

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
KANSAS CITY KANSAS DIVISION

CASE NO.: 02-2539-CM

MEDICAL SUPPLY CHAIN, INC.,

Plaintiff ,

vs.

US BANCORP, NA.
US BANK
PRIVATE CLIENT GROUP, CORPORATE TRUST,
INSTITUTIONAL TRUST AND CUSTODY,
AND MUTUAL FUND SERVICES, LLC.
PIPER JAFFRAY
ANDREW CESERE
SUSAN PAINE
LARS ANDERSON
BRIAN KABBES
UNKNOWN HEALTHCARE SUPPLIER

Defendants.

PLAINTIFF'S AMENDED COMPLAINT

Plaintiff MEDICAL SUPPLY CHAIN, INC. appears through its attorney, Bret D. Landrith, Esq., and submits the following amended complaint; adding a named defendant, JERRY A. GRUNDHOFER, the President and Chief Executive Officer of US BANCORP NA. The Plaintiff adds requests for declaratory relief and additional injunctive relief including supplemental state law based causes of action for Misappropriation Of Trade Secrets, Tortuous Interference With Prospective Contracts, Tortuous Interference With Contracts, Promissory Estoppel, Breach Of Contract, Fraudulent Misrepresentation, Violation Of Good

Faith And Fair Dealing. The Plaintiff adds requests for further equitable relief in the form of an urgent preliminary injunction preventing Defendant US BANCORP NA from denying the Plaintiff services, facilities and products of its financial institution under color of law through an abuse of Defendants' policing power under the US Patriot Act and against the public interest embodied in the Sherman, Clayton and Hobbs Acts prohibiting obstruction and barriers in entry to commerce. Additionally, MEDICAL SUPPLY CHAIN, INC. has amended its complaint to seek injunctive relief protecting its intellectual property and trade secrets from misappropriation under Kansas statute.

NATURE OF THE CASE

1. The Plaintiff Medical Supply Chain, Inc., (hereafter "MSCI") brings this action to seek temporary relief from the defendants US BANK, US BANCORP, NA, US BANCORP PIPER JAFFRAY, INC., JERRY A. GRUNDHOFER, ANDREW CESERE, BRIAN KABBES, LARS ANDERSON, SUSAN PAINE and UNKNOWN HEALTHCARE SUPPLIER'S (hereafter collectively referred as "Defendants") illegal acts, which have resulted in loss of property and detriment to the Plaintiff's business.

2. The Plaintiff MSCI has been harmed by the Defendants' conduct in furtherance of a common enterprise by Defendants' denial of services and facilities for hosting MSCI's escrow accounts. The Defendants with full confidential knowledge of MSCI's finances, business model, plan and proprietary business trade secrets obstructed and seek to delay MSCI's entry into commerce through the marketing of its healthcare supply chain intellectual property consisting of an educational healthcare certification program for training independent consultants and MSCI's entry into commerce through the marketing of its supply chain management and market making software. Defendant's

interference has affected MSCI's movement of these products into commerce to a severe degree.

3. Defendants own, control and broker shares of stock and bonds in healthcare industry companies MSCI has planned to compete with or rely on as suppliers. Defendants rely on the income from ownership in and services to healthcare industry companies and healthcare company officers that depend on profits derived from monopoly marketplace power. Defendants are suppliers of services to the healthcare industry and have combined to deny those services to MSCI.

4. The Plaintiff MSCI has been harmed by the Defendants' conduct in furtherance of a common enterprise as shown by Defendant employees' disclosure that the reason for Defendants' denial of services and facilities in the form of hosting escrow accounts is their required performance of duties policing accounts as federally chartered financial institutions under the federal statutory anti-money laundering requirements of the USA PATRIOT Act.

5. The Plaintiff MSCI responded to the Defendants' decision with communications to all levels of the Defendants' common enterprise explaining the reporting requirements of the US PATRIOT Act were not a burden on the escrow accounts, that the act did not apply to MSCI which was an established US BANCORP account holder and a corporation in existence for over two and a half years, currently in good standing with the Missouri Secretary of State and to which the Defendants have performed diligence on at the time it set up its corporate account under a federal tax id number and when its chief executive and sole officer opened his personal account. The Plaintiff MSCI informed the Defendants that they were in possession of the MSCI business plan, contract for certification, corporate report, certification of good standing from the Missouri Department of Revenue and a personal credit application of the chief executive

and founder, Samuel Lipari for a line of credit based on the nonrefundable portion of each certification account. MSCI informed Defendants that it had a 14 page financial application for each of the certification candidates, that all were US citizens and had provided releases for credit, financial and criminal background checks and that the funds would be wired from their personal financial institutions. The Defendants refused to reverse their denial of services and facilities in refusing to host MSCI's escrow accounts.

6. The Plaintiff MSCI on October 15th, 2002 repeated the inapplicability of the US PATRIOT Act and the failure to provide a valid or truthful reason by the Defendants for their denial of services and facilities in refusing to host MSCI's escrow accounts. The Plaintiff MSCI pointed out the inherent need to build candidate trust in MSCI exhibited by seeking the establishment of escrow accounts and that suddenly revoking US BANK as the trust entity would jeopardize the ten best independent representatives they had chosen at considerable time and expense out of hundreds of applicants. The Plaintiff MSCI explained that it was now trapped in a relationship with US Bank and could not seek escrow accounts at another bank without compounding the misunderstanding that USA PATRIOT Act requirements prevented MSCI from being entitled to escrow account services. The Plaintiff MSCI called attention to the Defendants knowledge of the magnitude of injury their obstruction and delay of MSCI's entry into commerce including the loss of hundreds of millions of dollars of revenue MSCI was depending on from its independent representatives. The Plaintiff MSCI called attention to the illegal business practices rife in the healthcare supply market space MSCI was committed to entering and reforming and that the Defendants had relationships, substantial investments in and revenue from established entities in the healthcare market, including substantial trust accounts from healthcare entities. The Plaintiff MSCI pointed out the conflict

of interest imputed by Defendants denial of service and facilities in failing to provide the escrow accounts. The Plaintiff MSCI entreated the Defendants to help in remediating damages by establishing escrow accounts for only the 10 candidates MSCI had relied upon the US Bank escrow account contract approved by the Defendants and sent 5 out before receiving notice of denial of service by the Defendants. Defendants again refused to provide escrow account services to MSCI.

7. The Plaintiff MSCI now seeks declaratory relief based on the injury suffered as a result of conduct prohibited by federal and state law and urgent injunctive relief because it continues to suffer as a result of Defendants' illegal conduct against it while MSCI attempts to remediate its injury.

8. The Plaintiff MSCI seeks urgent injunctive relief on the basis it continues to be in jeopardy of the Defendants abuse of their police power and authority under the USA PATRIOT Act in the form of false clandestine reporting that will harm MSCI as it attempts to capitalize its entry into commerce.

9. The Plaintiff MSCI seeks urgent injunctive relief on behalf of similarly situated companies without legal resources that might be discriminated against in banking services because of the ethnic or national origin of their corporate officers based on the pretextual use of USA PATRIOT Act reporting duties.

10. The Plaintiff MSCI seeks urgent injunctive relief to prevent the further harm by Defendants of MSCI's business associates and customers which are healthcare systems consisting of hospitals and long term care facilities who are dependent on a neutral electronic market place and supply management provider to enter a market in which they are being held hostage by corrupt healthcare product suppliers limiting their access to critical medical devices, pharmaceuticals and material at the cost of human lives and countless unnecessary permanent bodily injuries. The healthsystems and hospital relying on a neutral electronic

marketplace to replace their current dependency on Group Purchasing Organizations utilizing anticompetitive business practices including kickbacks, equity exchanges of healthcare supplier corporate stock, tying and exclusive contracting are unable to jeopardize their patients and businesses out of a fear of retaliation from these distributors.

11. The Plaintiff MSCI seeks urgent injunctive relief to prevent the further harm by Defendants to MSCI through harming MSCI's business associates and customers which are information technology partners who have made significant investments, even to the point of millions of dollars in research and development in their own corporations, partially in reliance on becoming a vendor of high end supply chain strategic management services and human resources management services, respectively to the healthcare industry.

