

IN THE IOWA DISTRICT COURT FOR CERRO GORDO COUNTY

ESTATE OF MARIO OCHOA, by its  
Administrator, Erica Ochoa, JEAN RYAN  
OCHOA, Individually, ERICA OCHOA,  
Individually, MARIO OCHOA JR.,  
Individually, ANDREA OCHOA WRIGHT,  
Individually, and JESSICA OCHOA READ  
Individually,

Plaintiffs,

vs.

MERCY HEALTH SERVICES-IOWA,  
CORP. d/b/a MERCY MEDICAL CENTER  
– NORTH IOWA, SHAWN PARCELLS,  
and NATIONAL AUTOPSY AND TISSUE  
RECOVERY SERVICES, INC.,

Defendants.

DOCKET NO. \_\_\_\_\_

**PETITION AT LAW AND JURY  
DEMAND**

Plaintiffs Estate of Mario Ochoa, by its Administrator, Erica Ochoa, Jean Ryan Ochoa, Individually, Erica Ochoa, Individually, Mario Ochoa Jr., Individually, Andrea Ochoa Wright, Individually, and Jessica Ochoa Read Individually, hereby set forth their claims for relief against Defendants Mercy Health Services-Iowa, Corp. d/b/a Mercy Medical Center – North Iowa, Shawn Parcels, and National Autopsy and Tissue Recovery Services Inc., and state:

**PARTIES**

1. The Estate of Mario Ochoa is pending in Cerro Gordo County, Iowa. The duly qualified and appointed Administrator of the Estate of Mario Ochoa, Erica Ochoa, is a citizen of Cerro Gordo County, Iowa. Plaintiffs' decedent, Mario Ochoa was a citizen of Cerro Gordo County, Iowa.

2. Jean Ryan Ochoa is the legal and surviving spouse of Mario Ochoa and is a resident of Cerro Gordo County.
3. Erica Ochoa is the legal and natural adult child of Mario Ochoa and is a resident of Cerro Gordo County.
4. Mario Ochoa Jr. is the legal and natural adult child of Mario Ochoa and is a resident of Cerro Gordo County.
5. Andrea Ochoa Wright is the legal and natural adult child of Mario Ochoa and is a resident of Cerro Gordo County.
6. Jessica Ochoa Read is the legal and natural adult child of Mario Ochoa and is a resident of Cerro Gordo County.
7. At all times material hereto, Mercy Health Services-Iowa, Corp. d/b/a Mercy Medical Center – North Iowa (hereafter referred to as “Mercy North Iowa”) has been a Delaware business entity providing healthcare services in Cerro Gordo County, Iowa and doing business as Mercy Medical Center-North Iowa.
8. At all times material hereto, Defendant Mercy North Iowa employed or had agency relationships with doctors, nurses, assistants, nurse practitioners, technicians and other healthcare professionals to provide professional medical care and services to patients admitted for hospital care and treatment at Mercy North Iowa.
9. At all times material, any doctors, nurses, assistants, nurse practitioners, technicians and other healthcare professionals who provided care to Mario Ochoa were acting within the scope and course of an employment and/or agency relationship Defendant Mercy North Iowa.

10. Defendant Shawn Parcels is a resident of Johnson County, Kansas.
11. At all times relevant herein, National Autopsy and Tissue Recovery Services Inc. d/b/a National Autopsy Services, LLC and National Autopsy Services (“NAS”) was a business entity registered with the Kansas Secretary of State and maintaining its principal place of business at 827 S. Topeka Blvd, Topeka, Kansas 66612.
12. At all times relevant herein, NAS did business in the State of Iowa, including entering into contacts with Iowa citizens to perform private autopsies, tissue recovery, and related forensic services.
13. Defendant Shawn Parcels is the President of NAS maintains the title of “pathologists’ assistant” with the business.

#### **FACTUAL BACKGROUND**

14. On December 2, 2018 Mario Ochoa was admitted to Mercy North Iowa for monitoring and care with a chief complaint of intermittent fever/confusion, shortness of breath, and failed antibiotic therapy for a previously diagnosed infection.
15. Due to some agitation, an order was placed on December 4, 2018 for the drug Haldol Decanoate to be given via intramuscular injection (IM).
16. On December 6, 2018, Mario was erroneously given the Haldol Decanoate via IV injection, rather than IM, which increases the risk of clots and neuroleptic malignant syndrome (NMS) like symptoms.
17. Later in the evening on December 6, 2018, Mario began showing stroke like symptoms, slumping over to one side, unable to follow commands, and becoming suddenly weak.

