

## ATTACHMENTS

1. MSC v. Novation Complaint 05-0210
2. Attachment 2 Affidavit of Samuel Lipari 05-0210
3. Lipari v. VHA - Novation et al. Complaint 08-04217
4. Appendix 1. Procedural History
5. Appendix 2. Table of Cases Complaint
6. Appendix 3. State Role in Disbarment
7. Appendix 4. US Bank Relationship
8. Appendix 5. GE Relationships
9. Appendix 6. (Cynthia Fitzgerald) *Ex rel* Complaint
10. Lipari v. GE, Wells Fargo, Regus International, Chapel Ridge (RICO) Petition 0916-38273
11. Lipari Affidavit 0916-38273
12. Lipari Affidavit Exhibits 0916-38273
13. Landrith Notice of Grand Jury Demand against Bank of America, BONY 63-main.pdf
14. Landrith Notice of Grand Jury Demand against Bank of America, BONY 63-1.pdf
15. Landrith Notice of Grand Jury Demand against Kansas Officials 132-main.pdf
16. 132-1.pdf Landrith Grand Jury Demand against Kansas Officials Part 1
17. 132-2.pdf Landrith Grand Jury Demand against Kansas Officials Part 2
18. 132-3.pdf Landrith Grand Jury Demand against Kansas Officials Part 3
19. 132-4.pdf Landrith Grand Jury Demand against Kansas Officials Part 4

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
KANSAS CITY, MISSOURI**

Medical Supply CHAIN, INC.,	)	
<i>Plaintiff,</i>	)	
v.	)	Case No. 05-0210-CV-W-ODS
NOVATION, LLC	)	Attorney Lien
NEOFORMA, INC.	)	
ROBERT J. ZOLLARS	)	
VOLUNTEER HOSPITAL ASSOCIATION	)	
CURT NONOMAQUE	)	
UNIVERSITY HEALTHSYSTEM CONSORTIUM	)	
ROBERT J. BAKER	)	
US BANCORP, NA	)	
US BANK	)	
JERRY A. GRUNDHOFFER	)	
ANDREW CESERE	)	
THE PIPER JAFFRAY COMPANIES	)	
ANDREW S. DUFF	)	
SHUGHART THOMSON & KILROY	)	
WATKINS BOULWARE, P.C.	)	
<i>Defendants.</i>	)	

**COMPLAINT**

Comes now the plaintiff Medical Supply Chain, Inc., through its counsel, Bret D. Landrith and makes the following complaint for federal antitrust and state contract related claims.

**Outline of Petition**

Jurisdiction

1. Subject Matter Jurisdiction
2. Personal Jurisdiction
3. Venue
4. Governing Law

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3. Anticompetitive Activity in the Subject Relevant Markets
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4. Background Procedural History
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5. The Hospital Group Purchasing Enterprise To Artificially Inflate Prices
  - a. The defendants' hospital group purchasing enterprise
6. The Origin of Technology That Made GPO's Obsolete And Eliminated Two Distribution Levels
7. The Defendants Foreclosure of Competition In The Market For Hospital Supplies Through Exclusionary Contracts and Loyalty Agreements That Have The Same Exclusionary Effect.
8. The Monopolization Of The Hospital Supply Industry By The Defendants In Conspiracies And Combinations With Premier, GHX, LLC and Their Predecessor Corporations

Events

1. Andrew S. Duff And Piper Jaffray's Concerted Refusal To Deal.
2. US Bank's Concerted Refusal To Deal.
3. US Bancorp, Andrew Cesere and Jerry Grundhoffer's Concerted Refusal To Deal.
4. The Defendants' Acceptance of Liability For Medical Supply's Business Plan Damages.
5. The Defendants' Theft of Medical Supply's Intellectual Property.
6. The Effects of the Plan To Financially Destroy Medical Supply.
7. US Bancorp, US Bank, Andrew Cesere And Jerry Grundhoffer Realize Because Of The Prospective Injunctive Relief Action Their Antitrust Liability To Medical Supply And The Requirement At Law That They Divest Piper Jaffray At A \$750 Million Dollar Loss.
8. US Bancorp, US Bank, Andrew Cesere And Jerry Grundhoffer Realize Because Of The Prospective Injunctive Relief Action Their Antitrust Liability To Medical Supply And The Requirement At Law That They Divest Piper Jaffray At A \$750 Million Dollar Loss.
9. Piper Jaffray And Andrew S. Duff Realize Because Of The Prospective Injunctive Relief Action Their Antitrust Liability To Medical Supply And The Requirement At Law That They Divest Their Healthcare Venture Fund, Losing \$225,000,000.00 (255 million dollars) In Assets.
10. Medical Supply Informs Robert J. Baker, UHC, Curt Nonomaque, VHA, Novation LLC, Bob Zollars And Neoforma that it has been unsuccessful in obtaining prospective injunctive and declaratory relief against their coconspirators Piper Jaffray, US Bancorp, US Bank, Andrew Cesere And Jerry Grundhoffer and that the conspirators are jointly and severally liable for the damages Medical Supply sought to avoid.
11. Medical Supply is granted a Rehearing in Tenth Circuit. That Afternoon UHC and VHA Realize Because of Medical Supply's Demand Letter That They Are Required At Law To Divest Neoforma and Both UHC and VHA Make an Emergency Announcement of An Agreement to Dispose of Neoforma at a \$150,000,000.00 (150 million dollar) loss.
12. Novation, LLC realizes Because of Medical Supply's Demand Letter That Its Relationship With Neoforma and Its Long Term Anticompetitive Contract Are Illegal Antitrust prohibited Conduct Without Redeeming Value and Announces It Will Review Neoforma's Value Creation.
13. Robert J. Baker, UHC, Curt Nonomaque, VHA, Novation LLC, Bob Zollars And Neoforma decide to continue to rely on Piper Jaffray, US Bancorp, US Bank, Andrew Cesere And Jerry Grundhoffer's corrupt scheme to influence the court.
14. Robert J. Baker, UHC, Curt Nonomaque, VHA, Novation LLC, Bob Zollars And Neoforma's Utilization of Ongoing Sham Petitioning By Shughart, Thomson & Kilroy, Piper Jaffray, US Bancorp, US Bank, Andrew Cesere And Jerry Grundhoffer To Deprive Medical Supply of Counsel.
15. The Impending Threat Of Monopolization of the Market For Hospital Supplies In E-Commerce.

Summary Of Claims

Claims For Relief

COUNT I

Damages For Combination And Conspiracy

In Restraint Of Trade Or Commerce

(15 U.S.C. §§ 1,15)

Group Boycott Under Sherman 1

Allocation of Customers Under Sherman 1

Horizontal Price Restraint Under Sherman 1  
Vertical Price Restraint Under Sherman 1  
Tying Agreements Under Sherman 1  
COUNT II  
Injunctive Relief For Combination And Conspiracy  
In Restraint Of Trade Or Commerce  
(15 U.S.C. §§ 1,26)  
COUNT III  
Damages For Monopolization  
(15 U.S.C. §§ 2,15)  
Threat of USA PATRIOT Act Suspicious Activity Reporting  
Violation of §802 of The USA PATRIOT Act  
The Filing of a Malicious USA PATRIOT Act Suspicious Activity Report (SAR)  
Harassing Medical Supply and its Agents Outside of This Action  
Unilateral Refusal To Deal  
COUNT IV  
Injunctive Relief For Monopolization  
(15 U.S.C. §§ 2,26)  
COUNT V  
Damages For Interlocking Directors  
(15 U.S.C. § 19)  
COUNT VI  
Damages For Combination And Conspiracy  
In Restraint Of Trade Or Commerce  
(26 MO. § 416.031(1), § 416.121(1),(1))  
COUNT VII  
Injunctive Relief For Combination And Conspiracy  
In Restraint Of Trade Or Commerce  
(26 MO. § 416.031(1), § 416.071(1), (2), § 416.121(1)(1))  
COUNT VIII  
Damages For Monopolization  
(26 MO. § 416.031(2), § 416.121(1),(1))  
COUNT IX  
Injunctive Relief For Monopolization  
(26 MO. § 416.031(2), § 416.071(1), (2), § 416.121(1),(2))  
COUNT X  
Damages For Tortuous Interference With  
Contract Or Business Expectancy  
COUNT XI  
Damages For Breach Of Contract  
COUNT XII  
Damages For Breach Of Fiduciary Duty  
COUNT XIII  
Damages For Fraud And Deceit  
COUNT XIV  
Damages For Prima Facie Tort  
COUNT XV  
Damages For Racketeering  
Influenced Corrupt Organization (RICO) Conduct  
(18 U.S.C. § 1962(c), 18 U.S.C. § 1962(d))  
COUNT XVI  
DAMAGES FOR MALICIOUS FILING OF A SUSPICIOUS ACTIVITY  
REPORT (SAR) UNDER THE USA PATRIOT ACT  
(Pub. L. No. 107-56 (2001), 18 U.S.C. § 1030 (e), 31 U.S.C. § 5318 (g)(3))  
Tolling Of Applicable Statutes Of Limitations  
Prayer For Relief



Conclusion  
Demand For Trial By Jury  
Designation Of Place Of Trial

### **JURISDICTION**

1. **Subject Matter Jurisdiction.** This complaint is filed and this action instituted under Sections 4 and 15 of the Clayton Act (15 U.S.C. SS 14 and 26) to recover damages for injuries to plaintiff's business and property by reason of the violations by the defendants of Sections 1 and 2 of the Sherman Act (15 U.S.C. SS 1, 2), and to enjoin the defendants from continuing to commit such violations in the future and the Declaratory Judgment Act, 28 U.S.C. SS 2201 and 2202. Jurisdiction of this Court is proper under 15 U.S.C. SS 15 and 26, 28 U.S.C. SS 1331, 1332 and 1337, and the doctrine of pendent jurisdiction. The amount in controversy exceeds \$75,000.00, exclusive of interest and costs.
2. The business and acts of the defendants described herein are conducted in, and affect commerce between and among, the various states of the United States and between the United States and foreign nations and their territories. The unlawful acts of the defendants alleged hereinafter have restrained interstate trade and commerce.
3. This complaint includes claims under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 196, et seq., a federal question with an amount in controversy exceeding \$75,000.00, exclusive of interest and costs.
4. This complaint includes claims under The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (The USA PATRIOT Act) Pub. L. No. 107-56 (2001), a federal question with an amount in controversy exceeding \$75,000.00, exclusive of interest and costs.
5. In connection with the acts alleged in this complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of interstate commercial carriers.
6. This complaint includes claims based on the existence of a written contract under Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq. involving a contract made in interstate commerce and affecting commerce among several states with an amount in controversy exceeding \$75,000.00, exclusive of interest and costs.

7. **Personal Jurisdiction.** The court has personal jurisdiction over the parties who are in the territorial limits of the United States and who have sufficient contacts with the State of Missouri.
8. **Venue.** Many of the acts charged herein, occurred in substantial part in the District for Western Missouri and the District of Kansas. Defendants conducted other substantial business within this District and the plaintiff's corporate headquarters are within this district.
9. **Governing Law.** This court has jurisdiction over supplemental state law based claims arising from the common law of trusts, contracts and fiduciary duty under 28 U.S.C. § 1367. The Laws of the State of Missouri apply to the plaintiff's state law claims and govern their resolution.

### **FACTS**

#### **1. PARTIES**

##### **a. Plaintiff**

10. Plaintiff Medical Supply Chain, Inc. (Medical Supply), is a Missouri Corporation with corporate headquarters at 1300 NW Jefferson Court, Blue Springs, MO 64015.

##### **b. Defendants**

11. Defendant Novation LLC. (Novation) is a company headquartered at 125 East John Carpenter Frwy Suite 1400 Irving, TX 75062.

12. Defendant Neoforma Inc. (Neoforma) NYSE Symbol NEOF, 3061 Zanker Road, San Jose, California 95134.

13. Defendant Robert J. Zollars is CEO of Neoforma, 3061 Zanker Road, San Jose, California 95134.

14. Defendant Volunteer Hospital Association of America, Inc. (VHA Inc.) is a corporation headquartered at 220 E. Las Colinas Blvd., Irving, TX 75039.

15. Curt Nonomaque, President and CEO, VHA Inc., 220 E. Las Colinas Blvd., Irving, TX 75039.

16. Defendant University Healthsystem Consortium (UHC) is a company headquartered at 2001 Spring Road, Suite 700 Oak Brook, Illinois 60523-1890.

17. Robert J. Baker, President and CEO of UHC, 2001 Spring Road, Suite 700 Oak Brook, Illinois 60523.

18. Defendant US Bancorp, NA (US Bancorp) NYSE symbol USB is a bank holding corporation headquartered at U.S. Bancorp Center 800 Nicollet Mall, Minneapolis, MN 55402.

19. Defendant US Bank, NA is a Delaware Corporation organized under the National Bank Act, 12 U.S.C. §§ 21-216d, headquartered at U.S. Bancorp Center 800 Nicollet Mall, Minneapolis, MN 55402.

20. Defendant Jerry A. Grundhoffer, the President and Chief Executive Officer of US Bancorp. His offices are at 800 Nicollet Mall, Minneapolis, MN 55402. He is not a citizen of Missouri.

21. Defendant Andrew Cesere is Vice Chairman of US Bancorp trust division. His offices are at 800 Nicollet Mall, Minneapolis, MN 55402. He is not a citizen of Missouri.

22. Defendant Piper Jaffray Companies, (Piper Jaffray) NYSE symbol PJC is a company located at 800 Nicollet Mall, Minneapolis, MN 55402.

23. Defendant Andrew S. Duff, CEO of Piper Jaffray, 800 Nicollet Mall, Minneapolis, MN 55402. He is not a citizen of Missouri.

24. Shughart Thomson & Kilroy Watkins Boulware, P.C., (Shughart, Thomson & Kilroy) is a company located at 120 W. 12TH STE 1600, Kansas City MO 64105

**c. Coconspirators Not Named As Defendants In This Action**

25. Premier, Inc. (Premier) 12225 Camino Real, San Diego, CA 92130.

26. Global Health Exchange LLC (GHX), 11000 Westmoor Circle, Suite 400 Westminster, Colorado 80021.

27. General Electric Company, (GE) NYSE symbol GE, 3135 Easton Turnpike, Fairfield, CT 06828-0001.

28. GE Healthcare, global headquarters, Chalfont St. Giles, United Kingdom, USA headquarters, Technologies: Waukesha, Wisconsin.

29. General Electric Capital Business Asset Funding Corporation, (GE Capital), 3135 Easton Turnpike, Fairfield, CT 06828-0001.

30. GE Transportation Systems Global Signaling, L.L.C. (GE Transportation) 3135 Easton Turnpike, Fairfield, CT 06828-0001.

31. Jeffrey R. Immelt, CEO of GE and former president of (GE Healthcare) 3135 Easton Turnpike, Fairfield, CT 06828-0001.

32. Robert Betz, president of Robert Betz Associates, Inc.

**2. THE RELATIVE MARKETS**

**a. The Nationwide Hospital Supply Market**

33. The market for hospital supplies includes all products used in the provision of healthcare services at doctor's offices, clinics, nursing homes, hospitals and health systems made up of multiple hospitals and outpatient facilities, nationwide.

34. Hospital supplies include everything from consumable bandages, dressings and pharmaceuticals to facility supplies including linens, instruments, test equipment, cleaning supplies, food and permanently installed laboratory equipment and physical plant machinery.

35. Currently, the market for hospital supplies is 1.8 trillion dollars in expenditures annually.

36. Two hospital group purchasing organizations, Novation, Inc. and Premier Inc. which originated as cooperative buyer's agents for hospitals currently control which products are available to 70% of the nation's hospitals.

**b. The Nationwide e-commerce Hospital Supply Market**

37. The e-commerce market includes all the products in the range of hospital supplies described above when they are selected from on line catalogs or purchased through Internet and World Wide Web communications from an electronic marketplace.

38. The e-commerce market also includes supply chain management software used in healthcare to enhance the advantages of web based suppliers over traditionally distributed goods which adds value in the form of obtaining product information, aggregating comparable or substitutable products to maximize competition in pricing, bidding, ordering, shipping, fulfillment and logistics.

39. The use of artificial intelligence software by electronic marketplaces radically increases the efficiency and decreases the costs of products available through traditional distribution systems.

40. Originally there were over a hundred e-commerce electronic marketplaces for hospital supplies. Now there are just two, Neoforma, Inc. the web based supplier controlled by Novation and GHX, LLC a web based supplier controlled by Premier and other members in a joint venture of formerly competing hospital manufacturers and suppliers.

41. Medical Supply and its founder Samuel Lipari created the concept of an electronic marketplace for hospital supplies based on an insurance clearing house model in 1995 but has been prevented from entering the market independent from the control of Novation and Premier.

**c. The Upstream Healthcare technology Company Capitalization Nationwide Market**

42. The ability to finance research and development and to create working technological solutions is commonly shouldered by the entrepreneur, his family and friends until the technology can be demonstrated and its utility can be quantified.

43. Healthcare technology companies and supply chain management companies (throughout this complaint, supply chain management companies will refer to companies with software applications that manage hospital supplies in the healthcare industry) create products that can be used throughout the nation, meeting a universal demand and necessitate capitalization to reach that market quickly as opposed to attempting to grow from region to region as a bricks and mortar retail store or services industry business might. Failure of the healthcare technology or supply chain management company to meet the demand for its product results in competitors substituting other technological solutions and meeting the demand before the entrepreneur can pay the cost of his research and development or repay the sources of capital used in entering the market.

44. US Bancorp NA and Piper Jaffray concentrated 70% of their investment in healthcare and created a 150 million dollar healthcare technology venture fund to capitalize healthcare technology and supply chain management companies.

45. US Bancorp Piper Jaffray was the leading capital source for healthcare technology companies and for supply chain management software that could be adapted to healthcare.

46. US Bancorp Piper Jaffray also provided research to institutional investors and published coverage of publicly traded healthcare technology companies that gave it the power to dominate the early stage capitalization of privately owned healthcare technology companies and whether the company would be selected for an initial public offering, the largest capitalization event for an entrepreneur and whether a market would be made or demand exist for the shares of the offering once they were marketed.

**3. ANTICOMPETITIVE ACTIVITY IN THE SUBJECT RELEVANT MARKETS**

47. “Most health care costs are covered by third parties. And therefore, the actual user of health care is not the purchaser of health care. And there's no market forces involved with health care.” President George W. Bush, Second Presidential Debate, October 14, 2004

48. The hospital supply market is recognized to be anticompetitive See The Exclusion of Competition For Hospital Sales Through Group Purchasing Organizations June 25, 2002 by Harvard Law Professor Einer Elhauge and The US General Accounting Office report Pilot Study Suggests Large Buying Groups Do Not Always Offer Hospitals Lower Prices April 30, 2002

49. On 4/30/02 Elizabeth A. Weatherman, Managing Director Warburg Pincus, LLC and Vice Chair of the Medical Group of the National Venture Capital Association testified before the Senate that **“...companies subject to, or potentially subject to, anti-competitive practices by GPOs will not be funded by venture capital. As a result, many of these companies and their innovations will die, even if they offer a dramatic improvement over an existing solution.”** [emphasis added]

50. She was called back on July 16, 2003 because of the Judiciary’s Antitrust Subcommittee concerns that GPO monopoly power and unethical conduct is still starving their healthcare technology competitors of capitalization.

51. US Bancorp Piper Jaffray was fined for acts of extortion against a healthcare technology company attempting to capitalize itself with another investment bank in the upstream relevant market of healthcare capitalization The article cited why the National Association of Securities Dealers fined Piper Jaffray but the conduct is also a Sherman 2 monopolization violation: “The NASD investigation found a Piper managing director, Scott Beardsley, threatened to discontinue coverage of Antigenics Inc., a biotech firm, if it did not select Piper as a lead underwriter for a planned secondary stock offering. As part of a settlement with the NASD, Piper was censured and fined \$250,000 and Beardsley was censured and fined \$50,000.”

52. In August of 2000 Piper Jaffray proffered positive research to ThermaSense, a medical technology it was interested in providing investment-banking services to. Piper Jaffray won the business of the firm, and \$3.8 million in investment banking fees. Such exchanges of positive research for investment banking business constitute “conflict of interest” by fair dealing standards.

53. Premier helped to set up American Pharmaceutical Partners in 1996, then steered hospital business to it. For this help and an initial \$100 investment, Premier received American Pharmaceutical stock that was worth \$46 million when the company went public in 2001. Premier also receives a percentage of the money that hospitals spend buying American Pharmaceutical's drugs. William J. Nydam, once an executive vice president of Premier, received stock options as an American Pharmaceutical director. He has since left

Premier, but his options were worth \$1.2 million at the stock's initial offering price. Palmer Ford, who worked for Premier's venture capital unit, received an undisclosed number of American Pharmaceutical options for consulting work after he had left the buying group. Mary Williams Walsh, "When a Buyer for Hospitals Has a Stake in Drugs It Buys", NY Times March 26, 2002.

54. Two Medical Supply legal actions to enjoin the Defendants from causing the breach of contracts to capitalize Medical Supply's entry to market were described to the third Senate Judiciary hearing on the GPO problem because of the important public policy being defeated by antitrust violations against e-commerce suppliers:

"[A] bank tied to an investment house that has seventy percent of its holdings in health care suppliers refused to provide the company with simple escrow services through a blatant misapplication of the USA Patriot Act. Most recently an international conglomerate that is a founder of GHX was willing to take a \$15 million dollar loss on a real estate deal just to keep this company out of the market."

Testimony of Lynn James Everard, "Hospital Group Purchasing: Has the Market Become More Open to Competition?" United States Senate Committee on the Judiciary Subcommittee on Antitrust, Competition and Business and Consumer Rights July 16, 2003.

55. On 7/15/02 The NY Times reported the investigation of antitrust conduct of US Bancorp and Piper Jaffray's coconspirator Novation:

"Premier and Novation are also being investigated by the Federal Trade Commission and the General Accounting Office, the investigative arm of Congress. The F.T.C. wants to know if the groups, which last year negotiated contracts worth more than \$30 billion, are wielding too much control in the market for hospital supplies. The G.A.O. has already issued a preliminary report that questions whether the groups actually save hospitals money."

56. By 8/21/04 The NY Times reported that the Justice Department had opened a broad criminal investigation of the medical-supply industry revealing that Novation is being subjected to a criminal inquiry:

"Novation's primary business is to pool the purchasing volume of about 2,200 hospitals, as well as thousands of nursing homes, clinics and physicians' practices, and to use their collective power to negotiate contracts with suppliers at a discount. In many cases, the contracts offer special rebates to hospitals that meet certain purchasing targets. **Although Novation is not well known outside the industry, it wields formidable power because it can open, or impede, access to a vast institutional market for health products.**" [emphasis added]

57. The US Attorney that obtained the criminal subpoenas was found dead in her home the day before the third senate subcommittee hearing in healthcare group purchasing organizations that took place September 14, 2004.

58. The claim that hospital group purchasing organizations save hospitals money or have ever saved money has been shown to be without a rational basis. See Defining and Measuring Product-Based Cost Savings in the Health Care Supply Chain by Lynn James Everard, (February, 2005): "An overwhelming 94 percent of respondents believe that their GPO saves them money," Everard reports. "Yet only 29% said they actually knew how much money their GPO had saved them – and 80 percent of those said they knew how much, because their GPO told them."

**a. The Harm To Buyers In The Market**

**i. The Harm to Hospitals, Nursing Homes and Home Healthcare Services:**

59. The combinations and or conspiracies of the defendants' Group Purchasing Enterprise produced adverse, anti-competitive effects by preventing the efficiency of competitive electronic commerce in the relevant United States hospital supply market resulting in excess charges from artificially inflated costs averaging 20% to 40% and in some goods excess charges of 50%, reducing the bottom line profit and loss statements of U.S. hospitals by an average of 5% and forcing over 2000 North American hospitals to operate at an unsustainable loss, endangering the nation's access to healthcare, increasing the cost of care and health insurance and forcing the closing and merging of treatment centers, resulting in needless suffering and death.

**The Monopoly's artificial inflation of Hospital Supply Costs (Excluding Prescription Drugs):**

60. The defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused hospitals to be overcharged \$30,000,000,000.00 (thirty billion dollars) in 2002.

61. The defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused hospitals to be overcharged \$32,200,000,000.00 (thirty two billion, two hundred million dollars) in 2003.

62. The defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused hospitals to be overcharged \$34,500,000,000.00 (thirty four billion, five hundred million dollars) in 2004.

**The Monopoly's artificial inflation of Nursing Home and Home Health Costs (Excluding Prescription Drugs):**



63. The defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused nursing home and home health services to be overcharged \$8,200,000,000.00 (eight billion, two hundred million dollars) in 2002.

64. The defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused nursing home and home health services to be overcharged \$9,400,000,000.00 (nine billion, four hundred million dollars) in 2003.

65. The defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused nursing home and home health services to be overcharged \$10,000,000,000.00 (ten billion dollars) in 2004.

**The Monopoly's artificial inflation of Prescription Drugs:**

66. The defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused hospital supply consumers to be overcharged \$40,000,000,000.00 (forty billion dollars) in 2002.

67. The defendants in combinations or conspiracies with hospital suppliers, distributors and manufacturers caused hospital supply consumers to be overcharged \$45,000,000,000.00 (forty five billion dollars) in 2003.

68. The defendants in combinations or conspiracies with hospital suppliers, distributors and manufacturers caused hospital supply consumers to be overcharged \$50,100,000,000.00 (fifty billion, one hundred million dollars) in 2004.

**ii. The Harm To Healthcare Services Consumers**

69. A study released February 2, 2005 stated about half of bankruptcies filed in 2001 were because of medical bills, according to a study published Wednesday on the Health Affairs Web site, the Chicago Tribune reports (Rubin, Chicago Tribune, 2/2). For the study, researchers from Harvard Medical School and Harvard Law School surveyed 1,771 U.S. residents who filed for bankruptcy in 2001 and interviewed 931 of them (Abelson, New York Times, 2/2).

70. People interviewed had cases involving injury or illness, unpaid medical bills of more than \$1,000 in the two years prior to filing for bankruptcy, loss of two weeks of work because of illness or injury or

mortgaging of a home to pay medical bills, the Los Angeles Times reports (Dickerson, Los Angeles Times, 2/2).

71. According to the study, 46.2% of people reporting bankruptcy in 2001 cited illness and medical bills as the cause the rate rose to 54.5% when births, deaths and gambling addictions were considered as factors, the AP/San Jose Mercury News reports (Jewell, AP/San Jose Mercury News, 2/2). The number of bankruptcies filed in the United States tripled between 1980 and 2001, to nearly 1.5 million couples and individuals. The number of medical-related bankruptcies increased twenty-threefold during that period, the study says (Los Angeles Times, 2/2).

**iii. Loss of Healthcare Insurance**

72. Approximately 81.8 million Americans -- one out of three people under 65 years of age -- were uninsured at some point of time during 2002-2003, according to a report released June 16, 2004 by the Health Consumer Organization Families USA.

73. The report, based mainly on Census Bureau data, showed that most of these uninsured individuals lacked coverage for lengthy periods of time: Almost two-thirds (65.3 percent) were uninsured for six months or more; and over half (50.6 percent) were uninsured for at least nine months.

74. Four out of five of the uninsured were in working families, according to the report. Of those working families, the report found that significant portions of the middle class were uninsured. For example, among people with incomes between 300 and 400 percent of the federal poverty level (between \$55,980 and \$74,640 in annual income for a family of four in 2003), more than one out of four were uninsured over the past two years.

75. Governor Sebelius indicated the stakes involved in being uninsured: "Tens of millions of Americans -- and hundreds of thousands of Kansans -- are regularly risking their health and financial security because the cost of health insurance is too often out of their reach," she said.

**iv. The Injury To Healthcare Insurance Plans**

**Medicare**

76. In 2002, the defendants in combination and or conspiracies with hospital suppliers, distributors and manufacturers caused Medicare to be overcharged for hospital care \$13,920,000,000.00 (thirteen billion, nine hundred twenty million dollars), caused Medicare to be overcharged for nursing home and

home health care \$3,845,000,000.00 (three billion, eight hundred forty five million dollars) and caused Medicare to be overcharged for prescription drugs \$5,663,000,000.00 (five billion, six hundred sixty three million dollars).

77. In 2003, the defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused Medicare to be overcharged for hospital care \$14,832,000,000.00 (fourteen billion, eight hundred thirty two million dollars), caused Medicare to be overcharged for nursing home and home health care \$4,052,000,000.00 (four billion fifty two million) and caused Medicare to be overcharged for prescription drugs \$6,272,000,000.00 (six billion, two hundred seventy two million dollars).

78. In 2004, the defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused Medicare to be overcharged for hospital care \$15,864,000,000.00 (fifteen billion, eight hundred sixty four million dollars), caused Medicare to be overcharged for nursing home and home health care \$4,316,000,000.00 (four billion, three hundred sixteen million dollars) and caused Medicaid to be overcharged for prescription drugs \$7,000,000,000.00 (seven billion dollars).

#### **Private Insurance**

79. In 2002, the defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused Private Insurers to be overcharged for hospital care \$12,710,000,000.00 (twelve billion seven hundred ten million dollars), caused Private Insurers to be overcharged for nursing home and home health care \$3,488,000,000.00 (three billion, four hundred eighty eight million dollars) and caused Private Insurers to be overcharged for prescription drugs \$30,742,000,000.00 (thirty billion seven hundred forty two million dollars).

80. In 2003, the defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused private insurers to be overcharged for hospital care \$13,542,000,000.00 (thirteen billion, five hundred forty two million dollars), caused private insurers to be overcharged for nursing home and home health care \$3,675,000,000.00 (three billion, six hundred seventy five million dollars) and caused private insurers to be overcharged for prescription drugs \$34,048,000,000.00 (thirty four billion, forty eight million dollars)

81. In 2004, the defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused private insurers to be overcharged for hospital care \$13,539,000,000.00 (thirteen

billion five hundred thirty nine million dollars), caused private insurers to be overcharged for nursing home and home health care \$3,914,000,000.00 (three billion, nine hundred fourteen million dollars) and caused private insurers to be overcharged for prescription drugs \$38,095,000,000.00 (thirty eight billion ninety five million dollars).

### **Medicaid**

82. In 2002, the defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused Medicaid to be overcharged for hospital care \$3,631,000,000.00 (three billion, six hundred thirty one million dollars), caused Medicaid to be overcharged for nursing home and home health care \$1,699,000,000.00 (one billion, six hundred ninety nine million dollars) and caused Medicaid to be overcharged for prescription drugs \$4,045,000,000.00 (four billion forty five million dollars).

83. In 2003, the defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused private Medicaid to be overcharged for hospital care \$3,869,000,000.00 (three billion, eight hundred sixty nine million dollars), caused Medicaid to be overcharged for nursing home and home health care \$1,790,000,000.00 (one billion, seven hundred ninety million dollars) and caused Medicaid to be overcharged for prescription drugs \$4,480,000,000.00 (four billion, four hundred eighty million dollars).

84. In 2004, the defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused Medicaid to be overcharged for hospital care \$4,138,000,000.00 (four billion, one hundred thirty eight million dollars), caused Medicaid to be overcharged for nursing home and home health care \$1,907,000,000.00 (one billion, nine hundred seven million dollars) and caused Medicaid to be overcharged for prescription drugs \$5,000,000,000.00 (five billion dollars).

85. On January 26, 2005, Governor Blunt of Missouri was forced to propose removing thousands of people from Medicaid insurance. The state-federal program provides health care for the disabled, the blind, some elderly people and low-income families with children. Also cut would be adults who are considered medically unemployable but haven't yet qualified as disabled. Medically unemployable persons often rely on the special coverage while they await federal decisions on whether they are disabled. The governor would eliminate podiatry, dental care and rehabilitation services for adults. Also, some services would be subject to small co-payments and deductibles. In all, the state's need to make Medicaid cuts would save

\$626 million in state and federal funds. But even with the cuts, Blunt said, the \$5.3 billion program would consume 26 percent of the total state budget.

**v. The Loss Of Life From Decreased Access To Healthcare**

86. The rise in healthcare costs of which hospital supply inflation is a significant contributing factor led to a reported 18,000 deaths a year in the USA resulting from 40 million Americans being uninsured in 2001. See “Study Blames 18,000 deaths in USA on Lack of Insurance”, USA Today, May 23, 2002.

87. In 2002, the number of uninsured increased to 43.6 million Americans and without decreases in the mortality rates of untreated illnesses or observed improvements in public health systems, the number of deaths resulting from the lack of affordable health insurance was 19,962.

88. The following year, 2003, the number of uninsured Americans increased to 45 million, resulting in an expected 20,603 deaths resulting from the lack of affordable health insurance.

89. During the period of time in which Medical Supply has been foreclosed from competing in the market for healthcare supplies as a result of the actions of the defendants, at least 41, 206 Americans have died as a result of the increasing cost of hospitalization and medical care of which artificially inflated hospital supply costs are a significant contributing factor.

**vi. The Harm to Medical Supply**

90. The actions taken by the Defendants have resulted in dramatic losses to Medical Supply its stakeholders, associates, suppliers and customers. Under traditional Clayton Antitrust Act damages calculations, the Defendants have caused substantial short and long-term losses that are not recoverable due to Medical Supply’s injury and delay in obtaining banking services. Medical Supply has directly suffered \$2,901,600 in damages the 1st year, \$27,366,576 in damages the 2nd year, \$74,798,940 in damages the 3rd year plus forward financial damages in the fourth year of \$140,443,9800 and \$223,488,060 in the fifth year as a combined total of \$468,099,156 and trebled are \$1,404,297,468.

91. As a direct result of Medical Supply’s injury, its associates also are damaged due to the actions of the Defendants. Losses include an average of 40-60 hours per week participation in Medical Supply’s evaluation and hiring practices; in addition to due diligence and market evaluation activities. Losses of revenue for associates are \$93,085,831 trebled are \$279,257,493.

92. As a direct result of Medical Supply's injury, its consultants and suppliers have been harmed by Medical Supply's inability to fulfill success agreements and service contracts due to the actions of the Defendants. Medical Supply consultants and suppliers have performed several thousand hours in services that are contractually due and Medical Supply is unable to perform as a result of the actions of the Defendants. These consultants and suppliers depend on Medical Supply to meet its obligations and the actions of the Defendants are preventing Medical Supply from doing so.

93. The direct result of Medical Supply injury and inability to perform its services to customers are the lost savings and additional revenue Medical Supply generates for its customers through its services. Losses to Medical Supply customers are directly due to the actions of the Defendants and are 20% of the total supplies spend health systems currently pay out annually or \$4,425,655,560 trebled are \$13,276,966,680.

94. Medical Supply's customers are healthcare systems consisting of hospital groups. The actions of the Defendants to preserve an anticompetitive marketplace in healthcare supplies keep in jeopardy over 2000 of the nation's 5,700 hospitals. The resulting closings of some or most of these hospitals due to unsustainable supply costs will significantly harm public access to healthcare, increasing loss of life and unnecessary injury.

**b. The Need For Private Antitrust Enforcement**

95. At the close of the US Senate Judiciary Committee's Antitrust Subcommittee's hearing entitled "Hospital Group Purchasing: How to Maintain Innovation and Cost Savings" on Tuesday, September 14, 2004, the subcommittee's chair suggested that the 1.8 trillion dollar market's anti-competitive behavior might be better corrected with private antitrust litigation than with new legislation.

**i. The Limited Resources Of The US Department Of Justice**

96. Two US Attorneys that appeared connected to the criminal investigation of Novation, LLC have died and three more in the Ft Worth office of the US Department of Justice with antitrust expertise have been dismissed.

97. The Ft. Worth US Attorney's office has been at the epicenter of where civil antitrust actions by manufacturers foreclosed from group purchasing organization distribution systems have been litigated

and is believed to have been the center of effort behind the government's criminal investigation of hospital supply relationships.

98. On October 18, 2004 Leonard Senerote, A former U.S. Army Special Forces officer who was an expert in complex securities cases and an antitrust trial attorney, Michael Uhl and Michael Snipes, veteran prosecutors with expertise in white collar fraud and corruption were announced as separating from the Ft. Worth Office of the US Attorney.

**ii. The Deaths of The FCA Attorneys**

99. The Dallas Morning News described the office as already reeling from the unexpected deaths of criminal chief Shannon Ross [the source of the widespread criminal inquiry into medical supplies and False Claims Act violations against Medicare] and civil and False Claims Act litigator Thelma Louise Quince Colbert. Ms. Ross, who had been feeling ill, was found September in her home. Ms. Colbert accidentally drowned a month earlier in July.

100. Medical Supply does not believe there is currently an active criminal investigation of the supplier side of hospital Medicare false claims.

**4. BACKGROUND**

**a. Procedural History**

Medical Supply filed its first action for injunctive and declaratory relief in the U.S. District Court for the District of Kansas, *Medical Supply Chain, Inc. v. US Bancorp, NA et al* KS. Dist. Case No.: 02-2539

101. Medical Supply sought relief based on a complaint for an urgent Temporary Restraining Order filed 10/22/02 and amended 11/02/02 because the defendants were repudiating a contract (misusing the USA PATRIOT Act shown to be a false pretext) on 10/15/02 to provide escrow accounts required for the deposit of \$350,000.00 raised from manufacturer rep candidates by Medical Supply. The denial of the TRO caused all funds to be lost on 12/1/02, including the company's last resources used to recruit the candidates and all funds invested in preparation of training.

102. Medical Supply's cause was controversial because it was an action to seek an injunction against breaking a contract to provide escrow accounts in furtherance of a boycott by US Bancorp and Piper Jaffray's coconspirator identified in the complaint as Novation, a healthcare group purchasing organization ("GPO") competitor of Medical Supply's in the hospital supply market. Also identified in the complaint

was Novation's captive e-commerce marketplace Neoforma, Inc. competing with Medical Supply on the web.

103. Medical Supply sought an interlocutory appeal on the denial of injunctive relief without a memorandum and order or findings of law and fact *Medical Supply Chain, Inc. v. US Bancorp, NA et al* 10th Cir. Case No.: 02-3443. Medical Supply also sought interim pre-hearing relief in the Tenth Circuit. The pre-hearing relief was denied and the interlocutory appeal was dismissed as moot.

104. Medical Supply appealed the dismissal of its injunctive and declaratory relief action *Medical Supply Chain, Inc. v. US Bancorp, NA et al* 10th Cir. Case No.: 03-3342. The Tenth Circuit upheld the trial court's dismissal without findings of law or fact and made a show cause order why Medical Supply and its counsel should not be sanctioned for a frivolous appeal.

105. Medical Supply answered the show cause order asserting the trial court had applied the incorrect legal standard and had misstated the USA PATRIOT Act. The Tenth Circuit found that Medical Supply had pled a conspiracy that included a separate legal entity, contradicting the trial court's ruling and the Tenth Circuit panel found that Medical Supply was correct in the existence of private rights of action under the USA PATRIOT Act. However, instead of correcting its ruling and ordering that Medical Supply was entitled to injunctive and declaratory relief, the Tenth Circuit panel ordered that Medical Supply's counsel receive its most serious sanction for a frivolous appeal.

106. Medical Supply sought en banc rehearing of its appeal, giving notice that the panel's ruling had no preclusive effect for the parties regarding the future action for monetary damages in the Western District of Missouri. Neither the court nor opposing counsel contradicted Medical Supply's ripeness analysis. The court declined to rehear the case en banc and Medical Supply is now seeking Supreme Court review.

**b. The Legal Basis For Now Ripe Monetary Damages Submitted to The Tenth Circuit**

107. Now that Medical Supply has experienced all the injury it sought to avoid, it is required to bring its claims for monetary damages to a federal district court: "...if future damages are unascertainable, a cause of action for such damages does not accrue until they occur. *Zenith*, 401 U.S. at 339, 91 S. Ct. at 806." *Kaw Valley Elec. Co-op. Co., Inc. v. Kansas Elec. Power Co-op., Inc.*, 872 F.2d 931 at FN4 (C.A.10 (Kan.), 1989). See also *Barnosky Oils Inc., v. Union Oil Co.*, 665 F.2d 74, 82 (6th Cir. 1981). US Bank was still attempting to perform the financing part of the contract after Medical Supply filed for its injunctive relief.



“If the initial refusal is not final, each time the victim seeks to deal with the violator and is rejected, a new cause of action accrues”. See *Pace Indus.*, 813 F.2d at 237-39; *Midwestern Waffles, Inc. v. Waffle House, Inc.*, 734 F.2d 705, 714-15 (11th Cir.1984).” *Kaw Valley Elec. Co-op. Co., Inc. v. Kansas Elec. Power Co-op., Inc.*, 872 F.2d 931 at 933-4 (C.A.10 (Kan.), 1989).

108. Medical Supply also now has evidence the malicious suspicious activity report as a sham petition was filed to further the agreement to suppress competition. See, e.g., *Al George, Inc. v. Envirotech Corp.*, 939 F.2d 1271, 1274-75 (5th Cir. 1991); *Korody-Colyer Corp. v. General Motors Corp; In re Relafen Antitrust Litigation* at pg. 6 (Mass., 2003). The amended pleading for now ripe monetary damages in Kansas District Court or a new-filed action in some other federal district court would suffer no issue preclusion on Sherman 1 or 2 claims. *Oltremari v. Kansas Social & Rehabilitative Service*, 871 F. Supp. 1331 (Kan., 1994). The failure of either the trial court or the appellate panel to address the meritorious appeal that the defendant’s use of the USA PATRIOT Act was a sham petition is a Sherman 2 A violation not excepted by *Eastern RR v. Noerr.*, 365 U.S. 127, 141, 81 S.Ct. 523, 531, 5 L.Ed.2d 464 or maliciously under the USA PATRIOT Act private right of action completes the lack of preclusive effect of the appeal court decision.

##### **5. THE HOSPITAL GROUP PURCHASING ENTERPRISE TO ARTIFICIALLY INFLATE PRICES**

109. During October 22 thru October 24 in 1979, a little known hospital logistics industry organization called the Group Purchasing Group held a conference in Vacation Village, San Diego California. At that event a seven page document was circulated among representatives of cooperative hospital purchasing groups which originated as buying agents for hospitals that became the blueprint for nationwide fraudulent price collusion in hospital supplies.

110. The recipients of the document were officials in Sun Health, American Medical Systems, HSCA, Cardinal and other precursors to today’s two dominant hospital group purchasing organizations (GPO’s), Novation and Premier. Eventually the document recipients would become the key officials in the later group purchasing organizations Amerinet, Novation and Premier and in oligarch hospital supply manufacturers including Johnson & Johnson and Baxter.

111. The document itself was presented as the perfect “sales story.” Ways to communicate to hospitals that group purchasing cooperatives were creating value for their members. However, the document was

instead employed as a blueprint for fraud. The membership “value” for hospitals being communicated was a deception about the cost of commodities sold through the cooperative.

112. The fraudulent scheme described a method for creating a false baseline for commodity pricing from an average of the purchase price of units of goods by kind taken from a broad sample of the goods as purchased in many hospitals in a variety of locations and in varying quantities. The data would then be used to create a manipulated average well above an easily obtainable volume discount.

113. The victim prospective hospital would also be subjected to the frightening prospects of price increases and shortages that would certainly befall hospitals that did not join the security of the purchasing cooperative.

114. The cooperative would then negotiate a “discounted” price below the false baseline and declare the difference as the “savings” to the hospital. The cooperatives derived the “savings” from manipulated baseline costs of goods distributed and therefore had to disconnect the savings expectations of their member hospitals from an easily comparable commodity price. This “savings” was delivered to the member hospitals in the form of periodic, usually quarterly refunds, rebates and dividends.

115. The secret document described the upward manipulation of their customers’ expected costs as price “inflation.” The scheme included steadily increasing the baselines used to assist members and prospective members to compare the cooperative’s prices. This deception was described as “inflation based savings.”

116. The cooperatives exploited the foreseeable effect of this delayed repayment to hospitals. Hospitals billed third party payers including the government’s healthcare insurance funds Medicare, Medicaid and Champus the cooperative contract price or even the artificially inflated baseline price instead of the actual cost to the hospital once the delayed rebate was subtracted. The scheme depended upon the hospitals certifying to Medicare that the bills being presented for patient care conformed to the government’s accounting safeguards, including the Medicare Antikickback act.

117. To co-opt administrative officials in hospitals, hospital groups and independent distribution networks, the cooperatives and later the dominant GPO’s would encourage and facilitate maintaining two sets of books by issuing two different reports. One for the chief executive of the hospital or hospital group

that fully detailed the various refunds, rebates, dividends, cash and cash equivalent payments and another for the materials director showing the units purchased at the cooperative price.

118. The attendees that employed the perfect sales story were able to insert their cooperative between the hospital and its suppliers and extract a membership fee. The precursor group purchasing organizations effectively sold “rebates” rather than price efficiency to their members. The business model was profitable for the cooperatives but had the potential of becoming extremely profitable if competition could be consolidated and the increased control of hospital supply distribution could be used to extract fees from product manufacturers.

119. The firm of Robert Betz Associates was utilized during 1985-86 to obtain a regulatory safe harbor from the Federal Trade Commission and the Department of Justice from the Medicare Antikickback statute to give the appearance of legitimacy to the Vacation Village conference attendees practice of paying periodic refunds, rebates and dividends to member hospitals. Robert Betz was successful and as a direct result of his efforts, Department of Justice False Claims Act prosecutions have never since targeted the GPOs or their supplier cartel members.

120. Once some kickbacks in the form of administrative fees to cooperatives were officially allowed, the original Vacation Village conference attendees were able to use their illegally inflated revenue stream to acquire their law abiding hospital supply competitors and a frenzy of mergers and acquisitions resulted in two dominant group purchasing organizations, Premier and Novation, LLC that control 70% of the national market in hospital supplies.

121. Premier and Novation, LLC are required under the Antikickback safe harbor to disclose administrative fees in excess of 3% that are added to the cost of goods sold through their distribution networks. Premier and Novation, LLC have however expanded the fees charged member hospitals in the price of goods sold to include 12 to 15 separate “non administrative fees.” The names of the fees charged include “marketing,” “conversion” “stocking” “tracing” and other legitimate sounding supplemental costs and some overtly illegitimate fees including “channel fees” and “patronage fees”, however all such charges are outside of the safe harbor.

122. Premier and Novation, LLC use their market power to extract fees from manufacturers to have their products distributed through the monopolized distribution networks. The dominant GPO’s have

expanded the Vacation Village “inflation savings” scheme to include managing suppliers to the group purchasing organization with planned price increases. Premier and Novation, LLC choose market leaders, a manufacturer with the largest market share to be the sole providers of each line of products used by their thousands of member hospitals.

123. The market leader is encouraged to set an increased list price for each good distributed by the GPO and to plan periodic increases in the list price. Premier and Novation, LLC then give the market leader a long term exclusive contract designed to eliminate competition for the market of goods used by the member hospitals. The market leader is secretly charged sizable fees by Premier and Novation, LLC for having its products distributed through the group purchasing organization. The market leader’s contract price to the member hospitals has been increased to include this fee to Premier and Novation, LLC and by design, the contract price always compares favorably to the manufacturer’s list price to further the “savings” deception on GPO members.

124. The “inflation savings” scheme is perpetuated to this day by annual inflation forecasts created and distributed by Premier and Novation, LLC. The documents appear to be legitimate economic forecasts to aid hospital-purchasing directors and include macroeconomic analysis of economic conditions that have the potential to effect product prices. For those uninitiated into the secrets of the fraud, the long-term contracts with the hospital’s GPO either Premier or Novation, LLC appear to have protected the hospital against the full effect of projected increases in the manufacturer’s list prices.

125. The fraud however is easily verified. The economic forecasts of Novation LLC and Premier speak for themselves. The lists of products and services and the projected price changes invariably show price increases exceeding the annual inflation index rate for the contract protected hospital supply market leader manufacturers and below annual inflation index price changes for non-hospital supply specialty items, even declining prices in some markets with competition. To offset these glaringly obvious comparisons, Novation LLC and Premier make much use (misuse) of macro inflationary data to project increases in commodities they do not control.

126. As an example, Novation LLC’s 2005 projections utilize temporary surges in products like farm produce from fuel cost increases in 2004 to creatively portray large increases in products not under contract providing cover for the fraudulently increased prices of the GPO’s participating suppliers.

127. Novation LLC and Premier also utilize a broad range of antitrust prohibited devices to coerce their member hospitals into continuing to be subjected to the artificially inflated healthcare supply costs.

Hospitals are deceived into upgrading their dues based memberships into “shareholder” status and a higher rate of refunds, rebates, dividends, cash and cash equivalent payments.

128. Because of this illegal product-tying scheme, hospitals are forced to buy products they would not have otherwise purchased, fearing they will lose their vested interests in what are in actuality fictitious or deceptive rebates and discounts.

129. The hospitals are not given meaningful data regarding the perceived “savings” and are prevented from realizing they are paying their own refunds out of inflated costs at either membership and share holder remuneration rates.

130. Hospitals and hospital groups that achieve shareholder status are deceived into thinking that they will lose an “investment” in the achieved shareholder status if they withdraw from the GPO. However, there is no retainable value in the shares of the GPO. Neither Novation LLC or Premier is publicly held and the “shares” are a Sherman Act prohibited tying device to prevent competition.

131. Another device to prevent competition in the hospital supply markets for Novation LLC and Premier members is the allocation of markets among participating suppliers and the GPO’s themselves. As part of their membership agreements Novation LLC and Premier require hospitals to obtain typically 6% of a product from a supplier that is not the GPO’s contracted market leader. Other contract requirements include participating in a smaller GPO to a limited share of the hospital’s purchases so that no hospital or hospital group is supplied exclusively by Premier or Novation, LLC to deceive the hospitals into thinking they are not monopolized and to provide a much lower volume inferior choice.

132. The contracts utilized by Novation LLC and Premier reward hospitals and hospital groups for increasing the market shares of selected product lines sold through the GPO’s. Hospital rebate, refund, dividend cash and cash substitute kickbacks are increased depending on how much use of the targeted products are increased.

133. Finally, Novation LLC and Premier employ contracts with harsh terms including severe discipline for hospitals and hospital groups that obtain products or services from competitive markets outside of the

GPO. The sanctions can include embargo of supplies, stiff financial penalties and probationary periods of adverse financial terms as penalties for participating in a competitive market.

**a. The defendants' hospital group purchasing enterprise**

134. Robert J. Baker, UHC, Curt Nonomaque and VHA distribute hospital supplies by corrupting administrators in health systems (hospitals, hospital groups and independent distribution networks) that support the provision of services or provide services to Medicare, Medicaid and Champus funded patients. UHC and VHA employ marketing schemes that provide remunerations to healthcare systems under contracts in violation of the federal Anti-Kickback Act, 42 U.S.C. § 1320a-7b.

135. Robert J. Baker, UHC, Curt Nonomaque and VHA encourage health systems to violate § 1320a-7b(b)(1) by receiving unlawful remunerations which are labeled as “rebates” and are paid periodically based on the products used by the health system and its loyalty to the terms of the anticompetitive exclusive agreement with the group purchasing organization, UHC, VHA or Premier which control 70% of the hospital supply market.

136. Robert J. Baker, UHC, Curt Nonomaque and VHA encourage their member hospitals to believe the group purchasing organizations are saving money by communicating the “value” of the rebates they are receiving as contrasted against the constantly increasing prices of hospital supplies allowed into UHC, VHA's distribution system.

137. The corrupting subtext of Robert J. Baker, UHC, Curt Nonomaque and VHA's marketing scheme is knowingly encouraging that third party payers, chiefly Medicare, Medicaid and Champus are billed for the artificially inflated list price, not the actual cost to the health system once the cash and cash substitute remunerations are factored in.

138. Robert J. Baker, UHC, Curt Nonomaque and VHA violate § 1320a-7b(b)(2) because they knowingly and willfully pay and offer to pay the unlawful remunerations. To provide cover for the spiraling prices in the product lists of chosen hospital suppliers who are protected from competition in UHC and VHA's captive market, Robert J. Baker, UHC, Curt Nonomaque and VHA generate flawed studies that extol the discount in the form of rebates as a savings over the monopoly “list” price for healthcare supplies.

139. The constant threat to the corrupt marketing scheme employed by UHC and VHA is access to real data from which to evaluate the actual costs imposed upon member hospitals by the artificially inflated distribution system, which would be destabilized by independent actions of participating hospitals and suppliers.

140. Robert J. Baker, UHC, Curt Nonomaque and VHA have protected against this destabilizing by forcing hospitals and suppliers into long-term anticompetitive exclusive dealing contracts that harshly penalize every violation. Out of a misguided fear of antitrust liability, the contracts typically assign market share limiting each health system to 95% of its purchasing through the dominant group purchasing organization and require a token share of products to be purchased through a “competing” group purchasing organization.

141. Robert J. Baker, UHC, Curt Nonomaque and VHA have also commanded loyalty among member health systems by making cash and cash substitute payments to health system board members and chief administrators in return for participation in the cost inflation scheme.

142. Many forms of the Defendants’ cash and cash substitute payments to hospital administrators are concealed as “consulting contracts” and are not reported to Medicare, Medicaid or Champus or subtracted from the costs of hospital supplies transferred to third party payers.

143. Robert J. Baker, UHC, Curt Nonomaque, VHA and Novation LLC have made use of payments to a third party in which hospital CEO’s are stakeholders in order to conceal the commercial bribe nature of the payments. An organization called the Healthcare Research and Development Institute ([www.hrdi.com](http://www.hrdi.com)) has existed since the late 1990s. HRDI has approximately 35 members who are hospital CEOs (many are heavily involved in supporting GPOs). The Institute's clients are large manufacturers, publishers, and large consulting firms. Each client pays the Institute and the members of the Institute, who are also its shareholders, are paid out of the profits of the organization. For hospital CEOs to personally receive payments from companies that they do business with is a serious conflict of interest and a failure to fulfill their fiduciary responsibility.

144. UHC, VHA and Premier insist that the Antikickback Act provides a safe harbor for marketing programs offering discounts to health care providers and that its program was designed to take advantage of this safe harbor. See 42 U.S.C. § 1320a7b(b)(3)(A); 42 C.F.R. § 1001.952(h).

145. The rewards Robert J. Baker, UHC, Curt Nonomaque, VHA have given to health systems, hospital board members and purchasing managers have been paid in “cash or cash equivalents” and sometimes equity (stock shares) extorted from healthcare technology companies permitted to sell through the distribution system. This appears to be inconsistent with the group purchasing systems’ safe harbor theory. See 42 C.F.R. § 1001.952(h)(5)(i) (“The term discount does not include – Cash payment or cash equivalents (except that rebates as defined in [42 C.F.R. § 1001.952(h)(4)] may be in the form of a check).”).

146. Robert J. Baker, UHC, Curt Nonomaque and VHA also have protected their monopoly markets by forming a joint venture with each other, acquiring an electronic marketplace that could be co-opted as a false storefront for their illegal marketing scheme and finally by joining a joint venture created by the dominant suppliers with their competitor group purchasing organization, Premier.

147. UHC and VHA knowingly created an antitrust prohibited joint venture limited liability company called Novation, LLC for the purpose of unlawfully setting prices for hospital supplies sold through the formerly competing group purchasing organizations UHC and VHA’s 2000 member hospitals.

148. Novation, LLC limited the suppliers whose products could have access to purchasing managers in the 2000 member hospitals. Novation, LLC used its power to determine which products were sold to the member hospitals not to command the best supplier pricing or fulfillment, but instead to guarantee that approved suppliers would participate in planned upward manipulation of list prices so that Robert J. Baker, UHC, Curt Nonomaque, VHA and Novation LLC could sell “discounts” or “rebates” to their member hospitals.

149. Robert J. Baker, UHC, Curt Nonomaque and VHA operated Novation LLC to control transactions between suppliers and member hospitals utilizing facsimile telephony (fax) and Electronic Data Interchange (EDI) ordering and fulfillment to keep track of hospital purchasing data and police supplier fulfillment and product pricing to ensure healthcare product prices were being continually manipulated upwards (artificially inflated).

150. When web based business to business electronic marketplaces showed the potential to dramatically increase hospital supply purchasing efficiency and lower hospital supply prices by facilitating direct communications between hospital groups and many competing product suppliers, Robert J. Baker,



UHC, Curt Nonomaque, VHA and Novation LLC actively prevented Neoforma.com, an electronic marketplace that enabled hospital supplies to be purchased on the web from having access UHC and VHA's member hospital market and from carrying the products of Novation's suppliers.

151. Robert J. Baker, UHC, Curt Nonomaque, VHA and Novation LLC's power to exclude entrants from their market with long term anticompetitive contracts and a centralizing price controlling joint venture, allowed Neoforma.com to be taken over in a scheme to utilize the new web based electronic marketplace as a mere "storefront" for the existing inefficient bricks and mortar group purchasing organization Novation LLC and therefore secure UHC and VHA's price inflation scheme.

152. US Bancorp, US Bank, Andrew Cesere, Jerry Grundhoffer, Piper Jaffray And Andrew S. Duff participated in a syndicate to make a market in an initial offering of publicly traded shares for Neoforma, LLC and to manipulate the stock prices in an illicit "laddering" scheme of prearranged market purchases to deceive stock investors into buying the shares at rapidly increasing share prices. US Bancorp, US Bank, Andrew Cesere, Jerry Grundhoffer, Piper Jaffray and Andrew S. Duff profited from this deceptive manipulation by receiving blocks of shares in Neoforma.com which they inflated in a "pump and dump scheme" through Piper Jaffray's false recommendations to institutional fund managers and individual investors in reports about the bright future for the company without disclosing the brokerage's conflict of interest and participation in the prior arranged scheme to keep Neoform.com from reaching its potential to increase hospital supply efficiency. Instead, the Defendants planned to suppress Neoforma.com's technology to preserve Robert J. Baker, UHC, Curt Nonomaque, VHA and Novation LLC's corrupt inefficiencies. US Bancorp and Piper Jaffray were fined and paid \$32.5 million fine to settle these securities fraud charges brought by with the SEC, NASD, NYSE, NASAA, and the New York Attorney General for the fraudulent research.

153. In March, 2000, Robert J. Baker, UHC, Curt Nonomaque, VHA, Novation LLC, Bob Zollars And Neoforma into deceiving the board of directors of Eclipsys, a software application company with superior technology to Neoforma.com and a positive cash flow into merging with Neoforma.com based on a long term contract to pay Neoforma.com a quarterly payment for providing an electronic marketplace on the web that Robert J. Baker, UHC, Curt Nonomaque, VHA and Novation LLC could control.

154. Neoforma, Inc.'s acquisition of Eclipsys and its stream of income was a threat to US Bancorp, US Bank, Andrew Cesere, Jerry Grundhoffer, Piper Jaffray And Andrew S. Duff's substantial interests in the hospital supply and hospital supply in e-commerce markets. With Eclipsys, Robert Zollar had the potential to compete with GPO's and bypass US Bancorp and Piper Jaffray's ability to extort equity from new market entries trying to supply hospitals.

155. A negative analyst report on the merger by Piper Jaffray was used to control Robert Zollars and Neoforma, Inc. Investors did not understand that Novation LLC controlled what companies had access to thousands of hospitals and that Eclipsys superior technology was not as valuable to its directors as the ability to gain access to the monopolized hospital supply market. Investors expressed dismay concerning the Merger Agreement as follows:

"Investors may be unsettled by combining Eclipsys' relatively high-margin software and services business with Neoforma's extremely low-margin online [business-to-business] exchange. Furthermore, ECLP shareholders are frustrated about the ownership split between [Neoforma] and [Eclipsys]. Neoforma and Eclipsys are getting 37% and 28% of the combined company, respectively."

156. Similarly, a March 30,2000 report issued by analyst Caren Taylor, of E-Offering entitled "Neoforma to Acquire Eclipsys and Healthvision - - What's Wrong With This Picture?" stated:

"As we take a step back and look at the big picture, we think there is something fundamentally wrong with this deal. We understand that Neoforma has had a difficult time accessing the buyer market, and we had heard recently that the company might miss their earnings target this quarter. In addition, we are somewhat dismayed by the behavior of Eclipsys - - first its initiation of a takeover bid of Shared Medical Systems Corp., which was dropped as of today, and now this sudden agreement to be acquired by Neoforma.com. This has left us wondering about the underlying issues within the Eclipsys organization. We would certainly not want to be the owners of these two stocks."

157. The detriment to Eclipsys shareholders was also recognized in a March 30,2000 analyst report issued by Pacific Growth Equities, in which Eclipsys was lowered to a "Neutral" rating from its previous "Buy" rating. In a paragraph entitled "Terms are disappointing for Eclipsys shareholders", the report stated:

"The terms of the deal call for Eclipsys to receive 1.34 shares of the new Company for each of its 37.5 million shares (50.25 million shares), Novation to receive 69.3 million shares, Healthvision (excluding the amounts attributable to Eclipsys and the VHA) to receive 0.444 shares for each share and Neoforma.com to control the rest for a total share count of 2 10 million shares. Because these companies are all valued very differently - a classic old economy and new economy merger - attributing relative value is tricky. However, Neoforma.com, a leader among the emerging online marketplaces, was essentially still in "show me" mode and had little revenue. On the other hand, Eclipsys was a profitable company with one of the strongest franchises at \$250 million in revenue last year...[t]hus we believe with less than 25% in the new company, the terms of the transaction are disappointing for Eclipsys shareholders."

158. In addition, Eclipsys shareholders cannot rely on increased medical supply orders from the Novation agreement to fill in the gaps of the Merger Agreement. As explained in a March 30, 2000 Reuters article, it is not clear how much revenue Neoforma can count on from the Novation arrangement. The article added mistakenly that with respect to the Novation deal, “Novation really can’t prevent their hospital customers from buying wherever they want to buy”

159. Robert J. Baker, UHC, Curt Nonomaque, VHA and Novation LLC agreed to a plan where Eclipsys would instead partner with Neoforma, Inc. and preserve the Defendants’ corrupt inefficiencies in exchange for a long term contract with quarterly payments of member hospital funds through Novation, LLC.

160. US Bancorp, US Bank, Andrew Cesere, Jerry Grundhoffer, Piper Jaffray And Andrew S. Duff deceived purchasers of Neoforma.com’s stock into thinking the firm’s e-commerce technology would provide efficiency in the delivery of hospital supplies while knowing that no measurable difference in efficiency exists in the software technology EDI already employed by Novation LLC and the e-commerce html based software employed by Neoforma.com. US Bancorp, US Bank, Andrew Cesere, Jerry Grundhoffer, Piper Jaffray and Andrew S. Duff knew the only advantage leading to efficiency e-commerce software had over EDI was in facilitating the competition that Novation LLC’s control of Neoforma.com was designed to prevent.

161. US Bancorp, US Bank, Andrew Cesere, Jerry Grundhoffer, Piper Jaffray And Andrew S. Duff also benefited because 70% of their venture funds were invested in healthcare technology companies and in exchange for their participation in the UHC and VHA scheme to keep hospital supply costs inflated, Piper Jaffray’s healthcare technology companies received long term exclusive and anticompetitive contracts with Novation, LLC. This allowed US Bancorp and Piper Jaffray to profit greatly from underwriting the healthcare technology and supply chain management companies’ initial public offerings.

**6. The Origin of Technology That Made GPO’s Obsolete And Eliminated Two Distribution Levels Facilitating Automated Competitive Direct Purchasing In An Electronic Marketplace**

162. On July 17, 1993 Physicians Management Group was founded to supply doctor’s offices, clinics and nursing homes with discounted healthcare supplies at costs rivaling the volume purchasing enjoyed by hospitals. The founders recruited Samuel Lipari, who would later found the plaintiff Medical Supply for his expertise in mass merchandising, grocery and automotive distribution.

163. Samuel Lipari recognized that the volume pricing in even large group purchasing organizations failed to provide significant cost savings and Physicians Management Group was able to profit by splitting the savings its customers realized over volume pricing.

164. Samuel Lipari discovered that for every product line and from almost every vendor in the broad spectrum of hospital supplies from bedding, to pharmaceuticals, to instruments and even including food and janitorial supplies, the price of goods sold through hospital group purchasing organizations and even their contract suppliers and manufacturer's catalog price was substantially higher than the discounts he could obtain. Samuel Lipari found it easy to beat the "volume discounts" on even very small quantity purchases for widely dispersed customers with disproportionately high handling and transportation costs.

165. In order to increase Physicians Management Group's recognizable savings to aid its customers in evaluating value over products sourced from other vendors, Samuel Lipari innovated the use of separate fees for Physicians Management Group's management, storage and delivery of healthcare supplies to allow customers to directly compare unit costs with other purchasing organizations. This innovation was a great aid to small doctor's practices and rural nursing homes which were empowered to make purchasing decisions on a direct comparison of value in cost per unit of product with the nation's larger volume hospital supply organizations while having the logistics costs of managing contracts, fulfillment, storage and delivery separated out in observable fees that could be tracked and competitively evaluated. Physicians Management Group's logistics services could then be partially or completely substituted with more competitive local alternatives.

166. The demand for Physicians Management Group's business model as an alternative supplier grew faster than the fledgling company with no access to operating capital could sustain. The first 25 independent representatives who had self financed their representation, a practice common among manufacturer's representatives in the automotive and mass merchandizing industries brought in four million dollars in contracts within the first 90 days and Physicians Management Group began shipping products to their clients.

167. Physicians Management Group's hospital group purchasing organization (GPO) supplier was Health Services Corporation of America (HSCA). Despite being one of the largest GPOs at the time with the most volume from which to leverage lowest prices HSCA's contract prices for its member customers

were not as good as those Physicians Management Group obtained on purchases outside of the GPO. Even though Physicians Management Group was only fulfilling the requirements of small volume doctor's offices, clinics and nursing homes.

168. Without access to operating capital to sustain the high demand and growth, Physicians Management Group ceased operations and began returning all unshipped products to the appropriate manufacturer. Physicians Management Group Inc. filed for financial relief on October 15, 1996 and that relief was granted and the file closed on April 09, 1997.

169. On October 24, 1995 Samuel Lipari incorporated Medical Supply Management in the State of Missouri, a healthcare supplier that used technology to bundle services to assist hospitals, nursing homes, surgery centers and physician offices purchase track and pay for supplies again innovating and adopting the role suppliers in the vastly more competitive mass merchandizing industry create value for their customers reducing administrative and product costs.

170. The effect of bundling services to purchase track and pay for supplies, utilizing Samuel Lipari's proprietary software was a revolutionary value adding innovation radically increasing efficiency and reducing costs that rendered group purchasing organizations obsolete. Group purchasing organizations operating without supply chain management software were physically unable to manually offer these value adding services, even with their enormous administrative offices and staff. Hospitals, unlike retail stores where supplier management of purchasing, tracking and paying for supplies as a competition enhancing service to customers originated, do not have the primary function of selling products. When suppliers start to purchase, track and pay for supplies as an included service for hospitals, hospital staffing can concentrate on the primary value creating function of providing healthcare services. The savings realized became exponential.

171. Group purchasing organizations and suppliers began a refusal to deal strategy to foreclose the new supply chain technology from the market for hospital supplies. Although HSCA had indicated a willingness to provide Medical Supply Management a membership in its GPO as they had done earlier for Physicians Management Group, HSCA later breached the membership contract with Medical Supply Management, stating the GPO was getting too much pressure from several suppliers.

172. Medical Supply Management replaced HSCA with MedEcon as its GPO, and as a member of MedEcon, Medical Supply Management's clients were entitled to contract pricing according to MedEcon's Manufacturer Agreements to supplement direct purchasing negotiated by Medical Supply Management itself.

173. As a supplier for health systems (hospital chains, hospitals, clinics and nursing homes) Medical Supply Management was what the industry labels an "independent distribution network." However, unlike other suppliers in healthcare, Medical Supply Management did not make exclusive contracts with particular manufacturers extracting profit from the rebate or kick back payment for exclusive access to a market. Medical Supply Management's compensation was driven only by its performance in saving costs for its customers. Consequently, Samuel Lipari's software was engineered as a "clearing house" resembling an insurance claims processing center of the period where many active competitors utilize the center as a neutral utility. This was the first electronic marketplace in healthcare supplies and it was not based on the GPO model of extracting fees for anticompetitive advantage and monopolization. Later in 2001, the defendant US Bancorp and Piper Jaffray did a study authored by their senior analyst Daren Marhula and determined the model would save twenty three billion dollars a year over the current inefficient distribution system.

174. MedEcon like other GPO's had not invested in efficiency creating technologies like Medical Supply Management's supply chain management software due to the lack of competition in the market for hospital supplies. However, MedEcon enlisted Medical Supply Management transaction accounting and reporting data to police their suppliers' contract pricing compliance, giving birth to the current practice of GPOs to use electronic marketplace software to enforce anticompetitive minimum price maintenance in Sherman Act prohibited vertical price fixing between manufacturers, suppliers and vendors selling to hospitals through Neofoma, Inc. or GHX LLC's electronic marketplace.

175. Owen Healthcare, Inc., a wholly owned subsidiary of Cardinal Health, Inc., took a great interest in Medical Supply Management's business model. On the pretense of building a relationship with Medical Supply Management that would allow Samuel Lipari to sell Owen's lines of pharmaceuticals as an independent distribution network, Owen Healthcare obtained Medical Supply's business plan and proprietary information developed as of 1995.

176. Cardinal Health, Inc. utilized the information in the business plan describing the clearinghouse model and Robert Zollars, a Cardinal employee left Cardinal and later joined Neoforma, Inc. that had started up in 1996 to sell hospital supplies through the internet in an electronic marketplace.

177. A July 29, 1996 letter to Dennis M. Egan of Health Services Corporation of America (HSCA) described Medical Supply Management's use of the Web for customer ordering:

"The Contract portfolio information MSM clients will receive from HSCA will be utilized as follows:

The contract portfolios will reside on MSM server and will include all product data (Vendor, Product ID, Description, Unit of Measure, etc.). The product information (excluding pricing, terms and conditions) will be accessible on the World Wide Web and only after a client locates products on the World Wide Web, will the client then negotiate EDI with MSM server and MSM server provide pricing. Pricing will be provided via Internet through a (SS) link."

**7. The Defendants Foreclosure of Competition In The Market For Hospital Supplies Through Exclusionary Contracts and Loyalty Agreements That Have The Same Exclusionary Effect**

178. Novation and Neoforma create distribution agreements with incumbent and market leading device makers that amount to exclusionary agreements with hospitals given the arrangements between Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker and their member hospitals.

179. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker also enter into explicit exclusionary contracts with incumbent and market leading device manufacturers for a given product with which member hospitals are obliged to comply by agreement and/or coercive threats of expulsion or penalties for deviations.

180. Explicit exclusionary contracts are created when Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker forbid member hospitals from buying outside the cartel, either explicitly or by a practice of imposing penalties if they do.

181. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker exercise their power as exclusive purchasing agents for hospitals by declining to approve competing devices in a given product market,

effectively imposing sole source device contract on member hospitals even when they do not do so explicitly.

182. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker exclude suppliers by agreement by allowing member hospitals to buy from other hospital supply vendors including Medical Supply but only for product categories not covered by the defendants cartel.

183. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker create some exclusionary contracts that are not imposed on member hospitals. Instead these member hospitals are free to accept or reject those exclusionary contracts on a contract-by-contract basis. Even with these “voluntary” exclusionary contracts which often cover multiple products and manufacturers, impose retroactive penalties on deviation, and ban even considering rival products effectively bind member hospitals even when rivals for some products later offer a better and cheaper product.

184. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker in exchange for fees and commercial bribes from manufacturers also use incentives to join exclusionary contracts that anticompetitively exclude device rivals, harm consumers, and harm hospitals as a group.

185. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker get members to accept exclusionary contracts by co-opting hospital system directors and decision makers with cash and cash substitute payments often in the guise of consulting contracts, giving hospitals other compensating benefits, disfavoring hospitals who do not join the exclusionary scheme, and/or giving hospitals who do join a share of the supracompetitive profits earned from downstream consumers.

186. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker overtly illegal forms of exclusive dealing proceed through voluntary agreements with multiple willing hospital buyers even though the long run result is a reduction of competition harmful to the ultimate consumer and often to the hospital buyers themselves.



187. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Bake deceive governmental oversight by making anticompetitive agreements that do not require purchasing 100% from one manufacturer, but instead some other high percentage like 90 or 95%.

188. The defendants use a private brand through Novation, LLC called Novaplus. The Novaplus Pulse Oximetry Letter of Commitment (requiring 95% minimum of annual oximetry sensor purchases from Tyco-Nellcor, which had 88% of market); The defendants Novation Opportunity ® Spectrum I Portfolio Participation Agreement (requiring 95% minimum spanning 12 product categories; The Ethicon-Novation Commitment Document (offering different discounts for Novation hospitals buying 90 or 95% of sutures from Ethicon, which had 81% of suture market)

189. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake's exclusive dealing arrangements cause anticompetitive harm by raising costs for Medical Supply, other distributors, suppliers and manufacturers. The defendants accomplish their monopolization scheme by denying rivals the economies of scale they need to compete effectively.

190. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake create exclusive contracts by Volunteer Hospital Association and University Healthsystem Consortium's general terms of the Novation membership or the defendants' contracts for particular product areas also often require the hospital to use Novation as its sole purchasing agent for the covered product categories. In Novation's Opportunity ® Spectrum I Portfolio Participation Agreement it states "Participant declares Novation as its sole supply cost management company for the purchase of products in the OPPORTUNITY product categories. . . . Participant will purchase OPPORTUNITY ® products though Novation purchasing arrangements and will not purchase OPPORTUNITY products or any products that compete with OPPORTUNITY products though any other supply cost management company."

191. Some of Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake's hospital agreements provide that a

signing hospital cannot solicit rival bids, examine rival products, or even entertain rival proposals to prevent Medical Supply or other Web based suppliers from providing competing product pricing.

192. Novation's Opportunity ® Spectrum I Portfolio Participation Agreement states "Participant will not . . . participate in competitive product evaluations for OPPORTUNITY products." Novation's Opportunity ® Spectrum II Portfolio Participation Agreement (same); Supply Partner Terms of Participation Opportunity ® Spectrum I Portfolio states **"Health care organization agrees not to cause supply partner to incur defensive selling costs during the term of this Agreement (such as can be caused by entertaining proposals from other vendors or conducting product evaluations) . . ."** [emphasis added].

193. The defendants' Supply Partner Terms of Participation Opportunity ® Spectrum II Portfolio states the same. See, e.g., Letter from James Bradley of Stuart Cardiology Group to Jake Langer of Biotronik, Feb. 26, 2001 ("Hospital has entered into a GPO Novation contract, which provides only a single cardiac rhythm device vendor. The hospital is enforcing a 100% compliance to this vendor even though the actually contract states 95% compliance.")

194. The defendants use contracts designed so that a hospital cannot consider rival products, to make it impossible for the hospital to obtain products outside of the agreement made with Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake even though on paper, the market is not restrained for the remaining 5-10%. The defendants' agreements in practice rival devices are often 100% excluded from hospitals despite the nominal right to buy 5-10% from them.

195. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake conceal their exclusionary agreements by not requiring an absolute obligation to buy a high percentage from the favored supplier, but instead provide loyalty rebates if that high percentage is met. The Novaplus Pulse Oximetry Letter of Commitment (discount contingent on 95% compliance). Novation's Opportunity ® Spectrum I Portfolio Participation Agreement also stated the same.

196. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake use loyalty rebates as a more

sophisticated penalty on noncompliance than that imposed under a traditional illegal exclusive agreement to restrain trade, and one that is far more enforceable to boot.

197. With loyalty rebates, Novation can unilaterally impose a penalty for noncompliance by just withholding the quarterly or annual rebate without even going to court, and can easily prove in court the amount of past rebates that must be returned. In this way courts become the defendants instrument of monopolization.

198. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake use a termination penalty making the defendants' exclusive dealing agreements violate the Sherman Antitrust Act. The defendants add additional penalties that are more enforceable including loyalty rebates that increase the exclusionary effect.

199. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake use loyalty rebates that are conditional on the buyer taking all or a high percentage of its purchases from a favored supplier and amount to *de facto* exclusive dealing. IIIA Areeda & Hovenkamp, Antitrust Law ¶768B3, AT 151 (1996); XI Hovenkamp, Antitrust Law ¶1807, at 115-18 (1998).

200. The defendants' loyalty payments are used to inflate prices. (1) Here the rebates or discounts are conditioned on purchasing a high share of the buyer's purchases from the supplier. Thus, this is not a per item price cut that can be met by any equally efficient rival for any future purchases. Because the loyalty rebates are conditioned on getting a high share of the buyer's purchases, they leave rivals with access to only a lower share, which may not sustain economies of scale. When they do so, such loyalty rebates exclude rivals by worsening the rivals' efficiency.

201. (2) Once the hospital has committed to the arrangement, the rebates on all the hospital's past purchases are contingent on it meeting the loyalty threshold. Because loyalty commitments can last for five to seven years, a failure to comply can result not only in losing any rebate already earned in the current year but a demand for a return of all the rebates paid in all past years too. Novation's Opportunity ® Spectrum I Portfolio Participation Agreement states "all earned incentive payments received by the Participant will be subject to repayment if Participant fails to comply for the full [five-year] term of the OPPORTUNITY

portfolio” with a 95% purchase commitment and other requirements; Novation’s Opportunity ® Spectrum II Portfolio Participation Agreement states the same.

202. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake use the threat to reclaim all those rebates on past purchases to induce their member hospitals not to switch to making future purchases from a rival that is just as efficient and offering a lower price, effectively foreclosing Medical Supply from the market for hospital supplies.

203. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake’s exclusionary programs cover multiple products and manufacturers rather than just one. Sometimes the defendants and a given incumbent manufacturer gives rebates or discounts on a whole product line if the buyer commits to making a high percentage of their purchases from that manufacturer through Novation or Neoforma for each product in the line. [Ethicon-Novation Commitment Document (offering highest discount for Novation hospitals that buy 95% of sutures and 85% of endomechanical products from Ethicon, which had 81% of suture market and 61% of endomechanical products)]

204. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake even sometimes give rebates or discounts on menu of products from different manufacturers if the hospital commits to buying a high percentage of each product from the corresponding manufacturer on the menu. Novation’s Opportunity ® Spectrum I Portfolio Participation Agreement employs a 95% purchase commitment applies for twelve product categories covering five different manufacturers, though with one manufacturer for each product category. Novation’s Opportunity ® Spectrum II Portfolio Participation Agreement uses an 85-95% purchase commitment applying to 14 product categories covering 7 manufacturers.

205. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake’s market foreclosure agreements applying to multiple products do not differ from a single product exclusive dealing arrangement, but only worsen the anticompetitive consequences. Through these programs, the defendants impose a penalty for a hospital or health system’s failure to meet the threshold for any one product and in a multiple product

loyalty agreement includes withholding or reclaiming rebates not only for that product but for all the other products as well. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake can then exacerbate the penalty for noncompliance after the rebates have been earned.

206. The defendants have foreclosed competition in the market for hospital supplies so that even at the very beginning of a rebate period, Medical Supply could not compete by simply offering a price on one of the products that matches or beats the price the incumbent manufacturer and Novation or Neoforma is charging for that product net of the program discount.

207. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake use their tremendous market power of over 2000 hospitals and multiple product rebates or package discounts as an illegal tying agreement described in *X Areeda, Elhauge & Hovenkamp, Antitrust Law* ¶1758b, at 343-346 (1996).

208. The defendants' scheme is designed to keep a more efficient Web based vendor or suppliers from providing products to hospitals at lower prices than the cartel. For the hospital would have to take into account that even if it gets a better price from using the rival for that product, it loses the discount on all the other products in the program. The defendants' multi-product rebates are equivalent to sidepayments given to hospitals and health systems in exchange for agreeing to enhance the manufacturer selling through Novation and Neoforma's market power by excluding other sources in one product, with the sidepayments compensating these hospitals and health systems for the fact that this scheme increases the price they pay for the product whose market power was enhanced.

209. More generally, as noted above, even when a hospital does not formally make a multi-product commitment, Novation and Neoforma pressure or threaten with expulsion any member hospitals who do not comply with the commitment obligations made on any of the defendants' exclusionary agreements with incumbent manufacturers. Every single product exclusionary agreement of the defendants is effectively the same as a multi-product one and violates Sherman 1.

210. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake have inserted themselves between the manufacturer and consuming hospitals to extract fees from incumbent manufacturers. These fees or

commercial bribes are solicited by Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake and are partially forwarded to member hospitals and more efficiently to hospital decision makers for high share commitments that are not volume-based at all, and are in actuality not rebates or discounts but a system of graft.

211. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake and their officers with the assistance of US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff have obtained cash and cash equivalents such as stock-options, warrants, or investment interests in the manufacturers favored by Novation and Neoforma's commitment programs.

212. The fees and bribes solicited by the defendants from favored manufacturers includes making monetary investments in the defendants' owned businesses including Neoforma, Inc., and giving Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Bake, US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff favorable business terms on other unrelated deals.

213. US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff also employed another tactic to extort funds from manufacturers and suppliers to enter the cartel. US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff have hosted annual healthcare conferences where healthcare technology companies seeking capitalization were forced to pay US Bancorp Piper Jaffray for underwriting their public offerings and favorable analyst coverage marketed as "independent" research to create demand for their shares as a pre initial public offering investment for qualified investors and most importantly to obtain an introduction to Novation and Neoforma officials to be favored by Novation's commitment programs.

214. US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff were paid large sums for a private meeting with Novation officials or for a prospective healthcare technology company's membership in a GPO institute for evaluating technologies.

215. Manufacturers and suppliers are forced to pay Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Bake fixed amounts that are not linked to volume in the form of: (1) fees given to have products considered, (2) annual administration fees, (3) marketing or endorsement fees, and (4) licensing fees for use of the NovaPlus brand name.

216. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Bake arrange for selected manufacturers and suppliers to pay hospitals fixed fees that are not dependent on the volume of sales in exchange for their commitment to achieving the target market shares. The fact that the payments given for loyalty commitments often are not proportional to volume worsens the anti-competitive effects. The defendants' side-payments that are unrelated to sales volume are used because they are a more effective means of dividing monopoly profits created by seller-buyer collusion designed to enhance Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Bake's market power.

217. Sometimes Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Bake make agreements where the *de facto* exclusivity for any given product is granted not to one incumbent manufacturer or supplier, but to two of them. The defendants at times enforce a duopoly in some products to protect those manufacturers from competition by rivals and entrants. Regardless, the motive of the defendants is to restrict output and increase prices just as where the defendants enforce an absolute monopoly in a product or product line.”

218. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Bake have offered to allow rival products from unfavored manufacturers and suppliers to be offered if they would agree to increase their prices dramatically to levels higher than that being charged by the incumbent manufacturers and suppliers who benefit from the exclusionary agreements. For example, Retractable Technologies reported that Novation finally said it would agree to use safer needle technology from Retractable Technologies, but only if it were sold under Novation's private label for a price 270% higher than Retractable wanted to charge. Thomas Shaw, “Examine the ‘questionable’ side of GPOs,” Commentary, Dallas Business Journal (March 15,

1999) Mark Smith, "Innovative medical products: a clash of blood and money," Houston Chronicle (April 18, 1999).

**8. The Monopolization Of The Hospital Supply Industry By The Defendants In Conspiracies And Combinations With Premier, GHX, LLC and Their Predecessor Corporations**

219. On September 28, 1998, Richard A. Heard, Senior Vice President, Diversified Services obtained via subterfuge the business plan and model created by Samuel Lipari for Medical Supply Management for the Defendants using a false offer to buy out the company from Samuel Lipari.

220. On November 23 and 24th, 1998, the Defendants obtained a demonstration in Salt Lake City, Utah of Samuel Lipari's software that allowed purchases of hospital supply products to be purchased and managed via pc computers instead of the existing costly mainframes still used by the Defendants and their member hospitals and manufacturers to this day.

221. No agreement was finalized because with the demonstration and intellectual property obtained by the defendants through Richard A. Heard and Owen Health, a subsidiary of Cardinal which would later be part owned by the Defendant Novation, the Defendants had obtained the information they needed to prevent Medical Supply from obtaining capital to enter the marketplace by implementing their own electronic exchanges, diluting the value of Samuel Lipari's innovation with false substitutes that maintained the group purchasing organization enterprise of the Defendants to artificially inflate hospital supply costs.

222. In June 1999, MedAssets was formed, it acquired the two GPO's InSource and Axis Point Health Services and then Health Services Corporation of America (HSCA) that had provided supplies to Samuel Lipari's two earlier companies in May 2001.

223. On June 28, 1999, Neoforma, Inc. announced that it has elected Robert J. Zollars to the position of Chairman, President and Chief Executive Officer. He succeeds Jeff Kleck, Ph.D., co-founder of Neoforma. Zollars joins Neoforma from his position as an E.V.P. and Group President at Cardinal Health, Inc.

224. On March 7, 2000, Medibuy.com Inc. (Medibuy) a vendor of Internet-based health care supply purchasing software announced it was acquiring Premier Health Exchange LLC, the electronic commerce subsidiary of San Diego-based Premier Inc.

225. On September 1, 2000, Medibuy announced it was acquiring empactHealth.com, a Nashville, Tenn.-based purchasing Web portal started by hospital chain HCA--The Hospital Co. Shareholders of the



privately held [empactHealth.com](http://empactHealth.com), including HCA, will receive approximately 23% of [medibuy.com](http://medibuy.com). HCA's ownership interest in [medibuy.com](http://medibuy.com) will total approximately 16%. Under the agreement, San Diego-based [medibuy.com](http://medibuy.com) will become the exclusive electronic commerce partner to HCA's 204 hospitals, as well as several members of HCA's group purchasing organization, including LifePoint Hospitals, Triad Hospitals and Health Management Associates.

226. On February 6, 2000, [Empacthealth](http://Empacthealth.com) announced that Columbia/HCA Healthcare Corp. is pumping up to \$40 million into [empactHealth.com](http://empactHealth.com), which will charge hospitals and vendors a fee for ordering supplies online. Columbia/HCA, the nation's largest for-profit hospital company, will be the firm's first customer.

227. On March 30, 2000, [EmpactHealth](http://EmpactHealth.com) announced today that it has signed a founding partner agreement with Health Management Associates (HMA), the premier operator of acute care hospitals in the Southeast and Southwest areas of non-urban America. Under the terms of the agreement, HMA will exclusively implement and use [empactHealth's](http://empactHealth.com) [empactBuy](http://empactBuy.com) solution for the online requisitioning, ordering and purchasing of all medical and non-medical supplies and services for the company's 32 acute care hospitals, and any facilities HMA adds in the future. HMA will also become a founding partner and an equity shareholder in [empactHealth](http://empactHealth.com).

228. In the same announcement [empactHealth](http://empactHealth.com) stated it is a leading healthcare e-procurement company that synchronizes the business processes of healthcare buyers and suppliers to reduce costs and increase efficiency at both ends of the healthcare supply chain. The company has already signed a large critical mass of committed buyers, including more than 240 Columbia/HCA and Health Management Associates facilities that will use [empactBuy](http://empactBuy.com), exclusively, as their e-procurement solution. In addition, [empactHealth](http://empactHealth.com) has commitments from Johnson & Johnson, Baxter, and Medline and a number of other suppliers to integrate their ERP business processes with [empactSupply](http://empactSupply.com). [empactHealth](http://empactHealth.com) offers healthcare-specific e-procurement solutions based on foundation technology from Commerce One and adds valuable functions such as business intelligence, contract management, and inventory management. The company is Nashville-based and privately funded.

229. On March 29, 2000, Global Healthcare Exchange (GHX) was founded as a Limited Liability Company or a trust by five major healthcare manufacturing competitors: Johnson & Johnson Health Care

Systems; GE Medical Systems; Baxter Healthcare Corp.; Medtronic USA, Inc. and Abbott Exchange, Inc. Much of the capitalization came from GE, the parent company of GE Medical. The name was also copied from GE's existing internet marketplace for hospital supplies Global Exchange and was part of a plan created by Jeffrey Immelt, then GE Medical president and now CEO of GE to prevent competition from electronic marketplaces that were independent from the manufacturers ability to control hospital supply distribution with kickbacks and commercial bribes.

230. On March 30, 2000 Neoforma announced the merger with Eclipsys Corporation (NASDAQ: ECLP) and HEALTHvision, Inc. In conjunction with the agreements, Neoforma.com announced that it has signed an exclusive 10-year strategic agreement to provide e-commerce services for the 6,500 healthcare organizations participating in the purchasing programs of Novation, LLC, the world's largest buyer of medical supplies and the supply company of national healthcare alliances VHA Inc. and University HealthSystems Consortium (UHC). The companies later decided not to merge and instead to form a combination to jointly control the market for hospital supplies in e-commerce among Novation, LLC's customers.

231. On March 31, 2000 The New Healthcare Exchange was formed as a consortium of four of the US largest health care distributors, which include AmeriSource Health, Cardinal Health, Fisher Scientific International; and McKesson HBOC.

232. On May 25, 2000 Neoforma announced that it has reaffirmed its exclusive 10-year agreement to provide e-commerce procurement services for Novation. Neoforma.com also announced modifications to the structure and terms of its stock and warrant transactions with VHA Inc. and University HealthSystem Consortium (UHC), the national healthcare alliances that own Novation. Much of the public offering was subscribed to or purchased by Novation with funds owned by UHC and VHA member hospitals and without their knowledge and approval. The capitalization of Neoforma as a direct consequence rose to 1.2 billion dollars.

233. Neoforma also announced on May 25, 2000 that Eclipsys Corporation and HEALTHvision, Inc. agreed by mutual consent to terminate, effective immediately, their proposed mergers announced March 30, 2000. Instead, Neoforma.com, Eclipsys and HEALTHvision have entered into a strategic commercial relationship that will include a co-marketing and distribution arrangement between Neoforma.com and

HEALTHvision. The arrangement includes the use of Eclipsys' eWebIT™ enterprise application integration (EAI) technology and professional services to enhance the integration of legacy applications with Neoforma.com's e-commerce platform.

234. Under the terms of the modified Novation agreements, VHA will receive 46.3 million shares, representing approximately 36% of Neoforma.com, and UHC will receive 11.3 million shares, representing approximately 9% of Neoforma.com. In addition, under new warrants to be issued to VHA and UHC, VHA and UHC will have the opportunity to earn up to 30.8 million and 7.5 million additional Neoforma.com shares, respectively, over a four-year period by meeting certain performance targets. These targets are based upon the historical purchasing volume of VHA- and UHC-member healthcare organizations that sign up to use Neoforma.com's e-commerce exchange. The targets increase annually to total healthcare organizations representing approximately \$22 billion of combined purchasing volume at the end of the fourth year. The warrants will have a strike price of \$0.01. On a pro forma basis, including shares issuable upon the exercise of Neoforma.com's existing options and warrants, and VHA and UHC earning all of the shares underlying the performance-based warrants, Neoforma.com would have approximately 175 million shares outstanding.

235. The May 25, 2000 announcement also revealed the interlocking directors used by the Defendants to restrain trade in hospital supplies. In connection with the new agreements, two of the seven seats on the Neoforma.com Board of Directors will be filled by VHA designees after closing of the transaction. Subject to certain exceptions, VHA has agreed to vote any Neoforma.com shares it owns in excess of 20% of outstanding Neoforma.com stock in the same proportion as all other stockholders. Subject to certain exceptions, UHC has agreed to vote any Neoforma.com shares it owns in excess of 9% of outstanding Neoforma.com stock in the same proportion as all other stockholders. VHA and UHC have also agreed to certain other restrictions on acquisitions and transfers of Neoforma.com stock.

236. Mark McKenna, Novation's president, said, "We are excited about the advantages and value that our relationship with Neoforma.com offers our members in managing their supply expenses and inventories. We have already made significant progress in our relationship with Neoforma.com, including the establishment of supplier and buyer relationship management teams and a targeted implementation strategy. We anticipate members will be able to begin conducting purchase transactions as early as the third

quarter of this year."

237. Curt Nonomaque, VHA executive vice president, noted, "We believe the increased efficiencies, reduced costs and ease-of-use features that Neoforma.com's B2B technology provides will significantly benefit both Novation's member organizations as well as other health care providers. In addition, VHA is creating a separate cooperative pool and will distribute Neoforma.com stock to our members in proportion to their dollar volume of purchases through Neoforma to further align incentives. In addition, the new strategic partnership involving Neoforma.com, HEALTHvision and Eclipsys offers additional benefits for healthcare organizations seeking to integrate and use Internet technology. These agreements build on existing customer relationships with HEALTHvision and Eclipsys that provide the Web-based solutions that enable hospitals to connect with their physicians and communities."

238. Edward Schwartz, executive vice president at UHC, indicated, "We're pleased that the relationship with Neoforma.com is moving forward and that UHC's members will be able to gain value from it. We're also excited to announce that the first organization to sign up for the exchange through Novation is a UHC member, the Medical College of Virginia Hospitals in Richmond, Virginia."