JURISDICTION AND VENUE

12. This Court has jurisdiction over the subject matter of the present injunctive relief sought based on federal statutes giving rise to federal civil causes of action and supplemental state law based claims for damages. The contract initiating the relationship between the parties was executed between US Bancorp and MSCI at the US Bank Office at 5730 SW 21st Street, Topeka, KS., therefore venue in this court is proper.

13. This Complaint is filed and these proceedings are instituted under the provisions of the Sherman Act and the Clayton Act.

14. This Court has jurisdiction over complaints based on Hobbs Act, The USA PATRIOT Act.

15. Jurisdiction for Medical Supply Chain, Inc. to commence this action for injunctive relief is conferred by the Clayton Act, 15 U.S.C. §§ 13 and 26 and K.S.A. 60-3321. Misappropriation of trade secret; injunctive or other protective relief

16. US BANCORP NA is a Delaware Corporation organized under the National Bank Act, 12 U.S.C. §§ 21-216d, headquartered in Minnesota and doing business in Kansas and other states through its wholly owned subsidiaries US BANK, PRIVATE CLIENT GROUP, CORPORATE TRUST, INSTITUTIONAL TRUST AND CUSTODY, AND MUTUAL FUND SERVICES, LLC and US BANCORP PIPER JAFFRAY and its employees and agents: JERRY A. GRUNDHOFER, ANDREW CESERE, SUSAN PAINE, LARS ANDERSON, BRIAN KABBES and through its ownership interest or underwriting relationship in UNKNOWN HEALTHCARE SUPPLIER.

17. The violations alleged herein have a substantial effect on interstate commerce.

18. Kansas substantive law permits an injured party to have civil remedies for criminal acts *Smith v. Welch* 265 Kan. 868.

PARTIES

PLAINTIFF:

MEDICAL SUPPLY CHAIN INC.

19. Plaintiff MSCI or MEDICAL SUPPLY CHAIN, INC., is a registered Missouri Corporation in good standing with corporate headquarters at 1300 NW Jefferson Court, Blue Springs, MO. MSCI sought to obtain escrow account services for tuition from candidates for a year long healthcare supply strategist certification program, similar to bank escrow account arrangements for tuition from students enrolled in other Missouri technical and university education programs. MSCI was forced to develop its own educational program when over a period of several years it could not convince leading US universities to offer substantial course work concerning healthcare logistics and the entire healthcare supply chain. With the exception of limited courses provided with the assistance of MSCI's associate industry experts available at Arizona State University, Wharton School of

Business and Harvard School of Business, MSCI could not find the external training it required for its independent representatives so it was forced at great expense to create a healthcare supply chain strategist certification program which it made available to qualified consultants in healthcare and information technology with a tuition of \$5000.00 for the first week of intensive introduction and orientation and \$ 25,000.00 for the remaining year of instruction and healthcare supply chain practicum. These funds were to be held in individual escrow accounts at US BANCORP NA.

DEFENDANTS:

US BANCORP NA

20. Defendant US BANCORP, NA is a Bank Holding Corporation headquartered at U.S. Bancorp Center 800 Nicollet Mall , Minneapolis, MN 55402. Defendant US BANCORP, NA merged with Firststar Bank to operate banks in several states under the name US Bank. US BANCORP, NA is the parent company of the employees and subsidiaries named as Defendants. US BANCORP, NA is thought to be invested in and have maintained accounts and provided services for Defendant UNKNOWN HEALTHCARE PROVIDER. At all times during this matter, US BANCORP NA provided information about its involvement in healthcare industry companies to all employees throughout its subsidiaries through daily updates on its corporate intranet, web site and media broadcasts in addition to newsletters, employee investment account solicitations and corporate publications.

US BANK NA

21. 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.

PRIVATE CLIENT GROUP, CORPORATE TRUST, INSTITUTIONAL TRUST AND CUSTODY, AND MUTUAL FUND SERVICES, LLC

22. Defendant PRIVATE CLIENT GROUP, CORPORATE TRUST, INSTITUTIONAL TRUST AND CUSTODY, AND MUTUAL FUND SERVICES, LLC. (hereafter “defendant LLC entity”) is a trust subsidiary of US BANCORP NA. , headquartered at U.S. Bancorp Center 800 Nicollet Mall, Minneapolis, MN 55402 doing business in several states with an office at one US Bank Plaza, St. Louis, MO and at all times relevant to this matter was the entity responsible for setting up escrow accounts for MSCI. The defendant LLC entity was represented to be independent and free standing by its Vice President Brian Kabbes.

23. Defendant LLC entity is the division of US BANCORP NA responsible for escrow accounts and trust accounts of hospitals and healthcare systems under contract with Group Purchasing Organizations responsible for limiting or obstructing market access

US BANCORP PIPER JAFFRAY, INC.

24. Defendant US BANCORP PIPER JAFFRAY, INC. is the investment banking subsidiary of US BANCORP NA. US BANCORP PIPER JAFFRAY, INC. does business in Kansas through its investment banking offices and licensed and registered securities brokers. Defendant US BANCORP PIPER JAFFRAY, INC corporate headquarters are at U.S. Bancorp Center 800 Nicollet Mall Suite 800 Minneapolis, MN 55402.

25. Defendant US BANCORP PIPER JAFFRAY, INC. has had underwriting and investment relationships with healthcare suppliers, including biotechnology producers and medical device manufacturers. Defendant US BANCORP PIPER JAFFRAY, INC. has investments in, underwritten and promoted the capitalization of biotechnology producers, including Omnicell, Inc. ⁱ and medical device manufacturers including Aspect Medical Systems, Inc. ⁱⁱ of Newton, MA, that

have engaged in anti competitive “sole” or “single source” contracts with health systems including Health Services Corporation of America of Cape Girardeau, MO that plea bargained a conclusion to a federal fraud investigation in 1997ⁱⁱⁱ and Group Purchasing Organizations held responsible for preventing competitive access to suppliers and creating unnecessary increases in healthcare supply costs^{iv} including AmeriNet, Inc.^v of St. Louis, MO., Healthtrust Purchasing Group.^{vi}

26. Defendant US BANCORP PIPER JAFFRAY, INC. has underwriting and investment relationships with healthcare Group Purchasing Organizations including Novation, Inc., a healthcare GPO currently the subject of Federal Trade Commission and General Accounting Office investigations into whether it holds too much control in the market for hospital supplies.^{vii} Defendant US BANCORP PIPER JAFFRAY, INC. has underwriting, promotional and investment relationships with Neoforma, Inc. an internet supply chain software and electronic marketplace similar to MSCI but which is 60% owned by the above mentioned Novation, Inc. (UHA and VHA owned shares combined as of 8/9/02) and limits supplier access. Novation used tens of millions of dollars it held in custody and trust for its hospital customers to purchase the equities in the publicly traded, money-losing electronic commerce company, Neoforma Inc.,^{viii}

27. Defendant US BANCORP PIPER JAFFRAY became attracted to the profit opportunity in internet delivery of medical supplies to hospital health systems approximately 5 years after Sam Lipari started developing software to order and track medical supplies from pc computers dialing up internet connections and

exchanging data with hospital mainframe computers. In February of 2000, US BANCORP PIPER JAFFRAY released a study it had commissioned that concluded similarly to Sam Lipari's analysis that 13% of what US BANCORP PIPER JAFFRAY then estimated to be \$83 billion dollars spent annually could be eliminated if supplies were purchased through the internet. US BANCORP PIPER JAFFRAY's Senior Analyst Daren Marhula estimated \$23 billion of the total spent on medical supplies is pure process and procurement costs, and about half of this cost could be eliminated by ordering supplies over the Internet. Roughly half of hospital supplies, for instance, are for routine purposes, such as office, janitorial and medical items that can easily be purchased through the Internet. However, US BANCORP PIPER JAFFRAY had failed to realize the implication of strategic management when the purchaser was able to utilize artificial intelligence to optimize purchase negotiations and quantity delivery throughout the complete supply chain and backed companies with business models incapable of creating the value and cost savings of Medical Supply Chain incorporated in the same year to provide a commercial platform for Sam Lipari's research and development work.

