCX \_\_\_ refers to General Counsel’s Exhibits.



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 3rd day of October, 2019 I caused a true and correct copy of the foregoing **CHARGING PARTY'S BRIEF TO THE ADMINISTRATIVE LAW JUDGE** to be filed through the NLRB E-Filing System:

Honorable John T. Giannopoulos  
NLRB Division of Judges, San Francisco Office  
901 Market Street, Suite 300  
San Francisco, CA 94013

I HEREBY CERTIFY that on the 3rd day of October, 2019, I caused to be served a true and correct copy of the foregoing **CHARGING PARTY'S BRIEF TO THE ADMINISTRATIVE LAW JUDGE** on the following person(s) by electronic mail:

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/s/ Kaine Messer  
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