239. Scott Decker, HEALTHvision chief executive officer, said, "We're pleased that through our relationships with Neoforma.com and Eclipsys we will be able to offer customers a comprehensive e-Health solution. HEALTHvision's customers will be able to quickly take advantage of Neoforma.com's expertise in supply chain management because Neoforma.com's contributions will nicely complement our existing services. HEALTHvision currently provides Web-based services to more than 1,200 hospitals, and the potential addition of e-commerce capabilities has already generated a great deal of interest and demand."

240. According to Zollars, the agreement with Novation creates immediate potential scale for Neoforma.com's e-commerce platform, as Novation represents more than 30% of U.S. procurement in healthcare with a membership that includes many of the nation's largest and most respected healthcare organizations and physicians. Novation also brings an existing base of relationships with a wide range of healthcare suppliers, essential to the success of an e-commerce offering. Novation plans to be active in recruiting other suppliers to the Neoforma.com marketplace. Novation already provides its alliance members with highly regarded and utilized Web-enabled tools, including an online catalog, Web-based

tools for cross-referencing and standardization.

241. On September 01, 2000, Medibuy announced that shareholders of the privately held empactHealth.com, including HCA, will receive approximately 23% of medibuy.com. HCA's ownership interest in medibuy.com will total approximately 16%. Under the agreement, San Diego-based medibuy.com will become the exclusive electronic commerce partner to HCA's 204 hospitals, as well as several members of HCA's group purchasing organization, including LifePoint Hospitals, Triad Hospitals and Health Management Associates. medibuy.com will integrate empactHealth.com's technology into its products and services.

242. On April 2001 Broadlane an electronic marketplace that comprises Tenet Healthcare Corp., Community Health Systems, Kaiser Permanente, Iasis Healthcare, Paracelsus Healthcare, Cleveland Clinic Foundation, Universal Health Services, Intermountain Health Care and Continuum Health Partners is formed.

243. On March 26, 2001 Medibuy and Premier announced the launch of Premier Exchange, an Internet portal providing electronic commerce services to Premier's 1,850 alliance members. San Diego-based Premier is a purchasing coalition for health care organizations. Medibuy, also in San Diego, is an electronic procurement vendor offering online supply ordering and management. Medibuy earlier this year acquired Premier's start-up online supply division.

244. On April 30, 2001 HealthNexis is created. Formerly the New Health Exchange, was founded in April 2000 by four of the nation's largest healthcare companies: AmeriSource Health Corporation (NYSE: AAS), Cardinal Health, Inc. (NYSE: CAH), Fisher Scientific International, Inc. (NYSE: FSH), and McKesson HBOC, Inc. (NYSE: MCK).

245. On November 26, 2001 Global Healthcare Exchange and Health Nexis announced they will combine their operations into a single Internet-based exchange, according to the organizations. Supplier members of both organizations will be connected to GHX's 70 integrated delivery networks (IDNs), which currently represent approximately 600 hospitals. The combined entity will operate as Global Healthcare Exchange LLC and will be headquartered in Westminster, Colorado. The merger announcement follows recent GHX alliances with Neoforma Inc. and AmeriNet Inc. Says GHX president Mike Mahoney, "Connectivity, participation, and cooperation among all members of the supply chain is critical for e-

commerce to reach its full potential. HealthNexis and its membership of leading healthcare companies provide considerable e-commerce technology solutions and supply chain expertise. This combination reinforces GHX's commitment to building an open and neutral healthcare exchange to drive supply chain savings."

246. On October 09, 2002 Global Healthcare Exchange, LLC (GHX) and Neoforma, Inc. announced they have signed a definitive agreement to create the first comprehensive, integrated supply chain solution for the healthcare industry. Neoforma and GHX expect the strategic alliance to accelerate the adoption of e-commerce by hospitals and suppliers, accelerating supply chain cost savings. The agreement enables Neoforma's hospital customers, including the 514 hospitals currently contracted to use the Neoforma-powered Marketplace@Novation™, to transact business with GHX's growing network of healthcare supplier members through the integrated solution, without the added cost of implementing and maintaining separate Internet connections. GHX's connected suppliers will be able to sell their products to Neoforma's current and future hospital customers through one Internet-based exchange, reducing implementation costs and simplifying the e-commerce strategy for these suppliers. GHX has signed more than 100 leading supplier members.

247. On December 11, 2002 Global Healthcare Exchange, LLC (GHX) and Medibuy, Inc. announced they have signed a definitive agreement to merge their two companies. The new company will be called Global Healthcare Exchange, LLC (GHX). Owned by many of the world's largest healthcare suppliers and providers, GHX and Medibuy will combine their respective Internet-based trading exchanges to create the largest single exchange in healthcare. More than 1400 hospitals and other healthcare facilities and 100 suppliers have already selected GHX or Medibuy as their preferred solution for purchasing healthcare products and supplies. Through this merger, the newly created exchange will provide a means for all participants in the healthcare supply chain, including provider organizations, manufacturers, group purchasing organizations (GPOs) and distributors, to benefit from improved efficiencies, cost reductions, process automation, and the adoption of industry standards.

248. The same December 11, 2002 announcement described the owners of GHX: "Originally founded in March 2000 by five major healthcare manufacturers: Johnson & Johnson Health Care Systems; GE Medical Systems; Baxter Healthcare Corp.; Medtronic USA, Inc.; Abbott Exchange, Inc., GHX has since

realized its vision of being owned by representatives of the entire supply chain, including manufacturers, distributors, providers and group purchasing organizations. In addition to the founders, the original equity owners included: Siemens; Becton, Dickinson & Co.; Boston Scientific Corp., Tyco Healthcare Group, LP; Guidant Corp.; C.R. Bard, Inc.; B Braun Medical Inc. In December 2001, GHX combined business operations with the distributor-created exchange, HealthNexis, adding AmerisourceBergen Corp.; Cardinal Health, Inc.; Fisher Scientific International, Inc.; and McKesson Corp. to its list of owners. A year later, a merger with Medibuy Inc. rounded out the current ownership roster with the addition of Premier, Inc., one of the nation's largest group purchasing organizations, and HCA, a national integrated delivery network (IDN).

249. While adopting Medical Supply's neutral marketplace concept, the same announcement reveals that GHX still maintains and is an instrument for enforcing the Defendant Novation and the unnamed coconspirator Premier's anticompetitive pricing achieved through contracts that horizontally and vertically fix prices:

250. "How does GHX benefit group purchasing organizations (GPOs)? GPOs are working with GHX to develop integrated contract management and other e-commerce services that enable their hospital members to more easily and efficiently **purchase contracted products at the agreed upon price.**"

[Emphasis added]

251. On April 11, 2003, GHX, MedAssets HSCA announced that they have formed a Strategic Alliance. Global Healthcare Exchange and MedAssets HSCA, the St. Louis-based group purchasing organization, announced they have formed a strategic alliance they say will make e-commerce services available to more than 16,000 healthcare providers. Under the terms of the agreement, MedAssets has selected GHX as an integrated e-commerce solution for members of its GPO. As a result, MedAssets members will be able to purchase products via GHX's Internet-based trading exchange using pricing data contained in the CDQuick E-Catalog, supplemented by the accurate product data in the GHX AllSource catalog.

#### EVENTS

252. On or about 3/12/2002, and following 3 years of R&D Samuel Lipari, President and CEO of Medical Supply Chain, Inc. (Medical Supply) began a process of selecting a corporate bank for the rollout

of its healthcare supply chain empowerment program that produces significant benefits to healthcare and its patients. He sought input from associates and advisors concerning selection of an appropriate national bank that would be capable of a full range of corporate banking services, including nation wide checking, escrow services, short and long term credit facilities, receivables financing and international clearing of transactions between thousands of health systems and their suppliers. Several national banks were evaluated but US Bancorp NA was selected because it also had an investment banking relationship with Piper Jaffray. Piper Jaffray had targeted healthcare customers and participated as underwriter and funds manager for pre IPO healthcare manufacturers and service providers and US Bancorp NA acted as underwriter for corporate bonds of healthcare companies.

253. On or about 4/15/02 Samuel Lipari arranged for Medical Supply's corporate account to be opened at US Bank's SW Topeka branch. The account was opened in the name of Medical Supply Chain, Inc., using Medical Supply's federal tax I.D. number with a cashier's check in the name of Medical Supply's agent and drawn on Miner's State Bank of Frontenac Kansas for \$7,500.00.

254. On or about 4/25/02 Samuel Lipari opened a personal account in his name at US Bank's neighborhood branch at 3640 S. Noland Road, Independence, MO. Before opening the checking account, the US Bank employee reviewed Samuel Lipari's account application and submitted Samuel Lipari's personal data to Chex Systems, Inc. for a background check, evaluation and verification of eight years of his previous banking history at other banking institutions. Samuel Lipari was approved for a personal checking account and an electronic debit card. Samuel Lipari initially used the personal account to pay expenses of Medical Supply with reimbursement from the corporation.

#### **1. Andrew S. Duff And Piper Jaffray's Concerted Refusal To Deal**

255. On 6/5/02 Samuel Lipari contacted Piper Jaffray's Minneapolis headquarters to speak to Heath Lukatch, managing director of the Piper Jaffray healthcare venture fund about Medical Supply being considered as a venture capital candidate. He was instructed to send an executive summary of his business plan via email. Samuel Lipari sent the summary and financial projections for Medical Supply with a restriction on disclosure notice. Piper Jaffray made no response to the receipt of the executive summary and financial projections from Medical Supply's business plan. Samuel Lipari again telephoned the Minneapolis offices of the Piper Jaffray venture fund managers and his calls were not taken and not



returned. Samuel Lipari also attempted to speak to a Piper Jaffray venture fund manger in their San Francisco office but again, his calls were not taken or returned.

256. On 7/9/02 Samuel Lipari and Medical Supply were visited by a Merger and Acquisitions attorney for another San Francisco venture capital firm and after extensive discussions with her at Medical Supply's Blue Springs, MO headquarters on the need to quickly enter the healthcare supply chain market and take advantage of the opportunity created by the healthcare industry's sudden willingness to reject the existing Group Purchasing Organizations, and after the New York Times had began uncovering corruption revelations in the market. However the discussions revealed the current condition of venture funding and IPO underwriting was very troubling. At the time of these meetings the first news of WorldCom's debacle was breaking. Medical Supply's management felt with the exception of Piper Jaffray, which concentrated its investments in healthcare, that much of the assets venture funds reported were in fact overvalued equities in telecom technology companies and that the collapse of WorldCom would further depress the venture capital markets.

257. The venture capital M&A attorney questioned Samuel Lipari about the overtures of large companies seeking to acquire Medical Supply. Samuel Lipari recounted the contacts made with Supply Solution, a Michigan based company focused on expanding integration in the healthcare industry, GoCoop/Avendra a Florida based company providing e-procurement/group purchasing in the hospitality industry and also wanted to integrate in the healthcare industry, both of which were seeking go to market partners in healthcare, Owen Healthcare the pharmaceutical distribution subsidiary acting for Cardinal and Cerner, a Kansas City healthcare company with enterprise resource planning software that is based on an older operating system, called EDI that is inferior to Medical Supply's web based services and poorly suited for electronic commerce.

258. Cerner had bought out Mitch Cooper & Associates, a healthcare supply chain consulting company and seemed to be trying to acquire the capability to create an electronic healthcare marketplace.

259. Samuel Lipari told the VC attorney that Medical Supply would not compromise itself by being aligned with any existing healthcare supplier. Medical Supply has the solution and he did not want to be tainted with companies that support the high cost healthcare problem. He also recounted how start up healthcare electronic marketplace firms with technology similar to Medical Supply like Empacthealth and

Medibuy had been bought up by GPOs for tens of millions of dollars, but that once they were no longer independent, their market potential was eliminated and the technology was used by GPO firms to deceive health systems into thinking their GPO partner was attempting to increase its economic efficiency when in fact they continued to restrict trade in support of monopolizing markets.

260. Medical Supply resolved to develop a way to internally capitalize a roll out of its supply chain empowerment program and supply chain management technology. Medical Supply settled on a plan that would utilize the value of its healthcare supply chain intellectual property and offer a comprehensive year long education and healthcare supply chain certification program to independent representatives.

261. This plan would put representatives in the field nationwide that possess the knowledge and skills to relate to all levels of management in healthcare systems and assist in the adoption of Medical Supply's supply chain empowerment program. The independent representatives would pay for their certification and fund their own marketing and sales operations, consistent with distribution systems that rely on independent manufacturer's representatives. Since Medical Supply's web services were new to the market, Samuel Lipari decided that it would be critical for the certification fee to be held in escrow until the candidates had a chance to meet Medical Supply's certification team and have a chance to see if they would succeed in mastering healthcare supply chain empowerment knowledge. After a week long intensive seminar, the candidates would have the opportunity to decide whether or not to commit to the certification program and Medical Supply would have the opportunity to reject any candidates it felt would not succeed in the program.

262. Medical Supply developed a curriculum and contracted with the industry's foremost logistics and supply chain experts to provide instruction during the weeklong seminar and assist and advise candidates throughout the certification process. Medical Supply made arrangements to include information and presenters from companies with expertise in financial analysis of healthcare purchasing, including strategic sourcing and human resource evaluations so that the representatives would be able to represent products and technology services outside of Medical Supply's capabilities that would complement Medical Supply's supply chain empowerment program in allowing a health system/hospital to break free of its GPO supplier.

263. Beginning 8/1/02 Medical Supply advertised nationwide to recruit experienced account executives and sales professionals and processed hundreds of applicants with detailed evaluation of resumes, job

history and financial disclosure applications. For the first of what were to be quarterly classes, Medical Supply selected 15 candidates that had the potential to succeed as independent representatives for its services. After numerous telephone interviews ten applicants had committed to becoming certification candidates and attend the certification class starting the first week of December/02. During this same time, Medical Supply was preparing the escrow account system that the candidates would utilize.

## **2. US Bank's Concerted Refusal To Deal**

264. On or about 10/1/02 Medical Supply contacted Chris Walden of the Noland Road, Independence MO branch of US Bank for direction on escrow accounts and commercial banking services. Medical Supply was referred to Becky Hainje a US BANCORP "Private Banker" and on or about 10/3/02 Becky Hainje contacted Samuel Lipari and told him she would arrange to put him in contact with the persons in different departments of US Bank that could provide Medical Supply the services Medical Supply requested and needed. She connected Medical Supply with Brian Kabbes in St. Louis who was responsible for US Bank commercial trust accounts in Missouri and Kansas. She also connected Medical Supply with Douglas Lewis, responsible for commercial loans in the Noland Road office.

265. Samuel Lipari described Medical Supply's need for escrow accounts to Brian Kabbes and emailed him an escrow contract that Medical Supply counsel had prepared for its candidates. Brian Kabbes asked questions about the candidates, the certification program and how many candidates had been selected so far. Samuel Lipari negotiated with Brian Kabbes to reduce the escrow fee per account since all escrow accounts would be identical, and US Bank had refused to have the funds in a single account. Brian Kabbes agreed to lower the fee for US Bank's escrow agent services from the normal of \$1,500 to \$600 per account and no hidden or additional transaction or disbursement fees.

266. After reviewing the escrow contract, on or about 10/5/02 Brian Kabbes communicated to Samuel Lipari that the language of paragraph 10 "Security Interests" should be changed so that a security interest for US Bank could be created in the \$5,000 portion of the escrow that became Medical Supply's property the moment a candidate submitted their certification funds into escrow. Medical Supply altered its escrow contract to conform to Brian Kabbes' s suggestion and on or about 10/7/02 emailed the changes to Brian Kabbes. Brian Kabbes and US Bank were identified as the escrow agent in the escrow agreement and Brian Kabbes' address was included in the body of the agreement.

267. On or about 10/8/02 Samuel Lipari spoke again to Becky Hainje about Medical Supply's need for a business line of credit based on the Medical Supply portion of the escrow assets. Becky Hainje said she had talked to Brian Kabbes and he had told her there would be no problems with the escrow accounts, that they were a "slam dunk." She suggested Samuel Lipari call Doug Lewis and make an appointment to apply for the line of credit, which was based on the escrow account assets.

268. On or about 10/9/02 Brian Kabbes called to request an additional change in the escrow contract. He supplied a specified US Treasury fund investment language for the funds while the funds were in the custody of US Bank Trust Department. Medical Supply agreed to the additional change and modified the investment instructions exactly as Brian Kabbes instructed. Medical Supply also ask if there were any other changes needed before Medical Supply sent the contracts out to its certification candidates. Brian Kabbes said there would be no other changes and asked why Medical Supply was sending the candidates the escrow contract. Medical Supply explained that the contracts were going out with the certification program agreement so candidates would have a chance to review the information before their November 1st deadline, which required their funds to be in the US Bank escrow accounts. Brian Kabbes acknowledged the explanation and agreed to look over the release document Medical Supply developed that candidates would execute following the weeklong evaluation seminar to be held the first week of December.

269. During this conversation, Brian Kabbes also requested Medical Supply's current corporate good standing documentation from the Missouri Secretary of State's Office. Medical Supply agreed to send him the reinstatement and tax clearance documents on Friday 10/11/02 and that Samuel Lipari was meeting with Doug Lewis on the afternoon of Thursday 10/10/02 to set up the credit facility using the escrow accounts as security. Samuel Lipari told Brian Kabbes he would have Doug Lewis send the requested information to Brian Kabbes on 10/11/02. Brian Kabbes made no statement that US Bank had yet to approve Medical Supply 's escrow accounts and sought no additional information.

270. On or about Thursday 10/10/02, Samuel Lipari delivered the Medical Supply business plan and associate program to Douglas Lewis, at the US Bank, Noland road office to apply for the agreed upon commercial line of credit based on the portion of the escrow accounts Medical Supply would retain.

271. The business plan and associate program booklets each had cover pages giving notice of restricted use and that Medical Supply protected the confidential business trade secret and intellectual property contained in them.

272. A letter of introduction also stated the contents were protected and restricted disclosure and possession of the materials. Two more folders contained the good standing documentation Brian Kabbes requested and the associate program contracts that were sent to the candidates.

273. Doug Lewis asked how many candidates Medical Supply had and Samuel Lipari reached into his brief case and held up the ten folders of applicants who had committed to sending in their funds by November 1st and five others who were in the final stages.

274. Samuel Lipari further explained that he planned to start a new certification group each quarter. Samuel Lipari was given a loan application and agreed to and did return the application the next day.

275. On or about Tuesday 10/15/02 Brian Kabbes called Samuel Lipari and informed him that US Bank had turned down the escrow accounts because of the USA PATRIOT Act. When asked to clarify, he said the know your customer requirements had changed and US Bank could not set up the escrow accounts for Medical Supply.

276. Samuel Lipari was shocked and stunned and handed away the phone, where Brian Kabbes repeated again The Patriot Act as the reason the accounts were denied.

277. Later that morning Samuel Lipari called Becky Hainje and asked if she could see what happened. Samuel Lipari explained that Medical Supply was counting on the escrow accounts and that the line of credit depended on them too. He said he could not believe the USA PATRIOT Act could be a reason that applied to Medical Supply. She said she would call and see what happened.

278. Becky Hainje called back and left a taped recording on the Medical Supply answering system and listed the reasons Brian Kabbes told her. She said the reasons were the lack of a "relationship with the Bank... that the principals involved with the business were people unknown to the bank, but the main reason is to know your customer "Patriot Act" that was enacted after 9/11, and which we could not really give all the correct answers on the source and flow of money.

### **3. US Bancorp, Andrew Cesere and Jerry Grundhoffer's Concerted Refusal To Deal**

279. On or about 10/15/02 Medical Supply found Andrew Cesere was the head of US Bancorp trust department on the US Bank web site and at 4 p.m. called his secretary Barb in Minneapolis. He was unavailable so Medical Supply asked her to leave instructions for him to call Samuel Lipari about Medical Supply's corporate escrow account rejection at 9 a.m. the following morning.

280. Barb asked for more details concerning the problem. She said Mr. Cesere had a morning meeting but she would get the message to him. At 4:30 p.m. she called back and asked for additional information and the names of the people Medical Supply had dealt with so that Mr. Cesere could inquire about the problem.

281. At 9 a.m. the following morning on or about 10/16/02 Ed Higgins called, leaving a tape-recorded message on Medical Supply's answering system identifying him as the executive vice president of Midwest trusts for US Bank. Samuel Lipari, believing that the USA Patriot Act had probably been used to reject the escrow accounts because of his family name which is also the name of a small group of Islands in the Mediterranean Sea and which ends in "ari" like many Moslem names of people of Arabic descent, activated a tape recorder with a built in microphone and called Mr. Higgins back on the speaker phone.

282. Each subsequent call to US Bank in which Samuel Lipari participated was also recorded by him to document what he suspected was discrimination based on his national origin or ethnic descent.

283. Ed Higgins listened to Samuel Lipari after stating he was an attorney and how long he had been working in trust banking, agreed with him that he saw no reason why the USA Patriot Act would apply to Medical Supply.

284. Samuel Lipari explained that Medical Supply needed additional US Bank services including credit facilities, receivables financing and clearing and settlement services for approximately 90 million worth of transactions in the first year of operations. He said he would check into the matter and call Samuel Lipari back later that day.

285. Instead of Ed Higgins, Brian Kabbes called back with Lars Anderson who he identified as head of corporate trust new business development person and Susan Paine who he said he reported to, both on the line with him. Medical Supply explained that at the time of his previous call, it was not realized that the escrow account contracts that US Bank had approved had already been sent out to the candidates in reliance on US Bank's agreement to host the escrow accounts.

286. Lars Anderson expressed some irritation that Medical Supply had contacted the head of the trust unit about the rejection of escrow accounts. Lars Anderson said the bank had never been on board and it was not a done deal. Brian Kabbes denied that there had been an agreement; he said he had twice told Samuel Lipari.

287. Lars Anderson said that there had never been a signed off agreement to provide the service and that there had never been any bid for it. Medical Supply contradicted that and said the price for the service had been quoted by Brian Kabbes and after negotiating, a specific amount had been agreed upon.

288. Samuel Lipari also told them Brian Kabbes provided and requested changes to the escrow and that Brian Kabbes had told Becky Hainje it was a “slam dunk.”

289. During the call Medical Supply attempted several times to work out any misunderstandings and set up at least the 10 accounts Medical Supply had relied on US Bank for and that US Bank had known about and that Medical Supply was now in danger of being irreparably harmed.

290. Medical Supply stated that the Patriot Act did not apply and that Medical Supply was in actuality an established US Bank customer and that Medical Supply had been in a trust relationship with US Bank and the bank even had its business plan and information about its proprietary business model.

291. Brian Kabbes said that the trust department was a “stand-alone unit” and had its own criteria for accepting customers. US Bank refused to reverse its decision.

292. Medical Supply pointed out that it had not received a true reason for denial of the accounts and that the reason given was a pretext at best.

293. Viewing US Bank’s actions, Medical Supply stated they could only be explained by a conflict of interest due to US Bancorp’s existing healthcare investments and involvement. Medical Supply felt extremely disturbed by the apparent out come of this situation, there was not enough time to establish a new banking relationship with another nationally recognized Bank and Medical Supply would loose substantial momentum.

294. Medical Supply had spent several months building up to roll out it’s supply chain empowerment program and felt to change a trust relationship in the middle will be devastating to it’s entry to market. Medical Supply researched over 300 resumes only to find 30 that appeared to be qualified.

295. On or about 10/17/02 Samuel Lipari telephoned Douglas Lewis and told him what had happened. Doug said he had sent Brian Kabbes the good standing documentation but not the business plan and associate program. Samuel Lipari instructed him not to send the business plan and associate program materials to the corporate trust office of US Bank in St. Louis because of previous losses of intellectual property from unauthorized business plan dissemination.

296. Samuel Lipari told Douglas Lewis that Medical Supply would be litigating over the escrow decision and planned to renew its application for a line of credit once it had the situation straightened out.

297. Samuel Lipari suggested he might find another bank but Douglas Lewis said that would make the line of credit difficult. Samuel Lipari further instructed Douglas Lewis to hold on to the materials and keep anyone else from having access to them. Douglas Lewis agreed and stated he would keep the business plan materials safe.

298. On or about 10/18/02 Medical Supply drafted a letter and sent it to Jerry A. Grundhoffer, the President and Chief Executive Officer of US Bancorp NA with a copy being sent to Andrew Cesere, explaining the staggering damages US Bancorp would be liable for in imminent litigation due to the refusal to provide escrow accounts to Medical Supply. Medical Supply suggested an alternative of fact finding depositions to take place in St. Louis, MO before the end of the day Tuesday 10/22/02, believing US Bank to be misinformed about the USA Patriot Act and any reason for denying the escrow accounts.

299. US Bancorp Trust Department corporate counsel, Kristen Strong replied Friday 10/18/02 via fax and priority delivery with a letter denying US Bancorp NA was in contract with Medical Supply and that if any law suit is filed to address service for the trust department to her at her office.

300. Medical Supply called the trust department counsel Monday 10/21/02 to ask for service addresses of the other named entities and employees. Kristen Strong said the same address would be good for all and then proceeded to ask what the causes of action were. Medical Supply explained that it was chiefly an antitrust action based on the Sherman, Clayton and Hobbs Act and that causes of action under the USA Patriot Act were also a basis for the suit.

301. Kristen Strong was surprised Medical Supply was told the USA Patriot Act had been given as the reason for the denial of escrow account service but reiterated that there was no contract in her view and she saw no basis for the other causes of action. Medical Supply stated that it would fax the complaint to her at



the time the action was filed at the end of business Thursday 10/24/02, but they were still waiting for Mr. Gunderson to select the alternative of mutual fact finding to promote a resolution of the matter without litigation.

302. Kristen Strong stated that the depositions would not lead to any meaningful explanation, that Medical Supply had her letter explaining US Bank's reason for denying the escrow accounts and that the bank reserved the right to choose whom it served.

303. Medical Supply reminded her that US Bancorp had extensive investments in healthcare and that choosing not to provide a service to a competitor is actionable under antitrust law.

304. Kristen Strong warned Medical Supply Not To Contact Anyone At US Bank And Said If Medical Supply filed an action against US Bancorp NA, she would send a letter to the judge in advance of her answer to our complaint saying we had *ex parte* communications.

305. Medical Supply stated that it had not had any communications with US Bank employees since receiving her reply on Friday 10/18/02. However, Medical Supply was an account holder at US Bank and would continue to have communications with US Bank regarding its other bank business.

306. Medical Supply reminded her that US Bancorp had extensive investments in healthcare distributors and that choosing not to provide a service to a competitor is actionable under antitrust law.

307. Medical Supply contacted an attorney, familiar with the healthcare supply chain research and development done by Samuel Lipari at the law firm of Shook Hardy and Bacon and asked if his firm could act as escrow agent for accounts to be set up in US Bank. He said the bank is better prepared to provide escrow services, fearing the liabilities and risks for an escrow agent where the USA PATRIOT Act had been invoked and declined to act as escrow agent.

308. On Thursday 10/24/02 Medical Supply filed for urgent injunctive relief against US BANCORP NA, its subsidiaries and named employees. Medical Supply counsel contacted US Bank counsel Kristin Strong to clarify the clerk of the court's questioning of service and to attempt to schedule a hearing. Ms. Strong said she would call the following morning Friday 10/25/02 to answer the question about service. She did not call and took the day off. Medical Supply counsel called her on Monday morning 10/28/02 at which time she said the case had been transferred to outside counsel and gave the phone number to Medical Supply.

309. On or about 10/28/02 Medical Supply contacted US Bancorp's retained counsel and explained that there were questions about service and that Medical Supply was seeking to schedule a hearing that week for its requested relief to stop the harm it was suffering and to avoid a terminal outcome for the company. US Bancorp's counsel said he had to travel and was unsure of his schedule but by the next day he might know of a time he could make a hearing. Without hearing from the opposing counsel, Medical Supply became concerned and sent an email on or about 10/29/02 suggesting portions of the injunctive relief it seemed likely the two parties could agree on and explaining the harm it was suffering and what delaying the relief beyond critical dates would inflict on Medical Supply, its associates and customers.

#### **4. The Defendants' Acceptance of Liability For Medical Supply's Business Plan Damages**

310. The email explained the losses as follows: the damages of failing to receive the \$350,000 to \$450,000 it depended on November 1st and the resulting effects of that delay on its projected financials including lost profit of \$51,795,005.00, lost increase in average valuation of \$155,385,015.00, Candidate lost revenue of \$15,499,788.00.

311. The email explained that these injuries would be far greater if a December 1st deadline is missed. However, if the company does not recover from US Bank's denial of the escrow accounts the total third year losses of the company would be as follows: lost profits \$51,795,005.00, loss of increased company avg. valuation of \$155,385,015.00, Candidate lost revenue of \$15,499,788.00 and Customer losses of \$697,486,200.00.

312. On or about Wednesday 10/30/02, US Bancorp's counsel sent a letter to the court dismissive of Medical Supply's complaint and stating that it would oppose all requested relief.

313. On or about Thursday 10/31/02, Medical Supply called US Bancorp's counsel explaining the necessity of the relief sought and specifically the relief requested under paragraph 66 seeking to stop US Bank from reporting negative information about Medical Supply under the USA PATRIOT Act.

314. US Bancorp's counsel reiterated his belief Medical Supply needed to find another bank and that no liability existed. Medical Supply's counsel explained that Samuel Lipari will not risk a hundred million dollar company that requires high level banking services to future damage from a secret USA PATRIOT Act report that has misinformation in it and would create a black mark preventing them from ever being able to do any business.

315. US Bancorp's counsel said it would not agree to even just the relief sought in paragraph 66. Medical Supply asked US Bancorp's counsel if his firm would act as an escrow agent for accounts to be deposited in US Bank, since Shook Hardy and Bacon had declined to do so. US Bancorp's counsel refused to do so stating that US Bank did not owe any duty to Medical Supply.

##### **5. The Defendants' Theft of Medical Supply's Intellectual Property**

316. Realizing there was no immediate solution to this matter, and the fact that a previous business model pricing system developed by Samuel Lipari in 1995 was appropriated by HSCA, Medecon and Cardinal Owen Healthcare through exploitation of a confidential business relationship and then taken later by many other GPOs.

317. On or about 11/6/02 Samuel Lipari visited US Bank, Noland road branch to retrieve the documents left by him following the meeting with Doug Lewis on 10/10/02. Doug Lewis gave the documents back to Samuel Lipari.

318. Samuel Lipari specifically ask if the documents were copied or faxed and Doug Lewis said he put all of the information in his analysis and Samuel Lipari left the bank. Upon returning to Medical Supply's office Samuel Lipari Inspected the documents and found that the binders had been separated and copies or faxes had been made of the associate program and the business plan documents.

319. There were also tractor marks from a copy or fax machine on the back of the entire associate program and the business plan pages.

320. The documents relating to the escrow agreement associate program application, and certification contract were not faxed or copied. There were no marks on the back of these documents.

321. Medical Supply became fearful of where these documents were sent and who has reviewed them. The documents that were copied or faxed contain all confidential details to the business, business model, management team, investors, industry experts, advisors, business practices, market strategies, revenue model, service structure, formula, algorithms and financials including 5 year details, 5 year condensed and break even analysis.

322. Samuel Lipari became fearful this information would fall into the wrong hands further blocking or eliminating entry to market.

##### **6. The Effects of the Plan To Financially Destroy Medical Supply**

323. On or about 11/7/02 Samuel Lipari received a complimentary D&B report dated 10/31/02 on Medical Supply. The report indicated Medical Supply started in 2000 and has a clear credit history and a strong financial condition.

324. On November 18, 2002, Medical Supply obtained a TRO hearing on its request for preliminary injunctive relief. Medical Supply sought urgent preliminary injunctive relief from trade secret misappropriation and urgent preliminary injunctive relief from USA PATRIOT Act reporting.

325. Medical Supply had second preliminary injunction hearing at 12:00 p.m. on December 12, 2002. Medical Supply again sought urgent preliminary injunctive relief from trade secret misappropriation and urgent preliminary injunctive relief from USA PATRIOT Act reporting, but was denied.

326. On December 17, 2002 Medical Supply filed a notice of interlocutory appeal to The Tenth Circuit Court of Appeals.

327. On June 16, 2003, the Kansas District Court dismissed Medical Supply's action for injunctive and declaratory relief.

328. After losing a motion for new trial, Medical Supply filed a timely notice for appeal on November 21, 2003.

329. On January 7<sup>th</sup>, 2004, the Tenth Circuit dismissed the interlocutory appeal as moot due to the superceding appeal of the action's dismissal.

**7. US Bancorp, US Bank, Andrew Cesere And Jerry Grundhoffer Realize Because Of The Prospective Injunctive Relief Action Their Antitrust Liability To Medical Supply And The Requirement At Law That They Must Divest Piper Jaffray At A \$750 Million Dollar Loss**

330. Jerry Grundhoffer, the CEO of US Bancorp NA realized that his acquisition of Piper Jaffray in a scheme to exploit US Bank essential facilities as the eight largest national bank in America and use its deposits as a guarantor of capital in underwriting initial public offerings (IPO's) of healthcare technology and supply chain companies and to support those IPO's with Piper Jaffray's essential facility of providing investor research had made US Bank and US Bancorp NA liable under antitrust law for its injury to Medical Supply.

331. Jerry Grundhoffer attempted to sell Piper Jaffray first to Royal Bank of Canada and then to A.G. Edwards & Sons, Inc., seeking a purchase price \$100 million dollars less than US Bancorp had acquired Piper Jaffray for.

332. In December of 2002 Samuel Lipari, CEO of Medical Supply communicated with Gordon M. Nixon and Irving Weiser of the Royal Bank of Canada (RBC) explaining Medical Supply's action against Piper Jaffray and offering to work with RBC if they decided to purchase Piper Jaffray in the hope that RBC would "prevent similar conflicts of interest from ever occurring and to ensure healthcare company securities are not marketed on the basis of illicit anticompetitive contracting advantages."

333. In December 2002 Samuel Lipari, CEO of Medical Supply contacted Robert L. Bagby and Douglas L. Kelly of A.G. Edwards & Sons, Inc. about the action against Piper Jaffray offering to work to resolve any claims:

"We believe we will prevail in our antitrust and contract related claims. The portion of liability for these staggering damages that will be apportioned to US Bancorp Piper Jaffray INC causes us great concern for your company should it acquire Piper Jaffray. A.G. Edwards has responsible corporate governance standards in place and has long served its customers without reproach. I will be happy to work with you and your counsel to resolve Piper Jaffray's involvement in these anticompetitive acts."

334. Jerry Grundhoffer sought and obtained an agreement with Piper Jaffray's C level officers subrogating US Bancorp NA and US Bank's future antitrust judgment liability to Medical Supply from Jerry Grundhoffer to Piper Jaffray.

335. Having no other alternative and realizing that liability to Medical Supply in antitrust continued to accumulate as long as the two companies were commonly owned, US Bancorp announced on February 19<sup>th</sup>, 2003 that Piper Jaffray was being spun off or separated from US Bancorp NA.

336. On December 31<sup>st</sup> 2003, US Bancorp announced the completion of its spin off of Piper Jaffray, trading on the NYSE as an independent public offering January 2, 2004.

**8. US Bancorp, US Bank, Andrew Cesere And Jerry Grundhoffer Realize Because Of The Prospective Injunctive Relief Action Their Antitrust Liability To Medical Supply And The Requirement At Law That They Must Divest Piper Jaffray At A \$750 Million Dollar Loss**

337. GE And GHX, LLC acted against their own short term profit interest and in knowing coordination with Neoforma, Inc. in an intentional effort to deprive Medical Supply in June 2003 of its contracted or bargained for capitalization of \$350,000.00 to enter the market for hospital supplies, just as Neoforma, Inc. (Unknown Healthcare Entity) and US Bancorp, et al had through combination or conspiracy deprived Medical Supply of another \$350,000.00 obtained through the contract for escrow accounts in November 2002.

338. The Defendants Foreclosure of Medical Supply's Attempt Following Attempt To Enter Into the Market For Hospital Supplies and Hospital Supplies in E-Commerce.

339. While seeking a new corporate headquarters for Medical Supply in May 2002 Mr. Lipari discovered an unused building in the same Blue Springs suburb of Kansas City, Missouri. The building had been purpose built to house information technology workers and had the infra structure including adequate communications connections and an electric plant for Medical Supply's servers.

340. GE Transportation acquired the building and its transferable lease when it bought the railroad signal company Harmon, Inc. and got rid of its employees. GE Transportation sought to escape the \$5.4 million dollar liability of the remaining 7 year lease because of the \$50,000.00 to \$60,000.00 dollar a month payments and insurance on the building that had not been occupied for over 8 months with no sub lease offers. Previously the building had been under utilized while GE reduced Harmon's staff. The high monthly cost was making the subsidiary fail to meet GE's economic performance requirements and hurting the conglomerate's bottom line and share price.

341. On or about June 1st, 2002, Samuel Lipari, CEO of Medical Supply Chain, Inc. contacted the leasing agent Cohen & Essrey Property Management regarding a building located at 1600 N.E. Coronado Drive in Blue Springs, MO. The leasing agent indicated the building was already leased but that the lessee could and would like to sub-lease the building. The building was not occupied so Mr. Lipari made a verbal offer to sub-lease a portion of the building. The leasing agent declined his offer indicating the existing lessee would not accept anything less than leasing the entire building.

342. On or about April 1st, 2003 Mr. Lipari contacted the new leasing agent (B.A. Karbank & Company) in the event the new agent had different instructions regarding a sub-lease of the property located at 1600 N.E. Coronado Drive in Blue Springs, MO. The new leasing agent told him that GE was the lessee seeking to sub-lease the building due to their vacating the building after GE Transportation bought out of Harmon Industries. The building was still not occupied so again Mr. Lipari made a verbal offer to lease a portion of the building. The leasing agent declined his offer indicating GE Corporate Properties would not accept anything less than leasing the entire building.

343. On or about April 7<sup>th</sup> Mr. Lipari contacted GE and spoke with the GE property manager, George Frickie regarding Medical Supply's interest in sub-leasing the building. George Frickie indicated again that

GE would not be interested in sub-leasing a portion of the building but rather would be interested in leasing the entire building. Mr. Lipari requested the name of the owners and Mr. Frickie gave him the name and number of Barry Price with Cherokee Properties L.L.C. Mr. Lipari contacted Mr. Price, he was referred to Scott Asner who also had a substantial interest in the building. While speaking with Mr. Asner he provided Mr. Lipari the background and current details on the building lease with GE, terms and a price to purchase the building. The lease was transferable and GE was still obligated for 7-years out of a 10-year lease. Mr. Asner agreed to sell Medical Supply the building for the remaining balance of the GE 7-year lease (\$5.4 million) and provided Mr. Lipari with a letter of intent to sell the building to Medical Supply.

344. On or about April 15th, Mr. Lipari contacted Mr. Frickie with GE Commercial Properties and indicated that he had an interest in purchasing the building. Mr. Lipari ask Mr. Frickie if GE had an interest in buying out the remainder of their lease so that Medical Supply could occupy the building following the purchase. Mr. Frickie offered GE's lease payments for the remainder of 2003 (\$350,000) as a buy out offer.

345. On or about May 1st, 2003 Mr. Lipari tentatively contacted several local Banks, knowing that US Bank had threatened his company with a malicious USA PATRIOT Act report to keep Medical Supply from entering the hospital supply market where US bank was affiliated with Neoforma, an existing electronic marketplace for healthcare supplies. Mr. Lipari knew Medical Supply could not get a loan because of the threat and extortion, but knew he needed input from bankers familiar with the commercial real estate market in Blue Springs. Mr. Lipari felt Medical Supply could form a holding company to obtain the property without US Bank realizing he could enter the hospital supply market. Mr. Lipari spoke with Allen Lefko President of Grain Valley Bank, Pat Campbell branch manager of Gold's Bank and Randy Castle Senior Vice-President of Jacomo Bank. Each of the banks indicated a willingness to provide the mortgage because they felt the property was worth far more than the price offered by Cherokee Properties L.L.C., but the mortgage was too large for the regulatory size of their bank and they each suggested a national bank as an alternative. Due to US Bank's extortion and racketeering, including the pretext and very real threat of a malicious USA PATRIOT Act suspicious activity report (SAR) against Medical Supply since Mr. Lipari had tried to enter the hospital supply market in October of 2002, Mr. Lipari knew he was unable to solicit a national bank for the real estate loan.

346. On or about May 7th, Medical Supply contracted a financial consultant (Joan Mark) for advice on how to put a mortgage together to buy the building which has a 7-year revenue stream from GE in the amount of \$5.4 million, the identical amount offered to purchase the building and for which Medical Supply had a letter of intent from the owner Cherokee Properties L.L.C. Mrs. Mark suggested Mr. Lipari propose a mortgage arrangement directly to George Frickie with GE Corporate. Mrs. Mark explained how a purchase of the \$10 Million dollar property for \$5.4 Million was a great deal for any mortgage lender. Mrs. Mark also explained if GE provided a \$5.4 million dollar mortgage on a \$10 million dollar property and eliminated a \$5.4 million dollar lease obligation that GE would directly benefit from a \$15 million dollar swing to their balance sheet.

347. Without realizing the existence of a combination and conspiracy between the Defendants, including the existence of a secret market allocating and tying agreement between Neoforma, Inc. and G.E and Premier's electronic market place, GHX, LLC. Samuel Lipari prepared an offer on the building for GE Transportation.

348. The afternoon of May 15th, Mr. Frickie responded, leaving a taped voicemail message and stating he had spoke with the business leaders at GE corporate and that they will accept Medical Supply's proposal.

May 15th 2003-George Frickie

"Bret, George Frickie, ah.... I know I sent you an email saying that my counsel way out ah...and I followed up with another email but I spoke to the business leaders and we will accept that transaction ah... let's start the paper work ah... if you want to do some drafting of lease termination or if you would like us to do that, give me a holler 203-431-4452."

349. The second e-mail Mr. Frickie referenced on the phone conversation explicitly stated that GE would accept Medical Supply's proposal and initialed the written acceptance in addition to the electronic signature file for the e-mail:

From: Fricke, George (CORP) To: Bret Landrith Cc: Newell, Andrew (TRANS) ; Payne, Robert J (TRANS) ; Davis, Tom L (TRANS) ; Jakaitis, Gary (CORP)  
Sent: Thursday, May 15, 2003 6:05 PM  
Subject: RE: Lease buyout GE/Harmon building Bret, I would like to confirm our telephone conversation in that GE will accept your proposal to terminate the existing Lease. Robert Payne GE Counsel will start working on the document. He is out of the office until Monday 19th. GCF

350. On or about May 20th, 2003, Medical Supply was given a walk through of the property to inventory the buildings furniture and fixtures and discuss building maintenance and operational procedures. Tom Davis, the property manager for GE Transportation in Blue Springs and John Phillips, the GE



Transportation building maintenance engineer provided the three-hour walk through in addition to the building maintenance and operational procedures. John Philips also provided the blue prints of the building and allowed me to make copies. Mr. Lipari returned the original blue prints after he made copies. They both stated they were being dismissed from employment by GE since they would no longer be necessary.

351. On May 22nd, 2003 Mr. Lipari spoke with Doug McKay with GE Capital who had called earlier that week with regard to the mortgage outlined in Medical Supply's proposal. Doug asked that Mr. Lipari send our company information regarding the mortgage. Mr. Lipari indicated that he could meet him the following Tuesday because Medical Supply had a loan package for him that included its financials, the proposal that George Frickie and GE's business leaders accepted, the letter of intent from the owners and our Dunn & Bradstreet report showing Medical Supply's good credit and strong financial condition. Mr. Lipari gave the information to McKay and McKay indicated he needed to speak with GE Transportation to see how they wanted to handle the terms of the accepted proposal.

352. On or about June 2nd, 2003 Mr. Lipari called McKay to see how they were doing on closing and McKay indicated that the person he needed to speak with was at corporate and that he needed to speak with him before moving forward.

353. As the June 15, 2003 closing date approached, Medical Supply had not received any definitive closing date so Medical Supply's corporate counsel called and sent George Frickie an email stating that a delay in closing would not effect the lease buyout of \$350,000. Medical Supply's counsel later again called Mr. Frickie when he received no response and Mr. Frickie became extremely angry and hung up the phone.

354. Medical Supply then proceeded to speak with GE's counsel Kate O'Leary to determine if the contract had been repudiated. Supporting statutes and the antitrust basis and damages implications were explained to Ms O'Leary.

355. Medical Supply gave GE a deadline to June 10th to clarify whether there had been a repudiation. Mrs. O'Leary later faxed a letter on the 10th requesting that Medical Supply not speak to anyone at GE and that any correspondence relating to this matter be directly to her. Medical Supply then emailed a letter stating that if no earnest money were deposited to indicate the contract was not being repudiated, Medical Supply would file on June 16th for antitrust and breach of contract.

356. George Fricke, property manager for The General Electric Company who Medical Supply had been told by Fricke and his agents, was the authority for the building at 1600 NE Coronado Dr. telephoned Medical Supply Chain's Missouri headquarters and placed a message on its answering machine stating he had been instructed by "business leaders" to accept Medical Supply's proposal and he was calling to do so. Then, George Fricke sent a written acceptance via e-mail with his initials added a signature at the end of the email message. No terms were disputed and the acceptance confirmed The General Electric Company would make its subsidiary GE Transportation LLC. pay \$350,000 for the buy out of the lease and its GE Capital subsidiary provide the \$6.4 million dollar mortgage and closing at 5.4% for twenty years with a first year moratorium on payments. In diversity actions, the Court applies the substantive law, including choice of law rules, that Kansas state courts would apply. See *Moore v. Subaru of Am.*, 891 F.2d 1445, 1448 (10th Cir. 1989). Kansas courts apply the doctrine of *lex loci contractus*, which requires that the Court interpret the contract according to the law of the state in which the parties performed the last act necessary to form the contract. See *Missouri Pac. R.R. Co. v. Kansas Gas and Elec. Co.*, 862 F.2d 796, 798 n.1 (10th Cir. 1988) (citing *Simms v. Metropolitan Life Ins. Co.*, 9 Kan. App. 2d 640, 642-43, 685 P.2d 321 (1984)).

357. George Fricke's signed written acceptance referenced the proposal he had received from Medical Supply earlier that day. The set of documents then became an bilateral contract completed with the last act exchanging mutual promises (*D.L. Peoples Group, Inc. v. Hawley*, — So.2d — (2002 WL 63351, Ct. App., Fla., 2002) enforceable for the sale of the lease interest and the benefit of the bargain obtained by Medical Supply under its clear and complete terms meeting the writing requirements of a real estate purchase contract in Missouri and the writing and definiteness requirement of a credit agreement under Missouri statute RMS 432.045.2 .

358. The formation of an enforceable contract in a set of documents created in correspondence is well settled See *Estate of Younge v. Huysmans*, 127 N.H. 461, 465-66, 506 A.2d 282, 284-85 (1965). Since state law requires a writing, the e-mail acceptance and signature of George Fricke is valid and enforceable under 15 USC §7001, the federal Electronic Signatures in Global and National Commerce Act, widely known as "E-SIGN." Section 101(a) of E-SIGN states that "(1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in

electronic form; and (2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation."

359. Medical Supply had performed as required, introducing itself to the City of Blue Springs Economic Development, and committed to purchase the building from its owner in reliance on the contract with GE. GE Transportation made open partial performance of the contract by opening the building for a three hour briefing on the operation and maintenance of the building's complex systems. This briefing was made by GE Transportation's Blue Springs property manager and the building's maintenance engineer, both of whom told Medical Supply's CEO Samuel Lipari that they had been terminated and will be leaving employment with GE Transportation the following month because they were no longer needed.

360. GE Capital partially performed as required and made an appointment with Samuel Lipari in its Overland Park, Kansas office where Mr. Lipari took the building's blueprints furnished him by GE Transportation, the building's physical description and photo furnished by George Fricke of GE corporate and Medical Supply's corporate records for the loan.

361. The GE Capital loan officer Douglas McKay discussed the terms and questioned Mr. Lipari in detail about the lawsuit. Mr. Lipari explained why under the threat by US Bank of a malicious USA PATRIOT Act suspicious activity report, Medical Supply could not risk going to a bank until the lawsuit was settled. Douglas McKay agreed the USA PATRIOT Act had no valid relationship to Medical Supply's involvement with US Bank and stated he would obtain the additional requirements GE Capital required from George Fricke and GE Transportation. McKay indicated it could take longer to close but he would check into it.

362. Medical Supply communicated to its stakeholders, business associates, potential customers, and the owners of the building that it had obtained the financing and made commitments in reliance of GE's performance on the contract.

363. No letter similar to that which Mr. McKay had described was received from GE Capital by the June 15th contract deadline and no notice of rejection of credit has been received. George Fricke communicated by phone and e-mail that the GE Capital performance would be at arm's length but since the financing was the benefit bargained for by Medical Supply, this did not contradict the contract. When

doubts about GE' intent to honor the contract arose, counsel for GE, GE Transportation and GE Capital each refused to confirm the repudiation.

364. The proposal accepted by George Fricke on behalf of GE's business leaders contained the executive summary of Medical Supply's business plan, including an explanation of the antitrust lawsuit with US Bancorp, et al and the financial projections for Medical Supply's entry into market. Under *Anuhco, Inc. v. Westinghouse Credit Corp.*, 883 S.W.2d 910 (Mo App 1994) GE is responsible for the expectation damages of the forward projections that it had accepted at the time it entered into contract with Medical Supply. Medical Supply is able to prove its projected profits with reasonable certainty. Lost future profits may be used as a method of calculating damage where no other reliable method of valuing the business is available, see *Albrecht v. The Herald Co.*, 452 F.2d 124 at 129 (8th Cir. 1971) cited for this purpose by 10th Cir.

365. GE, the parent company of GE Transportation was a dominant medical device manufacturer and medical equipment and electrical equipment supplier to North American hospitals. GE ceased to be a manufacturer and became a distributor of parts, assemblies, products, systems and credit services to hospitals. GE established monopolies in many product lines for hospitals but feared other distributors would bypass GE and buy the same parts, assemblies, products, systems from foreign sources and sell them to North American hospitals at lower prices in competition with GE To prevent this, GE made alliances with the dominant distributors for hospitals called GPO's including the Defendant Novation, LLC because they were intended to be group purchasing cooperatives (organizations). GE and the other dominant manufacturers gave the management of these GPO's including the Defendant Novation, LLC kickbacks to prevent direct competition in distribution, preserve their loyalty and to protect the inflated prices. However, GE saw that the captive customers of these GPO's including the Defendant Novation, LLC were growing dissatisfied at the inefficiency and the failure to achieve group purchasing discounts. To protect against other market entrants, GE formed Global Health Exchange LLC. as an electronic market place promising online distribution at lower prices to hospitals. GE owns shares of stock in the privately held company and provided the initial capitalization. As an alliance of a handful of dominant manufacturers (now distributors) the actual goal was to preempt the fledgling e-commerce companies from entering the electronic distribution of hospital supplies.

366. G.E, had also formed its own electronic marketplace called Global exchange and continues to market hospital supply products over the internet from its corporate web site as a distributor of other manufacturers' hospital supply products.

367. GE found the technology of GHX, Inc. was inadequate to outperform new entrants and aligned itself with the Defendant Neoforma, Inc., the electronic marketplace co-opted by the dominant GPO's including the Defendant Novation, LLC in an alliance to exchange data among suppliers to enforce cost structures as inflated as those of the GPO's. GHX, LLC at the direction and approval of GE has retaliated against suppliers who endanger the marketplace with competitive prices. GHX, LLC. at the direction and approval of GE has excluded competitors including Retractable Technologies, Inc. and Masimo for failing to give kick backs to the cartel. Death and injury resulted from the failure of hospitals to obtain these medical devices.

368. GHX, LLC. at the direction and approval of GE in a conspiracy and combination with the Defendants has excluded Medical Supply Chain, Inc. from entering the market by not allowing Medical Supply to offer GE Capital Healthcare credit to its potential customers in April of 2002, and by refusing to offer US Bancorp Piper Jaffray services to Medical Supply in June 2002 in a conspiracy with the Defendants and by repudiating essential escrow contracts required by Medical Supply to capitalize its entry into market in October 2002. (US Bancorp has interlocking directorships and an exchange of directors with the two dominant GPO founders of GHX LLC.; the Defendant Novation and Premier. US Bancorp helped the Defendant Novation acquire control of the Defendant Neoforma and partner it with GHX LLC. creating a monopoly of over 80% of healthcare e-commerce).

369. GE at the direction of the Defendants including Neoforma and Novation LLC caused its subsidiary GE Transportation to repudiate the contract to buy the lease from Medical Supply, sacrificing \$15 million dollars on June 15th, 2003 to keep Medical Supply from being able to compete against GHX, LLC. and Neoforma. The market is worth 1.8 trillion dollars. GE acted on the tremendous windfall to preserve its monopoly. George Fricke is GE Corporate's property manager.

**9. Piper Jaffray And Andrew S. Duff Realize Because Of The Prospective Injunctive Relief Action Their Antitrust Liability To Medical Supply And The Requirement At Law That They Divest Their Healthcare Venture Fund, Losing \$225,000,000.00 (255 Million Dollars) In Assets**

370. The Defendants The Piper Jaffray Companies and Andrew S. Duff attempted to contract with the Defendant US Bancorp to guarantee the bank holding company's liability to Medical Supply but discovered it could not continue to incur liability to Medical Supply for participating in the scheme to monopolize the markets in hospital supplies and hospital supplies in e-commerce and announced it was withdrawing from the conspiracy and combination's scheme to monopolize the capitalization of healthcare technology and supply chain management companies.

371. On October 13, 2004, Piper Jaffray announced it was relinquishing its healthcare technology capitalization subsidiary, Piper Jaffray Ventures.

372. Founded in 1992, Piper Jaffray Ventures manages over \$225 million in capital dedicated exclusively to funding innovative, emerging growth companies in the medical technology, biotechnology and healthcare services sectors. Through Piper Jaffray Ventures, The Piper Jaffray Companies actively participated in and held seats on the boards of directors of their client companies, facilitating the monopolization of the markets for hospital supplies and hospital supplies in e-commerce.

373. Through Piper Jaffray Ventures, The Piper Jaffray Companies was also able to extract fees for access to an extensive network of industry contacts including Novation, LLC, UHC, VHA and Neoforma.

374. The Piper Jaffray Companies also used Piper Jaffray Ventures to capitalize healthcare technology and supply chain management companies that became part of the Defendants' combination and conspiracy to restrain trade with US Bancorp NA.

**10. Medical Supply Informs Robert J. Baker, UHC, Curt Nonomaque, VHA, Novation LLC, Bob Zollars And Neoforma that it has been unsuccessful in obtaining prospective injunctive and declaratory relief against their coconspirators Piper Jaffray, US Bancorp, US Bank, Andrew Cesere And Jerry Grundhoffer and that the conspirators are jointly and severally liable for the damages Medical Supply sought to avoid.**

375. On December 14, 2004, Medical Supply served a demand letter Robert J. Baker, UHC, Curt Nonomaque, VHA, Novation LLC, Bob Zollars And Neoforma giving notice to these defendants of Medical Supply's claims against them. Medical Supply informed the defendants that it has been unsuccessful in obtaining prospective injunctive and declaratory relief against their coconspirators Piper Jaffray, US Bancorp, US Bank, Andrew Cesere And Jerry Grundhoffer and that the conspirators are jointly and severally liable for the damages Medical Supply sought to avoid.

**11. Medical Supply is granted a Rehearing in Tenth Circuit. That Afternoon UHC and VHA Realize Because of Medical Supply's Demand Letter That They Are Required At Law To Divest**

**Neoforma and Both UHC and VHA Make an Emergency Announcement of An Agreement to Dispose of Neoforma at a \$150,000,000.00 dollar loss.**

376. On January 25<sup>th</sup> in an emergency late afternoon press announcement after hearing Medical Supply's Tenth Circuit decision would be reheard, Neoforma, Inc. stated:

“Neoforma Hires Merrill to Mull Options

Associated Press  
01.11.2005, 04:52 PM

Neoforma Inc., a provider of supply-chain management solutions for the health-care industry, on Tuesday said it hired Merrill Lynch & Co. as its financial adviser to help it explore options, including a sale or merger.

Neoforma said that any transaction must be approved by VHA Inc. and the University HealthSystem Consortium - national health-care alliances which own a majority of the company's outstanding shares and own Neoforma's largest customer, the supply company Novation.

The company said that there is no assurances that any transaction will occur.”

Before Medical Supply's antitrust actions were brought, Neoforma and Robert Zollars boasted of the monopolization of the e-commerce market for hospital supplies accomplished by alliances with other monopolists including the Defendant Novation, LLC:

CEO explains reasons why long-term investor should be looking at Neoforma Full article published: 12/20/2001 ROBERT J. ZOLLARS is Chairman and Chief Executive Officer of Neoforma, Inc.

Mr. Zollars: To start with, Neoforma is a 2001 Internet success story, and we're the leader in healthcare B2B. Neoforma builds and operates Internet marketplaces that empower healthcare trading partners to optimize their supply chain. So simply put, we help hospitals buy their supplies more efficiently and more effectively.

TWST: Could you give us a sense of the competitive landscape?

Mr. Zollars: About a year or so ago, there were probably 100 companies competing for this opportunity, and today you have less than a handful. As you look at the metrics that we're enjoying right now, as of October 18, Neoforma has over 700 trading partners; that includes 563 hospitals under contract, 333 live using the technology, and 130 suppliers. To give you an idea of scale, that means in our third quarter, we processed over 500,000 order documents that included 1.5 million line items. So, clearly, by any measure, we're out in front of the rest of the pack, which is exciting for us.

TWST: What were the steps you took to achieve this dominant position?

Mr. Zollars: I think the most important thing is we have great partners. First of all, we're partnered with Novation. Novation is the number one group purchasing organization in the country, or GPO. It covers roughly one-third of the market. It's members buy approximately \$36 billion a year in medical supplies and equipment, and just over a year ago we signed an agreement with Novation to be it's exclusive e-commerce partner for 10 years. We're now one year into that agreement and have generated some great results together, as I just mentioned. The other great partner we have is GHX, the Global Health Exchange, an industry supplier consortium. It was founded by General Electric, Johnson & Johnson, Baxter, Abbott and Medtronic, and up until August, had been competing with

us in the market. We struck a strategic alliance agreement with GHX in August that is really exciting for us. It's the first time healthcare buyers and suppliers have really gotten on the same side of the table to work at taking healthcare costs out. The alliance gives us access to the great supplier relationships that GHX has and they, of course, get the great buyer relationships that we have with our hospitals.

**12. Novation, LLC realizes Because of Medical Supply's Demand Letter That Its Relationship With Neoforma and Its Long Term Anticompetitive Contract Are Illegal Antitrust prohibited Conduct Without Redeeming Value and Announces It Will Review Neoforma's Value Creation**

377. Because of this impending legal action, Novation LLC has realized it has created no competition or efficiency enhancing value to the business of its two founders VHA Inc. and University HealthSystem Consortium. Novation subsequently notified Neoforma that it will review the value created by the electronic marketplace:

**"Independent Consultants Engaged to Assess Neoforma's Offering to Novation**

**San Jose, CA - January 26, 2005** - In connection with Neoforma, Inc.'s (NASDAQ: NEOF) decision to evaluate strategic alternatives, Neoforma, a leading provider of supply chain management solutions for the healthcare industry, and Novation, LLC, Neoforma's principal customer, each have engaged independent consultants to assess the technology, information, services and pricing provided by Neoforma to Novation and its owners, VHA Inc. and University HealthSystem Consortium (UHC), and their member hospitals under an exclusive outsourcing agreement. Neoforma announced on January 11, 2005 that it had retained Merrill Lynch & Co. as its financial advisor to assist the Company in evaluating strategic alternatives, including a possible sale or merger of the Company, to achieve greater stockholder value. VHA and UHC own 42.4% and 10.5%, respectively, of Neoforma's outstanding common stock.

The current 10-year exclusive outsourcing agreement, which was originally entered into in March 2000, was most recently amended in August 2003 as a result of negotiations between the parties to the contract. Under the terms of that amendment, the quarterly maximum payment from Novation to Neoforma was established at \$15.25 million, or \$61.0 million per year, beginning in 2004. Since that time, Neoforma has documented significant value delivered by its offering to VHA and UHC hospitals. In 2004, approximately 280 VHA and UHC hospitals, representing a subset of Neoforma's customer base, documented approximately \$100 million in value by using Neoforma's solutions to drive supply chain improvements within their organizations. Based on the value of its offering to Novation and to VHA and UHC hospitals, Neoforma believes that it is a valuable contributor to Novation, VHA and UHC maintaining their competitive position in the industry and to their hospitals' efforts to improve supply chain efficiency.

Neoforma believes that the current quarterly maximum payment from Novation is reasonable. Novation has advised the Company, however, that its assessment could result in a formal request to reduce the quarterly maximum payment.

Each of the consultants independently will assess the current technology, information, services and pricing that Neoforma develops and delivers under the outsourcing agreement. At this time, none of the parties to the outsourcing agreement have requested that the formal benchmarking process allowed under the terms of the agreement be undertaken; however, no assurances can be given that this process will not be requested by any of the parties at a later date. While the actual results of these assessments, which are expected to be completed within 45 days, or of any formal benchmarking process cannot be determined at this time, either process could have an impact on the structure and financial terms of the outsourcing agreement.



### **About Neoforma**

Neoforma is a leading supply chain management solutions provider for the healthcare industry. Through a unique combination of technology, information and services, Neoforma provides innovative solutions to over 1,500 hospitals and suppliers, supporting more than \$10 billion in annualized transaction volume. By bringing together contract information and order data, Neoforma's integrated solution set delivers a comprehensive view of an organization's supply chain, driving significant cost savings and better decision-making for both hospitals and suppliers. "

378. A February 18, 2005 article in the Los Angeles Times exposed Novation, LLC and its subsidiary Cardinal's (the descendent of Owen Health that stole Medical Supply's intellectual property in 1995) extreme opposite conduct of what could legitimize a joint venture between the former competitors VHA and UHC.

379. Los Angeles Times columnist Michael Hiltzik on Thursday profiled the experience of John Glaspy, professor of medicine at the University of California-Los Angeles Medical Center and medical director of UCLA's Bowyer Oncology Center, who attempted to reduce his university's \$13 million annual bill for chemotherapy drugs. According to Hiltzik, the issue raises questions about whether the University of California system received the "best value from a contract" with purchasing groups Cardinal Health and Novation, and it "shed[s] a glimmer of light on a deal whose key terms ... are secret."

380. Changes to Medicare reimbursement rates for oncology medications adversely affected the budgets for the four community cancer clinics Glaspy runs, prompting him to seek information about the contract with Cardinal and Novation, which "presumably leveraged the vast buying power of the five UC medical centers to obtain enormous discounts," Hiltzik writes. According to Hiltzik, Glaspy made a "few phone calls" and discovered he could "beat the Cardinal/Novation price" on oncology medications by about \$800,000 annually.

381. However, UC officials "told him to back off," and his discovery set off "months of conflict between UC headquarters and UCLA, where campus purchasing agents were sufficiently intrigued to wonder whether they could do better without Cardinal/Novation," Hiltzik writes. UC officials did not allow UCLA officials to see the contract terms but did tell the school that removing the oncology medications from the contract "would threaten discounts for the whole [UC] system," according to Hiltzik.

382. Eventually, UC allowed the clinics to purchase their own chemotherapy medications, matching savings found by Glaspy. Hiltzik writes that despite the resolution, the "question remains: Has the University of California been overpaying for all its chemo drugs for the last four years? ... And what about

the other pharmacy purchases at the five UC medical centers, which total about \$200 million a year?"

Michael Hiltzik "A Valuable Drug Discovery at UC" LA Times, February 18, 2005

383. Novation is a limited-liability corporation formed in 1998 by VHA Inc. and University HealthSystem Consortium and was the subject of Senate antitrust hearings in 2002, 2003 and 2004. 2,200 healthcare providers that are part of the Novation distribution system.

384. The Senate Judiciary antitrust subcommittee encouraged the two dominant GPOs, Premier and Novation, the largest GPO to voluntarily implement codes of conduct to stop their antitrust prohibited conduct of bundling, charging large administrative fees, sole-sourcing goods and demanding a high percentage of purchases before rebates kick in.

385. Several hospitals testified in the first hearings that they saved money when they withdrew from the purchasing groups, while medical suppliers have sued Novation over freezing them out of the market.

386. On August 24th, 2004, The Connecticut Attorney General Richard Blumenthal stated; "Novation has a position of very definite market dominance and potentially has misused that power to bundle products and force hospitals to buy supplies that perhaps they would not have done." Mary E. O'Leary," Yale New Haven Executive has Ties to Company in Probe," New Haven Register 08/24/2004.

387. Novation uses its dominance in the market to favor certain medical suppliers and stop competition by smaller manufacturers.

388. Manufacturers and suppliers make rebates and payments to Novation as industrial bribes and kickbacks that influence Novation's decision to carry their products.

389. Novation has actively solicited and obtained rebates, bribes, kickbacks and equity in healthcare technology companies in exchange for distributing the products of manufacturers and suppliers.

390. Novation has required and obtained rebates, bribes, kickbacks and equity in healthcare technology companies before allowing products to be purchased by its member hospitals.

391. Novation and related companies including Neoforma, Inc. use ties and affiliations with hospital executives that receive payments and incentives personally for making decisions regarding their hospital's participation in Novation's system. The hospital executives are on "both sides of the sale transaction involving Novation and their hospital."

392. Novation switched its practice of awarding anticompetitive contracts to the market leader when a subsidiary of Tyco was able to pay kickbacks and bribes greater than Ethicon, the current market leader in sutures. Tyco has been the subject of accounting fraud and securities investigations and CNN reported on February 8th, 2005 Tyco is being investigated in the UN Arms for food scandal where illegal kickbacks and bribes were utilized in the sale of Iraq's oil during the UN embargo.

393. On December 20, 2004, U.S. Surgical, a business unit of Tyco Healthcare, was awarded suture contracts by Novation. The long-term exclusive contracts run from April 1, 2005 through March 31, 2008. The contracts announcement stated VHA and UHC have the potential to purchase as much as \$900 million in the eight product categories that make up Novation's complete wound closure and endomechanical offering.

394. The competing company Ethicon has approximately 90 percent of the suture market and bundles better discounts on sutures to its endomechanical product line. This time US Surgical (a division of Tyco) won both awards.

395. Novation provided a suture conversion calculator to validate for its members that they would save 20 – 25% using the new US Surgical contract. A hospital member of Novation used the aforementioned suture conversion calculator and found that their actual prices for sutures on the new contract are going to be 36% higher the previous contract, yet the hospital was told by Novation that they will realize the above stated savings (20-25% savings).

396. Novation fraudulently deceived its member hospitals into believing the new US Surgical suture contract would save them 20-25 percent. Instead of delivering savings, Novation and Tyco increased the list or book price for the sutures. The hospitals were given a fraudulent means to calculate their "savings" the suture conversion calculator that showed savings in the range of 20-25%. However, when the prices for Ethicon products, the sutures that had been used by the hospital were run through the same calculator, the hospital realized the new US Surgical contract prices were actually 36% higher.

**13. Robert J. Baker, UHC, Curt Nonomaque, VHA, Novation LLC, Bob Zollars And Neoforma decide to continue to rely on Piper Jaffray, US Bancorp, US Bank, Andrew Cesere And Jerry Grundhoffer's corrupt scheme to influence the court**

397. Only counsel for Neoforma, Inc., responded to Medical Supply's demand letter and the response merely a plea to delay action until the attorney could reach everyone after the Christmas holidays. The follow up response never came.

398. No Defendant repudiated its participation in the monopoly or made any overt declaration of withdraw from the conspiracy except for the announced divestitures stated above.

**14. Robert J. Baker, UHC, Curt Nonomaque, VHA, Novation LLC, Bob Zollars And Neoforma's Utilization of Ongoing Sham Petitioning By Shughart, Thomson & Kilroy, Piper Jaffray, US Bancorp, US Bank, Andrew Cesere And Jerry Grundhoffer To Deprive Medical Supply of Counsel**

399. On November 20, 2003, The former managing partner and Shughart Thomson & Kilroy shareholder acting as magistrate in Kansas District Court action *Bolden v. City of Topeka, et al*, Case No. 02-CV-2635, where the African American plaintiff was being represented by Medical Supply's counsel repeatedly told the plaintiff that he should sue his attorney for malpractice. The magistrate also stated Bolden would be better off representing himself. Bolden testified he was thankful to have his counsel, three previous ones had abandoned him after being intimidated and retaliated against by the City. Bolden's previous counsel still has not been located. Affidavits were furnished that many witnesses and process servers had been retaliated against, threatened with criminal prosecution if they testified in federal court and harassed. The magistrate also denied Bolden discovery in the action.

400. The transcript of the hearing which was also taped reveals that the magistrate was obsessed with legal malpractice insurance as a result of his firm's mishandling of Medical Supply's action against the US Bancorp defendants and Unknown Healthcare Supplier, amply documented in the record, and the aborted disclosures of the firm's malpractice liability insurance as the party in interest and guarantor of US Bancorp's certain antitrust losses.

401. During the *Bolden v. City of Topeka, et al* pretrial conference the former Shughart Thomson & Kilroy managing partner and shareholder acting as magistrate expressed his disturbance over "stealth lawsuits" where parties don't even know they are subject to them. While wholly inapplicable to Bolden's case where the City was liable for the officials regardless of whether they remained in the case, the subject of the deliberate pretext used to attack Medical Supply's counsel for his representation of Bolden, the magistrate is clearly troubled over the failure of his firm to consider its responsibilities to the identified coconspirators in *Medical Supply v. US Bancorp, et al*.

402. The attack on Medical Supply's counsel was overtly pretextual. The civil rights liability of the city for the conduct of its officers in their official capacity is based on law the magistrate well knew and in an unrelated pretrial order conference the following day accepted the voluntary stipulation of parties that all officials be voluntarily dismissed. The magistrate also stated that there was unlikely any difference in damages in a footnote to his report and recommendation.

403. The magistrate reiterated his criticism of Medical Supply's counsel in the Bolden v. City of Topeka, et al pretrial order conference report and recommendation, stating Bolden should consider representing himself if Medical Supply's counsel is the only attorney he can get. On December 3, 2003, the magistrate's report and recommendation was submitted as an attachment and the basis for an ethics complaint filed by the assistant city attorney Sherri Price against Medical Supply's counsel for his representation of Bolden. The Kansas Office of the Disciplinary Administrator investigated the complaint by having dinner with the magistrate. The magistrate used to be work for the office prior to starting at Shughart Thomson & Kilroy and continued to serve on various Kansas state ethics committees while a managing partner for at Shughart Thomson & Kilroy. Bolden was never contacted during the investigation and during the prosecution appeared only as a witness for Medical Supply's counsel.

404. The defendants US Bancorp, US Bank, Jerry A. Grundhoffer, Andrew Cesere, Piper Jaffray Companies and Andrew S. Duff coordinated their defense of Medical Supply's action for injunctive and declaratory relief with the coconspirators Jeffrey R. Immelt, GE, GHX, GE Healthcare, GE Capital and GE Transportation who inconceivably attached the Medical Supply complaint and order to their 12(b)6 motion to dismiss in Medical Supply's separate action against Jeffrey R. Immelt, GE, GHX, GE Capital and GE Transportation. The former eighteen year Shughart Thomson & Kilroy shareholder acting as magistrate on the GE case denied Medical Supply discovery and the court did not even permit discovery when the dismissal attachments necessitated conversion of the GE motion to one for summary judgment.

405. On January 29, 2004, March 4, 2004, April 2, 2004 US Bancorp's counsel, Nicholas A.J. Vlietstra and Piper Jaffray's counsel Reed coordinated their appeal (10<sup>th</sup> C.C.A. 03-3342) with the GE defense. The GE defendants included the action against the US Bancorp defendants and Unknown Healthcare Provider as a related appellate case in (10<sup>th</sup> C.C.A. 04-3075) and used the US Bancorp order as a basis for a cross

appeal (10<sup>th</sup> C.C.A. 04-3102) challenging the failure of the trial court to grant sanctions against Medical Supply.

406. The coconspirators UHC, Robert J. Baker, VHA, Inc., Curt Nonomaque, Novation LLC, Neoforma, Inc. and Robert J. Zollars did however renew their conscious commitment to a common scheme designed to achieve an unlawful objective of keeping Medical Supply out of the market for hospital supplies by reviewing the case against US Bancorp and consulting with representatives for US Bancorp, US Bank, Jerry A. Grundhoffer, Andrew Cesere, Piper Jaffray Companies and Andrew S. Duff. The cartel decided to rely on the continuing efforts to illegally influence the Kansas District Court and Tenth Circuit Court of Appeals to uphold the trial court's erroneous ruling. The cartel also renewed their efforts to have Medical Supply's sole counsel disbarred, knowing that an extensive search for counsel by Medical Supply had resulted in 100% of the contacted firms being conflicted out of opposing US Bancorp and actually effected a frenzy of disbarment attempts against Medical Supply's counsel in the period from December 14, 2004 to February 3rd, 2005, all originating from the cartel's agents Shughart Thomson and Kilroy's past and current share holders.

407. The Shughart Thomson & Kilroy counsel, Andrew DeMarea failed to file a reply brief in the interlocutory appeal for the US Bancorp appellees. The Tenth Circuit court clerk called him two days later to remind him and urged him to file for an extension one day beyond the date the brief was due and seven days beyond the deadline for a motion for extension of time under 10th Cir. R. 27.4(F).

408. Andrew DeMarea also refused to turn in a parties case management conference report on the form required by local rule in the Kansas District Court. He repeatedly assured the magistrate during the first case management conference that the Medical Supply case would be dismissed.

409. Mark Olthoff, an attorney for Shughart Thomson & Kilroy in their Kansas City, MO office appeared to write all pleadings and briefs for the defendants until the second appeal where he appears to have been replaced by Susan C. Hascall of the Kansas City, MO office who was a Tenth Circuit Court of Appeals law clerk through 2000.

410. Mark Olthoff's trial pleadings repeatedly misstated and misrepresented Medical Supply's Amended Complaint and pleadings to the court, even after it had been repeatedly drawn to the court's attention that Mr. Olthoff was exploiting the court's reliance on the experience of Shughart Thomson &

Kilroy and was neglecting to read or consider Medical Supply's pleadings. In its order, the court even admonished Medical Supply's for failing to research law and facts that the record evidences had been researched. The negligence was entirely that of Mr. Olthoff and the court's or a result of the court's misplaced reliance on Mr. Olthoff.

411. The Medical Supply action against US Bancorp was dismissed but not on arguments or authorities presented by Shughart Thomson & Kilroy's dismissal memorandum. The first findings of law and fact made by the court in the case were *sua sponte* and both were clearly erroneous.

412. The court did not respond to Medical Supply's arguments for reconsideration or correct its factual errors. It is believed that the Shughart Thomson & Kilroy former managing partner obtained the magistrate assignment to Medical Supply's case against General Electric because of his relationship to Shughart Thomson & Kilroy and it provided an opportunity to address the same fact pattern as the earlier case because GE breached its contract with Medical Supply once the electronic marketplace GHX created by GE and its hospital supplier competitors discovered Medical Supply was attempting again to enter the market for hospital supplies.

413. On January 14th, 2005, Andrew DeMarea was directed to file an ethics complaint against Medical Supply. Like the "complaint" filed by Sherri Price, no allegations of misconduct appear in DeMarea's complaint, it merely incorporates by reference attached Medical Supply filings in the District Court and the Tenth Circuit and the appellate panel's sanction of Medical Supply's counsel for a "frivolous appeal." The "complaint" also contained Medical Supply's motion for en banc review of the sanctions. The sanction order itself admitted the trial court and the hearing panels were mistaken in stating there was no private right of action contained in the USA PATRIOT Act.

414. The former Shughart Thomson & Kilroy managing partner used his position as magistrate assigned to the Medical Supply action against General Electric to deny Medical Supply discovery. A decision he also made in the Bolden case. On January 20, 2005 the magistrate testified under oath in the disciplinary prosecution of Medical Supply's counsel that he had only denied discovery in a few cases. He stated he was unaware of any other case he was assigned where the respondent was an attorney. He visibly winced when he was then questioned if he was a magistrate in Medical Supply v. General Electric et al. where the respondent was the sole counsel for the plaintiff.

415. On January 19<sup>th</sup>, 2005, the state disciplinary tribunal heard arguments that the magistrate was the complaining witness in fact for the complaint made by the assistant city attorney against Medical Supply's counsel. Sherri Price made no independent allegations or observations of misconduct against the respondent and merely incorporated by reference Magistrate O'Hara's report and recommendation from Bolden's pretrial conference. The disciplinary tribunal ordered the magistrate to drive to Topeka and testify under oath.

416. The former Shughart Thomson & Kilroy managing partner acting as magistrate added to his attacks against Medical Supply's counsel with further statements impugning the respondent's competence. The magistrate testified that Bolden's counsel was the worst attorney he had seen in 20 years. The magistrate alleged that Medical Supply's counsel did not have the skill or knowledge of the law a first year law student would possess.

417. The former Shughart Thomson & Kilroy managing partner acting as magistrate made a point of addressing facts that weakened the Kansas Disciplinary Administrator's case from the previous two days and made these assertions unsolicited from the questioning of the Disciplinary Administrator and demonstrated a pre appearance coaching or consultation with the Disciplinary Administrator, especially on the point about Medical Supply's competence being less than that of a first year law student. The magistrate could not have known that Medical Supply's counsel had testified the previous day that many states permit law students to represent clients in civil rights actions because of the shortage of counsel willing to undertake this difficult and un lucrative work.

418. The former Shughart Thomson & Milroy managing partner acting as magistrate impugned the professional ability of Medical Supply's counsel in an order where he was neither a party or attorney, The magistrate stated unequivocally that Medical Supply's counsel was incompetent. During testimony under oath on January 20<sup>th</sup>, 2005, the magistrate stated he could not recall ever stating in an order where the respondent was not an attorney that the respondent was incompetent.

#### **15. The Impending Threat Of Monopolization of the Market For Hospital Supplies In E-Commerce**

419. Industry insiders and investment message boards are communicating that it is likely Neoforma, Inc, with its 1,500 hospitals \$4.1 billion in gross transaction volume and \$6.8 billion in supply chain data will be acquired by GHX, LLC this year.



420. The purpose of the merger is to restrain trade in the e-commerce market for hospital supplies and increase the market power of both companies, which is 80% to the entire control of the single company GHX. A second purpose of the merger is to conceal the loss of funds belonging to Novation's member hospitals in the Neoforma venture.

421. Neoforma, Inc. and GHX, LLC have already integrated their electronic marketplaces, sharing data to control prices by preserving the Novation and Premier imposed fees and contracts on manufacturers for internet sales of hospital supplies and pooling electronic marketplace infrastructures to eliminate competition between the two marketplaces and have done so since 2001.

422. GHX connects over 2,200 hospitals to more than 140 suppliers, creating the largest trading exchange in healthcare. The company proclaims; "GHX is the leader in the healthcare trading exchange segment. "On average, GHX processed more than 12,000 purchase orders and \$23 million in volume daily at the end of 2004.

#### **SUMMARY OF CLAIMS**

423. Medical Supply Chain, Inc., in its antitrust litigation opposing trade restraint in the electronic market for hospital supplies. Medical Supply has experienced substantial antitrust injury from the actions of Novation, a joint venture created by UHC and VHA, Inc. in support of the electronic marketplace entity Neoforma, Inc. which is believed to be an instrumentality of UHC and VHA, Inc. which were both in an alliance to eliminate competition among member competitors in a scheme to inflate prices similar to the alliance of Shell and Texaco to create two joint ventures, Equilon Enterprises LLC and Motiva Enterprises condemned for per se Sherman I prohibited conduct in *Dagher v Saudi Refining Inc*, 369 F.3d 1108, 1114 (9th Cir. 2004).

424. Medical Supply Chain, Inc. has been excluded from the hospital supply market with agreements between UHA and VHA's Novation in combination with their electronic marketplace Neoforma, Inc. US Bancorp NA, and The Piper Jaffray Companies exchanged directors with Novation and participated in exclusive agreements with Novation and Neoforma to keep hospitals using technology products from companies US Bancorp NA and Piper Jaffray had an interest in. The purpose of these agreements was to injure the hospital supply consumers with artificially inflated prices.

425. Because of these illegal anticompetitive agreements with Novation and Neoforma, Inc., Piper Jaffray and then US Bancorp refused to deal with Medical Supply Chain, Inc. US Bancorp broke a contract with Medical Supply Chain, Inc. to provide escrow accounts needed to capitalize Medical Supply's entry into the hospital supply marketplace, using the pretext of the USA PATRIOT Act. US Bancorp and Piper Jaffray simultaneously stole Medical Supply's intellectual property, which has since been openly used by Novation and Neoforma. US Bancorp and Piper Jaffray have continued to extort property from Medical Supply Chain on behalf of the hospital supply cartel by obstructing entry to the market for hospital supplies through the threat of malicious USA PATRIOT Act reports.

426. Medical Supply attempted to obtain preliminary injunctive relief against US Bancorp, The Piper Jaffray Companies and an Unknown Healthcare Supplier to prevent them from using the USA PATRIOT Act as a sham petition designed to prevent Medical Supply from entering the market and to stop the theft of its intellectual property. To date, Medical Supply has not been successful.

427. In June of 2004, Novation/ Neoforma, Inc. again stopped Medical Supply from entering the market for hospital supplies using exclusive dealing agreements with General Electric and GE's electronic marketplace cartel GHX, LLC. These agreements caused GE to break a written contract to purchase a commercial real estate lease from Medical Supply. The contract included Medical Supply's requirement to use the proceeds to capitalize Medical Supply's entry to market since it was under the extortion of US Bancorp threatened and malicious USA PATRIOT Act reporting. Medical Supply is currently attempting to resolve its contract with GE and obtain injunctive relief and treble damages under Sherman I and II.

428. On December 14, 2004 Medical Supply served notice on UHC, Robert J. Baker, VHA, Inc., Curt Nonomaque, Novation LLC, Neoforma, Inc. and Robert J. Zollars that Medical Supply had not succeeded in obtaining prospective injunctive relief against the US Bancorp and Piper Jaffray defendants to prevent antitrust injuries from being obstructed from entering the market for hospital supplies or the theft of Medical Supply's intellectual property. The notice informed the UHC, Robert J. Baker, VHA, Inc., Curt Nonomaque, Novation LLC, Neoforma, Inc. and Robert J. Zollars that if they did not provide a substantiated response denying their responsibility for the hospital supply cartel's actions against Medical Supply, they would be held jointly and severally liable:

"If you dispute that any of these actions were taken against Medical Supply, or that your company is liable as an antitrust coconspirator, please promptly provide a *substantiated* basis for Medical

Supply's reliance on the same to me at the address provided below. Since your company has not refuted the publicized events and relationships described herein, a constructive use of the time remaining between now and our anticipated filing of February 1, 2005 might be to reach an agreement on the platform and electronic format the millions of recorded transactions, hospital supply contracts, kickbacks and equity shares that will be exchanged through discovery as we collectively document the injuries to America's hospitals and our company from your concerted refusals to deal and group boycotts."

429. Only counsel for Neoforma responded and the purpose of the communication was to have Medical Supply await their answer till after the holidays, an answer that never came.

430. The coconspirators UHC, Robert J. Baker, VHA, Inc., Curt Nonomaque, Novation LLC, Neoforma, Inc. and Robert J. Zollars did however renew their conscious commitment to a common scheme designed to achieve an unlawful objective of keeping Medical Supply out of the market for hospital supplies by reviewing the case against US Bancorp and consulting with representatives for US Bancorp, US Bank, Jerry A. Grundhoffer, Andrew Cesere, Piper Jaffray Companies and Andrew S. Duff. The cartel decided to rely on the continuing efforts to illegally influence the Kansas District Court and Tenth Circuit Court of Appeals to uphold the trial court's erroneous ruling. The cartel also renewed their efforts to have Medical Supply's sole counsel disbarred, knowing that an extensive search for counsel by Medical Supply had resulted in 100% of the contacted firms being conflicted out of opposing US Bancorp and actually effected a frenzy of disbarment attempts against Medical Supply's counsel in the period from December 14, 2004 to February 3<sup>rd</sup>, 2005, all originating from the cartel's agents Shughart Thomson and Kilroy's past and current share holders.

#### **CLAIMS FOR RELIEF**

431. Medical Supply seeks the following relief based on continuing anticompetitive conduct by the defendants in an ongoing unlawful enterprise to overcharge Medicare, Medicaid, Champus and private insurance companies with artificially inflated claims and to control the capitalization of healthcare technology companies and supply chain management companies to prevent web based competition from lowering the prices for hospital supplies.

432. The defendants Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker, US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff targeted Medical Supply Chain as a potential competitor that would bypass their monopolized distribution

system for hospital supplies and cause price competition and destroy the anticompetitive advantage held by healthcare technology and supply chain management companies controlled by the defendants in obtaining capitalization.

433. The defendant Novation LLC is the largest Hospital Group Purchasing Organization selling over 30 billion dollars in hospital supplies a year and controlling the purchasing in 2000 hospitals nationwide.

434. The defendants possess market power having the power to exclude competitors from 2000 of the nation's hospitals, which Novation controls under long term purchasing contracts. The defendants possess market power in the ability to charge manufacturers and suppliers fees to have their products sold to Novation's members and additional fees to manufacturers and suppliers for allowing their products to be sold through the web where member hospitals are required to purchase products through Neoforma, Inc. The defendants possess market power in having exclusive access to Piper Jaffray's investor research coverage and annual healthcare conferences, elements essential to effectively obtain capitalization through an initial public offering. The defendants possess market power in having exclusive access to the commercial banking facilities of US Bancorp NA.

**COUNT I**  
**DAMAGES FOR COMBINATION AND CONSPIRACY**  
**IN RESTRAINT OF TRADE OR COMMERCE**  
**(15 U.S.C. §§ 1,15)**

435. Plaintiff realleges paragraphs 1 through 434.

436. 15 U.S.C. § 1 provides that "Every ... combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States... is hereby declared to be illegal."

437. Beginning at least as early as 1998, and continuing until the present date, Defendants entered into a combinations and or conspiracies in unreasonable restraint of trade or commerce among the several States of the United States, in the markets for hospital supplies, hospital supplies sold in e-commerce and the capitalization of healthcare technology and supply chain management companies.

438. These combinations and or conspiracies took the form of Group Boycott, Allocation of Customers, Horizontal Price Restraint, Vertical Price Restraint and Tying Agreements, and their respective annual shows. Said Group Boycott, Allocation of Customers, Horizontal Price Restraint, Vertical Price Restraint and Tying Agreements were instigated and conducted by Defendants Novation, LLC, Neoforma, Inc.,

Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Baker who had and have market power over, i.e. a controlling percentage of market share of, the sale of hospital supplies, and the sale of hospital supplies sold in e-commerce; and by Defendants US Bancorp, NA, US Bank , Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff who had and have market power over, i.e. a controlling percentage of market share of, the capitalization of healthcare technology and supply management companies including healthcare venture funds, private placement and public offering underwriting, commercial banking, trust facilities and market research analyst coverage necessary for Medical Supply to obtain external capital and necessary for Medical Supply to self capitalize its entry into the hospital supply market and the market for hospital supplies in e-commerce. Said Group Boycott, Allocation of Customers, Horizontal Price Restraint, Vertical Price Restraint and Tying Agreements had the purpose and effect of severely impairing the ability of Medical Supply to sell hospital supplies to hospitals conventionally or through e-commerce and to obtain capital it had self raised to enter the market for hospital supplies in the several States of the United States; and was further intended to eliminate or greatly reduce the availability of hospital supplies through e-commerce regardless of hospital demand in the several States of United States, and impose a burdensome fees on manufacturers and suppliers for selling hospital supplies through web based electronic marketplaces to hospitals and health systems in the several States of the United States.

439. The defendants Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Baker are and were direct competitors of Medical Supply in the sale of hospital supplies and the sale of hospital supplies in e-commerce.

440. The defendants Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Baker have and have had significant interests in the market for capitalization of healthcare technology and supply chain management companies.

441. The defendants US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff competed and compete directly with Medical Supply in the market for capitalization of healthcare technology and supply chain management companies because Medical

Supply was forced by the defendants conspiracies and combinations to self capitalize its entry into market with unique trust accounts from it had solicited from its sales representative candidates.

442. The defendants US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff have and have had significant interests in the market for hospital supplies and hospital supplies sold in e-commerce where US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff have concentrated 70% of their investment and have marketed IPO shares based on exclusive dealing contracts obtained for their client companies with Novation, LLC. , Neoforma, Inc., Volunteer Hospital Association and University Healthsystem Consortium.

443. The defendant Shughart Thomson & Kilroy as a latecomer in October 2002 to the conspiracies and combinations had a significant interest in the markets for hospital supplies and hospital supplies sold in e-commerce and the capitalization of healthcare technology companies and supply chain management companies where they were agents for US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff. Shughart Thomson & Kilroy was coerced or voluntarily took unlawful actions to protect and assist the defendants in monopolization and monopoly of the markets for hospital supplies and hospital supplies sold in e-commerce and the capitalization of healthcare technology companies and supply chain management companies.

444. The Defendants committed the following per se violations of section 1 of the Sherman Antitrust Act:

**Novation, LLC, Neoforma, Inc., Robert J. Zollars,  
Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium,  
Robert J. Baker, US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere,  
The Piper Jaffray Companies and Andrew S. Duff's Group Boycott Under Sherman 1**

445. (1) Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker, US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff had agreements to restrain trade in the market for hospital supplies, and agreements to restrain trade in the market for healthcare technology company capitalization.

446. a. The defendants Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker, US Bancorp, NA,

US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff created and enforced agreements to restrain trade in the market for hospital supplies, and agreements to restrain trade in the market for healthcare technology company capitalization with a unity of purpose and a common design and understanding, having a meeting of minds in unlawful plans to limit competition and thereby increase the defendants profitability from overcharging Medicare, Medicaid, Champus and private insurance companies for healthcare costs based on artificially inflated hospital supply costs. The defendants created and enforced unlawful plans to prevent healthcare technology and supply chain management companies from being capitalized and from marketing products and services to healthcare companies without the defendants' participation, approval and profit.

447. **b.** The defendants The Piper Jaffray Companies and Andrew S. Duff refused to offer Medical Supply investment banking services or to respond to Medical Supply's correspondence pursuant to agreements with Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Baker to restrain trade in the market for hospital supplies, and agreements to restrain trade in the market for healthcare technology company capitalization.

448. **c.** The defendants US Bancorp, NA, US Bank, Jerry A. Grundhoffer and Andrew Cesere, broke their contract to provide quarterly escrow account deposits of \$350,000.00 Medical Supply had relied upon to capitalize its entry into the market for hospital supplies pursuant to agreements with Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Baker to restrain trade in the market for hospital supplies, and agreements to restrain trade in the market for healthcare technology company capitalization.

449. **(2)** Medical Supply was injured as a direct and proximate result of Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker, US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff's agreements to restrain trade in the market for hospital supplies, and agreements to restrain trade in the market for healthcare technology company capitalization.

450. **(3)** Medical Supply's damages from Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker, US

Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff's agreements to restrain trade in the market for hospital supplies, and agreements to restrain trade in the market for healthcare technology company capitalization are capable of ascertainment and not speculative.

**Novation, LLC, Neoforma, Inc., Robert J. Zollars,  
Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium,  
Robert J. Baker, US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere,  
The Piper Jaffray Companies and Andrew S. Duff's Allocation of Customers Under Sherman 1**

451. (1) Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker, US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff had agreements to allocate customers in the market for hospital supplies, and agreements to allocate customers in the market for healthcare technology company capitalization.

452. a. The defendants Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker, US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff created and enforced agreements to allocate customers in the market for hospital supplies, and agreements to allocate customers in the market for healthcare technology company capitalization with a unity of purpose and a common design and understanding, having a meeting of minds in unlawful plans to limit competition by allocating customers and thereby increase the defendants profitability from overcharging Medicare, Medicaid, Champus and private insurance companies for healthcare costs based on artificially inflated hospital supply costs. The defendants created and enforced unlawful plans to allocate customers in long term anticompetitive contracts between healthcare technology and supply chain management companies and group purchasing organizations to guarantee companies marketing products and services to healthcare companies with the defendants' participation, approval and profit were being capitalized and that competitors were being excluded from capitalization.

453. b. The defendants The Piper Jaffray Companies and Andrew S. Duff refused to offer Medical Supply investment banking services or to respond to Medical Supply's correspondence pursuant to agreements with Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Baker to allocate customers among the



group purchasing organizations to healthcare technology company and supply chain management companies in which the defendants' cartel had a participatory interest.

454. c. The defendants US Bancorp, NA, US Bank, Jerry A. Grundhoffer and Andrew Cesere, broke their contract to provide quarterly escrow account deposits of \$350,000.00 Medical Supply had relied upon to capitalize its entry into the market for hospital supplies pursuant to agreements with Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Baker to pursuant to agreements with Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Baker to allocate customers among the group purchasing organizations to healthcare technology company and supply chain management companies in which the defendants' cartel had a participatory interest.