18. Following the IV Haldol Decanoate injection, Mario continued to have an altered mental state and was ultimately transferred to intensive care and intubated. A Brain MRI was performed showing an acute/subacute right parietal lobe infarct and EEG x2 showed signs of hypoxia or hypoperfusion injury.
19. After transfer to the ICU, Mario did not show any significant neurologic improvement, prompting his family to make the difficult decision, after consultation with providers at Mercy North, to pursue Hospice care.
20. On December 19, 2018, Mario passed away.
21. Following Mario's death, the family of Mario Ochoa sought to locate someone to perform an autopsy as part of an investigation into the cause of his death.
22. On December 21, 2018, Plaintiffs entered into an agreement with Defendants Parcels and NAS to perform a private autopsy on the remains of Mario Ochoa.
23. The agreement between Plaintiffs and Defendants Parcels and NAS provides that "most exams take an average of 2 to 3 months for completion."
24. The agreement between Plaintiffs and Defendants Parcels and NAS also provided that Parcels/NAS was to be paid \$3,300 for services related to the autopsy of the body of Mario Ochoa, which amount was timely paid in full by Plaintiffs.
25. Defendants Parcels and NAS were aware that one of the purposes of the autopsy was as part of an investigation into whether Mario Ochoa died as a result of medical negligence and, as such, time was of the essence to allow for proper investigation of the case and for compliance with the applicable statute of limitations.

26. An “autopsy” is not defined in Iowa’s statutes; however, Black’s Law Dictionary defines autopsy as “[t]he dissection of a dead body for the purpose of inquiring into the cause of death.” BLACK’S LAW DICTIONARY 134 (6th ed 1990).
27. The autopsy was supposed to be performed on December 21, 2018.
28. The location for the examination, tissue recovery, and/or autopsy of the body of Mario Ochoa was the Ward Van Slyke Colonial Chapel in Clear Lake, Iowa.
29. Shawn Parcels was involved in the tissue recovery portion of the autopsy.
30. Thereafter, Mario’s body was cremated on December 22, 2018.
31. Following the autopsy, Parcels maintained communication with Plaintiffs, advising them that an autopsy report was forthcoming.
32. To date, no autopsy report was produced by Defendants Parcels and/or NAS.
33. Pursuant to Iowa Code § 619.18, plaintiffs certify that the prayer for relief exceeds applicable jurisdictional requirements for the amount in controversy.

**DIVISION I –**  
**CLAIMS FOR RELIEF AGAINST MERCY**  
**HEALTH SERVICES-IOWA, CORP. d/b/a**  
**MERCY MEDICAL CENTER – NORTH IOWA**

Plaintiffs Estate of Mario Ochoa, by its Administrator, Erica Ochoa, Jean Ryan Ochoa, Individually, Erica Ochoa, Individually, Mario Ochoa Jr., Individually, Andrea Ochoa Wright, Individually, and Jessica Ochoa Read Individually, hereby set forth their claims for relief directed specifically against Defendants Mercy Health Services-Iowa, Corp. d/b/a Mercy Medical Center – North Iowa herein. All references to “Defendant or Defendant(s)” within Division I of this

Petition refer specifically to Mercy Health Services-Iowa, Corp. d/b/a Mercy Medical Center – North Iowa.

**COUNT I – NEGLIGENCE**

34. Plaintiffs incorporate and replead paragraphs 1 through 33 herein.

35. Defendant Mercy North, by and through its agents, servants and employees, was negligent in the following particulars:

- a. Administering Haldol Decanoate via IV injection, directly contrary to orders that the drug be administered IM;
- b. Failure to follow physician orders;
- c. Failure to provide appropriate care and treatment;
- d. Failure to use the degree of skill, care and learning ordinarily possessed and exercised by other healthcare providers in similar circumstances;
- e. Other unspecified acts of negligence.

36. Defendant Mercy North is vicariously liable for the negligence of its employees, physicians, physician assistants, nurses, aids, pharmacists, technicians, agents and others who may have been involved in the care of Mario Ochoa.

