

**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
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3. Venue
4. Governing Law

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 - b. Defendants
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 - b. The Nationwide e-commerce Hospital Supply Market
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3. Anticompetitive Activity in the Subject Relevant Markets
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 - b. The Legal Basis For Now Ripe Monetary Damages Submitted to The Tenth Circuit
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) 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, 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.

226. 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.

227. 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](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 7th, 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 19th, 2003 that Piper Jaffray was being spun off or separated from US Bancorp NA.

336. On December 31st 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 7th 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 25th 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 (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.

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 19th, 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 20th, 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 3rd, 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
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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