**Novation, LLC, Neoforma, Inc., Robert J. Zollars,  
Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium,  
Robert J. Baker, US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere,  
The Piper Jaffray Companies and Andrew S. Duff's Horizontal Price Restraint Under Sherman 1**

455. The competing hospital cooperative purchasing organizations Volunteer Hospital Association and University Healthsystem Consortium formed the joint venture Novation, LLC for the illegal purpose of eliminating competition between the two cooperatives, leveraging their market power established with long term anticompetitive and exclusive dealing contracts to restrain trade in a larger percentage of the US hospital market. The Defendants used the combinations and conspiracies to set prices for every member hospital in Novation and Neoforma's markets.

**Novation, LLC, Neoforma, Inc., Robert J. Zollars,  
Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium,  
Robert J. Baker, US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere,  
The Piper Jaffray Companies and Andrew S. Duff's Vertical Price Restraint Under Sherman 1**

456. The competing hospital cooperative purchasing organizations Volunteer Hospital Association and University Healthsystem Consortium formed the joint venture Novation, LLC for the illegal purpose of eliminating competition between the two cooperatives, leveraging their market power established with long term anticompetitive contracts to restrain trade in a larger percentage of the US hospital market. The new company managed all of the distribution for both competitors, set prices, artificially inflating the costs of all products sold to both hospital member groups and pooled the profits from the sale of hospital supplies.

457. The competing hospital cooperative purchasing organizations Volunteer Hospital Association and University Healthsystem Consortium eliminated competition by marketing products under the Novation, LLC private brand.

458. The competing hospital cooperative purchasing organizations Volunteer Hospital Association and University Healthsystem Consortium also retained rebates belonging to both groups of member hospitals and pooled them in a web based electronic marketplace company- Neoforma, Inc. which the defendants Novation, LLC, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker, US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff gained control of, suppressed and used to forestall competition from an independent web based electronic marketplace for hospital supplies utilizing Medical Supply's business model.

#### **Maintaining Minimum Prices**

459. (1) Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker, US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff had agreements to maintain minimum prices in the market for hospital supplies, and agreements to maintain minimum prices in the market for healthcare technology company and supply chain management company capitalization.

460. a. The defendants Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker, US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff created and enforced agreements to maintain minimum prices in the market for hospital supplies, and agreements to allocate maintain minimum prices in the market for healthcare technology company capitalization with a unity of purpose and a common design and understanding, having a meeting of minds in unlawful plans to limit competition by maintain minimum prices and thereby increase the defendants profitability from overcharging Medicare, Medicaid, Champus and private insurance companies for healthcare costs based on artificially inflated hospital supply costs. The defendants created and enforced unlawful plans to maintain minimum prices in long term anticompetitive contracts between healthcare technology and supply chain management companies and group purchasing organizations to guarantee companies marketing products

and services to healthcare companies with the defendants' participation, approval and profit were being capitalized and that competitors who would not maintain minimum prices were being excluded from capitalization.

461. **b.** The defendants The Piper Jaffray Companies and Andrew S. Duff refused to offer Medical Supply investment banking services or to respond to Medical Supply's correspondence pursuant to agreements with Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Baker to maintain minimum prices among the group purchasing organizations to healthcare technology company and supply chain management companies in which the defendants' cartel had a participatory interest and exclude companies that would not maintain minimum prices.

462. **c.** The defendants US Bancorp, NA, US Bank, Jerry A. Grundhoffer and Andrew Cesere, broke their contract to provide quarterly escrow account deposits of \$350,000.00 Medical Supply had relied upon to capitalize its entry into the market for hospital supplies pursuant to agreements with Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Baker to pursuant to agreements with Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Baker to allocate customers among the group purchasing organizations to healthcare technology company and supply chain management companies in which the defendants' cartel had a participatory interest and exclude companies that would not maintain minimum prices.

463. **d.** The defendants' anticompetitive conduct to maintain prices included using the US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff underwritten company Omnicell's software and later Neoforma, Inc.'s to monitor pricing and fulfillment of products sold throughout the distribution channels of Novation, LLC, Volunteer Hospital Association and University Healthsystem Consortium to enforce the defendant's scheme to artificially inflate prices of hospital supplies.

464. **e.** Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Baker utilized an electronic reporting

arrangement facilitated by Neoforma, Inc. to foster parallel pricing with the competitor GPO Premier and throughout the competing electronic marketplace GHX, LLC to fix prices of hospital supplies.

465. f. (1) Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Baker has contracted, combined, and conspired (2) with a separate economic entity supplier and manufacturers (3) to set the price at which the products are resold (4) in an independent commercial transaction with a subsequent hospital purchasers.

**Novation, LLC, Neoforma, Inc., Robert J. Zollars,  
Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium,  
Robert J. Baker, US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere,  
The Piper Jaffray Companies and Andrew S. Duff's Tying Agreements Under Sherman 1**

466. The competing hospital cooperative purchasing organizations Volunteer Hospital Association and University Healthsystem Consortium formed the joint venture Novation, LLC for the illegal purpose of eliminating competition between the two cooperatives, leveraging their market power established with long term anticompetitive and exclusive dealing contracts to restrain trade in a larger percentage of the US hospital market. The Defendants used the combinations and conspiracies to tie products and lines of products so that hospitals were unable to chose between vendors.

467. The Defendants tied membership in their electronic marketplace, Neoforma, Inc. with their competitor Premier's electronic marketplace GHX, LLC so that every hospital that enrolled in GHX, LLC was required to also enroll in Neoforma so that the Defendants could exclude electronic marketplaces outside of the combination and conspiracy.

15 U.S.C. § 15 provides that

“... any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefore... without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.”

468. As a direct result of Defendants' unlawful activity, Plaintiff has suffered and will continue to suffer substantial injuries and damages to their businesses and property.

469. Plaintiff is entitled to recover their actual damages in the amount of approximately \$500,000,000.00, multiplied by three for total damages of approximately \$1,500,000,000.00, for the denial of the escrow accounts and approximately \$500,000,000.00, multiplied by three for total damages of approximately \$1,500,000,000.00, for the denial of the second capitalization attempt through the sale of the

lease to GE Transportation. The plaintiff is entitled to recover total Sherman 1 damages of \$3,000,000,000.00 and the cost of suit including a reasonable attorney's fee.

**COUNT II**  
**INJUNCTIVE RELIEF FOR COMBINATION AND CONSPIRACY**  
**IN RESTRAINT OF TRADE OR COMMERCE**  
**(15 U.S.C. §§ 1,26)**

470. Plaintiff realleges paragraphs 1 through 469.

471. 15 U.S.C. § 26 provides that “Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief... against threatened loss or damage by a violation of the antitrust laws... [and] the cost of suit, including a reasonable attorney’s fee.”

472. Unless enjoined from doing so, Defendants will continue to violate 15 U.S.C. § 1.

473. Plaintiff is also entitled to recover their cost of suit, including a reasonable attorney’s fee.

**COUNT III**  
**DAMAGES FOR MONOPOLIZATION**  
**(15 U.S.C. §§ 2,15)**

474. Plaintiff realleges paragraphs 1 through 473.

475. 15 U.S.C. § 2 provides that “Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade of commerce among the several States... shall be deemed guilty” of an offense against the antitrust laws of the United State.

476. Defendants collectively have at all times material to this complaint maintained, attempted to achieve and maintain, or combined or conspired to achieve and maintain, a monopoly over the sale of hospital supplies, the sale of hospital supplies in e-commerce, and over the capitalization of healthcare technology companies and supply chain management companies in the several States of the United States; and have used, attempted to use, or combined and conspired to use, their monopoly power to affect competition in the sale of hospital supplies, the sale of hospital supplies in e-commerce, and over the capitalization of healthcare technology companies and supply chain management companies sale of the same in the several States of the United States in violation of 15 U.S.C. § 2.

477. As a direct result of Defendants’ unlawful activities, Plaintiff has suffered and will continue suffer substantial injuries and damages to their businesses and property.

478. Plaintiff is entitled to recover their actual damages in the amount of approximately \$500,000,000.00, multiplied by three for total damages of approximately \$1,500,000,000.00, and the cost of suit including a reasonable attorney's fee.

**Threat of USA PATRIOT Act Suspicious Activity Reporting**

479. The Defendants repeatedly used the USA Patriot Act to deny services of US Bank and US Bancorp to Medical Supply, causing the loss of Medical Supply property. The Defendants, despite their regulated status as financial institutions and corporate officers of financial institutions responsible for providing a professional service; denied Medical Supply, a known domestic corporation in good standing with its Secretary of State and State Department of Revenue an escrow account service on the basis of increased reporting requirements for new accounts under the USA PATRIOT Act even though The US Treasury Department had previously announced it was delaying the date account opening requirements become issued and effective and Us Bancorp was under no reporting requirements for Medical Supply's escrow accounts.

480. The Defendants continue to endanger the plaintiff Medical Supply and its associates with wrongful denial of services and facilities of US Bancorp where Medical Supply has its accounts or at other national and state banks where Medical Supply may be denied services based on erroneous or bad faith reporting by the Defendants.

481. The Defendants continue to endanger the plaintiff Medical Supply its associates and customers with wrongful denial of services and facilities of national and state banks where Medical Supply may be denied services based on the Defendants unprofessional and bad faith denial of escrow accounts based on the USA PATRIOT Act. The Defendants action prevents Medical Supply from escaping the denial of escrow accounts history and banking references in all new financial arrangements.

482. On October 22, 2002 Medical Supply approached an attorney of Shook, Hardy and Bacon for the purpose of acting as escrow agent in substitute accounts to be set up at a national bank. After asking why Medical Supply's existing bank did not provide the accounts, the attorney declined to act as escrow agent out of a justified fear his firm would also receive a malicious suspicious activity report.

**Violation of §802 of The USA PATRIOT Act**

483. The Defendants continue to endanger the plaintiff Medical Supply, its associates and customers with illegal conduct that prevents them from or threatens to prevent them providing a market solution to this governmental healthcare policy issue.

484. The US Senate Judiciary Committee's Antitrust Subcommittee has held three consecutive hearings on the anticompetitive practices in the national market for hospital supplies. The illegal actions of the defendants have prevented Medical Supply from having the resources to appear and testify.

485. The Defendants through their illegal obstruction of Medical Supply's entry into the markets for hospital supplies and hospital supplies in e-commerce have attempted to influence the national policy debate on group purchasing organization regulation by denying legislators statistics and data from a functioning independent electronic marketplace.

#### **The Filing of a Malicious USA PATRIOT Act Suspicious Activity Report (SAR)**

486. On information and belief, Medical Supply has discovered that the Defendants have filed malicious suspicious activity reports against Medical Supply and its founder Samuel Lipari.

487. The Defendants have deliberately and intentionally filed a baseless USA PATRIOT Act suspicious activity report as part of a conspiracy and or combination to keep Medical Supply out of the market place for hospital supplies and hospital supplies sold in e-commerce and to keep Medical Supply from being able to self fund its entry into market by destroying Medical Supply's ability to capitalize healthcare technology and supply chain management companies.

#### **Harassing Medical Supply and its Agents Outside of This Action**

488. The Defendants through Neoforma and Robert Zollars, acting for the other defendants and in a conspiracy and combination with the unnamed coconspirators GE, GE Healthcare, GE Capital and GHX caused Medical Supply and its counsel to be threatened with sanctions for filing an action to prevent GE from restraining trade in the market for hospital supplies and hospital supplies in e-commerce.

489. Neither GE or its counsel furnished a reason why Medical Supply would be sanctioned for filing the suit and intended to intimidate or harass Medical Supply by implying that GE and Neoforma have illegal influence and control over the legal system.

490. The Defendant Shughart Thomson & Kilroy has acted outside of litigation in defense of the Defendants and repeatedly sought to deprive Medical Supply of counsel under color of state law by causing

Medical Supply's counsel to have multiple ethics complaints filed and prosecuted for the sole purpose of preventing Medical Supply from having effective representation.

491. The Defendants knew Shughart Thomson & Kilroy was succeeding in extra legal influencing of Medical Supply's case against the US Bancorp defendants and the action against GE and its subsidiaries and overtly ratified said conduct for the purpose of monopolizing the markets in the sale of hospital supplies and hospital supplies in e-commerce and the market in capitalizing healthcare technology and supply chain management companies.

**Unilateral Refusal To Deal**

492. The Piper Jaffray Companies and Andrew S. Duff unilaterally as a single firm refused to provide investment banking services to Medical Supply to monopolize the market in capitalizing healthcare technology and supply chain management companies because Medical Supply was not seeking underwriting and to control the downstream markets in the sale of hospital supplies and hospital supplies in e-commerce where The Piper Jaffray Companies and Andrew S. Duff have substantial interests.

493. US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere as a single firm unilaterally refused to provide trust escrow accounts and other banking services to Medical Supply to monopolize the market in capitalizing healthcare technology and supply chain management companies because Medical Supply was not seeking underwriting from US Bancorp and Piper Jaffray and to control the downstream markets in the sale of hospital supplies and hospital supplies in e-commerce where The Piper Jaffray Companies and Andrew S. Duff have substantial interests.

494. As a direct result of Defendants' unlawful activities, Plaintiff has suffered and will continue suffer substantial injuries and damages to their businesses and property.

495. Plaintiff is entitled to recover their actual damages in the amount of approximately \$500,000,000.00, multiplied by three for total damages of approximately \$1,500,000,000.00, and the cost of suit including a reasonable attorney's fee.

**COUNT IV**  
**INJUNCTIVE RELIEF FOR MONOPOLIZATION**  
**(15 U.S.C. §§ 2,26)**

496. Plaintiff realleges paragraphs 1 through 495.

497. Unless enjoined from doing so, Defendants will continue to violate 15 U.S.C. §2.



498. Plaintiff is also entitled to recover their cost of suit, including a reasonable attorney's fee.

**COUNT V**  
**DAMAGES FOR INTERLOCKING DIRECTORS**  
**(15 U.S.C. § 19)**

499. Plaintiff realleges paragraphs 1 through 498.

500. The Defendants use of interlocking directors in joint ventures and LLC's formed by competing suppliers, manufacturers and distributors and use of interlocking directors on the boards of healthcare technology and supply chain management companies violate Section 8 of the Clayton Act, 15 U.S.C. § 19.

501. The fourth paragraph of Section 8 provides:

"No person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than \$1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies, and common carriers subject to the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws."

502. Defendants through the use of interlocking directors collectively have at all times material to this complaint maintained, attempted to achieve and maintain, or combined or conspired to achieve and maintain, a monopoly over the sale of hospital supplies, the sale of hospital supplies in e-commerce, and over the capitalization of healthcare technology companies and supply chain management companies in the several States of the United States; and have used, attempted to use, or combined and conspired to use, their monopoly power and interlocking directors to affect competition in the sale of hospital supplies, the sale of hospital supplies in e-commerce, and over the capitalization of healthcare technology companies and supply chain management companies sale of the same in the several States of the United States in violation of 15 U.S.C. § 19.

503. As a direct result of Defendants' unlawful activities, Plaintiff has suffered and will continue suffer substantial injuries and damages to their businesses and property.

504. Plaintiff is entitled to recover their actual damages in the amount of approximately \$500,000,000.00, multiplied by three for total damages of approximately \$1,500,000,000.00, and the cost of suit including a reasonable attorney's fees.

**COUNT VI**  
**DAMAGES FOR COMBINATION AND CONSPIRACY**  
**IN RESTRAINT OF TRADE OR COMMERCE**  
**(26 MO. § 416.031(1), § 416.121(1),(1))**

505. Plaintiff realleges paragraphs 1 through 504.

506. 26 Mo § 416.031 (1) provides that “Every... combination or conspiracy in restraint of trade or commerce in this state is unlawful.”

507. Beginning at least as early as 1998, and continuing until the present date, Defendants entered into a combinations and or conspiracies in unreasonable restraint of trade or commerce among the several States of the United States, in the markets for hospital supplies, hospital supplies sold in e-commerce and the capitalization of healthcare technology and supply chain management companies.

508. These combinations and or conspiracies took the form of Group Boycott, Allocation of Customers, Horizontal Price Restraint, Vertical Price Restraint and Tying Agreements, and their respective annual shows. Said Group Boycott, Allocation of Customers, Horizontal Price Restraint, Vertical Price Restraint and Tying Agreements were instigated and conducted by Defendants Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Baker who had and have market power over, i.e. a controlling percentage of market share of, the sale of hospital supplies, and the sale of hospital supplies sold in e-commerce; and by Defendants US Bancorp, NA, US Bank , Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff who had and have market power over, i.e. a controlling percentage of market share of, the capitalization of healthcare technology and supply management companies including healthcare venture funds, private placement and public offering underwriting, commercial banking, trust facilities and market research analyst coverage necessary for Medical Supply to obtain external capital and necessary for Medical Supply to self capitalize its entry into the hospital supply market and the market for hospital supplies in e-commerce. Said Group Boycott, Allocation of Customers, Horizontal Price Restraint, Vertical Price Restraint and Tying Agreements had the purpose and effect of severely impairing the ability of Medical Supply to sell hospital supplies to hospitals conventionally or through e-commerce and to obtain capital it had self raised to enter the market for hospital supplies in the several States of the United States; and was further intended to eliminate or greatly reduce the availability of hospital supplies through e-commerce regardless of hospital demand in the several States of United States, and impose a burdensome fees on manufacturers and suppliers for selling hospital supplies through web based electronic marketplaces to hospitals and health systems in the several States of the United States.

509. The defendants Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Baker are and were direct competitors of Medical Supply in the sale of hospital supplies and the sale of hospital supplies in e-commerce.

510. The defendants Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Baker have and have had significant interests in the market for capitalization of healthcare technology and supply chain management companies.

511. The defendants US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff competed and compete directly with Medical Supply in the market for capitalization of healthcare technology and supply chain management companies because Medical Supply was forced by the defendants conspiracies and combinations to self capitalize its entry into market with unique trust accounts from it had solicited from its sales representative candidates.

511. The defendants US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff have and have had significant interests in the market for hospital supplies and hospital supplies sold in e-commerce where US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff have concentrated 70% of their investment and have marketed IPO shares based on exclusive dealing contracts obtained for their client companies with Novation, LLC. , Neoforma, Inc., Volunteer Hospital Association and University Healthsystem Consortium.

512. The defendant Shughart Thomson & Kilroy as a latecomer in October 2002 to the conspiracies and combinations had a significant interest in the markets for hospital supplies and hospital supplies sold in e-commerce and the capitalization of healthcare technology companies and supply chain management companies where they were agents for US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff. Shughart Thomson & Kilroy was coerced or voluntarily took unlawful actions to protect and assist the defendants in monopolization and monopoly of the markets for hospital supplies and hospital supplies sold in e-commerce and the capitalization of healthcare technology companies and supply chain management companies.

513. 26 Mo. § 416.121 provides that:

1. “Any person... who is injured in his business or property by reason of anything forbidden or declared unlawful by section [416.031(1)] ... may:

(1) Sue for damages sustained by him, and... shall be awarded threefold damages by him sustained and reasonable attorneys’ fees... together with the costs of suit.”

514. As a direct result of Defendants’ unlawful activity, Plaintiff has suffered and will continue to suffer substantial injuries and damages to their businesses and property.

515. Plaintiff is entitled to recover their actual damages in the amount of approximately \$500,000,000.00, multiplied by three for total damages of approximately \$1,500,000,000.00, and the cost of suit including a reasonable attorney’s fee.

**COUNT VII**  
**INJUNCTIVE RELIEF FOR COMBINATION AND CONSPIRACY**  
**IN RESTRAINT OF TRADE OR COMMERCE**  
**(26 MO. § 416.031(1), § 416.071(1), (2), § 416.121(1)(1))**

516. Plaintiff realleges paragraphs 1 through 515.

517. 26 Mo. § 416.071 provides for:

1. “... such preliminary or permanent injunctive relief and ... such temporary restraining orders as are necessary to prevent and restrain violations of section 416.031... [and]

2. ... such prohibitory injunctions and other restraints as [the court] deems expedient to deter ...and secure against... committing a future violation of section [416.031(1)]... [and] such mandatory relief as is reasonably necessary to restore or preserve fair competition in the trade or commerce affected by the violation.”

518. 26 Mo. § 416.121 provides that:

1. “Any person... who is injured in his business or property by reason of anything forbidden or declared unlawful by section [416.031(1)] ... may:

(2) Bring proceedings to enjoin the unlawful practices, and... shall be awarded reasonable attorneys’ fees... together with the costs of the suit.”

519. Unless enjoined from doing so, Defendants will continue to violate 26 Mo. § 416.031(1).

520. Plaintiffs are also to recover their costs of suit and reasonable attorneys’ fees.

**COUNT VIII**  
**DAMAGES FOR MONOPOLIZATION**  
**(26 MO. § 416.031(2), § 416.121(1),(1))**

521. Plaintiff realleges paragraphs 1 through 520.

522. 26 Mo. § 416.031(2) provides that “It is unlawful to monopolize, attempt to monopolize, or conspire to monopolize trade or commerce in this state.”

523. Defendants collectively have at all times material to this complaint maintained, attempted to achieve and maintain, or combined or conspired to achieve and maintain, a monopoly over the sale of hospital supplies, the sale of hospital supplies sold in e-commerce and the capitalization of healthcare technology companies and supply chain management companies.

524. As a direct result Defendants' unlawful activities, Plaintiff has suffered and will continue to suffer substantial injuries and damages to their businesses and property.

525. Plaintiff is entitled to recover actual damages in the amount of approximately \$500,000,000.00, multiplied by three for total damages of approximately \$1,500,000,000.00, and the cost of suit including a reasonable attorney's fee.

**COUNT IX**  
**INJUNCTIVE RELIEF FOR MONOPOLIZATION**  
**(26 MO. § 416.031(2), § 416.071(1), (2), § 416.121(1),(2))**

526. Plaintiff realleges paragraphs 1 through 525.

527. Unless enjoined from doing so, Defendants will continue to violate 26 Mo. § 416.031(2).

528. Plaintiff is also entitled to recover their costs of suit and reasonable attorneys' fees.

**COUNT X**  
**DAMAGES FOR TORTIOUS INTERFERENCE WITH**  
**CONTRACT OR BUSINESS EXPECTANCY**

529. Plaintiff realleges paragraphs 1 through 528.

530. Plaintiff's individual representative candidate trust accounts with US Bank and its contract to sale the office building lease to General Electric Transportation Co. were required for Medical Supply to enter the markets for hospital supplies and hospital supplies for e-commerce and were contracts or business expectancies Said activities were intended by Defendants and performed by Defendants.

531. Defendants knew of said contracts or business expectancies.

532. Having such knowledge, Defendants intentionally conspired to interfere and did interfere with such contracts or business expectancies, so as to cause breach of the same.

533. Defendants did so without justification and stated pretextual reasons for their actions.

534. As a direct and proximate result of said actions of Defendants, Plaintiff has suffered and will continue to suffer injuries and damages to its business and properties.

535. Plaintiff is entitled to recover their actual damages in the amount of in excess of \$500,000,000.00 for their actions resulting in the loss of trust accounts, and actual damages in the amount of in excess of \$500,000,000.00 for their actions resulting in the loss of the lease sale together with the costs of suit, and attorney fees.

536. Defendants' actions were willful, wanton, malicious and oppressive.

537. Plaintiff is also entitled to recover punitive damages in an amount in excess of \$10,000.00.

**COUNT XI**  
**DAMAGES FOR BREACH OF CONTRACT**

538. Plaintiff realleges paragraph 1 through 537.

539. The Defendant US Bank breached an enforceable contract with Medical Supply that was a written contract under Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq.

540. The Defendants US Bank and Shughart Thomson & Kilroy caused the breach of US Bank's contractual duty to Medical Supply to provide trust accounts based on a deliberately false reason, the USA PATRIOT Act.

541. Plaintiff is entitled to recover their actual damages in the amount of in excess of \$500,000,000.00 for their actions resulting in the loss of trust accounts, and actual damages in the amount of in excess of \$500,000,000.00 for their actions resulting in the loss of the lease sale together with the costs of suit, and attorney fees.

542. Defendants' actions were willful, wanton, malicious and oppressive.

543. Plaintiff is also entitled to recover punitive damages in an amount in excess of \$10,000.00.

**COUNT XII**  
**DAMAGES FOR BREACH OF FIDUCIARY DUTY**

544. Plaintiff realleges paragraph 1 through 543.

545. The Defendant US Bank owed a duty to Medical Supply to know the USA PATRIOT Act was not a bar to providing Medical Supply its trust accounts.

546. The Defendant US Bank owed a duty to Medical Supply to not disclose confidential information to Medical Supply's competitors, the defendants in this action.

547. The Defendant US Bank breached its fiduciary duty to Medical Supply without justification and stated pretextual reasons for their actions.

548. The Defendant US Bank and Shughart Thomson & Kilroy breached US Bank's fiduciary duty to Medical Supply by denying the existence of a valid contract and without providing a basis in fact or law for the contract to be void.

549. The Defendants US Bank and Shughart Thomson & Kilroy caused the breach of US Bank's fiduciary duty to Medical Supply in conspiracy with the other defendants.

550. As a direct and proximate result of said actions of Defendants, Plaintiff has suffered and will continue to suffer injuries and damages to its business and properties.

551. Plaintiff is entitled to recover their actual damages in the amount of in excess of \$500,000,000.00 for their actions resulting in the loss of trust accounts, and actual damages in the amount of in excess of \$500,000,000.00 for their actions resulting in the loss of the lease sale together with the costs of suit, and attorney fees.

552. Defendants' actions were willful, wanton, malicious and oppressive.

553. Plaintiff is also entitled to recover punitive damages in an amount in excess of \$10,000.00.

**COUNT XIII**  
**DAMAGES FOR FRAUD AND DECEIT**

554. Plaintiff realleges paragraph 1 through 553.

555. Each of the acts, practices, misrepresentations, violations and other wrongs complained of above have been engaged in by Defendants with malice and with specific and deliberate intent to oppress, defraud, deceive and injure Plaintiff.

556. Said activities aforementioned by Defendants were done in concert and in secret with the intention to injure Plaintiff all the while knowing that the lack of candor and disclosure of the true acts and activities by Defendants would give Defendants an economic advantage over Plaintiff. Defendants were engaged in concealed fraudulent conduct. Defendants, and each of them, had a duty under the antitrust and anticompetitive which Defendants breached constituting a fraud and deceit upon Plaintiff.

557. Said activities were intended by Defendants to cause injury to Plaintiff by and through intentional misrepresentations to Plaintiff and third parties concerning Plaintiff.

558. Said activities did directly and proximately cause injury to Plaintiff.

559. Said activities were and are unjustified.

560. Plaintiff is entitled to recover their actual damages in the amount of in excess of \$500,000,000.00 for their actions resulting in the loss of trust accounts, and actual damages in the amount of in excess of \$500,000,000.00 for their actions resulting in the loss of the lease sale together with the costs of suit, and attorney fees.

561. Defendants' actions were willful, wanton, malicious and oppressive.

562. Plaintiff is also entitled to recover punitive damages in an amount in excess of \$10,000.00.

**COUNT XIV**  
**DAMAGES FOR PRIMA FACIE TORT**

563. Plaintiff realleges paragraphs 1 through 562.

564. To whatever extent said activities of Defendants may not violate antitrust laws or tortuously interfere with contract or business expectancy, said acts and activities of Defendants are still unlawful and fraudulent.

565. Said activities were intended by Defendants and performed by Defendants.

566. Said activities were intended by Defendants to cause injury to Plaintiff.

567. Said activities did directly and proximately cause injury to Plaintiff.

568. Said activities were and are unjustified.

569. Plaintiff is entitled to recover their actual damages in the amount of in excess of \$500,000,000.00 for their actions resulting in the loss of trust accounts, and actual damages in the amount of in excess of \$500,000,000.00 for their actions resulting in the loss of the lease sale together with the costs of suit, and attorney fees.

570. Defendants' actions were willful, wanton, malicious and oppressive.

571. Plaintiff is also entitled to recover punitive damages in an amount in excess of \$10,000.00.

**COUNT XV**  
**DAMAGES FOR RACKETEERING**  
**INFLUENCED CORRUPT ORGANIZATION (RICO) CONDUCT**  
(18 U.S.C. § 1962(c), 18 U.S.C. § 1962(d))

572. Plaintiff realleges paragraph 1 through 571.

573. On January 21, 2005 Medical Supply discovered the Defendants' pattern of inflicting injuries on the plaintiff to obstruct its entry into the market for hospital supplies and hospital supplies in e-commerce. An important component of the Defendants' scheme was to interdict capital required by Medical Supply to



enter the market. The Defendants targeted Medical Supply's founder in 1995 and targeted Medical Supply upon its incorporation in 2000. From the outset, the Defendants have maintained a continuous pattern of preventing an independent clearinghouse electronic market place from interfering with their common enterprise to to artificially inflate prices paid by Medicare, Medicaid and Champus.

574. The Defendants violated 18 U.S.C. § 1962(c) by conducting a RICO enterprise (the hospital group purchasing enterprise to artificially inflate prices paid by Medicare, Medicaid and Champus) through a pattern of racketeering activity.

575. The Defendants violated 18 U.S.C. § 1962(d) through participation in a RICO conspiracy.

576. The Defendants engaged in (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.

577. The Defendants participated in the operation and management of the hospital group purchasing enterprise to artificially inflate prices paid by Medicare, Medicaid and Champus itself.

578. When Medical Supply sought to appeal the outcomes in the Kansas District Court, the Defendants sought the assistance of Shughart Thomson & Kilroy to intimidate, harass and obstruct Medical Supply and prevent Medical Supply and its agents from testifying and preventing evidence in federal court.

579. To realize that goal the Defendants directly and tacitly caused Shughart Thomson & Kilroy to create and arrange for Medical Supply's counsel to receive repeated ethics complaints and to be prosecuted by the State of Kansas Disciplinary Administrator based on the false and misleading testimony of Shughart Thomson & Kilroy's former managing partner, a federal magistrate judge and a sham complaint made by the Shughart Thomson & Kilroy counsel defending US Bancorp and Piper Jaffray.

580. Shughart Thomson & Kilroy through its employees and past employees created the plan to retaliate against and intimidate and harass Medical Supply's counsel when they discovered Medical Supply could not obtain outside counsel due to conflicts of interest in law firms the plaintiff had approached.

581. Shughart Thomson & Kilroy through its employees and past employees implemented the plan and carried out its operations with the intent and motive of making sure that the Defendants could continue the enterprise to monopolize the markets in hospital supplies, hospital supplies sold in e-commerce and the capitalization of healthcare technology and supply chain management companies without challenge by the US District Court.

582. The Defendants implicitly ratified Shughart Thomson & Kilroy's conduct on their behalf and relied on the conduct to attempt to avoid Medical Supply's intention to seek redress. Shughart Thomson & Kilroy engaged in "racketeering activity" as that term has been defined by Congress, see 18 U.S.C. § 1961(1).

583. The Defendant Shughart Thomson & Kilroy through its officers, employees and agents injured Medical Supply in violation of 18 USC § 1503 when it caused false and misleading testimony to be given against Medical Supply's counsel and again when it caused its employee to file a facially void ethics complaint against Medical Supply's counsel. The purpose of the Defendant Shughart Thomson & Kilroy's complaint was intimidation and harassment of Medical Supply's counsel to interfere with the administration of justice in the federal antitrust action against the Defendants.

584. 18 USC § 1503 entitled "Influencing or injuring officer or juror generally" provides:

"(a) Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States,... in the discharge of his duty...or injures any such officer,... in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be punished as provided in subsection (b)."

585. The Defendant Shughart Thomson & Kilroy through its officers, employees and agents injured Medical Supply in violation of 18 USC § 1513 when it caused false and misleading testimony to be given against Medical Supply's counsel and again when it caused its employee to file a facially void ethics complaint against Medical Supply's counsel to deprive him of property in the form of his license to practice law. The purpose of the Defendant Shughart Thomson & Kilroy's retaliation against Medical Supply's counsel was to interfere with the administration of justice in the federal antitrust action against the Defendants.

586. 18 USC § 1513 entitled "Retaliating against a witness, victim, or an informant" provides:

"(e) [2] Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.

(b) Whoever knowingly engages in any conduct and thereby causes bodily injury to another person or damages the tangible property of another person, or threatens to do so, with intent to retaliate against any person for—

- (1) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or
- (2) any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation [1] supervised release, [1] parole, or release pending judicial proceedings given by a person to a law enforcement officer;"

587. In furtherance of their enterprise to artificially inflate healthcare costs, the Defendants stole copyrighted works to keep Medical Supply from realizing its plan to enter the market for hospital supplies. The Defendants stole copyrighted works that included business plans, algorithms, confidential proprietary business models, customer and associate lists from Medical Supply Chain, Inc. in 2002 and from its predecessor company Medical Supply Management in 1995 and 1996 in violation of 17 USC § 506 entitled "Criminal offenses" providing:

"(a) Criminal Infringement.— Any person who infringes a copyright willfully either— for purposes of commercial advantage or private financial gain, or by the reproduction or distribution, including by electronic means, during any 180-day period, of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than \$1,000, shall be punished as provided under section 2319 of title 18, United States Code. For purposes of this subsection, evidence of reproduction or distribution of a copyrighted work, by itself, shall not be sufficient to establish willful infringement."

588. The Defendants violation falls under 18 USC § 2319 entitled "Criminal infringement of a copyright" which provides:

"(a) Whoever violates section 506 (a) (relating to criminal offenses) of title 17 shall be punished as provided in subsections (b) and (c) of this section and such penalties shall be in addition to any other provisions of title 17 or any other law."

589. Defendants violated The Hobbs Act prohibition against racketeering by preventing Medical Supply's entry into commerce under color of official right in violation of 18 U.S.C. 1951, which states:

"Section 1951. Interference with commerce by threats or violence

Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

b) As used in this section – The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right."

590. Defendants interfered with and obstructed Medical Supply's entry into market by threatening the plaintiff with the filing of a USA PATRIOT Act suspicious activity report which would destroy the

plaintiff's ability to make financial wire transactions with corresponding banks required to effectively compete in the market for hospital supplies.

591. As a direct result Defendants' unlawful activities, Plaintiff has suffered and will continue to suffer substantial injuries and damages to their businesses and property.

592. Plaintiff is entitled to recover actual damages in the amount of approximately \$500,000,000.00, multiplied by three for total damages of approximately \$1,500,000,000.00, and the cost of suit including a reasonable attorney's fee.

**COUNT XVI**  
**DAMAGES FOR MALICIOUS FILING OF A SUSPICIOUS ACTIVITY**  
**REPORT (SAR) UNDER THE USA PATRIOT ACT**  
(Pub. L. No. 107-56 (2001), 18 U.S.C. § 1030 (e), 31 U.S.C. § 5318 (g)(3))

593. Plaintiff realleges paragraphs 1 through 592.

594. On information and belief the Defendants through US Bank and US Bancorp NA and maliciously filed a suspicious activity report ("SAR") concerning Medical Supply and its founder Samuel Lipari with federal authorities for the purpose of securing a financial benefit for the Defendants including US Bank and US Bancorp NA and were not protected by the safe harbor provisions of 31 U.S.C. § 5318 (g)(3).

595. The USA PATRIOT Act § 310. Financial Crimes Enforcement Network requires the maintenance of a government wide data access service and data banks for financial crime reporting including suspicious activity reports. In threatening to cause a malicious suspicious activity report or in causing a malicious suspicious activity report to be filed against Medical Supply, the defendants have violated 18 U.S.C. § 1030.

596. The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (The USA PATRIOT Act) Pub. L. No. 107-56 (2001), 115 Stat. 272.

at § 814 of the USA PATRIOT Act entitled DETERRENCE AND PREVENTION OF CYBERTERRORISM created a private right of action for Medical Supply to address the conduct of the Defendants in gaining access to the FINCEN network for the purpose of filing a suspicious activity report to prevent Medical Supply from providing hospital supplies and reducing healthcare costs.

597. The USA PATRIOT Act amended 18 U.S.C. § 1030 to include a cause of action for impairment, or potential impairment of medical diagnosis, treatment or care, physical injury, a threat to public health or safety.

598. The USA PATRIOT Act reaffirmed the civil liability and private rights of action provisions of 18 U.S.C. § 1030 (e) DAMAGES IN CIVIL ACTIONS- to include civil liability for any person may maintain a civil action for damages and injunctive relief.

599. 18 U.S.C. § 1030 provides:

18 U.S.C. § 1030. Fraud and related activity in connection with computers

Whoever - knowingly and with intent to defraud, accesses a protected computer without authorization, or exceeds authorized access, and by means of such conduct furthers the intended fraud and obtains anything of value,

(5)

(iii) intentionally accesses a protected computer without authorization, and as a result of such conduct, causes damage; and

(B) by conduct described in clause (i), (ii), or (iii) of subparagraph (A), caused (or, in the case of an attempted offense, would, if completed, have caused) -

(ii) the modification or impairment, or potential modification or impairment, of the medical examination, diagnosis, treatment, or care of 1 or more individuals;

(iii) physical injury to any person;

(iv) a threat to public health or safety;

(g) Any person who suffers damage or loss by reason of a violation of this section may maintain a civil action against the violator to obtain compensatory damages and injunctive relief or other equitable relief. A civil action for a violation of this section may be brought only if the conduct involves 1 of the factors set forth in clause (i), (ii), (iii), (iv), or (v) of subsection (a)(5)(B). Damages for a violation involving only conduct described in subsection (a)(5)(B)(i) are limited to economic damages. No action may be brought under this subsection unless such action is begun within 2 years of the date of the act complained of or the date of the discovery of the damage.”

600. The USA PATRIOT Act) Pub. L. No. 107-56 (2001), 115 Stat. 272. at § 351 modified 31 U.S.C. § 5318 (g)(3) to eliminate immunity from civil liability for malicious suspicious activity reporting:

“(g) Reporting of suspicious transactions.--

In General.-The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

\* \*

Liability for disclosures.--

In general.-Any financial institution that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this subsection or any other authority, and any director, officer, employee, or agent of such institution who makes, or requires another to make any such disclosure, shall not be liable under law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement),

for such disclosure or for any failure to provide notice of such disclosure to the person who is subject of such disclosure or any other person identified in the disclosure.”

601. The Act specifies that financial institutions are to report" any possible violation of law or regulation." Congress did not intend the Act's safe harbor to give banks blanket immunity for malicious, willful criminal and civil violations of law.
602. Importantly, the Act requires there to be a "possible" violation of law-"possible" being the operative word-before a financial institution can claim protection of the statute.
603. The Defendants knew there was no possible violation and that the USA PATRIOT Act know your customer provision did not apply to the subject escrow accounts.
604. US Bank and US Bancorp did not file a report of a "possible violation" of the law but rather acted maliciously and willfully in an attempt to have Medical Supply deprived of high level banking services including international wire fund transactions on information the defendants knew to be false.
605. Said activities aforementioned by Defendants were done in concert and in secret with the intention to injure Plaintiff all the while knowing that the lack of candor and disclosure of the true acts and activities by Defendants would give Defendants an economic advantage over Plaintiff. Defendants were engaged in concealed fraudulent conduct.
606. Said malicious suspicious activity reporting against Medical Supply and its founder Samuel Lipari was done with the purpose of restricting the availability of and access to hospital supplies and resulted in impairment and potential impairment of medical diagnosis, treatment and care, along with physical injury, and constituted a threat to public health and safety
607. Said activities were intended by Defendants to cause injury to Plaintiff by and through intentional misrepresentations to third parties concerning Plaintiff.
608. Said activities did directly and proximately cause injury to Plaintiff.
609. Said activities were and are unjustified.
610. Plaintiff is entitled to recover their actual damages in the amount of in excess of \$500,000,000.00 for their actions resulting in the loss of trust accounts, and actual damages in the amount of in excess of \$500,000,000.00 for their actions resulting in the loss of the lease sale together with the costs of suit, and attorney fees.

611. Defendants' actions were willful, wanton, malicious and oppressive.

612. Plaintiff is also entitled to recover punitive damages in an amount in excess of \$10,000.00.

#### **TOLLING OF APPLICABLE STATUTES OF LIMITATIONS**

613. Plaintiff could not have reasonably discovered its injuries, or that its injuries were wrongfully caused, until January 21st, 2005, when Shughart Thomson & Kilroy's former managing partner testified under oath in the Kansas Attorney Disciplinary Prosecution of the plaintiff's counsel.

#### **PRAYER FOR RELIEF**

**WHEREFORE** Plaintiff demands:

(1) That Defendants, their agents and servants, be enjoined during the pendency of this action and permanently from their activities in unreasonable restraint of trade or commerce and in monopolizing, attempting to monopolize, or combining or conspiring to monopolize.

(2) That Defendants be required to pay to Plaintiff such damages as Plaintiff has sustained in consequence of Defendants' activities in unreasonable restraint of trade or commerce and in monopolizing, attempting to monopolize, or combining or conspiring to monopolize, in the amount of approximately \$500,000,000.00, multiplied by three for total damages of approximately \$1,500,000,000.00 for the conduct related to the refusal to provide trust accounts and approximately \$500,000,000.00, multiplied by three for total damages of approximately \$1,500,000,000.00 for the conduct related to preventing Medical Supply from selling the office building lease to General Electric Transportation Co. for a total of approximately \$3,000,000,000.00.

(3) That Defendants be required to pay to Plaintiff such damages as Plaintiff has sustained in consequence of Defendants' activities in tortious interference with contract or business expectancy and/or in prima facie tort, in the amount of approximately \$1,000,000.00, together with punitive or exemplary damages for the same, in an amount in excess of \$10,000.00.

(4) Medical Supply Chain, Inc. seeks damages for the injury of its business associates and stakeholders, including Blue Springs, Missouri, loss of good will and the injury of the 2000 hospitals loosing money due to high supply costs under *Mid Atl. Telecom, Inc. v. Long Distance Servs., Inc.*, 18 F.3d 260, 263 (4th Cir.1994)'s interpretation of standing on a RICO statutes having a common antitrust basis.

(5) That Defendants be required to pay to Plaintiff such damages as Plaintiff has sustained in consequence of Defendants' activities in violation of civil racketeering laws, in the amount of approximately \$500,000.00, multiplied by three for total damages of approximately \$1,500,000.00.

(6) That Defendants be required to pay to Plaintiff such damages as Plaintiff has sustained in consequence of Defendants' activities in violation of the USA PATRIOT Act, in the amount of approximately \$500,000.00.

(7) That Defendants pay to Plaintiff the costs of this action and reasonable attorney's fees to be allowed to the Plaintiff by the Court.

(8) That Plaintiffs have such other and further relief as is just.

#### **CONCLUSION**

Whereas for the above reasons, the plaintiff respectfully request that the court award damages and provide other relief, attorneys fees and costs.

Respectfully Submitted

S/Bret D. Landrith  
Bret D. Landrith  
Kansas Supreme Court ID # 20380  
2961 SW Central Park, # G33,  
Topeka, KS 66611  
1-785-876-2233  
1-785-267-4084  
landrithlaw@cox.net

#### **DEMAND FOR TRIAL BY JURY**

Comes now plaintiff and makes demand for a trial before 8 jurors.

S/Bret D. Landrith

Bret D. Landrith  
Kansas Supreme Court Number 20380

#### **DESIGNATION OF PLACE OF TRIAL**

Comes now plaintiff and designates Kansas City, Missouri as the place of trial.

S/Bret D. Landrith

Bret D. Landrith  
Kansas Supreme Court Number 20380





**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
KANSAS CITY, MISSOURI**

Medical Supply CHAIN, INC.,	)	
<i>Plaintiff,</i>	)	
v.	)	Case No. 05-0210-CV-W-ODS
NOVATION, LLC	)	Attorney Lien
NEOFORMA, INC.	)	
ROBERT J. ZOLLARS	)	
VOLUNTEER HOSPITAL ASSOCIATION	)	
CURT NONOMAQUE	)	
UNIVERSITY HEALTHSYSTEM CONSORTIUM	)	
ROBERT J. BAKER	)	
US BANCORP, NA	)	
US BANK	)	
JERRY A. GRUNDHOFFER	)	
ANDREW CESERE	)	
THE PIPER JAFFRAY COMPANIES	)	
ANDREW S. DUFF	)	
SHUGHART THOMSON & KILROY	)	
WATKINS BOULWARE, P.C.	)	
<i>Defendants.</i>	)	

**Affidavit of Sam Lipari on The Unsuitability of Transfer**

1. My name is Samuel Lipari, I reside at 297 Bayview in Lee’s Summit Missouri. I am the chief executive officer of Medical Supply Chain, Inc., a company I incorporated in May of 2000. I chose to bring this new action in Missouri District court because I have a responsibility to Medical Supply’s stakeholders and to the shareholders of US Bancorp NA, The Piper Jaffray Companies and Neoforma, Inc. to adjudicate these claims in accordance with laws of the United States. I brought two earlier and related actions to Kansas District court based on the advice of my counsel. I witnessed first hand that no decision or outcome in either case including from the Tenth Circuit Court of Appeals had any relationship to the pleadings of my company or applicable law. I make this determination based on my considerable personal experience as a clerk and researcher for a Missouri legal firm and upon discussions with what I believe are the foremost healthcare antitrust authorities in our nation.

2. I know first hand the consequences to Medical Supply and the additional liabilities US Bancorp NA, The Piper Jaffray Companies and Neoforma, Inc. have incurred as a result of the Kansas District court outcomes and the Tenth Circuit delays. I believe several of these defendants will no longer be viable after a judgment at law is made on their conduct.

3. I received a confidential decision by Chief Judge Deanell R. Tacha dated March 23, 2005; a complaint with extensive documented evidence including official court transcripts and affidavits I made to the Tenth Circuit about the conduct of the Kansas District Court Magistrate James P. O'Hara and the attorneys of the law firm Shughart, Thomson & Kilroy described in the lawsuit before this court. Chief Justice Tacha determined that the conduct described presented an issue about the bias of the forum Medical Supply suffered. Included in the complaint was evidence that the bias reached the Office of the Clerk for the Tenth Circuit Court of Appeals and the person of Patrick Fischer, Chief Clerk.

4. Early in the Kansas District Court case against the US Bancorp defendants, I instructed my counsel to write a letter to the Chief Administrative Judge of the Kansas District Court inquiring as to whether the Kansas District court had the resources to adjudicate an antitrust matter based on a Sherman Act refusal to deal claim and if we should transfer the action to a different forum. The Kansas District Court never had the time, resources or manpower to answer my inquiry and it is my belief after observing first hand that the Kansas District Court does not have the resources required for me to prosecute my claims against these defendants.

5. Beyond the lack of sufficient resources, I was repeatedly struck by the bias and open hostility exhibited by the Kansas District Court and Tenth Circuit personnel against the claims of my company and how Kansas government attorneys were enlisted to retaliate against my counsel for bringing these actions. I believe this is the bias that Chief Judge Deanell R. Tacha described in her decision dated March 23, 2005. I became concerned and attended the trial phase of my counsel's representation of James Bolden, an African American small business man who had sought out my counsel when Kansas government attorneys had discouraged or intimidated four of his previous attorneys, the last of which still has not been found. I assisted in the trial preparation for this case believing it would be good practice for Medical Supply's jury trials.

6. I have now known James Bolden for some time and believe him to be an extraordinarily honest god-fearing man. I also know that his work vehicle was firebombed while it was parked next to his home and the Topeka Police Department refused to even take a police report and that he feared for his life while his case was being litigated in the Kansas District Court. The injuries and threats made against his witnesses who I also know and believe are honest made affidavits of the incidents, including the opposing city attorney, Sherri Price's threat to criminally prosecute the Topeka business owner Fred Sanders if he testified in federal court on behalf of James Bolden.

7. The City of Topeka and the Topeka office of the US Attorney threatened and intimidated other witnesses I have met because of their testimony in Mr. Landrith's cases. Affidavits of these incidents were filed in the various Kansas District Court cases and the response of the Kansas judicial branch was to increase its threats against Mr. Landrith, one of which was mailed the afternoon Mr. Landrith had called Mark Hunt a former US

Army officer and an African American to testify in a Topeka Federal courtroom. Mark Hunt was severely retaliated against for that testimony and Melvin Johnson, a retired US Postal worker client of Mr. Landrith was also retaliated against by city officials that night, leaving him homeless. The Topeka office of Eric Melgran the US Attorney caused Melvin Johnson's key witness, Rosemary Price to be retaliated against for her participation in a deposition held in the Topeka federal courthouse a week later.

8. The Kansas District court repeatedly rebuked Mr. Landrith for documenting the obstruction and deliberate interference of justice that seems to be commonplace in the Kansas legal culture. Magistrate James P. O'Hara issued a very harsh report against Mr. Landrith in the Bolden case that seems to be more about Medical Supply's case and what has happened to Shughart, Thomson and Kilroy. The Kansas Disciplinary Administrator Stanton Hazlett used the report to justify his investigation and prosecution of Mr. Landrith.

9. I advised Mr. Landrith to file in Kansas District Court to stop the state disciplinary administrator from prosecuting him for representing an African American and his American Indian witness. Affidavits in both cases revealed that Kansas state officials repeatedly obstructed justice and that the opposing counsel Sherri Price had threatened minority business men with criminal prosecution if they testified in Kansas District court against the City of Topeka. I knew that since none of this testimony was ever disputed the District of Kansas would certainly prevent the state from retaliating against Mr. Landrith for his protected speech on behalf of an African American and his American Indian witness. Surprisingly, however the District of Kansas judges recused themselves and the

Tenth Circuit assigned the Chief Judge Dee Benson of the District of Utah who made no findings of fact or law and dismissed the case with prejudice.

10. I attended the pre trial order conference of the Kansas Disciplinary Administrator before a three-attorney panel consisting of Sally H. Harris, Michael K. Schmitt and presided over by Randall D. Grisell. Stanton Hazlett admitted to the panel that the secret probable cause hearing had excluded official court records and evidence including a reply brief in the adoption appeal that matched court transcripts refuting each evidentiary point raised by the adoption attorney seeking to terminate Mr. Price's parental rights. Stanton Hazlett admitted he had secured the probable cause to prosecute Mr. Landrith by stating there was no evidence behind the appeal.

11. Randall D. Grisell and the panel ruled that Mr. Landrith would not be able to present any evidence or witnesses related to the discriminatory prosecution of himself while the felony threats to obstruct justice documented in the case and including opposing counsel were being ignored. Strangely, the panel also ordered the exclusion of any evidence or witnesses supporting the truth of the underlying litigations. Randall D. Grisell also ruled that the substantial family interest of Stanton Hazlett in the private adoption industry and that the chief complaining witness, Kansas state Judge G. Joeseph Pierron, Jr. held a position on the board of directors of a private \$40 million dollar commercial adoption contractor with the State of Kansas, Kansas Children's Service League, Inc. did not require the dismissal and reinvestigation of the complaint. Judge G. Joeseph Pierron, Jr. had refused to disqualify himself when Mr. Price's appeal raised questions about widespread Kansas adoption law violations and the failure of the Kansas

Social and Rehabilitation Services to ensure compliance with laws designed to prevent interstate child trafficking.

12. A few days after Mr. Landrith asked to call Frank D. Williams as a witness to Stanton Hazlett's pattern and practice of not reading or familiarizing himself with the case before seeking to prosecute an individual, Kansas state officials in the judicial branch attempted to seize \$50,000.00 in Southwestern Bell stock owned by Frank D. Williams on a ten year old judgment that had expired without being renewed or served on Mr. Williams. I believe this was an effort by state officials in the Kansas legal community to retaliate against witnesses and to threaten and harass witnesses with their misconduct. Since the Medical Supply complaint addresses misconduct related to influencing the Kansas District court, I believe that similar efforts will be made against Medical Supply's witnesses if the case is tried in a Kansas forum.

13. I witnessed the stress mount on Mr. Landrith leading up to the pretrial conference for the ethics prosecution. It was a dark holiday season as he had to spend an enormous amount of time preparing evidence for the ethics trial in January. I offered to clerk for Mr. Landrith during the trial and sat with him during its entirety at the counsel table.

14. On January 19<sup>th</sup> 2005 Stanton Hazlett sent another disciplinary complaint letter to Mr. Landrith. I saw that the ethics trial was not going well for Stanton Hazlett who seemed entirely unfamiliar with the evidence and exhibited shock and surprise when the testimony of Hazlett's own witnesses revealed that court records had been withheld from Mr. Landrith violating the due process and Sixth Amendment rights of his clients and that actions had been taken to deceive the court in the underlying cases.

15. Even though the bad faith basis for the prosecution had become overwhelmingly clear, Stanton Hazlett argued (looking to Andrew DeMarea's complaint for the inspiration that an appeal could be frivolous even though the ruling contradicts both statute and controlling case law and in the face of documented trial court misconduct) that Mr. Landrith should never have accepted the appeal of the indigent David Price when his appointed attorney had withdrawn before the conclusion of the trial court case and the trial court had refused to hear any of Mr. Price's pro se motions or allow him access to records required for post trial representation. This struck me as a living nightmare that the State of Kansas was so far removed from lawfulness and the constitution that I was thankful I don't live there.

16. At the conclusion of Mr. Landrith's ethics trial, Sally H. Harris, Michael K. Schmitt and Randall D. Grisell stated that they had found Mr. Landrith guilty of something but were not sure yet what it was. Stanton Hazlett then argued that the only possible punishment was disbarment.

17. Following the hearing I observed Magistrate O'Hara lagging behind in an effort to communicate with Stanton Hazlett and the three judge panel. Throughout this hearing there were several occasions where Stanton Hazlett and the three-judge panel had what appeared to be private off the record conversations.

18. Mr. Landrith asked me to accompany him to a meeting with John Ambrosio, a Topeka attorney Stanton Hazlett had directed to investigate the complaint made by Andrew DeMarea of Shughart Thomson and Kilroy who was representing counsel for the defendant US Bank in the Medical Supply case. Mr. Landrith had told me he had



answered the complaint and sent additional documents, but John Ambrosio had sent several letters threatening disbarment if Mr. Landrith did not attend a meeting.

19. Bret Landrith also arranged for Mr. Dennis Hawver to accompany us to the meeting since Mr. Hawver was investigating filing a legislative claim on behalf of Mr. Landrith for the enormous burden the repeated bad faith prosecutions by Stanton Hazlett in retaliation for Mr. Landrith's representing minority Kansans who were injured by state officials violating Kansas law. When we got there John Ambrosio's wife Kathleen Ambrosio who Janice King, a voluntary process server for Mr. Landrith told me had been assigned by the Kansas Judicial branch to assist a divorce attorney opposing her claims for child support in the Tenth Circuit stood around listening to our conversations. Then we were taken to John Ambrosio's office.

20. John Ambrosio was introduced to me and did not recognize my name even though he had insisted Mr. Landrith attend this meeting to be questioned about the Medical Supply case. I heard Mr. Landrith call his attention to the fact that he had been threatened several times by John Ambrosio if he did not make himself available for questioning about the case yet Ambrosio had clearly made no preparations and was unfamiliar with the complaint or the documents furnished by Stanton Hazlett. Furthermore Mr. Landrith complained that Stanton Hazlett had been prosecuting him for over two years, making it impossible to earn a living and that he had been told he would be disbarred on the earlier claims.

21. John Ambrosio insisted I leave and that I not witness the meeting but Mr. Hawver could stay. Mr. Landrith declined to be interviewed without my presence and I heard John Ambrosio threaten Mr. Landrith again with disbarment stating that if Mr. Landrith

didn't cooperate he would respond to Stanton Hazlett stating that everything Andrew DeMarea had alleged would be reported as true since Mr. Landrith was unwilling to refute it.

22. At that moment I knew the meeting had been arranged solely to harass Mr. Landrith for representing me. Despite being paid by the State of Kansas to do an ethics investigation, John Ambrosio had not even bothered to read Andrew DeMarea's complaint. Like Sherri Price, the City of Topeka attorney relaying Magistrate James O'Hara's order, Andrew DeMarea was smart enough to sign his name only to the cover page relaying without subjective comment a ruling designed to injure Mr. Landrith for his representation, neither alleged any wrongdoing against Mr. Landrith. I could see that despite John Ambrosio's visible intent to severely frighten Mr. Landrith if he did not meet without a witness, John Ambrosio had not bothered to review the case.

23. When the defendants realized they had to answer my action in Missouri, I experienced the intensified presence of law enforcement officials. Including uniformed and plain-clothes surveillance. I believe two plain clothes officers arranged to meet and question me. I was questioned extensively about GPO practices and how I was able to finance my litigation. I believe the justification for this investigation was the USA PATRIOT Act suspicious activity report filed against my company and me over two years ago.

24. I know the suspicious activity reports were filed because my father has my same name and the secret reports disrupted the financial operations of my father's trucking company at the time causing him significant losses in income and stress arising from the decreased income and the threats of foreclosure on the home he and my stepmother

shared. The stress aggravated their physical health and my stepmother died from a stroke later that year.

25. I believe the impetus for the investigation however was the requests made by the defendants to government officials in Missouri starting once the Missouri action was filed. I went to the FBI office in Kansas City, Missouri with supporting documentation and the information described in the complaint about the defendants actions to retaliate against my attorney Mr. Landrith in their plan to impede the administration of justice.

26. No action was taken on my complaint and the law enforcement officials did not start surveillance of my home until the defendants requested it. I believe the surveillance was unproductive in that it did not serve the goals of the government officials who had attempted to accommodate the defendants. I believe this resulted in my fiancé who I lived with for four years and whose daughter we were arraigning for me to adopt as father was being targeted. When she was pressured repeatedly to find something unlawful I was doing, it led to our relationship being canceled and I lost my home.

27. I moved in with my father and live in his basement. I believe that this residence and my office in it has been searched while we were out, again under the justification of the USA PATRIOT Act suspicious activity report filed against my company and me over two year ago but for the purpose of finding something that could be used to stop my litigation.

28. I continue to experience Internet research interruption and email delays even though I believe the Missouri officials are satisfied as to Medical Supply's claims and the lawfulness of our litigation against the defendants. I am hopeful they will enforce the law and protect the witnesses of every party. The events that appeared to have occurred in

Texas, California and Kansas when persons have challenged the defendants' monopoly make this action's location in Missouri necessary for all the safety of all involved.

29. Unfortunately, I am experiencing the fallout from law enforcement officials on the Missouri side discovering that Medical Supply's claims were justified and that nothing unlawful is being done in my litigation against the defendants. Kansas state officials in the judicial branch, including Stanton Hazlett have contacted persons in the last two weeks to relay their intentions to me. This is on its face unlawful because Stanton Hazlett is required to keep that information confidential until the complaint is filed. One such person who had a conversation with Stanton Hazlett has made it clear that Mr. Landrith will be disbarred regardless of the law or evidence in the record. While this threat imperils Medical Supply's chance for justice in this litigation, the threat accompanied offers to "save" Medical Supply. This involves replacing Medical Supply's counsel with a Kansas attorney as lead counsel I feel Stanton Hazlett believes he and Magistrate O'Hara can control. I was offered the \$300,000.00 US Bancorp deprived Medical Supply of to capitalize my company's entry to market if I would agree to this arrangement. While this is being suggested to me repeatedly to the point that it is becoming a pressure, the suggested attorneys have no antitrust experience or familiarity with the present actions.

30. I believe Stanton Hazlett and Magistrate O'Hara are acting in the interests of the defendant Shughart Thomson & Kilroy to use their control over the enforcement of Kansas Attorney Ethics rules to change counsel so that evidence of Shughart Thomson & Kilroy's actions in furtherance of the defendant's conspiracy will not be subjected to discovery, accomplishing the conspiracy's short term objective of concealing what was done to influence the Kansas District Court and the defendant conspiracy's long term

objective of eliminating liability for their conduct. Because the conspiracy so overtly seeks to control and prevent the presentation of evidence regarding the occurrences in Kansas District court and the motivations for what was done to Mr. Landrith while suppressing evidence of misconduct including felony obstruction of justice, witness intimidation and harassment related to Mr. Bolden and Mr. Price's entirely unrelated cases.

31. Chief Judge Deanell R. Tacha's confidential decision clearly casts the Sherman Antitrust Act and 18 U.S.C. § 241 as "frivolous" laws. This also comports with the Tenth Circuit's formal opinions regarding Medical Supply's antitrust claims. Since my company cannot enter the market unless the conspirators exerting monopolistic control over the market are enjoined from further planned actions to exclude competition and discouraged from the belief that US antitrust law will not be enforced in the ecommerce delivery of hospital supplies, I must bring my company's claims to a jurisdiction that will follow US Antitrust law. I believe that excludes the Kansas District court and its appellate circuit.

32. At the time my counsel has twelve days to answer about 20 motions seeking the dismissal and transfer of this case, Stanton Hazlett is misleading the Tenth Circuit into dismissing the motion to enjoin further disbarment proceedings during the pendency of Mr. Landrith's civil rights cases (he still has to represent Mr. James Bolden) based on Stanton Hazlett's misrepresentations that the appeal is moot because Mr. Landrith is not being disciplined, then, Stanton Hazlett filed a recommendation of disbarment against Mr. Landrith in the Kansas Supreme Court on April 14, 2005 without retracting his Tenth Circuit Motion to dismiss.

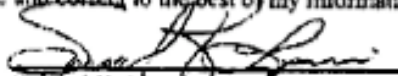
33. The defendants seek to transfer Medical Supply's case to Kansas. I have feared for my life during parts of this litigation especially after calling the Ft. Worth, TX office of the US Attorney to ask to speak to the attorney that issued the criminal subpoenas against my cases defendants and being told she was dead and then finding out that the FCA attorney had died shortly before her. It is my belief that I would be putting witnesses in jeopardy if this action were conducted in Kansas and that would principally be a result of the hostility the Kansas District court has for victims of witness intimidation and harassment and the obvious willingness of the Kansas judicial branch to assist in the harassment and intimidation. Certainly, it would be unlikely that law enforcement officials could bring anyone to justice in that environment.

34. I do believe the State of Missouri will uphold the laws against witness and victim harassment and secure the protection of all parties. In Missouri, law enforcement officials appear to have already looked into this litigation at the request of the defendants and I also have my up most confidence in them

**VERIFICATION**

STATE OF KANSAS        )  
  )     SS:  
COUNTY OF MISSOURI    )

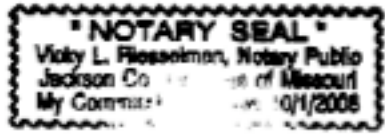
I, Samuel K. Lipari being of lawful age and being first duly sworn upon my oath, state that I have read the above and foregoing affidavit and find the statements therein made to be true and correct to the best of my information, knowledge and belief.

  
Samuel K. Lipari

Subscribed and sworn to before me this 18<sup>th</sup> day of April, 2005.

*Vicky L. Fesselman*  
Notary

Commission expires *10/1/08*



**IN THE STATE OF MISSOURI  
 JACKSON COUNTY SIXTEENTH CIRCUIT COURT  
 AT INDEPENDENCE, MISSOURI**

SAMUEL K. LIPARI )  
 (Assignee of Dissolved )  
 Medical Supply Chain, Inc.)  
*Plaintiff* )

vs. )

NOVATION, LLC )  
 NEOFORMA, INC. )  
 GHX, LLC )  
 ROBERT J. ZOLLARS )  
 VOLUNTEER HOSPITAL ASSOCIATION )  
 VHA MID-AMERICA, LLC )  
 CURT NONOMAQUE )  
 THOMAS F. SPINDLER )  
 ROBERT H. BEZANSON )  
 GARY DUNCAN )  
 MAYNARD OLIVERIUS )  
 SANDRA VAN TREASE )  
 CHARLES V. ROBB )  
 MICHEAL TERRY )  
 UNIVERSITY HEALTHSYSTEM CONSORTIUM )  
 ROBERT J. BAKER )  
 JERRY A. GRUNDHOFER )  
 RICHARD K. DAVIS )  
 ANDREW CECERE )  
 THE PIPER JAFFRAY COMPANIES )  
 ANDREW S. DUFF )  
 COX HEALTH CARE SERVICES OF THE OZARKS, INC. )  
 SAINT LUKE'S HEALTH SYSTEM, INC. )  
 STORMONT-VAIL HEALTHCARE, INC. )  
 SHUGHART THOMSON & KILROY, P.C. )  
 HUSCH BLACKWELL SANDERS LLP )  
 LATHROP & GAGE L.C. )  
*Defendants.* )

Case No. 08-04217

**Missouri Antitrust,  
 Fraud,  
 Tortious Interference,  
 Prima Facie Tort**

**Jury Trial Demanded**

**PETITION**

Pursuant to 16<sup>th</sup> Circuit Court of Jackson County Missouri local rule 3.2, the plaintiff lists the names address and contact information if known for the parties and registered agents for service of process by the Jackson County Sheriff:

**Parties**

**Plaintiff :**

Samuel K. Lipari, 297 NE. Bayview, Lee's Summit, MO 64064      816-365-1306  
 saml@medicalsupplychain.com

**Defendants:**



Novation LLC. ("Novation") 125 East John Carpenter Frwy Suite 1400 Irving, TX 75062. 972-581-552 kgoldste@novationco.com

Neoforma Inc. (Neoforma), 3061 Zanker Road, San Jose, California 95134.

GHX, LLC, 1315 W. Century Drive, Louisville CO 80027 720-887-7000 kconway@ghx.com

Robert J. Zollars, 525 Race Street, San Jose, CA 95126 408-882-5100

Volunteer Hospital Association of America, Inc. (VHA), 220 E. Las Colinas Blvd., Irving, TX 75039.

VHA Mid-America, LLC, c/o The Corporation Company, Inc., 515 South Kansas Avenue, Topeka, KS 66603

Curt Nonomaque, President and CEO, VHA Inc., 220 E. Las Colinas Blvd., Irving, TX 75039.

Thomas F. Spindler, Area Senior Vice President, VHA Mid-America LLC, 8500 West 110th Street - Suite 118, Overland Park, KS 66210 913-319-6220 tspindle@vha.com

Robert H. Bezanson, President & CEO CoxHealth, 1423 North Jefferson, Springfield, MO 65802 417-269-6107 robert.bezanson@coxhealth.com

Gary Duncan, President & CEO (Chair) Freeman Health System, 1102 West 32nd Street Joplin, MO 64804-3599 417-347-6602 gdduncan@freemanhealth.com

Charles V. Robb SVP/CFO., Saint Luke's Health System, 10920 Elm Avenue, Kansas City, MO 64134 816-932-2206 crobb@saint-lukes.org

Sandra Van Trease, Group President, BJC HealthCare, 4444 Forest Park Avenue, St. Louis, MO 63108 314-286-2111 svantrease@bjc.org

Micheal Terry, President/Chief Executive Officer, Salina Regional Health Center, 400 South Santa Fe (67401), PO Box 5080 Salina, KS 67402-5080 785-452-7144 mterry@srhc.com

University Healthsystem Consortium (UHC) is a company headquartered at 2001 Spring Road, Suite 700 Oak Brook, Illinois 60523-1890.

Robert J. Baker, President and CEO of UHC, 2001 Spring Road, Suite 700 Oak Brook, Illinois 60523.

Jerry A. Grundhofer, Chairman of US Bancorp, Inc., 800 Nicollet Mall, Minneapolis, MN 55402.

Richard K. Davis, President and CEO of US Bancorp, Inc., 800 Nicollet Mall, Minneapolis, MN 55402.

Andrew Cecere, Chief Financial Officer of US Bancorp, Inc., 800 Nicollet Mall, Minneapolis, MN 55402.

The Piper Jaffray Companies ("Piper"), 800 Nicollet Mall, Suite 800, Minneapolis, MN 55402

Andrew S. Duff, CEO of Piper Jaffray, 800 Nicollet Mall, Suite 800, Minneapolis, MN 55402.

Cox Health Care Services Of The Ozarks, Inc., c/o Registered Agent Robert H. Bezanson, 1423 N. Jefferson Avenue, Springfield MO 65802

Saint Luke's Health System, Inc., 10920 Elm Avenue, Kansas City, MO 64134

Stormont-Vail Healthcare, Inc., 1500 Southwest Tenth Avenue, Topeka, KS 66604; c/o Michael Lummis,  
Registered Agent Office: 1500 Southwest Tenth Avenue , Topeka, KS 66604

Shughart Thomson & Kilroy, P.C. (“Shughart”) c/o STK Registered Agent, Inc., 120 W 12th ST Ste 1800,  
Kansas City MO 64105

Husch Blackwell Sanders LLP (“Husch Blackwell”) c/o C T Corporation System, 120 South Central  
Avenue, Clayton, MO 63105

Lathrop & Gage L.C. c/o Registered Agent Ltd., 2345 Grand #2500, Kansas City, MO 64108

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## **COMPLAINT**

Comes now the petitioner, Samuel K. Lipari on his personal property interest as the sole assignee of rights for the dissolved Missouri Corporation Medical Supply Chain, Inc. where he was the founder and Chief Executive Officer and appears *pro se*.

### **I. Introduction**

1. The petitioner brings this actions against some members of a hospital supplies cartel for their conduct in keeping the plaintiff out of the Missouri market for hospital supplies distributed to hospitals and other health systems including clinics and nursing homes through anticompetitive long term exclusionary contracts.

2. The hospital supply cartel of VHA, UHC and Novation LLC artificially inflates the costs of hospital supplies, hospital supply management and of hospital supplies distributed through electronic marketplaces like the petitioner's and during the time period complained of, shared with its member hospitals the unlawful overcharging of healthcare insurance providers.

3. The previous litigation by the has ended the utility of Neoforma, Inc for passing on these unlawful kickbacks and has forced the defendants to enter into two failed schemes to substitute the flow of government healthcare tax dollars through VHA, UHC and Novation LLC in Missouri.

4. The first was to eliminate Medicaid in this state and to replace the insurance plan with a Missouri state pilot program administering the federal Medicare and Medicaid funds without federal controls or auditing called Insure-Missouri as the Republican National Committee model for the nation.

5. The second failed plan was to take from the State of Kansas the academic credentials, doctors and residents and operate the Novation LLC Saint Luke's Plaza hospital in Kansas City, Missouri as a National Cancer Institute Certified Research Center even though no curriculum, staff or qualifying programs were in existence.

6. The defendants were desperate to replace the loss of preferential treatment of their Medicare claims by Blue Cross Blue Shield of Kansas, Inc. on February 29, 2008.

7. During the complained of time period sheltered the defendant conspirator's Missouri hospitals and Nursing homes from effective oversight and permitted CoxHealth and Saint Luke's to unlawfully grow their revenue by tens of millions of dollars a year.

8. The two schemes failed when the petitioner on April 9, 2007 discovered and press released that the US Attorney Todd Graves had been targeted by Karl Rove and former US Attorney General Alberto Gonzales for Graves' investigation of Medicare fraud at CoxHealth.

## **II. Averments**

9. The petitioner makes the following averments of fact regarding the jurisdiction of this court, the previous and related proceedings and the identity and conduct of the parties.

10. Each factual averment is pled to meet the requirements of Missouri Supreme Court Rule 55(b)(3) in that the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

11. Each factual averment is relative to proving the petitioner's claims and the petitioner is entitled to discovery of records in the possession of the defendants to produce documents or papers, which contain evidence relevant to the subject matter involved in the pending action under Missouri Supreme Court Rule 56.01.

## **A. Jurisdiction**

The petitioner asserts the following basis for the court's jurisdiction over this matter.

### **1. Subject Matter Jurisdiction**

12. This court has subject matter jurisdiction over the defendants herein to state statutory causes of action consisting of violations of Missouri state antitrust statutes §§ 416.011 to 416.161, RSMo and state common law tortious interference with business relationships; fraud; and prima facie tort claims.

### **2. Personal Jurisdiction**

13. Personal jurisdiction over the defendant corporations and individual persons exists under Mo. Rev. Stat. § 416.131.

14. Personal jurisdiction over the defendant corporations and individual persons exists under the Missouri long-arm statute, Mo. Rev. Stat. § 506.510 (2007).

### **3. Venue**

15. The plaintiff makes a well pleaded complaint claiming state statutory causes of action over violations of Missouri state antitrust statutes §§ 416.011 to 416.161, RSMo and state common law tortious interference with business relationships; fraud; and prima facie tort claims against the defendants' conduct occurring in Jackson County.

16. The plaintiff's complaint is against defendants that regularly do business in Jackson County, Missouri.

17. Venue in Jackson County is proper under Mo. Rev. Stat. § 416.545 where the plaintiff resides and the causes of action herein accrued.

18. Venue in Jackson County is proper under Mo. Rev. Stat. § 416.131. 1 where defendants reside, engage in business and have agents.

#### **4. Timeliness**

19. This matter is timely under Mo. Rev. Stat. § 416.131. 2 having been commenced within four years after the relative antitrust causes of action against new defendants and subsequent conduct of prior defendants accrued.

20. This matter is timely under Mo. Rev. Stat. § 516.230 having been commenced within one year after the suffering of a nonsuit on March 7, 2007 in *Medical Supply Chain, Inc. v. Novation LLC et al* KS Dist. Court Case No.: 05-2299, an action originally filed in Missouri on March 9, 2005 as *Medical Supply Chain, Inc. v. Novation LLC et al*. W.D. of MO Case No. 05-0210-CV-W-ODS.

#### **5. Procedural History**

21, The petitioner, in the name of his Missouri corporation Medical Supply Chain, Inc. ("Medical Supply") initiated litigation against members of the defendants' hospital supply cartel in the US District Court for Kansas in October 2002 to enjoin the cartel from interdicting \$350,000.00 the plaintiff had raised to enter the hospital supply market. A detailed description of the legal actions between the plaintiff and members of the defendants' hospital supply cartel is incorporated by reference as **Appendix One**.

## 6. Table of Prior and Related Cases

23. The petitioner as a hospital supply distributor prevented from entering the market is the efficient enforcer of Missouri antitrust statutes. The related federal and state legal actions against the defendant cartel's members are listed in a table incorporated by reference as **Appendix Two**.

## 7. Governing Law

24. The Missouri state long arm statute § governs this court's jurisdiction over the out of state defendants.

25. The Missouri State Antitrust Chapter 416 Monopolies, Discriminations and Conspiracies; statutes §§ 416.011 to 416.161, RSMo govern the substantive claims of the petitioner related to statutory violations of state law against anticompetitive conduct.

26. The petitioner has averred the existence of antitrust conspiracy to the current new antitrust pleading standard under *Bell Atlantic Corp. v. Twombly*, \_\_\_ U.S. \_\_\_, 127 S.Ct. 1955, 1970, 167 L.Ed.2d 929 (2007).

27. The petitioner's right to bring new claims based on subsequent conduct of previous defendants is governed by *Lawlor v. National Screen Service Corp.*, 349 U.S. 322:

"*Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 75 S.Ct. 865, 99 L.Ed. 1122,. In *Lawlor* five new defendants were brought into the case in the new action. Substantial new antitrust violations subsequent to the termination of the prior litigation were charged."

*Engelhardt, v. Bell & Howell Co.*, 327 F.2d 30 at ¶ 42 (8<sup>th</sup> Cir, 1964).

28. The petitioner's claims for tortious interference with a business expectancy, fraud and prima facie tort are governed by the common law of the State of Missouri.

## B. Statement of Facts

29. The plaintiff avers the following facts as true to the best of his knowledge or will likely to be proven through discovery:

### 1. Parties

30. The following persons and corporations are subject to this legal action:

**a. Plaintiff**

31. Samuel K. Lipari, 297 NE. Bayview, Lee's Summit, MO 64064.

**b. Defendants**

32. Novation LLC. ("Novation") 125 East John Carpenter Frwy Suite 1400 Irving, TX 75062

33. Neoforma Inc. (Neoforma), 3061 Zanker Road, San Jose, California 95134.

34. GHX, LLC, 1315 W. Century Drive, Louisville, CO 80027.

35. Robert J. Zollars, 525 Race Street, San Jose, CA 95126.

36. Volunteer Hospital Association of America, Inc. (VHA), 220 E. Las Colinas Blvd., Irving, TX 75039.

37. VHA Mid-America, LLC, c/o The Corporation Company, Inc., 515 South Kansas Avenue , Topeka, KS 66603.

38. Curt Nonomaque, President and CEO, VHA Inc., 220 E. Las Colinas Blvd., Irving, TX 75039.

39. Thomas F. Spindler, Area Senior Vice President, VHA Mid-America LLC, 8500 West 110th Street - Suite 118, Overland Park, KS 66210.

40. Robert H. Bezanson, President & CEO CoxHealth, 1423 North Jefferson, Springfield, MO 65802.

41. Gary Duncan, President & CEO (Chair) Freeman Health System, 1102 West 32nd Street Joplin, MO 64804-3599.

42. Charles V. Robb SVP/CFO., Saint Luke's Health System, 10920 Elm Avenue, Kansas City, MO 64134.

43. Sandra Van Trease, Group President, BJC HealthCare, 4444 Forest Park Avenue, St. Louis, MO 63108.

44. Micheal Terry, President/Chief Executive Officer, Salina Regional Health Center, 400 South Santa Fe (67401), PO Box 5080 Salina, KS 67402-5080.

45. University Healthsystem Consortium (UHC) is a company headquartered at 2001 Spring Road, Suite 700 Oak Brook, Illinois 60523-1890.

46. Robert J. Baker, President and CEO of UHC, 2001 Spring Road, Suite 700 Oak Brook, Illinois 60523.

47. Jerry A. Grundhofer, Chairman of US Bancorp, Inc., 800 Nicollet Mall, Minneapolis, MN 55402.

48. Richard K. Davis, President and CEO of US Bancorp, Inc., 800 Nicollet Mall, Minneapolis, MN 55402.

49. Andrew Cecere, Chief Financial Officer of US Bancorp, Inc., 800 Nicollet Mall, Minneapolis, MN 55402.

50. The Piper Jaffray Companies (“Piper”), 800 Nicollet Mall, Suite 800, Minneapolis, MN 55402.

51. Andrew S. Duff, CEO of Piper Jaffray, 800 Nicollet Mall, Suite 800, Minneapolis, MN 55402.

52. Cox Health Care Services Of The Ozarks, Inc. (“CoxHealth”), c/o Registered Agent Robert H. Bezanson, 1423 N. Jefferson Avenue, Springfield MO 65802.

53. Saint Luke's Health System, Inc., 10920 Elm Avenue, Kansas City, MO 64134.

54. Stormont-Vail Healthcare, Inc., 1500 Southwest Tenth Avenue, Topeka, KS 66604; c/o Michael Lummis, Registered Agent Office: 1500 Southwest Tenth Avenue , Topeka, KS 66604.

55. Shughart Thomson & Kilroy, P.C. (“Shughart”) c/o STK Registered Agent, Inc., 120 W 12th ST Ste 1800, Kansas City MO 64105.

56. Husch Blackwell Sanders LLP (“Husch Blackwell”) c/o C T Corporation System, 120 South Central Avenue, Clayton, MO 63105.

57. Lathrop & Gage L.C. c/o Registered Agent Ltd., 2345 Grand #2500, Kansas City, MO 64108.

## **2. The Relative Markets**

58. The petitioner identifies the following relative product and services markets as being monopolized by the defendants Novation LLC. Neoforma Inc., GHX, LLC, Robert J. Zollars, Volunteer Hospital Association of America, Inc.(VHA), VHA Mid-America, LLC, Curt Nonomaque, Thomas F. Spindler, Robert H. Bezanson, Gary Duncan, Charles V. Robb, Sandra Van Trease, Micheal Terry, University Healthsystem Consortium (UHC), Robert J. Baker, Jerry A. Grundhofer, Richard K. Davis,



Andrew Cecere, The Piper Jaffray Companies, Andrew S. Duff, Cox Health Care Services Of The Ozarks, Inc. (CoxHealth), Saint Luke's Health System, Inc., Stormont-Vail Healthcare, Inc., Shughart Thomson & Kilroy P.C., Husch Blackwell Sanders LLP, Lathrop & Gage L.C.:

**a. The Missouri Hospital Supply Market**

59. The petitioner avers that the defendants monopolized and/or attempted to monopolize the geographic market of hospital supplies sold in the State of Missouri to hospitals.

60. The petitioner avers that the defendants monopolized and/or attempted to monopolize the geographic market of hospital supplies sold in the State of Missouri to nursing homes.

61. The petitioner avers that the defendants monopolized and/or attempted to monopolize the geographic market of automated hospital supplies management sold in the State of Missouri to hospitals.

62. The petitioner avers that the defendants monopolized and/or attempted to monopolize the geographic market of automated hospital supplies management sold in the State of Missouri to nursing homes.

**b. The Missouri e-commerce Hospital Supply Market**

63. The petitioner avers that the defendants monopolized and/or attempted to monopolize the sub market of hospital supplies sold in the geographic area of the State of Missouri to hospitals through electronic marketplaces.

64. The petitioner avers that the defendants monopolized and/or attempted to monopolize the sub market of hospital supplies sold in the geographic area of the State of Missouri to nursing homes through electronic marketplaces.

**c. The Upstream Healthcare Technology Company Capitalization Market in Missouri.**

65. The petitioner avers that the defendants monopolized and/or attempted to monopolize the geographic market of healthcare technology company capitalization hospital in the State of Missouri for new ventures with products for hospital use in the treatment of patients.

**2. Anticompetitive Activity in the Subject Relevant Markets**

66. The petitioner avers that the defendants have monopolized the above relevant markets through conduct prohibited by the Missouri Antitrust Statutes §§ 416.011 to 416.161, RSMo and that the prohibited conduct has injured Missouri hospital supply customers including health systems and patients.

67. The petitioner also avers that the petitioner has been injured by conduct prohibited by the Missouri Antitrust Statutes §§ 416.011 to 416.161, RSMo and that but for the actions of the defendants, the petitioner would be selling hospital supplies to hospitals and nursing homes in the State of Missouri.

**a. The Harm To Buyers In The Market**

68. The petitioner avers that the defendants have violated the Missouri Antitrust Statutes §§ 416.011 to 416.161, RSMo injuring Missouri hospital supply customers including health systems and patients.

**i. The Harm to Hospitals**

69. VHA through Novation LLC contracts management controls the purchasing at 41 hospitals in Missouri, including: BJC HealthCare, Cox Health System in Springfield, Freeman Health System in Joplin, St. Luke's Health System in Kansas City, Liberty Hospital, Skaggs Medical Center in Branson, St. Francis Medical Center in Cape Girardeau, and Citizens Memorial Hospital in Boliver.

70. As VHA members, the hospitals are deceived into participating in VHA programs where artificially inflated hospital supply contracts are controlled by Novation LLC to add 20 to 45% on average to the costs of purchases of essential, but expensive, supplies for their patients.

71. The defendants VHA and UHC are group purchasing organizations (“GPOs”).

72. The defendants VHA and UHC represent themselves as extensions of hospital purchasing departments providing special expertise, negotiating experience, electronic tools and processes to streamline buying and save hospitals hundreds of millions of dollars each year.

73. In actuality, VHA steered its members to the Novation LLC scheme that artificially inflates hospital supplies and extorts illegal kickbacks from the manufacturers represented by Novation LLC.

74. VHA steered Missouri hospitals toward purchasing more than \$718.4 million in supplies in 2005 exclusively through Novation LLC.

75. The defendants through VHA and VHA Mid-America, LLC misrepresent that “On average, hospitals buying through Novation save an average of one to three percent, compared with purchasing on their own or through another GPO. These savings fall immediately to a hospital's bottom line, giving them resources that can be used for other purposes, such as providing the hospital with more staff to provide better care.” VHA press release dated February 23, 2008.

76. And that Missouri hospital members “saved more than \$43.3 million in 2005.” VHA press release dated February 23, 2008.

77. In reality, Novation LLC has taken money belonging to Missouri hospitals in the market the petitioner is being kept out of by the defendants.

78. On August 21, 2004 the NY Times reported that the Justice Department had opened a broad criminal investigation of the medical-supply industry revealing that Novation is being subjected to a criminal inquiry:

“Novation's primary business is to pool the purchasing volume of about 2,200 hospitals, as well as thousands of nursing homes, clinics and physicians' practices, and to use their collective power to negotiate contracts with suppliers at a discount. In many cases, the contracts offer special rebates to hospitals that meet certain purchasing targets. **Although Novation is not well known outside the industry, it wields formidable power because it can open, or impede, access to a vast institutional market for health products.**” [emphasis added]

79. On July 31, 2006 the London Times reported the existence of the US Department of Justice investigation of Novation’s conduct as a hospital group purchasing organization or “GPO” and quoted Professor Prakash Sethi, president of the International Center for Corporate Accountability at Baruch College in New York who stated “My most conservative estimates suggest that GPOs extract extra profits of \$5 billion (£2.6 billion) to \$6 billion which legitimately belong to their principal clients, the hospitals.”

80. Missouri hospitals purchasing through Novation LLC, VHA or UHC in actuality lost 5% annually of their bottom line revenue as institutions and suffered a resulting loss of capacity to serve Missourians.

## **ii. The Harm To Healthcare Services Consumers**

81. The anticompetitive conduct of the defendants have artificially inflated hospital supply costs creating an over 11% per year increase in healthcare costs.

82. The suppression of economic competition in hospital supplies has led to unsustainable increases in healthcare costs.

83. The actions of the hospital supply cartel defendants to deprive critical inputs required by new entrants to the market, including breaking their contracts with the petitioner demand investigative scrutiny.

84. The injury to Missouri's healthcare consumers has been aggravated by the defendants' misconduct as part of an agreement with other hospital supply distributors to control access to the hospital supply market conditioned on participating in a scheme to artificially inflate the costs of hospital supplies.

### **iii. Loss of Healthcare Insurance**

85. The artificial inflation of hospital supply costs and the resulting continuing double digit increases in healthcare costs have become unsustainable for private healthcare insurance plans.

86. As a result of the relator's failure to advance his antitrust and state law based contract claims in federal court due to the misconduct of the defendants, the first 65,000 Missouri residents were cut off of Medicaid benefits on July 1, 2005.

87. A July 2nd, 2005 Los Angeles Times article stated 1/3 of the Missourians losing insurance coverage are children: "An estimated 24,000 children are expected to lose their benefits, dental coverage is being cut for adults, and disabled people are losing coverage for crutches and other aids." See Missouri's Sharp Cuts to Medicaid Called Severe-More than 68,000, a third of them children, may lose benefits in the move to avoid tax hikes. LA Times, July 1, 2005.

88. On June 29, 2005, David Moskowitz MD, was invited to testify before the Missouri Medicaid Reform Commission and in his released pretestimony stated for the 65,000 patients losing coverage; "Since oxygen tanks are among the items no longer covered, many patients will soon die"[emphasis added]. Of course patients are the consumers in the market for hospital supplies that is the primary relevant market the petitioner is attempting to enter.

89. Doctor Moskowitz also stated; "The Missouri Legislature is wrestling with the most critical domestic issue of our time. It is literally a life and death issue for tens of millions of Americans.

90. Currently 719,000 Missourians are without health insurance.

91. However, the increased costs on health systems including hospitals and nursing homes is being passed on to the five million Missourians covered by health insurance, increasing the loss of jobs and

healthcare insurance benefits.

#### **iv. The Injury To Healthcare Insurance Plans**

92. Insure-Missouri quotes Dwight L. Fine, Senior Vice President for Health Policy, Missouri Hospital Association as stating:

“As more people lose coverage, the costs associated with caring for the growing uninsured population are shifted to those with health insurance thus making it more expensive. As health insurance costs increase, more employers stop offering coverage to their employees...”

#### **v. The Loss Of Life From Decreased Access To Healthcare**

93. Insure-Missouri also quotes Dwight L. Fine, Senior Vice President for Health Policy, Missouri Hospital Association as stating:

“Studies show that those who are uninsured delay seeking needed care, which leads to the onset of chronic diseases. More importantly, those studies tell us that those who have health insurance live longer than those who do not.”

94. The rise in healthcare costs of which hospital supply inflation is a significant contributing factor led to a reported 18,000 deaths a year in the USA resulting from 40 million Americans being uninsured in 2001. See “Study Blames 18,000 deaths in USA on Lack of Insurance”, USA Today, May 23, 2002.

95. In 2002, the number of uninsured increased to 43.6 million Americans and without decreases in the mortality rates of untreated illnesses or observed improvements in public health systems, the number of deaths resulting from the lack of affordable health insurance was 19,962.

96. The following year, 2003, the number of uninsured Americans increased to 45 million, resulting in an expected 20,603 deaths resulting from the lack of affordable health insurance.

97. During the period of time in which Medical Supply has been foreclosed from competing in the market for healthcare supplies as a result of the actions of the defendants, at least 103,015 Americans have died as a result of the increasing cost of hospitalization and medical care of which artificially inflated hospital supply costs are a significant contributing factor.

98. Videotapes exist and are discoverable of surgeries in Missouri hospitals which were stopped due to unforeseen shortages of critical hospital supplies with the foreseeable and certain death of the patient resulting.

### **b. The Harm to Medical Supply**

99. The petitioner has been injured by conduct prohibited by the Missouri Antitrust Statutes §§ 416.011 to 416.161, RSMo.

100. The petitioner lost over \$300,000.00 raised in October 2002 to capitalize his entry into the hospital supply market through US Bank escrow accounts the petitioner had contracted for as a substitute for Piper Jaffray's venture capital services.

101. The petitioner obtained a replacement of over \$300,000.00 to capitalize his entry into the hospital supply market by selling the lease of a Blue Springs, Missouri Office building to the General Electric Company.

102. The defendants have repeatedly violated Missouri Antitrust Statutes §§ 416.011 to 416.161, RSMo during the period of March 25, 2004 through February 25, 2008 to deprive the petitioner of inputs required to enter the subject relevant Missouri markets including tortiously interfering with the petitioner's property rights to his claims against US Bank NA, US Bancorp, Inc. and the General Electric Company.

103. The conduct of the defendants in obstructing the petitioner in his federal litigation to recover the market entry capitalization included separate Missouri Antitrust Statutes §§ 416.011 to 416.161, RSMo violations to deprive the petitioner of his corporate counsel, representation by Missouri and Kansas attorneys and therefore the enjoyment of the right for Medical Supply Chain, Inc. to be incorporated under the laws of the State of Missouri.

104. The conduct and transactions of the defendants in violation of Missouri Antitrust Statutes §§ 416.011 to 416.161, RSMo caused the foreseeable injury of the petitioner being forced to dissolve Medical Supply Chain, Inc. on January 27th, 2006

105. The conduct and transactions of the defendants to cause the petitioner to be forced to dissolve his Missouri corporation occurred subsequent to the petitioner's filing of the federal antitrust action on March 9, 2005 styled *Medical Supply Chain, Inc. v. Novation LLC et al.* W.D. of MO Case No. 05-0210-CV-W-ODS.

106. The petitioner is obstructed from necessary inputs and critical facilities including capitalization for marketing as long as he is deprived of the right to be incorporated under the laws of the State of Missouri by the anticompetitive conduct of the defendants.

107. The defendants chose to injure the petitioner by depriving him of state and federal government related benefits and immunities constructively and through bribery and extortion instead of *Noerr-Pennington* Doctrine protected petitioning.

**c. The Need For Private Antitrust Enforcement**

108. The petitioner brings his claims for redress because of the inability of the State of Missouri and the Federal Government to enforce their respective antitrust regulatory schemes in the complex electronic marketplaces where hospital supplies are distributed.

**i. The Limited Resources Of The US Department Of Justice**

109. The plaintiff asserts that the US Department of Justice under for Attorney General Alberto Gonzales and the Federal Trade Commission Chairwoman Deborah Platt Majoras have acted to protect the hospital supply cartel created by Novation LLC.

**(A) FTC Chairwoman Deborah Platt Majoras**

110. The Federal Trade Commission enforcement attorneys had to hire the petitioner's expert witnesses Lynn Everard and Patti King to document and explain how the electronic marketplaces for hospital supplies run by Neoforma, Inc. and GHX LLC created a choke point over all the supplies purchased in the nation's hospitals.

111. The Federal Trade Commission enforcement attorneys were excited about ending the monopoly in hospital supplies Lynn Everard and Patti King revealed to them.

112. The Chairwoman Deborah Platt Majoras saw to it that the agency did not prevent the merger of Neoforma, Inc. and GHX LLC to further Karl Rove's protection of the defendants' hospital supply cartel.

**(B) F.B.I. Director Robert Mueller**

113. The Federal Bureau of Investigation under Director Robert Mueller has no will to exercise the responsibilities of his office and did not investigate the criminal conduct against the petitioner in the Kansas District Court in a complaint made by the petitioner at the direction of the US Tenth Circuit Court of Appeals in 2005.

114. To this date less than one third of Federal Bureau of Investigation employees even have access to the Internet at their workspace desks as was disclosed in answers to questions made by Willie T. Hulon, Executive Assistant Director.

115. National Security Branch of the Federal Bureau of Investigation in a recent House and Senate hearing on the F.B.I.'s implementation of recommendations made by the 9/11 Commission.

116. FBI Executive Assistant Director Willie T. Hulon testified on October 23, 2007 with 9/11 Commission Chairmen Lee Hamilton & Thomas Kean before a Senate Select Intelligence Committee hearing on the FBI's National Security Strategic Plan.

117. The hearing examined the FBI's reform effort and how the agency is adapting to meet national security challenges.

118. Sen. John Rockefeller of West Virginia chaired the hearing and the senior minority party member Sen. Kit Bond of Missouri also questioned the witnesses.