37. As a result of Defendant Mercy North's negligence, Mario Ochoa sustained injuries and ultimately death.

38. As a result of Defendant Mercy North's negligence, Mario Ochoa endured conscious mental and physical pain and suffering prior to his death, for which the Estate of Mario Ochoa seeks damages.

39. As a result of Mario Ochoa's death, the Estate of Mario Ochoa has prematurely incurred expenses for Mario Ochoa's funeral and burial, and is entitled to interest on such expenses.
40. As a result of Defendant Mercy North's negligence and Mario Ochoa's injuries and death, Mario Ochoa's surviving spouse, Jean Ryan Ochoa, has suffered the loss of Mario's care, services, support, society, companionship, love, affection, aid, comfort, and consortium.
41. As a result of Defendant Mercy North's negligence and Mario Ochoa's injuries and death, Mario Ochoa's surviving children, Erica Ochoa, Mario Ochoa Jr., Andrea Ochoa Wright, and Jessica Ochoa Read have suffered the loss of their father's care, services, support, society, companionship, love, affection, aid, comfort, and consortium.
42. The negligence of Defendant Mercy North was the cause of the injuries and damages sustained by each of the Plaintiffs and said injuries and damages would not have happened except for the negligence of said Defendant.
43. The above-mentioned conduct and the harms and damages sustained by the Plaintiffs were within the scope of the liability of Defendant Mercy North, by and through its agents, servants and employees.

**PRAYER FOR RELIEF**  
**MERCY HEALTH SERVICES-IOWA, CORP.**  
**D/B/A MERCY MEDICAL CENTER – NORTH IOWA**

WHEREFORE, Plaintiffs Estate of Mario Ochoa, by its Administrator, Erica Ochoa, Jean Ryan Ochoa, Individually, Erica Ochoa, Individually, Mario Ochoa Jr., Individually, Andrea Ochoa Wright, Individually, and Jessica Ochoa Read Individually, pray for judgment against Defendant Mercy Health Services-Iowa, Corp. d/b/a Mercy Medical Center – North Iowa in an

amount which will fully and completely compensate each of them, together with interest thereon as provided by law, and for the costs of this action.

**DIVISION II –**  
**CLAIMS FOR RELIEF AGAINST SHAWN**  
**PARCELLS, and NATIONAL AUTOPSY**  
**AND TISSUE RECOVERY SERVICES, INC.**

Plaintiffs Estate of Mario Ochoa, by its Administrator, Erica Ochoa, Jean Ryan Ochoa, Individually, Erica Ochoa, Individually, Mario Ochoa Jr., Individually, Andrea Ochoa Wright, Individually, and Jessica Ochoa Read Individually, herby set forth their claims for relief directed specifically against Defendants Shawn Parcels, and National Autopsy and Tissue Recovery Services Inc., herein. All references to “Defendants” within Division II of this Petition refer specifically to Shawn Parcels and National Autopsy and Tissue Recovery Services Inc.

**COUNT I**  
**BREACH OF CONTRACT**

44. Plaintiffs replead and incorporate paragraphs 1 through 43 herein.
45. The agreement between Plaintiffs and Defendants Parcels and NAS to perform a private autopsy in exchange for \$3,300 constituted a binding contract between the parties.
46. A material term of the contract between Plaintiffs and Defendants was that said Defendants would produce a written report of findings and conclusions arising from the autopsy.
47. The failure of Defendants to produce a written report of findings and conclusions from the autopsy constitutes a material breach of contract. and seeks all foreseeable damages resulting from the breach.



48. The failure to timely and properly provide contracted professional services constitutes a wrongful act resulting in injuries and damages to Plaintiffs.
49. As a direct and proximate result of Defendants' breach of contract, Plaintiffs suffered and will suffer substantial pecuniary losses.
50. As a direct and proximate result of the above-stated acts and/or omissions by Defendants, Plaintiffs are entitled to all direct and consequential damages sustained as a natural and probable result of the Defendants' breach of contract.