28. The defendant US BANCORP PIPER JAFFRAY invested in, underwrote and promoted companies providing internet or web based software to help healthcare systems manage their purchasing, including Embion, Inc. (which US BANCORP PIPER JAFFRAY raised 10 million dollars for)^x or Centromine, to improve their service delivery. Several did not make it to the IPO stage and US BANCORP PIPER JAFFRAY has difficulty maintaining the good will of its venture

fund investors.^x Some companies made it to the public offering stage like Eclipsys Corp to have their shares promoted and marketed for 125 million dollars by US BANCORP PIPER JAFFRAY only to fall drastically in value like upon revelation of sharply lower financial expectations than investors had been led to believe. Now US BANCORP PIPER JAFFRAY is embroiled in numerous investor law suits for irregularities in its promotion of IPO capitalization equity shares.

29. In both healthcare supplier and healthcare electronic commerce firms, the defendant US BANCORP PIPER JAFFRAY concentrates its investments in early stage firms that partner with existing dominant healthcare suppliers and distributors. US BANCORP PIPER JAFFRAY publicizes these relationships as it solicits and promotes investment in the venture funds US BANCORP PIPER JAFFRAY uses for their capitalization. US BANCORP PIPER JAFFRAY publicized a high profile merger Eclipsys Corp with the GPO controlled Neoforma to dominate the healthcare supply electronic marketplace^{xi}. Later, the merger would terminate and Eclipsys Corp and Neoforma would announce a mutual alliance to dominate online healthcare supplies utilizing their existing dominant GPO partner; Novation.^{xii} The existing dominant healthcare suppliers and distributors co-opt the business model development of the healthcare electronic commerce firms into channels to push a limited sub set of products whose suppliers are allied with the established partnering firms, creating only additional dimensions to the anticompetitive market. The technology for web based supply chain management merely becomes Internet storefront faces for existing monopolistic suppliers motivated to increase costs as they do in their traditional

GPO distribution channels. Whatever potential exists in the still nascent technologies of MSCI's potential competitors like MedCenterDirect.com^{xiii} (initially given 30 million dollars in early stage capital) to provide widespread cost savings and obtain high rates of adoption is subordinated by the defendant US BANCORP PIPER JAFFRAY's use of anticompetitive business practices including sole source or exclusive dealing contracts, and vertical exchange of stock ownership with established dominant suppliers, distributors and their corporate officers to inflate the value of its equity funds and offerings.

UNKNOWN HEALTHCARE ENTITY

30. Defendant UNKNOWN HEALTHCARE ENTITY is believed to be a supplier or purchasing organization who has communicated with US Bancorp NA, its employees or its subsidiaries about MSCI for the purpose of obstructing or delaying MSCI's entry into commerce. Defendant UNKNOWN HEALTHCARE ENTITY and its corporate executives and directors are assisted by US BANCORP NA in obtaining ownership shares in companies Defendant UNKNOWN HEALTHCARE ENTITY allows to enter the healthcare supply chain marketplace.

INDIVIDUAL US BANCORP EMPLOYEES

31. Defendant JERRY A. GRUNDHOFER, the President and Chief Executive Officer of US BANCORP NA and at all times relevant to this action was the controlling officer of US BANCORP NA. Defendant JERRY A. GRUNDHOFER was in communication with MSCI regarding the action of US Bank trust department in St. Louis rejecting MSCI escrow accounts and MSCI's efforts to reverse or remEDIATE the decision. Defendant JERRY A. GRUNDHOFER directly supervised Defendant ANDREW CESERE. Defendant JERRY A.

GRUNDHOFER acquired Piper Jaffray and renamed the subsidiary US BANCORP PIPER JAFFRAY and oversaw the units anticompetitive business practices, including setting revenue goals and providing financing and guarantees for US BANCORP PIPER JAFFRAY healthcare supplier and distribution integration and combination. Defendant JERRY A. GRUNDHOFER refused to review the decision to deny services and critical facilities to MSCI or to participate in a fact finding effort to clear up the problem without litigation.

32. Defendant ANDREW CESERE is identified as Vice Chairman of US Bancorp trust division by the US Bank website and at all times relevant to this action was a senior controlling officer of US BANCORP in communication with the US Bank trust department in St. Louis regarding the acceptance of MSCI escrow accounts and MSCI's efforts to reverse or remediate the decision.

Defendant ANDREW CESERE would not take calls or return them from Plaintiff MSCI. Defendant ANDREW CESERE directed LARS ANDERSON, SUSAN PAINE and BRIAN KABBES not to reverse their decision on MSCI and not to perform the required diligence on MSCI to meet the standard of expectation of providing a professional service or their duties under the USA PATRIOT Act.

33. Defendant SUSAN PAINE is the supervisor for US BANK's St. Louis, MO corporate trust office. SUSAN PAINE was identified by Defendant Brian Kabbes as being present during a conference call where Plaintiff MSCI sought to reverse or remediate the damages from Defendants and in which Defendants expressed their disturbance that MSCI had contacted the corporate headquarters of US BANCORP NA about the problem with setting up escrow accounts.

34. Defendant LARS ANDERSON was identified to MSCI as the new customer acquisition manager for US BANK's St. Louis, MO corporate trust office by Defendant BRIAN KABBES. Defendant LARS ANDERSON stated he made the decision not to provide escrow account services to MSCI.

35. Defendant BRIAN KABBES identified himself as Vice President of Corporate Trusts for US BANK. Plaintiff MSCI was referred to Brian Kabbes for escrow account services by its neighborhood US BANK branch in Independence, MO and later when MSCI was again referred to Defendant BRIAN KABBES when MSCI sought to establish a Kansas escrow account after having difficulty with the St. Louis corporate Trust Department. Defendant BRIAN KABBES provided a review of Plaintiff MSCI's proposed escrow account agreement and suggested changes to meet US BANK's acceptance. Defendant BRIAN KABBES reviewed an approved the escrow account agreement with his name on it as escrow agent for US BANK , along with the changes to make it correct for transmittal to MSCI's ten known selected candidates with their certification contract. After the escrow agreements were sent to the candidates Defendant BRIAN KABBES contacted Sameul Lipari of MSCI to inform him US BANK would not host the escrow accounts because of the USA PATRIOT Act. Defendant BRIAN KABBES maintains the he and Samuel Lipari had not reached an oral contract for service and that reservation for additional approvals were part of earlier conversations.

STATEMENT OF FACTS

36. On or about 3/12/2002, and following 3 years of R&D Sam Lipari, President and CEO of Medical Supply Chain, Inc. (MSCI) 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 arm called US BANCORP PIPER JAFFRAY that 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.

37. On or about 4/15/02 Sam Lipari arranged for MSCI'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 MSCI's federal tax I.D. number with a cashier's check in the name of MSCI's agent and drawn on Miner's State Bank of Frontenac Kansas for \$7,500.00.

38. On or about 4/25/02 Sam 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 Sam Lipari's account application and submitted Sam 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. Sam Lipari was approved for a personal checking account and an electronic debit card. Sam

Lipari initially used the personal account to pay expenses of MSCI with reimbursement from the corporation.

39. On 6/5/02 Sam Lipari contacted US BANCORP PIPER JAFFRAY'S Minneapolis headquarters to speak to Heath Lukatch, managing director of the US BANCORP PIPER JAFFRAY healthcare venture fund about MSCI being considered as a venture capital candidate. He was instructed to send an executive summary of his business plan via email. Sam Lipari sent the summary and financial projections for MSCI with a restriction on disclosure notice. US BANCORP PIPER JAFFRAY made no response to the receipt of the executive summary and financial projections from MSCI's business plan. Sam Lipari again telephoned the Minneapolis offices of the US BANCORP PIPER JAFFRAY venture fund managers and his calls were not taken and not returned. Sam Lipari also attempted to speak to a US BANCORP PIPER JAFFRAY venture fund manager in their San Francisco office but again, his calls were not taken or returned.

40. On 7/9/02 Sam Lipari and MSCI were visited by a Merger and Acquisitions attorney for another San Francisco venture capital firm and after extensive discussions with her at MSCI'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 begun 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. MSCI's management felt with the exception of US BANCORP 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.