119. The hearing is on video including Executive Assistant Director Willie T. Hulon at the following url:

<http://12.170.145.161/search/basic.asp?ResultStart=1&ResultCount=10&BasicQueryText=Senate+Select+Intelligence+Cmte.+Hearing+on+the+FBI%27s+National+Security+Strategic+Plan>

## **ii. How the Defendants' Cartel Avoided Federal Prosecution in Texas**

120. Two US Attorneys that appeared connected to the criminal investigation of Novation, LLC have died and three more in the Ft Worth office of the US Department of Justice with antitrust expertise have been terminated.

### **(A) The deaths of two Assistant US Attorneys**

121. On the night of July 29, 2004 some lawyers from the US Attorney for the Northern District of Texas Office watched the conclusion of the Democratic National Convention on television.

122. Senator John Forbes Kerry had accepted the nomination and gave a stirring speech interrupted 43 times by applause.

123. Senator Kerry said his brand of leadership "starts by telling the truth to the American people. That is my first pledge to you tonight: As president, I will restore trust and credibility."



124. The speech inspired some listeners in Dallas Texas to think that by January, John Ashcroft would no longer be Attorney General or control the US Department of Justice for the Bush administration.

125. Breaking Main Justice's unwritten policy of prosecuting only healthcare providers and never the two giant Group Purchasing Organizations Novation LLC and Premier, Inc. that put their customers up to wholesale Medicare fraud, a criminal subpoena was issued

126. The Dallas Texas U.S. Attorney's office Criminal Chief Shannon Ross who was just 44 years old supervised seventy criminal prosecutors.

#### **(1) AUSA Thelma Louise Quince Colbert**

127. Federal whistleblower False Claims Act cases for the district were overseen by Fort Worth, Texas Civil Enforcement Head Thelma Louise Quince Colbert.

128. Southern University Law Center awarded Assistant US Attorney Thelma Louise Quince Colbert the 1998 Distinguished Alumnus Award for having served as the first editor-in-chief of the school's law review and where she was first in her class, graduating summa cum laude.

129. Assistant US Attorney Thelma Louise Quince Colbert was tasked with the majority of Medicare Fraud cases for Texas.

#### **(2) AUSA Shannon K. Ross**

130. New York Times reporter Mary Williams Walsh wrote "Wide U.S. Inquiry Into Purchasing for Health Care," one of the most comprehensive early stories on August 21, 2004 regarding the Justice Department's (USDOJ) inquiry into healthcare industry purchasing, antitrust issues and other Medicare abuses.

131. Novation LLC, Merck, Bristol-Myers Squibb, Genentech, G.E. Healthcare and Cardinal Health were all cited in the subpoena.

132. Federal investigators were seeking evidence of health care fraud, conspiracy to defraud the United States, theft or bribery involving programs receiving federal funds, obstruction of investigations and other possible violations.

133. Mary Williams Walsh reported the subpoena was signed by Assistant US Attorney Shannon K. Ross, criminal chief of the United States attorney's office in Dallas.

134. Assistant U.S. Attorney Shannon K. Ross was interviewed about the subpoenas by New York Times reporter Mary Williams Walsh for a follow up story on Saturday September 11, 2004.

135. The story ran in the New York Times on September 14, 2004, the day of the second US Senate Judiciary Committee hearing on Novation LLC's anticompetitive conduct and was entitled "U.S. to Address Possible Abuses in Hospital Supply Industry"

136. The article described Shannon K. Ross's work stating:

"The United States attorney in Dallas is now conducting a criminal investigation and about a month ago served subpoenas on more than a dozen companies in the hospital supply business, and on Novation.

One particular problem is the practice among the purchasing companies of accepting payments from the very medical product suppliers whose products they are supposed to evaluate.

The payments are ostensibly to cover the cost of administering the contracts, and limited payments for that purpose are expressly exempted from the federal anti-kickback law for health care. But this loophole has long created the appearance that lucrative contracts are sometimes awarded to suppliers making the highest payments.

The payments have also become extremely complicated and hard to trace over the years. In the past, some payments were made in cash, some in stock or stock options; some were a percentage of each hospital's purchases. And some payments were larger than allowed under the law."

137. However, unknown to many of the Senate antitrust hearing participants, Assistant U.S. Attorney Shannon Ross was found dead on September 13, 2004, just 55 days after Colbert turned up dead in her swimming pool on July 20, 2004.

138. When the petitioner called Shannon Ross' office he was surprised and shocked to hear she was not there and had passed away.

139. The petitioner checked and verified that the tragedy had occurred and posted an announcement on September 17<sup>th</sup>, 2004 for others in the healthcare industry, unwittingly providing the only press announcement of the event:

**(B) "Second US Attorney Death in Novation Medicare Fraud Case**

*US Attorney Shannon Ross, the second death in the Ft. Worth, TX US Attorney office connected to the governments investigation of Novation, GE and other GHX members for Medicare fraud*

Kansas City, MO (PRWEB) September 17, 2004 -- Assistant US Attorney for Texas, Shannon Ross died on Monday September 13th, 2004. Shannon Ross, who supervised 70 US Justice Department prosecutors, had issued the criminal subpoenas to healthcare suppliers General Electric in addition to other members of GHX, LLC that do business with Novation, the largest healthcare GPO, under the investigation that sparked the New York Times article "Wide U.S. Inquiry Into Purchasing For Health Care" on Saturday August 21, 2004.

Sam Lipari, President of Medical Supply Chain, Inc. stated that Ms. Ross was a courageous believer in the rule of law and that the Ft. Worth, TX Office of the US Attorney was the first to actually obtain manufacturer records and compare them to the monopolist suppliers and their client hospitals. Medical Supply Chain, Inc. has alleged that Medicare is overcharged by sum 40% through Sherman Act prohibited supplier cartels in the \$1.8 Trillion dollar healthcare industry and is civilly prosecuting Novations joint venture partners GE and US Bancorp Piper Jaffray for conspiring to keep its more efficient web based marketplace from providing lower cost products to hospitals.

Shannon Ross death was preceded by the death of Thelma Quince Colbert on July 20th, also of the Ft. Worth US Attorneys office and the head of a special civil litigation unit that prosecuted companies for defrauding government-funded programs.

#### About Medical Supply Chain

Medical Supply Chain, Inc. (MSCI) is a Health System service center providing supply chain resources and technology to the health system (hospital) and their trading partners. MSCI supports and complements the work and goals of the supply chain professional in their pursuit to strategically direct supply-chain activities and relationships. When this occurs real supply-chain value will find its way into healthcare and only then will the layers of cost and inefficiencies be removed. MSCI transforms health systems with empowerment to control their own supply chain costs.”

Above from Medical Supply Chain, Inc. press release September 17<sup>th</sup>, 2004.

#### **(C) The termination of three more experienced Assistant US Attorneys**

140. Karl Rove utilized Alberto Gonzales take over of the US Department of Justice to reign in the independence of the US Attorneys around the nation to strengthen the protection racket of the conspiracy hub and to further protect the control of hospital supply distribution through the Novation LLC cartel.

141. Karl Rove with Alberto Gonzales also caused enemies of the cartel to be targeted by unlawful wiretapping and electronic surveillance for the purpose of more effectively obstructing justice where it could not be controlled by a US Attorney or the F.B.I.

142. Karl Rove was caught by surprise when the Assistant US Attorney Shannon K. Ross that headed the criminal division for the Northern District of Texas signed criminal subpoenas against the Novation LLC cartel members in an investigation triggered by a whistleblower False Claims Act filing against Novation LLC.

143. Karl Rove therefore relied on then U.S. Deputy Attorney General Paul J. McNulty to change the rules for investigating publicly traded corporations in the McNulty Memo authored in December 2006 to prevent the Northern District of Texas US Attorney’s office from requesting records of member hospital funds being laundered by Novation LLC through the petitioner’s competitor Neoforma, Inc.

144. Former US Attorney General Alberto Gonzales was a partner in Vinson & Elkins, LLP which represented the defendant Novation, LLC in antitrust cases including the one brought by the petitioner in 2005.

145. On information and belief, the defendants' protectors in the current administration determined the stakes were high enough over Novation LLC to necessitate decimating the whole civil fraud unit in Dallas-Fort Worth, Texas.

146. The remainder of the experienced core of white collar crime prosecutors in the Dallas and Ft. Worth offices were terminated by Richard B. Roper, III after Roper was sworn in as interim United States Attorney for the Northern District of Texas and at the direction of Attorney General Alberto Gonzales for having violated Karl Rove's protection of Novation LLC, VHA and UHC.

147. On October 18, 2004 Leonard Senerote, A former U.S. Army Special Forces officer who was an expert in complex securities cases and an antitrust trial attorney, Michael Uhl and Michael Snipes, veteran prosecutors with expertise in white collar fraud and corruption were announced as separating from the Ft. Worth Office of the US Attorney.

148. The Dallas Morning News described the office as already reeling from the unexpected deaths of criminal chief Shannon Ross [the source of the widespread criminal inquiry into medical supplies and False Claims Act violations against Medicare] and False Claims Act litigator Thelma Louise Quince Colbert.

149. The Dallas Morning News article stated Ms. Ross, who had been feeling ill, was found September in her home. Ms. Colbert accidentally drowned a month earlier in July.

### **iii. Discovery that the Hospital Supply Cartel Protection Reached To Kansas City**

150. On April 9, 2007 the petitioner published a press release to call attention to the unusual circumstances in which the extremely competent US Attorney for the Western District of Missouri, Todd Graves had been removed from office and bizarrely replaced with Bradley J. Schlozman of Kansas.

#### **(A) Medical Supply Chain press release dated April 9, 2007**

151. The press release referenced documents obtained by the petitioner from third party sources in his litigation against Novation LLC and the other hospital supply cartel members and stated:

“Medical Supply Chain founder Samuel Lipari unearthed a US Department of Justice memo revealing the Office of the Attorney General had targeted not eight but ten US Attorneys including the former attorney for the Western District of Missouri, Todd P. Graves. The documents were obtained during Medical Supply Chain's discovery related to the civil antitrust action *Medical Supply Chain, Inc. v. Novation LLC, et al*, Western District of Missouri case #05-210-CV-W-ODS filed on March 9, 2005.

The e-mail dated January 9th, 2006 from Kyle Sampson, chief of staff for Attorney General Alberto Gonzales, to Harriet Miers and William Kelley at the White House, shows the ten U.S. Attorneys that were first selected to voluntarily resign or face termination. Attorneys that resigned were redacted. Todd P. Graves of Missouri resigned March 24, 2006.

The Western District of Missouri US Attorney office under Todd P. Graves had been active in prosecuting Medicare fraud. Medical Supply Chain, Inc.'s civil antitrust suit against Texas based Novation LLC, Volunteer Hospital Association (VHA), University Health System Consortium (UHC) and Neoforma, Inc. alleges the companies formed a cartel and were involved in a scheme to monopolize hospital supplies to defraud Medicare through payments to administrators and kickbacks. The scheme resulted in almost all of Kansas City, Missouri St. Luke's hospital's one hundred million dollar supply budget being purchased through Novation LLC. St. Luke's merged with University of Kansas Hospital after Irene Cumming, CEO of the University of Kansas Hospital was given a job by University Health System Consortium (UHC) on March 19, 2007.

The first prosecutor identified as being fired by the Office of the Attorney General was Carol Lam, a U.S. Attorney in San Diego, California. Carol Lam was personally prosecuting Medicare fraud at the Tenet Healthcare Alvarado hospital when political pressure was brought on the Justice Department to remove her from office. Carol Lam's prosecution caused the U.S. Department of Health and Human Services threatened to cut Medicare and Medicaid funds to Alvarado Hospital Case # 03CR15870 US Dist. Court Southern California.

On May 17, 2006, Alvarado Hospital's parent company, Tenet Healthcare, agreed to sell or close the hospital and pay \$21 million to settle criminal and civil charges.

Medical Supply Chain discovered documents include a December 4, 2006 e-mail from Attorney General Alberto Gonzales' Chief of Staff Kyle Sampson targeting Carol Lam. On December 7, 2006, the Justice Department fired Carol Lam and the six other U.S. attorneys that refused to resign.

Samuel Lipari became concerned that Attorney General Alberto Gonzales was using the firing of appointed US Attorneys and senior assistant US Attorneys to obstruct justice in investigations involving public corruption on October 18, 2004 when white collar crime prosecuting Assistant US Attorneys Leonard Senerote, Michael Uhl and Michael Snipes were fired from the Ft. Worth Texas office of the US Attorney that had issued subpoenas in an ongoing investigation of Novation LLC and other hospital suppliers for anticompetitive practices. Samuel Lipari was especially concerned over the firings in the Ft. Worth office where the chief US Attorney responsible for Medicare fraud, Thelma Louise Quince Colbert had been found dead in her swimming pool on July 20th, 2004 and the Ft. Worth office Senior US Prosecuting Attorney that had signed the subpoenas, Shannon Ross (formerly of Kansas) was found dead in her home on September 13th, 2004. Shannon Ross's investigation of Novation LLC sparked the New York Times article "Wide U.S. Inquiry Into Purchasing For Health Care" on Saturday August 21, 2004.

Attorney General Alberto Gonzales used a little known provision of the USA PATRIOT Act to replace Todd P. Graves with Bradley Schlozman. Bradley Schlozman failed to prosecute public corruption related to the Medical Supply Chain litigation and failed to enforce civil rights laws related to the Novation LLC defendants success in getting Medical Supply Chain's counsel Bret D. Landrith disbarred. Samuel Lipari raised these concerns before the US Court of Appeals for the Eight Circuit. On January 16, 2007 Attorney General Gonzales tried to quell criticism of the mass US Attorney firings and the misuse of the USA PATRIOT Act by announcing John Wood would be taking Schlozman's place in Kansas City.”

Above from Medical Supply Chain press release dated April 9, 2007.

152. When Karl Rove's role in politically influencing the operations of the US Department of Justice started coming to light as a result of the "Ninth US Attorney" press release created by the petitioner in the first part of April, 2007, the hospital supply cartel's protection conspiracy hub of Rove and McNulty turned to Scott J. Bloch, head of the Office of Special Counsel ( and former Kansas Disciplinary Administrator representative) to run protection for Karl Rove.

**(B) Special Counsel Scott J. Bloch**

153. Scott J. Bloch was supposed to be investigating Karl Rove, warrantless surveillance and the Hatch Act employment violations of the defendant Bradley J. Schlozman ( also from Kansas) and Schlozman's conduct in Missouri to protect the hospital supply cartel defendants from the petitioner but identified more strongly with his role protecting hospital supply cartel members than his government job as Special Counsel.

154. Scott J. Bloch's real direction and actions were not from the mandate of his government office but instead communicated to him through the Republican National Committee ("RNC") email system from his hospital supply cartel protector associates in the conspiracy hub of Rove's USDOJ protection scheme.

155. An investigation of Scott J. Bloch however, by the federal Office of Personnel Management's inspector general looking into claims that Mr. Bloch improperly retaliated against employees and dismissed whistleblower cases without adequate examination, threatened to expose the USDOJ's protection selling conspiracy hub's use of RNC email to control the US Department of Justice.

156. To protect the conspiracy, Scott J. Bloch destroyed evidence including the RNC email on Dec. 18 and Dec. 21, 2006 by having his drive and two others used by departed aides subjected to a level seven wipe. The wipe eliminates the possibility of the hard drives being forensically reconstructed.

**iv. The Attempt to Interfere With CoxHealth Investigation**

157. Staffers for Missouri's US Senator Christopher S. "Kit" Bond approached the Bush administration in 2005 and suggested that it might be wise to remove Graves from his post after his four year term expired because of his wife's involvement in a controversial 'fee office' patronage scheme in Missouri.

### **(A) Senator Kit Bond**

158. Later Senator Kit Bond did become directly involved in Graves' termination in early 2006.

159. Senator Kit Bond 's spokesman Shana Marchio said in a statement: “Senator Bond ... upon (Graves’) request personally called the White House to gain Todd extra time to wrap up case work before his departure.”

160. The White House rejected Senator Kit Bond’s efforts on Graves’ behalf because of “performance” concerns. E-mails from the Justice Department and the White House have used similar language in discussing the other U.S. attorneys who were fired.

### **(B) Appointment of USA Bradley J. Schlozman**

161. Bradley J. Schlozman was appointed to serve as the United States Attorney for the Western District of Missouri under an Attorney General Appointment on March 23, 2006.

162. On July 3, 2006 , the federal grand jury investigating Medicare fraud at CoxHealth in Springfield, Missouri ended its term without issuing indictments.

163. However, the evidence of Medicare fraud by defendant Robert H. Bezanson’s CoxHealth hospital that had been heard and recorded during the grand jury term was too substantial for the USDOJ not to proceed.

164. The hospital supply cartel was concerned that the widespread inquiry started by former US Attorney Todd Graves would also lead to charges against the artificial inflation of hospital supplies through the kickback practices and Medicare fraud used by the defendants VHA Mid-America, LLC, VHA and Novation, LLC.

165. The continuing prosecution of CoxHealth had to be narrowed and kept from targeting Novation LLC.

### **(C) Appointment of USA John Wood**

166. After the petitioner’s April 9, 2007 press release caused Bradley J. Schlozman to be recalled, the administration at the direction of Karl Rove appointed John F. Wood to the position of US Attorney for the Western District of Missouri on April 11, 2007.

167. US Attorney John F. Wood is a cousin of Senator Kit Bond.

**v. Hospital Cartel Stops the Federal Grand Jury Over VHA Defendant's Medicare Fraud**

168. The petitioner knew of US Attorney Todd Graves' reputation as a supremely competent state prosecutor and had followed Grave's prosecution of the Kansas City pharmacist that had diluted chemotherapy drugs.

**(A) USA Todd Graves**

169. The petitioner did not know at the time he discovered Todd Graves had also been targeted and wrongfully fired as a US Attorney over an ongoing Medicare Fraud investigation of a Missouri hospital.

170. Just like the Western District of Missouri's US Attorney Todd Graves, the first prosecutor identified as being fired by the Office of the Attorney General was Carol Lam, a U.S. Attorney in San Diego, California.

171. Like Graves, Carol Lam was personally prosecuting Medicare fraud.

**(B) USA Carol Lam**

172. US Attorney Carol Lam had investigated and then prosecuted the Tenet Healthcare Alvarado hospital when political pressure was brought on the Justice Department to remove her from office.

173. Tenet Healthcare is a member of Novation LLC and the hospital supply cartel.

174. Carol Lam's prosecution caused the U.S. Department of Health and Human Services threatened to cut Medicare and Medicaid funds to Alvarado Hospital over Case # 03CR15870 US Dist. Court Southern California.

175. On May 17, 2006, Alvarado Hospital's parent company Tenet Healthcare, agreed to sell or close the hospital and pay \$21 million to settle criminal and civil charges.

**(C) Defendant Robert H. Bezanson**

176. The defendant Robert H. Bezanson is President & CEO of CoxHealth a hospital system in Springfield, Missouri that also operates a nursing home.



177. CoxHealth, like Tenet Healthcare Alverado is also a member of Texas based Novation LLC which includes the Volunteer Hospital Association (“VHA”) and University Health System Consortium (“UHC”).

178. The defendant Robert H. Bezanson has participated in the fraudulent reports of Novation, LLC that misrepresent the hospital supply cartel’s artificial inflation of hospital supply costs as a savings to CoxHealth.

179. In 2007, the fraud of the “savings” report was continued but under the name of Robert H. Bezanson’s other organization, the defendant VHA Mid-America, LLC, a subsidiary of VHA and also a member participant in Novation, LLC.

#### **vi. Federal Grand Jury Investigation of Defendant Bezanson’s Hospital For Medicare Fraud**

180. On August 26, 2005 the Springfield Missouri News-Leader reported that US Attorney Todd Graves U.S. Attorney Todd Graves names former Cox CEO Larry Wallis and former Cox Chief Financial Officer Larry Pennel as targets. He names former Cox employee David Tapp, Cox corporate compliance officer Betty Breshears and the present action defendant Cox CEO Robert Bezanson as subjects of the government action.

#### **(A) CoxHealth**

181. The News-Leader August 26 article also stated under the heading “New Revelations” information about the investigation:

“Bezanson first publicly acknowledged on April 1 that an "audit" was being conducted by Health and Human Services. Subsequent hospital memos and court documents mentioned an investigation.

Graves' court document reveals for the first time who and what is under scrutiny at Cox.

The document states, "Since at least December 2004, agents from the United States Department of Health and Human Services, Office of Inspector General, Office of Investigations have been investigating allegations that defendant Cox and its agents/employees/corporate officers were and are involved in the commission of criminal health care fraud with respect to the Medicare program."

The document explains that a government attorney told a Cox attorney in January 2005 that investigators were looking into allegations of Medicare fraud and needed to perform an on-site audit at Cox. The Cox lawyer indicated Cox was aware of possible irregularities and was conducting an internal investigation.

One of the matters under investigation is the method by which Cox billed Medicare for dialysis services, Graves said.

"The specific allegation is that the physicians were paid despite not providing a service," he said.

Graves continued: "The government's investigation is wide-ranging and includes numerous additional matters that have nothing to do with Cox's dialysis services program and the physicians who were working in Cox's dialysis services program.

"Numerous Cox agents, employees, or officers have been identified as targets and/or subjects of the government action," it states.

Graves' document names Wallis, Pennel, Bezanson, Breshears and Tapp "by way of illustration and not by way of limitation."

182. Above from August 26, 2005 the Springfield Missouri News-Leader article Federal probe looks at 5 Cox officials Investigation focuses on determining whether Medicare fraud took place. By Kathleen O'Dell.

183. On July 3, 2006 , The News-Leader reported the federal grand jury issued no indictments in the CoxHealth Medicare fraud investigation before ending its term.

184. The News-Leader article stated that "Among the unanswered questions after the grand jury's dismissal Thursday is the status of an overlapping civil suit filed on behalf of two fired Cox employees. Their attorney, Matthew Placzek, declined to comment about the issue Thursday."

185. The News-Leader reported on October 3, 2006 - A U.S. District Court judge has lifted the stay, or delay, he imposed in November 2005 on the lawsuit against CoxHealth (Springfield, MO) filed by two former dialysis administrators.

186. The same article stated Roger Cochran and Dennis Morris claim they were wrongfully fired in 2004 after it became known they cooperated with federal law enforcement officials investigating alleged fraudulent business practices at Cox, court records show.

187. And that CoxHealth has been ordered by a U.S. District Court judge to produce internal files that led to the firing of two dialysis supervisors.

188. The News-Leader reported on September 17, 2007 - CoxHealth officials have confirmed the system has set aside \$26 million in a special fund for possible expenses and settlement of an ongoing, wide-ranging federal probe.

189. The article stated; "U.S. attorneys have said in court documents they are investigating whether Cox officials committed Medicare fraud by knowingly overcharging the government program for kidney dialysis services by using a method of billing it was not eligible to use.

190. The article also reported Investigators are also looking at whether Cox officials paid two kidney specialists to serve as medical directors at Ozarks Dialysis Services even though they did not provide a service, according to a court document."

191. CoxHealth's \$26 million is five million dollars larger than even the May 17, 2006 agreement of Tenet Healthcare to pay \$21 million to settle criminal and civil charges for Tenet Healthcare Alvarado.

**vii. Karl Rove Saw Removing US Attorney Todd Graves As Protecting Novation, LLC and VHA**

192. Governor Matt Blunt and the Blunt family were strong social conservative Republicans, loyal to the Bush Administration. The Southern part of Missouri had always been key to George W. Bush's success and the destiny of the Republican party relied on the whether the swing state went with the GOP or its traditionally Democrat roots.

**(A) Governor Matt Blunt**

193. Governor Matt Blunt's hometown is Springfield, Missouri and the financial support of the above living wage population and especially healthcare professionals and the management in the CoxHealth and Freeman healthcare systems has been essential to the Blunt family's political fortunes.

**(B) Lathrop & Gage LC**

194. The defendant Lathrop & Gage LC employed Mark F. "Thor" Hearne, a high-level GOP operative, friend of Karl Rove, former national general counsel for the Bush/Cheney '04 political campaign, and co-founder of the American Center for Voting Rights (ACVR) that was used by the Republican National Committee to coordinate voting disenfranchisement.

**(C) Mark F. "Thor" Hearne**

195. Mark F. "Thor" Hearne, in his capacity at Lathrop & Gage LC, was also Missouri Governor Matt Blunt's long-time legal man counsel.

196. Both Missouri Governor Matt Blunt and Lathrop & Gage LC were being investigated by the Arkansas U.S. Attorney Bud Cummins in association with the privatization of the lucrative state licensing fee offices when Cummins was wrongfully fired by the US Department of Justice at the direction of Karl Rove.

197. U.S. Attorney Bud Cummins was then replaced by Tim Griffin a former assistant and protege of Karl Rove.

**viii. Fallout from MSC April 9<sup>th</sup> Press Release Revealing Todd Graves was the Ninth US Attorney**

198. On the day Lathrop & Gage LC was tied to the US Attorney firing scandal, the law firm's CEO Tom Stewart requested a 90-day sabbatical on April 23<sup>rd</sup> 2007 "for matters having to do with personal and family health."

**(A) Lathrop & Gage LC**

199. Tom Stewart had previously announced that he would leave his position as chief executive at Lathrop & Gage LC to become chairman, effective July 1, 2007.

200. Instead, he has left Lathrop & Gage LC firm altogether and the KC Star reported that "Stewart held the top job at the firm for 18 years. During his tenure the firm grew from about 60 attorneys to 280."

**(B) Uninsurable Risk of Husch & Eppenberger LLC**

201. At Husch & Eppenberger LLC, the previous incarnation of the defendant Husch Blackwell Sanders LLP the firm had undertaken the entire representation of the hospital supply cartel co-conspirators General Electric, GE Capital and GE Transportation in addition to the conflicting interest of being local counsel for the defendants Novation LLC, VHA, UHC, Neoforma, Inc., Robert J. Zollars, Curt Nonomaque and Robert J. Baker.

202. John K. Power of Husch Blackwell Sanders LLP had handled the case load by imitating the conduct of the Shughart Thomson & Kilroy P.C. attorneys who consistently obtained outcomes against the petitioner in the Kansas District Court that contradicted the facts and controlling law.

203. When the petitioner brought his state law claims to the 16<sup>th</sup> Circuit and this court, John K. Power of Husch Blackwell Sanders LLP would fail to show up for the court's hearings or participate in

court ordered mediation, prompting the petitioner to finally press release John K. Power of Husch & Eppenberger LLC's absences:

**ix "\$450 Million Dollar Medical Supply Lawsuit Returned to Missouri State Court**

*Samuel Lipari wins remand order following an untimely removal of state contract claims that exposed Health Care Corruption*

Independence, MO (PRWEB) December 12, 2006 -- Medical Supply Chain founder Samuel Lipari's lawsuit for \$450 million dollars in damages over a contract with General Electric (GE) to finance the Independence Missouri firm's entry into the hospital supply market in June 2003 was returned to Jackson County 16th Circuit Court at Independence by the US District Court for the Western District of Missouri. The GE defendants attempted to remove the case to US District Court on July 17, 2006 after General Electric lost a motion to dismiss the lawsuit on May 31, 2006 and failed to attend two Jackson County Circuit Court hearings or participate in court ordered mediation since the lawsuit was filed March 22, 2006. The lawsuit is *Lipari v General Electric, et al*, Case # 0616-CV07421

United States District Judge Hon. Fernando J. Gaitan, Jr. ordered the lawsuit remanded back to Jackson County 16th Circuit Court of the State of Missouri on November 29, 2006 because the federal court lacked jurisdiction.

The lawsuit defendants General Electric Company, General Electric Capital Business Asset Funding Corporation and GE Transportation System Global Signaling, LLC are represented by the St. Louis, Missouri law firm Husch & Eppenberger, LLC through their Kansas City, Missouri attorney John K. Power. John K. Power, Husch & Eppenberger, LLC 1200 Main Street Suite 2300 Kansas City, MO 64105, (816) 283-4651.

Samuel Lipari is the founder of Medical Supply Chain and is currently launching a consumer oriented discount medical supply business based in Independence, Missouri: <http://MedicalSupplyLine.com> Mr. Lipari is representing himself in the lawsuit.

About Medical Supply Chain:

Medical Supply Chain (MSC) is a worldwide provider of web-based supply chain collaboration solutions with an electronic marketplace serving health care communities and their trading partners. Medical Supply Chain was founded in May of 2000 with a mission to deliver enabling supply chain technology in health care. To learn more visit: <http://www.MedicalSupplyChain.com>"

Above from Medical Supply Chain press release dated December 12, 2006.

204. The press releases and the fact that the petitioner maintains all his documents openly on the [www.medicalsupplychain.com/news](http://www.medicalsupplychain.com/news) web site caused [MedicalSupplyChain.com](http://MedicalSupplyChain.com) information to show up earlier in Google searches than the Husch & Eppenberger, LLC web site

205. The bad public relations image caused Husch & Eppenberger, LLC' senior successful partners with business to start leaving or considering leaving for their own practice or to form small boutique firms competing with Husch & Eppenberger, LLC.

206. After the April 9<sup>th</sup> 2007 press release identifying Todd Graves as the 9<sup>th</sup> US Attorney wrongfully fired caused attention to be directed toward Husch & Eppenberger, LLC's conduct in the petitioner's litigation against the General Electric hospital supply cartel defendants.

207. Without even shame or embarrassment, John K. Power of Husch & Eppenberger LLC caused General Electric's CEO to become a RICO (18 U.S.C. § 1962 *et seq.* ) defendant as federal claims were added to the petitioner's action against General Electric.

**(A) Husch Blackwell Sanders LLP**

208. Husch & Eppenberger, LLC's senior partners who had ignored discrete notice by the petitioner of John K. Power's conduct eventually became aware of the problems for the firm and began a desperate campaign to merge into another Missouri regional firm.

209. The firm eventually agreeing to take Husch & Eppenberger, LLC's three hundred attorneys was Blackwell Sanders LLP.

210. Recently the two firms announced that their common enterprise will be named Husch Blackwell Sanders LLP and Husch & Eppenberger, LLC's web site has stated that its name has changed to Husch Blackwell Sanders LLP.

**(B) Kansas City Business Journal**

211. The Kansas City Business Journal reported that the merger had to take place by December 31<sup>st</sup> 2007 and speculated that this was do to a conflict of interest between Blackwell Sanders LLP and Husch & Eppenberger, LLC's clients.

212. What the Kansas City Business Journal was unaware of was the liability created from the management of the legal defense of the General Electric clients in the litigation with the petitioner.

213. The Kansas City Business Journal was also unaware that Husch & Eppenberger, LLC had replaced Washington DC based Arnold & Porter as the sole counsel for the General Electric defendants.

214. Husch & Eppenberger, LLC had been put first into the role of local counsel in the Kansas District court antitrust litigation and then into sole counsel on the 16<sup>th</sup> Circuit Independence Missouri contract claims because of Husch & Eppenberger, LLC's billion dollar municipal bond underwriting malpractice coverage.

215. On information and belief the petitioner avers that the December 31<sup>st</sup>, 2007 deadline was the expiration of Husch & Eppenberger, LLC's malpractice liability and that liability insurance has been transferred under false representations to the insurers of Husch Blackwell Sanders LLP or in the alternative has ceased to be in force.

**x. The Defendants' Need To Change Their Revenue Model**

216. The defendants CoxHealth, Stormont-Vail Healthcare, Inc., and Saint Luke's Health System, Inc., needed to change their revenue model.

217. While organized as Missouri nonprofit corporations, CoxHealth and Saint Luke's Health System, Inc. have the goal of increasing payments for services and goods sold through their institutions.

**(A) Loss of Preferential Medicare Reimbursement through Blue Cross Blue Shield Of Kansas, Inc.**

218. Previously, this increased revenue was achieved through favorable treatment by Blue Cross Blue Shield Of Kansas, Inc., located in Topeka, Kansas.

219. An African American whistle blower named Rosalind Wynne reported to the federal government in the early 1990's that Medicare coding procedures were not being followed in the Medicare and Medicaid administration contract held by Blue Cross for Kansas, Missouri and Nebraska.

220. The action, eventually styled *US ex rel, Rosalind L. Wynne v. Blue Cross Blue Shield Of Kansas, Inc.*, KS District Court Case No. 05-4035-RDR was held under seal for over six years.

221. The federal government however acted on the information furnished by Wynne and unknown to her, reached a settlement with Blue Cross Blue Shield Of Kansas, Inc. and the State of Kansas which had regulatory control over the insurer while Governor Kathleen Sebelius was the Insurance Commissioner for Kansas from 1994-2002.

**(B) USA Eric F. Melgren**

222. The United States Attorney for the District of Kansas Eric F. Melgren was on the purge list in January 2006 but was removed from the targeting list by demonstrating his loyalty to Karl Rove and Attorney General Alberto Gonzales and did not intervene in the False Claims Act case against Blue Cross Blue Shield of Kansas for the fraud in processing Medicare claims for Missouri, Kansas and Nebraska.

223.. The hospital supply cartel defendants were still able to receive favorable treatment from Blue Cross Blue Shield Of Kansas, Inc. which resulted in approval of inappropriate up-coding and elimination of audits until 2007 when the contract was awarded to Wisconsin Physicians Service Health Insurance Corp., of Madison, Wis. a legitimate Medicare Administrator.

224. In May 2007, the Centers for Medicare and Medicaid Services, a branch of the U.S. Department of Health & Human Services, told Blue Cross Blue Shield of Kansas it wasn't in the running any longer for a major Medicare contract to cover Kansas, Nebraska, Iowa and Missouri in Medicare Part A (inpatient) and Medicare Part B (outpatient).

225. The intervention of Karl Rove in continuing the suppression of enforcement against Blue Cross Blue Shield Of Kansas, Inc. had caused Blue Cross management to mistakenly believe it could continue to destroy and delay valid claims for some regional healthcare providers while giving preferential treatment to the hospital supply cartel members to advance the anticompetitive interests over the healthcare marketplace of Missouri, Kansas and Nebraska.

226. In May 2007, the Centers for Medicare and Medicaid Services, a branch of the U.S. Department of Health & Human Services, told BCBS it wasn't in the running any longer for a major Medicare contract to cover Kansas, Nebraska, Iowa and Missouri in Medicare Part A (inpatient) and Medicare Part B (outpatient).

227. The continuation of these practices which resulted in substandard performance of the Medicare and Medicaid administration contracts resulted in Blue Cross Blue Shield Of Kansas, Inc.'s management losing the contract and 350 living wage jobs in Topeka, Kansas by February 29, 2008.

### **(C) Insure-Missouri**

228. Governor Matt Blunt had followed the RNC template of "hurt 'em and heal 'em" to accomplish the hospital supply cartel's plan to break Medicaid and lead an end run around the US Congress with a replacement program that opted out of Medicare's controls and safe guards and awarded the funds to the State of Missouri in a pilot program.

229. The defendant Husch Blackwell Sanders LLP through the influence of the hospital supply cartel installed a former Husch Eppenberger LLC attorney as Jane Drummond to serve as the Director of the Department of Health and Senior Services (DHSS) where she directs Missouri's healthcare purchasing.

230. The Insure-Missouri scheme attempts to source vendors through a request for proposal process that was secretive and quickly concluded.



231. The vendors that knew of the RFP and the meetings required to submit a proposal also participated in Governor Matt Blunt's creation of Insure-Missouri and in determining the ¼ billion dollar budget for the first phase.

232. The exploratory meetings, exchange of studies, emails and phone records were all to be maintained as Missouri state documents, even the schema of the software for the portal or electronic marketplace.

233. The portal utilizing Cerner's software creates a digital version of the Alabama Certificate of Need Board, allocating market share between insurance providers and hospital supplies to VHA /Novation LLC.

234. The central utility of Insure-Missouri to the hospital supply cartel defendants however is the scheme's liberation of Medicare dollars to replace Medicaid with payments that did not have Congress' audits and controls.

235. Insure-Missouri was intended to replace Blue Cross Blue Shield Of Kansas, Inc.'s liberal preferential allocation of Medicare dollars so the artificial inflation could continue.

**xi. Phase I of the Plan To Eliminate Missouri Medicaid And Effective Cost Auditing**

236. February 29, 2008 is judgment day for the hospital supply cartel defendant hospitals CoxHealth, Stormont-Vail Healthcare, Inc., and Saint Luke's Health System, Inc. who would lose the backroom practices of trusted Blue Cross Blue Shield Of Kansas, Inc. employees and the mysterious suspense audits and bulk audit free Medicare claims administration frequently enjoyed by the defendants and their bottom line.

237. The hospital supply cartel defendants CoxHealth and Saint Luke's Health System, Inc. along with the 39 other "nonprofit" Missouri hospital members of the defendants Volunteer Hospital Association of America, Inc. (VHA), VHA Mid-America, LLC, Novation LLC and Neoforma, Inc. now GHX, LLC, including BJC HealthCare, Freeman Health System in Joplin, St. Luke's Health System in Kansas City, Liberty Hospital, Skaggs Medical Center in Branson, St. Francis Medical Center in Cape Girardeau, and Citizens Memorial Hospital in Boliver all were depending on the defendant hospital supply cartel's scheme to eliminate Medicaid and replace the coverage with a new federal and state funded health insurance plan designed by the Republican National Committee to be piloted in Missouri.

238. The name of the new program was to be called "Insure Missouri". [www.insuremissouri.org](http://www.insuremissouri.org)

239. The plan calls for opting out of the federal Medicaid system and replacing it with a Missouri state pilot program that controlled and administered federal Medicare funds in a block grant, free of the audits and requirements of the federal Medicaid and Medicare programs.

240. The lifting of federal controls is specifically required by the defendants CoxHealth and Saint Luke's Health System, Inc. to replace the favorable preferential treatment enjoyed under

241. The "Insure Missouri" program was to be the centerpiece of Governor Matt Blunt's re-election campaign and was promoted by Blunt in his 2008 State of the State Address.

242. In 2005, to make way for the initiative that would eliminate federal oversight of Medicare and Medicaid expenditures required by the defendant cartel to artificially inflate hospital supply costs, Governor Matt Blunt cut 162,000 Missouri citizens off Medicaid.

243. The hospital supply cartel defendants, Karl Rove the former deputy chief of staff to the Bush administration and the Republican National Committee had worked extensively with Governor Matt Blunt, Henry Herschel and Ed Martin in secret meetings and utilizing email and "Blackberry" text messaging to determine state policy and administration rulemaking.

244. The Missouri House of Representatives were left out of the decision making process by Governor Matt Blunt's administration, even key representatives from his own party.

KOMU TV in Jefferson City, Missouri reported the dissension:

"Republican Rob Schaaf from St. Joseph says he wants to scrutinize Gov. Matt Blunt's Insure Missouri program. Blunt wants to sign up thousands of working parents by this spring, but that could be delayed by the study. Schaaf plans to finish before the state budget is approved. He says he wants to be sure the plan works before it gets money. Some lawmakers are annoyed that Blunt has already begun to seek bids from insurance companies. He plans to ask for \$43 million to pay for the program."

KOMU House Republicans Study New Health Plan Published: Friday, January 11, 2008 at 12:38 PM.

245. The Democrat House Minority leader, Representative Paul LeVota stated:

"If the governor is serious about improving health care in this state, he should start by reversing the disastrous cuts he imposed three years ago that resulted in 180,000 Missourians losing access to health-care services," House Minority Leader Paul LeVota, D-Independence, said. "This is something we can do now - without a tax increase and without resorting to questionable schemes that leave many Missourians behind."

246. Blunt stalls insurance plan kickoff, Governor wants time to sway legislators. By Jason Rosenbaum, Columbia Tribune, February 23, 2008.

247. On information and belief, the actual reason the Governor of Missouri Matt Blunt halted the registration of Missourians into the Insure-Missouri plan was due to the unplanned visit by Mike Leavitt, Secretary of the U.S. Department of Health and Human Services to Kansas City on February 20 , 2008.

248. On information and belief, Secretary Mike Leavitt communicated to the hospital supply cartel and Governor Matt Blunt that the U.S. Department of Health and Human Services could no longer endorse Missouri opting out of the administration of Medicaid and Medicare funds by federal contractors as had been earlier planned by the Bush administration under Karl Rove.

249. On information and belief, Secretary Mike Leavitt halted the plan because of renewed investigations of Governor Matt Blunt by the USDOJ as a result of the US Attorney firing scandal and Karl Rove's use of the US attorneys in a protection selling scheme.

#### **xii. Destroying Evidence in Covering Up Missouri Governor Matt Blunt's Work With the Cartel**

250. The defendant conspirators through the State of Missouri administrative branch have acted to conceal Governor Matt Blunt's involvement in furthering the interests of the hospital supply cartel.

251. In November 2007, the State of Missouri Office of Administration filed an ethics complaint against Scott Eckersley for acting ethically in his service to the State of Missouri and to Governor Matt Blunt.

252. Scott Eckersley, a Springfield attorney was deputy counsel to Missouri State Governor Matt Blunt but was fired on Sept. 28 because he had been raising questions about whether Blunt and his staff were handling e-mails in compliance with state record-retention and open-records laws.

253. Scott Eckersley was fired and defamed in retaliation for pointing out that Blunt's administration was destroying e-mails in violation of Missouri's open-records law.

254. The lawsuit by former Governor Blunt attorney Scott Eckersley alleges that Blunt's top aides ordered staff to delete e-mails to avoid having to provide information to the media and public under Missouri's Sunshine Law.

255. Scott Eckersley's former supervisor, Governor Blunt's Chief Counsel Henry Herschel, has been replaced and moved into another state job as retribution for allowing the Scott Eckersley's criticism of destroying email and records to become public.

256. Attorney Rich AuBuchon, General Counsel of the Office of Administration has fraudulently mislead the public in order to continue the concealment of illegal destruction of email, electronic text messages and other state records some of which are connected to the hospital supply cartel's scheme to switch Missouri off of Medicaid where their artificial inflation of hospital supply costs would go unchecked:

"Mr. Eckersley never once voiced a concern, never once wrote an e-mail, never once talked to other employees in the office evidencing any concern that the governor's office was not complying with the Sunshine Law or any record-retention policies."

257. Rich AuBuchon's misrepresentation contradicts the fact that Scott Eckersley sent emails to Rich Chrismer, Governor Blunt's Chief Counsel Henry Herschel and Ed Martin before September 20, 2007 advising Administration officials about the email retention policy that was being deliberately violated.

258. On or about October 25, 2007 Rich Aubuchon made the following intentional and written misrepresentation of facts to to the editorial page editor of the Springfield News-Leader, Tony Messenger:

"On Friday, September 28, 2007, Martin and Pryor met with Eckersley to discuss his departure. [...] He spoke about his role in the General Counsel's office and asserted for the first time his views about the policy of record retention."

259. Rich AuBuchon is assertions in the letter were known by AuBuchon to be false.

260. Aubuchon's letter makes clear, he had by that time made an exhaustive search through all Eckersley's emails and would therefore have been fully aware of the emails sent before September 28 from Eckersley to others in the governor's office stating his views about the violation of the record retention policy.

261. Governor Matt Blunt and the governor's office attorney Ed Martin had instructed Rich AuBuchon, the General Counsel of the Office of Administration to go forth and make misrepresentations to defend Governor Blunt against Scott Eckersley's public exposure of the violation of records retention laws and the intentional destruction or spoliation of email records because by early fall of 2007, the Missouri Governor knew he was a person of interest in the US Attorney firing investigations.

262. The petitioner's revelation on April 9, 2007 that former Western District of Missouri US Attorney Todd Graves had been fired caused the US Senate and House of Representatives Judiciary Committees to expand their respective investigations and Governor Matt Blunt and Ed Martin knew they had created an unlawful policy of destroying records to conceal Governor Matt Blunt's work in the hospital supply cartel scheme to switch Missouri off of Medicaid.

263. Governor Matt Blunt and Ed Martin knew that their direct misrepresentations regarding why Scott Eckersley would lead to federal felony indictments while Governor Matt Blunt still held office.

264. While Missouri newspapers were covering the controversy over the firing of Scott Eckersley and the failure of Governor Matt Blunt and Ed Martin to have a lawful policy regarding the retention of email and other electronic records, Missouri Attorney General Jay Nixon received information from a whistleblower in the administration that the back up tapes had been tampered with to eliminate evidence.

265. On January 22, 2008 Governor Matt Blunt announced he would not be running for re-election.

### **xiii. The Defendants Scheme To Fraudulently Obtain Federal Cancer Research Funds**

266. The Hall Family Foundation has been a central supporter of the Kansas City Area Life Sciences Institute, Inc. ("KCALSI") chaired by Irvine O. Hockaday Jr.

267. The Hall Family Foundation contributed over \$800,000.00 to KCALSI.

#### **(A) Irvine O. Hockaday Jr.**

268. Irvine O. Hockaday, Jr., is the retired president and chief executive officer of Hallmark Cards, Inc.

269. Mr. Hockaday is a celebrated Republican Party contributor:

"I believe that the way President Clinton has conducted himself in office is wanting," said Irvine O. Hockaday, the chief executive of Hallmark Cards, who said he was not thrilled by the choice but planned to vote for Mr. Dole.

"We're at a stage in the evolution of our democracy where the power of example has become disproportionately important," Mr. Hockaday said. "The inconsistencies in delivering on his word and the way the White House has handled Whitewater and Filegate issues all add up to a counterproductive behavioral example."

Above from "Executives Back Dole Despite Clinton Record" By Judith H. Dobrzynski, New York Times, October 18, 1996.

**(B) Kansas City Area Life Sciences Institute, Inc.**

270. The Kansas City Area Life Sciences Institute, Inc. is located at Kansas City 2405 Grand Blvd Suite 500, Kansas City, MO 64108, in the Hallmark, Crown Center area.

271. KCALSI became the coordinating entity for the larger effort to obtain a Kansas City Missouri National Cancer Center in the Plaza area Hospital facility of the defendant Saint Luke's Health System, Inc. a Novation LLC, VHA hospital.

272. Primarily seeing KCALSI as a lobbying organization to promote government life sciences research investment in the greater Kansas City area, Irvine O. Hockaday Jr. saw Saint Luke's Health System, Inc. as a more agile, entrepreneurial entity than the UMKC School of Medicine to develop into a National Cancer Center.

273. Other stakeholders in KCALSI like principals in the Kansas City Star have criticized UMKC's unwillingness to expand its innovative Doctor education program to include more students to meet the emergency shortage of medical doctors nationwide.

274. KCALSI promoted a scheme to staff their vision of a national Cancer research program at Saint Luke's with resident Doctors from the University of Kansas.

275. KCALSI called the project "The National Cancer Institute (NCI) Comprehensive Cancer Center Designation for KUMC."

276. This vision failed to account for the needs of Kansas hospitals and communities, especially in Wichita and the Western half of the state that depended on those same residents.

**(C) KU Medical School**

277. Instead KCALSI focused on the advantages to be gained from leveraging KU Medical School's academic credentials for the bountiful research dollars a designated National Cancer Center would qualify to receive, even as much as two billion dollars a year.

278. To secure the unusual arrangements of obtaining the KU Medical School students, researchers and residents for work across the state line into Missouri, KCALSI had to bring Kansas Governor Kathleen Sebelius on board and to also pry KU Medical School free of the KU Hospital

Authority in Kansas City, Kansas which was created to protect the state teaching hospital known popularly as KU Medical Center from Saint Luke's Health System, Inc.'s competition.

**(D) KU Hospital CEO Irene Cumming**

279. Irene Cumming, CEO of the University of Kansas Hospital was given a job by the hospital supply cartel defendant University Health System Consortium (UHC) on March 19, 2007 to help KCALSI take control of KU medical School.

280. Irvine O. Hockaday Jr. openly expressed his involvement in trying to merge KU Medical School with the defendant Saint Luke's Health System, Inc. a Novation LLC hospital chain to create a federally funded National Cancer Center:

“Much has been written about the affiliation discussions that have been going on between KUMC, KUH and SLH.  
I can report that Letters of Intent have been signed between these institutions to affiliate for purposes of teaching and research.  
These letters will be submitted to the Boards of both hospitals at their February meetings.  
The signed agreements describe a collaboration around teaching and research which would leverage the complimentary strengths of each institution.  
There is enormous promise in this.  
But, not all issues have been resolved—as they must be for a master affiliation agreement to be concluded. Gaps exist between KUMC and KUH on key issues.  
Importantly, however, the Chancellor of the University of Kansas unequivocally assured me and asked me to assure you that resolving these remaining issues will be top priority for KU. He will dedicate his full effort to that end.  
He further advised that the clear goal of the University is to complete this process and fulfill our vision of a national recognized life sciences center.  
This clear and unequivocal commitment by Chancellor Hemenway recognizes a central reality: there is one purpose of these affiliations and only one.  
And that is to accelerate and elevate medical research and patient care in our region...to the benefit of our residents and beyond.  
That is the only reason for affiliation.  
And it is every reason.  
To let parochial institutional interests, bureaucratic complexities or individual agendas to supersede our regional opportunity—even our obligation—would subvert the very purpose and hope of this conference.  
The Chancellor has said he will not let that happen.  
In a remarkable statement of support for the affiliation concept, a combination of foundations and businesses have committed a pool of approximately \$150M—and that could grow—to this effort...so long as the institutional leadership pursues a truly collaborative effort.  
You should know the names of those who have stepped forward in such unprecedented fashion. Cerner, DST, Embarq, GKCCF, Great Plains Energy, H&R Block, Hall Family Foundation, Hallmark  
Kansas City Southern, Sprint, YRC, Three anonymous  
Hopefully their leadership will be mirrored by that of University of Kansas and KU Hospital.  
This has not been easy...nor will the execution of such an undertaking be easy.  
Truman and UMKC have legitimate questions that will need to be addressed.”

Above from Hockaday 2007 speech to the Kansas City Chamber of Commerce.

**xiv. Novation LLC Plan To Launder Federal Cancer Research Funds Replacing Neoforma**

281. The defendants Novation LLC, VHA, VHA Mid-America, LLC, Thomas F. Spindler, Robert H. Bezanson, UHC, GHX LLC and Curt Nonomaque acted through Karl Rove who made repeated visits to Kansas City, Missouri gave assurances that the National Cancer Center revenue would be legitimately accounted for and used to fund research.

**(A) Novation LLC, VHA, VHA Mid-America, LLC**

282. The defendants Novation LLC, VHA, VHA Mid-America, LLC, Thomas F. Spindler, Robert H. Bezanson, UHC, GHX LLC and Curt Nonomaque omitted telling Missouri and Kansas State officials that the research dollars would replace the money the hospital supply cartel had previously laundered through Bob Zollars and Neoforma, Inc. to pay kickbacks to hospital administrators in exchange for acting contrary to their institutional interest and maintaining long term artificially inflated hospital supply contracts with Novation LLC.

283. The defendants Novation LLC, VHA, VHA Mid-America, LLC, Thomas F. Spindler, Robert H. Bezanson, UHC, GHX LLC and Curt Nonomaque acting through Karl Rove assured Missouri Governor Matt Blunt and Kansas Governor Kathleen Sebelius that Elias A. Zerhouni, M.D, director of The National Institutes of Health (NIH), a part of the U.S. Department of Health and Human Services would be able to cause John E. Niederhuber, M.D., the Director of the National Cancer Institute (NCI) to compromise its cancer research center standards and make the combination of the Novation LLC hospital Saint Luke's and the University of Kansas Medical School a National Cancer Institute (NCI)-designated Comprehensive Cancer Center.

**(B) Saint Luke's**

284. The defendant Saint Luke's, the University of Kansas Medical School and KCALI made representations of eligibility to the National Institute of Health when the Saint Luke's Plaza hospital and the KU Medical School did not have the research faculty, protocols or instructional curriculum to qualify and that the newly created institution would reasonably take as long as a decade to legitimately qualify.



**(C) USA Todd Graves Revealed to be Ninth US Attorney Wrongly Fired**

285. The petitioner being faced with his competitors' Novation LLC, Neoforma, Inc. VHA and UHC openly committing antitrust felonies and tens of thousands dying from loss of health insurance in the cartel's increasingly unaffordable healthcare, could not understand the federal subsidization of the monopoly with National Cancer funds given to Novation LLC.

286. Earlier, the Bush Administration had privatized the Veteran's Administration system into using the hospital supply cartel Novation, LLC for procurement.

287. The petitioner's April 9, 2007 press release stated:

"The Western District of Missouri US Attorney office under Todd P. Graves had been active in prosecuting Medicare fraud. Medical Supply Chain, Inc.'s civil antitrust suit against Texas based Novation LLC, Volunteer Hospital Association (VHA), University Health System Consortium (UHC) and Neoforma, Inc. alleges the companies formed a cartel and were involved in a scheme to monopolize hospital supplies to defraud Medicare through payments to administrators and kickbacks. The scheme resulted in almost all of Kansas City, Missouri St. Luke's hospital's one hundred million dollar supply budget being purchased through Novation LLC. St. Luke's merged with University of Kansas Hospital after Irene Cumming, CEO of the University of Kansas Hospital was given a job by University Health System Consortium (UHC) on March 19, 2007."

Above from MSC press release dated April 9, 2007. The press release had the effect of putting State of Kansas officials on notice of what was happening.

288. A public relations representative for KU Hospital called the petitioner that afternoon to demand the retraction of the release. Then in the evening called again withdrawing the request for retraction and merely pointing out details about the differences between KU Hospital and KU medical School.

**(D) Kansas State Legislature**

289. The Kansas State Legislature had some renewed questions however about the proposed merger.

290. As a net loser like Truman Medical Center and UMKC School of Medicine, the Kansas State Legislature's questions were about how the merger could go through without harming the significant public investment in KU School of Medicine to serve communities around Kansas with Doctors and Residents that would otherwise not be there for citizens of Kansas.

**(E) Governor Kathleen Sebelius**

291. Governor Kathleen Sebelius had recruited the Johnson County moderate Republican District Attorney Paul Morrison to run as a Democrat for Attorney General of Kansas, despite his repeated human rights violations in the Karbino Kuel matter and participation in the City of Topeka Housing and Urban Development (“HUD”) corruption scheme by attempting to prosecute the Kansas Army National Guardsman Mark Hunt and prevent his deployment to Iraq where he had volunteered to go and needed the income to support his family.

**(F) Kansas Attorney General Paul Morrison**

292. Governor Kathleen Sebelius had Kansas Attorney General Paul Morrison talk to members of the Kansas legislature and stake holders in the University of Kansas to counter the petitioner’s press release.

293. Kansas Attorney General Paul Morrison knew that the petitioner’s counsel Bret D. Landrith had been wrongfully disbarred to conceal federal crimes committed by Kansas State judicial branch officials.

**(G) KS Department of Revenue Secretary Joan Wagon**

294. Kansas Attorney General Paul Morrison met with David Martin Price and his attorney Craig Collins over the kidnapping of Baby C in retaliation for Price’s protected public speech against former Mayor Joan Wagon (later campaign treasurer for Governor Kathleen Sebelius and currently Secretary of the Kansas Department of Revenue).

295. The petitioner’s attorney Bret D. Landrith had represented David Martin Price *pro bono* on the appeal when Price’s Kansas State appointed attorney refused to do so.

296. David Martin Price (like Mark Hunt) was a crucial witness to the City of Topeka’s theft of HUD funds in the Kansas District Court Civil Rights and Fair Housing Act case *James Bolden v. City of Topeka*, brought by the petitioner’s attorney Bret D. Landrith.

297. Kansas Attorney General Paul Morrison before was shocked that the career staff of the Kansas Attorney General’s office had kept the matter from him and examined the evidence with Craig Collins concluding the child had been unlawfully taken.

298. Kansas Attorney General Paul Morrison promised to investigate and prosecute those responsible for the kidnapping and cover up.

**(H) K.B.I. Director Robert “Bob” E. Blecha**

299. Kansas Bureau of Investigation (“K.B.I.”) Director Robert “Bob” E. Blecha and his predecessor K.B.I. Director Larry Welch did not investigate the retaliatory kidnapping of Baby C or the cover-up during the court proceedings, though David Martin Price had repeatedly contacted them.

300. The petitioner avers the following six paragraphs on information and belief:

301. In Spring of 2007, Kansas Attorney General Paul Morrison repeatedly misrepresented to members of the Kansas legislature that the petitioner’s federal civil case against the defendants Novation LLC, VHA and UHC in *Medical Supply Chain, Inc. v. Novation, et al.*, KS Dist. case number 05-2299-CM ( Originally Western District of Missouri case #05-210-CV-W-ODS ) had no merit.

302. Kansas Attorney General Paul Morrison repeatedly misrepresented to members of the Kansas legislature that Novation LLC was not being investigated by the USDOJ over Medicare False Claims.

303. Kansas Attorney General Paul Morrison repeatedly misrepresented to members of the Kansas legislature that the petitioner’s claims were bogus because the petitioner’s attorney Bret D. Landrith had been disbarred by the State of Kansas for incompetence.

**xv. AG Paul Morrison’s Interference in Petitioner’s Antitrust Case To Protect Cancer Funds**

304. Kansas Attorney General Paul Morrison did not disclose to members of the Kansas legislature was that as Attorney General, Paul Morrison had directed Kansas Highway Patrol Superintendent Colonel William Seck to target the petitioner through the Kansas Highway Patrol and caused the petitioner’s father’s logistics business trucks to be stopped on Kansas Highways and his drivers to be arrested.

**(A) Kansas Highway Patrol Superintendent Colonel William Seck**

305. Kansas Attorney General Paul Morrison was acting on information from the hospital supply cartel defendants that the logistics business run by the petitioner for the petitioner’s father Samuel Lipari

Sr. who was dying of cancer provided the sole resources for the petitioner to maintain the action *Medical Supply Chain, Inc. v. Novation, et al.*, KS Dist. case number 05-2299-CM.

306. The purpose of Kansas Attorney General Paul Morrison's targeting the Lipari trucks through Kansas Highway Patrol Superintendent Colonel William Seck was to interfere with the petitioner's federal civil litigation *Medical Supply Chain, Inc. v. Novation, et al.*, KS Dist. case number 05-2299-CM against the defendants' hospital supply cartel.

**(B) KU Chancellor Robert Hemenway**

307. The defendant Saint Luke' at the encouragement of AG Paul Morrison, KCALI, Irvine O. Hockaday Jr. and University of Kansas Chancellor Robert Hemenway went ahead and announced that KU Med School and Saint Luke's had concluded their merger agreement solely for the purpose of obstructing members of the Kansas State Legislature from furthering their investigation of the petitioner's allegations.

**xvi. Kansas Officials' Interference In Petitioner's Antitrust Case For Defendants' Cancer Scheme**

308. Kansas Attorney Discipline Office officials and their agents including Stanton Hazlett, Gene E. Schroer, John J. Ambrosio, Isaac L. Diel, Rex A. Sharp and Gayle B. Larkin committed misconduct as detailed elsewhere in this petition to protect the hospital supply cartel's scheme to turn the defendant Novation LLC hospital Saint Luke's into a National Cancer Center.

309. The misconduct in the disbarment of the petitioner's counsel Bret D. Landrith during *Medical Supply Chain, Inc. v. Novation, et al.*, KS Dist. case number 05-2299-CM at the direction of the defendant Shughart, Thomson & Kilroy, P.C. through its senior partner US Magistrate James P. O'Hara and its attorney Andrew DeMarea is detailed in **Appendix Three**.

310. The misconduct of Kansas Highway Patrol officers under the direction of Kansas Highway Patrol Superintendent Colonel William Seck and Kansas Attorney General Paul Morrison in targeting the petitioner's trucks and drivers for the purpose of depriving the petitioner of the means to seek redress occurred because of the belief that Kansas would benefit from \$2 Billion dollars a year in health science research grants the Novation LLC hospital Saint Luke's at 4401 Wornall in Kansas City, Missouri would start receiving in a cancer research program headed currently by Thomas Jeffery Wieman, M.D.

311. The State of Kansas would benefit because the University of Kansas Medical School which the Novation LLC hospital St. Luke's needed to give the appearance it could qualify as a major research center would share in the research grant revenue.

312. The Kansas officials ignoring the discipline office's misconduct knew though the value of the conspiracy hub's offering.

313. Federal funds to the nation's largest medical research and education facilities had been significantly cut by the current administration.

314. More established and qualified institutions like the University of Missouri at Kansas City Medical School are having difficulty meeting their budgets for legitimate life saving ongoing research.

315. The Kansas officials believed they would benefit from the hospital supply cartel's ability to steer funds away from legitimately established research programs that could be used to build an actual qualifying research program that would meet what they were representing as already in existence.

#### **xvii. The Clean Up of the Failed Scheme to Divert Federal Cancer Research Funds**

316. On November 18<sup>th</sup>, 2007 the NY Times published a feature article by Mary Williams Walsh About an African American Novation LLC manager named Cynthia I. Fitzgerald who witnessed all the forms of conduct of the hospital supply cartel alleged in the plaintiff's federal antitrust complaint.

317. The manager had been the relator in a Medicare False Claims Act case held under seal by the USDOJ to protect Novation LLC, VHA and UHC.

318. When the petitioner finally succeeded in having US Attorney general Alberto Gonzales resign from office, the false claims action was finally released by the USDOJ shortly thereafter.

319. The Medicare False Claims Action is styled *US ex rel Cynthia I. Fitzgerald v. Novation LLC, VHA, University Healthcare Consortium et al*, N. Dist. Of Texas Case 3:03-cv-01589.

320. The Republican National Committee recognized that the hospital supply cartel's scheme to make the defendant hospital Saint Luke's a National Cancer Center and thereby replace Neoforma, Inc. as a vehicle to launder funds to hospital administrators participating in Novation LLC's long term anticompetitive contracts to artificially inflate hospital supplies had blown up.

321. The RNC knew the political fall out in Missouri, an important swing state was again in danger of determining which party controlled the Presidency and Congress after 2008.

322. The RNC lost the majority in the US Senate when US Senator Claire McCaskill prevailed over US Senator Jim Talent as a result of the political fall out from the first phase of the defendant hospital supply cartel's scheme to eliminate Medicaid and pilot state controlled health insurance plans using Medicare funds in Missouri at the beginning of Governor Matt Blunt's election.

**(A) President George W. Bush's Return Visit**

323. On January 31, 2008 President Bush flew again to Kansas City, Missouri.

324. President Bush went directly to Irvine O. Hockaday Jr.'s Hallmark Cards at Crown Center.

325. There President Bush and his staff cemented the details of a damage control plan for Karl Rove and Irvine O. Hockaday Jr.'s scheme compromising the integrity of Elias A. Zerhouni, M.D, director of The National Institutes of Health (NIH).

**(B) Irvine O. Hockaday Jr.**

326. Karl Rove and Irvine O. Hockaday Jr.'s exploitation of influence peddling to cause Elias A. Zerhouni, M.D and the U.S. Department of Health and Human Services to make John E. Niederhuber, M.D., the Director of the National Cancer Institute (NCI) compromise his agency's cancer research center standards and make the combination of the Novation LLC hospital Saint Luke's and the University of Kansas Medical School a National Cancer Institute (NCI)-designated Comprehensive Cancer Center had injured Kansas University and Kansas Governor Kathleen Sebelius' reputations.

**(C) Representative Samuel B. 'Sam' Graves**

327. After Hallmark Cards, the president's motorcade traveled to the private residence of Missouri US Congress Representative Samuel B. 'Sam' Graves, the brother of former US Attorney Todd Graves to help Representative Sam Graves raise money for re-election.

328. Irvine O. Hockaday Jr. and The Hall Family Foundation announced on February 20, 2008 that the Hall foundation is buying a Fairway office building in Johnson County that could under conditions be given to KU Med Center.

329. On February 21, 2008 Irvine O. Hockaday Jr. and The Hall Family Foundation announced a

\$43 million gift to fund Children's Mercy expansion, the Kansas City Urban Hospital that with doctors and residents from UMKC School of Medicine serves the Missouri population that would have been most injured by the defendants scheme to divert research funds to a Plaza Saint Luke's hospital without a curriculum or research staff so that Novation LLC could launder the money through the cartel.

#### **4. The Hospital Group Purchasing Enterprise To Artificially Inflate Prices**

330. During October 22 thru October 24 in 1979, a little known hospital logistics industry organization called the Group Purchasing Group held a conference in Vacation Village, San Diego California. At that event a seven page document was circulated among representatives of cooperative hospital purchasing groups which originated as buying agents for hospitals that became the blueprint for nationwide fraudulent price collusion in hospital supplies.

331. The recipients of the document were officials in Sun Health, American Medical Systems, HSCA, Cardinal and other precursors to today's two dominant hospital group purchasing organizations (GPO's), Novation and Premier. Eventually the document recipients would become the key officials in the later group purchasing organizations Amerinet, Novation and Premier and in oligarch hospital supply manufacturers including Johnson & Johnson and Baxter.

332. The document itself was presented as the perfect "sales story." Ways to communicate to hospitals that group purchasing cooperatives were creating value for their members. However, the document was instead employed as a blueprint for fraud. The membership "value" for hospitals being communicated was a deception about the cost of commodities sold through the cooperative.

333. The fraudulent scheme described a method for creating a false baseline for commodity pricing from an average of the purchase price of units of goods by kind taken from a broad sample of the goods as purchased in many hospitals in a variety of locations and in varying quantities. The data would then be used to create a manipulated average well above an easily obtainable volume discount.

334. The victim prospective hospital would also be subjected to the frightening prospects of price increases and shortages that would certainly befall hospitals that did not join the security of the purchasing cooperative.

335. The cooperative would then negotiate a "discounted" price below the false baseline and declare the difference as the "savings" to the hospital. The cooperatives derived the "savings" from

manipulated baseline costs of goods distributed and therefore had to disconnect the savings expectations of their member hospitals from an easily comparable commodity price. This “savings” was delivered to the member hospitals in the form of periodic, usually quarterly refunds, rebates and dividends.

336. The secret document described the upward manipulation of their customers’ expected costs as price “inflation.” The scheme included steadily increasing the baselines used to assist members and prospective members to compare the cooperative’s prices. This deception was described as “inflation based savings.”

337. The cooperatives exploited the foreseeable effect of this delayed repayment to hospitals. Hospitals billed third party payers including the government’s healthcare insurance funds Medicare, Medicaid and Champus the cooperative contract price or even the artificially inflated baseline price instead of the actual cost to the hospital once the delayed rebate was subtracted. The scheme depended upon the hospitals certifying to Medicare that the bills being presented for patient care conformed to the government’s accounting safeguards, including the Medicare Antikickback act.

338. To co-opt administrative officials in hospitals, hospital groups and independent distribution networks, the cooperatives and later the dominant GPO’s would encourage and facilitate maintaining two sets of books by issuing two different reports. One for the chief executive of the hospital or hospital group that fully detailed the various refunds, rebates, dividends, cash and cash equivalent payments and another for the materials director showing the units purchased at the cooperative price.

339. The attendees that employed the perfect sales story were able to insert their cooperative between the hospital and its suppliers and extract a membership fee. The precursor group purchasing organizations effectively sold “rebates” rather than price efficiency to their members. The business model was profitable for the cooperatives but had the potential of becoming extremely profitable if competition could be consolidated and the increased control of hospital supply distribution could be used to extract fees from product manufacturers.

340. The firm of Robert Betz Associates was utilized during 1985-86 to obtain a regulatory safe harbor from the Federal Trade Commission and the Department of Justice from the Medicare Antikickback statute to give the appearance of legitimacy to the Vacation Village conference attendees practice of paying periodic refunds, rebates and dividends to member hospitals. Robert Betz was successful and as a direct



result of his efforts, Department of Justice False Claims Act prosecutions have never since targeted the GPOs or their supplier cartel members.

341. Once some kickbacks in the form of administrative fees to cooperatives were officially allowed, the original Vacation Village conference attendees were able to use their illegally inflated revenue stream to acquire their law abiding hospital supply competitors and a frenzy of mergers and acquisitions resulted in two dominant group purchasing organizations, Premier and Novation, LLC that control 70% of the national market in hospital supplies.

342. Premier and Novation, LLC are required under the Antikickback safe harbor to disclose administrative fees in excess of 3% that are added to the cost of goods sold through their distribution networks. Premier and Novation, LLC have however expanded the fees charged member hospitals in the price of goods sold to include 12 to 15 separate “non administrative fees.” The names of the fees charged include “marketing,” “conversion” “stocking” “tracing” and other legitimate sounding supplemental costs and some overtly illegitimate fees including “channel fees” and “patronage fees”, however all such charges are outside of the safe harbor.

343. Premier and Novation, LLC use their market power to extract fees from manufacturers to have their products distributed through the monopolized distribution networks. The dominant GPO’s have expanded the Vacation Village “inflation savings” scheme to include managing suppliers to the group purchasing organization with planned price increases. Premier and Novation, LLC choose market leaders, a manufacturer with the largest market share to be the sole providers of each line of products used by their thousands of member hospitals.

344. The market leader is encouraged to set an increased list price for each good distributed by the GPO and to plan periodic increases in the list price. Premier and Novation, LLC then give the market leader a long term exclusive contract designed to eliminate competition for the market of goods used by the member hospitals. The market leader is secretly charged sizable fees by Premier and Novation, LLC for having its products distributed through the group purchasing organization. The market leader’s contract price to the member hospitals has been increased to include this fee to Premier and Novation, LLC and by design, the contract price always compares favorably to the manufacturer’s list price to further the “savings” deception on GPO members.

345. The “inflation savings” scheme is perpetuated to this day by annual inflation forecasts created and distributed by Premier and Novation, LLC. The documents appear to be legitimate economic forecasts to aid hospital-purchasing directors and include macroeconomic analysis of economic conditions that have the potential to effect product prices. For those uninitiated into the secrets of the fraud, the long-term contracts with the hospital’s GPO either Premier or Novation, LLC appear to have protected the hospital against the full effect of projected increases in the manufacturer’s list prices.

346. The fraud however is easily verified. The economic forecasts of VHA, Novation LLC and Premier speak for themselves. The lists of products and services and the projected price changes invariably show price increases exceeding the annual inflation index rate for the contract protected hospital supply market leader manufacturers and below annual inflation index price changes for non-hospital supply specialty items, even declining prices in some markets with competition. To offset these glaringly obvious comparisons, Novation LLC and Premier make much use (misuse) of macro inflationary data to project increases in commodities they do not control.

347. As an example, Novation LLC’s 2005 projections utilize temporary surges in products like farm produce from fuel cost increases in 2004 to creatively portray large increases in products not under contract providing cover for the fraudulently increased prices of the GPO’s participating suppliers.

348. Novation LLC and Premier also utilize a broad range of antitrust prohibited devices to coerce their member hospitals into continuing to be subjected to the artificially inflated healthcare supply costs. Hospitals are deceived into upgrading their dues based memberships into “shareholder” status and a higher rate of refunds, rebates, dividends, cash and cash equivalent payments.

349. Because of this illegal product-tying scheme, hospitals are forced to buy products they would not have otherwise purchased, fearing they will lose their vested interests in what are in actuality fictitious or deceptive rebates and discounts.

350. The hospitals are not given meaningful data regarding the perceived “savings” and are prevented from realizing they are paying their own refunds out of inflated costs at either membership and share holder remuneration rates.

351. Hospitals and hospital groups that achieve shareholder status are deceived into thinking that they will lose an “investment” in the achieved shareholder status if they withdraw from the GPO. However,

there is no retainable value in the shares of the GPO. Neither Novation LLC or Premier is publicly held and the “shares” are a Sherman Act prohibited tying device to prevent competition.

352. Another device to prevent competition in the hospital supply markets for Novation LLC and Premier members is the allocation of markets among participating suppliers and the GPO’s themselves. As part of their membership agreements Novation LLC and Premier require hospitals to obtain typically 6% of a product from a supplier that is not the GPO’s contracted market leader. Other contract requirements include participating in a smaller GPO to a limited share of the hospital’s purchases so that no hospital or hospital group is supplied exclusively by Premier or Novation, LLC to deceive the hospitals into thinking they are not monopolized and to provide a much lower volume inferior choice.

353. The contracts utilized by Novation LLC and Premier reward hospitals and hospital groups for increasing the market shares of selected product lines sold through the GPO’s. Hospital rebate, refund, dividend cash and cash substitute kickbacks are increased depending on how much use of the targeted products are increased.

354. Finally, Novation LLC and Premier employ contracts with harsh terms including severe discipline for hospitals and hospital groups that obtain products or services from competitive markets outside of the GPO. The sanctions can include embargo of supplies, stiff financial penalties and probationary periods of adverse financial terms as penalties for participating in a competitive market.

**a. The defendants’ hospital group purchasing enterprise**

355. Robert J. Baker, UHC, Curt Nonomaque and VHA distribute hospital supplies by corrupting administrators in health systems (hospitals, hospital groups and independent distribution networks) that support the provision of services or provide services to Medicare, Medicaid and Champus funded patients. UHC and VHA employ marketing schemes that provide remunerations to healthcare systems under contracts in violation of the federal Anti-Kickback Act, 42 U.S.C. § 1320a-7b.

356. Robert J. Baker, UHC, Curt Nonomaque and VHA encourage health systems to violate § 1320a-7b(b)(1) by receiving unlawful remunerations which are labeled as “rebates” and are paid periodically based on the products used by the health system and its loyalty to the terms of the anticompetitive exclusive agreement with the group purchasing organization, UHC, VHA or Premier which control 70% of the hospital supply market.

357. Robert J. Baker, UHC, Curt Nonomaque and VHA encourage their member hospitals to believe the group purchasing organizations are saving money by communicating the “value” of the rebates they are receiving as contrasted against the constantly increasing prices of hospital supplies allowed into UHC, VHA’s distribution system.

358. The corrupting subtext of Robert J. Baker, UHC, Curt Nonomaque and VHA’s marketing scheme is knowingly encouraging that third party payers, chiefly Medicare, Medicaid and Champus are billed for the artificially inflated list price, not the actual cost to the health system once the cash and cash substitute remunerations are factored in.

359. Robert J. Baker, UHC, Curt Nonomaque and VHA violate § 1320a-7b(b)(2) because they knowingly and willfully pay and offer to pay the unlawful remunerations. To provide cover for the spiraling prices in the product lists of chosen hospital suppliers who are protected from competition in UHC and VHA’s captive market, Robert J. Baker, UHC, Curt Nonomaque and VHA generate flawed studies that extol the discount in the form of rebates as a savings over the monopoly “list” price for healthcare supplies.

360. The constant threat to the corrupt marketing scheme employed by UHC and VHA is access to real data from which to evaluate the actual costs imposed upon member hospitals by the artificially inflated distribution system, which would be destabilized by independent actions of participating hospitals and suppliers.

361. Robert J. Baker, UHC, Curt Nonomaque and VHA have protected against this destabilizing by forcing hospitals and suppliers into long-term anticompetitive exclusive dealing contracts that harshly penalize every violation. Out of a misguided fear of antitrust liability, the contracts typically assign market share limiting each health system to 95% of its purchasing through the dominant group purchasing organization and require a token share of products to be purchased through a “competing” group purchasing organization.

362. Robert J. Baker, UHC, Curt Nonomaque and VHA have also commanded loyalty among member health systems by making cash and cash substitute payments to health system board members and chief administrators in return for participation in the cost inflation scheme.

363. Many forms of the Defendants' cash and cash substitute payments to hospital administrators are concealed as "consulting contracts" and are not reported to Medicare, Medicaid or Champus or subtracted from the costs of hospital supplies transferred to third party payers.

364. Robert J. Baker, UHC, Curt Nonomaque, VHA and Novation LLC have made use of payments to a third party in which hospital CEO's are stakeholders in order to conceal the commercial bribe nature of the payments. An organization called the Healthcare Research and Development Institute ([www.hrdi.com](http://www.hrdi.com)) has existed since the late 1990s. HRDI has approximately 35 members who are hospital CEOs (many are heavily involved in supporting GPOs). The Institute's clients are large manufacturers, publishers, and large consulting firms. Each client pays the Institute and the members of the Institute, who are also its shareholders, are paid out of the profits of the organization. For hospital CEOs to personally receive payments from companies that they do business with is a serious conflict of interest and a failure to fulfill their fiduciary responsibility.

365. UHC, VHA and Premier insist that the Antikickback Act provides a safe harbor for marketing programs offering discounts to health care providers and that its program was designed to take advantage of this safe harbor. See 42 U.S.C. § 1320a7b(b)(3)(A); 42 C.F.R. § 1001.952(h).

366. The rewards Robert J. Baker, UHC, Curt Nonomaque, VHA have given to health systems, hospital board members and purchasing managers have been paid in "cash or cash equivalents" and sometimes equity (stock shares) extorted from healthcare technology companies permitted to sell through the distribution system. This appears to be inconsistent with the group purchasing systems' safe harbor theory. See 42 C.F.R. § 1001.952(h)(5)(i) ("The term discount does not include – Cash payment or cash equivalents (except that rebates as defined in [42 C.F.R. § 1001.952(h)(4)] may be in the form of a check).").

367. Robert J. Baker, UHC, Curt Nonomaque and VHA also have protected their monopoly markets by forming a joint venture with each other, acquiring an electronic marketplace that could be co-opted as a false storefront for their illegal marketing scheme and finally by joining a joint venture created by the dominant suppliers with their competitor group purchasing organization, Premier.

368. UHC and VHA knowingly created an antitrust prohibited joint venture limited liability company called Novation, LLC for the purpose of unlawfully setting prices for hospital supplies sold through the formerly competing group purchasing organizations UHC and VHA's 2000 member hospitals.

369. Novation, LLC limited the suppliers whose products could have access to purchasing managers in the 2000 member hospitals. Novation, LLC used its power to determine which products were sold to the member hospitals not to command the best supplier pricing or fulfillment, but instead to guarantee that approved suppliers would participate in planned upward manipulation of list prices so that Robert J. Baker, UHC, Curt Nonomaque, VHA and Novation LLC could sell "discounts" or "rebates" to their member hospitals.

370. Robert J. Baker, UHC, Curt Nonomaque and VHA operated Novation LLC to control transactions between suppliers and member hospitals utilizing facsimile telephony (fax) and Electronic Data Interchange (EDI) ordering and fulfillment to keep track of hospital purchasing data and police supplier fulfillment and product pricing to ensure healthcare product prices were being continually manipulated upwards (artificially inflated).

371. When web based business to business electronic marketplaces showed the potential to dramatically increase hospital supply purchasing efficiency and lower hospital supply prices by facilitating direct communications between hospital groups and many competing product suppliers, Robert J. Baker, UHC, Curt Nonomaque, VHA and Novation LLC actively prevented Neoforma.com, an electronic marketplace that enabled hospital supplies to be purchased on the web from having access UHC and VHA's member hospital market and from carrying the products of Novation's suppliers.

372. Robert J. Baker, UHC, Curt Nonomaque, VHA and Novation LLC's power to exclude entrants from their market with long term anticompetitive contracts and a centralizing price controlling joint venture, allowed Neoforma.com to be taken over in a scheme to utilize the new web based electronic marketplace as a mere "storefront" for the existing inefficient bricks and mortar group purchasing organization Novation LLC and therefore secure UHC and VHA's price inflation scheme.

373. US Bancorp, US Bank, Andrew Cesere, Jerry Grundhoffer, Piper Jaffray And Andrew S. Duff participated in a syndicate to make a market in an initial offering of publicly traded shares for Neoforma, LLC and to manipulate the stock prices in an illicit "laddering" scheme of prearranged market

purchases to deceive stock investors into buying the shares at rapidly increasing share prices. US Bancorp, US Bank, Andrew Cesere, Jerry Grundhoffer, Piper Jaffray and Andrew S. Duff profited from this deceptive manipulation by receiving blocks of shares in Neoforma.com which they inflated in a “pump and dump scheme” through Piper Jaffray’s false recommendations to institutional fund managers and individual investors in reports about the bright future for the company without disclosing the brokerage’s conflict of interest and participation in the prior arranged scheme to keep Neoform.com from reaching its potential to increase hospital supply efficiency. Instead, the Defendants planned to suppress Neoforma.com’s technology to preserve Robert J. Baker, UHC, Curt Nonomaque, VHA and Novation LLC’s corrupt inefficiencies. US Bancorp and Piper Jaffray were fined and paid \$32.5 million fine to settle these securities fraud charges brought by with the SEC, NASD, NYSE, NASAA, and the New York Attorney General for the fraudulent research.

374. In March, 2000, Robert J. Baker, UHC, Curt Nonomaque, VHA, Novation LLC, Bob Zollars And Neoforma into deceiving the board of directors of Eclipsys, a software application company with superior technology to Neoforma.com and a positive cash flow into merging with Neoforma.com based on a long term contract to pay Neoforma.com a quarterly payment for providing an electronic marketplace on the web that Robert J. Baker, UHC, Curt Nonomaque, VHA and Novation LLC could control.

375. Neoforma, Inc.’s acquisition of Eclipsys and its stream of income was a threat to US Bancorp, US Bank, Andrew Cesere, Jerry Grundhoffer, Piper Jaffray And Andrew S. Duff’s substantial interests in the hospital supply and hospital supply in e-commerce markets. With Eclipsys, Robert Zollar had the potential to compete with GPO’s and bypass US Bancorp and Piper Jaffray’s ability to extort equity from new market entries trying to supply hospitals.

376. A negative analyst report on the merger by Piper Jaffray was used to control Robert Zollars and Neoforma, Inc. Investors did not understand that Novation LLC controlled what companies had access to thousands of hospitals and that Eclipsys superior technology was not as valuable to its directors as the ability to gain access to the monopolized hospital supply market. Investors expressed dismay concerning the Merger Agreement as follows:

“Investors may be unsettled by combining Eclipsys’ relatively high-margin software and services business with Neoforma’s extremely low-margin online [business-to-business] exchange. Furthermore, ECLP shareholders are frustrated about the ownership split between [Neoforma] and

[Eclipsys]. Neoforma and Eclipsys are getting 37% and 28% of the combined company, respectively.”

377. Similarly, a March 30,2000 report issued by analyst Caren Taylor, of E-Offering entitled “Neoforma to Acquire Eclipsys and Healthvision - - What’s Wrong With This Picture?” stated:

“As we take a step back and look at the big picture, we think there is something fundamentally wrong with this deal. We understand that Neoforma has had a difficult time accessing the buyer market, and we had heard recently that the company might miss their earnings target this quarter. In addition, we are somewhat dismayed by the behavior of Eclipsys - - first its initiation of a takeover bid of Shared Medical Systems Corp., which was dropped as of today, and now this sudden agreement to be acquired by Neoforma.com. This has left us wondering about the underlying issues within the Eclipsys organization. We would certainly not want to be the owners of these two stocks.”

378. The detriment to Eclipsys shareholders was also recognized in a March 30,2000 analyst report issued by Pacific Growth Equities, in which Eclipsys was lowered to a “Neutral” rating from its previous “Buy” rating. In a paragraph entitled “Terms are disappointing for Eclipsys shareholders”, the report stated:

“The terms of the deal call for Eclipsys to receive 1.34 shares of the new Company for each of its 37.5 million shares (50.25 million shares), Novation to receive 69.3 million shares, Healthvision (excluding the amounts attributable to Eclipsys and the VHA) to receive 0.444 shares for each share and Neoforma.com to control the rest for a total share count of 2 10 million shares. Because these companies are all valued very differently - a classic old economy and new economy merger - attributing relative value is tricky. However, Neoforma.com, a leader among the emerging online marketplaces, was essentially still in “show me” mode and had little revenue. On the other hand, Eclipsys was a profitable company with one of the strongest franchises at \$250 million in revenue last year...[t]hus we believe with less than 25% in the new company, the terms of the transaction are disappointing for Eclipsys shareholders.”

379. In addition, Eclipsys shareholders cannot rely on increased medical supply orders from the Novation agreement to fill in the gaps of the Merger Agreement. As explained in a March 30,2000 Reuters article, it is not clear how much revenue Neoforma can count on from the Novation arrangement. The article added mistakenly that with respect to the Novation deal, “Novation really can’t prevent their hospital customers from buying wherever they want to buy”

380. Robert J. Baker, UHC, Curt Nonomaque, VHA and Novation LLC agreed to a plan where Eclipsys would instead partner with Neoforma, Inc. and preserve the Defendants’ corrupt inefficiencies in exchange for a long term contract with quarterly payments of member hospital funds through Novation, LLC.

381. US Bancorp, US Bank, Andrew Cesere, Jerry Grundhoffer, Piper Jaffray And Andrew S. Duff deceived purchasers of Neoforma.com’s stock into thinking the firm’s e-commerce technology would



provide efficiency in the delivery of hospital supplies while knowing that no measurable difference in efficiency exists in the software technology EDI already employed by Novation LLC and the e-commerce html based software employed by Neoforma.com. US Bancorp, US Bank, Andrew Cesere, Jerry Grundhoffer, Piper Jaffray and Andrew S. Duff knew the only advantage leading to efficiency e-commerce software had over EDI was in facilitating the competition that Novation LLC's control of Neoforma.com was designed to prevent.

382. US Bancorp, US Bank, Andrew Cesere, Jerry Grundhoffer, Piper Jaffray And Andrew S. Duff also benefited because 70% of their venture funds were invested in healthcare technology companies and in exchange for their participation in the UHC and VHA scheme to keep hospital supply costs inflated, Piper Jaffray's healthcare technology companies received long term exclusive and anticompetitive contracts with Novation, LLC. This allowed US Bancorp and Piper Jaffray to profit greatly from underwriting the healthcare technology and supply chain management companies' initial public offerings.

#### **5. The Origin of Technology That Made GPO's Obsolete And Eliminated Two Distribution Levels**

383. On July 17, 1993 Physicians Management Group was founded to supply doctor's offices, clinics and nursing homes with discounted healthcare supplies at costs rivaling the volume purchasing enjoyed by hospitals. The founders recruited Samuel Lipari, who would later found the plaintiff Medical Supply for his expertise in mass merchandising, grocery and automotive distribution.

384. Samuel Lipari recognized that the volume pricing in even large group purchasing organizations failed to provide significant cost savings and Physicians Management Group was able to profit by splitting the savings its customers realized over volume pricing.

385. Samuel Lipari discovered that for every product line and from almost every vendor in the broad spectrum of hospital supplies from bedding, to pharmaceuticals, to instruments and even including food and janitorial supplies, the price of goods sold through hospital group purchasing organizations and even their contract suppliers and manufacturer's catalog price was substantially higher than the discounts he could obtain. Samuel Lipari found it easy to beat the "volume discounts" on even very small quantity purchases for widely dispersed customers with disproportionately high handling and transportation costs.

386. In order to increase Physicians Management Group's recognizable savings to aid its customers in evaluating value over products sourced from other vendors, Samuel Lipari innovated the use

of separate fees for Physicians Management Group's management, storage and delivery of healthcare supplies to allow customers to directly compare unit costs with other purchasing organizations. This innovation was a great aid to small doctor's practices and rural nursing homes which were empowered to make purchasing decisions on a direct comparison of value in cost per unit of product with the nation's larger volume hospital supply organizations while having the logistics costs of managing contracts, fulfillment, storage and delivery separated out in observable fees that could be tracked and competitively evaluated. Physicians Management Group's logistics services could then be partially or completely substituted with more competitive local alternatives.

387. The demand for Physicians Management Group's business model as an alternative supplier grew faster than the fledgling company with no access to operating capital could sustain. The first 25 independent representatives who had self financed their representation, a practice common among manufacturer's representatives in the automotive and mass merchandizing industries brought in four million dollars in contracts within the first 90 days and Physicians Management Group began shipping products to their clients.

388. Physicians Management Group's hospital group purchasing organization (GPO) supplier was Health Services Corporation of America (HSCA). Despite being one of the largest GPOs at the time with the most volume from which to leverage lowest prices HSCA's contract prices for its member customers were not as good as those Physicians Management Group obtained on purchases outside of the GPO. Even though Physicians Management Group was only fulfilling the requirements of small volume doctor's offices, clinics and nursing homes.

389. Without access to operating capital to sustain the high demand and growth, Physicians Management Group ceased operations and began returning all unshipped products to the appropriate manufacturer. Physicians Management Group Inc. filed for financial relief on October 15, 1996 and that relief was granted and the file closed on April 09, 1997.

390. On October 24, 1995 Samuel Lipari incorporated Medical Supply Management in the State of Missouri, a healthcare supplier that used technology to bundle services to assist hospitals, nursing homes, surgery centers and physician offices purchase track and pay for supplies again innovating and

adopting the role suppliers in the vastly more competitive mass merchandizing industry create value for their customers reducing administrative and product costs.

391. The effect of bundling services to purchase track and pay for supplies, utilizing Samuel Lipari's proprietary software was a revolutionary value adding innovation radically increasing efficiency and reducing costs that rendered group purchasing organizations obsolete. Group purchasing organizations operating without supply chain management software were physically unable to manually offer these value adding services, even with their enormous administrative offices and staff. Hospitals, unlike retail stores where supplier management of purchasing, tracking and paying for supplies as a competition enhancing service to customers originated, do not have the primary function of selling products. When suppliers start to purchase, track and pay for supplies as an included service for hospitals, hospital staffing can concentrate on the primary value creating function of providing healthcare services. The savings realized became exponential.

392. Group purchasing organizations and suppliers began a refusal to deal strategy to foreclose the new supply chain technology from the market for hospital supplies. Although HSCA had indicated a willingness to provide Medical Supply Management a membership in its GPO as they had done earlier for Physicians Management Group, HSCA later breached the membership contract with Medical Supply Management, stating the GPO was getting too much pressure from several suppliers.

393. Medical Supply Management replaced HSCA with MedEcon as its GPO, and as a member of MedEcon, Medical Supply Management's clients were entitled to contract pricing according to MedEcon's Manufacturer Agreements to supplement direct purchasing negotiated by Medical Supply Management itself.

394. As a supplier for health systems (hospital chains, hospitals, clinics and nursing homes) Medical Supply Management was what the industry labels an "independent distribution network." However, unlike other suppliers in healthcare, Medical Supply Management did not make exclusive contracts with particular manufacturers extracting profit from the rebate or kick back payment for exclusive access to a market. Medical Supply Management's compensation was driven only by its performance in saving costs for its customers. Consequently, Samuel Lipari's software was engineered as a "clearing house" resembling an insurance claims processing center of the period where many active competitors

utilize the center as a neutral utility. This was the first electronic marketplace in healthcare supplies and it was not based on the GPO model of extracting fees for anticompetitive advantage and monopolization. Later in 2001, the defendant US Bancorp and Piper Jaffray did a study authored by their senior analyst Daren Marhula and determined the model would save twenty three billion dollars a year over the current inefficient distribution system.

395. MedEcon like other GPO's had not invested in efficiency creating technologies like Medical Supply Management's supply chain management software due to the lack of competition in the market for hospital supplies. However, MedEcon enlisted Medical Supply Management transaction accounting and reporting data to police their suppliers' contract pricing compliance, giving birth to the current practice of GPOs to use electronic marketplace software to enforce anticompetitive minimum price maintenance in Sherman Act prohibited vertical price fixing between manufacturers, suppliers and vendors selling to hospitals through Neoforma, Inc. or GHX LLC's electronic marketplace.

396. Owen Healthcare, Inc., a wholly owned subsidiary of Cardinal Health, Inc., took a great interest in Medical Supply Management's business model. On the pretense of building a relationship with Medical Supply Management that would allow Samuel Lipari to sell Owen's lines of pharmaceuticals as an independent distribution network, Owen Healthcare obtained Medical Supply's business plan and proprietary information developed as of 1995.

397. Cardinal Health, Inc. utilized the information in the business plan describing the clearinghouse model and Robert Zollars, a Cardinal employee left Cardinal and later joined Neoforma, Inc. that had started up in 1996 to sell hospital supplies through the internet in an electronic marketplace.

398. A July 29, 1996 letter to Dennis M. Egan of Health Services Corporation of America (HSCA) described Medical Supply Management's use of the Web for customer ordering:

“The Contract portfolio information MSM clients will receive from HSCA will be utilized as follows:

The contract portfolios will reside on MSM server and will include all product data (Vendor, Product ID, Description, Unit of Measure, etc.). The product information (excluding pricing, terms and conditions) will be accessible on the World Wide Web and only after a client locates products on the World Wide Web, will the client then negotiate EDI with MSM server and MSM server provide pricing. Pricing will be provided via Internet through a (SS) link.”

**6. The Defendants Foreclosure of Competition In The Market For Hospital Supplies Through Exclusionary Contracts and Loyalty Agreements That Have The Same Exclusionary Effect.**

399. Novation and Neoforma create distribution agreements with incumbent and market leading device makers that amount to exclusionary agreements with hospitals given the arrangements between Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker and their member hospitals.

400. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker also enter into explicit exclusionary contracts with incumbent and market leading device manufacturers for a given product with which member hospitals are obliged to comply by agreement and/or coercive threats of expulsion or penalties for deviations.

401. Explicit exclusionary contracts are created when Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker forbid member hospitals from buying outside the cartel, either explicitly or by a practice of imposing penalties if they do.

402. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker exercise their power as exclusive purchasing agents for hospitals by declining to approve competing devices in a given product market, effectively imposing sole source device contract on member hospitals even when they do not do so explicitly.

403. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker exclude suppliers by agreement by allowing member hospitals to buy from other hospital supply vendors including Medical Supply but only for product categories not covered by the defendants cartel.

404. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker create some exclusionary contracts that are not imposed on member hospitals. Instead these member hospitals are free to accept or reject those exclusionary contracts on a contract-by-contract basis. Even with these “voluntary” exclusionary contracts which often cover multiple products and manufacturers, impose retroactive penalties on deviation, and ban

even considering rival products effectively bind member hospitals even when rivals for some products later offer a better and cheaper product.

405. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker in exchange for fees and commercial bribes from manufacturers also use incentives to join exclusionary contracts that anticompetitively exclude device rivals, harm consumers, and harm hospitals as a group.

406. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker get members to accept exclusionary contracts by co-opting hospital system directors and decision makers with cash and cash substitute payments often in the guise of consulting contracts, giving hospitals other compensating benefits, disfavoring hospitals who do not join the exclusionary scheme, and/or giving hospitals who do join a share of the supracompetitive profits earned from downstream consumers.

407. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker overtly illegal forms of exclusive dealing proceed through voluntary agreements with multiple willing hospital buyers even though the long run result is a reduction of competition harmful to the ultimate consumer and often to the hospital buyers themselves.

408. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker deceive governmental oversight by making anticompetitive agreements that do not require purchasing 100% from one manufacturer, but instead some other high percentage like 90 or 95%.

409. The defendants use a private brand through Novation, LLC called Novaplus. The Novaplus Pulse Oximetry Letter of Commitment (requiring 95% minimum of annual oximetry sensor purchases from Tyco-Nellcor, which had 88% of market); The defendants Novation Opportunity ® Spectrum I Portfolio Participation Agreement (requiring 95% minimum spanning 12 product categories; The Ethicon-Novation Commitment Document (offering different discounts for Novation hospitals buying 90 or 95% of sutures from Ethicon, which had 81% of suture market)

410. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake's exclusive dealing arrangements cause anticompetitive harm by raising costs for Medical Supply, other distributors, suppliers and manufacturers. The defendants accomplish their monopolization scheme by denying rivals the economies of scale they need to compete effectively.

411. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake create exclusive contracts by Volunteer Hospital Association and University Healthsystem Consortium's general terms of the Novation membership or the defendants' contracts for particular product areas also often require the hospital to use Novation as its sole purchasing agent for the covered product categories. In Novation's Opportunity® Spectrum I Portfolio Participation Agreement it states "Participant declares Novation as its sole supply cost management company for the purchase of products in the OPPORTUNITY product categories. . . . Participant will purchase OPPORTUNITY® products though Novation purchasing arrangements and will not purchase OPPORTUNITY products or any products that compete with OPPORTUNITY products though any other supply cost management company."

412. Some of Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake's hospital agreements provide that a signing hospital cannot solicit rival bids, examine rival products, or even entertain rival proposals to prevent Medical Supply or other Web based suppliers from providing competing product pricing.

413. Novation's Opportunity® Spectrum I Portfolio Participation Agreement states "Participant will not . . . participate in competitive product evaluations for OPPORTUNITY products." Novation's Opportunity® Spectrum II Portfolio Participation Agreement (same); Supply Partner Terms of Participation Opportunity® Spectrum I Portfolio states "**Health care organization agrees not to cause supply partner to incur defensive selling costs during the term of this Agreement (such as can be caused by entertaining proposals from other vendors or conducting product evaluations) . . .**" [emphasis added].

414. The defendants' Supply Partner Terms of Participation Opportunity® Spectrum II Portfolio states the same. See, e.g., Letter from James Bradley of Stuart Cardiology Group to Jake Langer of

Biotronik, Feb. 26, 2001 (“Hospital has entered into a GPO Novation contract, which provides only a single cardiac rhythm device vendor. The hospital is enforcing a 100% compliance to this vendor even though the actual contract states 95% compliance.”)

415. The defendants use contracts designed so that a hospital cannot consider rival products, to make it impossible for the hospital to obtain products outside of the agreement made with Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake even though on paper, the market is not restrained for the remaining 5-10%. The defendants’ agreements in practice rival devices are often 100% excluded from hospitals despite the nominal right to buy 5-10% from them.

416. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake conceal their exclusionary agreements by not requiring an absolute obligation to buy a high percentage from the favored supplier, but instead provide loyalty rebates if that high percentage is met. The Novaplus Pulse Oximetry Letter of Commitment (discount contingent on 95% compliance). Novation’s Opportunity ® Spectrum I Portfolio Participation Agreement also stated the same.

417. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake use loyalty rebates as a more sophisticated penalty on noncompliance than that imposed under a traditional illegal exclusive agreement to restrain trade, and one that is far more enforceable to boot.

418. With loyalty rebates, Novation can unilaterally impose a penalty for noncompliance by just withholding the quarterly or annual rebate without even going to court, and can easily prove in court the amount of past rebates that must be returned. In this way courts become the defendants instrument of monopolization.

419. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake use a termination penalty making the defendants’ exclusive dealing agreements violate the Sherman Antitrust Act. The defendants add additional penalties that are more enforceable including loyalty rebates that increase the exclusionary effect.



420. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake use loyalty rebates that are conditional on the buyer taking all or a high percentage of its purchases from a favored supplier and amount to *de facto* exclusive dealing. IIIA Areeda & Hovenkamp, Antitrust Law ¶768B3, AT 151 (1996); XI Hovenkamp, Antitrust Law ¶1807, at 115-18 (1998).

421. The defendants' loyalty payments are used to inflate prices.

(1) Here the rebates or discounts are conditioned on purchasing a high share of the buyer's purchases from the supplier. Thus, this is not a per item price cut that can be met by any equally efficient rival for any future purchases. Because the loyalty rebates are conditioned on getting a high share of the buyer's purchases, they leave rivals with access to only a lower share, which may not sustain economies of scale. When they do so, such loyalty rebates exclude rivals by worsening the rivals' efficiency.

(2) Once the hospital has committed to the arrangement, the rebates on all the hospital's past purchases are contingent on it meeting the loyalty threshold. Because loyalty commitments can last for five to seven years, a failure to comply can result not only in losing any rebate already earned in the current year but a demand for a return of all the rebates paid in all past years too. Novation's Opportunity ® Spectrum I Portfolio Participation Agreement states "all earned incentive payments received by the Participant will be subject to repayment if Participant fails to comply for the full [five-year] term of the OPPORTUNITY portfolio" with a 95% purchase commitment and other requirements; Novation's Opportunity ® Spectrum II Portfolio Participation Agreement states the same.

422. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake use the threat to reclaim all those rebates on past purchases to induce their member hospitals not to switch to making future purchases from a rival that is just as efficient and offering a lower price, effectively foreclosing Medical Supply from the market for hospital supplies.

423. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake's exclusionary programs cover multiple products and manufacturers rather than just one. Sometimes the defendants and a given incumbent manufacturer gives rebates or discounts on a whole product line if the buyer commits to making a high

percentage of their purchases from that manufacturer through Novation or Neoforma for each product in the line. [Ethicon-Novation Commitment Document (offering highest discount for Novation hospitals that buy 95% of sutures and 85% of endomechanical products from Ethicon, which had 81% of suture market and 61% of endomechanical products)]

424. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake even sometimes give rebates or discounts on menu of products from different manufacturers if the hospital commits to buying a high percentage of each product from the corresponding manufacturer on the menu. Novation's Opportunity® Spectrum I Portfolio Participation Agreement employs a 95% purchase commitment applies for twelve product categories covering five different manufacturers, though with one manufacturer for each product category. Novation's Opportunity® Spectrum II Portfolio Participation Agreement uses an 85-95% purchase commitment applying to 14 product categories covering 7 manufacturers.

425. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake's market foreclosure agreements applying to multiple products do not differ from a single product exclusive dealing arrangement, but only worsen the anticompetitive consequences. Through these programs, the defendants impose a penalty for a hospital or health system's failure to meet the threshold for any one product and in a multiple product loyalty agreement includes withholding or reclaiming rebates not only for that product but for all the other products as well. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake can then exacerbate the penalty for noncompliance after the rebates have been earned.

426. The defendants have foreclosed competition in the market for hospital supplies so that even at the very beginning of a rebate period, Medical Supply could not compete by simply offering a price on one of the products that matches or beats the price the incumbent manufacturer and Novation or Neoforma is charging for that product net of the program discount.

427. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake use their tremendous market power

of over 2000 hospitals and multiple product rebates or package discounts as an illegal tying agreement described in X Areeda, Elhauge & Hovenkamp, Antitrust Law ¶1758b, at 343-346 (1996).

428. The defendants' scheme is designed to keep a more efficient Web based vendor or suppliers from providing products to hospitals at lower prices than the cartel. For the hospital would have to take into account that even if it gets a better price from using the rival for that product, it loses the discount on all the other products in the program. The defendants' multi-product rebates are equivalent to sidepayments given to hospitals and health systems in exchange for agreeing to enhance the manufacturer selling through Novation and Neoforma's market power by excluding other sources in one product, with the sidepayments compensating these hospitals and health systems for the fact that this scheme increases the price they pay for the product whose market power was enhanced.

429. More generally, as noted above, even when a hospital does not formally make a multi-product commitment, Novation and Neoforma pressure or threaten with expulsion any member hospitals who do not comply with the commitment obligations made on any of the defendants' exclusionary agreements with incumbent manufacturers. Every single product exclusionary agreement of the defendants is effectively the same as a multi-product one and violates Sherman 1.

430. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake have inserted themselves between the manufacturer and consuming hospitals to extract fees from incumbent manufacturers. These fees or commercial bribes are solicited by Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake and are partially forwarded to member hospitals and more efficiently to hospital decision makers for high share commitments that are not volume-based at all, and are in actuality not rebates or discounts but a system of graft.

431. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake and their officers with the assistance of US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff have obtained cash and cash equivalents such as stock-options, warrants, or investment interests in the manufacturers favored by Novation and Neoforma's commitment programs.

432. The fees and bribes solicited by the defendants from favored manufacturers includes making monetary investments in the defendants' owned businesses including Neoforma, Inc., and giving Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Bake, US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff favorable business terms on other unrelated deals.

433. US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff also employed another tactic to extort funds from manufacturers and suppliers to enter the cartel. US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff have hosted annual healthcare conferences where healthcare technology companies seeking capitalization were forced to pay US Bancorp Piper Jaffray for underwriting their public offerings and favorable analyst coverage marketed as "independent" research to create demand for their shares as a pre initial public offering investment for qualified investors and most importantly to obtain an introduction to Novation and Neoforma officials to be favored by Novation's commitment programs.

434. US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff were paid large sums for a private meeting with Novation officials or for a prospective healthcare technology company's membership in a GPO institute for evaluating technologies.

435. Manufacturers and suppliers are forced to pay Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Bake fixed amounts that are not linked to volume in the form of: (1) fees given to have products considered, (2) annual administration fees, (3) marketing or endorsement fees, and (4) licensing fees for use of the NovaPlus brand name.

436. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Bake arrange for selected manufacturers and suppliers to pay hospitals fixed fees that are not dependent on the volume of sales in exchange for their commitment to achieving the target market shares. The fact that the payments given for loyalty commitments often are not proportional to volume worsens the anti-competitive effects. The defendants'

side-payments that are unrelated to sales volume are used because they are a more effective means of dividing monopoly profits created by seller-buyer collusion designed to enhance Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Bake's market power.

437. Sometimes Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Bake make agreements where the *de facto* exclusivity for any given product is granted not to one incumbent manufacturer or supplier, but to two of them. The defendants at times enforce a duopoly in some products to protect those manufacturers from competition by rivals and entrants. Regardless, the motive of the defendants is to restrict output and increase prices just as where the defendants enforce an absolute monopoly in a product or product line.”

438. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Bake have offered to allow rival products from unfavored manufacturers and suppliers to be offered if they would agree to increase their prices dramatically to levels higher than that being charged by the incumbent manufacturers and suppliers who benefit from the exclusionary agreements. For example, Retractable Technologies reported that Novation finally said it would agree to use safer needle technology from Retractable Technologies, but only if it were sold under Novation's private label for a price 270% higher than Retractable wanted to charge. Thomas Shaw, “Examine the ‘questionable’ side of GPOs,” Commentary, Dallas Business Journal (March 15, 1999) Mark Smith, “Innovative medical products: a clash of blood and money,” Houston Chronicle (April 18, 1999).

#### **7. The Monopolization Of The Hospital Supply Industry By The Defendants In Conspiracies And Combinations With Premier, GHX, LLC and Their Predecessor Corporations**

439. On September 28, 1998, Richard A. Heard, Senior Vice President, Diversified Services obtained via subterfuge the business plan and model created by Samuel Lipari for Medical Supply Management for the Defendants using a false offer to buy out the company from Samuel Lipari.

440. On November 23 and 24th, 1998, the Defendants obtained a demonstration in Salt Lake City, Utah of Samuel Lipari's software that allowed purchases of hospital supply products to be purchased and

managed via pc computers instead of the existing costly mainframes still used by the Defendants and their member hospitals and manufacturers to this day.

441. No agreement was finalized because with the demonstration and intellectual property obtained by the defendants through Richard A. Heard and Owen Health, a subsidiary of Cardinal which would later be part owned by the Defendant Novation, the Defendants had obtained the information they needed to prevent Medical Supply from obtaining capital to enter the marketplace by implementing their own electronic exchanges, diluting the value of Samuel Lipari's innovation with false substitutes that maintained the group purchasing organization enterprise of the Defendants to artificially inflate hospital supply costs.

442. In June 1999, MedAssets was formed, it acquired the two GPO's InSource and Axis Point Health Services and then Health Services Corporation of America (HSCA) that had provided supplies to Samuel Lipari's two earlier companies in May 2001.

443. On June 28, 1999, Neoforma, Inc. announced that it has elected Robert J. Zollars to the position of Chairman, President and Chief Executive Officer. He succeeds Jeff Kleck, Ph.D., co-founder of Neoforma. Zollars joins Neoforma from his position as an E.V.P. and Group President at Cardinal Health, Inc.

444. On March 7, 2000, Medibuy.com Inc. (Medibuy) a vendor of Internet-based health care supply purchasing software announced it was acquiring Premier Health Exchange LLC, the electronic commerce subsidiary of San Diego-based Premier Inc.

445. On September 1, 2000, Medibuy announced it was acquiring empactHealth.com, a Nashville, Tenn.-based purchasing Web portal started by hospital chain HCA--The Hospital Co. Shareholders of the privately held empactHealth.com, including HCA, will receive approximately 23% of medibuy.com. HCA's ownership interest in medibuy.com will total approximately 16%. Under the agreement, San Diego-based medibuy.com will become the exclusive electronic commerce partner to HCA's 204 hospitals, as well as several members of HCA's group purchasing organization, including LifePoint Hospitals, Triad Hospitals and Health Management Associates.

446. On February 6, 2000, Empacthealth announced that Columbia/HCA Healthcare Corp. is pumping up to \$40 million into empactHealth.com, which will charge hospitals and vendors a fee for

ordering supplies online. Columbia/HCA, the nation's largest for-profit hospital company, will be the firm's first customer.

447. On March 30, 2000, EmpactHealth announced today that it has signed a founding partner agreement with Health Management Associates (HMA), the premier operator of acute care hospitals in the Southeast and Southwest areas of non-urban America. Under the terms of the agreement, HMA will exclusively implement and use empactHealth's empactBuy solution for the online requisitioning, ordering and purchasing of all medical and non-medical supplies and services for the company's 32 acute care hospitals, and any facilities HMA adds in the future. HMA will also become a founding partner and an equity shareholder in empactHealth.

448. In the same announcement empactHealth stated it is a leading healthcare e-procurement company that synchronizes the business processes of healthcare buyers and suppliers to reduce costs and increase efficiency at both ends of the healthcare supply chain. The company has already signed a large critical mass of committed buyers, including more than 240 Columbia/HCA and Health Management Associates facilities that will use empactBuy, exclusively, as their e-procurement solution. In addition, empactHealth has commitments from Johnson & Johnson, Baxter, and Medline and a number of other suppliers to integrate their ERP business processes with empactSupply. empactHealth offers healthcare-specific e-procurement solutions based on foundation technology from Commerce One and adds valuable functions such as business intelligence, contract management, and inventory management. The company is Nashville-based and privately funded.

449. On March 29, 2000, Global Healthcare Exchange (GHX) was founded as a Limited Liability Company or a trust by five major healthcare manufacturing competitors: Johnson & Johnson Health Care Systems; GE Medical Systems; Baxter Healthcare Corp.; Medtronic USA, Inc. and Abbott Exchange, Inc. Much of the capitalization came from GE, the parent company of GE Medical. The name was also copied from GE's existing internet marketplace for hospital supplies Global Exchange and was part of a plan created by Jeffrey Immelt, then GE Medical president and now CEO of GE to prevent competition from electronic marketplaces that were independent from the manufacturers ability to control hospital supply distribution with kickbacks and commercial bribes.

450. On March 30, 2000 Neoforma announced the merger with Eclipsys Corporation (NASDAQ:

ECLP) and HEALTHvision, Inc. In conjunction with the agreements, Neoforma.com announced that it has signed an exclusive 10-year strategic agreement to provide e-commerce services for the 6,500 healthcare organizations participating in the purchasing programs of Novation, LLC, the world's largest buyer of medical supplies and the supply company of national healthcare alliances VHA Inc. and University HealthSystems Consortium (UHC). The companies later decided not to merge and instead to form a combination to jointly control the market for hospital supplies in e-commerce among Novation, LLC's customers.

451. On March 31, 2000 The New Healthcare Exchange was formed as a consortium of four of the US largest health care distributors, which include AmeriSource Health, Cardinal Health, Fisher Scientific International; and McKesson HBOC.

452. On May 25, 2000 Neoforma announced that it has reaffirmed its exclusive 10-year agreement to provide e-commerce procurement services for Novation. Neoforma.com also announced modifications to the structure and terms of its stock and warrant transactions with VHA Inc. and University HealthSystem Consortium (UHC), the national healthcare alliances that own Novation. Much of the public offering was subscribed to or purchased by Novation with funds owned by UHC and VHA member hospitals and without their knowledge and approval. The capitalization of Neoforma as a direct consequence rose to 1.2 billion dollars.

453. Neoforma also announced on May 25, 2000 that Eclipsys Corporation and HEALTHvision, Inc. agreed by mutual consent to terminate, effective immediately, their proposed mergers announced March 30, 2000. Instead, Neoforma.com, Eclipsys and HEALTHvision have entered into a strategic commercial relationship that will include a co-marketing and distribution arrangement between Neoforma.com and HEALTHvision. The arrangement includes the use of Eclipsys' eWebIT™ enterprise application integration (EAI) technology and professional services to enhance the integration of legacy applications with Neoforma.com's e-commerce platform.

454. Under the terms of the modified Novation agreements, VHA will receive 46.3 million shares, representing approximately 36% of Neoforma.com, and UHC will receive 11.3 million shares, representing approximately 9% of Neoforma.com. In addition, under new warrants to be issued to VHA and UHC, VHA and UHC will have the opportunity to earn up to 30.8 million and 7.5 million additional Neoforma.com



shares, respectively, over a four-year period by meeting certain performance targets. These targets are based upon the historical purchasing volume of VHA- and UHC-member healthcare organizations that sign up to use Neoforma.com's e-commerce exchange. The targets increase annually to total healthcare organizations representing approximately \$22 billion of combined purchasing volume at the end of the fourth year. The warrants will have a strike price of \$0.01. On a pro forma basis, including shares issuable upon the exercise of Neoforma.com's existing options and warrants, and VHA and UHC earning all of the shares underlying the performance-based warrants, Neoforma.com would have approximately 175 million shares outstanding.

455. The May 25, 2000 announcement also revealed the interlocking directors used by the Defendants to restrain trade in hospital supplies. In connection with the new agreements, two of the seven seats on the Neoforma.com Board of Directors will be filled by VHA designees after closing of the transaction. Subject to certain exceptions, VHA has agreed to vote any Neoforma.com shares it owns in excess of 20% of outstanding Neoforma.com stock in the same proportion as all other stockholders. Subject to certain exceptions, UHC has agreed to vote any Neoforma.com shares it owns in excess of 9% of outstanding Neoforma.com stock in the same proportion as all other stockholders. VHA and UHC have also agreed to certain other restrictions on acquisitions and transfers of Neoforma.com stock.

456. Mark McKenna, Novation's president, said, "We are excited about the advantages and value that our relationship with Neoforma.com offers our members in managing their supply expenses and inventories. We have already made significant progress in our relationship with Neoforma.com, including the establishment of supplier and buyer relationship management teams and a targeted implementation strategy. We anticipate members will be able to begin conducting purchase transactions as early as the third quarter of this year."

457. Curt Nonomaque, VHA executive vice president, noted, "We believe the increased efficiencies, reduced costs and ease-of-use features that Neoforma.com's B2B technology provides will significantly benefit both Novation's member organizations as well as other health care providers. In addition, VHA is creating a separate cooperative pool and will distribute Neoforma.com stock to our members in proportion to their dollar volume of purchases through Neoforma to further align incentives. In addition, the new strategic partnership involving Neoforma.com, HEALTHvision and Eclipsys offers

additional benefits for healthcare organizations seeking to integrate and use Internet technology. These agreements build on existing customer relationships with HEALTHvision and Eclipsys that provide the Web-based solutions that enable hospitals to connect with their physicians and communities."

458. Edward Schwartz, executive vice president at UHC, indicated, "We're pleased that the relationship with Neoforma.com is moving forward and that UHC's members will be able to gain value from it. We're also excited to announce that the first organization to sign up for the exchange through Novation is a UHC member, the Medical College of Virginia Hospitals in Richmond, Virginia."

459. Scott Decker, HEALTHvision chief executive officer, said, "We're pleased that through our relationships with Neoforma.com and Eclipsys we will be able to offer customers a comprehensive e-Health solution. HEALTHvision's customers will be able to quickly take advantage of Neoforma.com's expertise in supply chain management because Neoforma.com's contributions will nicely complement our existing services. HEALTHvision currently provides Web-based services to more than 1,200 hospitals, and the potential addition of e-commerce capabilities has already generated a great deal of interest and demand."

460. According to Zollars, the agreement with Novation creates immediate potential scale for Neoforma.com's e-commerce platform, as Novation represents more than 30% of U.S. procurement in healthcare with a membership that includes many of the nation's largest and most respected healthcare organizations and physicians. Novation also brings an existing base of relationships with a wide range of healthcare suppliers, essential to the success of an e-commerce offering. Novation plans to be active in recruiting other suppliers to the Neoforma.com marketplace. Novation already provides its alliance members with highly regarded and utilized Web-enabled tools, including an online catalog, Web-based tools for cross-referencing and standardization.

461. On September 01, 2000, Medibuy announced that shareholders of the privately held empactHealth.com, including HCA, will receive approximately 23% of medibuy.com. HCA's ownership interest in medibuy.com will total approximately 16%. Under the agreement, San Diego-based medibuy.com will become the exclusive electronic commerce partner to HCA's 204 hospitals, as well as several members of HCA's group purchasing organization, including LifePoint Hospitals, Triad Hospitals and Health Management Associates. medibuy.com will integrate empactHealth.com's technology into its

products and services.

462. On April 2001 Broadlane an electronic marketplace that comprises Tenet Healthcare Corp., Community Health Systems, Kaiser Permanente, Iasis Healthcare, Paracelsus Healthcare, Cleveland Clinic Foundation, Universal Health Services, Intermountain Health Care and Continuum Health Partners is formed.

463. On March 26, 2001 Medibuy and Premier announced the launch of Premier Exchange, an Internet portal providing electronic commerce services to Premier's 1,850 alliance members. San Diego-based Premier is a purchasing coalition for health care organizations. Medibuy, also in San Diego, is an electronic procurement vendor offering online supply ordering and management. Medibuy earlier this year acquired Premier's start-up online supply division.

464. On April 30, 2001 HealthNexis is created. Formerly the New Health Exchange, was founded in April 2000 by four of the nation's largest healthcare companies: AmeriSource Health Corporation (NYSE: AAS), Cardinal Health, Inc. (NYSE: CAH), Fisher Scientific International, Inc. (NYSE: FSH), and McKesson HBOC, Inc. (NYSE: MCK).

465. On November 26, 2001 Global Healthcare Exchange and Health Nexis announced they will combine their operations into a single Internet-based exchange, according to the organizations. Supplier members of both organizations will be connected to GHX's 70 integrated delivery networks (IDNs), which currently represent approximately 600 hospitals. The combined entity will operate as Global Healthcare Exchange LLC and will be headquartered in Westminster, Colorado. The merger announcement follows recent GHX alliances with Neoforma Inc. and AmeriNet Inc. Says GHX president Mike Mahoney, "Connectivity, participation, and cooperation among all members of the supply chain is critical for e-commerce to reach its full potential. HealthNexis and its membership of leading healthcare companies provide considerable e-commerce technology solutions and supply chain expertise. This combination reinforces GHX's commitment to building an open and neutral healthcare exchange to drive supply chain savings."

466. On October 09, 2002 Global Healthcare Exchange, LLC (GHX) and Neoforma, Inc. announced they have signed a definitive agreement to create the first comprehensive, integrated supply chain solution for the healthcare industry. Neoforma and GHX expect the strategic alliance to accelerate the

adoption of e-commerce by hospitals and suppliers, accelerating supply chain cost savings. The agreement enables Neoforma's hospital customers, including the 514 hospitals currently contracted to use the Neoforma-powered Marketplace@Novation™, to transact business with GHX's growing network of healthcare supplier members through the integrated solution, without the added cost of implementing and maintaining separate Internet connections. GHX's connected suppliers will be able to sell their products to Neoforma's current and future hospital customers through one Internet-based exchange, reducing implementation costs and simplifying the e-commerce strategy for these suppliers. GHX has signed more than 100 leading supplier members.

467. On December 11, 2002 Global Healthcare Exchange, LLC (GHX) and Medibuy, Inc. announced they have signed a definitive agreement to merge their two companies. The new company will be called Global Healthcare Exchange, LLC (GHX). Owned by many of the world's largest healthcare suppliers and providers, GHX and Medibuy will combine their respective Internet-based trading exchanges to create the largest single exchange in healthcare. More than 1400 hospitals and other healthcare facilities and 100 suppliers have already selected GHX or Medibuy as their preferred solution for purchasing healthcare products and supplies. Through this merger, the newly created exchange will provide a means for all participants in the healthcare supply chain, including provider organizations, manufacturers, group purchasing organizations (GPOs) and distributors, to benefit from improved efficiencies, cost reductions, process automation, and the adoption of industry standards.

468. The same December 11, 2002 announcement described the owners of GHX: "Originally founded in March 2000 by five major healthcare manufacturers: Johnson & Johnson Health Care Systems; GE Medical Systems; Baxter Healthcare Corp.; Medtronic USA, Inc.; Abbott Exchange, Inc., GHX has since realized its vision of being owned by representatives of the entire supply chain, including manufacturers, distributors, providers and group purchasing organizations. In addition to the founders, the original equity owners included: Siemens; Becton, Dickinson & Co.; Boston Scientific Corp., Tyco Healthcare Group, LP; Guidant Corp.; C.R. Bard, Inc.; B Braun Medical Inc. In December 2001, GHX combined business operations with the distributor-created exchange, HealthNexis, adding AmerisourceBergen Corp.; Cardinal Health, Inc.; Fisher Scientific International, Inc.; and McKesson Corp. to its list of owners. A year later, a merger with Medibuy Inc. rounded out the current ownership roster with

the addition of Premier, Inc., one of the nation's largest group purchasing organizations, and HCA, a national integrated delivery network (IDN).

469. While adopting Medical Supply's neutral marketplace concept, the same announcement reveals that GHX still maintains and is an instrument for enforcing the Defendant Novation and the unnamed coconspirator Premier's anticompetitive pricing achieved through contracts that horizontally and vertically fix prices:

“How does GHX benefit group purchasing organizations (GPOs)? GPOs are working with GHX to develop integrated contract management and other e-commerce services that enable their hospital members to more easily and efficiently **purchase contracted products at the agreed upon price.**” [Emphasis added]

470. On April 11, 2003, GHX, MedAssets HSCA announced that they have formed a Strategic Alliance. Global Healthcare Exchange and MedAssets HSCA, the St. Louis-based group purchasing organization, announced they have formed a strategic alliance they say will make e-commerce services available to more than 16,000 healthcare providers. Under the terms of the agreement, MedAssets has selected GHX as an integrated e-commerce solution for members of its GPO. As a result, MedAssets members will be able to purchase products via GHX's Internet-based trading exchange using pricing data contained in the CDQuick E-Catalog, supplemented by the accurate product data in the GHX AllSource catalog.

**a. US Bancorp's current President and CEO, Richard K. Davis**

471. Samuel Lipari, founder of Medical Supply Chain, has discovered US Bancorp's current President and CEO, Richard K. Davis continued the extortion of healthcare supplier companies that caused US Bank's parent company to jettison its investment-banking unit US Bancorp Piper Jaffray. Samuel Lipari's lawsuit against US Bank has been in federal court since October 2002.

472. The National Association of Securities Dealers in 2002 found a US Bancorp managing director, Scott Beardsley, threatened to discontinue coverage of Antigenics Inc., a biotechnology company that develops treatments for cancers and infectious diseases, if Antigenics did not select US Bancorp Piper Jaffray as a lead underwriter for a planned secondary stock offering. Antigenics required the capital to enter the hospital supply market controlled by Novation LLC. As part of a settlement with the NASD, US Bancorp was censured and fined \$250,000.

473. US Bancorp accepted liability for \$12.5 million in disgorgement and an additional \$12.5

million in penalties over US Bancorp Piper Jaffray's actions in falsely representing investment research related to capitalizing technology companies in IPO's on the NASDAQ stock exchange in 2003 as a result of Securities and Exchange Commission v. U.S. Bancorp Piper Jaffray Inc., 03 CV 2942 (WHP) (S.D.N.Y.).

474. US Bancorp underwrote the IPO for Neoforma, Inc.

475. Neoforma was taken private in 2007 by Novation LLC to conceal member hospital kickbacks laundered through the publicly traded company from the Ft. Worth, Texas US Department of Justice's False Claims Act investigation of Novation LLC for Medicare Fraud involving over 2500 Novation LLC hospitals.

476. The whistleblower case continues on as *United States ex rel. Cynthia I. Fitzgerald v. Novation LLC et al* N. Dist of TX Case no. 3:03-cv-01589 (2.) and has been covered by the New York Times (3.).

477. Jerry A. Grundhofer, the former CEO of US Bancorp attempted to disassociate US Bank from the notorious US Bancorp unit Piper Jaffray while Richard K. Davis was president by giving away Piper Jaffray to shareholders in a desperate spin off after two attempts to sell the investment unit at a hundred million dollar loss fell through in 2003.

478. However, Richard K. Davis continued a policy of using US Bank to interfere with healthcare technology companies attempting to enter the hospital supply market controlled by Novation LLC.

479. Samuel Lipari discovered US Bancorp's agents while under the control of CEO Richard K. Davis continued to obstruct Lipari's Medical Supply Chain's entry into the market for hospital supplies as recently as January 2008. Emails and court records now show that Shughart Thomson & Kilroy, P.C. acting at the direction of US Bancorp CEO Richard K. Davis repeatedly interfered with Lipari's efforts to obtain trial counsel in Medical Supply's Missouri litigation against General Electric (exchange symbol GE).

480. GE provided the \$600 million dollars to take Neoforma, Inc. private and prevent the USDOJ from obtaining access to hospital kickback records in the Medicare False Claims Act investigation. US Bancorp CEO Richard K. Davis attempted to conceal the fraud by omitting disclosure of the potential litigation liability in Securities and Exchange Commission filings as required under § 302 of the Sarbanes-

Oxley Act. KPMG LLP also endorsed the filings omitting the disclosures required under § 302 of the Sarbanes-Oxley Act.

## **8. Defendants' Tortious Interference with the Petitioner's Business Relations**

481. The petitioner has been injured by various combinations of the defendants tortiously interfering with the petitioner's business relationships and business expectancies.

### **a. Tortious Interference with Business Relations by Defendants Lathrop & Gage L.C.**

482. On or about April 11, 2005, the defendant Lathrop & Gage L.C. took advantage of its confidential attorney counsel relationship with McClatchey papers to advance Lathrop & Gage L.C.'s agenda of supporting Karl Rove's influence peddling scheme through the Republican National Committee that included the selling of USDOJ protection.

483. Lathrop & Gage L.C. caused the Independence Missouri newspaper the Examiner to confront its investigative reporter James Dornbrook over the first of a planned series of articles dealing with the state cuts in Medicaid brought by Governor Matt Blunt.

484. The immediate purpose of Lathrop & Gage L.C. was to prevent the petitioner from obtaining redress for General Electric's real estate obligations to the petitioner and thereby tortiously interfere in the petitioner's business expectancies and relationships with General Electric, General Electric Transportation and GE Capital.

485. Lathrop & Gage L.C. knew that the petitioner was relying on these expectancies to capitalize Medical Supply Chain, Inc.'s entry into the hospital supply market controlled by Novation LLC. and that the USDOJ was protecting Novation LLC.

486. The article featured the petitioner and his company Medical Supply Chain, Inc. and described his experience in federal court and his efforts to get redress and provide competition to lower costs in hospital supplies and increase access to affordable healthcare.

487. James Dornbrook and his paper the Examiner were subjected to Governor Matt Blunt and the Republican National Committee associated law firm Lathrop & Gage L.C.'s "fear counseling" to discourage news media from reporting on challenges to the healthcare interests of the defendant cartel members with false threats of publishing liability.

488. Missouri attorney Mark F. “Thor” Hearne who was the president of Lathrop & Gage L.C. coordinated Karl Rove and the Republican National Committee’s schemes to deprive African Americans of their vote with state legislators, secretaries of state and even county voting officials.

489. The schemes were so effective that even the petitioner’s witness, Bret D. Landrith, a Republican who had registered with the State of Kansas upon renewing his driver’s license for his new address in a traditionally African American Topeka Kansas neighborhood two blocks down from the Brown vs. Board of Education Memorial was challenged and no record of his change reached the Shawnee County polling station.

490. Mark F. “Thor” Hearne of Lathrop & Gage founded the National Republican Committee front group known as American Center for Voting Rights (“ACVR”).

491. The May 3<sup>rd</sup>, 2007 McClatchy was the story breaking the news that the Western District of Missouri US Attorney Todd Graves was the Ninth US Attorney improperly fired released by the petitioner on April 9<sup>th</sup>, 2007.

492. Missouri's Governor Matt Blunt is also a client of Lathrop & Gage L.C., and has been represented for years by Hearne. Blunt, Hearne, and the ACVR were all central to the McClatchy( the conglomerate that owns and runs the Kansas City Star) piece as originally filed by Greg Gordon and the role of each of them in the Kansas City Star's May 3<sup>rd</sup>, 2007 altered version of the story was subsequently removed or otherwise greatly watered down.

493. The McClatchy reporter called the petitioner on April 9<sup>th</sup> and verified the story with US Senate staffers permitted to see the unredacted US Justice Department emails.

494. The defendant Lathrop & Gage L.C. participated in the scheme by US Bancorp CEO, Richard K. Davis, Chairman Jerry Grundhofer and Shughart, Thompson & Kilroy PC to deprive the petitioner of the representation services of the petitioner’s original attorney Bret D. Landrith.

495. The petitioner’s witness David Price was an activist for judicial reform in Kansas and had successfully raised enough signatures to get the issue of returning to the election of judges on the Shawnee County ballot during an election.

496. The petitioner’s attorney Bret D. Landrith fulfilled his annual Kansas Bar obligation by representing David Price *pro bono* in a parental rights termination for adoption case on appeal.



497. Kansas State Republican Senator John L. Vratil is a managing partner of Lathrop & Gage L.C. and in his capacity as a member of the Kansas Judicial Council prepared a substitute reform of performance reporting in retention elections announced on December 26, 2005 to counter legislative efforts to change the selection process for judges.

498. The head of the Kansas Supreme Court panel hearing the disbarment case against the petitioner's attorney, Hon. Justice Donald L. Allegrucci chaired the Judicial Council, but did not disclose his participation in it. See "Judicial panel suggests reviews", Topeka Capital Journal December 26, 2005.

499. The face of the disbarment of the petitioner's attorney expressly finds Landrith should be disbarred for his association with David Price and David Price's protected speech unrelated to Landrith's representation of Price in violation of the Fourteenth Amendment's protection of the rights to Free Speech, Association and Redress.

500. Additionally the disbarment of Landrith is expressly for taking James Bolden's action to federal court where the Tenth Circuit overturned the dismissal on the brief written by Bret D. Landrith for James Bolden.

501. The direct goal of the hospital supply cartel acting through the defendant Lathrop & Gage L.C. in having further articles about the petitioner's litigation censored in the Independence Examiner, Kansas City Star, and the Topeka Capital Journal was to make it possible to influence the outcome of the petitioner's litigation in Kansas District Court to take a business expectancies and property rights from the petitioner without the possibility of a broader civic involvement causing the petitioner's claims to be taken seriously.

502. Later, Lathrop & Gage L.C. as advisor and counsel to other regional newspapers would help to cause the information on Bradley J. Schlozman's misconduct and the wrongful dismissal of US Attorney Todd Graves discovered by the petitioner to be under reported or excluded from coverage to further the hospital supply's protection from enforcement by the USDOJ or from Federal Trade Commission chairwoman, Deborah Platt Majoras and in maintaining Karl Rove and the Republican National's political control of US Department of Justice law enforcement for the purpose of protecting the enterprises' taking of property rights and market share from the petitioner.

#### **b. Tortious Interference with Business Relations**

**by Defendants Husch Blackwell Sanders LLP**

503. The defendant Husch Blackwell Sanders LLP (formerly Husch Eppenger LLC) tortiously interfered with several business relationships and expectancies of the petitioner.

504. On Wednesday, August 24th, 2005, the defendant Husch Blackwell Sanders LLP acting through its *pro hac vice* agent Jonathan L. Glecken of Arnold & Porter, LLP, lead counsel for the defendants Jeffrey R. Immelt, General Electric Company, General Electric Capital Business Asset Funding Corporation, GE Transportation Systems Global Signaling, LLC, threatened Medical Supply's counsel with the loss of his home if he did not withdraw Medical Supply's Missouri state law contract based claims.

**i. Interference with Business Relationship with Bret D. Landrith**

505. The defendant Husch Blackwell Sanders LLP acting through its *pro hac vice* agent Jonathan L. Glecken tortiously interfered with the business relationship between the petitioner and his legal counsel when Jonathan L. Glecken told the petitioner's counsel Bret D. Landrith that Landrith would have his house taken from him and all his property if he did not stop seeking redress for the petitioner even on the Missouri state law claims, which were not in dispute or subject to sanction.

506. Jonathan L. Glecken of Arnold & Porter, LLP, and John K. Power as agents of the defendant the defendant Husch Blackwell Sanders LLP and the hospital supply cartel members acting through Jeffrey R. Immelt, General Electric Company, General Electric Capital Business Asset Funding Corporation, GE Transportation Systems Global Signaling, LLC in *ex parte* communications with judicial branch officials and officials of the City of Blue Springs caused prejudice against the petitioner and his counsel to extort from them their property rights and the right to vindicate the petitioner's contract claims by representing GE as rich and powerful with the ability to control court outcomes and that the petitioner because he did not have money was not entitled to have his contract rights enforced.

**ii. Interference with Business Relationship with David Sperry**

507. Before filing the initial petition against the General Electric hospital supply cartel members in this court, the petitioner sought out Missouri licensed counsel experienced in commercial torts and contract law.

508. The only attorney the petitioner could find to visit with him about the claims was David Sperry of Independence, Missouri who had both experience in complex commercial litigation and the discovery disputes the petitioner anticipated would be the deciding issue in his claims.

509. After interviewing the petitioner, David Sperry was incredulous and shocked that the petitioner's prior counsel had been disbarred.

510. The defendant Husch Blackwell Sanders LLP succeeded in interfering with the business expectancy of legal representation and interfered with the petitioner's business relationship with David Sperry when Sperry declined to take the case because the power of the GE defendants over the court system as exercised by Husch Blackwell Sanders LLP and its *pro hac vice* agent Jonathan L. Glecken of Arnold & Porter, LLP would likely result in ethics complaints and in the case being transferred to a distant venue where it would be impossible for him to economically prosecute the case and his property rights in the contingent fee representation of the petitioner would be forfeited.

### **iii. Interference with Business Relationship with James C. Wirken and the Wirken Group**

511. After his Missouri state claims copied and pasted from the Kansas District Court complaint against the GE defendants where they were dismissed without prejudice survived a GE dismissal motion, the petitioner was referred to Mr. James C. Wirken founder and Chairman of the Wirkin Law Group in Kansas City, Missouri.

512. Mr. James C. Wirken graciously agreed to schedule an appointment to interview the petitioner on the possibility of representing his claims against GE.

513. However, before the actual meeting could take place, the present action defendant Husch Blackwell Sanders LLP through its employee John K. Power, MO Lic # 70448 had contacted James C. Wirken and his son who also was counsel at Wirkin Law Group to conduct several conversations to discourage the Wirkens from representing the petitioner.

514. During the conversations, Husch Blackwell Sanders LLP through John K. Power placed the Wirkens in fear of associating with the petitioner, falsely stating that the petitioner had been repeatedly sanctioned for baseless claims, that Husch Blackwell Sanders LLP's clients, the GE defendants were so powerful that no law firm could stand up to them and placing the Wirkens in fear that all the services

provided the petitioner would go uncompensated because the GE defendants would prevail no matter what in court.

515. Mr. James C. Wirken did politely interview the petitioner and charitably offered some constructive criticisms regarding the presentation of the case but strongly urged the petitioner to continue on *pro se*.

516. Mr. James C. Wirken stated that the Wirkin Group would have to charge \$7,500.00 to just read the complaint and would have to have a very sizeable retainer to cover any further research or meetings to just determine whether they would represent the petitioner.

517. The petitioner believed this was unusual for a cut and dried contract case that had already survived dismissal intact and where the petitioner had prevailed in obtaining a remand and understood that his business expectancy in the Wirkin Group's legal representation had been tortiously interfered with.

518. In January 2008, Mr. James C. Wirken did offer to visit with the petitioner about representing him in his GE litigation.

519. The petitioner is currently trying to overcome the additional economic injuries inflicted upon him by the defendants subsequent to the filing of the amended GE RICO petition in federal court, to be in a position again to pay for Wirkin Group's legal representation should it be offered.

**c. Tortious Interference with Business Relations  
by Defendants Jerry Grundhofer, Richard K. Davis,  
Husch Blackwell Sanders LLP, Shughart Thomson & Kilroy PC**

520. The defendants US Bancorp CEO, Richard K. Davis and Chairman Jerry Grundhofer through their defense counsel's detailed sworn affidavits for attorney's fees admit time spent with John K. Power and other attorneys of Husch Eppenger LLC now Husch Blackwell Sanders LLP met with Shughart Thomson & Kilroy PC attorneys for the purpose of coordinating General Electric's defense of contract and antitrust claims brought by the petitioner in *Medical Supply Chain, Inc. v. General Electric Company, et al.*, KS Dist. case number 03-2324-CM and where US Bancorp had no interest in the sale of lease contract between Medical Supply Chain, Inc. and General Electric.

521. The defendants Husch Blackwell Sanders LLP met with Shughart Thomson & Kilroy PC have repeatedly failed to produce these documents in the petitioner's discovery requests in this court and the Kansas District Court.

522. The petitioner has evidence that includes emails between the petitioner and Norman E. Siegel of Stueve Siegel Hanson, LLP that support a business relationship or expectancy was formed between himself and Stueve Siegel Hanson, LLP.

523. The petitioner sought to retain Norman E. Siegel to represent the petitioner's contract related claims against General Electric and state antitrust claims against General Electric's hospital supply co-conspirator Novation LLC in the 16<sup>th</sup> Circuit State of Missouri Court at Independence, Missouri.

524. The petitioner's cause was likely to return to federal court in the US District Court for the Western District of Missouri if the state representation could not be obtained in time.

525. During the course of communications about representation, the petitioner's claims against General Electric were removed to the Western District court. Seigel was one of only a handful of attorneys in the region that had the skills set required to replace the petitioner's original counsel in the General Electric and Novation LLC litigation whom the defendants had caused to be disbarred.

526. The defendant US Bancorp CEO, Richard K. Davis and Chairman Jerry Grundhofer through their agent Shughart, Thompson & Kilroy PC delegated the conduct of the litigation to Shughart, Thompson & Kilroy PC without controls in place to prevent fraud and racketeering as required under § 302 of the Sarbanes-Oxley Act and caused the petitioner's federal court litigation with General Electric in Missouri to be obstructed and interfered by depriving the petitioner of the representation of Stueve Siegel Hanson, LLP. during September to December of 2007.

527. The defendant US Bancorp CEO, Richard K. Davis and Chairman Jerry Grundhofer through their agent Shughart, Thompson & Kilroy PC caused the petitioner to be denied counsel and a prosecuting witness in the body of Norman E. Siegel and deprived the petitioner of the business expectancy of the legal representation of Stueve Siegel Hanson, LLP to prevent the petitioner from mitigating or covering for his damages from the defendants US Bank and US Bancorp's breach of the contract for escrow accounts and to prevent the petitioner from realizing the benefit from the contract or business expectancy with General Electric.

528. The defendants US Bank and US Bancorp interfered with and caused the petitioner to lose his business expectancy in the representation by Stueve Siegel Hanson, LLP and supplemented their continuing interference with the petitioner's business expectancy with General Electric by having their

agent Shughart Thompson & Kilroy, PC and the person Mark A. Olthoff, KS # 70339 fraudulently misrepresent the reputation of the petitioner and the petitioner's business and legal claims to Norman E. Siegel in the period from November 20th to December 8, 2007.

529. On December 7, 2008 the petitioner heard from Norman E. Siegel numerous misrepresentations about the viability of his claims that did not originate from case law or the documentation.

530. Some of the misrepresentations were clear "whoppers" like the litigation against the defendant conglomerate US Bancorp with banking and non-banking subsidiaries was not viable because banks cannot be liable for antitrust.

531. Notwithstanding the obvious, that US Bancorp is not a bank, Congress has specifically created policy specifically prohibiting banks anticompetitive acts in their client's market, creating a specific bank antitrust act The anti-tying section (Sec. 106) of the Bank Holding Company Act (BHCA) of 1970, and including banks in provisions of the Sherman and Clayton Antitrust Acts.

532. The overwhelming weight of American antitrust law reveals banks are not immune.

533. This misrepresentation of the law was communicated to Norman E. Siegel by the defendants US Bancorp President and CEO Richard K. Davis; Chairman Jerry Grundhofer; and Shughart Thomson & Kilroy PC through Mark A. Olthoff, KS # 70339 in the week preceding December 7, 2007.

534. The defendants US Bancorp President and CEO Richard K. Davis; Chairman Jerry Grundhofer; and Shughart Thomson & Kilroy PC through Mark A. Olthoff, KS # 70339 also communicated to Norman E. Siegel in the week preceding December 7, 2007 the intentional factual misrepresentation that the petitioner had claimed US Bank and US Bancorp monopolized banking services when the defendants and Mark A. Olthoff, KS # 70339 knew the petitioner had claimed that US Bank, US Bancorp and US Bancorp Piper Jaffray were in an anticompetitive agreement with Novation LLC to deprive healthcare technology companies of capital to enter the national hospital supply market and the national hospital supply market for supplies delivered through the internet by preventing new entrants from getting capitalized through the cartel's misconduct and group boycott.

535. The petitioner had also repeatedly supplied Mark A. Olthoff, KS # 70339 with the US Senate Judiciary Committee's Sub-Committee on Antitrust Business Rights and Competition's April 30, 2002, on

"Hospital Group Purchasing: Lowering Costs at the Expense of Patient Health and Medical Innovation?"

and specifically the hearing testimony of Ms. Elizabeth A. Weatherman, Managing Director Warburg Pincus, LLC. See Weatherman testimony about suppression of healthcare venture capital.

[http://judiciary.senate.gov/testimony.cfm?id=859&wit\\_id=2403](http://judiciary.senate.gov/testimony.cfm?id=859&wit_id=2403)

536. See also video of Ms. Elizabeth A. Weatherman's testimony and questioning in US Senate Holds Hearing to Review GPO Practices (Selected Testimony) <http://64.58.153.9/senatehearing2.wmv>

537. US Bancorp's current President and CEO, Richard K. Davis and Chairman Jerry Grundhofer are liable in their individual capacities for acting in excess of their corporate authority for tortious interference with the petitioner's General Electric lease sale contract on the conduct of their agent Shughart Thompson & Kilroy, PC to deprive the petitioner of counsel and interfere in the petitioner's representation of claims against the GE defendants in the State of Missouri 16<sup>th</sup> Circuit Court at Independence, Missouri and the US District Court for the Western District of Missouri.

538. US Bancorp's President and CEO, Richard K. Davis President and Chairman Jerry Grundhofer committed tortious interference with US Bank's contracts and relationship with the petitioner by omitting reference or disclosure of US Bancorp's (NYSE USB) liability in the Kansas District Court litigation from US Bancorp's securities filings as required under § 302 of the Sarbanes-Oxley Act, where the extended corporate governance repositied in the US Bancorp Board of Directors would have resulted in the contracts with the petitioner being honored and Medical Supply Chain entering the market for hospital supplies.

539. US Bancorp's President and CEO, Richard K. Davis is also liable for conduct by his agent Shughart Thompson & Kilroy PC to deny the petitioner discovery of evidence through extrinsic fraud to withhold evidence that can be used as exhibits by the petitioner in the present Kansas District Court litigation.

**d. Tortious Interference with Business Relationship Between Petitioner and US Senator Claire McCaskill Through Attempted Extortion Over Judy Jewsome Tortious For Helping Petitioner's Witness David Price by Defendants Lathrop & Gage L.C., Husch Blackwell Sanders LLP, and Shughart, Thompson & Kilroy PC**

540. The Hospital Supply Market includes highly regulated products and purchasing procedures created by the US Congress and administered through multiple federal agencies.

541. The petitioner's success in entering the hospital supply depends on the ability to obtain information and to seek redress from legislative aids in the offices of Missouri's US Senator, the Hon. Claire McCaskill and the petitioner's senior Congressional Representative, the Hon. Emmanuel Cleaver, II.

542. Tough neutral in the last election cycle, the petitioner's litigation and resulting documentation on [www.medicalsupplychain.com/news](http://www.medicalsupplychain.com/news) ended up shaping the debate in the narrow range of issues that shaped the election loss of former Senator Jim Talent as the state's electorate began to become concerned over the hospital supply cartel's artificial inflation of healthcare costs that resulted in the loss of healthcare insurance for many in Missouri's middle class and in the Missouri legislature being forced to cut thousands of Missourians from Medicare coverage. See *MSCI v. Novation et al* pg. 8-24  
<http://www.medicalsupplychain.com/pdf/MSC%20vs.%20Novation%20et%20al.pdf>

543. Missouri's US Senator, the Hon. Claire McCaskill and Kansas freshman Congresswoman the Hon. Nancy Boyda because of their surprising and unexpected successes have become influential leaders both in Washinton, D.C, the Democrat Party and in their respective districts.

544. The Hon. Nancy Boyda was elected in a close race with her popular Republican predecessor Jim Ryan when the petitioner's Kansas replacement attorney Dennis Hawver was tacked, pinned to the floor and arrested in front of President George W. Bush by US Secret Service men coordinating City of Topeka Police Department plain clothes detectives at a Ryan rally.

545. The television coverage of Hawver, a Republican candidate for Governor of Kansas being arrested and held over night for writing stop the war on the back of a paper sign given to all Ryan supporters was such a shocking repudiation of the US Constitution to Kansas voters that even some of Congressman Jim Ryan's Social Conservative Republican base stayed home or felt duty bound to respond to the event by voting for Boyda.

546. The petitioner sought out Missouri's US Senator, the Hon. Claire McCaskill immediately because of the effect of the warrantless wire tapping impeding the petitioner's use of Sprint Nextel cell phones and blocking the maintenance of the petitioner's web sites and email communications through SBC's internet service provider hosting as a result of the hospital supply cartel defendants' USDOJ protection under US Attorney General Alberto Gonzales.



547. The hospital supply cartel defendants through the deliberate networking with State of Kansas officials willing to disregard their oaths of office and violate clearly established rights of citizens to further the interests of Novation LLC and their agents directed Kansas state judicial branch employees acting in an investigative role to misuse their office injuring the petitioner a citizen of Missouri and his Missouri business.

**i. The defendants' retaliation against Judy Jawsome**

548. The defendants Lathrop & Gage L.C., Husch Blackwell Sanders LLP, and Shughart, Thompson & Kilroy PC through their networking with Kansas State Judicial Branch officials caused US Congresswoman Nancy Boyda's sole African American staff member Judy Jawsome in the Democrat congresswoman's Topeka Kansas office to be attacked as unfit to be admitted to the Kansas Bar.

549. Judy Jawsome was targeted by the defendants Lathrop & Gage L.C., Husch Blackwell Sanders LLP, and Shughart, Thompson & Kilroy PC because she had handled Congresswoman's Nancy Boyda's constituent services case for David Price seeking to have his kidnapped son returned.

550. David Price is a witness and associate of the petitioner who was a plaintiff in *United States ex rel Michael W. Lynch v Seyfarth Shaw et al.* Case no. 06-0316-CV-W- SOW in the Western District of Missouri and in injunction actions against the RICO defendant Seyfarth Shaw in Illinois and Kansas seeking to prevent Seyfarth Shaw from injuring the petitioner's associate Michael Lynch.

551. The defendant Missouri law firm Husch & Eppenger LLC represented the RICO defendant Seyfarth Shaw in Kansas District court against David Price.

552. Judy Jawsome was targeted by the defendants Lathrop & Gage L.C., Husch Blackwell Sanders LLP, and Shughart, Thompson & Kilroy PC because she set up a meeting between David Price and his counsel, Kansas attorney Craig Collins and Governor Kathleen Sebelius of Kansas and Kansas Attorney General Paul Morrison to hear the evidence of the kidnapping.

553. The meeting was then canceled at the last minute due to the influence of the defendants Lathrop & Gage L.C., Husch Blackwell Sanders LLP, and Shughart, Thompson & Kilroy PC.

554. The defendants Lathrop & Gage L.C., Husch Blackwell Sanders LLP, and Shughart, Thompson & Kilroy PC through staff members of the Kansas Attorney General's Office tried two more

times to keep David Price and his attorney Craig Collins from meeting with the Kansas Attorney General Paul Morrison before Price and Collins succeeded.

555. Kansas Attorney General Paul Morrison was shocked that the career staff of the Kansas Attorney General's office had kept the matter from him and examined the evidence concluding the child had been unlawfully taken and promising to investigate and prosecute those responsible for the kidnapping and cover up.

556. Fran Acree of the Kansas Attorney Admissions office used the false probable cause pretext that a private or personal email written by Judy Jewsome describing a policy of complete disclosure by applicants as unfair was a basis to investigate Judy Jewsome as unfit and to bring a complaint to prevent her from sitting for the July 2007 Kansas Bar examination.

557. Fran Acree is an attorney and in her capacity as head of the State of Kansas Office of Attorney Admissions was sworn to uphold the Constitution and knew she was violating the trust of the people of Kansas when she took the pretextual based action against Judy Jewsome on behalf of the Kansas Attorney Disciplinary Administrator Stanton Hazlett.

558. US Congresswoman Nancy Boyda's husband who is also a Kansas attorney, defended Judy Jewsome during the proceedings but had substantial reason to doubt they would prevail in the admission's hearing and even had cause to suggest that if Judy Jewsome would be allowed to sit for the examination, she should not count on being allowed to pass it, though Miss Jewsome was a good student and prior to attending law school worked in the Kansas Attorney General's office.

559. The effect of the attack on Judy Jewsome for performing protected constituent services, even though she was a federal employee and working in a US Congressional Office and additionally as an African American, a member of a protected class was so brazen a display of extral legal power by Lathrop & Gage L.C., Husch Blackwell Sanders LLP, and Shughart, Thompson & Kilroy PC that it has chilled and made ineffective the petitioner's business relationship with the staff of Missouri's US Senator, the Hon. Claire McCaskill.

560. In fact, the spreading fear from Lathrop & Gage L.C., Husch Blackwell Sanders LLP, and Shughart, Thompson & Kilroy PC's power has prevented even associates of the petitioner from obtaining redress through Congressional offices.

561. Kansas City, Missouri's senior Congressional Representative, the Hon. Emmanuel Cleaver did not respond to the petitioner's former attorney Bret D. Landrith's request for assistance as a new resident of Jackson County, MO and constituent of Cleaver's seeking help in ending retaliation based on Landrith's representation of the African American James Bolden in a federal Civil Rights action.

**e. Tortious Interference with Business Relationship  
Between Petitioner and Donna Huffman, the Petitioner's Trusted Advisor, Real Estate  
finance Expert and Potential Replacement Counsel by Defendants Lathrop & Gage L.C.,  
Husch Blackwell Sanders LLP, and Shughart, Thompson & Kilroy PC**

562. The defendants Lathrop & Gage L.C., Husch Blackwell Sanders LLP, and Shughart, Thompson & Kilroy PC through their networking with State of Kansas officials willing to disregard their oaths of office and violate clearly established rights of citizens to further the interests of the named defendants and their agents directed Kansas state judicial branch employees acting in an investigative role to misuse their office injuring the petitioner a citizen of Missouri and his Missouri business.

**i. The defendants' retaliation against Donna Huffman**

563. The petitioner sought out the real estate financial help of Donna Huffman, a mortgage broker licensed by the states of Kansas and Missouri and by the United States Department of Housing and Urban Development (H.U.D.) in January 2007 while considering a sale or purchase of his father's Lee's Summit town home to continue the stability of his father's trucking business while his father made arrangements to undergo extensive chemotherapy in treatment of bone cancer.

564. The defendants caused Donna Huffman to be retaliated against for her association with the petitioner and his witness Bret D. Landrith.

565. Two investigators from the Kansas Attorney Disciplinary Administrator Stanton Hazlett's office came to the petitioner's attorney Dennis Hawver's Ozawkie Kansas office around 8:30 am, Tuesday morning, November 27, 2007.

566. While there, the investigators and Dennis Hawver telephoned the petitioner's witness Bret D. Landrith in Lee's Summit, Missouri and revealed to Landrith that the Kansas Attorney Disciplinary Administrator was investigating Donna Huffman for fitness to be admitted to the Kansas Bar.

567. An investigator questioned Landrith about the Western District of Missouri case *Huffman v. ADP, Fidelity et al*, Case No. 05-CV-01205.

568. The Kansas Attorney Disciplinary Administrator investigators from Stanton Hazlett's office wanted to know if Landrith had represented Donna Huffman and if he had been paid by her.

569. The *Huffman v. ADP, Fidelity* action is available on Stanford Law School's class action website at [http://securities.stanford.edu/1035/ADP05\\_01](http://securities.stanford.edu/1035/ADP05_01)

570. Landrith informed the two investigators that he had represented Donna Huffman on the Western District of Missouri case and that he never received a fee or payment for the case because he was disbarred and no longer was entitled to the property right of contingent fees for his representation but that he thought it had settled because Huffman later gave him gratuitously \$2,000.00.

571. Landrith also informed the investigators that 100,000 to 300,000 members of the prospective class had been screwed out of their retirement because Donna Huffman could not find a replacement attorney after he had been disbarred.

572. Landrith reminded Kansas Attorney Disciplinary Administrator Stanton Hazlett's investigators that their office had disbarred him for bringing the Civil Rights claims of the African American James Bolden against the city of Topeka to federal court which Landrith had prevailed on in the Tenth Circuit Court of Appeals following disbarment and for representing James Bolden's witness against the City of Topeka theft of H.U.D. funds in an adoption appeal where David Price's infant son had been kidnapped.

573. The F.B.I. raided the City of Topeka front company Topeka City Homes which had been set up and controlled by the city after the Kansas District court erroneously dismissed Bolden's case and seized the records for violation of H.U.D. financial requirements.

574. As a result of Bret D. Landrith notifying the petitioner on November 27, 2007 of this meeting, the petitioner learned that his business associate Donna Huffman, an intelligent, capable woman who he trusts had been prevented from taking the July 2007 bar examination and was in danger of being found unfit by the influence of Kansas Attorney Disciplinary Administrator Stanton Hazlett's office over whether she is admitted in her home state and likely any other state to practice law on the false probable cause of being a plaintiff in the Western District of Missouri case *Huffman v. ADP, Fidelity et al*, Case No. 05-CV-01205 which was not frivolous and where the defendant Fidelity admitted to the claim

impermissible fees on some of the subject Simple IRA mutual funds in a mailing to the prospective ADP class members after the complaint was filed.

575. The defendant Husch Blackwell Sanders LLP represented the wrong doers in *ADP, Fidelity et al* and attempted to exploit both the disbarment of Huffman's counsel Bret D. Landrith by extrinsic fraud perpetrated by the defendant Shughart, Thompson & Kilroy PC.

576. While Huffman was unrepresented by counsel, Husch Blackwell Sanders LLP misrepresented to Huffman the current state of federal antitrust statutes to securities dealers and threatened Huffman with sanctions disparaging Landrith's representation of the petitioner and the antitrust outcomes obtained by the defendant Shughart, Thompson & Kilroy PC solely through extrinsic fraud on the Kansas District Court.

577. In a direct response to the above averment stated in the petitioner's action against GE, The defendants Lathrop & Gage L.C., Husch Blackwell Sanders LLP, and Shughart, Thompson & Kilroy PC through their networking with State of Kansas officials willing to disregard their oaths of office and violate federal law, caused Donna Huffman to be again denied the opportunity to take the Kansas Bar Exam.

578. Donna Huffman was prevented from representing the petitioner with the false assertion that she is mentally unfit based merely on the unconstitutional pretext that she asserted her individual legal rights *pro se* in protecting her child and won against the State of Kansas that was found to be abusing Huffman's rights in *Huffman v. State of Kansas Social & Rehabilitation Services*, Shawnee County Kansas District Court case.

579. The Kansas SRS had failed to protect Donna Huffman's child from documented physical abuse and continuing endangerment by Huffman's ex-husband, Chris W. Huffman a State Corridor Engineer for the Kansas Department of Transportation who's connections to the US Department of Transportation make him an important source and facilitator of million of dollars in federal highway funds for Governor Kathleen Sebelius.

580. The agents of the hospital supply cartel were aided by the noblesse oblige the State of Kansas extends higher level officials including Kansas Department of Transportation State Corridor Engineer Chris W. Huffman.

581. The defendants Lathrop & Gage L.C., Husch Blackwell Sanders LLP, and Shughart, Thompson & Kilroy PC caused the Kansas State Office of Attorney Admissions to make a determination that Huffman was mentally unfit to be an attorney despite the State of Kansas own expert witness testimony to the contrary.

582. The defendants Lathrop & Gage L.C., Husch Blackwell Sanders LLP, and Shughart, Thompson & Kilroy PC caused the Kansas State Office of Attorney Admissions and Gayle B. Larkin to seek a penalty against Donna Huffman that violates the Americans With Disabilities Act according to the Kansas State Office of Attorney Admissions and Gayle B. Larkin's own brief in another action against another Kansas law school graduate: *In the Matter of the Application of Ian Bruce Johnson For Admission to the Kansas Bar* Application No. 12320 Admissions Attorney's Hearing Brief, pp. 22-23 and thereby compromise the legitimacy of the Office of Attorney Admissions and the Judicial Branch of the State of Kansas which publicly states it conforms to:

"It is the policy of the Kansas Judicial Branch to comply with the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, *et seq.* The ADA prohibits discrimination against qualified individuals with disabilities on the basis of disability. Under the ADA, qualified individuals with disabilities shall not be excluded from participating in, or be denied the benefits of, the Kansas judicial system.

If you believe you have been excluded from participating in, or denied the benefits of, any court system function or program because of a disability, you may file a grievance with the judicial district's ADA officer or with Elizabeth Reimer, Office of Judicial Administration, 301 SW 10th, (785) 296-5309, TDD number 711, reimere@kscourts.org"

Kansas Court Administration ADA home page.

**f. Tortious Interference with Business Relations**

**by Defendants Novation LLC, Neoforma Inc., GHX, LLC, Robert J. Zollars, Volunteer Hospital Association of America, Inc., Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker, Jerry A. Grundhofer, Richard K. Davis, Andrew Cecere, The Piper Jaffray Companies, and Andrew S. Duff with petitioner's relationships and business expectancies with US Bank NA and US Bancorp, Inc.**

583. The petitioner had business relationships and business expectancies with US Bank NA and US Bancorp, Inc. See averments of relationships and expectancies incorporated herein from **Appendix Four**.

**g. Tortious Interference with Business Relations**

**by Defendants Novation LLC, Neoforma Inc., GHX, LLC, Robert J. Zollars, Volunteer Hospital Association of America, Inc., Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker, Jerry A. Grundhofer, Richard K. Davis, Andrew Cecere, The Piper Jaffray Companies, and Andrew S. Duff with petitioner's relationships and business expectancies with The General Electric Company**

584. The petitioner had business relationships and business expectancies with GE, GE Capital And GE Transportation See averments of relationships and expectancies incorporated herein from **Appendix Five**.

### **III. Claims**

The petitioner respectfully requests the court finds the defendants have violated the following counts:

#### **Count I § 416.031.1 RSMo**

The petitioner avers the following *per se* antitrust violations under the Missouri Antitrust Laws:

#### **(1) the defendants contracted, combined or conspired among each other;**

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

The petitioner avers that the defendants contracted with each other, combined together and or conspired to form a trust restraining commerce in hospital supplies, services related to managing hospital supplies and hospital supplies distributed through electronic marketplaces.

The petitioner avers VHA Mid-America, LLC has over 80% of Missouri's hospital beds ( the industry measure of market share for distribution of hospital supplies)

The petitioner avers that GHX, LLC has 100% of the market for hospital supplies sold to hospitals in Missouri through electronic marketplaces.

The petitioner avers that VHA Mid-America, LLC and GHX, LLC have participated in a group boycott to prevent the petitioner from entering the subject relevant markets in the geographic area of the State of Missouri through the creation of long term exclusionary contracts that prevent competition from the petitioner and/or allocate market share in a misguided scheme to evade the effect of antitrust laws.

#### **a. existence of a trust, contract, combination or conspiracy**

The defendant Saint Luke's Health System has an anticompetitive or exclusive dealing contract with the hospital supply cartel and with VHA/Novation LLC and is in combination with VHA/Novation LLC.

The defendant Saint Luke's Health System currently does over \$97 million dollars of business with VHA/Novation LLC

“SLHS is a shareholder and owner of VHA/Novation, the largest Group Purchasing Organization (GPO) in the nation. SLHS accessed 885 VHA/Novation contracts with a total spending of \$97 million in 2002. VHA/Novation validates the quality, market share, and availability of the various vendors, and provides SLHS as much as a 6% increase in discounts plus an average 2% rebate for every contract dollar spent, thereby supporting the achievement of SLH objectives. Most key suppliers are accessed through VHA/Novation.”

[http://baldrige.nist.gov/PDF\\_files/Saint\\_Lukes\\_Application\\_Summary.pdf](http://baldrige.nist.gov/PDF_files/Saint_Lukes_Application_Summary.pdf) at page 7

On information and belief, the VHA Mid-America, LLC hospital defendants Cox Health Care Services Of The Ozarks, Inc. (CoxHealth), and Stormont-Vail Healthcare, Inc. are members of VHA and believe themselves to be “owners” of Novation LLC, receiving 2% in kickbacks on purchases made providing they honor the group boycott agreement of purchasing over 90% of their hospital supplies through Novation, LLC.

**b. identification of co-conspirators who agreed with Novation LLC to injure the plaintiff**

The petitioner avers the following defendants have agreed with Novation LLC to injure the petitioner:

Neoforma Inc., GHX, LLC, Robert J. Zollars, Volunteer Hospital Association of America, Inc.(VHA), VHA Mid-America, LLC, Curt Nonomaque, Thomas F. Spindler, Robert H. Bezanson, Gary Duncan, Charles V. Robb, Sandra Van Trease, Micheal Terry, University Healthsystem Consortium (UHC), Robert J. Baker, Jerry A. Grundhofer, Richard K. Davis, Andrew Cecere, The Piper Jaffray Companies, Andrew S. Duff, Cox Health Care Services Of The Ozarks, Inc. (CoxHealth), Saint Luke's Health System, Inc., Stormont-Vail Healthcare, Inc., Shughart Thomson & Kilroy P.C., Husch Blackwell Sanders LLP, Lathrop & Gage L.C.

**c. business entity co-conspirators were separately incorporated**

The petitioner avers that Neoforma Inc., GHX, LLC, Volunteer Hospital Association of America, Inc.(VHA), VHA Mid-America, LLC, University Healthsystem Consortium (UHC), Cox Health Care Services Of The Ozarks, Inc. (CoxHealth), Saint Luke's Health System, Inc., Stormont-Vail Healthcare, Inc., Shughart Thomson & Kilroy P.C., Husch Blackwell Sanders LLP, and Lathrop & Gage L.C. are separately incorporated legally distinct entities.



**d. Officer and agent co-conspirators**

The petitioner avers that the named individual persons are properly defendants in this antitrust action for the following reasons:

**i. independent stake in achieving the object of the alleged conspiracy**

The petitioner avers that Robert J. Zollars, Thomas F. Spindler, Robert H. Bezanson, Gary Duncan, Charles V. Robb, Sandra Van Trease, Micheal Terry, Robert J. Baker, Jerry A. Grundhofer, Richard K. Davis, Andrew Cecere, and Andrew S. Duff each had or have a personal stake in restraining competition in hospital supplies in the subject relevant markets.

**ii. personal stake in achieving the object of the alleged conspiracy**

The petitioner avers that the defendant Robert J. Zollars was CEO of the defendant Neoforma, Inc and is the CEO of a hands free communication device manufacturer that is a healthcare supplier.

The petitioner avers that the defendant Thomas F. Spindler is an officer of both of the defendants Volunteer Hospital Association of America, Inc.(VHA), VHA Mid-America, LLC and is an agent of Novation, LLC and was an agent of Neoforma, Inc.

The petitioner avers that the defendant Robert H. Bezanson is both a Director of VHA Mid-America, LLC and CEO of Cox Health Care Services Of The Ozarks, Inc. (CoxHealth).

The petitioner avers that the defendant Gary Duncan is both a Director of VHA Mid-America, LLC and CEO of Freeman Health System.

The petitioner avers that the defendant Charles V. Robb is both a Director of VHA Mid-America, LLC and CFO of Saint Luke's Health System.

The petitioner avers that the defendant Sandra Van Trease is both a Director of VHA Mid-America, LLC and President of BJC HealthCare.

The petitioner avers that the defendant Micheal Terry is both a Director of VHA Mid-America, LLC and President/Chief Executive Officer of Salina Regional Health Center.

**(A) acting beyond the scope of their authority**

The petitioner avers that the defendants acted beyond the scope of their authority.

**(B) or for their own benefit.**

The petitioner avers that the defendants in the alternative acted for their own benefit.

**iii. co-conspirator officers**

The petitioner avers that the defendant co-conspirators' officers had or did the following:

**(A) actual knowledge**

The petitioner avers that the defendant co-conspirators' officers had actual knowledge of the complained of conduct.

**(B) or constructive knowledge of,**

The petitioner avers that the defendant co-conspirators' officers in the alternative had constructive knowledge of the complained of conduct.

**(C) and participated in, actionable wrongs**

The petitioner avers that the defendant co-conspirators' officers in the alternative had constructive knowledge of the complained of conduct.

**iv. co-conspirator agent law firms**

The petitioner avers that the defendants Shughart Thomson & Kilroy P.C., and Husch Blackwell Sanders LLP represented clients with conflicting interests against the petitioner.

The petitioner avers that the defendants Shughart Thomson & Kilroy P.C., and Husch Blackwell Sanders LLP represented their own respective organizational interests instead of the interests of their clients.

The petitioner avers that the defendants Shughart Thomson & Kilroy P.C. injured the petitioner instead of counseling US Bancorp, Inc. to settle with the petitioner paying US Bank.

The petitioner avers that the defendants Shughart Thomson & Kilroy P.C. counseled US Bank to not accept a settlement in February 2008 that was neutral and without financial loss for US Bancorp.

The petitioner avers that the defendants Husch Blackwell Sanders LLP counseled clients to act contrary to their respective interests to instead advance the interests of Husch Blackwell Sanders LLP in the State of Missouri.

The petitioner avers that the defendants Shughart Thomson & Kilroy P.C., and Husch Blackwell Sanders LLP elected not to perform professional services for or bill their clients in the hospital supply cartel for legally defending the petitioner's antitrust claims and never deposed witnesses or the petitioner.

Instead the defendants Shughart Thomson & Kilroy P.C., and Husch Blackwell Sanders LLP acted outside the authorization of their clients, outside of the scope of lawful conduct, risking the reputational interests, insurability and licensibility without proportional compensation solely to acquire narrow and hidden political power in the administration of the State of Missouri and within the Kansas District Court.

The petitioner avers that the defendant Lathrop & Gage L.C. used its representation of McClatchey newspapers to prevent the petitioner from obtaining redress in court.

The petitioner avers that the defendant Lathrop & Gage L.C. used Senator Vratil's position on the Kansas Judicial Commission in 2005 and 2006 to deprive the petitioner of counsel and to injure the petitioner's witness David Martin Price.

The petitioner avers that the defendant Lathrop & Gage L.C. acted out of the scope of their authority and in violation of law to advance the firm's Republican National Committee agenda and for the firm's profit and acquisition of power.

**(2) the combination or conspiracy produced adverse, anticompetitive effects within relevant product and geographic markets;**

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

**a. defendants' anti-competitive behavior injured consumers**

The petitioner avers the defendants' anti-competitive behavior injured consumers.

**b. defendants' anti-competitive behavior injured competition in the relevant market**

The petitioner avers the defendants' anti-competitive behavior injured competition in the relevant market.

**(3) that the objects of and the conduct pursuant to that contract or conspiracy were illegal;**

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

The petitioner avers that the goal of the defendants was the illegal monopolization of the relevant subject markets.

The petitioner avers that the defendants worked to accomplish their goal by committing felonies, interfering with the petitioner's contract property rights and rights to access to the courts, by committing fraud and prima facie tort in a manner that is civilly actionable.

**(4) that the plaintiff was injured as a proximate result of that conspiracy.**

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

**a. plaintiff was a competitor who suffered a direct antitrust injury**

The petitioner avers the petitioner was and is a competitor to the defendants and has suffered direct antitrust injuries.

**b. plaintiff's injury of the type the antitrust laws were intended to prevent**

The petitioner avers the petitioner's injuries were of the type and nature the antitrust laws were intended to prevent.

**Count II  
§ 416.031.2 RSMo**

The petitioner avers the defendants have a monopoly or have attempted to monopolize the subject relevant markets.

**A. Monopoly**

The petitioner avers that the defendants contracted with each other, combined together and or conspired and thereby enjoy a monopoly restraining commerce in hospital supplies, services related to managing hospital supplies and hospital supplies distributed through electronic marketplaces.

26 Mo. § 416.031(2) provides that "It is unlawful to monopolize, attempt to monopolize, or conspire to monopolize trade or commerce in this state."

Defendants collectively have at all times material to this complaint maintained, attempted to achieve and maintain, or combined or conspired to achieve and maintain, a monopoly over the sale of

hospital supplies, the sale of hospital supplies sold in e-commerce and the capitalization of healthcare technology companies and supply chain management companies.

**(1) the possession of monopoly power in the relevant market;**

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

**a. defendants have monopoly market share**

The petitioner avers the defendants have a monopoly market share of the subject relevant markets.

**i. defendants have acquired 80% of the hospital supply market**

The petitioner avers the defendants have acquired 80% of the market for hospital supplies in the relevant market.

**ii. defendants acquired 100% of the hospital supplies distributed through electronic marketplaces**

The petitioner avers the defendants have acquired 100% of the market for hospital supplies distributed through electronic marketplaces in the relevant market.

**iii. defendants acquired near exclusive distribution to VHA, UHC and member hospitals**

The petitioner avers the defendants have acquired near exclusive distribution to the VHA and UHC member hospitals and that any remainder is controlled by the defendants in a misguided belief that anticompetitive contracts mandating a small percentage purchased outside of Novation LLC , Neoforma, Inc. or GHX LLC evaded Missouri's antitrust statutes.

**b. defendants possess Monopoly power**

The petitioner avers the defendants possess monopoly power in the subject relevant markets.

**i. defendants have power to fix prices**

The petitioner avers the defendants have the power to fix prices in the subject relevant markets.

**ii. defendants have power to exclude competition**

The petitioner avers the defendants have the power to exclude competition.

**iii. defendants have the power to extort fees from the manufacturers whose products they distribute**

The petitioner avers the defendants have the power to extort fees from the manufacturers and distributors of the products the defendants distribute or allow to be purchased by their member hospitals.

The petitioner hereby incorporates by reference the averments in *US ex rel Cynthia I. Fitzgerald v. Novation LLC, VHA, University Healthcare Consortium et al*, N. Dist. Of Texas Case 3:03-cv-01589. See

## **Appendix Six**

### **(2) defendants willfully acquired and maintain their market power**

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

The petitioner avers the defendants have acted intentionally and willfully to acquire and maintain their market power in the subject relevant markets.

#### **a. the defendants did not enjoy market power growth or development as a consequence of**

The petitioner avers the defendants did not enjoy market power growth or development as a consequence of any of the following reasons:

##### **i. a superior product,**

The petitioner avers the defendants did not enjoy market power growth or development as a consequence of a superior product.

##### **ii. business acumen**

The petitioner avers the defendants did not enjoy market power growth or development as a consequence of business acumen.

##### **iii. or historic accident**

The petitioner avers the defendants did not enjoy market power growth or development as a consequence of historic accident.

#### **b. defendants monopoly power was not obtained for**

The petitioner avers the defendants monopoly power was not obtained for the following reasons:

##### **i. a valid business reason**

The petitioner avers the defendants monopoly power has not resulted or been created out of a valid business reason.

**ii. or concern for efficiency**

The petitioner avers the defendants monopoly power has not resulted or been created out of a concern for efficiency.

**B. Attempted Monopoly**

The petitioner avers the defendants have attempted to monopolize the subject relevant markets.

**(1) defendants have a specific intent to accomplish the illegal result;**

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

The defendants intentionally have worked to establish an illegal monopoly.

**(2) defendants have a dangerous probability of success.**

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

The defendants have a dangerous probability of monopolizing the subject relevant markets.

**i. relevant markets**

The petitioner avers the following relevant markets:

**(A) product market**

The petitioner avers that the markets for hospital supplies and the market for managing hospital supplies was subjected to the defendants prohibited anticompetitive conduct.

**attitudes of hospital consumers**

The petitioner required market entry capitalization to train hospital customers to adopt an open electronic marketplace.

The defendants required or forced Missouri hospitals and nursing homes to sign longterm contracts with Neoforma, Inc. and later GHX LLC to continue to receive the “savings” Novation LLC was represented as benefiting hospitals.

Missouri hospitals and nursing homes were deceived into believing GHX LLC standardization of suppliers through xml tags prevented doing business with competing online distributors.

**reactions of hospital consumers**

Missouri hospitals and nursing homes were deceived into believing purchasing through the petitioner or another electronic marketplace would cause their institution to lose substantial and legitimate kickbacks from Novation LLC and the hospital supply cartel.

**(B) geographic market**

The geographic area of the subject relevant markets is the State of Missouri.

**ii. relative submarket**

The relevant submarket is hospital supplies distributed through electronic marketplaces.

**(A) product market**

The relevant submarket is hospital supplies distributed through electronic marketplaces was created in the early 1990's by the petitioner in a business model that was stolen by Cardinal Health and became Neoforma, Inc.

**attitudes of hospital consumers**

The petitioner required market entry capitalization to train hospital customers to adopt an open electronic marketplace.

The defendants required or forced Missouri hospitals and nursing homes to sign longterm contracts with Neoforma, Inc. and later GHX LLC to continue to receive the "savings" Novation LLC was represented as benefiting hospitals.

Missouri hospitals and nursing homes were deceived into believing GHX LLC standardization of suppliers through xml tags prevented doing business with competing online distributors.

**reactions of hospital consumers**

Missouri hospitals and nursing homes were deceived into believing purchasing through the petitioner or another electronic marketplace would cause their institution to lose substantial and legitimate kickbacks from Novation LLC and the hospital supply cartel.



**(B) geographic market**

The geographic area of the subject relevant markets is the State of Missouri.

**C. Damages from Monopoly and Attempted Monopoly**

As a direct result defendants' unlawful activities, petitioner has suffered and will continue to suffer substantial injuries and damages to their businesses and property.

Petitioner is entitled to recover actual damages in the amount of approximately \$500,000,000.00, multiplied by three for total damages of approximately \$1,500,000,000.00, and the cost of suit including a reasonable attorney's fee.

**Count III  
Conspiracy to Violate § 416.031(2)**

**(1) defendants have an agreement or understanding;**

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

**(2) between two or more persons;**

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

**(3) to do unlawful acts prohibited by §§ 416.011 to 416.161, RSMo or to do a lawful act by unlawful means.**

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

**Count IV  
Tortious Interference with Business Relations**

The petitioner avers the defendants have caused and conspired to cause tortuous interference with the petitioner's agreements, contracts, and business relationships.

**(1) Plaintiff had established a contract or valid business relationship or expectancy (not necessarily a contract) to obtain the capital to enter the market for hospital supplies;**

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

Petitioner's individual representative candidate trust accounts with US Bank and its contract to sale the office building lease to GE and General Electric Transportation Co. were required for Medical Supply to enter the markets for hospital supplies and hospital supplies for e-commerce and were contracts or business expectancies said activities were intended by defendants and performed by defendants.

Petitioner's counsel and potential legal representatives were required to obtain petitioner's property rights and benefits from bargains.

Petitioner's counsel and potential legal representatives are required to obtain capital and other inputs to compete with the defendants.

**(2) defendants' knowledge of the contract or relationship;**

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

Defendants knew of said contracts or business expectancies.

**(3) intentional interference by the defendant inducing or causing a breach of contract or relationship;**

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

Having such knowledge of the petitioner's agreements and relationships, defendants intentionally conspired to interfere and did interfere with such contracts or business expectancies, so as to cause breach of the same.

**(4) absence of justification;**

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

Defendants intentionally conspired to interfere and did interfere with petitioner's agreements contracts or business expectancies, and did so without justification and stated pretextual reasons for their actions.

Defendants did not have an interest in the petitioner's agreements contracts or business expectancies.

**(5) damages resulting from defendants' conduct.**

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

As a direct and proximate result of said actions of defendants, plaintiff has suffered and will continue to suffer injuries and damages to its business and properties.

Petitioner is entitled to recover their actual damages in the amount of in excess of \$500,000,000.00 for their actions resulting in the loss of trust accounts, and actual damages in the amount of in excess of

\$500,000,000.00 for their actions resulting in the loss of the lease sale together with the costs of suit, and attorney fees.

Defendants' actions were willful, wanton, malicious and oppressive.

Petitioner is also entitled to recover punitive damages in an amount in excess of \$10,000.00.

**Count V  
Fraud and Deceit**

The petitioner avers the defendants have committed numerous frauds and deceits.

**(1) a representation;**

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

Defendants were engaged in concealed fraudulent conduct.

**(2) its falsity;**

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

The defendants representations regarding their savings to hospitals identified above are false.

The defendants representations regarding the validity of the petitioners claims, merits of his past litigation and quality of his legal representation are false.

**(3) its materiality;**

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

Said activities were intended by defendants to cause injury to petitioner by and through intentional misrepresentations to petitioner and third parties concerning petitioner.

**(4) the speaker's knowledge of its falsity or ignorance of the truth;**

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

Each of the acts, practices, misrepresentations, violations and other wrongs complained of above have been engaged in by defendants with malice and with specific and deliberate intent to oppress, defraud, deceive and injure petitioner.

**(5) the speaker's intent that the representation should be acted on by the hearer in the manner reasonably contemplated;**

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

Each of the acts, practices, misrepresentations, violations and other wrongs complained of above have been engaged in by defendants with malice and with specific and deliberate intent to oppress, defraud, deceive and injure petitioner .

Said activities aforementioned by defendants were done in concert and in secret with the intention to injure petitioner all the while knowing that the lack of candor and disclosure of the true acts and activities by defendants would give defendants an economic advantage over petitioner .

**(6) the hearer's ignorance of the falsity of the representation;**

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

The petitioner and third parties targeted by the defendants were unaware of the falsehood of the defendant representations.

**(7) the hearer's reliance on the representation being true;**

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

The petitioner, the petitioner associates and customers rely on the truth of the defendants' misrepresentations.

**(8) his right to rely thereon;**

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

**(9) the hearer's consequent and proximately-caused injuries.**

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

Said activities were intended by defendants to cause injury to petitioner by and through intentional misrepresentations to petitioner and third parties concerning petitioner and did injure the petitioner directly and proximately.

**Count VI  
Prima Facie Tort**

**(1) an intentional lawful act by the defendant;**

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

To whatever extent said activities of Defendants including procuring the disbarment and interference with the petitioner's potential may not violate antitrust laws or tortuously interfere with contract or business expectancy, said acts and activities of Defendants are still unlawful and fraudulent.

Said activities were intended by Defendants and performed by Defendants.

Defendants' actions were willful, wanton, malicious and oppressive.

**(2) an intent to cause injury to the plaintiff;**

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

Said activities were intended by Defendants to cause injury to the petitioner.

**(3) injury to the plaintiff;**

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

Said activities did directly and proximately cause injury to the petitioner.

Petitioner is entitled to recover their actual damages in the amount of in excess of \$500,000,000.00 for their actions resulting in the loss of trust accounts, and actual damages in the amount of in excess of \$500,000,000.00 for their actions resulting in the loss of the lease sale together with the costs of suit, and attorney fees.

**(4) an absence of any justification or an insufficient justification for defendant's act.**

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

Said activities were and are unjustified.

**VII. Prayer For Relief**

The plaintiff seeks his property expectation damages that would have resulted from his business relations with US Bank, US Bancorp, Inc. and separately from General Electric but for the anticompetitive conduct of the defendants.

The plaintiff seeks treble his above property expectation damages under § 416.121. 1(1) RSMo.

The plaintiff seeks a total after trebling of the above property expectation damages of three billion,

two hundred million dollars (\$3,200,000,000.00) in damages.

The plaintiff seeks that the court grant appropriate injunctions under § 416.121. 1(2) RSMO to enjoin the unlawful practices complained of in this petition.

Respectfully Submitted,

S/ Samuel K. Lipari

\_\_\_\_\_  
Samuel K. Lipari  
297 NE Bayview  
Lee's Summit, MO 64064  
816-365-1306  
saml@medicalsupplychain.com  
*Pro se*

**DEMAND FOR TRIAL BY JURY**

The plaintiff respectfully requests a jury decide all questions of fact.

S/Samuel K. Lipari

\_\_\_\_\_  
Samuel K. Lipari

**VERIFICATION**

State of Missouri                    )  
  ) SS  
County of Jackson                 )

I Samuel K. Lipari being of lawful age and being first duly sworn upon my oath, state that I have read the above and foregoing petition and attachments and find the statements therein to be true and correct to the best of my information, knowledge and belief.

\_\_\_\_\_  
Samuel K. Lipari

Subscribed and sworn to before me on this \_\_\_\_\_ day of February, 2008

\_\_\_\_\_  
Notary

Commission expires:

## APPENDIX ONE

### Procedural History

1. Plaintiff, in the name of his Missouri corporation Medical Supply Chain, Inc. (“Medical Supply”) brought an action to enjoin possible conduct by the defendants and to declare rights of parties under the subject contracts between Medical Supply and US Bank, NA and US Bancorp, Inc. of this antitrust and tortious interference action in a federal action against US Bank and US Bancorp in the US District Court for Kansas in October 2002.
2. Medical Supply’s first action for injunctive and declaratory relief in the U.S. District Court for the District of Kansas was captioned *Medical Supply Chain, Inc. v. US Bancorp, NA et al* KS. Dist. Case No.: 02-2539
3. Medical Supply sought relief based on a complaint for an urgent temporary restraining order filed 10/22/02 and amended 11/02/02 because the defendants were causing US Bank and US Bancorp to repudiate a contract (misusing the USA PATRIOT Act shown to be a false pretext) on 10/15/02 to provide escrow accounts required for the deposit of \$350,000.00 raised from manufacturer rep candidates by Medical Supply.
4. The Hon. Carlos Murguia denied the temporary restraining order.
5. US Bank and US Bancorp’s later conduct breaking the contract caused all funds to be lost on 12/1/02, including the company’s last resources used to recruit the candidates and all funds invested in preparation of training of representatives to launch Medical Supply into the market for hospital supplies.
6. Medical Supply’s cause was controversial because it was an action to seek an injunction against breaking a contract to provide escrow accounts in furtherance of a boycott by US Bancorp and Piper Jaffray’s coconspirator identified in the complaint as Novation, LLC a healthcare group purchasing organization (“GPO”) competitor of Medical Supply’s in the hospital supply market.
7. Also identified in the complaint was Novation, LLC’s captive e-commerce marketplace Neoforma, Inc. directly competing with Medical Supply on the Internet.
8. Medical Supply sought an interlocutory appeal on the denial of injunctive relief without a memorandum and order or findings of law and fact *Medical Supply Chain, Inc. v. US Bancorp, NA et al* 10th Cir. Case No.: 02-3443.

9. Medical Supply also sought interim pre-hearing relief in the Tenth Circuit seeking to prevent the defendants from filing a malicious USA PATRIOT Act Suspicious Activity Report that would destroy Medical Supply's ability to obtain escrow arrangements, higher level banking and international fund transfer services elsewhere to accomplish its capitalization and conduct hospital supply transactions.

10. Despite the loss of jurisdiction resulting from interlocutory appeal, Hon. Judge Carlos Murguia proceeded on with the action and to hear motions in trial court, ultimately dismissing the federal claims against the US Bancorp defendants and dismissing without prejudice the pendant state claims.

11. The dismissal of the US Bancorp defendants came as the petitioner was filing *Medical Supply Chain, Inc. v. General Electric Company, et al.*, KS Dist. case number 03-2324-CM over subsequent conduct by US Bancorp's co-conspirators.

12. The pre-hearing relief opposed by US Bank and US Bancorp was denied and the interlocutory appeal was dismissed as moot due to Judge Carlos Murguia's dismissal of the underlying action against US Bancorp.

13. Medical Supply appealed the dismissal of its injunctive and declaratory relief action *Medical Supply Chain, Inc. v. US Bancorp, NA et al* 10th Cir. Case No.: 03-3342.

14. The Hon. Judge Carlos Murguia dismissed the federal claims in the action against the GE defendants, overturning US Supreme Court controlling precedent that the antitrust co-conspirators need not be made defendants and where the petitioner had identified co-conspirators in the hospital supply cartel. The state law claims were dismissed without prejudice and are currently before the Western District of Missouri.

15. The Tenth Circuit upheld the trial court's dismissal without findings of law or fact and made a show cause order why Medical Supply and its counsel should not be sanctioned for a frivolous appeal.

16. Medical Supply answered the show cause order asserting the trial court had applied the incorrect legal standard for pleading antitrust claims and had misstated the USA PATRIOT Act.

17. After reviewing Medical Supply's reply to the show cause order, the Tenth Circuit found that Medical Supply had pled a conspiracy that included a separate legal entity, contradicting the trial court's ruling and the Tenth Circuit panel found that Medical Supply was correct in the existence of private rights of action under the USA PATRIOT Act.



18. Instead of the appellate panel correcting their ruling and ordering that Medical Supply was entitled to injunctive and declaratory relief, the Tenth Circuit panel ordered that Medical Supply's counsel receive the court's most serious sanction for a frivolous appeal.

19. Medical Supply sought *en banc* rehearing of its appeal, giving notice that the panel's ruling had no preclusive effect for the parties regarding the future action for monetary damages in the Western District of Missouri. Neither the court nor opposing counsel contradicted Medical Supply's ripeness analysis.

20. The Tenth Circuit court declined to rehear the case *en banc*.

21. Medical Supply then brought its now ripe damages claims against US Bank and US Bancorp along with its existing pendant state law contract and trade secret misappropriation claims in the Western District of Missouri where the matter was styled *Medical Supply Chain, Inc. v. Novation, et al*, W.D. MO case no. 05-0210.

22. The case was transferred to the District of Kansas at Kansas City, Kansas and recaptioned as *Medical Supply Chain, Inc. v. Novation, et al*, KS Dist. Court case no.:05-2299.

23. The Hon. Judge Kathryn H. Vratil made no rulings in *Medical Supply Chain, Inc. v. Novation, et al*, KS Dist. Court case no.:05-2299 delaying the opportunity to obtain discovery on the defendants' participation in the wrongful disbarment of Medical Supply's counsel for almost a year.

24. Kansas District Court Judge Kathryn H. Vratil then participated in an *ex parte* discussion on the day of the disbarment oral argument with personnel and justices of the Kansas Supreme Court, disparaging Medical Supply's counsel without his knowledge or opportunity to question Kansas District Court Judge Kathryn H. Vratil's testimony in conduct designed to cause Medical Supply's counsel to be disbarred without due process.