**COUNT II**  
**CONVERSION**

51. Plaintiffs replead and incorporate paragraphs 1 through 50 herein.
52. Pleading in the alternative, this claim is brought by Plaintiffs against Defendants and seeks damages found on conversion.
53. Defendants Parcels and NAS received a \$3,300.00 payment for an autopsy to be performed ("the Property").
54. There was an appropriation of Plaintiffs' Property to Defendants' own use and benefit.
55. The aforementioned appropriation was Defendants' intentional exercise of dominion over the Property.
56. The aforementioned appropriation was in defiance of the true owner's rights.
57. Plaintiffs have an absolute and unconditional right to the immediate possession of the property.
58. As a direct and proximate result of the above-stated acts and/or omissions by Defendants, Plaintiffs have suffered and will suffer substantial damage and/or suffered pecuniary losses.

59. As a direct and proximate result of the above-stated acts and/or omissions by Defendants, Plaintiffs are entitled to all actual losses or injuries sustained as a natural and probable result of Defendants' wrong.

### **COUNT III - NEGLIGENCE**

60. Plaintiffs replead and incorporate paragraphs 1 through 60 herein.

61. Pleading in the alternative, this claim is brought by Plaintiffs against Defendants and seeks damages for negligence.

62. This claim is brought by Plaintiffs against Defendants and seeks damages for negligence.

63. At all times material hereto, it was the duty of Defendants to exercise reasonable care.

64. According to Rule 641-127.3 of the Iowa Administrative Code, an autopsy shall only be conducted by a licensed physician. Iowa Admin. Code r. 641-127.3.

65. At the aforesaid time and place, Defendants were guilty of one or more of the following acts and/or omissions:

- a. Carelessly and negligently failed to retain a licensed physician and surgeon to conduct a forensic autopsy on Mario Ochoa;
- b. Carelessly and negligently failed to retain a licensed physician and surgeon to determine the results of a forensic autopsy on Mario Ochoa;
- c. Carelessly and negligently failed to timely prepare an autopsy report related to Mario Ochoa.

66. As a direct and proximate result of one or more of the foregoing negligent acts and/or omissions of Defendants, Plaintiffs incurred and/or will incur substantial costs and/or

suffered pecuniary losses, and Defendants' negligence was a substantial factor in causing the aforementioned harm.

**COUNT IV**  
**NEGLIGENCE SPOILIATION OF EVIDENCE**

67. Plaintiffs replead and incorporate paragraphs 1 through 66 herein.
68. Pleading in the alternative, this claim is brought by Plaintiffs against Defendants and seeks damages for negligence (spoliation of evidence).
69. At all times material hereto, it was the duty of Defendants to exercise reasonable care.
70. On December 21, 2018, Plaintiffs retained the Defendants to perform an autopsy of the body of Mario Ochoa.
71. At all times relevant herein, Defendants owed a duty to Plaintiffs to preserve evidence by either (1) timely performing and documenting (autopsy report and photographs of the private autopsy) or (2) in the event Defendants were unwilling or unable to timely complete the private autopsy, the body of Mario Ochoa should have been returned to the possession custody or control of Plaintiffs to permit them to seek out and obtain an autopsy performed by someone else.
72. Defendants breached their duty by failing to complete and document (autopsy report and photographs of the private autopsy) the results of any private autopsy of the body of Mario Ochoa.
73. Defendants breached their duty by failing to return the body of Mario Ochoa to the possession custody or control of Plaintiffs to permit them to seek out and obtain an autopsy performed by someone else.

74. As a direct and proximate result of one or more of the foregoing negligent acts and/or omissions of Defendants, Plaintiffs incurred and/or will incur substantial costs and/or suffered pecuniary losses, and Defendants negligence was a substantial factor in causing the aforementioned harm.
75. As a direct and proximate result of Defendants' acts and/or omissions, Plaintiffs lost the ability to obtain a robust and proper postmortem examination of body of Mario Ochoa to discover the cause of death.
76. As a direct and proximate result of Defendants' acts and/or omissions, Plaintiffs forever lost the ability to timely obtain a robust postmortem examination of body of Mario Ochoa for the purpose of providing this important investigatory component in any exploration and proof of a medical malpractice cause of action against the health care professionals at Mercy North.

**COUNT V**  
**NEGLIGENCE – MISHANDLING OF A CORPSE**

77. Plaintiffs plead and incorporate paragraphs 1 through 76 herein.
78. This claim is brought by Plaintiffs against Defendants and seeks damages for unauthorized mutilation of a corpse.
79. At all times material hereto, it was the duty of Defendants to exercise reasonable care.
80. At all times material hereto, it was the duty of the defendants to exercise ordinary care or skill in the management of the body of Mario Ochoa, which they were entrusted with.
81. At all times material hereto, it was the duty of Defendants to comply with the applicable Iowa law.