41. The venture capital M&A attorney questioned Sam Lipari about the overtures of large companies seeking to acquire MSCI. Sam 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, 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 MSCI's web based services and poorly suited for electronic commerce. 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. Sam Lipari told the VC attorney that MSCI would not compromise itself by being aligned with any existing healthcare supplier. MSCI 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 MSCI like Impact Health 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.

42. MSCI resolved to develop a way to internally capitalize a roll out of its supply chain empowerment program and supply chain management technology. MSCI 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.

43. 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 MSCI'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 MSCI's web services were new to the market, Sam Lipari decided that it would be critical for the certification fee to be held in escrow until the candidates had a chance to meet MSCI'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 MSCI would have the opportunity to reject any candidates it felt would not succeed in the program.

44. MSCI 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 advice candidates throughout the certification process. MSCI 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 MSCI's capabilities that would complement MSCI's supply chain empowerment program in allowing a health system/hospital to break free of its GPO supplier.

45. Beginning 8/1/02 MSCI 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, MSCI 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, MSCI was preparing the escrow account system that the candidates would utilize.

46. On or about 10/1/02 MSCI contacted Chris Walden of the Noland Road, Independence MO branch of US BANK for direction on escrow accounts and commercial banking services. MSCI was referred to Becky Hainje a US BANCORP "Private Banker" and on or about 10/3/02 Becky Hainje contacted

Sam Lipari and told him she would arrange to put him in contact with the persons in different departments of US BANK that could provide MSCI the services MSCI requested and needed. She connected MSCI with Brian Kabbes in St. Louis who was responsible for US BANK commercial trust accounts in Missouri and Kansas. She also connected MSCI with Douglas Lewis, responsible for commercial loans in the Noland Road office.

47. Sam Lipari described MSCI's need for escrow accounts to Brian Kabbes and emailed him an escrow contract that MSCI 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. Sam 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 BANKS escrow agent services from the normal of \$1,500 to \$600 per account and no hidden or additional transaction or dispersement fees.

48. After reviewing the escrow contract, on or about 10/5/02 Brian Kabbes communicated to Sam 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 MSCI's property the moment a candidate submitted their certification funds into escrow. MSCI 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.

49. On or about 10/8/02 Sam Lipari spoke again to Becky Hainje about MSCI's need for a business line of credit based on the MSCI 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 Sam Lipari call Doug Lewis and make an appointment to apply for the line of credit, which was based on the escrow account assets.

50. 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. MSCI agreed to the additional change and modified the investment instructions exactly as Brian Kabbes instructed. MSCI also ask if there were any other changes needed before MSCI sent the contracts out to its certification candidates. Brian Kabbes said there would be no other changes and asked why MSCI was sending the candidates the escrow contract. MSCI 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 MSCI developed that candidates would execute following the weeklong evaluation seminar to be held the first week of December.

51. During this conversation, Brian Kabbes also requested MSCI's current corporate good standing documentation from the Missouri Secretary of State's Office. MSCI agreed to send him the reinstatement and tax clearance documents on Friday 10/11/02 and that Sam 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. Sam 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 MSCI 's escrow accounts and sought no additional information.

52. On or about Thursday 10/10/02, Sam Lipari delivered the MSCI 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 MSCI would retain. The business plan and associate program booklets each had cover pages giving notice of restricted use and that MSCI protected the confidential business trade secret and intellectual property contained in them. 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. Doug Lewis asked how many candidates MSCI had and Sam 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. Sam Lipari further explained that he planned to start a new certification group each quarter. Sam

Lipari was given a loan application and agreed to and did return the application the next day.

53. On or about Tuesday 10/15/02 Brian Kabbes called Sam 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 MSCI. Sam 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.

54. Later that morning Sam Lipari called Becky Hainje and asked if she could see what happened. Sam Lipari explained that MSCI 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 MSCI. She said she would call and see what happened. Becky Hainje called back and left a taped recording on the MSCI 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.

55. On or about 10/15/02 MSCI 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 MSCI asked her to

leave instructions for him to call Sam Lipari about MSCI's corporate escrow account rejection at 9 a.m. the following morning. 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 MSCI had dealt with so that Mr. Cesere could inquire about the problem.

56. At 9 a.m. the following morning on or about 10/16/02 Ed Higgins called, leaving a tape-recorded message on MSCI's answering system identifying him as the executive vice president of Midwest trusts for US BANK.

Sam Lipari, believing that the USA Patriot Act had probably been used to reject the escrow accounts because of his family sir name which is also the name of a small group of Islands in the Mediterranean Sea and which ends in "ari" like many Moslem sir names of people of Arabic descent, activated a tape recorder with a built in microphone and called Mr. Higgins back on the speaker phone. Each subsequent call to US Bank in which Sam Lipari participated was also recorded by him to document what he suspected was discrimination based on his national origin or ethnic descent.

57. Ed Higgins listened to Sam 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 MSCI. Sam Lipari explained that MSCI 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 Sam Lipari back later that day.

58. Instead 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. MSCI 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 BANKS agreement to host the escrow accounts.

59. Lars Anderson expressed some irritation that MSCI 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 Sam Lipari. 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. MSCI 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. Sam 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.”

60. During the call MSCI attempted several times to work out any misunderstandings and set up at least the 10 accounts MSCI had relied on US BANK for and that US BANK had known about and that MSCI was now in danger of being irreparably harmed. MSCI stated that the Patriot Act did not apply and that MSCI was in actuality an established US BANK customer and that MSCI had

been in a trust relationship with US BANK and the bank even had its business plan and information about its proprietary business model. 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.

61. MSCI 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. Viewing US BANK's actions, MSCI stated they could only be explained by a conflict of interest due to US BANCORP's existing healthcare investments and involvement.

MSCI felt extremely disturbed by the apparent outcome of this situation, there was not enough time to establish a new banking relationship with another nationally recognized Bank and MSCI would lose substantial momentum. MSCI had spent several months building up to roll out its supply chain empowerment program and felt to change a trust relationship in the middle will be devastating to its entry to market. MSCI researched over 300 resumes only to find 30 that appeared to be qualified.

62. On or about 10/17/02 Sam 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. Sam Lipari instructed him not to send the business plan and associate program materials to the corporate trust office of US BANK in St. Louis. He told Douglas Lewis that MSCI 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. Sam Lipari suggested he might find another bank but Douglas Lewis said that would

make the line of credit difficult. Sam 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.

63. On or about 10/18/02 MSCI drafted a letter and sent it to Jerry A. Grundhofer, 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 MSCI. MSCI 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.

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

65. MSCI called the trust department counsel Monday 10/21/02 to ask for service addresses of the other named entities and employees. She said the same address would be good for all and then proceeded to ask what the causes of action were. MSCI 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. She was surprised MSCI 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. MSCI 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. She stated that the depositions would not lead to any meaningful explanation, that we 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. MSCI 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.

66. She warned MSCI not to contact anyone at US BANK and said if MSCI 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. MSCI stated that it had not had any communications with US BANK employees since receiving her reply on Friday 10/18/02. However, MSCI was an account holder at US BANK and would continue to have communications with US BANK regarding its other bank business. MSCI 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.

67. MSCI contacted an attorney, familiar with the healthcare supply chain research and development done by Sam 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 and declined to act as escrow agent.

68. On Thursday 10/24/02 MSCI filed for urgent injunctive relief against US BANCORP NA, its subsidiaries and named employees. MSCI 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. MSCI 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 MSCI.

69. On or about 10/28/02 MSCI contacted US BANCORP's retained counsel and explained that there were questions about service and that MSCI 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, MSCI 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 MSCI, its associates and customers.

70. 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. 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.

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

72. On or about Thursday 10/31/02, MSCI 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 MSCI under the USA PATRIOT Act. US BANCORP's counsel reiterated his belief MSCI needed to find another bank and that no liability existed. MSCI's counsel explained that Sam 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. US BANCORP's counsel said it would not agree to even just the relief sought in paragraph 66. MSCI 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 MSCI.

73. Realizing there was no immediate solution to this matter, and the fact that a previous business model pricing system developed by Sam Lipari in 1995 was appropriated by HSCA and MEDECON through exploitation of a confidential business relationship and then taken later by many other GPOs; on or about 11/6/02 Sam 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 Sam Lipari. Sam Lipari specifically ask if the documents were copied or faxed and Doug Lewis said he put all of the information in his analysis and Sam Lipari left the bank. Upon returning to MSCI's office Sam 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. There are tractor marks from a copy or fax machine on the back of all the pages. 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.