25. Kansas District Court Judge Kathryn H. Vratil then removed herself from the case on October 20, 2005 minutes before the Kansas Supreme Court justices heard Medical Supply's counsel's oral argument. A transcript of the hearing which was resultantly delayed will give light to these unusual events.

26. The petitioner's case was then transferred to Kansas District Court Judge, Hon. Carlos Murguia who had heard the original action for a temporary restraining order and declaratory relief.

27. The Hon. Judge Carlos Murguia took no action for many months until immediately after Medical Supply's counsel was reciprocally disbarred by the Kansas District Court without disclosing to Medical

Supply's counsel that Kansas District Court Judge Kathryn H. Vratil had participated in *ex parte* testimony over Medical Supply's counsel's "incompetence".

28. The Kansas District Court refused to postpone its decision on reciprocally disbaring Medical Supply's counsel until the Tenth Circuit ruled on the appeal of *Bolden v. City of Topeka* where Medical Supply's counsel representing James Bolden challenged Judge Kathryn H. Vratil's findings of law in that case and where Magistrate Judge James O'Hara, a managing partner in US Bank and US Bancorp's law firm Shugart Thomson & Kilroy, P.C. authored a case management recommendation condemning Medical Supply's counsel for properly relying on controlling case law on alternative state law service of process.

29. The Kansas District Court Clerk's office through Deputy Clerk Kerry Martinez also interfered and obstructed providing records to the Tenth Circuit court for the appeal in *Bolden v. City of Topeka* during and after the state proceedings to disbar Medical Supply's attorney causing the Tenth Circuit to have to postpone the briefing schedule of James Bolden's appeal.

30. The Kansas District Court Judge Kathryn H. Vratil was ultimately overruled on two issues appealed by the petitioner and James Bolden's now disbarred counsel and the decision *Bolden v. City of Topeka*, 441 F.3d 1129. (10thCir.2006) has been favorably cited by the Sixth Circuit.

31. No further court action occurred in the Medical Supply action until the petitioner's counsel had been disbarred, then Kansas District Court Judge Carlos Murguia began in earnest making rulings with the visible purpose of dismissing the action for the lack of counsel and completing the removal of representation participated in by the Kansas District court and to further its adversarial interest in the petitioner's proceeding.

32. The Kansas District Court Judge Carlos Murguia dismissed the federal claims in their entirety for failure to state a claim despite the fact that the complaint was identical in elements of pleading for its claims to the complaint filed in *Craftsman Limousine, Inc. vs. Ford Motor Company and American Custom Coachworks, et al*, 8th Cir. 03-1441 and 03-1554 and Judge Murguia expressly declined to exert jurisdiction over the state law based claims including the present Missouri state law antitrust claims, tortious interference with contract, fraud and prima facie tort.

33. The Kansas District court retained jurisdiction over the federal action to sanction Medical Supply's former counsel and the plaintiff Samuel K. Lipari for among other reasons, witnessing his

counsel's disbarment but then because of a timely motion for reconsideration by the plaintiff Samuel K. Lipari, Hon. Judge Carlos Murguia ruled Medical Supply Chain, Inc. would be sanctioned.

34. Medical Supply Chain, Inc. and Samuel K. Lipari as successor in interest gave notice of appeal of the federal court decision on September 8, 2006 and the plaintiff Samuel K. Lipari's federal law based claims over the injuries to his former corporation went before the Tenth Circuit Court of Appeals in *Medical Supply Chain, Inc. v. Novation, et al*, 10th Cir. case no. 06-3331.

35. The plaintiff Samuel K. Lipari undertook to bring the Missouri state law contract based claims as the sole assignee of his now dissolved Missouri corporation in this court acting *pro se* in an action that was captioned *Samuel Lipari v. US Bancorp, NA, et al*, 16<sup>th</sup> Cir Mo. Case no. 0616-CV32307.

36. US Bank and US Bancorp fraudulently removed the action to the US District Court for the District of Missouri asserting diversity but without disclosing to the Clerk of the Western District Court during the *ex parte* removal that the matter had been originally filed in the Western District as *Medical Supply Chain, Inc. v. Novation, et al*, W.D. MO case no. 05-0210 with Missouri resident codefendants.

37. US Bank and US Bancorp through their agent Shughart, Thomson, Kilroy, P.C. fraudulently had the Western District case transferred at US Bank and US Bancorp's false assertion of the interests of justice to the District of Kansas at Kansas City, Kansas where it was recaptioned as *Medical Supply Chain, Inc. v. Novation, et al*, KS Dist. Court case no.:05-2299 and dismissed by the Hon. Judge Carlos Murguia in response to extrinsic fraudulent dismissals filed by Shughart, Thomson, Kilroy, P.C. and Husch Blackwell Sanders LLP for not having pleading elements.

38. The pleading elements for the federal antitrust and racketeering claims were clearly on the face of the *Medical Supply Chain, Inc. v. Novation, et al* complaint and located where the table of contents identified them, exposing the extrinsic fraud on the Kansas District court.

39. US Bank and US Bancorp through their agent Shughart, Thomson, Kilroy, P.C. fraudulently withheld disclosure from the Clerk of the Western District of Missouri that *Samuel Lipari v. US Bancorp, NA, et al*, 16<sup>th</sup> Cir Mo. Case no. 0616-CV32307 was under exclusive federal jurisdiction in the US Court of Appeals for the Tenth Circuit as *Medical Supply Chain, Inc. v. Novation, et al*. 10th Cir. case no. 06-3331.

40. After removing the plaintiff's state law claims with the false assertion of federal diversity jurisdiction where the plaintiff's federal concurrent action was still under the jurisdiction of the Tenth

Circuit which was hearing the plaintiff's appeal, Shughart, Thomson, Kilroy, P.C. again falsely transferred the state action to the Kansas District court misrepresenting to US District Court for Western District of Missouri Hon. Judge Fernando J. Gaitan that the US Bank and US Bancorp sought the case moved in the "interests of justice."

41. The case continues on as *Samuel Lipari v. US Bancorp, NA, et al*, KS. Dist. Court Case No.

**42. XXXX insert here**

43. The Tenth Circuit was over ruled by the US Supreme Court on the impermissible heightened pleading standard appealed earlier by the plaintiff.

44. On February 13, 2008, the plaintiff filed a Rule 60 b Motion in the Tenth Circuit seeking to reopen *Medical Supply Chain, Inc. v. US Bancorp, NA, et al* 112 Fed. Appx. 730 (10th Cir. 2004) where the appellate court exercised original jurisdiction to sanction the plaintiff and the mandate rule prevents the trial court from altering the judgment.

45. On February 13, 2008, the plaintiff also filed a Rule 60 b Motion in the Kansas District Court seeking to reopen *Medical Supply Chain, Inc. v. Novation, et al*, KS Dist. Court case no.:05-2299 where the Tenth Circuit declined to assert jurisdiction over the appeal.

## APPENDIX TWO

### Table of Prior and Related Cases

*Medical Supply Chain, Inc. v. US Bancorp, NA, et al*, case no. 02-2539-CM (“*Medical Supply I*”) Case 2:05-cv-02299-CM-GLR ( All federal claims dismissed, state claims expressly dismissed without prejudice. No discovery or evidentiary hearings. Medical Supply’s counsel admonished for failing to research facts or law, including asserting an express private right of action under the USA PATRIOT Act.)

*Medical Supply Chain, Inc. v. US Bancorp, NA, et al* 112 Fed. Appx. 730 (10th Cir. 2004) (Medical Supply’s counsel sanctioned double attorney’s fees and costs \$23, 956.00 for asserting the existence of an express private right of action under the USA PATRIOT Act and asserting co-conspirators identified in the complaint need not be named defendants.)

*Medical Supply Chain, Inc. v. General Electric Company, et al.*, KS Dist. case no. 03-2324-CM (“*Medical Supply II*”) (All federal claims dismissed, state claims expressly dismissed without prejudice. No discovery or evidentiary hearings. Medical Supply’s counsel admonished for failing to research facts or law including asserting that co-conspirators identified in the complaint need not be named defendants.)

*Medical Supply Chain, Inc. v. General Electric Company, et al.* 144 Fed. Appx. 708 (10th Cir. 2005) (Trial court overturned for ruling against sanctions based on merits of state contract claims.)

*In re Landrith*, 124 P.3d 467, 485-86 (Kan. 2005) ( Medical Supply’s counsel disbarred for taking *Bolden v. City of Topeka, Kan.*, 441 F.3d 1129 at 1145 (10th Cir., 2006) to federal court and for representation James Bolden’s witness David Price.)

*Bolden v. City of Topeka, Kan.*, 441 F.3d 1129 at 1145 (10th Cir., 2006) ( Trial court overturned on dismissal of federal civil rights claims after Bret Landrith is disbarred.)

*In the Matter of Bret D. Landrith* Kansas District Court reciprocal disbarment action continued at request of the respondent until *Bolden v. City of Topeka, Kan.*, 441 F.3d 1129 (10th Cir., 2006) and *Medical Supply Chain, Inc. v. Neoforma et al* KS Dist. Court Case No.: 05-2299 were decided.

The Kansas District court reciprocally disbarred Bret D. Landrith after the trial court ordered dismissal and sanctions in *Medical Supply Chain, Inc. v. Neoforma et al* KS Dist. Court Case No.: 05-2299 without waiting for the Tenth Circuit decision in *Bolden v. City of Topeka, Kan.*, 441 F.3d 1129.

*Samuel Lipari v. General Electric Company, et al.* 16<sup>th</sup> Cir Mo. Case no. 0616-CV07421. ( Defendant's Motion for Dismissal overruled, then removed to W.D. of Missouri by defendants.)

*In Re Samuel K. Lipari*, ( Petition for Writ of Mandamus to require remanding of *Samuel Lipari v. General Electric Company, et al.* Denied), (8<sup>th</sup> Cir. 2006)

*Samuel Lipari v. General Electric Company, et al.* W.D. MO. Case no. 06-0573-CV-W-FJG Remanded for lack of federal jurisdiction.

*Samuel Lipari v. US Bancorp, NA, et al*, 16<sup>th</sup> Cir Mo. Case no. 0616-CV32307. (Defendants removed to W.D. of Missouri asserting diversity.)

*Samuel Lipari v. US Bancorp, NA, et al*, United States District Court, Western District of Missouri Case No. 06-1012-CV-W-FJG. (Plaintiff petitioned for remand arguing removal is improper due to existence of diversity when the same claims were filed under supplementary jurisdiction in *Medical Supply Chain, Inc. v. Neoforma et al* W.Dist. of MO Case No. 05-0210- CV-W-ODS which are now *Medical Supply Chain, Inc. v. Neoforma et al* KS Dist. Court Case No.: 05-2299.)

*Rochester v. C.R. Bard, Inc., Tyco International Inc., Tyco Healthcare Group LP, Novation LLC, VHA Inc., Premier and Premier Purchasing.* United States District Court, Eastern District of Texas Civil Action No. 304 CV 060, ( A lawsuit brought by hospital supply manufacturer Rochester. C.R. Bard settled for \$49 million dollars. Premier has been dismissed from the antitrust claim in an agreement to pay Rochester \$8.8 million dollars. )

## APPENDIX THREE

### State of Kansas Officials Role In Disbarment of Plaintiff's Federal Legal Representation

1        During the period of April 2 through April 18<sup>th</sup>, 2005 the defendant hospital supply cartel took control of the petitioner's legal representation in the federal antitrust action through extortion over the petitioner's Kansas licensed attorneys.

2        The Kansas State Disciplinary Administrator acting through the private Kansas licensed attorney Gene E. Schroer relayed the privileged information that my counsel Bret D. Landrith will be disbarred regardless of the law or evidence in the record.

3        This information was given in advance of the publication or announcement of any decision as a threat imperiling the petitioner's Missouri corporation Medical Supply Chain, Inc. by revealing it would lose the property right in its legal representation by Bret D. Landrith at a time when the record of the case revealed that efforts to substitute him had resulted in all the law firms with antitrust capabilities being conflicted out.

4        The petitioner would also be forced to forfeit his property rights in redress because a corporation had to be represented by an attorney or its claims would be dismissed with prejudice.

5        The threat relayed by Gene E. Schroer accompanied offers to "save" Medical Supply by providing representation and permitting the petitioner to use the \$300,000.00 taken by US Bank to enter into the national market for hospital supplies.

6        This first involved replacing Medical Supply's counsel a Kansas attorney as lead counsel that would not be named and his identity would not be revealed to the petitioner.

7        When the petitioner would not agree to this arrangement, Gene E. Schroer repeatedly promised the petitioner the return of the \$300,000.00 US Bancorp deprived Medical Supply of to capitalize the petitioner's company's entry into the hospital supply market if the petitioner and his counsel would travel to Chicago, Illinois and meet two attorneys that Gene E. Schroer would not name or identify.

8        The petitioner was suspicious and alarmed to the point of being in fear for his own safety due to the implausibility of two attorneys interested in taking on the representation of Medical Supply Chain, Inc. but who were unwilling to reveal their identity or talk on the phone.

9 When the petitioner questioned him further, Gene E. Schroer claimed the attorneys were from two different law firms and had to keep the meeting and their identities confidential.

10 The petitioner offered to discuss the case on the phone or to meet the attorneys from Chicago if they traveled to Lee's Summit, Missouri but Gene E. Schroer rejected these alternatives.

11 Gene E. Schroer repeatedly contacted the petitioner attempting to pressure him in taking this "only way" out of what was being done to Bret D. Landrith.

12 The petitioner believed that the trip to Chicago was a ruse or pretext to get the petitioner and his representative Bret D. Landrith to a distant location where they would be harmed or murdered and no longer a threat to the Medicare fraud scheme of GE and the Novation LLC antitrust conspirators VHA, UHC, Neoforma, Inc. and GHX,LLC .<sup>1</sup>

13 The petitioner had heard that Gene E. Schroer had made appointments with Bret D. Landrith's client James Bolden to do Bolden's appeal but took the money from James Bolden and spent the time questioning Bolden about Landrith and not Bolden's case before contacting Bolden to inform him he would not take the case stating it lacked any merit and refusing to return any of the funds (Landrith prevailed in the Tenth Circuit, overturning the trial court.)

14 This knowledge reinforced the petitioner's belief that Gene E. Schroer was acting for the State of Kansas Office of Attorney Discipline of Stanton Hazlett and that Medical Supply Chain, Inc.'s case would be forfeited if he did not accept Gene E. Schroer's arrangements, but the petitioner was to fearful that the trip to Chicago would cause him and Bret D. Landrith to end up like the two Assistant US Attorneys in the Ft. Worth, Texas office investigating the Novation LLP Medicare fraud and laundering of hospital money through Neoforma, Inc.

15 On or about the filing date in 2005, the General Electric defendants and Novation LLC antitrust conspirators VHA, UHC, Neoforma, Inc. and GHX,LLC through their agent John K. Power contacted the

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<sup>1</sup> The Criminal Chief of the Dallas U.S. Attorney's office Shannon K. Ross who signed the subpoenas on GE Healthcare and Novation LLC was found dead September 11, 2004 in her home the day before Senate hearings on Novation's hospital supply anti-trust violations and just 55 days after her associate Thelma Colbert in charge of healthcare False Claims Act investigations was found dead. The office subsequently terminated three more Assistant US Attorneys with white collar crime prosecution experience, eventually causing national notice of the improper firings or terminations of US Attorneys related to Medicare fraud investigations and the racketeering deaths of two more Assistant US Attorneys.



Clerk of the US District Court for the Western District Court to complain about the petitioner's counsel Bret D. Landrith being admitted to the Western District of Missouri and being able to file *Medical Supply Chain, Inc. v. Neoforma et al* , W.Dist. of MO Case No. 05-0210- CV-W- ODS the action against the GE defendants' hospital supply market monopoly conspirators.

16 On or about The General Electric defendants and the Novation LLC antitrust conspirators VHA, UHC, Neoforma, Inc. and GHX,LLC through their agent John K. Power caused the State of Kansas Attorney Discipline Office through Stanton Hazlett to make the petitioner's counsel's participation in a reciprocal admission program for which he was eligible that was created between the judges of the US Courts for the Western District of Missouri and the Kansas District courts.

17 This lawful and ethical act is cited as a basis for Landrith's disbarment in *In re Landrith*, 124 P.3d 467, 485-86 (Kan. 2005).

18 The petitioner's attorney had to be prosecuted by Stanton Hazlett and the State of Kansas Disciplinary office because the defendants required an outcome that contradicted the Constitution, statute and Model Rules of Ethics that could only be obtained through denial of due process and fraud.

19 The defendants then made use of this void *ab initio* order to prevent the petitioner's claims and standing from being heard by the court in *Medical Supply Chain, Inc. v. Neoforma et al* , W.Dist. of MO Case No. 05-0210- CV-W- ODS after it had been fraudulently transferred to the Kansas District Court and attempted to use it to prevent this action from being heard in the State of Missouri court where it was filed.

20 The defendants and their agents knew that false probable cause and even charges of committing conduct required by the Kansas Rules of Ethics could be used to get opposing counsel disbarred in the State of Kansas due to their control of the proceedings through Stanton Hazlett to deny due process.

21 The defendants' belief that the petitioner's counsel was not unreasonable, the Kansas Disciplinary Administrator Stanton Hazlett regularly used *ex parte* communications with the law clerks of Kansas Supreme Court Justices to co-write the opinions issued in discipline cases by the Kansas Supreme Court without knowledge of the respondent attorneys or their counsel.

22 This shocking practice of holding proceedings without even the semblance of Due Process led to a continuing legal education class of Kansas prosecuting attorneys being told the out come of one year

suspension in Kansas Supreme Court discipline case *In re Vanderbilt* case no. 93, 394 by Stanton Hazlett's prosecutor Alexander M. Walczak before the opinion was released or filed April 22, 2005 by the Kansas Supreme Court.

23 Jimmie A. Vanderbilt and his attorney John J. Ambrosio found out the Kansas Supreme Court order when the then Douglas County District Attorney attending the CLE class taught by Alexander M. Walczak called Vanderbilt after the lecture.

24 The opinion issued later was exactly as Alexander M. Walczak had described during the CLE class.

25 The petitioner's counsel was disbarred through Stanton Hazlett and the State of Kansas Disciplinary office presenting *ex parte* testimony by Kansas District Judge Kathryn H. Vratil to personnel and justices of the Kansas Supreme Court, disparaging Medical Supply's counsel without his knowledge or opportunity to question Kansas District Court Judge Kathryn H. Vratil's testimony on October 20, 2005 minutes before the Kansas Supreme Court justices heard Medical Supply's counsel's oral argument in defense of his law license.

26 The petitioner's counsel was disbarred through Stanton Hazlett and the State of Kansas Disciplinary office presenting to the tribunal *ex parte* testimony by Magistrate Judge James O'Hara, a managing partner in General Electric co-conspirators' law firm Shugart Thomson & Kilroy that was defending counsel in *Medical Supply Chain, Inc. v. Neoforma et al*, W.Dist. of MO Case No. 05-0210-CV-W- ODS and who denied the petitioner discovery with no basis in law in *Medical Supply Chain, Inc. v. General Electric Company, et al.*, KS Dist. case number 03-2324-CM, but under oath in the disbarment hearing denied he had done so.

### **Procurement through fraud**

27 The Disciplinary Administrator Stanton Hazlett proffered the perjured testimony of Sherri Price, Assistant City Attorney for the City of Topeka to the discipline tribunal during the three day evidentiary hearing in January 2005 that the petitioner's attorney Bret D. Landrith had been sanctioned in the Bolden case.

28 The Disciplinary Administrator Stanton Hazlett announced on the second day of the evidentiary hearing by means of *ex parte* communication to the tribunal members that Hazlett was going to prosecute

Landrith for appealing the cartel's antitrust case to the Tenth Circuit based on a clear error in the trial court's determination that the then newly enacted USA PATRIOT Act was devoid of private rights of action when it clearly had more than two express private rights in the text of the enactment as false probable cause, solely to defraud the disciplinary panel.

29 The defendants' co-conspirator and antitrust co-defendants made the complaint used by The Disciplinary Administrator Stanton Hazlett to defraud the disciplinary panel.

30 The Disciplinary Administrator Stanton Hazlett never prosecuted the complaint.

31 The Disciplinary Administrator Stanton Hazlett's law clerk authored a recommendation for disbarment of Bret D. Landrith that falsely stated that Landrith had failed to include citations to the record in the appeal brief of David Price's parental rights termination for adoption.

32 Twice in oral argument before a panel that included some Kansas Supreme Court Justices, the Disciplinary Administrator Stanton Hazlett misrepresented the record to conceal the kidnapping of David Price's infant son.

#### **The Disbarment Proceeding Was For a Malicious Purpose To Usurp Federal Law**

33 The Kansas Disciplinary Office through the influence of Stanton Hazlett caused the petitioner's attorney Bret D. Landrith to be suspended the week prior to his October 20, 2005 Kansas Supreme Court oral argument in defense of his license to practice law. This action was taken despite evidence of the hardship upon Landrith presented at the pretrial hearing resulting from the delay in investigating and resolving the disciplinary complaint.

34 The suspension had the foreseeable and intended effect of preventing the petitioner's attorney Bret D. Landrith from arguing the African American James Bolden's appeal before the Tenth Circuit on November 17, 2005. The briefing schedule of James Bolden's appeal had been previously stopped do to actions of the Disciplinary Administrator against the Landrith to interfere in its preparation.

35 On Wednesday, April 20th, 2005 the Federal Bureau of Investigation raided

36 Topeka City Homes, Inc., described on the fourth page of the second amended federal

37 Complaint in Bolden's case as one of the instrumentalities created by the city to self deal HUD funds and seized the city's records. The April 21st and 22nd, 2005 Topeka Capital Journal article described the agency's problems for the time period of James Bolden's complaint.

38 On July 8<sup>th</sup>, 2005, the City of Topeka's first African American Judge, Municipal Court Judge Deborah Purce suffered the instigation of an investigation for termination immediately after she had ruled in favor of David Price, Landrith's client and chief witness for James Bolden. Judge Deborah Purce stated that the City of Topeka was retaliating against her for acting ethically:

"People have told me that Ebberts was under pressure from the police department because of my number of 'not guilty' verdicts," Purce said. "It would not be legal or ethical for me to be fired because I weighed evidence in favor of the accused more than Ebberts and police would have liked." Purce also outlined the events of July 8. Armed security guards were called to escort her out of the courthouse"

"Ex-judge sees race as issue" Topeka Capital Journal July 17, 2005.

39 On the day of the petitioner's attorney Bret D. Landrith's Kansas Supreme Court oral argument, the Kansas District Attorney for Shawnee County was forced to release a report chronicling the City of Topeka's false testimony and faked evidence for probable cause warrant requests. The report stated the US Attorney for Kansas had quit accepting Topeka police cases because of city misconduct.

40 The Disciplinary Administrator's ethics prosecution was initiated against the petitioner's attorney Bret D. Landrith during the twenty days preparation for James Bolden's jury trial July 6, 2004 before District Judge Kathryn H. Vratil, necessitating the petitioner's attorney Bret D. Landrith filing in Kansas District court for injunctive relief to postpone the disbarment until after Bolden's case. *Landrith v. Hazlett*, Kansas Dist. Case No. 04-2215-DVB.

## APPENDIX Four

### Plaintiff's Business Relationship With US Bank and US Bancorp

1 The following statement of facts describes the business relationship of the petitioner Samuel K. Lipari with US Bank, NA and US Bancorp Inc. which was tortiously interfered with by the Missouri antitrust defendants as the facts were presented in the petitioner's litigation against US Bank and US Bancorp. Here in the word defendants refers to US Bank NA and US Bancorp, Inc.:

2 On or about 3/12/2002, following 3 years of R&D SAMUEL LIPARI, President and CEO of Medical Supply Chain, Inc. (Medical Supply) began a process of selecting a corporate bank for the rollout of its healthcare supply chain empowerment program that produces significant benefits to healthcare and its patients.

3 SAMUEL LIPARI sought input from associates and advisors concerning selection of an appropriate national bank that would be capable of a full range of corporate banking services, including nation wide checking, escrow services, short and long term credit facilities, receivables financing and international clearing of transactions between thousands of health systems and their suppliers.

4 Several national banks were evaluated but US BANCORP NA was selected because it also had an investment banking relationship with Piper Jaffray.

5 Piper Jaffray had targeted healthcare customers and participated as underwriter and funds manager for pre IPO healthcare manufacturers and service providers and US BANCORP NA acted as underwriter for corporate bonds of healthcare companies.

6 On or about 4/15/02 SAMUEL LIPARI arranged for Medical Supply's corporate account to be opened at US BANK's SW Topeka, Kansas branch.

7 The account was opened in the name of Medical Supply Chain, Inc., using Medical Supply's federal tax I.D. number with a cashier's check in the name of Medical Supply's agent and drawn on Miner's State Bank of Frontenac Kansas for \$7,500.00.

8 On or about 4/25/02 SAMUEL LIPARI opened a personal account in his name at US BANK's neighborhood branch at 3640 S. Noland Road, Independence, MO.

9 Before opening the checking account, the US Bank employee reviewed SAMUEL LIPARI's account application and submitted SAMUEL LIPARI's personal data to Chex Systems, Inc. for a

background check, evaluation and verification of eight years of his previous banking history at other banking institutions.

10 SAMUEL LIPARI was approved for a personal checking account and an electronic debit card.

11 SAMUEL LIPARI initially used the personal account to pay expenses of Medical Supply with reimbursement from the corporation.

**12 US BANK and US BANCORP's Knowledge of Medical Supply**

13 On 6/5/02 SAMUEL LIPARI contacted Piper Jaffray's Minneapolis headquarters to speak to Heath Lukatch, managing director of the Piper Jaffray healthcare venture fund about Medical Supply being considered as a venture capital candidate.

14 SAMUEL LIPARI was instructed to send an executive summary of his business plan via email. (Exb 1.)

15 SAMUEL LIPARI sent the summary and financial projections for Medical Supply with a restriction on disclosure notice.

16 Piper Jaffray made no response to the receipt of the executive summary and financial projections from Medical Supply's business plan.

17 SAMUEL LIPARI again telephoned the Minneapolis offices of the Piper Jaffray venture fund managers and his calls were not taken and not returned.

18 SAMUEL LIPARI also attempted to speak to a Piper Jaffray venture fund manger in their San Francisco office but again, his calls were not taken or returned.

19 On 7/9/02 SAMUEL LIPARI and Medical Supply were visited by a Merger and Acquisitions attorney for another San Francisco venture capital firm and after extensive discussions with her at Medical Supply's Blue Springs, MO headquarters on the need to quickly enter the healthcare supply chain market and take advantage of the opportunity created by the healthcare industry's sudden willingness to reject the existing Group Purchasing Organizations, and after the New York Times had began uncovering corruption revelations in the market.

20 The discussions revealed the current condition of venture funding and IPO underwriting was very troubling.

21 At the time of these meetings the first news of WorldCom's debacle was breaking.

22 Medical Supply's management felt with the exception of Piper Jaffray, which concentrated its investments in healthcare, that much of the assets venture funds reported were in fact overvalued equities in telecom technology companies and that the collapse of WorldCom would further depress the venture capital markets.

23 The venture capital M&A attorney questioned SAMUEL LIPARI about the overtures of large companies seeking to acquire Medical Supply.

24 SAMUEL LIPARI recounted the contacts made with Supply Solution, a Michigan based company focused on expanding integration in the healthcare industry, GoCoop/Avendra a Florida based company providing e-procurement/group purchasing in the hospitality industry and also wanted to integrate in the healthcare industry, both of which were seeking go to market partners in healthcare, Owen Healthcare the pharmaceutical distribution subsidiary acting for Cardinal and Cerner, a Kansas City healthcare company with enterprise resource planning software that is based on an older operating system, called EDI that is inferior to Medical Supply's web based services and poorly suited for electronic commerce.

25 Cerner had bought out Mitch Cooper & Associates, a healthcare supply chain consulting company and seemed to be trying to acquire the capability to create an electronic healthcare marketplace.

26 SAMUEL LIPARI told the VC attorney that Medical Supply would not compromise itself by being aligned with any existing healthcare supplier.

27 Medical Supply has the solution and SAMUEL LIPARI did not want to be tainted with companies that support the high cost healthcare problem.

28 SAMUEL LIPARI also recounted how start up healthcare electronic marketplace firms with technology similar to Medical Supply like Empacthealth and Medibuy had been bought up by GPOs for tens of millions of dollars, but that once they were no longer independent, their market potential was eliminated and the technology was used by GPO firms to deceive health systems into thinking their GPO partner was attempting to increase its economic efficiency when in fact they continued to restrict trade in support of monopolizing markets.

#### **29 Medical Supply's Internal Capitalization Plan**

30 Medical Supply resolved to develop a way to internally capitalize a roll out of its supply chain empowerment program and supply chain management technology.

31 Medical Supply settled on a plan that would utilize the value of its healthcare supply chain intellectual property and offer a comprehensive year long education and healthcare supply chain certification program to independent representatives.

32 This plan would put representatives in the field nationwide that possess the knowledge and skills to relate to all levels of management in healthcare systems and assist in the adoption of Medical Supply's supply chain empowerment program.

33 The independent representatives would pay for their certification and fund their own marketing and sales operations, consistent with distribution systems that rely on independent manufacturer's representatives.

34 Since Medical Supply's web services were new to the market, SAMUEL LIPARI decided that it would be critical for the certification fee to be held in escrow until the candidates had a chance to meet Medical Supply's certification team and have a chance to see if they would succeed in mastering healthcare supply chain empowerment knowledge.

35 After a week long intensive seminar, the candidates would have the opportunity to decide whether or not to commit to the certification program and Medical Supply would have the opportunity to reject any candidates it felt would not succeed in the program.

36 Medical Supply developed a curriculum and contracted with the industry's foremost logistics and supply chain experts to provide instruction during the weeklong seminar and assist and advise candidates throughout the certification process.

37 Medical Supply made arrangements to include information and presenters from companies with expertise in financial analysis of healthcare purchasing, including strategic sourcing and human resource evaluations so that the representatives would be able to represent products and technology services outside of Medical Supply's capabilities that would complement Medical Supply's supply chain empowerment program in allowing a health system/hospital to break free of its GPO supplier.

38 Beginning 8/1/02 Medical Supply advertised nationwide to recruit experienced account executives and sales professionals and processed hundreds of applicants with detailed evaluation of resumes, job history and financial disclosure applications.



39 For the first of what were to be quarterly classes, Medical Supply selected 15 candidates that had the potential to succeed as independent representatives for its services.

40 After numerous telephone interviews ten applicants had committed to becoming certification candidates and attend the certification class starting the first week of December/02.

41 During this same time, Medical Supply was preparing the escrow account system that the candidates would utilize.

**42 Defendants' Offer of US BANCORP Escrow Services**

43 On or about 10/1/02 Medical Supply contacted Chris Walden of the Noland Road, Independence MO branch of US BANK for direction on escrow accounts and commercial banking services.

44 Medical Supply was referred to Becky Hainje a US BANCORP "Private Banker" and on or about 10/3/02 Becky Hainje contacted SAMUEL LIPARI and told him she would arrange to put him in contact with the persons in different departments of US BANK that could provide Medical Supply the services Medical Supply requested and needed.

45 Becky Hainje connected Medical Supply with Brian Kabbes in St. Louis who was responsible for US BANK commercial trust accounts in Missouri and Kansas.

46 Becky Hainje also connected Medical Supply with Douglas Lewis, responsible for commercial loans in the Noland Road office.

47 SAMUEL LIPARI described Medical Supply's need for escrow accounts to Brian Kabbes and emailed him an escrow contract that Medical Supply counsel had prepared for its candidates.

48 Brian Kabbes asked questions about the candidates, the certification program and how many candidates had been selected so far.

**49 Meeting of the Minds With US BANCORP**

50 SAMUEL LIPARI negotiated with Brian Kabbes to reduce the escrow fee per account since all escrow accounts would be identical, and US BANK had refused to have the funds in a single account.

51 Brian Kabbes agreed to lower the fee for US Bank's escrow agent services from the normal of \$1,500 to \$600 per account and no hidden or additional transaction or disbursement fees.

52 After reviewing the escrow contract, on or about 10/5/02 Brian Kabbes communicated to SAMUEL LIPARI that the language of paragraph 10 "Security Interests" should be changed so that a

security interest for US BANK could be created in the \$5,000 portion of the escrow that became Medical Supply's property the moment a candidate submitted their certification funds into escrow.

**53 Performance of Escrow Contract**

54 Medical Supply altered its escrow contract to conform to Brian Kabbes' suggestion and on or about 10/7/02 emailed the changes to Brian Kabbes.

55 Brian Kabbes and US BANK were identified as the escrow agent in the escrow agreement and Brian Kabbes' address was included in the body of the agreement.

56 On or about 10/8/02 SAMUEL LIPARI spoke again to Becky Hainje about Medical Supply's need for a business line of credit based on the Medical Supply portion of the escrow assets.

**57 Oral Confirmation of Escrow Contract**

58 Becky Hainje said she had talked to Brian Kabbes and he had told her there would be no problems with the escrow accounts, that they were a "slam dunk."

59 Becky Hainje suggested SAMUEL LIPARI call Douglas Lewis and make an appointment to apply for the line of credit, which was based on the escrow account assets.

**60 Defendants' Receipt of Value for Escrow Contract**

61 On or about 10/9/02 Brian Kabbes called to request an additional change in the escrow contract.

62 Brian Kabbes supplied a specified US Treasury fund investment language for the funds while the funds were in the custody of US Bank Trust Department, without disclosing the treasury funds vehicle was also owned by US Bancorp which profited from steering US Bank's trust business into the treasury funds vehicle.

**63 Written Memorialization of Escrow Service Agreement**

64 Medical Supply agreed to the additional change and modified the investment instructions exactly as Brian Kabbes instructed.

65 Medical Supply also ask if there were any other changes needed before Medical Supply sent the contracts out to its certification candidates.

66 Brian Kabbes said there would be no other changes, thereby acknowledging the completion of the memorializing of the written agreement and asked why Medical Supply was sending the candidates the escrow contract.

67 Medical Supply explained that the contracts were going out with the certification program agreement so candidates would have a chance to review the information before their November 1st deadline, which required their funds to be in the US Bank escrow accounts.

68 Brian Kabbes acknowledged the explanation and agreed to look over the release document Medical Supply developed that candidates would execute following the week long evaluation seminar to be held the first week of December.

69 During this conversation, Brian Kabbes also requested Medical Supply's current corporate good standing documentation from the Missouri Secretary of State's Office.

70 Medical Supply agreed to send him the reinstatement and tax clearance documents on Friday 10/11/02 and that Samuel Lipari was meeting with Douglas Lewis at the Noland Road Branch on the afternoon of Thursday 10/10/02 to set up the credit facility using the escrow accounts as security.

71 Samuel Lipari told Brian Kabbes he would have Douglas Lewis send the requested information to Brian Kabbes on 10/11/02.

72 Brian Kabbes made no statement that US Bank had yet to approve Medical Supply's escrow accounts and sought no additional information.

**73 Defendants' Misappropriation Of Trade Secrets**

74 On or about Thursday 10/10/02, Samuel Lipari delivered the Medical Supply business plan and associate program to Douglas Lewis, at the US Bank, Noland road office to apply for the agreed upon commercial line of credit based on the portion of the escrow accounts Medical Supply would retain from its associate program.

75 The business plan and associate program booklets each had cover pages giving notice of restricted use and that Medical Supply protected the confidential business trade secret and intellectual property contained in them.

76 A letter of introduction also stated the contents were protected and restricted disclosure and possession of the materials.

77 Two more folders contained the good standing documentation Brian Kabbes requested and the associate program contracts that were sent to the candidates.

78 Douglas Lewis asked how many candidates Medical Supply had and SAMUEL LIPARI reached into his brief case and held up the ten folders of applicants who had committed to sending in their funds by November 1st and five others who were in the final stages.

79 SAMUEL LIPARI further explained that he planned to start a new certification group each quarter.

80 SAMUEL LIPARI was given a loan application and agreed to and did return the application the next day.

**81 Repudiation of Agreement to Provide Escrows**

82 On or about Tuesday 10/15/02 Brian Kabbes called SAMUEL LIPARI and informed him that US Bank had turned down the escrow accounts because of the USA PATRIOT Act.

83 When asked to clarify, he said the know your customer requirements had changed and US Bank could not set up the escrow accounts for Medical Supply.

84 SAMUEL LIPARI was shocked and stunned and handed away the phone, where Brian Kabbes repeated again The Patriot Act as the reason the accounts were denied.

85 Later that morning SAMUEL LIPARI called Becky Hainje and asked if she could see what happened.

86 SAMUEL LIPARI explained that Medical Supply was counting on the escrow accounts and that the line of credit depended on them too.

87 SAMUEL LIPARI said he could not believe the USA PATRIOT Act could be a reason that applied to Medical Supply.

88 Becky Hainje said she would call and see what happened.

89 Becky Hainje called back and left a taped recording on the Medical Supply answering system and listed the reasons Brian Kabbes told her.

90 Becky Hainje said the reasons were the lack of a “relationship with the Bank... that the principals involved with the business were people unknown to the bank, but the main reason is the know your customer provisions of the "Patriot Act" that was enacted after 9/11, and which we could not really give all the correct answers on the source and flow of money.

**91 US BANCORP Participation in the Repudiation**

92 On or about 10/15/02 Medical Supply found Andrew Cesere was the head of US Bancorp trust department on the US Bank web site and at 4 p.m. called his secretary Barb in Minneapolis.

93 Andrew Cesere was unavailable so Medical Supply asked Barb to leave instructions for him to call SAMUEL LIPARI about Medical Supply's corporate escrow account rejection at 9 a.m. the following morning.

94 Barb asked for more details concerning the problem.

95 Barb said Mr. Cesere had a morning meeting but she would get the message to him.

96 At 4:30 p.m. Barb called back and asked for additional information and the names of the people Medical Supply had dealt with so that Mr. Cesere could inquire about the problem.

97 At 9 a.m. the following morning on or about 10/16/02 Ed Higgins called, leaving a tape-recorded message on Medical Supply's answering system identifying him as the executive vice president of Midwest trusts for US BANK.

98 SAMUEL LIPARI, believing that the USA Patriot Act had probably been used to reject the escrow accounts because of his family sir name which is also the name of a small group of Islands in the Mediterranean Sea and which ends in "ari" like many Moslem sir names of people of Arabic descent, activated a tape recorder with a built in microphone and called Mr. Higgins back on the speaker phone.

99 Each subsequent call to US BANK in which Samuel Lipari participated was also recorded by him to document what he suspected was discrimination based on his national origin or ethnic descent. See Attachment 1 Transcript of Recordings.

100 Ed Higgins listened to SAMUEL LIPARI after stating he was an attorney and how long he had been working in trust banking, agreed with him that he saw no reason why the USA Patriot Act would apply to Medical Supply.

101 SAMUEL LIPARI explained that Medical Supply needed additional US Bank services including credit facilities, receivables financing and clearing and settlement services for approximately \$90 million worth of transactions in the first year of operations.

102 Ed Higgins said he would check into the matter and call SAMUEL LIPARI back later that day.

103 Instead of Ed Higgins, Brian Kabbes called back with Lars Anderson who he identified as head of corporate trust new business development person and Susan Paine who he said he reported to, both on the line with him.

104 Medical Supply explained that at the time of his previous call, it was not realized that the escrow account contracts that US BANK had approved had already been sent out to the candidates in reliance on US BANK's agreement to host the escrow accounts.

105 Lars Anderson expressed some irritation that Medical Supply had contacted the head of the trust unit about the rejection of escrow accounts.

106 Lars Anderson said the bank had never been on board and it was not a done deal.

107 Brian Kabbes denied that there had been an agreement; he said he had twice told SAMUEL LIPARI.

108 Lars Anderson said that there had never been a signed off agreement to provide the service and that there had never been any bid for it.

**109 Defendants' Knowledge of Breach**

110 Medical Supply contradicted that and said the price for the service had been quoted by Brian Kabbes and after negotiating, a specific amount had been agreed upon.

111 SAMUEL LIPARI also told them Brian Kabbes provided and requested changes to the escrow and that Brian Kabbes had told Becky Hainje it was a "slam dunk."

**112 Defendants' Knowledge of Irreparable Harm to Medical Supply**

113 During the call Medical Supply attempted several times to work out any misunderstandings and set up at least the 10 accounts Medical Supply had relied on US Bank for and that US Bank had known about and that Medical Supply was now in danger of being irreparably harmed.

114 Medical Supply stated that the US Patriot Act did not apply and that Medical Supply was in actuality an established US BANK customer and that Medical Supply had been in a trust relationship with US BANK and the bank even had its business plan and information about its proprietary business model.

115 Brian Kabbes said that the trust department was a "stand-alone unit" and had its own criteria for accepting customers.

**116 US BANK Refused to Reverse its Decision**

117 Medical Supply pointed out that it had not received a true reason for denial of the accounts and that the reason given was a pretext at best.

118 Viewing US BANK's actions, Medical Supply stated they could only be explained by a conflict of interest due to US BANCORP's existing healthcare investments and involvement.

119 Medical Supply felt extremely disturbed by the apparent out come of this situation, there was not enough time to establish a new banking relationship with another nationally recognized Bank and Medical Supply would loose substantial momentum.

120 Medical Supply had spent several months building up to roll out it's supply chain empowerment program and felt to change a trust relationship in the middle will be devastating to it's entry to market.

121 Medical Supply researched over 300 resumes only to find 30 that appeared to be qualified.

**122 Defendants' Fiduciary responsibility for trade secrets**

123 On or about 10/17/02 SAMUEL LIPARI telephoned Douglas Lewis and told him what had happened.

124 Douglas said he had sent Brian Kabbes the good standing documentation but not the business plan and associate program.

125 SAMUEL LIPARI instructed him not to send the business plan and associate program materials to the corporate trust office of US Bank in St. Louis because of previous losses of intellectual property from unauthorized business plan dissemination.

126 SAMUEL LIPARI told Douglas Lewis that Medical Supply would be litigating over the escrow decision and planned to renew its application for a line of credit once it had the situation straightened out.

127 SAMUEL LIPARI suggested he might find another bank to provide the escrow accounts but Douglas Lewis said that would make the line of credit difficult. SAMUEL LIPARI further instructed Douglas Lewis to hold on to the materials and keep anyone else from having access to them.

128 Douglas Lewis agreed and stated he would keep the business plan materials safe.

129 On or about 10/18/02 Medical Supply drafted a letter and sent it to Jerry A. Grundhoffer, the President and Chief Executive Officer of US BANCORP NA with a copy being sent to Andrew Cesere, explaining the staggering damages US Bancorp would be liable for in imminent litigation due to the refusal to provide escrow accounts to Medical Supply.

130 Medical Supply suggested an alternative of fact finding depositions to take place in St. Louis, MO before the end of the day Tuesday 10/22/02, believing US BANK to be misinformed about the USA Patriot Act and any reason for denying the escrow accounts.

131 US BANCORP Trust Department corporate counsel, Kristen Strong replied Friday 10/18/02 via fax and priority delivery with a letter denying US BANCORP NA was in contract with Medical Supply and that if any law suit is filed to address service for the trust department to her at her office.

132 Medical Supply called the trust department counsel Monday 10/21/02 to ask for service addresses of the other named entities and employees.

133 Kristen Strong said the same address would be good for all and then proceeded to ask what the causes of action were.

134 Medical Supply explained that it was chiefly an antitrust action based on the Sherman, Clayton and Hobbs Act and that causes of action under the USA Patriot Act were also a basis for the suit.

135 Kristen Strong was surprised Medical Supply was told the USA Patriot Act had been given as the reason for the denial of escrow account service but reiterated that there was no contract in her view and she saw no basis for the other causes of action.

136 Medical Supply stated that it would fax the complaint to her at the time the action was filed at the end of business Thursday 10/24/02, but they were still waiting for Mr. Jerry Grundhoffer to select the alternative of mutual fact finding to promote a resolution of the matter without litigation.

137 Kristen Strong stated that the depositions would not lead to any meaningful explanation, that Medical Supply had her letter explaining US BANK's reason for denying the escrow accounts and that the bank reserved the right to choose whom it served.

138 Medical Supply reminded her that US BANCORP had extensive investments in healthcare and that choosing not to provide a service to a competitor is actionable under antitrust law.

139 Kristen Strong warned Medical Supply not to contact anyone at US BANK and said If Medical Supply filed an action against US BANCORP NA, she would send a letter to the judge in advance of her answer to our complaint saying we had *ex parte* communications.

140 Medical Supply stated that it had not had any communications with US BANK employees since receiving her reply on Friday 10/18/02.



141 Medical Supply informed Strong it was an account holder at US BANK and would continue to have communications with US BANK regarding its other bank business.

142 Medical Supply contacted an attorney, familiar with the healthcare supply chain research and development done by SAMUEL LIPARI at the law firm of Shook, Hardy and Bacon and asked if his firm could act as escrow agent for accounts to be set up in US Bank.

143 The Shook, Hardy and Bacon attorney said the bank is better prepared to provide escrow services, fearing the liabilities and risks for an escrow agent where the USA PATRIOT Act had been invoked and declined to act as escrow agent.

144 On Thursday 10/24/02 Medical Supply filed for urgent injunctive relief against US BANCORP NA, its subsidiaries and named employees.

145 Medical Supply counsel contacted US BANK counsel Kristin Strong to clarify the clerk of the court's questioning of service and to attempt to schedule a hearing.

146 Ms. Strong said she would call the following morning Friday 10/25/02 to answer the question about service. She did not call and took the day off.

147 Medical Supply counsel called her on Monday morning 10/28/02 at which time she said the case had been transferred to outside counsel and gave the phone number to Medical Supply.

148 On or about 10/28/02 Medical Supply contacted US BANCORP's retained counsel and explained that there were questions about service and that Medical Supply was seeking to schedule a hearing that week for its requested relief to stop the harm it was suffering and to avoid a terminal outcome for the company.

149 US BANCORP's counsel said he had to travel and was unsure of his schedule but by the next day he might know of a time he could make a hearing.

150 Without hearing from the opposing counsel, Medical Supply became concerned and sent an email on or about 10/29/02 suggesting portions of the injunctive relief it seemed likely the two parties could agree on and explaining the harm it was suffering and what delaying the relief beyond critical dates would inflict on Medical Supply, its associates and customers.

**151 The Defendants' Acceptance of Liability for Medical Supply's Business Plan Damages**

152 The email explained the losses as follows: the damages of failing to receive the \$350,000 to \$450,000 it depended on November 1st and the resulting effects of that delay on its projected financials including lost profit of \$51,795,005.00 lost increase in average valuation of \$155,385,015.00 Candidate lost revenue of \$15,499,788.00.

153 The email explained that these injuries would be far greater if a December 1st deadline is missed and if the company does not recover from US Bank's denial of the escrow accounts the total third year losses of the company would be as follows: lost profits \$51,795,005.00 loss of increased company avg. valuation of \$155,385,015.00 Candidate lost revenue of \$15,499,788.00 and Customer losses of \$697,486,200.00.

154 On or about Wednesday 10/30/02, US BANCORP's counsel sent a letter to the court dismissive of Medical Supply's complaint and stating that it would oppose all requested relief.

155 On or about Thursday 10/31/02, Medical Supply called US BANCORP's counsel explaining the necessity of the relief sought and specifically the relief requested under paragraph 66 of the first federal complaint seeking to stop US BANK from reporting negative information about Medical Supply under the USA PATRIOT Act.

156 US BANCORP's counsel reiterated his belief Medical Supply needed to find another bank and that no liability existed.

157 Medical Supply's counsel explained that SAMUEL LIPARI will not risk a hundred million dollar company that requires high level banking services to future damage from a secret USA PATRIOT Act report that has misinformation in it and would create a black mark preventing them from ever being able to do any business.

158 US BANCORP's counsel said it would not agree to even just the relief sought in paragraph 66 of the first federal complaint.

159 Medical Supply asked US BANCORP's counsel if his firm would act as an escrow agent for accounts to be deposited in US BANK, since Shook, Hardy and Bacon had declined to do so.

160 US BANCORP's counsel refused to do so stating that US Bank did not owe any duty to Medical Supply.

**161 Defendants' Intellectual Property Misappropriation**

162 Realizing there was no immediate solution to this matter, and the fact that a previous business model pricing system developed by SAMUEL LIPARI in 1993-1995 was appropriated by HSCA, Medecon and Cardinal Healthcare's subsidiary Owen Healthcare through exploitation of a confidential business relationship and then taken later by many other GPOs.

163 On or about 11/6/02 SAMUEL LIPARI visited US BANK, Noland road branch to retrieve the documents left by him following the meeting with Douglas Lewis on 10/10/02.

164 Douglas Lewis gave the documents back to SAMUEL LIPARI.

165 SAMUEL LIPARI specifically ask if the documents were copied or faxed and Douglas Lewis said he put all of the information in his analysis and Samuel Lipari left the bank.

166 Upon returning to Medical Supply's office SAMUEL LIPARI inspected the documents and found that the binders had been separated and copies or faxes had been made of the associate program and the business plan documents.

167 There were also tractor marks from a copy or fax machine on the back of the entire associate program and the business plan pages.

168 The documents relating to the escrow agreement associate program application, and certification contract were not faxed or copied.

169 There were no marks tractor marks on the back of these documents.

170 Medical Supply became fearful of where these documents were sent and who has reviewed them.

171 The documents that were copied or faxed contain all confidential details to the business, business model, management team, investors, industry experts, advisors, business practices, market strategies, revenue model, service structure, formula, algorithms and financials including 5 year details, 5 year condensed and break even analysis.

172 SAMUEL LIPARI became fearful this information would fall into the wrong hands further blocking or eliminating entry to market.

**173 Defendants' Breach Injures Medical Supply**

174 On or about 11/7/02 SAMUEL LIPARI received a complimentary D&B report dated 10/31/02 on Medical Supply.

175 The report indicated Medical Supply started in 2000 and has a clear credit history and a strong

financial condition.

**176 Medical Supply Seeks Federal Declaratory Relief**

177 On November 18, 2002, Medical Supply obtained a TRO hearing on its request for preliminary injunctive relief. Medical Supply sought urgent preliminary injunctive relief from trade secret misappropriation and urgent preliminary injunctive relief from USA PATRIOT Act reporting.

178 Medical Supply had a second preliminary injunction hearing at 12:00 p.m. on December 12, 2002.

179 Medical Supply again sought urgent preliminary injunctive relief, opposed by the defendants from trade secret misappropriation and urgent preliminary injunctive relief from USA PATRIOT Act reporting, but was denied.

180 On December 17, 2002 Medical Supply filed a notice of interlocutory appeal to The Tenth Circuit Court of Appeals.

181 On June 16, 2003, the Kansas District Court dismissed Medical Supply's action for injunctive and declaratory relief.

182 After losing a motion for new trial, Medical Supply filed a timely notice for appeal on November 21, 2003.

183 On January 7<sup>th</sup>, 2004, the Tenth Circuit dismissed the interlocutory appeal as moot due to the superceding appeal of the action's dismissal.

**184 The Third Attempt to Cover For Defendants' Breach**

185 The defendants subjected MSCI to threatened and or actual USA PATRIOT Act Suspicious Activity Reporting (S.A.R.) with the knowledge that such reporting would harm or destroy MSCI's ability to capitalize its entry into the market for hospital supplies.

186 Never the less, on or about May 1st, 2003 Samuel Lipari again attempted to substitute or cover the defendants breach, this time with a capitalization plan involving the purchase of an office building at 1600 N.E. Coronado Drive in Blue Springs.

187 On or about May 7th, 2003 MSCI's loan consultant Joan Mark explained if the General Electric Company provided a \$5.4 Million dollar mortgage on a \$10 Million dollar property and eliminated a \$5.4 Million dollar lease obligation that GE would directly benefit from a \$15 Million dollar swing to their balance sheet.

188 Samuel Lipari negotiated a contract to purchase 1600 N.E. Coronado Drive creating for MSCI \$350,000.00 in funds earned in the purchase bargain from selling the termination of the building's ten year \$5.4 million dollar lease with the building's tenant GE Transportation to its parent corporation, the General Electric Company (GE), which also agreed to provide MSCI a purchase mortgage as part of its contract with MSCI to release GE Transportation from the ten year lease.

189 When GE entered into the contract with MSCI, knowing of the S.A.R. threat by US BANK and US BANCORP related to GE by SAMUEL LIPARI.

190 GE on May 15th, 2003 agreed to buy the deeply discounted remainder of the lease and fund MSCI's mortgage to purchase the office building at 1600 N.E. Coronado Drive after performing diligence over the executive summary of MSCI's business plan and affirming MSCI would be able to repay the mortgage based on MSCI's value proposition and the opportunity in the market for an independent hospital supply electronic marketplace on the internet.

191 Later, GE Medical and its former president Jeffrey R. Immelt, now CEO of GE learned that GE corporate had capitalized MSCI's entry into the hospital supply marketplace when GE's former CEO Jack Welch had specifically instructed Jeffrey R. Immelt to distribute GE Medical's equipment and supplies on the internet first in GE's electronic marketplace Global Exchange and then to form GHX,LLC as an electronic marketplace, both because Jack Welch feared an independent hospital supplier creating an electronic marketplace that would provide lower prices selling supplies from GE's competitors.

192 GHX, L.L.C. was capitalized by and remains under the control of GE and Jeffrey R. Immelt which retains a directorship on the board of the privately held company.

193 With GE and Jeffrey R. Immelt's approval GHX, L.L.C. had subsequently formed a joint venture with the remaining electronic marketplace for hospital supplies, Neoforma, Inc. part of a healthcare technology company capitalization syndicate with US BANCORP's Piper Jaffray and together in an agreement, GHX, L.L.C. and Neoforma allocated market share of the nation's hospitals between each other.

194 GE repudiated its contract, sacrificing \$15 million dollars on June 15th, 2003 to keep Medical Supply from being able to compete against GHX, L.L.C. and Neoforma in the market for hospital supplies.

195 MSCI sought to enforce its contract with GE and recover damages in federal court so tat MSCI

would still be able to enter the market for hospital supplies and capitalizing its electronic marketplace.

196 SAMUEL LIPARI filed a *lis pendens* notice in the Jackson County Register of Deeds office based on his state law and antitrust claims in the US District Court.

**197 US BANCORP and US BANK Work to Frustrate Recovery From GE**

198 The defendants US BANCORP and US BANK along with Jerry A. Grundhoffer, Andrew Cesere, Piper Jaffray Companies and Andrew S. Duff coordinated their defense of Medical Supply's action for injunctive and declaratory relief with the GE defendants Jeffrey R. Immelt, GE, GHX, GE Healthcare, GE Capital and GE Transportation who inconceivably attached the Medical Supply complaint and order to their 12(b)6 motion to dismiss in Medical Supply's separate action against Jeffrey R. Immelt, GE, GHX, GE Capital and GE Transportation.

199 On January 29, 2004, March 4, 2004, April 2, 2004 US Bancorp's counsel, Nicholas A.J. Vlietstra and Piper Jaffray's counsel Reed coordinated their appeal (10th C.C.A. 03-3342) with the GE defense. The GE defendants included the action against the US BANCORP defendants and Unknown Healthcare Provider as a related appellate case in (10th C.C.A. 04-3075) and used the US BANCORP order as a basis for a cross appeal (10th C.C.A. 04-3102) challenging the failure of the trial court to grant sanctions against Medical Supply.”

200 A cartel of hospital suppliers organized in an anticompetitive agreement as members of GE's GHX,LLC and including the University Hospital Consortium (UHC), Robert J. Baker, the Volunteer Hospital Association (VHA, Inc.), Novation LLC, Neoforma, Inc. and Robert J. Zollars renewed their conscious commitment to a common scheme designed to achieve an unlawful objective of keeping Medical Supply out of the market for hospital supplies by reviewing the case against US BANCORP and consulting with representatives for the defendants US BANCORP and US BANK along with Jerry A. Grundhoffer, Andrew Cesere, the Piper Jaffray Companies and Andrew S. Duff.

201 The cartel decided to rely on the continuing efforts to illegally influence the Kansas District Court and Tenth Circuit Court of Appeals to uphold the trial court's erroneous ruling.

202 The cartel also renewed their efforts to have Medical Supply's sole counsel disbarred, knowing that an extensive search for counsel by Medical Supply had resulted in 100% of the contacted firms being conflicted out of opposing US BANCORP and actually effected a frenzy of disbarment attempts against

Medical Supply's counsel in the period from December 14, 2004 to February 3rd, 2005, originating from US BANCORP and US BANK's agent Shughart Thomson and Kilroy's past and current share holders."

203 The former eighteen year Shughart Thomson & Kilroy shareholder acting as magistrate on the GE case denied Medical Supply discovery and the court did not even permit discovery when the dismissal attachments necessitated conversion of the GE motion to one for summary judgment.

#### 204 BREACH OF CONTRACT

- 2) The Defendants breached their contract with Medical Supply (MSCI) which interests are now
- 3) This contract was executed in writing by the
- 4) Defendants and MSCI when their respective agents opened the Medical Supply Chain Corporate
- 5) The Defendants breached their contract with MSCI to provide MSCI with corporate trust services,
- 6) This contract was made while the plaintiff was influenced by representations over the phone at a
- 7) No writing or other memorialization of this contract to provide a full range of banking services with
- 8) The Defendant's Vice President Brian Kabbes and Samuel Lipari came into formation of a written  
ong term held funds, the directions for US BANK's investment of short term held funds, the selection of investment vehicles
- 9) The Defendants performed diligence to determine whether to accept the contract with MSCI to
- 10) The Defendants required only one item to be rectified for approval; a current good standing status
- 11) The Defendants approved MSCI's escrow form for delivery along with MSCI's associate contract to
- 12) The Defendants breached the contract to provide escrow accounts to MSCI when the defendants

- 13) MSCI attempted to cover or substitute as described in the statement of facts, seeking the services of
- 14) MSCI then attempted to cover or substitute by obtaining the capitalization for entry to market
- 15) The Defendant US BANCORP injured MSCI with a fraudulent misrepresentation material to their
- 16) Then Brian Kabbes speaking as a Vice President of US BANK falsely represented to MSCI that US
- 17) The defendants' officers Lars Anderson and Susan Paine made this fraudulent misrepresentation
- 18) The defendant US BANCORP's officer Andrew Cesere directed the defendants' officers Lars
- 19) misrepresentation when it had been questioned by MSCI and SAMUEL LIPARI and to maintain the
- 20) BANCORP NA, US BANK.
- 21) The defendants' officers Andrew Cesere, Lars Anderson, Susan Paine and Brian Kabbes caused this
- 22) escrow account hosting.
- 23) On 10-24-02 the defendants officer Brian Kabbes communicated to MSCI and SAMUEL LIPARI
- 24) Becky Hainje US Bancorp (Phone Message left on MSCI answering machine 10-24-02);
- 25) **Becky Hainje:** Hi Sam this is Becky Hainje with US Bank I a... visited again with Brian concerns that the bank had a... first of all was that of course this is an unknown start up business that a... did not have ) that's what the situation was a...I understand that your coming up with a unique way to finance and get a business off of ne a call at 913-261-5725."
- 26) Brian Kabbes called back rather than Ed Higgins:
- 27) **Bret Landrith MSCI;** "Yes Brian, this is Bret Landrith, returning your call.
- 28) **Brian Kabbes US BANCORP;** "Bret hey a...Lars Anderson wants to be on this call too, he is
- 29) **Bret Landrith MSCI;** " No problem."
- 30) **Lars Anderson US Bancorp;** "Hey Bret, I got Lars Anderson, hey Bret."
- 31) **Bret Landrith MSCI;** "Nice to speak to you"
- 32) **Lars Anderson US BANCORP;** "Susan Pane is here also here in the office a...



- 33) **Brian Kabbes US BANCORP**; “I report to Susan Pane and Lars is our new business
- 34) **Bret Landrith MSCI**; “Yes I didn't realize when I last spoke to Brian that we had already sent
- 35) **Lars Anderson US Bancorp**; “Who approved?”
- 36) **Bret Landrith MSCI**; “Brian Kabbes, he works there in your office, I think he is in front of  
rket a... that became a substantial issue for us and I didn't realize that when I last spoke to Mr. Kabbes.”
- 37) **Lars Anderson US Bancorp**; “Yeah, we were wondering how obviously calling Andy Cesere
- 38) **Bret Landrith MSCI**; “well a...”
- 39) **Lars Anderson US Bancorp**; “as you were not happy with our decision not to move forward
- 40) **Bret Landrith MSCI**; “a... Mr. Kabbes was very helpful, he suggested that we go to some local
- 41) **Lars Anderson US Bancorp**; “Sure”,
- 42) **Brian Kabbes US BANCORP**; “I said that when I said that I said your local bank, I didn't
- 43) **Bret Landrith MSCI**; “Who has really accelerated there a level of customer service just
- 44) **Lars Anderson US Bancorp**; “Got yea...Well then no doubt nobody questions about whether  
id what our duties were.”
- 45) **Bret Landrith MSCI**; “I don't think we need to go into minutia over that right now I think the
- 46) **Lars Anderson US Bancorp**; “We have not divulged your Business Plan to any body, there is
- 47) **Bret Landrith MSCI**; “well a...”
- 48) **Lars Anderson US Bancorp**; “Where did we ever accept the transaction, we never provided
- 49) **Bret Landrith MSCI**; “we had pricing and its oral, and this is Missouri, and this is a business
- 50) **Brian Kabbes US BANCORP**; “I'll tell you what Bret, you can talk with Sam, you can get
- 51) **Bret Landrith MSCI**; “Sam is in the room now.”
- 52) **Sam Lipari MSCI**; “Hi Brian, well Brian, I also had conversations with Becky Hainje, and
- 53) **Bret Landrith MSCI**; “but, but before we go farther down this line, obviously you don't have
- 54) **Brian Kabbes US BANCORP**; “Excuse me”
- 55) **Lars Anderson US Bancorp**; “you do want, on what basis do you consider us to be with you
- 56) **Bret Landrith MSCI**; “well we have our sole banking relationship with you and we have
- 57) **Lars Anderson US Bancorp**; “We don't have a conflict of interest.”
- 58) **Bret Landrith MSCI**; “this comes out of left field that you are accusing us of being Arab
- 59) **Lars Anderson US Bancorp**; “Ok, well I think Brian's conveyed...”
- 60) **Bret Landrith MSCI**; “well those are pretty bad reasons and those end up with a demand
- 61) **Lars Anderson US Bancorp**; “well we are not the right people to talk to about that, we are
- 62) **Bret Landrith MSCI**; “all right well, like I said earlier, I don't see any point in having a
- 63) **Lars Anderson US Bancorp**; “so your, what your what are you stating at this point, that you
- 64) **Bret Landrith MSCI**; “we got ten people that....”

- 65) **Lars Anderson US Bancorp**; “to force us to provide these services, or what, I don't
- 66) **Bret Landrith MSCI**; “your, your characterizing that as a threat, there are no threats here, our
- 67) **Lars Anderson US Bancorp**; “well we certainly never contracted with you or these ten
- 68) **Bret Landrith MSCI**; “well I think we go to a referee on that, first you get the demand letter,
- 69) **Sam Lipari MSCI**; “and, and if I might add something here, this patriot act, that was background check or financial background on these individuals. I mean I am just really concerned why this patriot act
- 70) **Lars Anderson US Bancorp**; “we were not trying to relate the Patriot Act specifically to your
- 71) **Sam Lipari MSCI**; “well according to Ed Higgins, he didn't see how this, where this even
- 72) **Bret Landrith MSCI**; “what other customers has this been an issue with for you and maybe
- 73) **Lars Anderson US Bancorp**; “The patriot act, when it was put in place, caused us to have a
- 74) **Sam Lipari MSCI**; “well according to Ed Higgins, he doesn't think that the Patriot Act has
- 75) **Bret Landrith MSCI**; “but, since you mentioned it the other day, we started looking at who you
- 76) **Lars Anderson US Bancorp**; “yea, you know what...we are not sure...what's your...”
- 77) **Bret Landrith MSCI**; “yea, it is pretty serious and it goes beyond contract damages ok.”
- 78) **Lars Anderson US Bancorp**; “we are not the right people to talk to if you...”
- 79) **Bret Landrith MSCI**; “I know you may not be the right people to talk about trust, that is why
- 80) **Lars Anderson US Bancorp**; “we have already spoken with him and explained the situation,
- 81) **Bret Landrith MSCI**; “no, I think we are going to focus on the Trust Department on US Bank
- 82) **Lars Anderson US Bancorp**; “do you have any other questions today?”
- 83) **Bret Landrith MSCI**; “No, you called us.”
- 84) **Lars Anderson US Bancorp**; “well we were just returning your call to Andy Ceccere”.
- 85) **Bret Landrith MSCI**; “well I think he ought to personally talk to us cause we are still not
- 86) **Lars Anderson US Bancorp**; “you are not looking for a good explanation you are looking to
- 87) **Bret Landrith MSCI**; “no, you guys are the ones that don't even threaten you just kill, but we
- 88) **Sam Lipari MSCI**; “yea, we need, the problem here is that we have these a..., we basically in time we tried to explain the situation and in fact we spoke with Ed, now who is Ed Higgins,
- 89) **Brian Kabbes US BANCORP**; “He is ahead of personal trust in St. Louis.”
- 90) **Sam Lipari MSCI**; “Ok, well when we spoke with Ed, Ed seemed to feel as though this to create a line of credit here at the local level, a... and everything seemed to be going in order and then all of a sudden
- 91) **Brian Kabbes US BANCORP**; “first off, that was a minor, that was part of our reason that
- 92) **Sam Lipari MSCI**; “well, if, if I quote Becky correctly this morning on her conversation, it going to find out that we are going to constantly come back to this issue where you have a conflict of interest and because
- 93) **Bret Landrith MSCI**; “but they were our ten best you know, former principal of IBM, and
- 94) **Sam Lipari MSCI**; “so all the conversations that we have documented since last week, have

- 95) **Brian Kabbes US BANCORP**; “you are missing a very important part of that, twice I said to
- 96) **Sam Lipari MSCI**; “ok well then let me ask you this Brian, why won’t you just set the escrow
- 97) **Brian Kabbes US BANCORP**; “well”
- 98) **Sam Lipari MSCI**; “there is a conflict of interest Brian, and you know there is, and I don't  
to deposit and we are going to have to go back to them to try and save them if we can, and if we can't all this is really kind  
Commission is after them, and not Medicare and Medicaid is after these GPO's. In addition to that, I have a glass pipe line  
ced you people to do, instead, you guys have carried this thing farther, in other words, you want to know more  
: a conflict, then set the escrow up.”
- 99) **Lars Anderson US Bancorp**; “Sam, this is Lars, Brian and I have talked about this since he
- 100) **Brian Kabbes US BANCORP**; “I don't have any idea what he is talking about.”
- 101) **Bret Landrith MSCI**; “I understand you are not admitting it yet, but you have not come up
- 102) **Brian Kabbes US BANCORP**; “we have to know our customers I have to have complete
- 103) **Bret Landrith MSCI**; “I don't think a US Bank knows too much about US Bank, but in terms
- 104) **Lars Anderson US Bancorp**; “we take on a trust business stand alone, and we have our own
- 105) **Bret Landrith MSCI**; “like I said, I don't think US Bank is a coherent entity and I am really
- 106) **Lars Anderson US Bancorp**; “Ok, well we are trying to explain to you today the reason why
- 107) **Sam Lipari MSCI**; “and what is that reason exactly, because we have gone””
- 108) Transcript of tape recorded telephone conference.
- 109) MSCI and SAMUEL LIPARI justifiably relied upon this fraudulent misrepresentation to not enforce  
Andrew Cesere, to try and resolve the problem, unintentionally angering Lars Anderson and Susan
- 110) Paine.
- 111) The defendants US BANCORP NA and US BANK caused this fraudulent misrepresentation to be
- 112) Or, in the alternative the defendants caused this fraudulent misrepresentation to be communicated
- 113) US BANK and US BANCORP intentionally deceived MSCI and SAMUEL LIPARI over the
- 114) US BANK and US BANCORP had a bad faith motive and deceived MSCI and SAMUEL LIPARI
- 115) US BANK and US BANCORP had a bad faith motive and deceived MSCI and SAMUEL LIPARI
- 116) US BANK and US BANCORP had a bad faith motive and deceived MSCI and SAMUEL LIPARI

117) MSCI and SAMUEL LIPARI relied on the Defendants fraudulent misrepresentation to MSCI and

118) MSCI and SAMUEL LIPARI were harmed by the Defendants' actions, resulting in the immediate

**119) TRADE SECRET MISAPPROPRIATION UNDER SECTION 417.450 RSMO OF THE**

1 The Defendants have misappropriated MSCI's business plan and associate program containing MSCI's trade secrets.

2 The Defendants have made use of MSCI's trade secrets through unauthorized copying and transmittal.

3 The Defendants directed Douglas Lewis to disassemble MSCI's Business Plan and Associate Program and make copies and or fax their contents in violation of SAMUEL LIPARI's oral instructions to Douglas Lewis and the notice of limitations of disclosure, use, transmittal and copying expressly stated on the covers and in the bodies of the above documents.

4 US BANK exceeded its authorized use and copied and or transmitted the above documents to the defendant US BANCORP and its officers Lars Anderson, Susan Paine and Brian

120) Kabbes.

1 The Defendants directed Douglas Lewis to disassemble MSCI's Business Plan and Associate Program and make a derivative analysis document containing MSCI's trade secret and or fax their contents in violation of Sam Lipari's oral instructions to Douglas Lewis and the notice of limitations of disclosure, use, transmittal and copying expressly stated on the covers and in the bodies of the above documents.

2 The defendant US BANCORP NA, its officers Lars Anderson, Susan Paine and Brian Kabbes and its subsidiary US BANCORP PIPER JAFFRAY acquired unconsented knowledge of MSCI's trade secrets and made use thereof.

3 The Defendants were at the time attempting to settle litigation through payment of several million dollars for theft of customer information in an unrelated class action lawsuit giving rise to MSCI's heightened fears of being materially injured if its trade secrets are not recovered and their dissemination is not disclosed.

**121) BREACH OF FIDUCIARY DUTY**

1 Plaintiff hereby re-alleges the preceding averments of facts and incorporates them herein.

2 US BANCORP through its investment banking subsidiary US BANCORP PIPER JAFFRAY  
dominated the capitalization of health care technology companies.

3 US BANCORP through its relationship directly with Novation, LLC and through its subsidiary  
US BANCORP PIPER JAFFRAY's relationship with Novation, LLC dominated the access to the  
nationwide hospital supply market.

4 Until April 28, 2003 when US BANCORP PIPER JAFFRAY settled charges it was guilty of  
aiding and abetting efforts to defraud investors and manipulating investment research, US BANCORP  
through its investment banking subsidiary US BANCORP PIPER JAFFRAY was able to dominate investor  
research and exclude potential competitors to Novation, LLC's control of the market for hospital supplies  
from having a market for securities.

5 SAMUEL LIPARI placed his trust in US BANK and US BANCORP to provide escrow services  
to MSCI in his plan to alternatively capitalize MSCI's entry into the market for hospital supplies through  
the participation of its certification candidates who would function as MSCI's marketing representatives.

6 US BANCORP's corporate trust division acting through US BANK was a trustee of the highest  
order to MSCI by virtue of US BANK's contract with SAMUEL LIPARI to provide MSCI escrow  
services.

7 In forming the trust relationship with MSCI, US BANK and US BANCORP asked for and  
obtained from SAMUEL LIPARI all of MSCI's confidential information relating to the escrow accounts  
and MSCI's certification candidates.

8 US BANK was a trustee of the highest order to MSCI by virtue of US BANK's officer Douglas  
Lewis' promise to SAMUEL LIPARI that US BANK would safeguard MSCI's confidential business plan.

9 US BANCORP and US BANK violated the high standard of conduct and loyalty owed to MSCI  
required by the defendants' fiduciary relationship as an escrow services provider to MSCI when US  
BANCORP and US BANK improperly used a change in federal law as a pretext to breach US BANCORP  
and US BANK's agreement to provide escrow services.

10 US BANCORP and US BANK violated the high standard of conduct and loyalty owed to MSCI required by the defendants' fiduciary relationship as an escrow services provider to MSCI when US BANCORP and US BANK fraudulently claimed a change in federal law excused their breach US BANCORP and US BANK's agreement to provide escrow services, knowing the change did not render performance impossible and knowing that a change in law or regulations did not relieve the defendants of their duty to perform under the escrow contract.

11 US BANK violated the high standard of conduct and loyalty owed to MSCI required by the defendants' fiduciary relationship as custodian of MSCI's confidential trade secrets contained in MSCI's business plan and MSCI's certification program when it reproduced the trade secrets and transmitted them to US BANCORP offices outside of the Independence, Missouri office of Douglas Lewis.

12 US BANCORP violated the high standard of conduct and loyalty owed to MSCI required by the defendants' fiduciary relationship as custodian of MSCI's confidential trade secrets contained in MSCI's business plan and MSCI's certification program when it received the MSCI trade secrets transmitted to them by Douglas Lewis and disseminated them to hospital suppliers and GPO's competing with MSCI.

13 US BANCORP and US BANK violated their duty of undivided loyalty to MSCI and to the escrow beneficiaries thereof by engaging in self-dealing by requiring the escrow account funds to be invested in a fund owned by US BANCORP without disclosure of US BANCORP's interest.

1 APPENDIX FIVE

2 **Plaintiff's Business Relationship With GE, GE CAPITAL and GE  
TRANSPORTATION**

3 The following statement of facts describes the business relationship of the petitioner Samuel K.  
Lipari with GE, GE CAPITAL and GE TRANSPORTATION which was tortiously interfered with by the  
Missouri antitrust defendants as the facts were presented in the petitioner's litigation against GE, GE  
CAPITAL and GE TRANSPORTATION. The word "defendants" herein refers to GE, GE CAPITAL and  
GE TRANSPORTATION.:

4 General Electric Company, (herein "GE"), Missouri registered agent: C T Corporation System, 314  
North Broadway, St. Louis, Mo 63102.

5 General Electric Capital Business Asset Funding Corporation, (herein "GE CAPITAL") Missouri  
registered agent: The Company Corporation 120 South Central Avenue Clayton, Mo 63105.

6 GE Transportation Systems Global Signaling, L.L.C. (herein "GE TRANSPORTATION") Missouri  
registered agent C T Corporation System, 120 South Central Avenue, Clayton Mo 63105.

7 Samuel K. Lipari's dissolved company Medical Supply Chain, Inc. (Medical Supply) formed a  
written contract via email with GE and GE Transportation to buy a \$10 million dollar building at 1600 N.E.  
Coronado Drive in Blue Springs, MO for \$5 million and simultaneously to sell GE Transportation a release  
from its ten-year lease for a deeply discounted value.

8 The GE entities knew Medical Supply intended to use the transaction to capitalize its entry into the  
hospital supply market and that it was the victim of antitrust conspirators using the USA PATRIOT ACT to  
prevent it from getting capital by conventional means. GE corporate "business leaders" approved the  
transaction obligating GE Capital's underwriting based on Samuel K. Lipari's business plan and Medical  
Supply's ability to pay as detailed in Medical Supply's forward looking financials.

9 The e-mail was a written contract meeting the Missouri Statute of Frauds and under Electronic  
Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq.

10 Both the GE entities and Medical Supply partially performed the terms of the contract. GE caused  
the breach of the contracts when GE Medical and the electronic hospital supply marketplace GHX LLC

created by GE interfered to prevent Medical Supply from getting capitalization through the contract to enter the hospital supply marketplace. GHX, GE and GE Medical are openly part of an unlawful hospital supply cartel with Novation LLC that had previously prevented Medical Supply from capitalizing its entry into the hospital supply market.

11 Medical Supply was entitled to its contract expectations *Albrecht v. The Herald Co.*, 452 F.2d 124 at 129 (8th Cir. 1971) including its business plan forward looking financials under *Anuhco, Inc. v. Westinghouse Credit Corp.*, 883 S.W.2d 910 (Mo App 1994) and GE Capital has specifically been subjected to business plan expectation damages for breaching finance contracts in Missouri State Court: *Rasse v. GE Capital Small Business Finance Corp.*, 2002 MO 808 (MOCA, 2002).

12 The Western District of Missouri U.S. District court decided an electronic contract/electronic signature case under federal and state electronic contract laws and the Missouri statute of frauds as Medical Supply's original pleadings advocated: *International Casings Group, Inc., v. Premium Standard Farms, Inc.*, 358 F. Supp. 2d 863; 2005 U.S. Dist. LEXIS 3145, February 9, 2005.

13 Jeffrey R. Immelt, the former president of GE Medical, Inc. knew he had succeeded Jack Welch as CEO of General Electric because GE's hospital supply business units had successfully maintained an anticompetitive market in U.S. hospital supply purchasing permitting GE to pass on higher prices to the hospital consumers and because of this the General Electric Company was under a consent order with the U.S. Department of Justice requiring the corporation to sell a medical imaging unit and refrain from future anticompetitive conduct at the time Medical Supply Chain, Inc. brought its original breach of contract and antitrust complaint against the GE defendants including Jeffrey R. Immelt. Immelt made it an essential priority for the General Electric defendants, their agents and their hospital supply cartel co-conspirators to have the petitioner's complaint dismissed at all costs.

14 Under Jeffrey R. Immelt's direction and control, Immelt's personal and corporate agents made repeated misrepresentations to state and federal judicial branch staff and attempted to influence them unlawfully, largely *ex parte* and unreported to the petitioner in order to have Medical Supply, the petitioner, his cause and his counsel destroyed.

15 The petitioner appealed the district court dismissal of his antitrust claims resulting from Rule 12 (b)

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6 pleadings filed by John K. Power, Jonathan I. Gleklen and Ryan Z. Watts deliberately misstating the law so that the petitioner's complaint would be erroneously thrown out for not making General Electric's independent co-conspirator Neoforma, Inc. a defendant. The dismissal was accomplished through the hostile climate in the court created *ex parte* by GE's legal representatives and Mark A. Olthoff, Steven D. Ruse, James P. O'Hara of the law firm Shughart Thomson & Kilroy, all representing Immelt's cartel co-conspirators and the cartel feared Immelt's deception would be discovered.

16 Jeffrey R. Immelt directed his legal team to file a counter appeal in an abuse of process to obtain sanctions against the petitioner that the trial court had denied. Through this overt action and an accompanying unlawful influence over Patrick J. Fisher, Jr., the Clerk of the Tenth Circuit U.S. Court of Appeals and law clerks for the court in a deliberate use of social networking between government officials in a pattern modeled after the Mississippi Sovereignty Commission and that eventually included the U.S. District Attorney for Kansas, Eric F. Melgran and Bradley J. Schlozman working in the U.S. Department of Justice and later installed as the US Attorney for the Western District of Missouri.

17 The resulting appeal decision upholding the erroneous dismissal and correctly reversing the trial court on whether sanctions could have been issued went on to vilify the petitioner and his representation for naming Jeffrey R. Immelt as an antitrust defendant and in doing so the opinion contradicted clearly established Tenth Circuit precedents on identical facts along with the controlling federal case law. The following day the US Supreme Court docketed the appeal of similar and equally unusual sanctions in the antitrust action against the cartel co-conspirators by the petitioner's attorney.

18 The two unusual opinions and the facts in the petitioner's case *Medical Supply Chain, Inc. v. Neoforma, et al.*, Case No. 05-0210-CV-W-ODS in which the petitioner was again subjected to the same misconduct and worse, starting with the GE defendants' misrepresentations to Hon. Judge Ortrie D. Smith of the Western District court through John K. Power and the cartel's common defense controlled by Immelt in order to fraudulently transfer the action to Kansas "in the interest of justice" caused the Tenth Circuit on the petitioner's information and belief to conduct a second internal investigation among law clerks in the Denver court following an earlier investigation directed at Magistrate James P. O'Hara led the Tenth Circuit to conclude that the counter appeal had been an abuse of process. This resulted in the unusual trial court

order stating the Tenth Circuit had directed Hon. Judge Carlos Murguia to order Jeffrey R. Immelt by name to personally file for the sanctions Immelt had succeeded in appealing but had not pursued in the year following remand. Immelt declined to appear or resubmit himself to the jurisdiction of the court and directed a letter be sent on his behalf by his personal counsel Jonathan I. Gleklen.

19 The petitioner's state law based contract claims against the GE defendants had been dismissed without prejudice and the petitioner exercised his right to file them where the injury occurred in Jackson County Missouri. Jeffrey R. Immelt attempted to conceal the continuing contractual liability to the petitioner in Securities and Exchange Commission mandated filings from his board of directors to prevent GE's role in the unlawful hospital supply cartel to be exposed.

20 The petitioner had earlier relied on the public filings of Neoforma, Inc., enraging Immelt. Jeffrey R. Immelt had through the aid of U.S. Deputy Attorney General Paul J. McNulty and the McNulty Memo authored in December 2006 to prevent the Northern District of Texas US Attorney's office investigating Novation, LLC's theft of member hospital funds and their money laundering through the petitioner's electronic marketplace competitor from obtaining the corporate papers of Neoforma, Inc. without Main Justice and Karl Rove's approval .

21 When the investment banking and merger syndicate of Merrill Lynch & Company, Inc., Fenwick & West LLP., Innisfree Limited, Lazard, McDermott Will & Emery LLP., Wachtell Lipton Rosen & Katz, Skadden Arps Slate Meagher & Flom LLP., Sidley Austin Brown & Wood LLP., and William Blair & Company formed by Novation LLC for the purpose of solving the cartel's exposure to the petitioner through Neoforma, Inc. discovered the petitioner's claims in November 2005 that had not been disclosed in Securities and Exchange Commission required filings and began to fear the liability of taking Neoforma, Inc. private to obstruct justice in the petitioner's antitrust civil litigation and the government False Claims Act Medicare fraud investigation that were both seeking the records of where the Novation LLC member hospitals' laundered funds went; Jeffrey R. Immelt caused the defendant entity GE Capital to underwrite the loan giving the money to Novation LLC for merging Neoforma, Inc. with GHX, LLC the sole remaining competitor electronic marketplace for hospital supplies.

22 Jeffrey R. Immelt directed his defense to attempt to unlawfully influence the Independence, Missouri court in deliberately fraudulent filings, a fraudulent removal to federal court and by acting *ex parte* to prevent the petitioner from obtaining counsel using the disbarment of the petitioner's previous counsel, the vilifying rulings and sanctions all knowingly obtained by Immelt through unlawful influence over the court and by using the Mississippi Sovereignty Commission style networking employed by Immelt to destroy the petitioner and his associates. The fear of GE's influence was so great and visibly no constitutional rights or laws could protect even officers of the court that the petitioner could not obtain counsel even when his contract claims survived dismissal.

23 Still Jeffrey R. Immelt feared the discovery of his role in the Novation LLC hospital supply cartel and when the petitioner attempted to receive an order compelling the GE defendants to mediation and to produce discovery, Jeffrey R. Immelt caused his defense counsel John K. Power Mo. Lic. #35312, Leonard L. Wagner MO. Lic. #39783 to repeatedly lie to the court, falsely stating that they had attempted to schedule mediation and falsely stating that the petitioner's discovery requests were not identified as to their relativity to the petitioner's complaint when each numbered production request was indexed to the particular paragraph of the complaint it was related to.

24 While Jeffrey R. Immelt perpetrated this misrepresentation on the court and General Electric was liable for over \$60,000.00 dollars in daily interest on contract based claims he could not escape, Jeffrey R. Immelt turned to the Illinois law firm of Seyfarth Shaw LLP to take over direction of the Independence, Missouri defense through extortion of the petitioner. Seyfarth Shaw LLP obtained an order from Hon. Judge Mark Filip, of the Federal District Court in Chicago, Illinois who was nominated to replace Deputy Attorney General McNulty to force the petitioner to testify without counsel on his relationship to the financier Michael Lynch, knowingly causing the petitioner to fear for his safety and evidencing no intention to follow through on the mediation the GE defendants had promised the state court.

25 Realizing the defendants had again openly and notoriously committed fraud on the 16<sup>th</sup> Circuit, Missouri court, the day after the petitioner's settlement offer to Jeffrey R. Immelt expired, Hon. Judge Michael W. Manners granted the petitioner leave to amend his complaint to include the following racketeering and racketeering conspiracy based claims against the defendants that occurred subsequent to

previous litigation with the requisite specificity to meet the current federal RICO pleading requirements and RICO conspiracy averment requirements in light of *Bell Atlantic v. Twombly*, No. 05-1126, 2007 WL1461066 (May 21, 2007) determination that Sherman Act conspiracy on which RICO is based requires more than notice pleading.

26 The plaintiff through his now dissolved corporation made a contract with the defendants to sell GE Transportation's remaining ten year lease at a deep discount benefiting GE in exchange for GE'S funding of the plaintiff's purchase of the building through GE'S business lending subsidiary, GE Capital.

**FORMATION OF A CONTRACT BETWEEN THE PLAINTIFF AND THE DEFENDANTS TO EXCHANGE GE TRANSPORTATION'S REMAINING LEASE AND FUND THE PURCHASE OF 1600 N.E. CORONADO BUILDING**

27 On or about June 1st, 2002, Samuel K. Lipari, in his role as CEO of Medical Supply Chain, Inc. contacted the leasing agent Cohen & Essrey Property Management ("Cohen") regarding a building located at 1600 N.E. Coronado Drive in Blue Springs, MO.

28 Cohen indicated the building was already leased but that the lessee could and would like to sub-lease the building.

29 The building was not occupied so Samuel K. Lipari made a verbal offer to sub-lease a portion of the building.

30 Cohen declined his offer indicating the existing lessee would not accept anything less than sub-leasing the entire building.

31 On or about April 1st, 2003 Samuel K. Lipari contacted the new leasing agent, B.A. Karbank & Company ("Karbank") in the event the new agent had different instructions regarding a sub-lease of the property located at 1600 N.E. Coronado Drive in Blue Springs, MO.

32 The new leasing agent Karbank told Samuel K. Lipari that GE was the lessee seeking to sub-lease the building due to their vacating the building after GE Transportation bought out Harmon Industries.

33 The building was still not occupied so again Samuel K. Lipari made a verbal offer to lease a portion of the building.

34 Karbank declined his offer indicating GE corporate properties would not accept anything less than

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leasing the entire building.

35 On or about April 7th, 2003 Samuel K. Lipari contacted GE and spoke with the GE property manager, Mr. George Frickie regarding Medical Supply's interest in sub-leasing the building.

36 George Frickie indicated again that GE would not be interested in sub-leasing a portion of the building but rather would be interested in leasing the entire building.

37 Samuel K. Lipari requested the name of the owners and George Frickie gave him the name and number of Mr. Barry Price with Cherokee Properties L.L.C.

38 Samuel K. Lipari contacted Barry Price, and he was referred to Mr. Scott Asner who also had a substantial interest in the building.

39 While speaking with Mr. Asner he provided Samuel K. Lipari the background and current details on the building lease with GE, terms and a price to purchase the building.

40 The lease was transferable and GE was still obligated for 7-years out of a 10-year lease.

41 Mr. Asner agreed to sell Medical Supply the building for the remaining balance of the GE 7-year lease (\$5.4 million) and provided Samuel K. Lipari with a letter of intent to sell the building to Medical Supply.

42 On or about April 15th, 2003 Samuel K. Lipari contacted George Frickie with GE Commercial Properties and indicated that he had an interest in purchasing the building. Samuel K. Lipari asked George Frickie if GE had an interest in buying out the remainder of their lease so that Medical Supply could occupy the building following the purchase.

43 George Frickie offered GE's lease payments for the remainder of 2003 (\$350,000) as a buy out offer.

44 On or about May 1st, 2003 Samuel K. Lipari tentatively contacted several local Banks, knowing that US Bank had threatened his company with a malicious USA PATRIOT ACT report to keep Medical Supply from entering the hospital supply market where US bank was affiliated with Neoforma, an existing electronic marketplace for healthcare supplies.

45 Samuel K. Lipari knew Medical Supply could not get a loan because of the threat and extortion of the USA PATRIOT ACT, but knew he needed inputs from bankers familiar with the commercial real estate

market in Blue Springs, MO.

46 Samuel K. Lipari felt Medical Supply could form a holding company to obtain the property without US Bank realizing, and could then enter the hospital supply market.

47 Samuel K. Lipari spoke with Mr. Allen Lefko President of Grain Valley Bank, Mr. Pat Campbell branch manager of Gold's Bank and Mr. Randy Castle Senior Vice-President of Jacomo Bank.

48 Each of the banks indicated a wiliness to provide the mortgage because they felt the property was worth far more than the price offered by Cherokee Properties L.L.C., but the mortgage was too large for the regulatory size of their bank and they each suggested a national bank as an alternative.

49 Due to US Bank's extortion and racketeering, including the pretext and very real threat of a malicious USA PATRIOT ACT "suspicious activity report" (SAR) against Medical Supply since Samuel K. Lipari had tried to enter the hospital supply market in October of 2002, Samuel K. Lipari knew he was unable to solicit a national bank for the real estate loan.

50 On or about May 7th, 2003 Medical Supply contracted a financial consultant (Mrs. Joan Mark) for advice on how to structure a mortgage to buy the building which has a 7- year revenue stream from GE in the amount of \$5.4 Million dollars, the identical amount offered to purchase the building and for which Medical Supply had a letter of intent from the owner Cherokee Properties LLC.

51 Mrs. Mark suggested Samuel K. Lipari propose a mortgage arrangement directly to Mr. Frickie with GE Corporate.

52 Mrs. Mark explained how a purchase of the \$10 Million dollar property for \$5.4 Million dollars was a great deal for any mortgage lender.

53 Mrs. Mark also explained if GE provided a \$5.4 Million dollar mortgage on a \$10 Million dollar property and eliminated a \$5.4 Million dollar lease liability that GE would directly benefit from a \$15 Million dollar positive swing to their balance sheet.

#### **Offer**

54 On or about May 15th, 2003, Medical Supply's corporate counsel sent a proposed transaction to George Frickie outlining the terms of Medical Supply's proposal :

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Dear Mr. Fricke:

I am writing on behalf of Medical Supply Chain, Inc. with a proposal to release GE from a seven-year 5.4 million dollar obligation on 1600 N.E. Coronado Dr., Blue Springs MO. We have spoke with the City of Blue Springs economic development officer and the city attorney. Medical Supply Chain, Inc. has also obtained a letter of intent from the building's owner, Cherokee South, L.L.C. (Barry Price/Scott Asner) to purchase the building. We offer to release GE from its lease and 5.4 million dollar obligation, providing GE pays Medical Supply Chain, Inc. at closing for the remainder of the 2003 lease and transfers title to the building's furnishings. This offer is contingent on GE's acceptance by 3pm (EST), Friday, May 23rd; the City of Blue Spring's approval of Medical Supply Chain's purchase and occupation of the building and is contingent upon GE Capital securing a twenty year mortgage on the building and the property with a first year moratorium.

Medical Supply Chain, Inc. believes this arrangement will result in a net gain in revenue for GE and GE's Capital services was our first choice for the commercial mortgage when our area bankers advised us the building and the property at 6.2 million dollars was substantially less than its market value of 7.5 million dollars, but would require a commercial lender. Medical Supply Chain, Inc. has no existing debt and a valuation of thirty two million dollars. See attachment 1.

GE Capital or its underwriter would need to provide Medical Supply Chain, Inc. a twenty-year

Mortgage at 5.4% on the full purchase price of 6.4 million dollars, with a moratorium on the first full year of mortgage payments. The City of Blue Springs would be paid the balance of lease payments for the land (\$800,000.00) or in the alternative, the mortgage will include an escrow account to complete the lease and purchase of the land on its original terms. GE

Capital can provide or designate the closing agent and would be required to provide 5.4 million dollars to Cherokee South, L.L.C. and your division's check for the remainder of the lease payable to Medical Supply Chain, Inc. along with a bill of sale for the buildings furniture and equipment. This closing would need to be completed by June 15th, 2003. Please contact us at your receipt of this offer and provide us a contact person for GE Capital or its mortgage agent.

Bret D. Landrith

#### **Oral Acceptance Affirming Meeting of the Minds**

55 The afternoon of May 15th, 2003 George Frickie responded, leaving a taped voicemail message and stating he had spoke with the "business leaders" at GE corporate and that they will accept Medical Supply's proposal:

56 "Bret, George Frickie, ah.... I know I sent you an email saying that my counsel is out ah...and I followed up with another email but I spoke to the business leaders and we will accept that transaction ah... let's start the paper work ah... if you want to do some drafting of lease termination or if you would like us to do that, give me a holler 203-431-4452."