82. Moreover, public policy requires that persons entrusted to perform autopsies adhere to a high standard of care in view of the psychological devastation likely to result from any mistake that upsets the expectations of the decedent's bereaved family.
83. Defendants' conduct was extreme and outrageous.
84. Defendants intended to inflict severe emotional distress or knew that there was at least a high probability that his conduct would inflict severe emotional distress.
85. Defendants' conduct did cause mental distress to Plaintiffs.
86. As mental distress is a highly foreseeable result of the above-referenced conduct, recovery for mental distress is a useful and necessary means to maintain the standards of the profession and is the only way in which the victims may be compensated for the wrongs they have suffered.
87. As a direct and proximate result of the foregoing negligent act and/or omission of Defendants, Plaintiffs incurred and/or will incur substantial costs and/or suffered pecuniary losses.

**COUNT VI**  
**NEGLIGENT INTERFERENCE WITH ABILITY TO OBTAIN A PROPER AUTOPSY**

88. Plaintiffs replead and incorporate paragraphs 1 through 87 herein.
89. Pleading in the alternative, this claim is brought by the Plaintiffs against Defendants and seeks damages for negligent interference with ability to obtain a proper autopsy.
90. At all times material hereto, it was the duty of Defendants to exercise reasonable care.
91. On December 21, 2018, Plaintiffs retained Defendants to perform an autopsy of the body of Mario Ochoa.

92. At all times relevant herein, Defendants owed a duty to Plaintiffs to preserve evidence by either (1) timely performing and documenting (autopsy report and photographs of the private autopsy) or (2) in the event Defendants were unwilling or unable to timely complete the private autopsy, the body of Mario Ochoa should have been returned to the possession custody or control of the plaintiffs to permit them to seek out and obtain an autopsy performed by someone else.
93. Defendants breached their duty to exercise reasonable and ordinary care when they proceeded with, inter alia, tissue collection when it was reasonably foreseeable that they could not timely and properly complete an autopsy.
94. Defendants breached their duty to exercise reasonable and ordinary care when it was reasonably foreseeable that they could not timely and properly complete an autopsy they failed to return the body of Mario Ochoa to the possession custody or control of Plaintiffs to permit them to seek out and obtain an autopsy performed by someone else.
95. As a direct and proximate result of Defendants' acts and/or omissions, Plaintiffs lost the ability to obtain a robust and proper postmortem examination of body of Mario Ochoa to discover the cause of death.
96. As a direct and proximate result of these defendants' acts and/or omissions, Plaintiffs forever lost the ability to timely obtain a robust postmortem examination of body of Mario Ochoa for the purpose of providing this important investigatory component in any exploration of a medical malpractice cause of action.

97. As a direct and proximate result of the foregoing negligent act and/or omission of the defendants, Plaintiffs incurred and/or will incur substantial costs and/or suffered pecuniary losses.

**COUNT VII**  
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

98. Plaintiffs replead and incorporate paragraphs 1 through 97 herein.

99. Pleading in the alternative, this claim is brought by the Plaintiffs against the Defendants and seeks damages for intentional infliction of emotional distress.

100. Here, the Defendants' conduct related to the failure to provide a timely and proper autopsy was outrageous.

101. Defendants acted with reckless disregard of the probability that the Plaintiffs would suffer severe emotional distress.

102. As a direct and proximate result of one or more of the foregoing acts and/or omissions of Defendants, Plaintiffs suffered severe emotional distress, incurred and/or will incur substantial costs, and/or suffered pecuniary losses.

**COUNT VIII**  
**VIOLATION OF THE IOWA CONSUMER  
PROTECTION ACT AND IOWA CONSUMER FRAUD ACT**

103. Plaintiffs replead and incorporate paragraphs 1 through 102 herein.

104. Pleading in the alternative, this claim is brought by Plaintiffs against Defendants and seeks damages found under the Iowa Consumer Rights Act ("ICRA") and the Iowa Consumer Fraud Act ("ICFA").

105. In 2019, Plaintiffs learned of some concerns related to Parcells' role in autopsies in Kansas.

106. Post-nominal letters or titles are the letters placed after a person's name to indicate that person's position, academic degree, accreditation, or office.