74. MSCI is now fearful of where these documents were sent or 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. Sam Lipari is fearful this information will fall into the wrong hands further blocking or eliminating entry to market.

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

CAUSES OF ACTION

COUNT I: VIOLATIONS OF THE SHERMAN ANTITRUST ACT

76. Plaintiff re-alleges paragraphs 1-75 above.

77. Defendants have violated Section 1 of the Sherman Anti Trust Act prohibition against combination or conspiracy, in restraint of commerce.

78. Defendants are a vertically integrated commercial banking, private banking, trust and investment banking concern with investment and underwriting trade concentrated in the healthcare supplier market. In this specific market of companies supplying new products, services and technology, new entrants are dependant on the approval and endorsement of the Defendants to healthcare supply distributors dominated by Healthcare Group Purchasing Organizations or GPO's due to the Defendants' monopoly power.

79. Defendants are believed to be the largest holder of healthcare supplier equity issues through their direct investments and the investments of funds they manage. Defendants are believed to be the largest promoters of healthcare supplier stock issues and provide the largest amount of industry analysis for investor evaluation of healthcare supplier stock issues. On information and belief, US BANCORP NA, US BANK, PRIVATE CLIENT GROUP, CORPORATE

TRUST, INSTITUTIONAL TRUST AND CUSTODY, AND MUTUAL FUND SERVICES, LLC and US BANCORP PIPER are alter egos of each other in that they now and at all relevant times (a) held themselves out to the public as a single, integrated, full-service, professional business enterprise; (b) completely dominated and controlled each other's assets, operations, policies, procedures, strategies, and tactics; (c) failed to observe corporate formalities; (d) and used and commingled the assets, facilities, employees, and business opportunities of each other, as if those assets, facilities, employees, and business opportunities were their own -- all to such an extent that any adherence to the fiction of the separate existence of any of these defendants distinct from the others would be inequitable, would permit egregious wrongdoers to abuse a corporate, limited liability corporation, and/or similar privilege of limited liability, if any, and would promote injustice by allowing these defendants to evade liability or veil assets that should be attachable.

80. Defendants' predatory practices in the capitalization of healthcare suppliers have been found to be in violation of regulatory statutes. In June of 2002, US BANCORP PIPER JAFFRAY was censured and fined \$250,000.00 by the National Association of Securities Dealers for threatening to deny Antigenetics, Inc. a critical service of analyst coverage if it did not select US BANCORP PIPER JAFFRAY as a lead underwriter for a second issuing of stock.^{xiv}

81. US BANCORP has participated in underwriting syndicates for 131 IPO's worth nearly 10 billion dollars since January 1999. ^{xv}US BANCORP is named as

a defendant in shareholder law suits investigating US BANCORP's role in a scheme to allocate equity shares of Commerce One to particular customers on the condition that these customers would then buy additional equity shares in the securities markets at agreed upon times to create a false increase in the prices of Commerce One shares.^{xvi} Commerce One is an electronic marketplace technology company providing supply chain management services in the business to business market and specifically through Medibuy in a "strategic relationship" to provide these services to healthcare facilities. Medibuy is a partner of the largest GPO which is also the main subject of federal healthcare supply marketplace inquiry, Premier, Inc. Medibuy is also the exclusive e-commerce supplier for HCA.

82. The Defendants maintain control over the day-to-day operations of healthcare supplier companies they invest in or provide services for.^{xvii} This control extends to interlocking directors when Defendants place corporate officers of US BANCORP NA on the boards of the healthcare supplier corporations that the Defendants have participated with in creating anti competitive sole source supplier contracts with healthcare GPO's that are "agreements whose nature and necessary effect are so plainly anticompetitive . . . no elaborate study of the industry is needed to establish their illegality-they are 'illegal per se.'" *National Society of Professional Engineers v. United States*, 435 U.S. 679, 692, 98 S. Ct.1355, 1365, 55 L. Ed. 2d 637 (1978).

83. The Defendants use the creation of anticompetitive sole source contracts between their client healthcare suppliers and healthcare GPO's the Defendants

have developed to promote and inflate the value of equity shares they are marketing.

The Defendants operate a conspiracy among their subsidiaries and parent companies and through their employees as “Persons” engaged in combination with healthcare GPO’s including UNKNOWN HEALTHCARE SUPPLIER for the purpose of restraining commerce. On information and belief, Defendants, in agreement, concert, and conspiracy with each other, directly or indirectly initiated, directed, participated in, aided and abetted, furthered, otherwise caused, and/or concealed the anticompetitive denial of services and critical facilities, or related events, for the purpose of preserving their directorships and/or other positions with US BANCORP NA, keeping their contracts with US BANCORP NA, their income, compensation, and fringe benefits, supporting the value of their US BANCORP NA securities, and/or concealing their participation in and liability for anticompetitive activities.

84. The Defendants prevented MSCI from establishing escrow accounts it was intending to use as a unique banking service with special escrow account agreements reviewed and approved by the Defendants to finance MSCI’s entry into to commerce in competition to reduce prices and increase manufacturers of healthcare devices and other healthcare suppliers access to markets in competition with sole source healthcare suppliers and healthcare GPO’s.

85. The escrow account contracts are novel and could not be duplicated at another bank in the short time between the Defendants surprise announcement that they were not going to host the accounts, breaching their contract or duty to

MSCI based falsely on the USA Patriot Act, and the deadlines MSCI was in reliance on for receipt of funds. The escrow accounts developed between MSCI and US BANK, along with the line of credit tying arrangement based on the contract guaranteed portion were “unique and unusual financing terms which are unavailable from competing financial institutions.” If other financial institutions have the required presence of bank branches and familiarity with MSCI candidates in several states, along with commercial trust departments capable of acting as escrow agent for accounts that provide fractional secured interests for a bank commercial loan line of credit, they were not present with the capability of putting the arrangement together in Blue Springs or Independence MO. Sam Lipari turned to US BANK for the escrow accounts after evaluating and visiting other banks within driving range of his Blue Springs office. US BANK’s branch office on Noland Rd. in Independence, MO was able to perform this custom financial service and proceeded to do so with a regional US BANK commercial trust office in St. Louis pooling resources for a multi state district. Once US BANK decided to withdraw the service, there was no financial institution MSCI could turn to that was capable of meeting its requirements in the few days remaining in which to get out the escrow contracts to the candidates for their examination in advance of the November 1st deadline. If US BANK had made its reversal earlier; there still was no competing national financial institution capable of providing such a complex custom service without having a pre-established banking relationship. US BANCORP NA was a financial institution lending upon a unique, novel or custom escrow financial instrument in the commercial money market

with sufficient economic power to give rise to a claim under the Sherman Act as contemplated in *United States Steel Corporation v. Fortner Enterprises, Inc.*, 429 U.S. 610, 51 L. Ed. 2d 80, 97 S. Ct. 861 (1977).

86. Defendants through their financial institutions act as a supplier of financial services to companies in the healthcare industry. Defendants own and control other supplier companies including medical device manufacturers, biotechnology producers, healthcare distributors and health system end users. Defendants have conspired with, aided and abetted and participated in the financing of efforts to limit or prevent competition in healthcare supply. Defendants have prevented MSCI from entering the healthcare supply market by refusing to act as a supplier of escrow accounts at any price to MSCI. Such conduct constitutes a contract, combination or conspiracy in restraint of trade in *per se* violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

87. The Defendants have acted in furtherance of the combine's conspiracy to deny MSCI access to services and essential facilities through a refusal to deal, denial of services, boycott or withholding of critical facilities which is conducted "to exclude a person or group from the market, or to accomplish some other anti-competitive objective, or both," *DeFilippo v. Ford Motor Co.*, 516 F.2d 1313, 1318 (3d Cir.) (citations omitted), cert. denied, 423U.S. 912, 96 S. Ct. 216, 46 L. Ed. 2d 141 (1975), and is a *per se* violations of § 1.