57 May 15<sup>th</sup> 2003 taped voice mail message recorded by George Frickie.

### **Verification, A Writing Meeting Statute of Frauds**

58 The second e-mail George Frickie referenced on the phone conversation explicitly stated that GE would accept Medical Supply's proposal and initialed the written acceptance in addition to the electronic signature file for the e-mail:

"From: Fricke, George (CORP)  
To: Bret Landrith  
cc: Newell, Andrew (TRANS) ; Payne, Robert J (TRANS) ;  
Davis, Tom L (TRANS) ; Jakaitis, Gary (CORP)  
Sent: Thursday, May 15, 2003 6:05 PM  
Subject: RE: Lease buyout GE/Harmon building

Bret, I would like to confirm our telephone conversation in that GE will accept your proposal to terminate the existing Lease. Robert Payne GE Counsel will start working on the document. He is out of the office until Monday the 19th. GCF"

### **Conduct Consistent With Contract**

59 On or about May 20<sup>th</sup>, 2003, Medical Supply was given a walk through of the property to inventory the buildings furniture and fixtures and discuss building maintenance and operational procedures.

60 Mr. Tom Davis, the property manager for GE Transportation in Blue Springs and Mr. John Phillips, the GE Transportation building maintenance engineer provided a three-hour walk through in addition to the building maintenance and operational procedures.

61 Mr. Phillips also provided the construction blueprints of the building and allowed Samuel K. Lipari to make copies.

62 Samuel K. Lipari returned the blueprints after copies were made.

63 Mr. Davis and Mr. Phillips both stated they were being dismissed from employment with GE since they would no longer be needed.

64 On May 22<sup>nd</sup>, 2003 Samuel K. Lipari spoke to Mr. Doug McKay with GE Capital who had called earlier that week with regard to the mortgage outlined in Medical Supply's proposal.

65 Mr. McKay asked that Samuel K. Lipari send his company information regarding the mortgage.

66 Samuel K. Lipari indicated that he could meet him the following Tuesday because Medical Supply



had a loan package for him that included its financials, the proposal that George Frickie and GE's business leaders accepted, the letter of intent from the owners Cherokee Properties LLC and Medical Supply's Dunn & Bradstreet report showing Medical Supply's good credit rating and strong financial condition.

67 Samuel K. Lipari gave the information to Mr. McKay and Mr. McKay indicated he needed to speak with GE Transportation to see how they wanted to handle the terms of the accepted proposal.

### **Conduct Suggesting Repudiation**

68 On or about June 2nd, 2003 Samuel K. Lipari called Mr. McKay to see how they were doing on closing and Mr. McKay indicated that the person he needed to speak with was at corporate and that he needed to speak with him before moving forward.

69 As the June 15th, 2003 closing date approached, Medical Supply had not received any definitive closing date so Medical Supply's corporate counsel called and sent George Frickie an email stating that a delay in closing would not effect the lease buyout of \$350,000.

70 Medical Supply's counsel later again called George Frickie when he received no response and George Frickie became extremely angry and hung up the phone.

71 Medical Supply then proceeded to speak with GE's counsel Mrs. Kate O'Leary to determine if the contract had been repudiated.

72 Supporting statutes and the antitrust basis including damage implications were explained to Kate O'Leary.

73 Medical Supply gave GE a deadline of June 10th, 2003 to clarify whether there had been contract repudiation. Kate O'Leary later faxed a letter on June 10th, requesting that Medical Supply not speak to anyone at GE or its affiliates and that any correspondence relating to this matter be directed to her.

74 Medical Supply then emailed a letter stating that if no earnest money were deposited to indicate the contract was not being repudiated, Medical Supply would file its claims on June 16th, 2003 for antitrust and breach of contract.

75 GE repudiated its contract, sacrificing \$15 million dollars on June 15th, 2003 to keep Medical Supply from being able to compete against GHX, L.L.C. and Neoforma in the market for hospital supplies.

76 Samuel K. Lipari filed a *lis pendens* in the Jackson County Register of Deeds office based on his state law claims in the US District Court.

77 The defendant Carpet n' More Inc. Stewart Foster placed the building up for sale with actual or imputed knowledge of Medical Supply's claims.

78 The defendants have occupied the building at 1600 NE Coronado preventing plaintiff from receiving the value of his bargain and with actual or imputed knowledge of Medical Supply's claims.

79 In March 2006 GE CAPITAL funded the purchase of Neoforma, an electronic marketplace competitor of Medical Supply Chain, Inc.

80 Neoforma has never been profitable: "Neoforma's balance sheet shows a cumulative loss of nearly \$739 million dollars as of Sept. 30, 2004." Healthcare Purchasing News March 2005.

81 "In 2005, in accordance with GAAP, Neoforma's net loss and net loss per share were \$35.9 million dollars and \$1.81 per share respectively, an improvement from the \$61.2 million dollar net loss and \$3.17 net loss per share recorded in the prior year." Neoforma, Inc. press release San Jose, CA, USA 02/26/2003.

#### **GENERAL ELECTRIC DEFENDANTS' INTERFERENCE WITH SUBSEQUENT ATTEMPTS TO CAPITALIZE PETITIONER'S ENTRY INTO HOSPITAL SUPPLY MARKET**

82 The petitioner attempting to obtain capital inputs a third time to enter the hospital supply market through a Chicago Illinois financier named Michael W. Lynch was stopped again by the GE defendants. Hon. Judge Eugene R. Wedoff, the Chief Bankruptcy Judge of the Northern District of Illinois has revealed to the Federal Bureau of Investigation the defendants' widespread use of offshore funds in the continuation of a "Greylord" racketeering enterprise effecting the outcomes of federal court cases in several states where General Electric's interest in a cartel member's monopoly market share is at stake. The evidence shows GE Capital, a defendant in this case and its financial client Alcoa furthered General Electric's interests by influencing the outcome of any action threatening General Electric's monopolies or actions to retaliate against witnesses who threatened General Electric's monopolies.

83 Michael W. Lynch provided evidence to Western District US Attorney Bradley J. Schlozman discovered in April 2006 that a \$39,000,000.00 bribery fund was being used to secure outcomes in court

cases including the shift of unfunded pension obligations of McCook Metals, Inc. to the Pension Benefit Guaranty Board (PBGC) at the expense of US taxpayers despite the obligation of Alcoa Aluminum financed by General Electric, pursuant to Alcoa's acquisition of Reynolds Metals, under ERISA law.

84 On July 1st, 2007 Hon. Judge Eugene R. Wedoff stepped down as Chief Bankruptcy Judge of the Northern District of Illinois. As a result of federal government investigations of illegal conduct that the petitioner believes was a protection selling racketeering scheme, Bradley J. Schlozman has resigned his current position at main justice, Deputy Attorney General Paul McNulty who authored the memo used by the GE CEO Jeffrey R. Immelt and the General Electric defendants to conceal the financial records of Neoforma and defeat the Sarbanes - Oxley Act of 2002 as described in the petitioner's underlying complaint has also resigned.

#### **GENERAL ELECTRIC DEFENDANTS' INTERFERENCE WITH RECOVERY OF PETITIONER'S CAPITALIZATION FOR ENTRY INTO HOSPITAL SUPPLY MARKET FROM US BANK DEFENDANTS**

85 The GE defendants Jeffrey R. Immelt, GE Capital and GE Transportation coordinated their defense of Medical Supply's action with the US Bank defendants US Bancorp and US Bank along with Jerry A. Grundhoffer, Andrew Cesere, Piper Jaffray Companies and Andrew S. Duff to defeat the petitioner's claims for injunctive and declaratory relief resulting from his first attempt to enter the market for hospital supplies.

86 On January 29, 2004, March 4, 2004, April 2, 2004 US Bancorp's counsel, Nicholas A.J. Vlietstra and Piper Jaffray's counsel Reed coordinated their appeal (10th C.C.A. 03-3342) with the GE defense. The GE defendants included the action against the US BANCORP defendants and Unknown Healthcare Provider as a related appellate case in (10th C.C.A. 04-3075) and used the US BANCORP order as a basis for a cross appeal (10th C.C.A. 04-3102) challenging the failure of the trial court to grant sanctions against Medical Supply. The GE Defendants decided to rely on the continuing efforts to illegally influence the Kansas District Court and Tenth Circuit Court of Appeals to uphold the trial court's erroneous ruling. The cartel also renewed their efforts to have Medical Supply's sole counsel disbarred, knowing that an extensive search for counsel by Medical Supply had resulted in 100% of the contacted firms being

conflicted out and actually effected a frenzy of disbarment attempts against Medical Supply's counsel in the period from December 14, 2004 to February 3rd, 2005, originating from US Bancorp and US Bank's agent Shughart Thomson and Kilroy's past and current share holders.

87 The former eighteen year Shughart Thomson & Kilroy, P.C. shareholder acting as magistrate on the GE case denied Medical Supply discovery and the court did not even permit discovery when the dismissal attachments necessitated conversion of the GE motion to one for summary judgment.

IN THE UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF TEXAS  
 DALLAS DIVISION

UNITED STATES OF AMERICA and  
 THE STATE OF TEXAS, *ex rei*  
 CYNTHIA I. FITZGERALD,

Plaintiffs

vs.

NOVATION, LLC, VHA, INC.,  
 UNIVERSITY HEAL THSYSTEM  
 CONSORTIUM, and HEAL THCARE  
 PURCHASING PARTNERS  
 INTERNATIONAL, LLC,

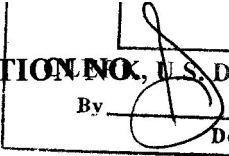
Defendants.

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~~U.S. DISTRICT COURT~~  
 NORTHERN DISTRICT OF TEXAS

**FILED**

CIVIL ACTION NO. U.S. DISTRICT COURT

By  Deputy

FILED IN CAMERA AND  
UNDER SEAL

*JUL 15 2003*

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COMPLAINT FOR VIOLATION OF FEDERAL FALSE CLAIMS ACT  
31 U.S.C. § 3730 AND TEXAS MEDICAID FRAUD PREVENTION ACT

PHILLIPS & COHEN LLP  
 Stephen L. Meagher  
 CA Bar No. 118188  
 Mary A. Inman  
 CA Bar No. 176059  
 Michael Brown  
 CA Bar No. 183609  
 131 Steuart Street, Suite 501  
 San Francisco, California 94105  
 Tel: (415) 836-9000  
 Fax: (415)

GOODE CASSEB JONES  
 RIKLIN CHOATE & WATSON  
 A PROFESSIONAL CORPORATION  
 John E. Clark  
 TX Bar No. 04287000  
 Rand J. Riklin  
 TX Bar No. 16924275  
 2122 North Main Ave.  
 San Antonio, Texas 78212  
 Tel: (210) 733-6030  
 Fax: (210) 733-0330

LAW OFFICE OF GLENN GROSSENBACHER  
 Glenn Grossenbacher  
 TX Bar No. 08541100  
 1800 McCullough  
 San Antonio, Texas 78212  
 Tel: (210) 271-3888  
 Fax: (210) 271-3980

ATTORNEYS FOR RELATOR PLAINTIFF

## I. INTRODUCTION

1. This is an action to recover damages and civil penalties on behalf of the United States of America and the State of Texas arising from false statements and claims made, presented, and caused to be presented by the defendants and/or their agents, employees and co-conspirators in violation of the Federal Civil False Claims Act, 31 U.S.C. §§ 3729 et seq., as amended ("the Federal FCA"), and the Texas Medicaid Fraud Prevention Act, Texas Human Resources Code §§ 36.001 et seq. ("the Texas MFPA").

2. The Federal FCA and Texas MFPA each provide that any person who knowingly submits or causes to be submitted a false or fraudulent claim to the government<sup>1</sup> for payment or approval is liable for a civil penalty of up to \$11,000 for each such claim submitted or paid, plus three times the amount of the damages sustained by the government. Liability attaches both when a defendant knowingly seeks payment that is unwarranted from the government and when false records or statements are knowingly created or caused to be used to conceal, avoid or decrease an obligation to pay or transmit money to the government. The Federal FCA and Texas MFPA each allow any person having information regarding a false or fraudulent claim against the government to bring an action for herself (the "relator" or "qui tam plaintiff") and for the government and to share in any recovery. The Complaint is filed under seal for at least 60 days (without service on the defendants during that period) to enable the government: (a) to conduct its own investigation without the defendants' knowledge, and (b) to determine whether to join the action.

3. Defendants in this action are VHA, Inc. ("VHA") and University HealthSystem Consortium ("UHC"), two nation-wide hospital networks consisting of 2,200 community-owned hospitals and 100 teaching hospitals, Novation, LLC ("Novation"), the nation's largest group purchasing organization founded and wholly owned by VHA and UHC to provide purchasing services to their collective 2,300 member health care organizations, and HealthCare Purchasing Partners International, LLC ("HPPI"), another VHA-UHC joint venture and group purchasing

<sup>1</sup> As used herein, the term "government" shall refer to both the federal government and the government of the State of Texas.

organization that markets Novation purchasing agreements to over 5,000 health care organizations (primarily physician groups, clinics, long-term care facilities, and home health agencies) that do not belong to the VHA or UHC hospital networks.

4. At all times relevant to this Complaint, meaning from 1993 to present, the member hospitals of Defendants VHA and UHC ("VHA and UHC Members") and the health care organizations that were customers of Defendant HPPI ("HPPI customers") purchased under the Novation group contracts supplies and services that were used in providing medical care to beneficiaries of state and federally-funded health insurance programs and sought reimbursement for the cost of these supplies and services from the government health insurance programs, including Medicare, Medicaid, and TRICARE/CHAMPUS. Medicare is a federally-funded health insurance program primarily for the elderly. Medicaid is a state and federally-funded health insurance program for low-income patients. In Texas, the Medicaid program - known as the Texas Medicaid Program -- is funded with 60% federal funds and 40% state funds. The Civilian Health And Medical Program of the Uniformed Services, now known as TRICARE ("TRICARE/CHAMPUS"), is a federally-funded health insurance program for individuals with family affiliations to the military services.

5. At all times relevant to this Complaint, defendant Novation (and its predecessor VHA Supply Company), was in the business of securing on behalf of the VHA and UHC Members and HPPI customers group contracts with manufacturers, suppliers, and distributors (collectively "vendors") for supplies and services. Since the VHA and UHC Members and HPPI customers purchase more than \$19.6 billion in supplies and services annually under Novation's group contracts and collectively comprise 22% of the national market of staffed beds, 29% of total admissions, and 30% of total surgeries, Novation wields considerable power in determining which manufacturer will be awarded one of its more than 600 group contracts and which distributors will be authorized to distribute products under these contracts. Throughout the period from at least 1993 to present, defendant Novation, with the assistance of VHA, UHC and HPPI, used this power to secure

<sup>2</sup> As used herein, the term "vendor" shall refer to manufacturers, distributors, and/or suppliers.

kickbacks and other illegal remuneration from the vendors as payment for awarding them coveted Novation contracts.

6. Defendant Novation, with the assistance of VHA, UHC, and HPPI, engaged in these fraudulent practices knowing that such payments would inflate the costs of the contracted supplies that the VHA and UHC Members and HPPI customers purchased and would ultimately cause them to submit to the government health insurance programs - in their invoices and annual cost reports - claims for reimbursement for supplies and services that were higher than they would have been had Novation not solicited and received these illegal payments. Defendant Novation, with the assistance of VHA, UHC, and HPPI, also engaged in these fraudulent practices knowing that, by awarding contracts to those vendors willing to pay Novation the biggest kickback (and not necessarily those able to supply the best product at the lowest price), it routinely excluded smaller manufacturers with safer and more innovative products that would have obviated or reduced the need for treatment of Medicare, Medicaid, and TRICARE/CHAMPUS beneficiaries and, in so doing, caused the government health insurance programs to incur increased health care costs.

7. Under the Federal FCA and Texas MFP A, Qui Tam Plaintiff/Relator Cynthia I. Fitzgerald ("Relator") seeks to recover damages and civil penalties arising from defendants' actions in soliciting and receiving kickbacks and thereby causing the VHA and UHC Members and HPPI customers to present false records, claims, and statements to the United States Government, the state governments (including the State of Texas) and their respective agents in connection with the VHA and UHC Members' and HPPI customers' claims for excessive reimbursement for supplies and services provided to beneficiaries of the Medicare, Medicaid, and TRICARE/CHAMPUS programs.

8. Relator has information and believes that the fraudulent practices described herein were typical of defendant Novation and Novation's predecessor VHA Supply Company at all times material to this action and that VHA, UHC and HPPI aided and abetted Novation and VHA Supply in these activities. Relator has information and believes that defendants have engaged in these fraudulent practices from at least 1993 to present.



## II. PARTIES

9. Qui tam plaintiff and relator, Cynthia I. Fitzgerald ("Relator"), is a resident of Plano, Texas and was employed by Novation from July 1998 to February 1999 as a Senior Product Manager for Medical/Surgical products in their Irving, Texas office. Shortly after Ms. Fitzgerald began to complain to senior management at Novation about these fraudulent practices, Novation terminated her employment in retaliation for her questioning their propriety. Ms. Fitzgerald files this action for violations of 31 U.S.C. §§ 3729 et seq. on behalf of herself, the United States Government pursuant to 31 U.S.C. § 3730(b)(1), and the State of Texas pursuant to Texas Human Resources Code §§ 36.101. Ms. Fitzgerald has personal knowledge of the false records, statements and/or claims that defendant Novation - aided and abetted by VHA, UHC, and HPPI - caused the VHA and UHC Members and HPPI customers to submit to the government health insurance programs.

10. Defendant Novation, LLC ("Novation"), the nation's largest group purchasing organization ("GPO"), is a Delaware corporation with its principal place of business at 125 E. John Carpenter Freeway in Irving, Texas. Novation was founded in January 1998 by combining VHA Supply Company and UHC Supply, the former purchasing arms of the 2,300-member VHA and UHC hospital networks. Novation is a for-profit company jointly owned by VHA and UHC whose core business is negotiating and managing contracts for supplies and services on behalf of the 2,300 VHA and UHC Members as well as the over 5,000 HPPI customers who access those contracts. Novation manages more than \$19 billion in group purchasing volume. Under Novation's portfolio of over 600 contracts with hundreds of vendors, VHA and UHC Members and HPPI customers can purchase nearly all of their supply and service needs, including such diverse product lines as medical/surgical supplies, pharmaceuticals, diagnostic imaging products, laboratory products, business products, capital equipment and dietary and food products. As its controlling shareholder (with a 77% ownership interest), VHA has populated Novation largely with staff from its former purchasing company, VHA Supply Company. Most, if not all, of the fraudulent practices in which Novation has engaged originated at VHA and VHA Supply Company. Novation's stated mission is to use VHA's and UHC's considerable combined purchasing power "to deliver comprehensive

value and the industry's best pricing to its customers."

11. Defendant VHA Inc. ("VHA"), formerly known as Voluntary Hospitals of America Inc., is a Delaware corporation, with its principal place of business located at 220 E. Las Colinas Boulevard in Irving, Texas. VHA is a nationwide network of community-owned health care systems and their physicians and includes such leading health care organizations as Baylor Health Care System in Dallas, Mayo Foundation in Rochester, Minnesota, and Cedars-Sinai Health System in Los Angeles. VHA has more than 2,200 members in 48 states (excluding Nevada and Utah). A list of VHA's membership is attached as Exhibit 1 and incorporated herein. VHA is a for-profit cooperative that was formed in 1977 to pool the resources and purchasing power of several formerly disparate community-owned hospitals. VHA's member organizations purchase a large percentage of their supplies and services under the more than 600 Novation contracts. From 1985 until January 1998, VHA had its own group purchasing organization, VHA Supply Company ("VHA Supply"), that negotiated supply contracts on its members' behalf. VHA Supply was a wholly-owned subsidiary of VHA. In January 1998, VHA joined its purchasing business with UHC's to form Novation, VHA and UHC's jointly-owned GPQ. VHA has a 77% ownership interest in Novation. Many of the fraudulent practices described herein originated from VHA Supply Company, which employed these tactics throughout its existence. Novation - which was created by combining UHC and VHA Supply and is largely staffed by former employees of VHA Supply - continued to perpetrate and expand the fraudulent practices of VHA Supply.

12. Defendant University Health System Consortium ("UHC") is an Illinois corporation with its principal place of business at 2001 Spring Road, Suite 700 in Oak Brook, Illinois. UHC is an alliance of approximately 100 academic health centers nationwide and includes as its members such leading teaching hospitals as NYU Medical Center, Yale-New Haven Hospital, Johns Hopkins Hospital, and Emory University Hospital. A complete list of UHC's members is attached as Exhibit 2 and incorporated herein. Like VHA, UHC was formed to aggregate the resources and purchasing power of teaching hospitals and achieve operational efficiencies and other economies of scale. In January 1998, UHC combined its purchasing business with that of VHA's to form Novation, a VHA

and UHC jointly-owned GPO. UHC has a 23% ownership interest in Novation. Prior to 1998, UHC operated its own GPO - UHC Supply -- and negotiated supply contracts on behalf of its members. Because many of UHC's member hospitals are part of publicly-funded universities, UHC -- and now Novation - uses a public competitive bid process in soliciting bids and awarding contracts. (In contrast, before joining with UHC to form Novation, VHA and VHA Supply Company did not subject its contracts to public competitive bid.) UHC's member hospitals purchase a large percentage of their supplies and services under the more than 600 Novation contracts.

13. Defendant Healthcare Purchasing Partners International ("HPPI") is a Delaware corporation with headquarters located at 220 East Las Colinas Boulevard in Irving, Texas. Like Novation, HPPI is a group purchasing organization that is jointly owned by VHA and UHC. HPPI is engaged in the business of providing access to Novation contracts (and subsequently managing the contracts) for those health care organizations who are not members of VHA and UHC and otherwise served by Novation. Rather than community-owned and teaching hospitals, HPPI's over 5,000 customers consist largely of physician offices, clinics, home health agencies, ambulatory care, and long-term care facilities. A list of HPPI's customers is attached as Exhibit 3 and incorporated herein. HPPI was purchased by VHA in 1994. In January 1998, at the same time that Novation was formed, UHC acquired a partial ownership interest in HPPI from VHA and became a joint owner (with VHA) of HPPI.

### III. JURISDICTION AND VENUE

14. This Court has jurisdiction over the subject matter of the Federal FCA action pursuant to 28 U.S.C. § 1331 and 31 U.S.c. § 3732(a), which specifically confers jurisdiction on this Court for actions brought pursuant to 31 U.S.C. §§ 3729 and 3730. This Court has jurisdiction over the subject matter of the Texas Medicaid Fraud Prevention Act ("Texas MFPA") action pursuant to 28 U.S.C. § 1367 and 31 U.S.c. § 3732(b) because the Texas MFPA action arises from the same transactions or occurrences as the Federal FCA action.

15. This Court has personal jurisdiction over the defendants pursuant to 31 U.S.C. § 3732(a), which provides that "[a]ny action under section 3730 may be brought in any judicial district in which

the defendant, or in the case of multiple defendants, anyone defendant can be found, resides, transacts business or in which any act proscribed by section 3729 occurred." Section 3732(a) also authorizes nationwide service of process. During the relevant period, defendants Novation, VHA, UHC, and HPPI resided and/or transacted business in the Northern District of Texas.

16. Venue is proper in this district pursuant to 31 U.S.C. § 3732(a) because defendants Novation, VHA, UHC, and HPPI each can be found in, resides in, and/or transacts business in the Northern District of Texas and because many of the violations of 31 U.S.C. § 3729 described herein occurred within this judicial district.

#### IV. BACKGROUND ON GROUP PURCHASING ORGANIZATIONS

17. In the mid-to-late 1980s, mergers among several of the large hospital suppliers increased their market power and helped drive up the costs of medical supplies and services. In response, individual hospitals and health systems sought to increase their bargaining power by joining together to form hospital buying cooperatives, known as group purchasing organizations ("GPOs"). By pooling the purchases of their member hospitals and negotiating group contracts for supplies and services, GPOs could use volume purchasing as leverage to negotiate lower prices with suppliers. Member hospitals would also be able to reduce their purchasing staffs, thereby lowering operating costs, as the GPO assumed their contracting functions.

18. As the primary purchasing agent for its member hospitals, the GPO handles all aspects of group contracting -- from drafting the request for proposal, soliciting and evaluating bids to awarding and subsequently managing the group contracts. Once it has awarded a group contract to a vendor, the GPO notifies hospital members of its terms (Novation issues members a "Launch Packet") and hospital members buy directly from the vendor for the price specified in the group contract. The GPO does not purchase any of the contracted supplies or services for its members nor does it take custody of the supplies.

19. Although they have an ownership interest in the GPOs and are the beneficiaries of the contracting services GPOs provide, neither the member hospitals nor their hospital network pays the GPOs' operating costs. Instead, GPOs are primarily financed by the vendors with whom the GPOs

contract through the use of "administrative fees." Administrative fees are typically calculated as a percentage of each hospital member's purchases from a vendor.

20. To prevent these fees from being treated as a 'kickback' or illegal payment under the Anti-Kickback Act, the GPO-industry convinced Congress to amend the Act in 1986 to include a safe harbor for administrative fees paid to a GPO by a vendor. See 42 U.S.C. § 1320a-7b(b). In defining what constitutes an appropriate administrative fee, the regulations require that the following criteria be satisfied: (1) the GPO must have a written agreement with each of its members under which the fees (and its terms) are disclosed; (2) the agreement must state that the fees are to be 3 percent or less of the purchase price of the supplies to be provided, or for fees above 3 percent, the amount or maximum amount to be paid by each vendor; and (3) the GPO must provide each member with an annual report listing the amount the GPO received from each vendor in administrative fees based on that member's purchases. 42 C.F.R. § 1001.952(j).

21. To enable GPOs to calculate their administrative fee, vendors provide GPOs with monthly reports listing, for each of its members, the amount of supplies and services the member purchased from the vendor the previous month under a particular group contract or set of contracts.

22. After paying its operating expenses, GPOs typically distribute any revenue they earn to their hospital members or hospital networks in the form of annual dividends. Where the administrative fees the GPO receives from vendors exceed its operating costs, a GPO should return the surplus fees to the member hospitals/networks in proportion to the amount of purchases each member made under the group contracts.

#### V. DEFENDANTS' FRAUDULENT SCHEMES

23. Federal law makes it a felony to "solicit[ ] or receive[ ] any remuneration (including any kickbacks, bribe or rebate) directly or indirectly, overtly or covertly, ... in return for purchasing, . . . ordering, or *arranging for or recommending* purchasing, . . . or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program [Medicare, Medicaid or TRICARE/CHAMPUS]." 42 U.S.C. § 1302a-7b(b) (emphasis added).

24. As the nation's largest GPO, Novation negotiates contracts on behalf of - and thereby arranges for and recommends the purchasing of supplies and services for -- more than 7,300 health care providers (2,300 VHA and UHC Members and more than 5,000 HPPI customers) who constitute 22% of the national market of staffed beds, 29% of total admissions, and 30% of total surgeries. As Novation informs potential bidders in its Invitations-to-Bid, Novation's customers represent greater than \$19.6 billion in actual annual purchasing volume and \$32 billion in purchasing potential. As these figures demonstrate, a contract with Novation can mean millions of dollars in sales and increased market share for the successful vendor who is awarded the group contract.

25. Rather than use its considerable collective purchasing power to serve its customers (the VHA and UHC Members and HPPI customers) by awarding group contracts to vendors offering the best product at the lowest price, Novation (and its predecessor VHA Supply) - with the assistance of VHA, UHC and HPPI -- has often acted to increase its profits, and those of its officers and executives, by awarding contracts to vendors who pay Novation the largest kickback, irrespective of the quality or price of their supplies/services.

26. At all times relevant to this Complaint, meaning from at least 1993 to present, Novation (and its predecessor VHA Supply) has solicited and received from the vendors to whom it awards contracts kickbacks and other illegal remuneration as payment for awarding them group contracts. Unlike the administrative fees vendors pay to GPOs, which are condoned by Congress, these kickbacks and other illegal remuneration are in no way tied to the administrative costs Novation incurs in managing the contract. Nor are they calculated based on clearly defined, objective criteria such as the volume of purchases made under the contract by Novation's customers. Instead, they are simply payments Novation requires vendors to pay up-front or throughout the life of the contract for the privilege of being awarded a group contract and thereby gaining access to Novation's 7,300 customers.

27. Since these payments bear no relationship to the performance of the underlying contracts (or the administrative costs incurred in managing those contracts), Novation regularly chooses among the competing vendors based on who is willing to pay the most. Under this guiding business

"principle," Novation has awarded the majority of its over 600 contracts to large vendors, who have been able to pay the biggest kickbacks. (The vendors, in turn, inflate the prices they charge under the contract in order to recoup the costs of paying Novation the kickbacks and other illegal remuneration necessary to win the contract. These increased costs are ultimately borne by the insurers, both government and private, who reimburse the VHA and UHC Members and HPPI customers for the costs of treating their insureds/beneficiaries.) Small vendors, possessing fewer financial resources but safer and more innovative products, have often been unwilling or unable to make such up-front payments and consequently are routinely shut out of Novation contracts.

28. At all times relevant to this Complaint, Novation (and its predecessor VHA Supply) has concealed the existence of these kickbacks and other remuneration from the VHA and UHC Members and HPPI customers, disguising the proceeds in "slush funds," secret accounts and unrelated business ventures. The overwhelming majority of the monies remuneration received from these kickbacks is retained by Novation, typically as lavish bonuses and "incentive" compensation for its officers and executives' or as capital for financing new ventures, such as the e-commerce company Neoforma, Inc. Novation distributes a modicum of its ill-gotten gains to the VHA and UHC Members in annual dividends of its revenue as a way of lulling the Members into believing Novation performs properly on their behalf and persuading them to continue to utilize its services.

29. As a Senior Product Manager at Novation from July 1998 to February 1999, Relator was responsible for negotiating and managing a portfolio of group contracts for medical/surgical supplies and services that was worth \$243 million. During her six months in this position, Relator was privy to the inner workings of Novation's contracting process, including the criteria Novation utilized to determine the vendors to whom it would award contracts. From her interactions with her superiors Sherry Woodcock and John Burks, among others, Relator quickly came to understand that her performance would be judged not merely by her ability to deliver to the VHA and UHC Members

<sup>3</sup> In 2002, Novation's President Mark McKenna earned \$928,000 (\$403,000 in annual base salary; \$357,000 under Novation's Retention Long-Term Incentive Program; \$145,000 under Novation's Annual Incentive Plan; and \$23,000 under Novation's Rewarding Excellence Incentive Plan).

contracts for the best supplies at the lowest prices, but also by the amount of revenue she was able to generate for Novation in the form of up-front payments and other illegal remuneration, of which the Members were not apprised. After raising concerns about these practices with Novation's Human Resources staff, Senior Management and In-House Legal Counsel and having those concerns summarily dismissed, Relator realized that these fraudulent practices were not unique to the Medical/Surgical Division but instead pervaded Novation's business. As described below, these illegal payments/remuneration took a wide variety of forms.

A. Up-Front Payments to "Buy the Contracts"

1. *Johnson & Johnson's Attempt to Buy the IV Catheter Contract*

30. One of the first medical/surgical contracts to which Relator was assigned in her position as Senior Contract Manager at Novation was Contract No. MS8020B, a three-year contract for "IV Standard and Safety Catheters and NOV APLUS® IV Start Kits." Under this contract, Novation was seeking a vendor to supply IV Catheters as well as IV Start Kits under Novation's private label brand, NOV APLUS®, to the VHA and UHC Members and HPPI customers. This was the first contract for IV Catheters and Start Kits put out for public competitive bid since Novation was formed.

31. Shortly after Relator received and opened the bids on the IV Catheter Contract, sales representatives from Johnson & Johnson called Relator to request a meeting with her to discuss Johnson & Johnson's bid. Relator agreed to such a meeting at Novation. During the meeting, it quickly became clear that the Johnson & Johnson sales representatives had no substantive questions regarding the contract but rather had convened the meeting simply to inquire about Johnson & Johnson's prospects of receiving the bid award. Unwilling to provide this information, Relator called an abrupt end to the meeting.

32. Having had their lobbying efforts rebuffed by Relator, the Johnson & Johnson sales staff contacted Relator's supervisor, Sherry Woodcock, and arranged a private meeting with Woodcock to which Relator was not invited. When Relator later learned of the meeting, she became concerned as to why she was being excluded and decided that, as the Senior Product Manager responsible for



awarding this contract, she would attend. Early on in the meeting, while discussing Contract No. MS8020B, "IV Standard and Safety Catheters and NOV APLUS® IV Start Kits," one of the Johnson & Johnson sales representatives asked Relator "How much will it take to get the contract?" When Relator appeared startled and did not have a ready response, the sales representative added, "Others before you have done it."

33. Offended by the request that she agree to accept a kickback (the price tag of which she was expected to name) in exchange for awarding the contract to Johnson & Johnson, Relator turned to her supervisor, Sherry Woodcock, and said "Oh, no. This is illegal, and I don't look good in orange and I don't look good in stripes." Shortly thereafter, when the meeting had concluded, Relator repeated her concerns to Sherry Woodcock about what had just transpired (*i.e.*, Johnson & Johnson's offer to pay Novation a kickback to obtain the IV Catheter business) and asked Woodcock whether she would like Relator to notify John Burks, the former Head of Novation's Medical/Surgical Division, or whether Woodcock would rather do it. Woodcock assured Relator that she would inform Burks.

34. Over the ensuing seven to ten days, when Relator would ask Woodcock if she had spoken with Burks yet, Woodcock's standard reply was that she had been unable to get to it. Frustrated by Woodcock's apparent unwillingness to address the issue, Relator spoke with Burks herself. According to Burks, while Johnson & Johnson's actions may have been unethical, he did not consider them to be illegal. Burks believed that Relator's suggested action -- disqualifying Johnson & Johnson's bid -- was too harsh a punishment. After Burks refused to take action against Johnson & Johnson, Relator next took the matter to Novation's Human Resources staff, William Laws, Jr. and Shirley Lopez, and in-house counsel, Gerry Rubin, but was similarly rebuffed.

35. At the same time that she was being stonewalled by her superiors on this front, Relator also was beginning to have concerns about the way in which other Novation contracts, including the Can-Liner Contract (discussed below), had been awarded. Shortly after voicing these concerns, Relator began to receive criticism about her job performance, was ostracized by her co-workers, and quickly terminated.

36. With the newfound perspective on Novation's contracting process gained from her work on the **N**Catheter and Can-Liner Contracts, Relator came to realize what was evident from Johnson & Johnson's question! comment ("How much will it take to get the contract? Others before you have done it."), i.e., that it had been, and continued to be, the practice of Novation (and its predecessor VHA Supply) to award contracts to large vendors like Johnson & Johnson because of the amount they were willing to pay Novation in up-front payments and other illegal remuneration. Under this standard operating procedure, Novation (and its predecessor VHA Supply) would suggest to vendors the amount of money it needed to receive up-front to award them the contract; the vendors, who were typically larger companies like Johnson & Johnson capable of paying such sums, paid Novation these monies to obtain the contract; and Novation ultimately awarded the contracts to these vendors.

37. Relator's refusal to play by these rules in the course of her work negotiating the **N** Catheter Contract (and later the Can-Liner Contract) represented an unexpected (albeit short-lived) departure from the norm. Although Relator did not award the **N**Catheter Contract to Johnson & Johnson in exchange for a kickback as had been the prior practice of NovationIVHA Supply (as discussed below, Relator awarded the Contract to Becton Dickinson), this was the first and last contract Relator ever negotiated for Novation. Novation fired her before she could interfere with any further contracts.

38. At no time did Novation or its predecessor VHA Supply inform the VHA and UHC Members and HPPI customers that it was their standard practice to solicit and receive kickbacks from vendors, as they had done with Johnson & Johnson on several previous occasions, in exchange for awarding them contracts.

2. *Becton Dickinson's \$100,000 "Donation" to Novation in Connection with Winning the IV Catheter Contract*

39. In addition to Johnson & Johnson, the other primary vendor to submit a bid on the **N** Catheter Contract was Becton Dickinson and Company ("Becton Dickinson"). While evaluating the Johnson & Johnson and Becton Dickinson bids under the traditional criteria of price and product quality to determine which vendor to recommend to Novation management, Relator was pressured

by her managers to consider what revenue each bidder would be able to provide Novation.

40. In response to this pressure, Relator implemented a revenue-generating plan that had recently been initiated by other Senior Product Managers at Novation. Under this plan, Relator solicited from bidders bronze, silver, and gold-level "sponsorships" of Novation's latest Information-Technology project, "VHaseCURE.net," an intranet developed by VHA to enable VHA members to communicate with one another over the Internet. Although to the objective observer these sponsorship payments appear wholly unconnected to the underlying contract, both Novation and the bidders understood that such "sponsorships" would buy favorable consideration from Novation in making its bid award. Such "sponsorship" payments were over and above the administrative/marketing fee (expressed as a %-of-total sales made under the contract) that vendors like Becton Dickinson had agreed to pay Novation to cover its costs for administering the contract.

41. In response to Relator's request for VHaseCURE.net donations, Becton Dickinson agreed to pay Novation \$100,000. Becton Dickinson's willingness to make such a payment was one of the factors Relator considered in deciding to recommend Becton Dickinson as the proposed recipient of the IV Catheter and Start Kit contract. Shortly after approving Relator's recommendation, Novation awarded Becton Dickinson the contract and Becton Dickinson sent Novation a check for \$100,000. See Exhibit 4 (\$100,000 check), which is incorporated herein. Senior management at Novation commended Relator for her work in procuring this and another "sponsorship" payment from vendors. See Exhibit 5 (e-mail from Novation 1-T Manager to Relator), which is incorporated herein.

42. As its characterization of the payment on the face of the check - "Marketing Fee/Sole Award" - reveals, Becton Dickinson made this payment to Novation in order to receive the bid award. Id. At no time did Novation ever disclose the existence, amount or purpose of these "sponsorship" payments to the VHA and UHC Members and HPPI customers.

3. *Becton Dickinson's \$1 Million Payment In Connection with Winning the Needle Contract*

43. In the course of negotiating Contract No. MS8020B, "**N**Standard and Safety Catheters and NOV APLUS® *N* Start Kits," Relator had frequent dealings with Kevin Mooneyham, a sales manager at Becton Dickinson, and had earned his trust and respect. In late 1998, shortly after Relator awarded the *N* Catheter Contract to Becton Dickinson, Mooneyham called Relator at work and asked her to meet him for lunch to discuss concerns he was having about activities taking place between Becton Dickinson and Novation regarding another upcoming contract. Over lunch, Mooneyham complained to Relator that Becton Dickinson had agreed to pay Novation large sums of money in order to secure "a huge Novation contract" that was coming up for bid. In short, Mooneyham claimed, Becton Dickinson was "buying the business," i.e., paying Novation an up-front fee to guarantee that it will be awarded the contract.

44. From the goings-on in Novation's Medical/Surgical Division, Relator knew that the contract to which Mooneyham was referring was Novation's upcoming three-year contract for hypodermic needles and syringes, a big ticket item for most hospitals and therefore a highly valuable contract. Relator later learned that Novation had, in fact, awarded the needles and syringes contract to Becton Dickinson and Becton Dickinson had paid Novation \$1 million in advance as a "special marketing fee." This \$1 million fee was over and above the administrative/marketing fee Becton Dickinson had agreed to pay Novation over the life of the contract based on a percentage (3%) of the total sales made by VHA and UHC Members under the contract.

45. Relator has information and believes that Novation never disclosed to the VHA and UHC Members and HPPI customers the fact that it had received this payment from Becton Dickinson in connection with awarding Becton Dickinson the needle contract.

4. *"Fee Enhancements" By Distributors*

46. In addition to choosing the manufacturers to whom it will award contracts, Novation also controls the distribution channels for the products purchased under its contracts. For each of its product lines, ~, medical/surgical supplies, dietary and food services, Novation awards an exclusive right to distribute the products purchased under its contracts to a few select distributors whom Novation calls "Authorized Distributors." For their services in distributing the products, Authorized Distributors are paid "distribution service fees" by the VHA and UHC Members and HPPI customers. The distribution service fees, also known as "the Distribution Mark-Up Fees," are added to the price of the products/services and are calculated based on the total volume of distributed purchases made by the Novation customer.

47. Like its Invitations-to-Bid to manufacturers, Novation's Invitations-to-Bid to distributors are supposed to be a public competitive bid process. However, as is the case with manufacturers, Novation awards the distribution contracts based on which distributors are willing to pay Novation the largest kickback or other illegal remuneration. Relator has information and believes that Novation has failed to inform the VHA and UHC Members and HPPI customers of the existence or amount of these illicit payments.

48. Like the "administrative/marketing" fees it charges manufacturers for the cost of administering the contract (described below), Novation also requires distributors to pay it a monthly fee based on the total purchases of products made by its customers. Although Novation provides distributors with a minimum percentage for what this fee must be, Novation leaves it to the distributor's discretion to propose the amount of the percentage. See Exhibit 6 at 7 & 13 (Invitation-to-Bid Long Term Care Distribution Services), which is incorporated herein. Under such liberal contracting guidelines, Novation regularly solicited and accepted lavish fees from distributors in

exchange for awarding them an authorized-distributor contract.

49. In addition to the monthly fee, Novation also encouraged bidders to propose fee enhancements - ways for distributors "to enhance the fee paid to Novation" -- and additional fees. Id. at 13. These enhancements and additional fees had no relationship to the underlying contract and were just another way for Novation to increase its revenue. Id. Relator has information and believes that Novation routinely awarded distribution contracts to large distributors like Cardinal Health, Inc., Allegiance Corporation, and Owens & Minor, Inc., who were willing and able to pay Novation the largest fee enhancement, "additional fees," or other illegal remuneration.

50. Like manufacturers, distributors also seek to recoup the costs of making these illegal payments to Novation. While manufacturers do so by increasing the price of the products/services themselves, distributors recoup the costs by building them into the distributor mark-up fee that is added to the price of the goods and services, which further inflates the price paid by the Novation customers and ultimately borne by the private insurers and government health insurance programs.

B. "Administrative/Marketing Fees"

51. In its Invitations-to-Bid, Novation requires all prospective bidders to include information on "marketing fees" to be paid to Novation and to calculate these fees as a percentage of sales made under the contract. See Exhibit 7 ("Novation 2001 Invitation to Bid, Enteral Products Bid") at 10, which is incorporated herein. Novation does not prescribe any limits on the size of the marketing fee that it is willing to accept (or that bidders may offer). Id. Contrary to the safe harbor requirements regarding appropriate GPO fees, Novation routinely has solicited and accepted marketing fees that greatly exceed the 3%-of-sales threshold and failed to inform the VHA and UHC Members or HPPI customers of the amount of the marketing fee they have agreed to receive.

52. According to a Novation "Contract Administration Fee Report," as of November 18, 1999, Novation had accepted administrative/marketing fees above 3% on at least 186 or 31% of its 600 contracts. See Exhibit 8 (Contract Administration Fee Report), which is incorporated herein. For many of these contracts, Novation received administrative/marketing fees as high as 30% of total sales made by Novation's customers under the contract. For instance, Novation received 30% administrative/marketing fees on Contract No. RX 132 (NOV APLUS® Ornipaque, Nonionic Contrast Media, Hypaque) with Nycomed, Inc. and Contract No. RX84160 (NOV APLUS® Diltiazem) with Ben Venue Laboratories - Bedford Laboratories. Id. at 20 & 28.

1. *Major Pharmaceutical Manufacturers Pay Novation Some of the Highest "Administrative/Marketing Fees"*

53. Pharmaceuticals are the largest product line in Novation's contract portfolio. Of Novation's 600 contracts, 275 or 46% are contracts with major pharmaceutical manufacturers for the sale of a wide array of pharmaceutical products. Id. at 17-31. Relative to other manufacturers, pharmaceutical manufacturers also paid Novation some of the highest administrative/marketing fees. In addition to the two pharmaceutical manufacturers listed above (Nycomed, Inc. and Bedford Laboratories) as having paid 30% administrative/marketing fees, the following are examples of some of the other pharmaceutical manufacturers from whom Novation received excessive administrative/marketing fees: Dupont Nuclear (Novation Contract No. RX64140) "NOV APLUS® Dipyridamole," 25% administrative/marketing fee; Bristol-Myers (Novation Contract No. RXOI9) "Multi source Antibiotics," 18% administrative/marketing fee; Abbott Laboratories (Novation Contract No. RX80010) "Small Volume Injectibles Including Carpuject," 14.5% administrative/marketing fee; and Merck & Company (Novation Contract No. RX81080) "Cozaar, Fosamax, Hyzaar, Mefoxin, Mevacor, Pepcid, Primaxin, Prinivil, Proscar, Recombivax, Timoptic,

Trusopt, Vasotec, Vaccines, Zocor," 20% administrative/marketing fee. Id.

54. Relator has information and believes that Novation has failed to inform the VHA and UHC Members and HPPI customers of the amount of any of these administrative/marketing fees that it has received and continues to receive from pharmaceutical companies.

2. *Other Excessive "Administrative/Marketing Fees" Paid by Becton Dickinson and Heritage Bag*

55. Before awarding a contract, it was the customary practice of Novation's Senior Contract Managers to prepare an "Executive Summary" setting forth their recommendation on and supporting rationale for which vendor should receive the bid award. The Summary was distributed exclusively to top management at Novation, including the head of the Division in which the Senior Contract Manager worked and Novation's Vice-President, for their approval. At no time was the Executive Summary given to the VHA and UHC Members and HPPI customers.

56. Once the contract was awarded, the Senior Contract Manager distributes a "Launch Packet" to the VHA and UHC Members announcing the recipient of the bid award, describing the supplies being offered and providing other information necessary for making purchases under the contract. At no time is any mention made of either Novation's receipt of or the amount of the "marketing fees" and other remuneration paid/to be paid to Novation by the successful vendors.

57. Attached as Exhibits 9 and 10 to this Complaint, and incorporated herein, are copies of two Executive Summaries Novation prepared that demonstrate Novation's and VHA's receipt of marketing fees well above 3% of total sales on four contracts. In the Executive Summary for Contract No. MS8020B, "IV Catheters and Start Kits," it is noted that Becton Dickinson - the recommended bidder - has offered to provide Novation a marketing fee of 9% of total sales of the NOV APLUS® products, Novation's private label brand. Exhibit 9 at 4. After receiving approval



for this recommendation from John Burks, Novation's former Head of Medical/Surgical Contracts, and Mark McKenna, Novation's former Vice-President, the contract was awarded to Becton Dickinson under the terms of its bid, which included paying Novation a 9% marketing fee. Novation never informed the VHA and UHC Members or HPPI customers, either orally or in writing, of the amount of this marketing fee.

58. In describing the marketing fee to be paid by Becton Dickinson, the author" of the Executive Summary also notes that Becton Dickinson's 9% fee represented an increase of between 1 to 4% above the marketing fee VHA had received under its prior contract for "IV Catheters and Start Kits" of between 5 and 8%. Exhibit 9 at 4. Accordingly, as this document illustrates, before the advent of Novation, VHA had also been receiving marketing fees above the 3% threshold as part of the VHA contract for "IV Catheters and Start Kits" that preceded Novation Contract No. MS8020B. Relator has information and believes that neither VHA nor VHA Supply ever informed the VHA Members, either orally or in writing, of the amount of this marketing fee.

59. After its formation in January 1998, Novation experienced a transition period during which it phased out current VHA and UHC contracts and replaced them with new Novation contracts. With Contract No. MS80310, "NOV APLUS® Can Liners," Novation sought to consolidate VHA and UHC's separate can liner contracts into a new Novation contract. In the Executive Summary for this contract, the author recommends that the Novation contract - available to both VHA and UHC Members (and HPPI customers) - be awarded to Heritage Bag under the same terms as those in VHA Supply's current can-liner contract with Heritage Bag. Exhibit 10 at 1-3. Among the reasons cited for recommending Heritage Bag is that the marketing fee Heritage Bag

<sup>4</sup> Although qui tam plaintiff/relator is listed as the author of this document, every Executive Summary she wrote at Novation, including this one, was thoroughly revised by her manager, Sherry Woodcock, before it was distributed to Novation management.

was offering - 8.19% of total sales -- is 6% higher than that being provided by UHC's supplier, Baxter Tennaco, under UHC's contract. Id. at 2.

60. After receiving approval for this recommendation from John Burks and Mark McKenna, Novation awarded Contract No. MS8031 0 to Heritage Bag under the same terms as the contract with VHA, which included the payment to Novation of an 8.19% marketing fee. Novation never informed the VHA and UHC Members or HPPI customers, either orally or in writing, of the amount of this marketing fee.

61. The Executive Summary for Contract No. MS8031 0 also makes clear that, like Novation, VHA Supply had also been receiving a marketing fee from Heritage Bag of 8.19% under its contract with Heritage Bag -- the predecessor to Novation Contract No. MS80310. See Exhibit 10 at 1-3. Relator has information and believes that neither VHA nor VHA Supply ever informed the VHA Members, either orally or in writing, of the amount of this marketing fee.

62. Relator also has information and believes that since 1995 Novation's predecessor VHA Supply routinely solicited and received marketing fees of at least 10% on its committed programs, including the "Opportunity I" and "Opportunity II" Programs. (Under these programs, a VHA Member could receive discounts off of the contract's base price by committing to buy a large fixed percentage of its supplies - typically between 80 and 95% -- under the contract.) Relator has information and believes that neither VHA nor VHA Supply ever informed the VHA Members, either orally or in writing, of the amount of these marketing fees.

3. *Novation's Preference for Higher Priced Goods Because They Serve To Increase Its "Administrative/Marketing Fees"*

63. By requiring that its administrative/marketing fees be expressed as a percentage of the total sales made under the contract (and routinely suggesting to bidders that the percentage should

exceed 3%), Novation has an interest in awarding contracts to the bidder with the highest priced goods because higher prices yield higher marketing fees. At all times relevant to this Complaint, Novation routinely chose to award contracts to vendors offering the largest marketing fee (either by virtue of the percentage of sales, higher prices or combination of the two) over competing vendors offering goods of comparable quality and lower prices than those of the chosen vendor.

64. For example, during the Summer of 2001, Novation issued an Invitation-to-Bid on a Novation contract to supply endo-mechanical products to its customers. Among the vendors who submitted bids to Novation were Johnson & Johnson and United States Surgical ("U.S. Surgical"). In its bid, U.S. Surgical offered the endo-mechanical products at prices significantly lower than those offered by Johnson & Johnson. After performing market research, Novation found U.S. Surgical's products were of comparable quality to that of Johnson & Johnson's. Despite the potential cost-savings to its customers, however, Novation awarded the contract to Johnson & Johnson.

65. Primary among Novation's reasons for choosing Johnson & Johnson over U.S. Surgical was the fact that U.S. Surgical's significantly lower prices would have greatly diminished the marketing fee that Novation would receive. Relator has information and believes that Novation never informed the VHA and UHC Members or HPPI customers of the specific details of the vendors' bids (including U.S. Surgical's significantly lower prices and comparable quality) or the real reason for its decision to choose Johnson & Johnson over U.S. Surgical- a feared reduction in its marketing fee.

**C. Payments for Products Offered Under Novation's Private Label Brand, "NOV APLUS@"**

66. As Senior Product Manager in Novation's MedicalSurgical Division, Relator was also responsible for increasing vendors' participation in Novation's private label brand program,

NOV APLUS®. NOV APLUS® was an outgrowth of a similar private label program, VHA PLUS ("Prices Lowered Utilizing Standardization"), started by VHA Supply in the 1980s. Like VHA PLUS, the stated goals of NOV APLUS® are to help the VHA and UHC Members and HPPI customers achieve cost savings and the benefits of product standardization by having vendors sell their products under Novation's private "NOV APLUS®" label. In practice, however, NOV APLUS® is simply another Novation scheme to generate more revenue without the knowledge of, and often at the expense of, the VHA and UHC Members and HPPI customers, whose interests it is supposed to serve.

67. Although made to sound like generics, the NOV APLUS® products differ from generic products in a number of important ways. With generics, cost savings are achieved because a manufacturer is able to produce an equivalent product more cheaply than the name-brand manufacturer. However, neither Novation nor its predecessor VHA Supply manufactures any products. Instead, Novation (like VHA Supply before it) simply supplies the name. After manufacturing the products, the manufacturers simply affix the NOV APLUS® label (in lieu of their own label) to their products. As explained in more detail below, rather than save Novation's customers money, the addition of the NOV APLUS® name does little more than create additional costs, such as "trademark and licensing" fees, that cause the prices of the NOV APLUS® products to exceed those of the identical products without the NOV APLUS® label.

68. Rather than providing the VHA and UHC Members and HPPI customers with cost savings, Novation routinely convinced vendors to sell their product under the NOV APLUS® label at a price significantly higher than what they were offering for the same product under their own label. For their participation in this scheme, Novation routinely offered to share with the vendors a percentage of the profits gained by charging the Members the increased NOV APLUS® price.

69. For instance, after it had received and opened bids on a recent contract for blood collection tubes, Novation approached Retractable Technologies Inc. ("RTI"), one of the bidders, about the possibility of selling its blood collection tube holder to the VHA and UHC Members and HPPI customers under Novation's private "NOV APLUS®" label. Although, in its bid, RTI had offered to sell its tube holders for 27 cents per unit, Novation proposed that RTI could sell the same tube holders to Novation's customers for \$1 per unit -- a 270% mark-up -- simply by changing the label to Novation's NOV APLUS® brand. In exchange for RTI's cooperation in this joint venture, Novation agreed to share with RTI a percentage of the profits from the 270% mark-up.

70. Although RTI rejected Novation's offer, Relator has information and believes that Novation consummated many similar deals with other, less scrupulous vendors. Relator has information and believes that Novation never informed the VHA and UHC Members or HPPI customers of the terms of these deals, including the fact that Novation had arranged to have vendors sell the NOV APLUS® products at prices higher than those charged for the same product without the NOV APLUS® label and kept the profits.

71. To participate in Novation's private label program and sell products under its NOV APLUS® brand, manufacturers are required to pay Novation a "trademark and licensing" fee. Despite its name, the "trademark and licensing" fee is not a fixed fee that corresponds to the costs Novation will incur obtaining a trademark and license for a manufacturer's product. Instead, like its "administrative/marketing" fees, Novation requires vendors to offer Novation a percentage of the total purchases of NOV APLUS® products made by Novation's customers under the NOV APLUS® contract. The "trademark and licensing" fee is in addition to the "administrative/marketing" fee Novation charges. By giving manufacturers the ability to name the amount of this fee, Novation encouraged manufacturers to bid up the percentage of total sales they were willing to provide as a

trademark and licensing fee and routinely awarded the NOV APLUS® contract to the highest bidder. Qui tam plaintiff has information and believes that Novation failed to inform the VHA and UHC Members and HPPI customers of either the existence or amount of these fees, let alone the method by which they were calculated.

72. Like the mark-up described in paragraphs 26, 27 and 50 above, the costs of such "trademark and licensing" and "administrative/marketing" fees are built into the prices of the NOV APLUS® products. Therefore, contrary to their purported cost-savings benefits, the NOV APLUS® products routinely are more expensive than identical products sold without the NOV APLUS® label. In her position as Senior Product Manager at Novation, Relator had the opportunity to speak with Novation's Authorized Distributors. Because they carry a wide range of products and could draw direct price comparisons, many of these distributors remarked to Relator how the NOV APLUS products were more expensive than the same products offered under the manufacturer's label. For instance, one distributor observed that its costs for a case of American Health Products ("AHP") gloves sold under the NOV APLUS® label were \$1 more than those for a case of the same gloves sold under AHP's label.

73. Because these practices are so lucrative, Novation has been aggressive in trying to get manufacturers to agree to sell their products under the NOV APLUS® brand. In its Invitations-to-Bid on contracts, Novation informs prospective bidders that their willingness to consider "a private label strategy under the NOV APLUS label" is a plus factor that Novation will consider - along with other "Non-Financial Award Criteria" -- in determining who will receive the bid award. See Exhibit 7 at 12 & Attachment B at 6. However, Novation's internal documents show that a bidder's willingness to sell products under the NOV APLUS® label is given much more weight in choosing the successful bidder. In a slideshow presentation to its Senior Product Managers describing

Novation's "Supplier Selection Criteria," Novation includes "Private Label" in with Price, Marketing Fees, and Committed programs, as one of the Financial Criteria it will consider. See Exhibit 11 (Novation Slides), which is incorporated herein. As of September 28,2001, Novation claimed to have 75 agreements with 42 vendors to sell products under the NQV APLUS® label, representing \$1.2 billion in annual sales.

D. Conflicts of Interest/Beneficial Business Relationships

1. *Nepotism/Cronyism with Heritage Bag*

74. Another one of the first medical/surgical contracts to which Relator was assigned in her position as Senior Contract Manager at Novation was Contract No. MS0021 0, a three-year contract for "NOV APLUS® Can Liners." Under this contract, Novation was seeking a vendor to supply trash can liners to the VHA and UHC Members and HPPI customers under Novation's private label brand, NOV APLUS®. This contract was the first can-liner contract put out for public competitive bid since Novation was formed. (Novation Contract No. MS80310, the predecessor to MS0021 0, was an interim contract under which Novation extended the terms of VHA Supply's previous can-liner contract to the UHC Members until the above-referenced contract could be awarded by public competitive bid.)

75. Shortly after starting at Novation, Relator met with her supervisor Sherry Woodcock to discuss the contracts she had been assigned. When their discussions turned to Contract No. MS00210, "NOV APLUS® Can Liners," Woodcock started to laugh and told Relator that this contract had always belonged to and would always belong to Heritage Bag Company ("Heritage Bag") and that the last person who tried to remove it from Heritage Bag almost lost his job. When Relator asked why Heritage Bag deserved such special treatment, Woodcock replied that Heritage Bag was represented by John M. Doyle, the founder and former President of VHA Supply.

76. At first, Relator tried ignoring the comment and went about the business of preparing to put the contract out for bid. Relator conducted some preliminary market research and discovered that at least three vendors had can liners with prices lower than Heritage Bag. During Relator's interviews with these vendors, each expressed surprise at her interest in their can-liners and stated that, since Heritage Bag has had VHA Supply/Novation's can-liner contract for the last 13 years, they had little hope of ever getting it away from Heritage Bag. In the meantime, Sherry Woodcock continued to make comments to Relator that the upcoming can-liner contract should be awarded to Heritage Bag.

77. Increasingly concerned by these comments (particularly in light of her discovery that competitors' can liners were cheaper), Relator went to speak with Brad Mohler, the Novation contracting officer reputed to have almost lost his job for trying to wrest the can-liner contract away from Heritage Bag. Mohler confirmed that the can-liner contract belonged to Heritage Bag because its representative, John M. Doyle, was the founder and former President of VHA Supply and advised Relator not to "rock the boat" (i.e., recommend awarding the contract to another vendor) because "you cannot win."

78. In December 1998, John M. Doyle, his son, and other representatives of Heritage Bag took Relator to dinner at Newport's Seafood in Dallas. At this dinner, John Doyle asked Relator what its competitors were bidding on the upcoming can-liner contract and sought confirmation that, given its history with VHA Supply, Heritage Bag would, in fact, be awarded the contract. When Relator refused to answer, stating that these were improper questions, Doyle's son became visibly angry, at which point John Doyle reassured him Heritage Bag had been around for a long time (as compared to Relator's short tenure at Novation) and that he would "take care of her [Relator]."



79. Convinced by these events that Novation would reject her recommendation to award the Can-Liner Contract to any vendor other than Heritage Bag irrespective of a vendor's more competitive pricing, Relator informed her supervisor Sherry Woodcock - in front of the entire contracting staff of the Medical/Surgical Division (gathered at a holiday dinner) - that she no longer wanted to manage the Can-Liner Contract since she had been informed that she would be fired if she did not award it to Heritage Bag. Woodcock agreed to take over the contract.

80. Shortly after raising these (and other) concerns about Novation's contracting process and rebuffing John Doyle over dinner, Relator experienced a dramatic change in her work environment. Among other things, where before she had received praise and camaraderie, she started receiving criticism about her work performance (including a detailed "performance improvement plan"), was alienated by her co-workers and quickly terminated.

81. Novation ultimately awarded the Can-Liner Contract to Heritage Bag. See Exhibit 12 (Novation Launch Packet for Contract No. MS00210), which is incorporated herein. Relator has information and believes that the basis for awarding Heritage Bag this and every other can-liner contract for the past 16 years was as a pay-off to John Doyle (who received a commission for every liner sold under the contract) for his having agreed in 1986 to resign as President of VHA Supply amidst accusations by three female employees of sexual harassment and sex discrimination. Heritage Bag won its first can-liner contract from VHA Supply shortly after John Doyle began work as its representative and has held the Can-Liner Contract uninterrupted over the succeeding 16 years while Doyle has continued as its representative.

82. Relator has information and believes that neither Novation nor VHA has ever informed the VHA and UHC Members and HPPI customers of the deal that VHA Supply struck with John Doyle, Doyle's current ties to Heritage Bag and previous affiliation with VHA Supply, or the role

these factors have played in guaranteeing Heritage Bag each of the can-liner contracts since 1986, despite the fact that there have been other bidders with less expensive can liners. In its Launch Packet for the most recent contract, which was distributed to its customers, Novation failed to include among the reasons listed under "Award Rationale" for awarding Contract No. MS00210 to Heritage Bag either its commitment to Doyle or the existence of other vendors with prices lower than Heritage Bag. See id.

## 2. *Owning Stock in Vendors to Whom Novation Awarded Contracts*

83. At all times relevant to this Complaint, Novation, VHA, and UHC, as well as top executives at these companies with considerable influence over contracting decisions, owned significant stock holdings in and had mutually beneficial business dealings with the vendors to whom Novation awarded contracts. Several of these executives also sat on the vendors' Board of Directors. Rather than award contracts based on objective criteria like quality and price, Novation routinely awarded contracts to vendors in which Novation, its parent companies VHA and UHC, and officers of these companies had a personal financial and/or business interest. Relator has information and believes that Novation, VHA and UHC failed to inform the VHA and UHC Members and HPPI customers of these ownership interests or business dealings and the role such interests/dealings played in awarding contracts to these vendors.

84. At all times relevant to this Complaint, Novation has had significant stock holdings in vendors to whom Novation has awarded contracts, including Johnson & Johnson and Tyco International Ltd. ("Tyco"). As of November 18, 1999, some of the contracts Novation awarded to Johnson & Johnson while it held Johnson & Johnson stock were as follows: Novation Contract Nos. CE116 (Portable Blood Pressure Monitoring Systems), HPM035 (Baby Products), LAB409 (Chemistry Analyzers), MS607 (Sutures, Endo-Mechanicals), MS80142 (Reusable Surgical

Instruments), and RX86100 (Baby Bath, Shampoo, Powder).

85. Kendall Sherwood-Davis & Geck ("Sherwood"), Sherwood Medical, and Kendall Healthcare Products Company ("Kendall") are all subsidiaries of Tyco. As of November 18, 1999, some of the contracts Novation awarded to Sherwood while it held Tyco stock were as follows: Novation Contract Nos. CE195 (Thermometers), HPM053 (Needles & Syringes), and MS644 (Needles & Syringes). As of November 18, 1999, some of the contracts Novation awarded to Sherwood Medical while it held Tyco stock were as follows: Novation Contract Nos. RX146 (Thermazene Cream) and RX81460 (Silver Sulfadiazine & Petrolatum Gauze). As of November 18, 1999, some of the contracts Novation awarded to Kendall while it held Tyco stock were as follows: Novation Contract Nos. MS153 (NOV APLUS® Endotracheal Tubes, Tracheostomy Care Kits, Open Suction Catheters), MS609 (Vascular Therapy Products), MS642 (Wound Care Products), and MS80010 (Bandages, Dressings, Sponges, Gauze).

86. At all times relevant to this Complaint, VHA and UHC have had significant stock holdings in vendors to whom Novation has awarded contracts, including Neoforma, Inc. ("Neoforma"). On July 26, 2000, VHA, UHC and Novation entered into an outsourcing and operating agreement with Neoforma, under which VHA and UHC collectively received 45% of Neoforma's outstanding common stock and Neoforma agreed to create and manage an on-line marketplace - called Marketplace@Novation™ -- through which the VHA and UHC Members and HPPI customers can order products under the Novation contracts. On January 25, 2001, VHA and UHC increased their holdings to 60.9% of Neoforma's total outstanding common stock.

87. Although Neoforma describes itself as an e-commerce company that creates and manages on-line marketplaces for GPOs, Integrated Delivery Networks, and other health care systems, Novation and its customers and vendors have been the primary source of Neoforma's business. In

July 2000, Novation awarded Neoforma a sole source contract, which was never put out for public competitive bid, to establish and provide Novation's customers with the on-line ordering service, Marketplace@Novation™. In 2001 alone, Novation paid Neoforma approximately \$21 million in fees for these services. In addition, Novation and Neoforma have an agreement under which Neoforma shares with Novation revenue related to transactions made through Marketplace@Novation.

88. C. Thomas Smith, who until recently was the President of VHA and had the ability to influence Novation's contracting decisions, held stock throughout his tenure at VHA in several vendors with whom Novation had contracts. Smith had significant stock holdings in Genetech and also sat on its Board of Directors from 1986 until 1999. During the time that Smith was both President of VHA, a Genetech stockholder and a member of Genetech's Board of Directors, Genetech was awarded several Novation Contracts, including Contract Nos. RX 163 and RX 81830 under which Genetech supplied the drug activase to the VHA and UHC Members and HPPI customers. As President of VHA, Smith also held at least 3,500 shares in Neoforma and sat on its Board of Directors. Smith also owned stock in Sysco Corporation, to whom Novation had awarded several food services contracts.

89. Curt Nonomaque, who has succeeded Smith as VHA's President and previously served as VHA's Vice-President and Chief Financial Officer, also has owned stock in Neoforma and other vendors to whom Novation has awarded contracts during his tenure at VHA. Nonomaque also sat on Neoforma's Board of Directors. Relator has information and believes that Nonomaque has created a fictitious corporation, called NBI, LLC, through which he purchases stock in vendors to whom Novation has awarded contracts.

90. Mark McKenna, Novation's current President and a former Vice-President, also owned stock in vendors to whom Novation has awarded contracts, including Neoforma, and served on Neoforma's Board of Directors during his tenure at Novation. The following VHA and Novation executive-level employees, with influence over Novation's contracting decisions, also own stock in Neoforma: Daniel Bourque and John Collins, Senior Vice-Presidents at VHA, Donald Caccia, a VHA executive, and Marcea Bland Lloyd, in-house counsel for Novation.

91. Novation requires the vendors to whom it awards contracts to agree to use Marketplace@Novation. In its Invitations-to-Bid, Novation lists as a "basic qualifying factor" to receiving a contract that a vendor be willing to commit to participate in Marketplace@Novation. See Exhibit 7 (Enteral Products Invitation to Bid) at 10 & Attachment C at 10. In so doing, Novation is serving its own financial interests and those of VHA, UHC and their executives since they all have a financial stake in ensuring Neoforma's success.

### 3. *Excessive Conference Fees*

92. At all times relevant to this Complaint, Novation (and its predecessor VHA Supply) regularly organized and hosted conferences on topics of interest to the VHA and UHC Members and HPPI customers. In connection with these conferences, Novation routinely would approach large vendors whom it expected to be bidding on upcoming contracts and solicit from them exorbitant fees to attend segments of the conference at which the VHA and UHC Members would be present or sponsor high-profile keynote speakers. These fees typically were well in excess of the costs Novation incurred in putting on the conference. Relator has information and believes that Novation failed to inform the VHA and UHC Members and HPPI customers about the existence or amount of these fees and charges.

4. *Travel & Entertainment Costs*

93. At all times relevant to this Complaint, Novation (and its predecessor VHA Supply) accepted lavish trips, meals and other entertainment from vendors who regularly bid on Novation contracts and to whom Novation subsequently awarded contracts. These trips, meals and other entertainment had little if any legitimate business purpose. For example, shortly before Novation was expected to issue Invitations-to-Bid for its NOV APLUS® exam glove contract, American Health Products - a large manufacturer of gloves for medical use -- hosted a Riverboat cruise on Lake Michigan with drinks, dinner and dancing for Relator, Relator's supervisor Sherry Woodcock, and other members of the Novation contracting staff responsible for awarding this contract. Edward Marteka, President of AHP, Rick Feady, an AHP sales representative, and several other members of the AHP sales staff were present. Throughout the evening, little to no business was conducted. Relator has information and believes that Novation failed to inform the VHA and UHC Members and HPPI customers about any of these vendor-sponsored trips, meals and other entertainment, the fact that such events had little to no legitimate business purpose, or the role these events played in awarding contracts.

VI. DAMAGES

A. Inflating Costs of Supplies Reimbursed by Government Health Insurance Programs

94. In order to recoup the often considerable costs of paying Novation the kickbacks and other illegal remuneration described above, vendors build these costs into the prices they charge Novation's customers under the contracts for the supplies and services, thereby inflating the prices. A large percentage of these supplies and services are utilized in the treatment of beneficiaries of the government health insurance programs. The government reimburses health care providers for certain

of the costs of these supplies based on cost-reimbursement calculations the providers include in cost reports filed annually with insurance companies the United States and Texas respectively have retained to act as their program fiscal intermediaries ("F.I.'s"). Under the federal cost-reporting regulations, there are several ways in which the vendors' inflated prices are borne by the government health insurance programs.

95. First, several areas of a hospital, such as rehabilitation and psychiatric units, are reimbursed by the government based on the actual costs incurred therein for treating Medicare/Medicaid/CHAMPUS/TRICARE beneficiaries. When a Novation customer uses an overpriced supply/service (i.e., one that includes the hidden costs of the Novation kickbacks) in one of these hospital areas, the inflated costs will cause a corresponding increase in the amount of the government's reimbursement to that customer.

96. For the majority of the time relevant to this Complaint, the two types of areas of a health care provider that were reimbursed based on the actual costs incurred therein are distinct part units and outpatient ancillary cost centers. As its name suggests, distinct part units are portions of the hospital (or free-standing facilities) that provide services that differ from the hospital's typical inpatient services. The four most typical types of distinct part units are psychiatric units/hospitals, rehabilitation units/hospitals, skilled nursing facilities ("SNFs"), and home health agencies ("HHAs"). Like the hospital itself, distinct part units have their own Medicare provider number under which all Medicare/Medicaid/TRICARE/CHAMPUS billing is processed.

97. The majority of Novation's customers are either free-standing distinct part units or have distinct part units associated with their hospitals. For instance, the 5,000 HPPI customers are largely comprised of alternate care providers such as free-standing rehabilitation hospitals, psychiatric hospitals, SNFs and HHAs. In addition, many of the 2,200 VHA and UHC Members, which consist

largely of community and teaching hospitals, have distinct part units associated with their hospitals. Accordingly, distinct part units account for a large percentage of the \$19.6 billion in total purchases that the Novation customers make each year. Since the actual costs of the supplies and services purchased by these units are reimbursed in whole or part by the government health insurance programs, by causing vendors to inflate the prices for such goods/services, defendants have caused the government to overstate its reimbursement to the large population of Novation customers with distinct part units, which has resulted in profound financial harm to the government health insurance programs.

98. The other primary area in which the government reimburses a health care provider based on actual costs incurred therein in treating Medicare/Medicaid/TRICARE/CHAMPUS beneficiaries is outpatient ancillary cost centers. As its name suggests, these are areas of the hospital that provide outpatient services that are ancillary to the hospital's typical inpatient services. Unlike distinct part units, however, services provided in outpatient ancillary cost centers are billed under the hospital's Medicare provider number and do not have their own provider numbers.

99. Examples of outpatient ancillary cost centers are the Operating Room, Recovery Room, Radiology Department, Emergency Room, Electrocardiogram Department, and Laboratory. The 2,200 VHA and UHC Members, which consist largely of community and teaching hospitals, have several such outpatient ancillary cost centers in each of their hospitals. Although largely comprised of alternate care providers, some of the HPPI customers are traditional hospitals with the above-mentioned outpatient ancillary cost centers. Since the actual costs of the supplies/services purchased by these cost centers are reimbursed in whole or part by the government health insurance programs, by causing vendors to inflate the prices for such goods/services, defendants have caused the government to overstate its reimbursement to the many VHA and UHC Members and HPPI



customers who have these cost centers, which has resulted in profound financial harm to the government health insurance programs.

100. Second, the overpriced supplies/services resulting from Novation's fraudulent practices also have served to improperly increase the amount of government reimbursement in areas of the hospital, like general acute care/Adults & Pediatrics, that are reimbursed under the "Prospective Payment System" or "PPS". Under PPS, the Medicare program uses payment schedules based on Diagnosis-Related Groups ("DRGs"), under which hospitals are paid pre-determined amounts for inpatient care in certain areas of the hospital based on the patients' diagnosis. The diagnosis-based DRG payments reflect the average costs an efficiently-run hospital would be expected to incur to treat such a patient. To determine the payment schedule that corresponds to each diagnosis, the government relies on pricing and other data from hospitals within the various geographic regions of the country as well as nationwide. Because Novation's 7,300 customers represent close to a third of the nation's health care providers, the government has necessarily relied on the inflated pricing information from many of Novation's customers in setting its DRG payments. Accordingly, the inflated prices incurred by the VHA and UHC Members and HPPI customers have, in turn, increased the amount of the DRG rate on which the government bases its reimbursement.

101. Third, for the majority of the time relevant to this Complaint, there was a category of products called "moveable capital equipment" that the government reimbursed based on the cost of the product, irrespective of the part of the hospital in which they were used. Examples of moveable capital equipment are ultrasound devices, CAT scanners, x-ray machines, hospital beds, and operating room tables. Capital equipment was one of Novation's primary product lines and Novation regularly negotiated capital-equipment contracts for its customers. As with Novation's other product lines, Relator has information and believes that several capital-equipment vendors paid

Novation kickbacks to obtain the contracts and increased the prices charged in Novation contracts for this equipment in order to recoup the illegal payments. Because such equipment is subject to cost-based reimbursement, the vendors' inflated prices on capital equipment also caused the government to overstate its reimbursement to the VHA and UHC Members and HPPI customers who purchased and later sought government reimbursement for the costs of this equipment.

B. Precludin<sup>2</sup> Manufacturers of Safer, More Innovative Products That Would Have Reduced Health care Costs

102. As a result of its practice of requiring vendors to pay large kickbacks and other illegal remuneration to obtain contracts, Novation routinely awarded contracts to large, well-established vendors, like Johnson & Johnson, who were capable of making such large payments. Smaller vendors, who often have safer, cheaper and more innovative products, were routinely denied contracts because they were unable or unwilling to offer Novation the up-front payments necessary to obtain the business.

103. For example, Novation awarded the most recent contract for needles and syringes to Becton Dickinson, a large, well-established medical product manufacturer. As discussed above, in connection with this contract, Becton Dickinson paid Novation a \$1 million "special marketing fee." Novation awarded the contract to Becton Dickinson despite contemporaneous market research showing that ECRI, a respected testing laboratory, had rated as "unacceptable" one of the Becton Dickinson needles to be supplied under the contract. Another bidder, Retractable Technologies, Inc. ("RTI"), who manufactures an innovative safety syringe and needle system with a demonstrated record of preventing needle sticks, was shut out of the contract largely because it was unable and unwilling to pay Novation kickbacks and other illegal remuneration.

104. By regularly shutting out the smaller vendors like RTI and awarding contracts to larger vendors who build the costs of the kickbacks into their prices, Novation caused the VHA and UHC Members and HPPI customers to submit to the government health insurance programs claims for medical supplies that were higher than they would have been had Novation awarded the contracts without such improper financial considerations as kickbacks and other illegal remuneration. In

addition, by favoring larger manufacturers over smaller ones like RTI with safer, more innovative products, Novation caused the VHA and UHC Members and HPPI customers to submit to the government health insurance programs claims for additional treatment related to injuries caused or exacerbated by the use of the larger manufacturers' products, such as needle stick injuries caused by the use of less safe needles. In many instances, these injuries and additional treatment costs would have been preventable had Novation awarded the contracts based on quality and price rather than other improper financial considerations.

#### VII. EMPLOYMENT DISCRIMINATION FOR ACTS IN FURTHERANCE OF FALSE CLAIMS ACT ACTION

105. Relator began working for Novation on July 27, 1998 as a Senior Product Manager for Medical/Surgical Products with an annual salary of \$63,500.04. From the beginning of her six months of employment at Novation until she started complaining to her superiors about the impropriety of the fraudulent practices described above, Relator was regularly commended by her superiors on her job performance.

106. For instance, upon completion of one of her first assignments - putting out to bid and awarding Contract No. MS8020B, "IV Catheters and Start Kits" - Relator received a hand-written note from Novation's then President, James Hersma, complimenting her on her "[g]reat work." See Exhibit 9 at 1. As described above, this was also the contract pursuant to which Relator secured from Becton Dickinson a \$100,000 "donation" to VHAseCURE.net. For her work in obtaining this donation as well as a similar donation from another vendor, the Head of Novation's Information Technology Department (who oversaw the VHAseCURE.net program) sent Relator an e-mail congratulating her on her success and thanking her for her efforts. See Exhibit 5. A copy of this e-mail was also sent to John Burks, the former Head of the Medical/Surgical Products Division. Id.

107. By the end of 1998/beginning of 1999, as a result of the experiences described above, Relator had come to realize that the kickbacks and other illegal remuneration were not isolated indiscretions by a few rogue vendors but instead were part of a larger Novation scheme that pervaded its business. Faced with two choices -- play by Novation's rules and be complicit in fraud or refuse and try to effect change from within -- Relator took the latter course. As described above, she

informed her supervisor Sherry Woodcock that she could no longer manage the can-liner contract because of the favoritism being shown to Heritage Bag, and she rebuffed Johnson & Johnson's attempts to pay Novation a kickback to obtain the IV Catheter Contract. Relator also raised her concerns about the impropriety of these practices with Novation senior management, including the Head of the Medical/Surgical Products Division, Human Resources staff, and Novation's in-house counsel. Her concerns were largely ignored.

108. Shortly after she took these corrective measures, Relator began to experience a dramatic change in her employment conditions. Where previously she had been treated as part of the team, Relator now was being alienated by her co-workers. For instance, Relator's administrative assistant, who had previously worked cooperatively with her (while also serving the other members of the Medical/Surgical contracting staff to whom she was jointly assigned), now refused to do any work for her.

109. Relator's supervisor Sherry Woodcock issued Relator a 6-page "Performance Improvement Plan" chronicling a laundry list of serious alleged lapses in her job performance and placing her on a 90-day probationary period. See Exhibit 13, which is incorporated herein. Although the vast majority of these alleged failings had supposedly occurred many months earlier, Relator had never before been informed of these "problems" and no reference to them had been made in her personnel file. Relator was only now hearing about them for the first time, a matter of days after she had first voiced concerns to management about Novation's contracting practices. Because of her supervisor's frequent fabrication and gross mischaracterization of the events described therein, Relator refused to sign the Performance Improvement Plan or agree to the conditions set forth therein. Fifteen days later, on February 5, 1999, Novation fired Relator for alleged problems related to her "performance/judgment."

110. Despite her supposed failings as an employee, Novation nevertheless chose to pay Relator - an at-will employee - a severance package of \$7,949.69. Novation conditioned Relator's receipt of these monies on her signing a severance agreement containing a confidentiality provision that prohibited her from revealing any of Novation's confidential information or information about

Novation's "business and opportunities" for three years. Relator signed the agreement and accepted the severance package.

111. As these circumstances clearly demonstrate, the reasons Novation gave for terminating Relator - "performance/judgment" - were a pretext. The real reason Novation fired Relator - as is belied by the close proximity between her complaints and Novation's belated criticism of her job performance - was in retaliation for her investigating and raising concerns about Novation's fraudulent contracting practices.

#### COUNT I

##### Substantive Violations of the Federal False Claims Act [31 U.S.C. §§ 3729(a)(1), (a)(2), (a)(7) and 3732(b)]

112. Relator realleges and incorporates by reference the allegations made in Paragraphs 1 through 111 of this Complaint.

113. This is a claim for treble damages and forfeitures under the Federal False Claims Act, 31 U.S.C. §§ 3729 et seq., as amended.

114. Through the acts described above, defendants Novation, VHA, UHC, and HPPI knowingly caused VHA and UHC Members and HPPI customers to present to the United States Government, through the Medicare, Medicaid, and TRICARE/CHAMPUS programs, false and fraudulent claims, records, and statements for reimbursement for health care supplies and services provided under Medicare, Medicaid, and TRICARE/CHAMPUS.

115. Through the acts described above and otherwise, defendants Novation, VHA, UHC, and HPPI knowingly caused the VHA and UHC Members and HPPI customers to make or use false records and statements, which also omitted material facts, in order to induce the United States Government and its F.I.'s to approve and pay such false and fraudulent claims.

116. Through the acts described above and otherwise, defendants Novation, VHA, UHC, and HPPI knowingly caused the VHA and UHC Members and HPPI customers to make or use false records and statements to conceal, avoid, and/or decrease the VHA and UHC Members' and HPPI customers' obligation to repay money to the United States Government that the defendants improperly and/or fraudulently received. Defendants Novation, VHA, UHC and HPPI also failed

to disclose to the United States Government and its F.I.'s material facts that would have resulted in substantial repayments by the VHA and UHC Members and HPPI customers to the federal government.

117. The United States, through the Medicare, Medicaid, and TRICARE/CHAMPUS programs and their respective F.I.'s, unaware of the falsity of the records, statements, and claims made or submitted by defendants Novation, VHA, UHC, and HPPI and the VHA and UHC Members and HPPI customers, paid and continue to pay the VHA and UHC members and HPPI customers for claims that would not be paid if the truth were known.

118. The Medicare, Medicaid, and TRICARE/CHAMPUS programs and their respective F.I.'s, unaware of the falsity of the records, statements, and claims made or submitted by defendants Novation, VHA, UHC, and HPPI (and the VHA and UHC Members and HPPI customers) -- or of defendants' failure to disclose material facts that would have reduced government obligations -- have not recovered Medicare, Medicaid, and TRICARE/CHAMPUS funds that would have been recovered otherwise.

119. By reason of the defendants' false records, statements, claims, and omissions and defendants' misconduct in causing the VHA and UHC Members and HPPI customers to make and submit false records, statements, claims and omissions, the United States has been damaged in the amount of many millions of dollars in Medicare, Medicaid, and TRICARE/CHAMPUS funds.

#### COUNT II

#### Federal False Claims Act Conspiracy [31 U.S.C. §§ 3729(a)(3) and 3732(b)]

120. Relator realleges and incorporates by reference the allegations made in Paragraphs 1 through 119 of this Complaint.

121. This is a claim for treble damages and forfeitures under the Federal False Claims Act, 31 U.S.C. §§ 3729 ~~et seq.~~ as amended.

122. Through the acts described above and otherwise, defendants entered into a conspiracy or conspiracies with each other and with others to defraud the United States by getting false and fraudulent claims allowed or paid. Defendants have also conspired with each other and with others

to omit disclosing or to actively conceal facts which, if known, would have reduced government obligations to the VHA and UHC Members and HPPI customers or resulted in repayments from the VHA and UHC Members and HPPI customers to government health insurance programs. Defendants have taken substantial steps in furtherance of those conspiracies, inter alia, by soliciting and accepting kickbacks and other monies from vendors as payment for awarding them Novation contracts knowing that these activities increased the cost of supplies and services ordered by the VHA and UHC Members and HPPI customers under these contracts and caused Novation's customers to submit false bills, cost reports and other records to the government and its F.I.'s for payment or approval that contained these improper costs, and by directing their agents and personnel not to disclose and/or to conceal their fraudulent practices or those of their co-defendants, as well.

123. The Medicare, Medicaid, and TRICARE/CHAMPUS programs and their respective F.I.'s, unaware of defendants' conspiracies or the falsity of the records, statements and claims caused to be made by defendants Novation, VHA, UHC, and HPPI and made by the VHA and UHC Members and HPPI customers, and as a result thereof, have paid and continue to pay millions of dollars in Medicare, Medicaid, and TRICARE/CHAMPUS interim and final reimbursement that they would not otherwise have paid. Furthermore, because of the false records, statements, claims, and omissions caused to be made by defendants Novation, VHA, UHC and HPPI and made by the VHA and UHC Members and HPPI customers, the United States has not recovered Medicare, Medicaid, and TRICARE/CHAMPUS funds from the VHA and UHC Members and HPPI customers that otherwise would have been recovered.

124. By reason of defendants' conspiracies and the acts taken in furtherance thereof, the United States has been damaged in the amount of many millions of dollars in Medicare, Medicaid, and TRICARE/CHAMPUS funds.

### COUNT III

Substantive Violations of the Texas Medicaid Fraud Prevention Act  
[Texas Human Resources Code §§ 36.002 (1)(A), (2)(B) & (4)(B)]

125. Relator realleges and incorporates by reference the allegations made in Paragraphs 1 through 124 of this Complaint.

126. This is a claim for restitution, double damages and penalties under the Texas Medicaid Fraud Prevention Act, Texas Human Resources Code, §§ 36.001 et seq.

127. Through the acts described above, defendants Novation, VHA, UHC, and HPPI knowingly have caused the VHA and UHC Members and HPPI customers to present to the Texas Medicaid program and its F.I.'s false and fraudulent claims, records, and statements for reimbursement for health care supplies and services provided under Medicaid.

128. Through the acts described above and otherwise, defendants Novation, VHA, UHC, and HPPI knowingly made, used, and/or caused the VHA and UHC Members and HPPI customers to make or use false records and statements, which also omitted material facts, in order to induce the Texas Medicaid program and its F.I.'s to approve and pay such false and fraudulent claims.

129. Through the acts described above and otherwise, defendants Novation, VHA, UHC, and HPPI knowingly made, used, and caused the VHA and UHC Members to make or use false records and statements to conceal, avoid, and/or decrease the VHA and UHC Members' and HPPI customers' obligation to repay money to the Texas Medicaid program and its F.I.'s that the VHA and UHC Members and HPPI customers improperly and/or fraudulently received. Defendants Novation, VHA, UHC, and HPPI also failed to disclose to the Texas Medicaid program and its F.I.'s material facts that would have resulted in substantial repayments by the VHA and UHC Members and HPPI customers to the Texas government.

130. The Texas Medicaid program and its F.I.'s, unaware of the falsity of the records, statements, and claims made or submitted by defendants and the VHA and UHC Members and HPPI customers, paid and continue to pay the VHA and UHC Members and HPPI customers for claims that would not be paid if the truth were known.

131. The Texas Medicaid program and its F.I.'s, unaware of the falsity of the records, statements, and claims made or submitted by defendants or the VHA and UHC Members and HPPI customers -- or of their failure to disclose material facts which would have reduced government obligations -- have not recovered Medicaid funds that would have been recovered otherwise.



132. By reason of the defendants' false records, statements, claims, and omissions and defendants' misconduct in causing the VHA and UHC Members and HPPI customers to make or submit false records, statements, claims, and omissions, the State of Texas and the Texas Medicaid program have been damaged in the amount of many millions of dollars in Medicaid funds.

COUNT IV  
Texas Medicaid Fraud Prevention Act Conspiracy  
[Tex. Human Resources Code § 36.002(9)]

133. Relator realleges and incorporates by reference the allegations made in Paragraphs 1 through 132 of this Complaint.

134. This is a claim for restitution, double damages and penalties under the Texas Medicaid Fraud Prevention Act, Texas Human Resources Code §§ 36.001 et seq.

135. Through the acts described above and otherwise, defendants entered into a conspiracy or conspiracies with each of the other defendants and with others to defraud the Texas Medicaid program by getting false and fraudulent claims allowed or paid. Defendants have also conspired with each other and with others to omit disclosing or to actively conceal facts which, if known, would have reduced the Texas Medicaid program's obligations to the VHA and UHC Members and HPPI customers or resulted in repayments from the VHA and UHC Members and HPPI customers to the Texas Medicaid program. Defendants Novation, VHA, UHC and HPPI have taken substantial steps in furtherance of those conspiracies, inter alia, by soliciting and accepting kickbacks and other monies from vendors as payment for awarding them Novation contracts knowing that these activities increased the cost of supplies and services ordered by the VHA and UHC Members and HPPI customers under these contracts and caused Novation's customers to submit false bills, cost reports and other records to the Texas Medicaid program and its F.I.'s for payment or approval that contained these improper costs, and by directing their agents and personnel not to disclose and/or to conceal their fraudulent practices or those of their co-defendants, as well.

136. The Texas Medicaid program and its F.I.'s, unaware of defendants' conspiracies or the falsity of the records, statements and claims caused to be made by defendants Novation, VHA, UHC

and HPPI and made by the VHA and UHC Members and HPPI customers, and as a result thereof, have paid and continue to pay millions of dollars in Medicaid interim and final reimbursement that they would not otherwise have paid. Furthermore, because of the false records, statements, claims, and omissions caused to be made by defendants Novation, VHA, UHC and HPPI and made by the VHA and UHC Members and HPPI customers, the Texas Medicaid program has not recovered Medicaid funds from the VHA and UHC Members and HPPI customers that otherwise would have been recovered.

137. By reason of defendants' conspiracies and the acts taken in furtherance thereof, the State of Texas and the Texas Medicaid program have been damaged in the amount of many millions of dollars in Medicaid funds.

COUNT V  
Federal False Claims Act -- Employment Discrimination  
[31 U.S.c. § 3730(h)]

138. Relator realleges and incorporates by reference the allegations made in Paragraphs 1 through 137 of this Complaint.

139. This is a claim for damages under the Federal False Claims Act, 31 U.S.c. § 3730(h).

140. Through the acts described above and otherwise, defendant Novation discriminated against Relator in the terms and conditions of her employment at Novation by, among other things, terminating her employment. Novation's stated reasons for terminating Relator regarding deficiencies in her job performance were baseless and simply a pretext for the real reason for her termination -- to retaliate against Relator for her investigation of defendants' fraudulent practices in preparation for filing the above-captioned False Claims Act lawsuit.

141. By reason of defendant Novation's actions, Relator has been damaged in the amount of many thousands of dollars.

COUNT VI  
Texas Medicaid Fraud Prevention Act - Employment Discrimination  
[Texas Human Resources Code § 36.115]

142. Relator realleges and incorporates by reference the allegations made in Paragraphs 1 through 141 of this Complaint.

143. This is a claim for damages under the Texas Medicaid Fraud Prevention Act, Texas Human Resources Code § 36.115.

144. Through the acts described above and otherwise, defendant Novation discriminated against Relator in the terms and conditions of her employment at Novation by, among other things, terminating her employment. Novation's stated reasons for terminating Relator regarding deficiencies in her job performance were baseless and simply a pretext for the real reason for her termination -- to retaliate against Relator for her investigation of defendants' fraudulent practices in preparation for filing the above-captioned False Claims Act lawsuit.

145. By reason of defendant Novation's actions, Relator has been damaged in the amount of many thousands of dollars.

#### **PRAYER**

WHEREFORE, Relator prays for judgment against defendants as follows:

1. That defendants cease and desist from violating 31 U.S.C. §§ 3729 et seq. and Texas Human Resources Code §§ 36.001 et seq.;

2. That the Court enter judgment against defendants in an amount equal to three times the amount of damages the United States has sustained as a result of defendants' actions in violation of the Federal FCA, as well as a civil penalty against each defendant of \$11,000 for each violation of 31 U.S.C. § 3729;

3. That the Court enter judgment against defendants in an amount equal to two times the amount of damages Texas has sustained as a result of defendants' actions in violation of the Texas Medicaid Fraud Prevention Act, as well as a civil penalty against each defendant of \$10,000 for each violation of Texas Human Resources Code § 36.052(3).

4. That Relator be awarded the maximum amount allowed pursuant to 31 U.S.C. § 3730(d) and Texas Human Resources Code § 36.110;

5. That Relator be awarded all costs and expenses of this action, including attorneys' fees;

6. That the Court enter judgment against defendant Novation as a result of its actions in violation of 31 U.S.c. § 3730(h) and Texas Human Resources Code § 36.115 as well as all relief necessary to make Relator whole, including reinstatement with the same seniority status Relator would have had but for the discrimination, not less than two times the amount of back pay, interest on back pay, and compensation for any special damages sustained as a result of Novation's employment discrimination, including litigation costs and reasonable attorney's fees; and

7. That the United States, the State of Texas, and Relator receive all such other relief as the Court deems just and proper.

#### Jury Demand

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Relator hereby demands trial by jury.