107. At all times relevant herein, Shawn Parcels has listed himself with the following post-nominal letters:

Shawn Lynn Parcels, BS, MSHAPI, PA, PhD-C  
Forensic Clinical Anatomist  
Chief Medical Investigator  
Board Eligible Forensic, Neuro and Infectious Disease Epidemiologist

108. The letters "PA" likely refer to pathology assistant, but is often confused with physician assistant, which is a degree in the healing arts. Defendant Parcels does not have this degree.

109. The above titles used by Parcels are not conferred by any education in any healing art.

110. According to the Kansas AG Petition, some consumers of Parcels' services have believed Parcels had the medical qualifications and licensure necessary to conduct an autopsy and offer a medical opinion on the cause and manner of death.

111. Defendants did not correct these misrepresentations or willfully concealed, suppressed or omitted these material facts.

112. According to the Kansas AG Petition, some consumers of Parcels' services believed Parcels was a Professor because of misrepresentations he was "Professor Lynn" (Shawn Parcels' middle name is "Lynn").

113. Typically, the title "professor" requires a doctoral degree and requires employment as a full-time, tenure-track university professor.

114. Parcels does not hold a doctorate degree and does not otherwise seem entitled to use the title "professor".



115. NAS's website stated that its pathologists were "board certified by the American Board of Pathology in anatomic, clinical, forensic, and/or neuropathology." (See <https://web.archive.org/web/20181228144908/http://www.nationalautopsyservices.com/about.html> (last visited Oct. 30, 2020).
116. However, upon information and belief, NAS does not have any employees involved in the performance of autopsies other than Parcels.
117. Not only is Parcels not a board-certified pathologist, he is not a medical doctor (MD or DO) of any kind.
118. Parcels is not and was not qualified to perform autopsies, on his own, in the State of Iowa.
119. According to a lawsuit filed by the Kansas Attorney General in a Kansas state court (Shawnee County, KS) (Case No. 2019-CV-000233) (hereinafter "the Kansas AG Petition"), Defendants' website [www.nationalautopsyservices.com](http://www.nationalautopsyservices.com) advertised, solicited, and offered for sale products and services including private autopsies, tissue recovery and forensic services."<sup>1</sup>
120. According to the Kansas AG Petition, Defendants' website [www.nationalautopsyservices.com](http://www.nationalautopsyservices.com) advertised, solicited, and offered for sale products and services including private autopsies, tissue recovery and forensic services.
121. According to the Kansas AG Petition, Defendants' website misrepresented that they have facilities for private autopsies across the United States and internationally. These locations

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<sup>1</sup> See [https://ag.ks.gov/docs/default-source/documents/2019-cv-233-petition.pdf?sfvrsn=8916d31a\\_2](https://ag.ks.gov/docs/default-source/documents/2019-cv-233-petition.pdf?sfvrsn=8916d31a_2) (last visited Nov. 3, 2020).

are mostly funeral homes where Defendants' employees or agents have conducted purported private "autopsies."

122. According to the Kansas AG Petition, Defendants were using fictitious addresses when conducting consumer transactions and solicitation of consumer transactions.

123. According to the Kansas AG Petition, beginning at least in 2017, Defendants used social media to post statements, photos and videos, which misrepresent Defendants' licensure, qualifications and education to conduct autopsies, tissue recover and forensic pathology.

124. According to the Kansas AG Petition, Defendants falsely advertised on the website that it partners with pathologists and other licensed and qualified medical professionals to provide the products and services offered.

125. According to the Kansas AG Petition, the Office of the Kansas Attorney General determined it is the pattern and practice of Defendants to offer and perform private autopsies and pathology services without the required licensure, qualifications and education of a pathologist.

126. According to the Kansas AG Petition, Defendants misrepresented contracts, agreements or partnerships with persons qualified to conduct autopsies, which constitute deceptive acts and practices under Iowa law.

127. Solicitation of a consumer transaction based upon misrepresentations is a violation of Iowa law.

128. The purpose of the ICRA and ICFA are to protect consumers and business from unfair and deceptive practices and acts.