88. Defendants through their financial institutions have discriminated against MSCI in provision of services and facilities in the form of the five escrow accounts MSCI had mailed out contracts for and the five escrow accounts for

candidates committing to payment of funds by November 1st which MSCI was in the process of sending contracts to and the future escrow accounts for its ongoing future quarterly medical supply chain strategist certification programs.

89. The public is being severely injured by the Defendants actions in restraint of trade through their combination or conspiracy, in restraint of commerce

90. MSCI has been severely injured and is in danger of further injury resulting from the Defendants actions in restraint of trade through their combination or conspiracy, in restraint of commerce. MSCI is now unable to meet its obligations, and risks damage to its corporate credit rating. MSCI is unable to procure an escrow agent to substitute for US BANK. MSCI is unable to meet its commitments to independent representatives that MSCI depended on to enter commerce. MSCI is unable to produce revenue without independent consultants who have begun its very expensive certification program. MSCI's good will with its associates and customers has been harmed by not meeting its scheduled entry to market.

91. Defendants have violated Section 2 of the Sherman Anti Trust Act prohibition against combining or conspiring with any other person or persons, to monopolize or attempt to monopolize any part of the trade or commerce.

92. Defendants have acquired, maintained and extended their monopoly power through improper means, including attempting to extort healthcare technology companies into using US BANCORP as the underwriter of capitalization against securities regulations and in denying MSCI the escrow accounts it required to capitalize its entry into commerce through extortion under

the color of official right-The USA Patriot Act, fraudulently invoked to tortuously Interfere with MSCI's contracts and prospective contracts.

93. Defendants utilize their monopoly power to foreclose competition and gain a competitive advantage for their client and associate companies, in which they have invested millions of dollars and on whose behalf and acting as a combination, they have attempted to destroy MSCI, a potential competitor in violation of 15 U.S.C.S. § 2.

94. The Defendants' vertical integration is part of a calculated scheme to gain control over the 1.3 trillion dollar healthcare supplier and distribution segment of the healthcare industry and to restrain or suppress competition, rather than an expansion to meet the legitimate business needs of US BANCORP's customers, exhibiting the requisite specific intent needed to show a violation of 15 U.S.C.S. § 2.

95. The Defendants as monopolists, or would be monopolists of the healthcare supplier/distribution marketplace engage in predatory tactics and dirty tricks including the above mentioned extortion of business customers seeking capitalization, "laddering" schemes to fraudulently inflate equity values of competitors they own interests in. Additionally, healthcare suppliers the Defendants invest in and promote engage in anticompetitive predatory sole source contract agreements with healthcare GPOs.

96. The Defendants through conspiracy and combination with healthcare suppliers and distributors have established monopoly power and have the power to control prices of healthcare supplies which they exercise in maintaining higher

prices through GPO distribution channels that are higher than those negotiated directly by hospitals, sometimes 25% higher according to the Government Accounting Office^{xviii} and by excluding competition in violation of 15 U.S.C.S. § 2.

97. Anticompetitive effects have resulted from the Defendant's actions. New technologies have been prevented from entering the healthcare market to protect competitors with the capitalization provided by the actions of the Defendants to make kickback payments to GPOs in exchange for sole source contracts. This has resulted in the unavailability of superior products and services that would have been able to save lives and alleviate suffering in hospital patients

98. The public is being severely injured by the Defendants actions in restraint of trade through their combining or conspiring with any other person or persons, to monopolize or attempt to monopolize any part of the trade or commerce

99. MSCI has been severely injured and is in danger of further injury resulting from the Defendants actions in restraint of trade through their combining or conspiring with any other person or persons, to monopolize or attempt to monopolize any part of the trade or commerce.

COUNT II: VIOLATIONS OF CLAYTON ANTITRUST ACT

100. Plaintiff re-alleges paragraphs 1 through 99 above.

101. Defendants have denied MSCI escrow account services, a critical facility in violation of the Robinson-Patman Act against discrimination in price, services, or facilities; 15 U.S.C. § 13 of the Clayton Antitrust Act.

102. Defendants provide financial services and facilities to existing healthcare supply market participants on the basis of those participants maintaining

exclusive dealing arrangements. The Defendants exclusive dealing criteria is directly applied where Defendants make contracts and provide investment and financing to healthcare supplier companies the Defendants proclaim and publicize as entering into and maintaining sole source or single source contracts with distributors and end user health systems. The Defendants publicize this information to solicit subscription of stocks they underwrite and to obtain additional investors. As a direct and proximate result of the Defendants' pervasive conspiracy to restrain trade in healthcare supplies, against the interests of shareholders, potential investors, and the integrity of the securities market, as set forth fully above, Plaintiffs have suffered injury and damages in the capitalization of their entry into market.

103. The Defendants exclusive dealing criteria is indirectly applied where Defendants make contracts and provide investment and financing to healthcare supplier companies on the basis of collusion derived profits. The Defendants have prevented MSCI from entering the healthcare supplier/distribution market by refusing to act as a supplier of financial services and facilities in the form of escrow accounts in violation of the Robinson-Patman Act.

104. The Defendants have denied MSCI equal access to these financial services on the basis of tying financial services to healthcare supplier and distribution customers participating in market limitation and denial of access.

105. Defendants through their financial institutions have discriminated against MSCI in provision of services and facilities in the form of the five escrow accounts MSCI had mailed out contracts for and the five escrow accounts for

candidates committing to payment of funds by November 1st which MSCI was in the process of sending contracts to and the future escrow accounts for its ongoing future quarterly medical supply chain strategist certification program.

106. Defendants provide financial services and facilities to existing healthcare supplier market participants. Defendants own, control or have a participatory interest in healthcare supplier market participants that they provide financial services and facilities to. Defendants have prevented MSCI from entering the healthcare supply market by refusing to act as a supplier of financial services and facilities in the form of escrow accounts. Such conduct constitutes a *per se* violation of 15 U.S.C. § 13.

107. The public is being severely injured by the Defendants actions in restraint of trade.

108. MSCI has been severely injured and is in danger of further injury resulting from the Defendants actions in restraint of trade.

109. MSCI is a corporation entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the Defendants, against threatened loss or damage by a violation of the antitrust laws, including sections 13 of this title. MSCI is likely to prevail on one or all of its claims against the Defendants. The danger of irreparable loss or damage to MSCI is immediate. There is a substantial threat that MSCI will suffer irreparable injury in the absence of preliminary relief; the likely injury to MSCI is greater than that likely to be suffered by the Defendants; and entry of the preliminary injunction would not disserve the public interest. *Lucero v. Operation Rescue of Birmingham*, 954

F.2d 624, 627 (11th Cir. 1992), *reh'g denied*, 961 F.2d 224 (1992). Where, as here, the plaintiff advances anti-trust claims, preliminary relief is specifically authorized by 15 U.S.C. § 26.

COUNT III: VIOLATIONS OF THE HOBBS ACT AGAINST RACKETEERING

110. Plaintiff re-alleges paragraphs 1 through 109 above.

111. Defendants violated The Hobbs Act prohibition against racketeering by preventing MSCI's entry into commerce under color of official right in violation of 18 U.S.C. 1951(b)(2).

112. Defendants committed an unusual act for banks by denial of service and facilities for plaintiff MSCI's escrow accounts in bad faith or nonperformance of their duty as financial institutions and employees. Defendants "under color of official right" through invocation of the USA PATRIOT Act deny and threaten MSCI's access to service at any national bank that MSCI, its customers or associates require to conduct their business, effecting the unjust enrichment of the Defendants and their related healthcare suppliers and distributors combine, preventing MSCI's services from entering into commerce in violation of The Hobbs Act, 18 U.S.C. 1951(b)(2).

113. Defendants are extensively invested in selected healthcare suppliers. The profits of these healthcare companies are dependent on a current market where competition in pricing is severely curtailed. Defendants' US BANCORP NA profit has not increased proportionately to its acquisition of banks and traditional commercial banking business. Defendants are consequentially dependant on revenue from their private banking, trust and investment banking divisions which

are disproportionately concentrated in healthcare suppliers engaging in anticompetitive business practices.