Dated: July 15, 2003

Respectfully submitted:

PHILLIPS & COHEN LLP

Stephen L. Meagher

CA Bar No. 118188

Mary A. Inman

CA Bar No. 176059

Michael Brown

CA Bar No. 183609

131 Steuart Street, Suite 501

San Francisco, California 94105

Tel: (415) 836-9000

Fax: (415) 836-9001

GOODE CASSEB JONES

RIKLIN CHOATE & WATSON

A PROFESSIONAL CORPORATION

By *~d~*  
John . ark

TX Bar No. 04287000

Rand J. Riklin

TX Bar No. 16924275

2122 North Main Ave.

San Antonio, Texas 78212

Tel: (210) 733-6030

Fax: (210) 733-0330

LAW OFFICE OF GLENN GROSSENBACHER  
Glenn Grossenbacher  
TX Bar No. 08541100  
1800 McCullough  
San Antonio, Texas 78212  
Tel: (210) 271-3888  
Fax: (210) 271-3980

ATTORNEYS FOR RELATOR/PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing complaint has been served by certified mail or hand delivery this 11th day of July 2003, as follows:

Mr. John Ashcroft  
Attorney General  
U. S. Department of Justice  
Civil Division  
P.O. Box 261, Ben Franklin Station  
Washington, DC 20044

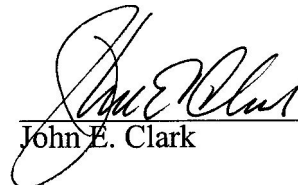
Certified Mail No.70022410000415006110  
Return Receipt Requested

Ms. Jane J. Boyle  
United States Attorney  
Northern District of Texas  
1100 Commerce Street, Third Floor  
Dallas, Texas 75242-1699

Hand Delivery

Mr. Greg Abbott  
Texas Attorney General  
300 W. 15<sup>th</sup> Street  
Austin, Texas 78701

Certified Mail No.70022410000415006127  
Return Receipt Requested

  
\_\_\_\_\_  
John E. Clark

JS44 (Rev. 3199)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the IntonnatiOn contained herein neither replace nor supplement the filing and service of le d... other papers 11s requi-9- bylaw, except as provided by local rules Of court. This form, approved by the Judicial Conference of the United States P... of the Clerk of Court for the purpose of initiating the civil docket sheet (SEE INSTRUCTIONS ON THE REVERSE OF E FO...)

I. (8) PLAINTIFFS

DEFENDANTS

United stat.es of America ex rel. (under seal) AND State of Texas ex rel. (under seal)

(Under seal,

J1. / 5 2003

(b) COUNTY OF RESIDENCE OF FIRST USTED PLAINTIFF (EXCEPT IN.U.S. PLAINTIFF CASES)

COUNIYOF RESIDENCE OF FIRST USTED

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(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONCERNATION USE THE LOCATION OF THE TRACT OF LAND INVOLVID.

(c) AntoRNEVS (FIRM NAME, ADDRESS. AND TELEPHONE NUMBER)

ATTORNEVS (IF I<NOWN)

See Attachment

N/A

II. BASIS OF JURISDICTION

(PLACE ~ "X" IN ONE BOX ONLY)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(PLACE ~ "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

0 3 Federal Question (U.S. Government Not a Party) 0 4 Diversity (Indicate Citizenship of Parties in Item III)

PTF DEF 0 1 0 1 Citizen of This State Incorporated or Principal Place of Business In This State 0 2 0 2 Citizen of Another State Incorporated and Principal Place of Business In Another State 0 3 0 3 Citizen or Subject of a Foreign Country Foreign Nation 0 4 0 4

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

Table with columns: CONTRACT, TORTS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal codes and descriptions.

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

0 1 Original Proceeding 0 2 Removed from State Court 0 3 Remanded from Appellate Court 0 4 Reinstated or Reopened 0 5 Transferred from another district (specify) 0 6 Multidistrict Utigation 0 7 Appeal to District Ju-efrOm MagiStrate Judgment

VI. CAUSE OF ACTION

(CITE THE U.S. CMLSTATUTE UNDER WHICH YOU ARE FIUNG AND WAITE BRIEF STATEMENT OF CAUSE. DO NOT CITE U.S. DIRECTIONAL STATUTES UNLESS DIVERSITY.)

The False Claims Act, 31 U.S.C.Sect. 3729, et seq. and the Texas Medicaid Fraud Prevention Act, Texas HumanResources Code Sect. 36.001 et seq.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS AcnON UNDER F.R.C.P.23

DEMAND \$ Treble damages/penalties

CHECK YES only if demanded in complaint JURY DEMAND: XIFJ YES 0 NO

VIII. RELATED CASE(S) (See instructions): J-E

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

15 July 2003

John E. Clark

Handwritten signature of John E. Clark

FOR OFFICE USE ONLY

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

UNITED STATES OF AMERICA and  
THE STATE OF TEXAS, *ex rel*  
CYNTHIA I. FITZGERALD,

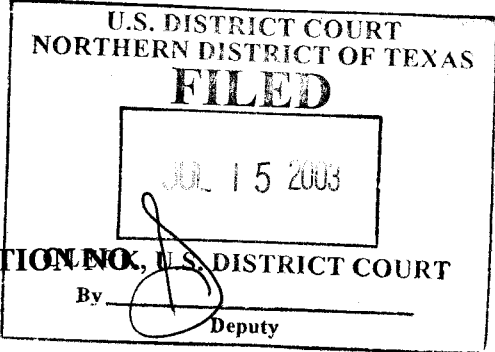
**Plaintiffs**

vs.

NOVATION, LLC, VHA, INC.,  
UNIVERSITY HEALTHSYSTEM  
CONSORTIUM, and HEALTHCARE  
PURCHASING PARTNERS  
INTERNATIONAL, LLC,

**Defendants.**

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FILED IN CAMERA AND  
UNDER SEAL

**3 03 CV 1589 D**

**COMPLAINT FOR VIOLATION OF FEDERAL FALSE CLAIMS ACT  
31 U.S.C. § 3730 AND TEXAS MEDICAID FRAUD PREVENTION ACT**

PHILLIPS & COHEN LLP  
Stephen L. Meagher  
CA Bar No. 118188  
Mary A. Inman  
CA Bar No. 176059  
Michael Brown  
CA Bar No. 183609  
131 Steuart Street, Suite 501  
San Francisco, California 94105  
Tel: (415) 836-9000  
Fax: (415)

GOODE CASSEB JONES  
RIKLIN CHOATE & WATSON  
A PROFESSIONAL CORPORATION  
John E. Clark  
TX Bar No. 04287000  
Rand J. Riklin  
TX Bar No. 16924275  
2122 North Main Ave.  
San Antonio, Texas 78212  
Tel: (210) 733-6030  
Fax: (210) 733-0330

LAW OFFICE OF GLENN GROSSENBACHER  
Glenn Grossenbacher  
TX Bar No. 08541100  
1800 McCullough  
San Antonio, Texas 78212  
Tel: (210) 271-3888  
Fax: (210) 271-3980

ATTORNEYS FOR RELATOR/PLAINTIFF

Appendix Five

## I. INTRODUCTION

1. This is an action to recover damages and civil penalties on behalf of the United States of America and the State of Texas arising from false statements and claims made, presented, and caused to be presented by the defendants and/or their agents, employees and co-conspirators in violation of the Federal Civil False Claims Act, 31 U.S.C. §§ 3729 et seq., as amended (“the Federal FCA”), and the Texas Medicaid Fraud Prevention Act, Texas Human Resources Code §§ 36.001 et seq. (“the Texas MFPA”).

2. The Federal FCA and Texas MFPA each provide that any person who knowingly submits or causes to be submitted a false or fraudulent claim to the government<sup>1</sup> for payment or approval is liable for a civil penalty of up to \$11,000 for each such claim submitted or paid, plus three times the amount of the damages sustained by the government. Liability attaches both when a defendant knowingly seeks payment that is unwarranted from the government and when false records or statements are knowingly created or caused to be used to conceal, avoid or decrease an obligation to pay or transmit money to the government. The Federal FCA and Texas MFPA each allow any person having information regarding a false or fraudulent claim against the government to bring an action for herself (the “relator” or “qui tam plaintiff”) and for the government and to share in any recovery. The Complaint is filed under seal for at least 60 days (without service on the defendants during that period) to enable the government: (a) to conduct its own investigation without the defendants’ knowledge, and (b) to determine whether to join the action.

3. Defendants in this action are VHA, Inc. (“VHA”) and University HealthSystem Consortium (“UHC”), two nation-wide hospital networks consisting of 2,200 community-owned hospitals and 100 teaching hospitals, Novation, LLC (“Novation”), the nation’s largest group purchasing organization founded and wholly owned by VHA and UHC to provide purchasing services to their collective 2,300 member health care organizations, and HealthCare Purchasing Partners International, LLC (“HPPI”), another VHA-UHC joint venture and group purchasing

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<sup>1</sup> As used herein, the term “government” shall refer to both the federal government and the government of the State of Texas.



organization that markets Novation purchasing agreements to over 5,000 health care organizations (primarily physician groups, clinics, long-term care facilities, and home health agencies) that do not belong to the VHA or UHC hospital networks.

4. At all times relevant to this Complaint, meaning from 1993 to present, the member hospitals of Defendants VHA and UHC (“VHA and UHC Members”) and the health care organizations that were customers of Defendant HPPI (“HPPI customers”) purchased under the Novation group contracts supplies and services that were used in providing medical care to beneficiaries of state and federally-funded health insurance programs and sought reimbursement for the cost of these supplies and services from the government health insurance programs, including Medicare, Medicaid, and TRICARE/CHAMPUS. Medicare is a federally-funded health insurance program primarily for the elderly. Medicaid is a state and federally-funded health insurance program for low-income patients. In Texas, the Medicaid program – known as the Texas Medicaid Program -- is funded with 60% federal funds and 40% state funds. The Civilian Health And Medical Program of the Uniformed Services, now known as TRICARE (“TRICARE/CHAMPUS”), is a federally-funded health insurance program for individuals with family affiliations to the military services.

5. At all times relevant to this Complaint, defendant Novation (and its predecessor VHA Supply Company), was in the business of securing on behalf of the VHA and UHC Members and HPPI customers group contracts with manufacturers, suppliers, and distributors (collectively “vendors”<sup>2</sup>) for supplies and services. Since the VHA and UHC Members and HPPI customers purchase more than \$19.6 billion in supplies and services annually under Novation’s group contracts and collectively comprise 22% of the national market of staffed beds, 29% of total admissions, and 30% of total surgeries, Novation wields considerable power in determining which manufacturer will be awarded one of its more than 600 group contracts and which distributors will be authorized to distribute products under these contracts. Throughout the period from at least 1993 to present, defendant Novation, with the assistance of VHA, UHC and HPPI, used this power to secure

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<sup>2</sup> As used herein, the term “vendor” shall refer to manufacturers, distributors, and/or suppliers.

kickbacks and other illegal remuneration from the vendors as payment for awarding them coveted Novation contracts.

6. Defendant Novation, with the assistance of VHA, UHC, and HPPI, engaged in these fraudulent practices knowing that such payments would inflate the costs of the contracted supplies that the VHA and UHC Members and HPPI customers purchased and would ultimately cause them to submit to the government health insurance programs – in their invoices and annual cost reports – claims for reimbursement for supplies and services that were higher than they would have been had Novation not solicited and received these illegal payments. Defendant Novation, with the assistance of VHA, UHC, and HPPI, also engaged in these fraudulent practices knowing that, by awarding contracts to those vendors willing to pay Novation the biggest kickback (and not necessarily those able to supply the best product at the lowest price), it routinely excluded smaller manufacturers with safer and more innovative products that would have obviated or reduced the need for treatment of Medicare, Medicaid, and TRICARE/CHAMPUS beneficiaries and, in so doing, caused the government health insurance programs to incur increased health care costs.

7. Under the Federal FCA and Texas MFPA, Qui Tam Plaintiff/Relator Cynthia I. Fitzgerald (“Relator”) seeks to recover damages and civil penalties arising from defendants’ actions in soliciting and receiving kickbacks and thereby causing the VHA and UHC Members and HPPI customers to present false records, claims, and statements to the United States Government, the state governments (including the State of Texas) and their respective agents in connection with the VHA and UHC Members’ and HPPI customers’ claims for excessive reimbursement for supplies and services provided to beneficiaries of the Medicare, Medicaid, and TRICARE/CHAMPUS programs.

8. Relator has information and believes that the fraudulent practices described herein were typical of defendant Novation and Novation’s predecessor VHA Supply Company at all times material to this action and that VHA, UHC and HPPI aided and abetted Novation and VHA Supply in these activities. Relator has information and believes that defendants have engaged in these fraudulent practices from at least 1993 to present.

## II. PARTIES

9. Qui tam plaintiff and relator, Cynthia I. Fitzgerald (“Relator”), is a resident of Plano, Texas and was employed by Novation from July 1998 to February 1999 as a Senior Product Manager for Medical/Surgical products in their Irving, Texas office. Shortly after Ms. Fitzgerald began to complain to senior management at Novation about these fraudulent practices, Novation terminated her employment in retaliation for her questioning their propriety. Ms. Fitzgerald files this action for violations of 31 U.S.C. §§ 3729 et seq. on behalf of herself, the United States Government pursuant to 31 U.S.C. § 3730(b)(1), and the State of Texas pursuant to Texas Human Resources Code §§ 36.101. Ms. Fitzgerald has personal knowledge of the false records, statements and/or claims that defendant Novation – aided and abetted by VHA, UHC, and HPPI – caused the VHA and UHC Members and HPPI customers to submit to the government health insurance programs.

10. Defendant Novation, LLC (“Novation”), the nation’s largest group purchasing organization (“GPO”), is a Delaware corporation with its principal place of business at 125 E. John Carpenter Freeway in Irving, Texas. Novation was founded in January 1998 by combining VHA Supply Company and UHC Supply, the former purchasing arms of the 2,300-member VHA and UHC hospital networks. Novation is a for-profit company jointly owned by VHA and UHC whose core business is negotiating and managing contracts for supplies and services on behalf of the 2,300 VHA and UHC Members as well as the over 5,000 HPPI customers who access those contracts. Novation manages more than \$19 billion in group purchasing volume. Under Novation’s portfolio of over 600 contracts with hundreds of vendors, VHA and UHC Members and HPPI customers can purchase nearly all of their supply and service needs, including such diverse product lines as medical/surgical supplies, pharmaceuticals, diagnostic imaging products, laboratory products, business products, capital equipment and dietary and food products. As its controlling shareholder (with a 77% ownership interest), VHA has populated Novation largely with staff from its former purchasing company, VHA Supply Company. Most, if not all, of the fraudulent practices in which Novation has engaged originated at VHA and VHA Supply Company. Novation’s stated mission is to use VHA’s and UHC’s considerable combined purchasing power “to deliver comprehensive

value and the industry's best pricing to its customers.”

11. Defendant VHA Inc. (“VHA”), formerly known as Voluntary Hospitals of America Inc., is a Delaware corporation, with its principal place of business located at 220 E. Las Colinas Boulevard in Irving, Texas. VHA is a nationwide network of community-owned health care systems and their physicians and includes such leading health care organizations as Baylor Health Care System in Dallas, Mayo Foundation in Rochester, Minnesota, and Cedars-Sinai Health System in Los Angeles. VHA has more than 2,200 members in 48 states (excluding Nevada and Utah). A list of VHA's membership is attached as Exhibit 1 and incorporated herein. VHA is a for-profit cooperative that was formed in 1977 to pool the resources and purchasing power of several formerly disparate community-owned hospitals. VHA's member organizations purchase a large percentage of their supplies and services under the more than 600 Novation contracts. From 1985 until January 1998, VHA had its own group purchasing organization, VHA Supply Company (“VHA Supply”), that negotiated supply contracts on its members' behalf. VHA Supply was a wholly-owned subsidiary of VHA. In January 1998, VHA joined its purchasing business with UHC's to form Novation, VHA and UHC's jointly-owned GPO. VHA has a 77% ownership interest in Novation. Many of the fraudulent practices described herein originated from VHA Supply Company, which employed these tactics throughout its existence. Novation – which was created by combining UHC and VHA Supply and is largely staffed by former employees of VHA Supply – continued to perpetrate and expand the fraudulent practices of VHA Supply.

12. Defendant University HealthSystem Consortium (“UHC”) is an Illinois corporation with its principal place of business at 2001 Spring Road, Suite 700 in Oak Brook, Illinois. UHC is an alliance of approximately 100 academic health centers nationwide and includes as its members such leading teaching hospitals as NYU Medical Center, Yale-New Haven Hospital, Johns Hopkins Hospital, and Emory University Hospital. A complete list of UHC's members is attached as Exhibit 2 and incorporated herein. Like VHA, UHC was formed to aggregate the resources and purchasing power of teaching hospitals and achieve operational efficiencies and other economies of scale. In January 1998, UHC combined its purchasing business with that of VHA's to form Novation, a VHA

and UHC jointly-owned GPO. UHC has a 23% ownership interest in Novation. Prior to 1998, UHC operated its own GPO – UHC Supply -- and negotiated supply contracts on behalf of its members. Because many of UHC’s member hospitals are part of publicly-funded universities, UHC -- and now Novation – uses a public competitive bid process in soliciting bids and awarding contracts. (In contrast, before joining with UHC to form Novation, VHA and VHA Supply Company did not subject its contracts to public competitive bid.) UHC’s member hospitals purchase a large percentage of their supplies and services under the more than 600 Novation contracts.

13. Defendant Healthcare Purchasing Partners International (“HPPI”) is a Delaware corporation with headquarters located at 220 East Las Colinas Boulevard in Irving, Texas. Like Novation, HPPI is a group purchasing organization that is jointly owned by VHA and UHC. HPPI is engaged in the business of providing access to Novation contracts (and subsequently managing the contracts) for those health care organizations who are not members of VHA and UHC and otherwise served by Novation. Rather than community-owned and teaching hospitals, HPPI’s over 5,000 customers consist largely of physician offices, clinics, home health agencies, ambulatory care, and long-term care facilities. A list of HPPI’s customers is attached as Exhibit 3 and incorporated herein. HPPI was purchased by VHA in 1994. In January 1998, at the same time that Novation was formed, UHC acquired a partial ownership interest in HPPI from VHA and became a joint owner (with VHA) of HPPI.

### **III. JURISDICTION AND VENUE**

14. This Court has jurisdiction over the subject matter of the Federal FCA action pursuant to 28 U.S.C. § 1331 and 31 U.S.C. § 3732(a), which specifically confers jurisdiction on this Court for actions brought pursuant to 31 U.S.C. §§ 3729 and 3730. This Court has jurisdiction over the subject matter of the Texas Medicaid Fraud Prevention Act (“Texas MFPA”) action pursuant to 28 U.S.C. § 1367 and 31 U.S.C. § 3732(b) because the Texas MFPA action arises from the same transactions or occurrences as the Federal FCA action.

15. This Court has personal jurisdiction over the defendants pursuant to 31 U.S.C. § 3732(a), which provides that “[a]ny action under section 3730 may be brought in any judicial district in which

the defendant, or in the case of multiple defendants, any one defendant can be found, resides, transacts business or in which any act proscribed by section 3729 occurred.” Section 3732(a) also authorizes nationwide service of process. During the relevant period, defendants Novation, VHA, UHC, and HPPI resided and/or transacted business in the Northern District of Texas.

16. Venue is proper in this district pursuant to 31 U.S.C. § 3732(a) because defendants Novation, VHA, UHC, and HPPI each can be found in, resides in, and/or transacts business in the Northern District of Texas and because many of the violations of 31 U.S.C. § 3729 described herein occurred within this judicial district.

#### **IV. BACKGROUND ON GROUP PURCHASING ORGANIZATIONS**

17. In the mid-to-late 1980s, mergers among several of the large hospital suppliers increased their market power and helped drive up the costs of medical supplies and services. In response, individual hospitals and health systems sought to increase their bargaining power by joining together to form hospital buying cooperatives, known as group purchasing organizations (“GPOs”). By pooling the purchases of their member hospitals and negotiating group contracts for supplies and services, GPOs could use volume purchasing as leverage to negotiate lower prices with suppliers. Member hospitals would also be able to reduce their purchasing staffs, thereby lowering operating costs, as the GPO assumed their contracting functions.

18. As the primary purchasing agent for its member hospitals, the GPO handles all aspects of group contracting -- from drafting the request for proposal, soliciting and evaluating bids to awarding and subsequently managing the group contracts. Once it has awarded a group contract to a vendor, the GPO notifies hospital members of its terms (Novation issues members a “Launch Packet”) and hospital members buy directly from the vendor for the price specified in the group contract. The GPO does not purchase any of the contracted supplies or services for its members nor does it take custody of the supplies.

19. Although they have an ownership interest in the GPOs and are the beneficiaries of the contracting services GPOs provide, neither the member hospitals nor their hospital network pays the GPOs’ operating costs. Instead, GPOs are primarily financed by the vendors with whom the GPOs



contract through the use of “administrative fees.” Administrative fees are typically calculated as a percentage of each hospital member’s purchases from a vendor.

20. To prevent these fees from being treated as a ‘kickback’ or illegal payment under the Anti-Kickback Act, the GPO-industry convinced Congress to amend the Act in 1986 to include a safe harbor for administrative fees paid to a GPO by a vendor. See 42 U.S.C. § 1320a-7b(b). In defining what constitutes an appropriate administrative fee, the regulations require that the following criteria be satisfied: (1) the GPO must have a written agreement with each of its members under which the fees (and its terms) are disclosed; (2) the agreement must state that the fees are to be 3 percent or less of the purchase price of the supplies to be provided, or for fees above 3 percent, the amount or maximum amount to be paid by each vendor; and (3) the GPO must provide each member with an annual report listing the amount the GPO received from each vendor in administrative fees based on that member’s purchases. 42 C.F.R. § 1001.952(j).

21. To enable GPOs to calculate their administrative fee, vendors provide GPOs with monthly reports listing, for each of its members, the amount of supplies and services the member purchased from the vendor the previous month under a particular group contract or set of contracts.

22. After paying its operating expenses, GPOs typically distribute any revenue they earn to their hospital members or hospital networks in the form of annual dividends. Where the administrative fees the GPO receives from vendors exceed its operating costs, a GPO should return the surplus fees to the member hospitals/networks in proportion to the amount of purchases each member made under the group contracts.

#### **V. DEFENDANTS’ FRAUDULENT SCHEMES**

23. Federal law makes it a felony to “solicit[ ] or receive[ ] any remuneration (including any kickbacks, bribe or rebate) directly or indirectly, overtly or covertly, . . . in return for purchasing, . . . ordering, or *arranging for or recommending* purchasing, . . . or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program [Medicare, Medicaid or TRICARE/CHAMPUS].” 42 U.S.C. § 1302a-7b(b) (emphasis added).

24. As the nation's largest GPO, Novation negotiates contracts on behalf of – and thereby arranges for and recommends the purchasing of supplies and services for -- more than 7,300 health care providers (2,300 VHA and UHC Members and more than 5,000 HPPI customers) who constitute 22% of the national market of staffed beds, 29% of total admissions, and 30% of total surgeries. As Novation informs potential bidders in its Invitations-to-Bid, Novation's customers represent greater than \$19.6 billion in actual annual purchasing volume and \$32 billion in purchasing potential. As these figures demonstrate, a contract with Novation can mean millions of dollars in sales and increased market share for the successful vendor who is awarded the group contract.

25. Rather than use its considerable collective purchasing power to serve its customers (the VHA and UHC Members and HPPI customers) by awarding group contracts to vendors offering the best product at the lowest price, Novation (and its predecessor VHA Supply) – with the assistance of VHA, UHC and HPPI -- has often acted to increase its profits, and those of its officers and executives, by awarding contracts to vendors who pay Novation the largest kickback, irrespective of the quality or price of their supplies/services.

26. At all times relevant to this Complaint, meaning from at least 1993 to present, Novation (and its predecessor VHA Supply) has solicited and received from the vendors to whom it awards contracts kickbacks and other illegal remuneration as payment for awarding them group contracts. Unlike the administrative fees vendors pay to GPOs, which are condoned by Congress, these kickbacks and other illegal remuneration are in no way tied to the administrative costs Novation incurs in managing the contract. Nor are they calculated based on clearly defined, objective criteria such as the volume of purchases made under the contract by Novation's customers. Instead, they are simply payments Novation requires vendors to pay up-front or throughout the life of the contract for the privilege of being awarded a group contract and thereby gaining access to Novation's 7,300 customers.

27. Since these payments bear no relationship to the performance of the underlying contracts (or the administrative costs incurred in managing those contracts), Novation regularly chooses among the competing vendors based on who is willing to pay the most. Under this guiding business



“principle,” Novation has awarded the majority of its over 600 contracts to large vendors, who have been able to pay the biggest kickbacks. (The vendors, in turn, inflate the prices they charge under the contract in order to recoup the costs of paying Novation the kickbacks and other illegal remuneration necessary to win the contract. These increased costs are ultimately borne by the insurers, both government and private, who reimburse the VHA and UHC Members and HPPI customers for the costs of treating their insureds/beneficiaries.) Small vendors, possessing fewer financial resources but safer and more innovative products, have often been unwilling or unable to make such up-front payments and consequently are routinely shut out of Novation contracts.

28. At all times relevant to this Complaint, Novation (and its predecessor VHA Supply) has concealed the existence of these kickbacks and other remuneration from the VHA and UHC Members and HPPI customers, disguising the proceeds in “slush funds,” secret accounts and unrelated business ventures. The overwhelming majority of the monies/remuneration received from these kickbacks is retained by Novation, typically as lavish bonuses and “incentive” compensation for its officers and executives<sup>3</sup> or as capital for financing new ventures, such as the e-commerce company Neoforma, Inc. Novation distributes a modicum of its ill-gotten gains to the VHA and UHC Members in annual dividends of its revenue as a way of lulling the Members into believing Novation performs properly on their behalf and persuading them to continue to utilize its services.

29. As a Senior Product Manager at Novation from July 1998 to February 1999, Relator was responsible for negotiating and managing a portfolio of group contracts for medical/surgical supplies and services that was worth \$243 million. During her six months in this position, Relator was privy to the inner workings of Novation’s contracting process, including the criteria Novation utilized to determine the vendors to whom it would award contracts. From her interactions with her superiors Sherry Woodcock and John Burks, among others, Relator quickly came to understand that her performance would be judged not merely by her ability to deliver to the VHA and UHC Members

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<sup>3</sup> In 2002, Novation’s President Mark McKenna earned \$928,000 (\$403,000 in annual base salary; \$357,000 under Novation’s Retention Long-Term Incentive Program; \$145,000 under Novation’s Annual Incentive Plan; and \$23,000 under Novation’s Rewarding Excellence Incentive Plan).

contracts for the best supplies at the lowest prices, but also by the amount of revenue she was able to generate for Novation in the form of up-front payments and other illegal remuneration, of which the Members were not apprised. After raising concerns about these practices with Novation's Human Resources staff, Senior Management and In-House Legal Counsel and having those concerns summarily dismissed, Relator realized that these fraudulent practices were not unique to the Medical/Surgical Division but instead pervaded Novation's business. As described below, these illegal payments/remuneration took a wide variety of forms.

**A. Up-Front Payments to "Buy the Contracts"**

**1. *Johnson & Johnson's Attempt to Buy the IV Catheter Contract***

30. One of the first medical/surgical contracts to which Relator was assigned in her position as Senior Contract Manager at Novation was Contract No. MS8020B, a three-year contract for "IV Standard and Safety Catheters and NOVAPLUS® IV Start Kits." Under this contract, Novation was seeking a vendor to supply IV Catheters as well as IV Start Kits under Novation's private label brand, NOVAPLUS®, to the VHA and UHC Members and HPPI customers. This was the first contract for IV Catheters and Start Kits put out for public competitive bid since Novation was formed.

31. Shortly after Relator received and opened the bids on the IV Catheter Contract, sales representatives from Johnson & Johnson called Relator to request a meeting with her to discuss Johnson & Johnson's bid. Relator agreed to such a meeting at Novation. During the meeting, it quickly became clear that the Johnson & Johnson sales representatives had no substantive questions regarding the contract but rather had convened the meeting simply to inquire about Johnson & Johnson's prospects of receiving the bid award. Unwilling to provide this information, Relator called an abrupt end to the meeting.

32. Having had their lobbying efforts rebuffed by Relator, the Johnson & Johnson sales staff contacted Relator's supervisor, Sherry Woodcock, and arranged a private meeting with Woodcock to which Relator was not invited. When Relator later learned of the meeting, she became concerned as to why she was being excluded and decided that, as the Senior Product Manager responsible for

awarding this contract, she would attend. Early on in the meeting, while discussing Contract No. MS8020B, "IV Standard and Safety Catheters and NOVAPLUS® IV Start Kits," one of the Johnson & Johnson sales representatives asked Relator "How much will it take to get the contract?" When Relator appeared startled and did not have a ready response, the sales representative added, "Others before you have done it."

33. Offended by the request that she agree to accept a kickback (the price tag of which she was expected to name) in exchange for awarding the contract to Johnson & Johnson, Relator turned to her supervisor, Sherry Woodcock, and said "Oh, no. This is illegal, and I don't look good in orange and I don't look good in stripes." Shortly thereafter, when the meeting had concluded, Relator repeated her concerns to Sherry Woodcock about what had just transpired (i.e., Johnson & Johnson's offer to pay Novation a kickback to obtain the IV Catheter business) and asked Woodcock whether she would like Relator to notify John Burks, the former Head of Novation's Medical/Surgical Division, or whether Woodcock would rather do it. Woodcock assured Relator that she would inform Burks.

34. Over the ensuing seven to ten days, when Relator would ask Woodcock if she had spoken with Burks yet, Woodcock's standard reply was that she had been unable to get to it. Frustrated by Woodcock's apparent unwillingness to address the issue, Relator spoke with Burks herself. According to Burks, while Johnson & Johnson's actions may have been unethical, he did not consider them to be illegal. Burks believed that Relator's suggested action -- disqualifying Johnson & Johnson's bid -- was too harsh a punishment. After Burks refused to take action against Johnson & Johnson, Relator next took the matter to Novation's Human Resources staff, William Laws, Jr. and Shirley Lopez, and in-house counsel, Gerry Rubin, but was similarly rebuffed.

35. At the same time that she was being stonewalled by her superiors on this front, Relator also was beginning to have concerns about the way in which other Novation contracts, including the Can-Liner Contract (discussed below), had been awarded. Shortly after voicing these concerns, Relator began to receive criticism about her job performance, was ostracized by her co-workers, and quickly terminated.

36. With the newfound perspective on Novation's contracting process gained from her work on the IV Catheter and Can-Liner Contracts, Relator came to realize what was evident from Johnson & Johnson's question/comment ("How much will it take to get the contract? Others before you have done it."), *i.e.*, that it had been, and continued to be, the practice of Novation (and its predecessor VHA Supply) to award contracts to large vendors like Johnson & Johnson because of the amount they were willing to pay Novation in up-front payments and other illegal remuneration. Under this standard operating procedure, Novation (and its predecessor VHA Supply) would suggest to vendors the amount of money it needed to receive up-front to award them the contract; the vendors, who were typically larger companies like Johnson & Johnson capable of paying such sums, paid Novation these monies to obtain the contract; and Novation ultimately awarded the contracts to these vendors.

37. Relator's refusal to play by these rules in the course of her work negotiating the IV Catheter Contract (and later the Can-Liner Contract) represented an unexpected (albeit short-lived) departure from the norm. Although Relator did not award the IV Catheter Contract to Johnson & Johnson in exchange for a kickback as had been the prior practice of Novation/VHA Supply (as discussed below, Relator awarded the Contract to Becton Dickinson), this was the first and last contract Relator ever negotiated for Novation. Novation fired her before she could interfere with any further contracts.

38. At no time did Novation or its predecessor VHA Supply inform the VHA and UHC Members and HPPI customers that it was their standard practice to solicit and receive kickbacks from vendors, as they had done with Johnson & Johnson on several previous occasions, in exchange for awarding them contracts.

2. ***Becton Dickinson's \$100,000 "Donation" to Novation in Connection with Winning the IV Catheter Contract***

39. In addition to Johnson & Johnson, the other primary vendor to submit a bid on the IV Catheter Contract was Becton Dickinson and Company ("Becton Dickinson"). While evaluating the Johnson & Johnson and Becton Dickinson bids under the traditional criteria of price and product quality to determine which vendor to recommend to Novation management, Relator was pressured

by her managers to consider what revenue each bidder would be able to provide Novation.

40. In response to this pressure, Relator implemented a revenue-generating plan that had recently been initiated by other Senior Product Managers at Novation. Under this plan, Relator solicited from bidders bronze, silver, and gold-level “sponsorships” of Novation’s latest Information-Technology project, “VHAseCURE.net,” an intranet developed by VHA to enable VHA members to communicate with one another over the Internet. Although to the objective observer these sponsorship payments appear wholly unconnected to the underlying contract, both Novation and the bidders understood that such “sponsorships” would buy favorable consideration from Novation in making its bid award. Such “sponsorship” payments were over and above the administrative/marketing fee (expressed as a %-of-total sales made under the contract) that vendors like Becton Dickinson had agreed to pay Novation to cover its costs for administering the contract.

41. In response to Relator’s request for VHAseCURE.net donations, Becton Dickinson agreed to pay Novation \$100,000. Becton Dickinson’s willingness to make such a payment was one of the factors Relator considered in deciding to recommend Becton Dickinson as the proposed recipient of the IV Catheter and Start Kit contract. Shortly after approving Relator’s recommendation, Novation awarded Becton Dickinson the contract and Becton Dickinson sent Novation a check for \$100,000 . See Exhibit 4 (\$100,000 check), which is incorporated herein. Senior management at Novation commended Relator for her work in procuring this and another “sponsorship” payment from vendors. See Exhibit 5 (e-mail from Novation I-T Manager to Relator), which is incorporated herein.

42. As its characterization of the payment on the face of the check – “Marketing Fee/Sole Award” – reveals, Becton Dickinson made this payment to Novation in order to receive the bid award. Id. At no time did Novation ever disclose the existence, amount or purpose of these “sponsorship” payments to the VHA and UHC Members and HPPI customers.

3. ***Becton Dickinson's \$1 Million Payment In Connection with Winning the Needle Contract***

43. In the course of negotiating Contract No. MS8020B, "TV Standard and Safety Catheters and NOVAPLUS® IV Start Kits," Relator had frequent dealings with Kevin Mooneyham, a sales manager at Becton Dickinson, and had earned his trust and respect. In late 1998, shortly after Relator awarded the IV Catheter Contract to Becton Dickinson, Mooneyham called Relator at work and asked her to meet him for lunch to discuss concerns he was having about activities taking place between Becton Dickinson and Novation regarding another upcoming contract. Over lunch, Mooneyham complained to Relator that Becton Dickinson had agreed to pay Novation large sums of money in order to secure "a huge Novation contract" that was coming up for bid. In short, Mooneyham claimed, Becton Dickinson was "buying the business," *i.e.*, paying Novation an up-front fee to guarantee that it will be awarded the contract.

44. From the goings-on in Novation's Medical/Surgical Division, Relator knew that the contract to which Mooneyham was referring was Novation's upcoming three-year contract for hypodermic needles and syringes, a big ticket item for most hospitals and therefore a highly valuable contract. Relator later learned that Novation had, in fact, awarded the needles and syringes contract to Becton Dickinson and Becton Dickinson had paid Novation \$1 million in advance as a "special marketing fee." This \$1 million fee was over and above the administrative/marketing fee Becton Dickinson had agreed to pay Novation over the life of the contract based on a percentage (3%) of the total sales made by VHA and UHC Members under the contract.

45. Relator has information and believes that Novation never disclosed to the VHA and UHC Members and HPPI customers the fact that it had received this payment from Becton Dickinson in connection with awarding Becton Dickinson the needle contract.

#### 4. *“Fee Enhancements” By Distributors*

46. In addition to choosing the manufacturers to whom it will award contracts, Novation also controls the distribution channels for the products purchased under its contracts. For each of its product lines, e.g., medical/surgical supplies, dietary and food services, Novation awards an exclusive right to distribute the products purchased under its contracts to a few select distributors whom Novation calls “Authorized Distributors.” For their services in distributing the products, Authorized Distributors are paid “distribution service fees” by the VHA and UHC Members and HPPI customers. The distribution service fees, also known as “the Distribution Mark-Up Fees,” are added to the price of the products/services and are calculated based on the total volume of distributed purchases made by the Novation customer.

47. Like its Invitations-to-Bid to manufacturers, Novation’s Invitations-to-Bid to distributors are supposed to be a public competitive bid process. However, as is the case with manufacturers, Novation awards the distribution contracts based on which distributors are willing to pay Novation the largest kickback or other illegal remuneration. Relator has information and believes that Novation has failed to inform the VHA and UHC Members and HPPI customers of the existence or amount of these illicit payments.

48. Like the “administrative/marketing” fees it charges manufacturers for the cost of administering the contract (described below), Novation also requires distributors to pay it a monthly fee based on the total purchases of products made by its customers. Although Novation provides distributors with a minimum percentage for what this fee must be, Novation leaves it to the distributor’s discretion to propose the amount of the percentage. See Exhibit 6 at 7 & 13 (Invitation-to-Bid Long Term Care Distribution Services), which is incorporated herein. Under such liberal contracting guidelines, Novation regularly solicited and accepted lavish fees from distributors in



exchange for awarding them an authorized-distributor contract.

49. In addition to the monthly fee, Novation also encouraged bidders to propose fee enhancements – ways for distributors “to enhance the fee paid to Novation” -- and additional fees. Id. at 13. These enhancements and additional fees had no relationship to the underlying contract and were just another way for Novation to increase its revenue. Id. Relator has information and believes that Novation routinely awarded distribution contracts to large distributors like Cardinal Health, Inc., Allegiance Corporation, and Owens & Minor, Inc., who were willing and able to pay Novation the largest fee enhancement, “additional fees,” or other illegal remuneration.

50. Like manufacturers, distributors also seek to recoup the costs of making these illegal payments to Novation. While manufacturers do so by increasing the price of the products/services themselves, distributors recoup the costs by building them into the distributor mark-up fee that is added to the price of the goods and services, which further inflates the price paid by the Novation customers and ultimately borne by the private insurers and government health insurance programs.

**B. “Administrative/Marketing Fees”**

51. In its Invitations-to-Bid, Novation requires all prospective bidders to include information on “marketing fees” to be paid to Novation and to calculate these fees as a percentage of sales made under the contract. See Exhibit 7 (“Novation 2001 Invitation to Bid, Enteral Products Bid”) at 10, which is incorporated herein. Novation does not prescribe any limits on the size of the marketing fee that it is willing to accept (or that bidders may offer). Id. Contrary to the safe harbor requirements regarding appropriate GPO fees, Novation routinely has solicited and accepted marketing fees that greatly exceed the 3%-of-sales threshold and failed to inform the VHA and UHC Members or HPPI customers of the amount of the marketing fee they have agreed to receive.



52. According to a Novation "Contract Administration Fee Report," as of November 18, 1999, Novation had accepted administrative/marketing fees above 3% on at least 186 or 31% of its 600 contracts. See Exhibit 8 (Contract Administration Fee Report), which is incorporated herein. For many of these contracts, Novation received administrative/marketing fees as high as 30% of total sales made by Novation's customers under the contract. For instance, Novation received 30% administrative/marketing fees on Contract No. RX 132 (NOVAPLUS® Omnipaque, Nonionic Contrast Media, Hypaque) with Nycomed, Inc. and Contract No. RX84160 (NOVAPLUS® Diltiazem) with Ben Venue Laboratories – Bedford Laboratories. Id. at 20 & 28.

**1. Major Pharmaceutical Manufacturers Pay Novation Some of the Highest "Administrative/Marketing Fees"**

53. Pharmaceuticals are the largest product line in Novation's contract portfolio. Of Novation's 600 contracts, 275 or 46% are contracts with major pharmaceutical manufacturers for the sale of a wide array of pharmaceutical products. Id. at 17-31. Relative to other manufacturers, pharmaceutical manufacturers also paid Novation some of the highest administrative/marketing fees. In addition to the two pharmaceutical manufacturers listed above (Nycomed, Inc. and Bedford Laboratories) as having paid 30% administrative/marketing fees, the following are examples of some of the other pharmaceutical manufacturers from whom Novation received excessive administrative/marketing fees: Dupont Nuclear (Novation Contract No. RX64140) "NOVAPLUS® Dipyridamole," 25% administrative/marketing fee; Bristol-Myers (Novation Contract No. RX019) "Multisource Antibiotics," 18% administrative/marketing fee; Abbott Laboratories (Novation Contract No. RX80010) "Small Volume Injectibles Including Carpuject," 14.5% administrative/marketing fee; and Merck & Company (Novation Contract No. RX81080) "Cozaar, Fosamax, Hyzaar, Mefoxin, Mevacor, Pepcid, Primaxin, Prinivil, Proscar, Recombivax, Timoptic,

Trusopt, Vasotec, Vaccines, Zocor,” 20% administrative/marketing fee. Id.

54. Relator has information and believes that Novation has failed to inform the VHA and UHC Members and HPPI customers of the amount of any of these administrative/marketing fees that it has received and continues to receive from pharmaceutical companies.

**2. *Other Excessive “Administrative/Marketing Fees” Paid by Becton Dickinson and Heritage Bag***

55. Before awarding a contract, it was the customary practice of Novation’s Senior Contract Managers to prepare an “Executive Summary” setting forth their recommendation on and supporting rationale for which vendor should receive the bid award. The Summary was distributed exclusively to top management at Novation, including the head of the Division in which the Senior Contract Manager worked and Novation’s Vice-President, for their approval. At no time was the Executive Summary given to the VHA and UHC Members and HPPI customers.

56. Once the contract was awarded, the Senior Contract Manager distributes a “Launch Packet” to the VHA and UHC Members announcing the recipient of the bid award, describing the supplies being offered and providing other information necessary for making purchases under the contract. At no time is any mention made of either Novation’s receipt of or the amount of the “marketing fees” and other remuneration paid/to be paid to Novation by the successful vendors.

57. Attached as Exhibits 9 and 10 to this Complaint, and incorporated herein, are copies of two Executive Summaries Novation prepared that demonstrate Novation’s and VHA’s receipt of marketing fees well above 3% of total sales on four contracts. In the Executive Summary for Contract No. MS8020B, “TV Catheters and Start Kits,” it is noted that Becton Dickinson – the recommended bidder – has offered to provide Novation a marketing fee of 9% of total sales of the NOVAPLUS® products, Novation’s private label brand. Exhibit 9 at 4. After receiving approval

for this recommendation from John Burks, Novation's former Head of Medical/Surgical Contracts, and Mark McKenna, Novation's former Vice-President, the contract was awarded to Becton Dickinson under the terms of its bid, which included paying Novation a 9% marketing fee. Novation never informed the VHA and UHC Members or HPPI customers, either orally or in writing, of the amount of this marketing fee.

58. In describing the marketing fee to be paid by Becton Dickinson, the author<sup>4</sup> of the Executive Summary also notes that Becton Dickinson's 9% fee represented an increase of between 1 to 4% above the marketing fee VHA had received under its prior contract for "TV Catheters and Start Kits" of between 5 and 8%. Exhibit 9 at 4. Accordingly, as this document illustrates, before the advent of Novation, VHA had also been receiving marketing fees above the 3% threshold as part of the VHA contract for "TV Catheters and Start Kits" that preceded Novation Contract No. MS8020B. Relator has information and believes that neither VHA nor VHA Supply ever informed the VHA Members, either orally or in writing, of the amount of this marketing fee.

59. After its formation in January 1998, Novation experienced a transition period during which it phased out current VHA and UHC contracts and replaced them with new Novation contracts. With Contract No. MS80310, "NOVAPLUS® Can Liners," Novation sought to consolidate VHA and UHC's separate can liner contracts into a new Novation contract. In the Executive Summary for this contract, the author recommends that the Novation contract – available to both VHA and UHC Members (and HPPI customers) – be awarded to Heritage Bag under the same terms as those in VHA Supply's current can-liner contract with Heritage Bag. Exhibit 10 at 1-3. Among the reasons cited for recommending Heritage Bag is that the marketing fee Heritage Bag

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<sup>4</sup> Although qui tam plaintiff/relator is listed as the author of this document, every Executive Summary she wrote at Novation, including this one, was thoroughly revised by her manager, Sherry Woodcock, before it was distributed to Novation management.

was offering – 8.19% of total sales -- is 6% higher than that being provided by UHC's supplier, Baxter Tennaco, under UHC's contract. Id. at 2.

60. After receiving approval for this recommendation from John Burks and Mark McKenna, Novation awarded Contract No. MS80310 to Heritage Bag under the same terms as the contract with VHA, which included the payment to Novation of an 8.19% marketing fee. Novation never informed the VHA and UHC Members or HPPI customers, either orally or in writing, of the amount of this marketing fee.

61. The Executive Summary for Contract No. MS80310 also makes clear that, like Novation, VHA Supply had also been receiving a marketing fee from Heritage Bag of 8.19% under its contract with Heritage Bag -- the predecessor to Novation Contract No. MS80310. See Exhibit 10 at 1-3. Relator has information and believes that neither VHA nor VHA Supply ever informed the VHA Members, either orally or in writing, of the amount of this marketing fee.

62. Relator also has information and believes that since 1995 Novation's predecessor VHA Supply routinely solicited and received marketing fees of at least 10% on its committed programs, including the "Opportunity I" and "Opportunity II" Programs. (Under these programs, a VHA Member could receive discounts off of the contract's base price by committing to buy a large fixed percentage of its supplies – typically between 80 and 95% -- under the contract.) Relator has information and believes that neither VHA nor VHA Supply ever informed the VHA Members, either orally or in writing, of the amount of these marketing fees.

3. ***Novation's Preference for Higher Priced Goods Because They Serve To Increase Its "Administrative/Marketing Fees"***

63. By requiring that its administrative/marketing fees be expressed as a percentage of the total sales made under the contract (and routinely suggesting to bidders that the percentage should

exceed 3%), Novation has an interest in awarding contracts to the bidder with the highest priced goods because higher prices yield higher marketing fees. At all times relevant to this Complaint, Novation routinely chose to award contracts to vendors offering the largest marketing fee (either by virtue of the percentage of sales, higher prices or combination of the two) over competing vendors offering goods of comparable quality and lower prices than those of the chosen vendor.

64. For example, during the Summer of 2001, Novation issued an Invitation-to-Bid on a Novation contract to supply endo-mechanical products to its customers. Among the vendors who submitted bids to Novation were Johnson & Johnson and United States Surgical ("U.S. Surgical"). In its bid, U.S. Surgical offered the endo-mechanical products at prices significantly lower than those offered by Johnson & Johnson. After performing market research, Novation found U.S. Surgical's products were of comparable quality to that of Johnson & Johnson's. Despite the potential cost-savings to its customers, however, Novation awarded the contract to Johnson & Johnson.

65. Primary among Novation's reasons for choosing Johnson & Johnson over U.S. Surgical was the fact that U.S. Surgical's significantly lower prices would have greatly diminished the marketing fee that Novation would receive. Relator has information and believes that Novation never informed the VHA and UHC Members or HPPI customers of the specific details of the vendors' bids (including U.S. Surgical's significantly lower prices and comparable quality) or the real reason for its decision to choose Johnson & Johnson over U.S. Surgical – a feared reduction in its marketing fee.

**C. Payments for Products Offered Under Novation's Private Label Brand, "NOVAPLUS®"**

66. As Senior Product Manager in Novation's Medical/Surgical Division, Relator was also responsible for increasing vendors' participation in Novation's private label brand program,

NOVAPLUS®. NOVAPLUS® was an outgrowth of a similar private label program, VHA PLUS (“Prices Lowered Utilizing Standardization”), started by VHA Supply in the 1980s. Like VHA PLUS, the stated goals of NOVAPLUS® are to help the VHA and UHC Members and HPPI customers achieve cost savings and the benefits of product standardization by having vendors sell their products under Novation’s private “NOVAPLUS®” label. In practice, however, NOVAPLUS® is simply another Novation scheme to generate more revenue without the knowledge of, and often at the expense of, the VHA and UHC Members and HPPI customers, whose interests it is supposed to serve.

67. Although made to sound like generics, the NOVAPLUS® products differ from generic products in a number of important ways. With generics, cost savings are achieved because a manufacturer is able to produce an equivalent product more cheaply than the name-brand manufacturer. However, neither Novation nor its predecessor VHA Supply manufactures any products. Instead, Novation (like VHA Supply before it) simply supplies the name. After manufacturing the products, the manufacturers simply affix the NOVAPLUS® label (in lieu of their own label) to their products. As explained in more detail below, rather than save Novation’s customers money, the addition of the NOVAPLUS® name does little more than create additional costs, such as “trademark and licensing” fees, that cause the prices of the NOVAPLUS® products to exceed those of the identical products without the NOVAPLUS® label.

68. Rather than providing the VHA and UHC Members and HPPI customers with cost savings, Novation routinely convinced vendors to sell their product under the NOVAPLUS® label at a price significantly higher than what they were offering for the same product under their own label. For their participation in this scheme, Novation routinely offered to share with the vendors a percentage of the profits gained by charging the Members the increased NOVAPLUS® price.

69. For instance, after it had received and opened bids on a recent contract for blood collection tubes, Novation approached Retractable Technologies Inc. (“RTI”), one of the bidders, about the possibility of selling its blood collection tube holder to the VHA and UHC Members and HPPI customers under Novation’s private “NOVAPLUS®” label. Although, in its bid, RTI had offered to sell its tube holders for 27 cents per unit, Novation proposed that RTI could sell the same tube holders to Novation’s customers for \$1 per unit -- a 270% mark-up -- simply by changing the label to Novation’s NOVAPLUS® brand. In exchange for RTI’s cooperation in this joint venture, Novation agreed to share with RTI a percentage of the profits from the 270% mark-up.

70. Although RTI rejected Novation’s offer, Relator has information and believes that Novation consummated many similar deals with other, less scrupulous vendors. Relator has information and believes that Novation never informed the VHA and UHC Members or HPPI customers of the terms of these deals, including the fact that Novation had arranged to have vendors sell the NOVAPLUS® products at prices higher than those charged for the same product without the NOVAPLUS® label and kept the profits.

71. To participate in Novation’s private label program and sell products under its NOVAPLUS® brand, manufacturers are required to pay Novation a “trademark and licensing” fee. Despite its name, the “trademark and licensing” fee is not a fixed fee that corresponds to the costs Novation will incur obtaining a trademark and license for a manufacturer’s product. Instead, like its “administrative/marketing” fees, Novation requires vendors to offer Novation a percentage of the total purchases of NOVAPLUS® products made by Novation’s customers under the NOVAPLUS® contract. The “trademark and licensing” fee is in addition to the “administrative/marketing” fee Novation charges. By giving manufacturers the ability to name the amount of this fee, Novation encouraged manufacturers to bid up the percentage of total sales they were willing to provide as a



trademark and licensing fee and routinely awarded the NOVAPLUS® contract to the highest bidder. Qui tam plaintiff has information and believes that Novation failed to inform the VHA and UHC Members and HPPI customers of either the existence or amount of these fees, let alone the method by which they were calculated.

72. Like the mark-up described in paragraphs 26, 27 and 50 above, the costs of such “trademark and licensing” and “administrative/marketing” fees are built into the prices of the NOVAPLUS® products. Therefore, contrary to their purported cost-savings benefits, the NOVAPLUS® products routinely are more expensive than identical products sold without the NOVAPLUS® label. In her position as Senior Product Manager at Novation, Relator had the opportunity to speak with Novation’s Authorized Distributors. Because they carry a wide range of products and could draw direct price comparisons, many of these distributors remarked to Relator how the NOVAPLUS products were more expensive than the same products offered under the manufacturer’s label. For instance, one distributor observed that its costs for a case of American Health Products (“AHP”) gloves sold under the NOVAPLUS® label were \$1 more than those for a case of the same gloves sold under AHP’s label.

73. Because these practices are so lucrative, Novation has been aggressive in trying to get manufacturers to agree to sell their products under the NOVAPLUS® brand. In its Invitations-to-Bid on contracts, Novation informs prospective bidders that their willingness to consider “a private label strategy under the NOVAPLUS label” is a plus factor that Novation will consider – along with other “Non-Financial Award Criteria” -- in determining who will receive the bid award. See Exhibit 7 at 12 & Attachment B at 6. However, Novation’s internal documents show that a bidder’s willingness to sell products under the NOVAPLUS® label is given much more weight in choosing the successful bidder. In a slideshow presentation to its Senior Product Managers describing



Novation's "Supplier Selection Criteria," Novation includes "Private Label" in with Price, Marketing Fees, and Committed programs, as one of the Financial Criteria it will consider. See Exhibit 11 (Novation Slides), which is incorporated herein. As of September 28, 2001, Novation claimed to have 75 agreements with 42 vendors to sell products under the NOVAPLUS® label, representing \$1.2 billion in annual sales.

**D. Conflicts of Interest/Beneficial Business Relationships**

***1. Nepotism/Cronyism with Heritage Bag***

74. Another one of the first medical/surgical contracts to which Relator was assigned in her position as Senior Contract Manager at Novation was Contract No. MS00210, a three-year contract for "NOVAPLUS® Can Liners." Under this contract, Novation was seeking a vendor to supply trash can liners to the VHA and UHC Members and HPPI customers under Novation's private label brand, NOVAPLUS®. This contract was the first can-liner contract put out for public competitive bid since Novation was formed. (Novation Contract No. MS80310, the predecessor to MS00210, was an interim contract under which Novation extended the terms of VHA Supply's previous can-liner contract to the UHC Members until the above-referenced contract could be awarded by public competitive bid.)

75. Shortly after starting at Novation, Relator met with her supervisor Sherry Woodcock to discuss the contracts she had been assigned. When their discussions turned to Contract No. MS00210, "NOVAPLUS® Can Liners," Woodcock started to laugh and told Relator that this contract had always belonged to and would always belong to Heritage Bag Company ("Heritage Bag") and that the last person who tried to remove it from Heritage Bag almost lost his job. When Relator asked why Heritage Bag deserved such special treatment, Woodcock replied that Heritage Bag was represented by John M. Doyle, the founder and former President of VHA Supply.

76. At first, Relator tried ignoring the comment and went about the business of preparing to put the contract out for bid. Relator conducted some preliminary market research and discovered that at least three vendors had can liners with prices lower than Heritage Bag. During Relator's interviews with these vendors, each expressed surprise at her interest in their can-liners and stated that, since Heritage Bag has had VHA Supply/Novation's can-liner contract for the last 13 years, they had little hope of ever getting it away from Heritage Bag. In the meantime, Sherry Woodcock continued to make comments to Relator that the upcoming can-liner contract should be awarded to Heritage Bag.

77. Increasingly concerned by these comments (particularly in light of her discovery that competitors' can liners were cheaper), Relator went to speak with Brad Mohler, the Novation contracting officer reputed to have almost lost his job for trying to wrest the can-liner contract away from Heritage Bag. Mohler confirmed that the can-liner contract belonged to Heritage Bag because its representative, John M. Doyle, was the founder and former President of VHA Supply and advised Relator not to "rock the boat" (i.e., recommend awarding the contract to another vendor) because "you cannot win."

78. In December 1998, John M. Doyle, his son, and other representatives of Heritage Bag took Relator to dinner at Newport's Seafood in Dallas. At this dinner, John Doyle asked Relator what its competitors were bidding on the upcoming can-liner contract and sought confirmation that, given its history with VHA Supply, Heritage Bag would, in fact, be awarded the contract. When Relator refused to answer, stating that these were improper questions, Doyle's son became visibly angry, at which point John Doyle reassured him Heritage Bag had been around for a long time (as compared to Relator's short tenure at Novation) and that he would "take care of her [Relator]."

79. Convinced by these events that Novation would reject her recommendation to award the Can-Liner Contract to any vendor other than Heritage Bag irrespective of a vendor's more competitive pricing, Relator informed her supervisor Sherry Woodcock – in front of the entire contracting staff of the Medical/Surgical Division (gathered at a holiday dinner) – that she no longer wanted to manage the Can-Liner Contract since she had been informed that she would be fired if she did not award it to Heritage Bag. Woodcock agreed to take over the contract.

80. Shortly after raising these (and other) concerns about Novation's contracting process and rebuffing John Doyle over dinner, Relator experienced a dramatic change in her work environment. Among other things, where before she had received praise and camaraderie, she started receiving criticism about her work performance (including a detailed "performance improvement plan"), was alienated by her co-workers and quickly terminated.

81. Novation ultimately awarded the Can-Liner Contract to Heritage Bag. See Exhibit 12 (Novation Launch Packet for Contract No. MS00210), which is incorporated herein. Relator has information and believes that the basis for awarding Heritage Bag this and every other can-liner contract for the past 16 years was as a pay-off to John Doyle (who received a commission for every liner sold under the contract) for his having agreed in 1986 to resign as President of VHA Supply amidst accusations by three female employees of sexual harassment and sex discrimination. Heritage Bag won its first can-liner contract from VHA Supply shortly after John Doyle began work as its representative and has held the Can-Liner Contract uninterrupted over the succeeding 16 years while Doyle has continued as its representative.

82. Relator has information and believes that neither Novation nor VHA has ever informed the VHA and UHC Members and HPPI customers of the deal that VHA Supply struck with John Doyle, Doyle's current ties to Heritage Bag and previous affiliation with VHA Supply, or the role

these factors have played in guaranteeing Heritage Bag each of the can-liner contracts since 1986, despite the fact that there have been other bidders with less expensive can liners. In its Launch Packet for the most recent contract, which was distributed to its customers, Novation failed to include among the reasons listed under “Award Rationale” for awarding Contract No. MS00210 to Heritage Bag either its commitment to Doyle or the existence of other vendors with prices lower than Heritage Bag. See id.

**2. *Owning Stock in Vendors to Whom Novation Awarded Contracts***

83. At all times relevant to this Complaint, Novation, VHA, and UHC, as well as top executives at these companies with considerable influence over contracting decisions, owned significant stock holdings in and had mutually beneficial business dealings with the vendors to whom Novation awarded contracts. Several of these executives also sat on the vendors’ Board of Directors. Rather than award contracts based on objective criteria like quality and price, Novation routinely awarded contracts to vendors in which Novation, its parent companies VHA and UHC, and officers of these companies had a personal financial and/or business interest. Relator has information and believes that Novation, VHA and UHC failed to inform the VHA and UHC Members and HPPI customers of these ownership interests or business dealings and the role such interests/dealings played in awarding contracts to these vendors.

84. At all times relevant to this Complaint, Novation has had significant stock holdings in vendors to whom Novation has awarded contracts, including Johnson & Johnson and Tyco International Ltd. (“Tyco”). As of November 18, 1999, some of the contracts Novation awarded to Johnson & Johnson while it held Johnson & Johnson stock were as follows: Novation Contract Nos. CE116 (Portable Blood Pressure Monitoring Systems), HPM035 (Baby Products), LAB409 (Chemistry Analyzers), MS607 (Sutures, Endo-Mechanicals), MS80142 (Reusable Surgical

Instruments), and RX86100 (Baby Bath, Shampoo, Powder).

85. Kendall Sherwood-Davis & Geck ("Sherwood"), Sherwood Medical, and Kendall Healthcare Products Company ("Kendall") are all subsidiaries of Tyco. As of November 18, 1999, some of the contracts Novation awarded to Sherwood while it held Tyco stock were as follows: Novation Contract Nos. CE195 (Thermometers), HPM053 (Needles & Syringes), and MS644 (Needles & Syringes). As of November 18, 1999, some of the contracts Novation awarded to Sherwood Medical while it held Tyco stock were as follows: Novation Contract Nos. RX146 (Thermazene Cream) and RX81460 (Silver Sulfadiazine & Petrolatum Gauze). As of November 18, 1999, some of the contracts Novation awarded to Kendall while it held Tyco stock were as follows: Novation Contract Nos. MS153 (NOVAPLUS® Endotracheal Tubes, Tracheostomey Care Kits, Open Suction Catheters), MS609 (Vascular Therapy Products), MS642 (Wound Care Products), and MS80010 (Bandages, Dressings, Sponges, Gauze).

86. At all times relevant to this Complaint, VHA and UHC have had significant stock holdings in vendors to whom Novation has awarded contracts, including Neoforma, Inc. ("Neoforma"). On July 26, 2000, VHA, UHC and Novation entered into an outsourcing and operating agreement with Neoforma, under which VHA and UHC collectively received 45% of Neoforma's outstanding common stock and Neoforma agreed to create and manage an on-line marketplace – called Marketplace@Novation™ -- through which the VHA and UHC Members and HPPI customers can order products under the Novation contracts. On January 25, 2001, VHA and UHC increased their holdings to 60.9% of Neoforma's total outstanding common stock.

87. Although Neoforma describes itself as an e-commerce company that creates and manages on-line marketplaces for GPOs, Integrated Delivery Networks, and other health care systems, Novation and its customers and vendors have been the primary source of Neoforma's business. In

July 2000, Novation awarded Neoforma a sole source contract, which was never put out for public competitive bid, to establish and provide Novation's customers with the on-line ordering service, Marketplace@Novation™. In 2001 alone, Novation paid Neoforma approximately \$21 million in fees for these services. In addition, Novation and Neoforma have an agreement under which Neoforma shares with Novation revenue related to transactions made through Marketplace@Novation.

88. C. Thomas Smith, who until recently was the President of VHA and had the ability to influence Novation's contracting decisions, held stock throughout his tenure at VHA in several vendors with whom Novation had contracts. Smith had significant stock holdings in Genetech and also sat on its Board of Directors from 1986 until 1999. During the time that Smith was both President of VHA, a Genetech stockholder and a member of Genetech's Board of Directors, Genetech was awarded several Novation Contracts, including Contract Nos. RX 163 and RX 81830 under which Genetech supplied the drug activase to the VHA and UHC Members and HPPI customers. As President of VHA, Smith also held at least 3,500 shares in Neoforma and sat on its Board of Directors. Smith also owned stock in Sysco Corporation, to whom Novation had awarded several food services contracts.

89. Curt Nonomaque, who has succeeded Smith as VHA's President and previously served as VHA's Vice-President and Chief Financial Officer, also has owned stock in Neoforma and other vendors to whom Novation has awarded contracts during his tenure at VHA. Nonomaque also sat on Neoforma's Board of Directors. Relator has information and believes that Nonomaque has created a fictitious corporation, called NBI, LLC, through which he purchases stock in vendors to whom Novation has awarded contracts.

90. Mark McKenna, Novation's current President and a former Vice-President, also owned stock in vendors to whom Novation has awarded contracts, including Neoforma, and served on Neoforma's Board of Directors during his tenure at Novation. The following VHA and Novation executive-level employees, with influence over Novation's contracting decisions, also own stock in Neoforma: Daniel Bourque and John Collins, Senior Vice-Presidents at VHA, Donald Caccia, a VHA executive, and Marcea Bland Lloyd, in-house counsel for Novation.

91. Novation requires the vendors to whom it awards contracts to agree to use Marketplace@Novation. In its Invitations-to-Bid, Novation lists as a "basic qualifying factor" to receiving a contract that a vendor be willing to commit to participate in Marketplace@Novation. See Exhibit 7 (Enteral Products Invitation to Bid) at 10 & Attachment C at 10. In so doing, Novation is serving its own financial interests and those of VHA, UHC and their executives since they all have a financial stake in ensuring Neoforma's success.

### 3. *Excessive Conference Fees*

92. At all times relevant to this Complaint, Novation (and its predecessor VHA Supply) regularly organized and hosted conferences on topics of interest to the VHA and UHC Members and HPPI customers. In connection with these conferences, Novation routinely would approach large vendors whom it expected to be bidding on upcoming contracts and solicit from them exorbitant fees to attend segments of the conference at which the VHA and UHC Members would be present or sponsor high-profile keynote speakers. These fees typically were well in excess of the costs Novation incurred in putting on the conference. Relator has information and believes that Novation failed to inform the VHA and UHC Members and HPPI customers about the existence or amount of these fees and charges.



#### 4. *Travel & Entertainment Costs*

93. At all times relevant to this Complaint, Novation (and its predecessor VHA Supply) accepted lavish trips, meals and other entertainment from vendors who regularly bid on Novation contracts and to whom Novation subsequently awarded contracts. These trips, meals and other entertainment had little if any legitimate business purpose. For example, shortly before Novation was expected to issue Invitations-to-Bid for its NOVAPLUS® exam glove contract, American Health Products – a large manufacturer of gloves for medical use -- hosted a Riverboat cruise on Lake Michigan with drinks, dinner and dancing for Relator, Relator's supervisor Sherry Woodcock, and other members of the Novation contracting staff responsible for awarding this contract. Edward Marteka, President of AHP, Rick Feady, an AHP sales representative, and several other members of the AHP sales staff were present. Throughout the evening, little to no business was conducted. Relator has information and believes that Novation failed to inform the VHA and UHC Members and HPPI customers about any of these vendor-sponsored trips, meals and other entertainment, the fact that such events had little to no legitimate business purpose, or the role these events played in awarding contracts.

#### VI. DAMAGES

##### A. Inflating Costs of Supplies Reimbursed by Government Health Insurance Programs

94. In order to recoup the often considerable costs of paying Novation the kickbacks and other illegal remuneration described above, vendors build these costs into the prices they charge Novation's customers under the contracts for the supplies and services, thereby inflating the prices. A large percentage of these supplies and services are utilized in the treatment of beneficiaries of the government health insurance programs. The government reimburses health care providers for certain



of the costs of these supplies based on cost-reimbursement calculations the providers include in cost reports filed annually with insurance companies the United States and Texas respectively have retained to act as their program fiscal intermediaries ("F.I.'s"). Under the federal cost-reporting regulations, there are several ways in which the vendors' inflated prices are borne by the government health insurance programs.

95. First, several areas of a hospital, such as rehabilitation and psychiatric units, are reimbursed by the government based on the actual costs incurred therein for treating Medicare/Medicaid/CHAMPUS/TRICARE beneficiaries. When a Novation customer uses an overpriced supply/service (i.e., one that includes the hidden costs of the Novation kickbacks) in one of these hospital areas, the inflated costs will cause a corresponding increase in the amount of the government's reimbursement to that customer.

96. For the majority of the time relevant to this Complaint, the two types/areas of a health care provider that were reimbursed based on the actual costs incurred therein are distinct part units and outpatient ancillary cost centers. As its name suggests, distinct part units are portions of the hospital (or free-standing facilities) that provide services that differ from the hospital's typical inpatient services. The four most typical types of distinct part units are psychiatric units/hospitals, rehabilitation units/hospitals, skilled nursing facilities ("SNFs"), and home health agencies ("HHAs"). Like the hospital itself, distinct part units have their own Medicare provider number under which all Medicare/Medicaid/TRICARE/CHAMPUS billing is processed.

97. The majority of Novation's customers are either free-standing distinct part units or have distinct part units associated with their hospitals. For instance, the 5,000 HPPI customers are largely comprised of alternate care providers such as free-standing rehabilitation hospitals, psychiatric hospitals, SNFs and HHAs. In addition, many of the 2,200 VHA and UHC Members, which consist

largely of community and teaching hospitals, have distinct part units associated with their hospitals. Accordingly, distinct part units account for a large percentage of the \$19.6 billion in total purchases that the Novation customers make each year. Since the actual costs of the supplies and services purchased by these units are reimbursed in whole or part by the government health insurance programs, by causing vendors to inflate the prices for such goods/services, defendants have caused the government to overstate its reimbursement to the large population of Novation customers with distinct part units, which has resulted in profound financial harm to the government health insurance programs.

98. The other primary area in which the government reimburses a health care provider based on actual costs incurred therein in treating Medicare/Medicaid/TRICARE/CHAMPUS beneficiaries is outpatient ancillary cost centers. As its name suggests, these are areas of the hospital that provide outpatient services that are ancillary to the hospital's typical inpatient services. Unlike distinct part units, however, services provided in outpatient ancillary cost centers are billed under the hospital's Medicare provider number and do not have their own provider numbers.

99. Examples of outpatient ancillary cost centers are the Operating Room, Recovery Room, Radiology Department, Emergency Room, Electrocardiogram Department, and Laboratory. The 2,200 VHA and UHC Members, which consist largely of community and teaching hospitals, have several such outpatient ancillary cost centers in each of their hospitals. Although largely comprised of alternate care providers, some of the HPPI customers are traditional hospitals with the above-mentioned outpatient ancillary cost centers. Since the actual costs of the supplies/services purchased by these cost centers are reimbursed in whole or part by the government health insurance programs, by causing vendors to inflate the prices for such goods/services, defendants have caused the government to overstate its reimbursement to the many VHA and UHC Members and HPPI

customers who have these cost centers, which has resulted in profound financial harm to the government health insurance programs.

100. Second, the overpriced supplies/services resulting from Novation's fraudulent practices also have served to improperly increase the amount of government reimbursement in areas of the hospital, like general acute care/Adults & Pediatrics, that are reimbursed under the "Prospective Payment System" or "PPS". Under PPS, the Medicare program uses payment schedules based on Diagnosis-Related Groups ("DRGs"), under which hospitals are paid pre-determined amounts for inpatient care in certain areas of the hospital based on the patients' diagnosis. The diagnosis-based DRG payments reflect the average costs an efficiently-run hospital would be expected to incur to treat such a patient. To determine the payment schedule that corresponds to each diagnosis, the government relies on pricing and other data from hospitals within the various geographic regions of the country as well as nationwide. Because Novation's 7,300 customers represent close to a third of the nation's health care providers, the government has necessarily relied on the inflated pricing information from many of Novation's customers in setting its DRG payments. Accordingly, the inflated prices incurred by the VHA and UHC Members and HPPI customers have, in turn, increased the amount of the DRG rate on which the government bases its reimbursement.

101. Third, for the majority of the time relevant to this Complaint, there was a category of products called "moveable capital equipment" that the government reimbursed based on the cost of the product, irrespective of the part of the hospital in which they were used. Examples of moveable capital equipment are ultrasound devices, CAT scanners, x-ray machines, hospital beds, and operating room tables. Capital equipment was one of Novation's primary product lines and Novation regularly negotiated capital-equipment contracts for its customers. As with Novation's other product lines, Relator has information and believes that several capital-equipment vendors paid

Novation kickbacks to obtain the contracts and increased the prices charged in Novation contracts for this equipment in order to recoup the illegal payments. Because such equipment is subject to cost-based reimbursement, the vendors' inflated prices on capital equipment also caused the government to overstate its reimbursement to the VHA and UHC Members and HPPI customers who purchased and later sought government reimbursement for the costs of this equipment.

**B. Precluding Manufacturers of Safer, More Innovative Products That Would Have Reduced Health care Costs**

102. As a result of its practice of requiring vendors to pay large kickbacks and other illegal remuneration to obtain contracts, Novation routinely awarded contracts to large, well-established vendors, like Johnson & Johnson, who were capable of making such large payments. Smaller vendors, who often have safer, cheaper and more innovative products, were routinely denied contracts because they were unable or unwilling to offer Novation the up-front payments necessary to obtain the business.

103. For example, Novation awarded the most recent contract for needles and syringes to Becton Dickinson, a large, well-established medical product manufacturer. As discussed above, in connection with this contract, Becton Dickinson paid Novation a \$1 million "special marketing fee." Novation awarded the contract to Becton Dickinson despite contemporaneous market research showing that ECRI, a respected testing laboratory, had rated as "unacceptable" one of the Becton Dickinson needles to be supplied under the contract. Another bidder, Retractable Technologies, Inc. ("RTI"), who manufactures an innovative safety syringe and needle system with a demonstrated record of preventing needle sticks, was shut out of the contract largely because it was unable and unwilling to pay Novation kickbacks and other illegal remuneration.

104. By regularly shutting out the smaller vendors like RTI and awarding contracts to larger vendors who build the costs of the kickbacks into their prices, Novation caused the VHA and UHC Members and HPPI customers to submit to the government health insurance programs claims for medical supplies that were higher than they would have been had Novation awarded the contracts without such improper financial considerations as kickbacks and other illegal remuneration. In

addition, by favoring larger manufacturers over smaller ones like RTI with safer, more innovative products, Novation caused the VHA and UHC Members and HPPI customers to submit to the government health insurance programs claims for additional treatment related to injuries caused or exacerbated by the use of the larger manufacturers' products, such as needle stick injuries caused by the use of less safe needles. In many instances, these injuries and additional treatment costs would have been preventable had Novation awarded the contracts based on quality and price rather than other improper financial considerations.

#### **VII. EMPLOYMENT DISCRIMINATION FOR ACTS IN FURTHERANCE OF FALSE CLAIMS ACT ACTION**

105. Relator began working for Novation on July 27, 1998 as a Senior Product Manager for Medical/Surgical Products with an annual salary of \$63,500.04. From the beginning of her six months of employment at Novation until she started complaining to her superiors about the impropriety of the fraudulent practices described above, Relator was regularly commended by her superiors on her job performance.

106. For instance, upon completion of one of her first assignments – putting out to bid and awarding Contract No. MS8020B, “TV Catheters and Start Kits” – Relator received a hand-written note from Novation’s then President, James Hersma, complimenting her on her “[g]reat work.” See Exhibit 9 at 1. As described above, this was also the contract pursuant to which Relator secured from Becton Dickinson a \$100,000 “donation” to VHAsCURE.net. For her work in obtaining this donation as well as a similar donation from another vendor, the Head of Novation’s Information Technology Department (who oversaw the VHAsCURE.net program) sent Relator an e-mail congratulating her on her success and thanking her for her efforts. See Exhibit 5. A copy of this e-mail was also sent to John Burks, the former Head of the Medical/Surgical Products Division. Id.

107. By the end of 1998/beginning of 1999, as a result of the experiences described above, Relator had come to realize that the kickbacks and other illegal remuneration were not isolated indiscretions by a few rogue vendors but instead were part of a larger Novation scheme that pervaded its business. Faced with two choices -- play by Novation’s rules and be complicit in fraud or refuse and try to effect change from within -- Relator took the latter course. As described above, she

informed her supervisor Sherry Woodcock that she could no longer manage the can-liner contract because of the favoritism being shown to Heritage Bag, and she rebuffed Johnson & Johnson's attempts to pay Novation a kickback to obtain the IV Catheter Contract. Relator also raised her concerns about the impropriety of these practices with Novation senior management, including the Head of the Medical/Surgical Products Division, Human Resources staff, and Novation's in-house counsel. Her concerns were largely ignored.

108. Shortly after she took these corrective measures, Relator began to experience a dramatic change in her employment conditions. Where previously she had been treated as part of the team, Relator now was being alienated by her co-workers. For instance, Relator's administrative assistant, who had previously worked cooperatively with her (while also serving the other members of the Medical/Surgical contracting staff to whom she was jointly assigned), now refused to do any work for her.

109. Relator's supervisor Sherry Woodcock issued Relator a 6-page "Performance Improvement Plan" chronicling a laundry list of serious alleged lapses in her job performance and placing her on a 90-day probationary period. See Exhibit 13, which is incorporated herein. Although the vast majority of these alleged failings had supposedly occurred many months earlier, Relator had never before been informed of these "problems" and no reference to them had been made in her personnel file. Relator was only now hearing about them for the first time, a matter of days after she had first voiced concerns to management about Novation's contracting practices. Because of her supervisor's frequent fabrication and gross mischaracterization of the events described therein, Relator refused to sign the Performance Improvement Plan or agree to the conditions set forth therein. Fifteen days later, on February 5, 1999, Novation fired Relator for alleged problems related to her "performance/judgment."

110. Despite her supposed failings as an employee, Novation nevertheless chose to pay Relator – an at-will employee – a severance package of \$7,949.69. Novation conditioned Relator's receipt of these monies on her signing a severance agreement containing a confidentiality provision that prohibited her from revealing any of Novation's confidential information or information about

Novation's "business and opportunities" for three years. Relator signed the agreement and accepted the severance package.

111. As these circumstances clearly demonstrate, the reasons Novation gave for terminating Relator – "performance/judgment" – were a pretext. The real reason Novation fired Relator – as is belied by the close proximity between her complaints and Novation's belated criticism of her job performance – was in retaliation for her investigating and raising concerns about Novation's fraudulent contracting practices.

**COUNT I**  
**Substantive Violations of the Federal False Claims Act**  
**[31 U.S.C. §§ 3729(a)(1), (a)(2), (a)(7) and 3732(b)]**

112. Relator realleges and incorporates by reference the allegations made in Paragraphs 1 through 111 of this Complaint.

113. This is a claim for treble damages and forfeitures under the Federal False Claims Act, 31 U.S.C. §§ 3729 et seq., as amended.

114. Through the acts described above, defendants Novation, VHA, UHC, and HPPI knowingly caused VHA and UHC Members and HPPI customers to present to the United States Government, through the Medicare, Medicaid, and TRICARE/CHAMPUS programs, false and fraudulent claims, records, and statements for reimbursement for health care supplies and services provided under Medicare, Medicaid, and TRICARE/CHAMPUS.

115. Through the acts described above and otherwise, defendants Novation, VHA, UHC, and HPPI knowingly caused the VHA and UHC Members and HPPI customers to make or use false records and statements, which also omitted material facts, in order to induce the United States Government and its F.I.'s to approve and pay such false and fraudulent claims.

116. Through the acts described above and otherwise, defendants Novation, VHA, UHC, and HPPI knowingly caused the VHA and UHC Members and HPPI customers to make or use false records and statements to conceal, avoid, and/or decrease the VHA and UHC Members' and HPPI customers' obligation to repay money to the United States Government that the defendants improperly and/or fraudulently received. Defendants Novation, VHA, UHC and HPPI also failed



to disclose to the United States Government and its F.I.'s material facts that would have resulted in substantial repayments by the VHA and UHC Members and HPPI customers to the federal government.

117. The United States, through the Medicare, Medicaid, and TRICARE/CHAMPUS programs and their respective F.I.'s, unaware of the falsity of the records, statements, and claims made or submitted by defendants Novation, VHA, UHC, and HPPI and the VHA and UHC Members and HPPI customers, paid and continue to pay the VHA and UHC members and HPPI customers for claims that would not be paid if the truth were known.

118. The Medicare, Medicaid, and TRICARE/CHAMPUS programs and their respective F.I.'s, unaware of the falsity of the records, statements, and claims made or submitted by defendants Novation, VHA, UHC, and HPPI (and the VHA and UHC Members and HPPI customers) -- or of defendants' failure to disclose material facts that would have reduced government obligations -- have not recovered Medicare, Medicaid, and TRICARE/CHAMPUS funds that would have been recovered otherwise.

119. By reason of the defendants' false records, statements, claims, and omissions and defendants' misconduct in causing the VHA and UHC Members and HPPI customers to make and submit false records, statements, claims and omissions, the United States has been damaged in the amount of many millions of dollars in Medicare, Medicaid, and TRICARE/CHAMPUS funds.

**COUNT II**  
**Federal False Claims Act Conspiracy**  
**[31 U.S.C. §§ 3729(a)(3) and 3732(b)]**

120. Relator realleges and incorporates by reference the allegations made in Paragraphs 1 through 119 of this Complaint.

121. This is a claim for treble damages and forfeitures under the Federal False Claims Act, 31 U.S.C. §§ 3729 et seq., as amended.

122. Through the acts described above and otherwise, defendants entered into a conspiracy or conspiracies with each other and with others to defraud the United States by getting false and fraudulent claims allowed or paid. Defendants have also conspired with each other and with others



to omit disclosing or to actively conceal facts which, if known, would have reduced government obligations to the VHA and UHC Members and HPPI customers or resulted in repayments from the VHA and UHC Members and HPPI customers to government health insurance programs. Defendants have taken substantial steps in furtherance of those conspiracies, inter alia, by soliciting and accepting kickbacks and other monies from vendors as payment for awarding them Novation contracts knowing that these activities increased the cost of supplies and services ordered by the VHA and UHC Members and HPPI customers under these contracts and caused Novation's customers to submit false bills, cost reports and other records to the government and its F.I.'s for payment or approval that contained these improper costs, and by directing their agents and personnel not to disclose and/or to conceal their fraudulent practices or those of their co-defendants, as well.

123. The Medicare, Medicaid, and TRICARE/CHAMPUS programs and their respective F.I.'s, unaware of defendants' conspiracies or the falsity of the records, statements and claims caused to be made by defendants Novation, VHA, UHC, and HPPI and made by the VHA and UHC Members and HPPI customers, and as a result thereof, have paid and continue to pay millions of dollars in Medicare, Medicaid, and TRICARE/CHAMPUS interim and final reimbursement that they would not otherwise have paid. Furthermore, because of the false records, statements, claims, and omissions caused to be made by defendants Novation, VHA, UHC and HPPI and made by the VHA and UHC Members and HPPI customers, the United States has not recovered Medicare, Medicaid, and TRICARE/CHAMPUS funds from the VHA and UHC Members and HPPI customers that otherwise would have been recovered.

124. By reason of defendants' conspiracies and the acts taken in furtherance thereof, the United States has been damaged in the amount of many millions of dollars in Medicare, Medicaid, and TRICARE/CHAMPUS funds.

### **COUNT III**

#### **Substantive Violations of the Texas Medicaid Fraud Prevention Act [Texas Human Resources Code §§ 36.002 (1)(A), (2)(B) & (4)(B)]**

125. Relator realleges and incorporates by reference the allegations made in Paragraphs 1 through 124 of this Complaint.

126. This is a claim for restitution, double damages and penalties under the Texas Medicaid Fraud Prevention Act, Texas Human Resources Code, §§ 36.001 et seq.

127. Through the acts described above, defendants Novation, VHA, UHC, and HPPI knowingly have caused the VHA and UHC Members and HPPI customers to present to the Texas Medicaid program and its F.I.'s false and fraudulent claims, records, and statements for reimbursement for health care supplies and services provided under Medicaid.

128. Through the acts described above and otherwise, defendants Novation, VHA, UHC, and HPPI knowingly made, used, and/or caused the VHA and UHC Members and HPPI customers to make or use false records and statements, which also omitted material facts, in order to induce the Texas Medicaid program and its F.I.'s to approve and pay such false and fraudulent claims.

129. Through the acts described above and otherwise, defendants Novation, VHA, UHC, and HPPI knowingly made, used, and caused the VHA and UHC Members to make or use false records and statements to conceal, avoid, and/or decrease the VHA and UHC Members' and HPPI customers' obligation to repay money to the Texas Medicaid program and its F.I.'s that the VHA and UHC Members and HPPI customers improperly and/or fraudulently received. Defendants Novation, VHA, UHC, and HPPI also failed to disclose to the Texas Medicaid program and its F.I.'s material facts that would have resulted in substantial repayments by the VHA and UHC Members and HPPI customers to the Texas government.

130. The Texas Medicaid program and its F.I.'s, unaware of the falsity of the records, statements, and claims made or submitted by defendants and the VHA and UHC Members and HPPI customers, paid and continue to pay the VHA and UHC Members and HPPI customers for claims that would not be paid if the truth were known.

131. The Texas Medicaid program and its F.I.'s, unaware of the falsity of the records, statements, and claims made or submitted by defendants or the VHA and UHC Members and HPPI customers -- or of their failure to disclose material facts which would have reduced government obligations -- have not recovered Medicaid funds that would have been recovered otherwise.

132. By reason of the defendants' false records, statements, claims, and omissions and defendants' misconduct in causing the VHA and UHC Members and HPPI customers to make or submit false records, statements, claims, and omissions, the State of Texas and the Texas Medicaid program have been damaged in the amount of many millions of dollars in Medicaid funds.

**COUNT IV**  
**Texas Medicaid Fraud Prevention Act Conspiracy**  
**[Tex. Human Resources Code § 36.002(9)]**

133. Relator realleges and incorporates by reference the allegations made in Paragraphs 1 through 132 of this Complaint.

134. This is a claim for restitution, double damages and penalties under the Texas Medicaid Fraud Prevention Act, Texas Human Resources Code §§ 36.001 et seq.

135. Through the acts described above and otherwise, defendants entered into a conspiracy or conspiracies with each of the other defendants and with others to defraud the Texas Medicaid program by getting false and fraudulent claims allowed or paid. Defendants have also conspired with each other and with others to omit disclosing or to actively conceal facts which, if known, would have reduced the Texas Medicaid program's obligations to the VHA and UHC Members and HPPI customers or resulted in repayments from the VHA and UHC Members and HPPI customers to the Texas Medicaid program. Defendants Novation, VHA, UHC and HPPI have taken substantial steps in furtherance of those conspiracies, inter alia, by soliciting and accepting kickbacks and other monies from vendors as payment for awarding them Novation contracts knowing that these activities increased the cost of supplies and services ordered by the VHA and UHC Members and HPPI customers under these contracts and caused Novation's customers to submit false bills, cost reports and other records to the Texas Medicaid program and its F.I.'s for payment or approval that contained these improper costs, and by directing their agents and personnel not to disclose and/or to conceal their fraudulent practices or those of their co-defendants, as well.

136. The Texas Medicaid program and its F.I.'s, unaware of defendants' conspiracies or the falsity of the records, statements and claims caused to be made by defendants Novation, VHA, UHC

and HPPI and made by the VHA and UHC Members and HPPI customers, and as a result thereof, have paid and continue to pay millions of dollars in Medicaid interim and final reimbursement that they would not otherwise have paid. Furthermore, because of the false records, statements, claims, and omissions caused to be made by defendants Novation, VHA, UHC and HPPI and made by the VHA and UHC Members and HPPI customers, the Texas Medicaid program has not recovered Medicaid funds from the VHA and UHC Members and HPPI customers that otherwise would have been recovered.

137. By reason of defendants' conspiracies and the acts taken in furtherance thereof, the State of Texas and the Texas Medicaid program have been damaged in the amount of many millions of dollars in Medicaid funds.

**COUNT V**  
**Federal False Claims Act -- Employment Discrimination**  
**[31 U.S.C. § 3730(h)]**

138. Relator realleges and incorporates by reference the allegations made in Paragraphs 1 through 137 of this Complaint.

139. This is a claim for damages under the Federal False Claims Act, 31 U.S.C. § 3730(h).

140. Through the acts described above and otherwise, defendant Novation discriminated against Relator in the terms and conditions of her employment at Novation by, among other things, terminating her employment. Novation's stated reasons for terminating Relator regarding deficiencies in her job performance were baseless and simply a pretext for the real reason for her termination -- to retaliate against Relator for her investigation of defendants' fraudulent practices in preparation for filing the above-captioned False Claims Act lawsuit.

141. By reason of defendant Novation's actions, Relator has been damaged in the amount of many thousands of dollars.

**COUNT VI**  
**Texas Medicaid Fraud Prevention Act -- Employment Discrimination**  
**[Texas Human Resources Code § 36.115]**

142. Relator realleges and incorporates by reference the allegations made in Paragraphs 1 through 141 of this Complaint.

143. This is a claim for damages under the Texas Medicaid Fraud Prevention Act, Texas Human Resources Code § 36.115.

144. Through the acts described above and otherwise, defendant Novation discriminated against Relator in the terms and conditions of her employment at Novation by, among other things, terminating her employment. Novation's stated reasons for terminating Relator regarding deficiencies in her job performance were baseless and simply a pretext for the real reason for her termination -- to retaliate against Relator for her investigation of defendants' fraudulent practices in preparation for filing the above-captioned False Claims Act lawsuit.

145. By reason of defendant Novation's actions, Relator has been damaged in the amount of many thousands of dollars.

#### **PRAYER**

WHEREFORE, Relator prays for judgment against defendants as follows:

1. That defendants cease and desist from violating 31 U.S.C. §§ 3729 et seq. and Texas Human Resources Code §§ 36.001 et seq.;
2. That the Court enter judgment against defendants in an amount equal to three times the amount of damages the United States has sustained as a result of defendants' actions in violation of the Federal FCA, as well as a civil penalty against each defendant of \$11,000 for each violation of 31 U.S.C. § 3729;
3. That the Court enter judgment against defendants in an amount equal to two times the amount of damages Texas has sustained as a result of defendants' actions in violation of the Texas Medicaid Fraud Prevention Act, as well as a civil penalty against each defendant of \$10,000 for each violation of Texas Human Resources Code § 36.052(3).
4. That Relator be awarded the maximum amount allowed pursuant to 31 U.S.C. § 3730(d) and Texas Human Resources Code § 36.110;
5. That Relator be awarded all costs and expenses of this action, including attorneys' fees;

6. That the Court enter judgment against defendant Novation as a result of its actions in violation of 31 U.S.C. § 3730(h) and Texas Human Resources Code § 36.115 as well as all relief necessary to make Relator whole, including reinstatement with the same seniority status Relator would have had but for the discrimination, not less than two times the amount of back pay, interest on back pay, and compensation for any special damages sustained as a result of Novation's employment discrimination, including litigation costs and reasonable attorney's fees; and

7. That the United States, the State of Texas, and Relator receive all such other relief as the Court deems just and proper.

**Jury Demand**


Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Relator hereby demands trial by jury.

Dated: July 15, 2003

Respectfully submitted:

PHILLIPS & COHEN LLP  
Stephen L. Meagher  
CA Bar No. 118188  
Mary A. Inman  
CA Bar No. 176059  
Michael Brown  
CA Bar No. 183609  
131 Steuart Street, Suite 501  
San Francisco, California 94105  
Tel: (415) 836-9000  
Fax: (415) 836-9001

GOODE CASSEB JONES  
RIKLIN CHOATE & WATSON  
A PROFESSIONAL CORPORATION

By:   
John E. Clark  
TX Bar No. 04287000  
Rand J. Riklin  
TX Bar No. 16924275  
2122 North Main Ave.  
San Antonio, Texas 78212  
Tel: (210) 733-6030  
Fax: (210) 733-0330

LAW OFFICE OF GLENN GROSSENBACHER  
Glenn Grossenbacher  
TX Bar No. 08541100  
1800 McCullough  
San Antonio, Texas 78212  
Tel: (210) 271-3888  
Fax: (210) 271-3980

ATTORNEYS FOR RELATOR/PLAINTIFF

### CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing complaint has been served by certified mail or hand delivery this 11th day of July 2003, as follows:

Mr. John Ashcroft  
Attorney General  
U. S. Department of Justice  
Civil Division  
P.O. Box 261, Ben Franklin Station  
Washington, DC 20044

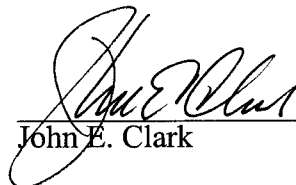
Certified Mail No.70022410000415006110  
Return Receipt Requested

Ms. Jane J. Boyle  
United States Attorney  
Northern District of Texas  
1100 Commerce Street, Third Floor  
Dallas, Texas 75242-1699

Hand Delivery

Mr. Greg Abbott  
Texas Attorney General  
300 W. 15<sup>th</sup> Street  
Austin, Texas 78701

Certified Mail No.70022410000415006127  
Return Receipt Requested

  
\_\_\_\_\_  
John E. Clark



JS 44  
(Rev. 3/99)

# CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

United States of America ex rel. (under seal)  
AND  
State of Texas ex rel. (under seal)

**DEFENDANTS**

(Under seal)

RECEIVED  
JUL 15 2003  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

See Attachment

ATTORNEYS (IF KNOWN)

N/A

**II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)**

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)**

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)**

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 610 Selective Service <input type="checkbox"/> 650 Securities/Commodities/Exchange <input type="checkbox"/> 675 Customer Challenge 12 USC 3410 <input type="checkbox"/> 691 Agricultural Acts <input type="checkbox"/> 692 Economic Stabilization Act <input type="checkbox"/> 693 Environmental Matters <input type="checkbox"/> 694 Energy Allocation Act <input type="checkbox"/> 695 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 990 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 670 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 671 IRS — Third Party 28 USC 7609

**V. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

- Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
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**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)**

The False Claims Act, 31 U.S.C. Sect. 3729, et seq. and the Texas Medicaid Fraud Prevention Act, Texas Human Resources Code Sect. 36.001 et seq.

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23  DEMAND \$ Treble damages/penalties CHECK YES only if demanded in complaint: JURY DEMAND:  YES  NO

**VIII. RELATED CASE(S) (See instructions): IF ANY**

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE: 15 July 2003 SIGNATURE OF ATTORNEY OF RECORD: John E. Clark *[Signature]*

FOR OFFICE USE ONLY: RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING FFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_



JS 44  
(Rev. 3/99)

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United States of America ex rel.  
Cynthia I. Fitzgerald  
AND State of Texas ex rel.  
Cynthia I. Fitzgerald

**DEFENDANTS**

Novation, LLC, VHA, Inc., University Healthsystem Consortium and Healthcare Purchasing Partners International, LLC

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT County of Dallas  
(IN U.S. PLAINTIFF CASES ONLY)

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See Attachment

ATTORNEYS (IF KNOWN)  
  
N/A

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 Diversity (Indicate Citizenship of Parties in Item III)

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**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23  **DEMAND \$** Treble damages/penalties **CHECK YES only if demanded in complaint: JURY DEMAND:**  YES  NO

**VIII. RELATED CASE(S) IF ANY** (See instructions):

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE 15 July 2003 SIGNATURE OF ATTORNEY OF RECORD John E. Clark 

FOR OFFICE USE ONLY  
 RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**CIVIL COVER SHEET**  
Attachment

I.(c) Attorneys (Firm Name, Address, and Telephone Number)

Stephen L. Meagher (Cal. State Bar No. 118188)

Mary A. Inman (Cal. State Bar No. 176059)

Michael Brown (Cal. State Bar No. 183609)

PHILLIPS & COHEN LLP

131 Steuart Street, Suite 501

San Francisco, California 94105

Tel: (415) 836-9000

Fax: (415) 8369-001

John E. Clark (Texas Bar Card No. 04287000)

Rand J. Riklin (Texas Bar Card No. 16924275)

GOODE CASSEB JONES RIKLIN CHOATE & WATSON

A PROFESSIONAL CORPORATION

2122 North Main Ave.

San Antonio, Texas 78212

Tel: (210) 733-6030

Fax: (210) 733-0330

Glenn Grossenbacher

Texas Bar Card No. 08541100

Law Office of Glenn Grossenbacher

1800 McCullough

San Antonio, Texas 78212

Tel: (210) 271-3888

Fax: (210) 271-3980