129. The ICRA and ICFA provide a remedy for consumers who have been victimized by deceptive or unfair business practices.
130. Specifically, the ICRA and ICFA is a regulatory and remedial statute intended to protect consumers, borrowers, and business persons against fraud, unfair methods of competition, and other unfair and deceptive practices.
131. The ICRA and ICFA covers both unfair and deceptive conduct.
132. Defendants engaged in a deceptive act when Parcells represented to Plaintiffs that NAS would perform a private autopsy of the body of Mario Ochoa, which he knew was part of an investigation into whether medical negligence had occurred at Mercy Medical Center (Mason City, IA).
133. Defendants intended the Plaintiffs to rely on the aforementioned deceptive act.
134. Defendants engaged in a deceptive practice when Defendants advertised, via its website, that NAS performed autopsies.
135. Defendants intended the plaintiff to rely on the aforementioned deceptive practice.
136. The sale of and/or performance of an autopsy constitutes a course of conduct involving trade or commerce.
137. Plaintiffs were deceived by Defendants' misrepresentations.
138. In reliance on the aforementioned deceptive act and/or deceptive practice, Plaintiffs retained Defendants by signing a contract and paying a fee and, then, allowing Defendants to take possession, custody, and control over the body of Mario Ochoa for the purpose of having a private autopsy performed.

139. Defendants subsequently lied about a proper autopsy being performed on the body of Mario Ochoa in a timely manner.
140. In reliance on Defendants' representation that an autopsy had been performed, the body of Mario Ochoa was cremated without, in fact, an autopsy being properly performed by someone authorized to practice medicine in Iowa and without the opportunity for someone else to perform an autopsy.
141. The acts and/omissions of Defendants were unfair in that the practice they engaged in offends public policy.
142. The acts and/omissions of Defendants were unfair in that the practice they engaged in was immoral, unethical, oppressive, and/or otherwise unscrupulous.
143. The acts and/omissions of Defendants were unfair in that the practice they engaged in causes substantial injury to consumers.
144. As a direct and proximate result of the above-stated acts and/or omissions by Defendants, Plaintiffs suffered actual damages that Defendants' deception.
145. As a direct and proximate result of the above-stated acts and/or omissions by Defendants, Plaintiffs suffered substantial injury.

**COUNT IX**  
**VIOLATION OF THE KANSAS CONSUMER PROTECTION ACT**

146. Plaintiffs replead and incorporate paragraphs 1 through 145 herein.
147. Pleading in the alternative, this claim is brought by Plaintiffs against Defendants and seeks damages found under the Kansas Consumer Protection Act ("KCPA").

148. This claim is being filed within three (3) years following the date the injury was or reasonably should have been discovered. See Kan. Stat. Ann. § 60-512.
149. Solicitation of a consumer transaction based upon misrepresentations is a violation of Kansas law.
150. Some of the interactions between Plaintiffs and Defendants occurred while Parcels operated from the State of Kansas with Plaintiffs in the State of Iowa.
151. The purpose of the KCPA to protect consumers from suppliers who commit deceptive and unconscionable practices. See Kan. Stat. Ann. § 50-623(b).
152. The KCPA proscribes deceptive or unconscionable acts and practices in connection with a consumer transaction. Kan. Stat. Ann. §§ 50-626, 627.
153. Section 50-624(b) of the KCPA defines a “consumer” as “an individual, husband and wife, sole proprietor, or family partnership who seeks or acquires property or services for personal, family, household, business or agricultural purposes.” Kan. Stat. Ann. § 50-624.
154. Section 50-624(l) of the KCPA defines a “supplier” as “a manufacturer, distributor, dealer, seller, lessor, assignor, or other person who, in the ordinary course of business, solicits, engages in or enforces consumer transactions, whether or not dealing directly with the consumer...” Kan. Stat. Ann. § 50-624.
155. Section 50-626(a) of the KCPA states that “[n]o supplier shall engage in any deceptive act or practice in connection with a consumer transaction.” Kan. Stat. Ann. § 50-626.
156. The KCPA prohibits a supplier from, inter alia, the following: the willful use, in any oral or written representation, of exaggeration, falsehood, innuendo or ambiguity as to a material fact (Kan. Stat. Ann. § 50-626(b)(2)); the willful failure to state a material fact, or the willful

concealment, suppression or omission of a material fact (Kan. Stat. Ann. § 50-626(b)(3)); and offering services without intent to sell them (Kan. Stat. Ann. § 50-626(b)(5)).