114. Defendants' US BANCORP NA, despite the patriotic appellation "US BANK" in red white and blue signage that it places on its newly acquired Kansas and Missouri banks, is unlike a traditional American bank in that Defendants US BANCORP NA functions like an Asian bank interlinked in an industry group combine, acting against the combine's industry competitors and aiding the combine's allies. In Japan a similar industry group would be called a "Keiretsu"^{xix} or in Korea a "Chaebol." The Defendants' vertically integrated monopoly acting in consort with their healthcare suppliers and distributors combine in efforts to prevent MSCI from entering into commerce through the misuse of the USA Patriot Act are extorting property from MSCI, its associates and customers.

115. The Defendants did not do the investigation of MSCI they claimed was required under the USA PATRIOT Act and sought to harm MSCI out of an undisclosed profit incentive. In using the USA PATRIOT Act the Defendants are using force or in the alternative acting under color of law in taking property from MSCI its associates and customers.

116. This bad faith performance of its regulator imposed and customer expected duty was made self evident by the Defendants' St. Louis Trust Department telling MSCI that it "did not understand why MSCI went to them and not MSCI's local bank" without even realizing MSCI was already an established US BANCORP NA client customer with a corporate checking account and a

pending corporate credit application, or that MSCI's chief executive was an established checking account holder.

117. Plaintiff MSCI has accepted voluntarily that it will be delayed, suffer lost profits, injury to its associates and lose some or all of the ten best candidates for bringing its electronic marketplace and supply chain management software services to commerce. The Defendants have the power to label MSCI as a money laundering suspect or to do their normal duty of diligence and discover MSCI, its candidates and associates are upstanding citizens with documented funds. MSCI may reluctantly have no choice but to wait until the Defendants' healthcare suppliers and distributors develop a strategy to counter MSCI's neutral electronic marketplace and cost reducing supply chain management software before the Defendants allow MSCI the escrow accounts it needs to enter the healthcare supply marketplace.

118. MSCI's chief executive prudently fears that bad faith reporting under the USA PATRIOT Act by the Defendants to enrich their vertically integrated combine will prevent MSCI from going to other financial institutions and opening escrow accounts or obtaining other banking services, including the clearing and settlement of over 90 million dollars in annual healthcare supply transactions, foreign exchange conversion and purchasing finance, all of which are far more sensitive and subject to greater anti-money laundering scrutiny under know your customer laws and the USA Patriot Act.

119. The Defendants have opposed MSCI's requested injunctive relief which would have temporarily ordered US BANCORP NA and its employees to stop

secretly reporting negative information against MSCI under the USA Patriot Act until adequate training and the required compliance officers were in place. The Defendants have not denied exercising the USA Patriot Act against MSCI.

120. The Defendants' unprofessional conduct and lack of truthful disclosure about USA PATRIOT Act based conduct continues to threaten the Plaintiff MSCI, its associates and customers through actions that may trigger similar surprise denials of critical banking services at other financial institutions.

121. The Public has been harmed by the Defendants extortion of MSCI that has obstructed or delayed MSCI's entry into commerce and the resulting cost savings and increased availability of beneficial healthcare technologies. Over 2000 hospitals nation-wide are endangered by the current anticompetitive market for healthcare supplies and are harmed by the Defendants continued prevention of MSCI from entering commerce. Public access to healthcare will be harmfully cut back if more hospitals are closed because they are unable to realize the 20% cost reduction provided through MSCI's system.

COUNT IV : FAILURE TO PROPERLY TRAIN EMPLOYEES ON USA PATRIOT ACT OR PROVIDE A COMPLIANCE OFFICER

122. Plaintiff re-alleges paragraphs 1 through 121 above.

123. Defendants US BANCORP NA, US BANK; PRIVATE CLIENT GROUP, CORPORATE TRUST, INSTITUTIONAL TRUST AND CUSTODY, AND MUTUAL FUND SERVICES, LLC., failed to provide training or adequate training to its employees or to designate a USA PATRIOT Act compliance officer in each of its financial institutions as required under Section 352 of USA Patriot Act.

Without training, employees of US BANCORP denied MSCI, a known domestic

corporation in good standing with its Secretary of State and State Department of Revenue an escrow account service even though it was not an activity that was regulated under Section 312 effective July 23, 2002.

124. Without having adequately trained employees and a USA PATRIOT Act mandated compliance officer in each of their financial institutions, the Defendants continue to endanger the plaintiff MSCI, its associates and customers with wrongful denial of services and facilities of US BANCORP NA where MSCI has its accounts or at other national and state banks where MSCI and its associates may be harmed through denied services based on erroneous reporting by the Defendants.

COUNT V: MISUSE OF AUTHORITY AND EXCESSIVE USE OF FORCE AS ENFORCEMENT OFFICERS UNDER THE USA PATRIOT ACT

125. Plaintiff re-alleges paragraphs 1 through 124 above.

126. The Defendants BRIAN KABBES, LARS ANDERSON and SUSAN PAINE, under knowing direction of Defendants ANDREW CESERE and JERRY A. GRUNDHOFER, repeatedly used the USA Patriot Act to deny services of US BANK, PRIVATE CLIENT GROUP, CORPORATE TRUST, INSTITUTIONAL TRUST AND CUSTODY, AND MUTUAL FUND SERVICES, LLC. and US BANCORP NA to MSCI, causing the loss of MSCI property. The Defendants, despite their regulated status as financial institutions and corporate officers of financial institutions responsible for providing a professional service; denied MSCI, 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 MSCI's escrow accounts.

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

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

129. On October 22, 2002 MSCI 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 MSCI's existing bank did not provide the accounts, the attorney declined to act as escrow agent.

COUNT VI: VIOLATION OF CRIMINAL LAWS TO INFLUENCE PUBLIC POLICY UNDER SECTION 802 OF THE USA PATRIOT ACT

130. Plaintiff re-alleges paragraphs 1 through 129 above.

131. Defendants are preventing MSCI from entry into commerce to alleviate market collusion in healthcare supplies that has lead to injury and loss of life and

continues to threaten US citizens. This healthcare supply emergency has been the subject of US agency action and investigation. Members and committees of the US Congress have begun inquiry into the failure of the healthcare supply market place for the purposes of creating public policy regulating market participants. Defendants are preventing MSCI's entry into commerce in violation of Section 802 of the USA PATRIOT Act which creates a federal crime of "domestic terrorism" that broadly extends to "acts dangerous to human life that are a violation of the criminal laws" if they "appear to be intended...to influence the policy of a government by intimidation or coercion," and if they "occur primarily within the territorial jurisdiction of the United States."

132. The Defendants continue to endanger the plaintiff MSCI, 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.

Supplemental State Law Based Causes Of Action

COUNT VII: MISAPPROPRIATION OF TRADE SECRETS

133. Plaintiff re-alleges paragraphs 1-132 above.

134. The Defendants have misappropriated MSCI's business plan and associate program containing MSCI's trade secrets. The Defendants have made use of MSCI's trade secrets through unauthorized copying and transmittal.

135. The Defendants directed Douglas Lewis to disassemble MSCI's Business Plan and Associate Program and make copies and or fax their contents in violation of Sam Lipari's oral instructions to Douglas Lewis and the notice of

limitations of disclosure, use, transmittal and copying expressly stated on the covers and in the bodies of the above documents. US BANK's exceeded its authorized use and copied and or transmitted the above documents to the defendants PRIVATE CLIENT GROUP, CORPORATE TRUST, INSTITUTIONAL TRUST AND CUSTODY, AND MUTUAL FUND SERVICES, LLC., UNKNOWN HEALTHCARE SUPPLIER, LARS ANDERSON, SUSAN PAINE and BRIAN KABBES.

136. The Defendants directed Douglas Lewis to disassemble MSCI's Business Plan and Associate Program and make a derivative analysis document containing MSCI's trade secret and or fax their contents in violation of Sam Lipari's oral instructions to Douglas Lewis and the notice of limitations of disclosure, use, transmittal and copying expressly stated on the covers and in the bodies of the above documents. US BANK's exceeded its authorized use and copied and or transmitted the above documents to the defendants PRIVATE CLIENT GROUP, CORPORATE TRUST, INSTITUTIONAL TRUST AND CUSTODY, AND MUTUAL FUND SERVICES, LLC., UNKNOWN HEALTHCARE SUPPLIER, LARS ANDERSON, SUSAN PAINE and BRIAN KABBES.