157. At all times relevant herein, Defendants willfully used, in any oral and/or written representation(s), the exaggeration, falsehood, innuendo or ambiguity as to the material fact that Defendants were unable to provide a private autopsy of Mario Ochoa, in violation of Kan. Stat. Ann. § 50-626(b)(2)).

158. At all times relevant herein, Defendants willfully failed to state a material fact, or the willfully concealed, suppressed or omitted the material fact that Defendants were unable to provide a private autopsy of Mario Ochoa, in violation of Kan. Stat. Ann. § 50-626(b)(3).

159. At all times relevant herein, Defendants offered private autopsy services without intent to sell them, in violation of Kan. Stat. Ann. § 50-626(b)(5).

160. Section 50-627(a) of the KCPA states that “[n]o supplier shall engage in any unconscionable act or practice in connection with a consumer transaction. An unconscionable act or practice violates this act whether it occurs before, during or after the transaction.” Kan. Stat. Ann. § 50-627.

161. Section 50-627(b) of the KCPA states that “[t]he unconscionability of an act or practice is a question for the court. In determining whether an act or practice is unconscionable, the court shall consider circumstances of which the supplier knew or had reason to know, such as, but not limited to the following that: (1) The supplier took advantage of the inability of the consumer reasonably to protect the consumer’s interests because of the consumer’s physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement or similar factor”. Kan. Stat. Ann. § 50-627.

162. At all times relevant herein, Defendants acted unconscionably when they permitted the cremation of the body of Mario Ochoa knowing that no autopsy of the body had been performed by them and by failing to contact Plaintiffs to allow her to arrange for someone else to perform the private autopsy of the body of Mario Ochoa.
163. Section 50-634(b) of the KCPA provides that a “consumer” who is aggrieved by a violation of this act may recover, but not in a class action, damages or a civil penalty as provided in subsection (a) of K.S.A. 50-636 and amendments thereto, whichever is greater.” Kan. Stat. Ann. § 50-634.
164. Pursuant to Section 50-634(g) of the KCPA, the Office of the Kansas Attorney General has been (or will be) notified of this action. Kan. Stat. Ann. § 50-634.
165. Further, one or more of the aforementioned deceptive and/or unconscionable practices constitutes an act or practice that is continuing in nature and not in connection with a specific identifiably consumer transaction. See Kan. Stat. Ann. § 50-636(c).
166. As a direct and proximate result of the above-stated acts and/or omissions by Defendants, Plaintiffs’ have suffered and will suffer substantial monetary damage.
167. As a direct and proximate result of Defendants’ bad faith conduct, Plaintiffs’ have incurred and will incur substantial pecuniary losses.

**COUNT X**  
**NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

168. Plaintiffs replead and incorporate paragraphs 1 through 167 herein.
169. Defendants contracted with Plaintiffs to deliver medical services, namely to perform a private autopsy.

170. The nature of the special relationship between Plaintiffs and Defendants was such that it supported the imposition of a duty on the Defendants to exercise ordinary care to avoid causing emotional harm to Plaintiffs.

171. Services involving the remains of a deceased loved one involve matters invoking such mental concern and solicitude that the breach of a contract incident thereto will inevitably result in mental anguish, pain, and suffering.

172. As a direct result of Defendants' breach of the duty to exercise ordinary care, Plaintiffs suffered severe emotional distress damages.

**PRAYER FOR RELIEF**  
**SHAWN PARCELLS AND NATIONAL AUTOPSY  
AND TISSUE RECOVERY SERVICES INC.**

WHEREFORE, Plaintiffs Estate of Mario Ochoa, by its Administrator, Erica Ochoa, Jean Ryan Ochoa, Individually, Erica Ochoa, Individually, Mario Ochoa Jr., Individually, Andrea Ochoa Wright, Individually, and Jessica Ochoa Read Individually, pray for judgment against Defendants Shawn Parcels and National Autopsy and Tissue Recovery Services Inc. in an amount which will fully and completely compensate each of them, including full compensatory damages, disgorgement of profits, treble damages as permitted, punitive damages, attorney fees as permitted, and other relief as the court deems just and proper, together with interest thereon as provided by law, and for the costs of this action.

**JURY DEMAND**

Plaintiffs hereby demand a trial by jury.

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(Subject to Pending Motion for  
Admission *Pro Hac Vice*)

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