137. The defendants US BANCORP NA; US BANCORP PIPER JAFFRAY; PRIVATE CLIENT GROUP, CORPORATE TRUST, INSTITUTIONAL TRUST AND CUSTODY, AND MUTUAL FUND SERVICES, LLC.; LARS ANDERSON; SUSAN PAINE and BRIAN KABBES acquired unconsented knowledge of MSCI's trade secrets and made use thereof.

138. The Defendants are attempting to settle litigation through payment of several million dollars for theft of customer information in an unrelated class action lawsuit giving rise to MSCI's heightened fears of being materially injured if its trade secrets are not recovered and their dissemination is not disclosed.

COUNT VIII: TORTUOUS INTERFERENCE WITH PROSPECTIVE CONTRACTS

139. Plaintiff re-alleges paragraphs 1-138 above.

140. The Defendants have committed Tortuous Interference With Prospective MSCI Contracts for independent representatives, business associates and health system customers.

141. The Defendants willfully and intentionally acted to prevent 15 prospective contractual relationships between MSCI and independent representatives.

142. The Defendants willfully and intentionally acted to prevent or interfere with the prospective contractual relationships between MSCI and business associates named in MSCI's business plan and associate agreement.

143. The Defendants willfully and intentionally acted to prevent or interfere with the prospective contractual relationships between MSCI and health system customers including hospitals.

144. The Defendants willfully and intentionally acted to prevent or interfere with the prospective contractual relationships between MSCI and the technology partners discussed in MSCI's business plan and associate agreement.

145. MSCI had a reasonable probability of entering into contracts with 15 independent representatives for the December 1st course, nine business associates, three technology partners and numerous hospital groups.

146. The Defendants decision to withdraw from acting as MSCI's escrow agent on October 15, and refusing to repair or reverse their decision was the proximate cause of MSCI's damages and loss.

147. The Defendants decision to withdraw from acting as MSCI's escrow agent on October 15, and refusing to repair or reverse their decision caused the actual loss of 350,000 to 450,000 dollars MSCI would have on deposit on November 1st, of which \$50,000 to \$75,000 would be available for securing credit and which the entire sum would be the property of MSCI by December 15th. MSCI depended on these funds to meet its contractual obligations.

COUNT IX: TORTUOUS INTERFERENCE WITH CONTRACTS

148. Plaintiff re-alleges paragraphs 1-147 above.

149. The Defendants have committed Tortuous Interference With MSCI Contracts for independent representatives, business associates and health system customers.

150. The Defendants willfully and intentionally acted to disrupt or interfere with 10 contractual relationships between MSCI and potential independent representatives.

151. The Defendants willfully and intentionally acted to disrupt or interfere with the contractual relationships between MSCI and business associates named in MSCI's business plan and associate agreement.

152. The Defendants willfully and intentionally acted to disrupt or interfere with the contractual relationships between MSCI and a human resource technology partner.

153. The Defendants willfully and intentionally acted to disrupt or interfere with the contractual relationships between MSCI and its landlord and utilities.

154. The Defendants decision to withdraw from acting as MSCI's escrow agent on October 15, and refusing to repair or reverse their decision was the proximate cause of MSCI's damages and loss.

155. The Defendants decision to withdraw from acting as MSCI's escrow agent on October 15, and refusing to repair or reverse their decision caused the actual loss of 350,000 to 450,000 dollars MSCI would have on deposit on November 1st, of which \$50,000 to \$75,000 would be available for securing credit and which the entire sum would be the property of MSCI by December 15th. MSCI depended on these funds to meet its contractual obligations.

COUNT X: BREACH OF CONTRACT

156. Plaintiff re-alleges paragraphs 1-155 above.

157. The Defendants breached their contract with MSCI to provide MSCI with a full range of business banking services, including corporate trust services and escrow agency to be performed lawfully and professionally with a "five star guarantee" of quality of service. This contract was executed in writing by the Defendants and MSCI when their respective agents opened the Medical Supply Chain Corporate checking account in Topeka, Kansas.

158. The Defendants breached their contract with MSCI to provide MSCI with corporate trust services, escrow agency and the service of hosting escrow accounts for MSCI and its candidates. This contract was made over the phone at a distance of 300 miles between the defendant US BANK's St. Louis office and

MSCI a customer of US BANK's Noland Road Independence office in the regular course of business. No writing or other memorialization of this contract was referred to or contemplated at any time during its negotiation and formation by either the Defendants or MSCI.

159. The Defendant BRIAN KABBES and Sam Lipari came into formation of contract when both had agreed upon some or all of the terms including: the composition of the escrow form, the language limiting the liability of US BANK and the escrow agent, the language designating US BANK's compensation for its duties in any legal disputes arising between the parties, the directions for US BANK's investment of long term held funds, the directions for US BANK's investment of short term held funds, the selection of investment vehicles for both funds respectively, the name and address of BRIAN KABBES as escrow agent on the escrow form, the name and address of US BANK as escrow depository on the escrow form, the price term US BANK is charging for the agreed upon escrow service and the price term and payment schedule for maintaining the account.

160. The Defendants performed diligence to determine whether to accept the contract with MSCI to provide MSCI with corporate trust services, escrow agency and the service of hosting escrow accounts for MSCI and its candidates. The Defendants required only one item to be rectified for approval; a current good standing status from the Missouri Secretary of State, which MSCI provided, satisfying their sole open element.

161. The Defendants approved MSCI's escrow form for delivery along with MSCI's associate contract to MSCI's independent representative candidates for their examination and submission for review to their personal legal counsel.

COUNT XI: PROMISSORY ESTOPPEL

162. Plaintiff re-alleges paragraphs 1-161 above.

163. The Defendants repudiated the existence of a binding oral contract to provide MSCI with corporate trust services, escrow agency and the service of hosting escrow accounts for MSCI and its independent representative candidates. The Defendants refused to perform the services that their actions and communications reasonably lead MSCI to rely on when the Defendants were estopped from doing so by their promises.

164. The Defendants approved MSCI's escrow form for delivery along with MSCI's associate contract to MSCI's independent representative candidates and did other actions and made statements that caused MSCI with the full knowledge of the Defendants to rely on the Defendants' performance of the escrow agency and to host the accounts at US BANK.

165. MSCI relied on the Defendants conduct and statements to MSCI's detriment when Defendants refused to perform and host the escrow accounts and perform as escrow agents for MSCI. MSCI was harmed by the Defendants actions, resulting in the loss of from three hundred thousand to four hundred and fifty thousand dollars and the inability to act on the opportunity it had planned to realize with the funds, including the recruitment and training of a nationwide

network of independent representatives and the revenue the representatives would create through MSCI's entry into commerce.

COUNT XII: FRAUDULENT MISREPRESENTATION

166. Plaintiff re-alleges paragraphs 1-165 above.

167. The Defendants injured MSCI with a fraudulent misrepresentation material to their transaction of escrow agency and escrow account hosting with MSCI.

168. The Defendant BRIAN KABBES speaking as a Vice President of US BANK falsely represented to MSCI that US BANK and the commercial trust department would not perform as escrow agent or host MSCI's escrow accounts because of the "know your customer" diligence requirements of the USA Patriot Act had come into effect and made it impossible for the bank to perform this service for MSCI.

169. The defendants LARS ANDERSON and SUSAN PAINE made this fraudulent misrepresentation through the defendant BRIAN KABBES by directing him to give this reason to MSCI's chief executive, Sam Lipari.

170. The defendant ANDREW CESERE directed the defendants LARS ANDERSON, SUSAN PAINE and BRIAN KABBES not to retract this fraudulent misrepresentation when it had been questioned by MSCI and to maintain the misrepresentation in their capacity as managing speaking officers for US BANCORP NA, US BANK and LLC

171. The defendants ANDREW CESERE, LARS ANDERSON, SUSAN PAINE and BRIAN KABBES caused this fraudulent misrepresentation to be communicated to Sam Lipari with the intention to induce MSCI to refrain from

enforcing US BANK's agreement to provide MSCI escrow agency services and escrow account hosting.

172. MSCI justifiably relied upon this fraudulent misrepresentation to not enforce US BANK's promise with the defendant BRIAN KABBES upon learning that US BANK was not going to provide the escrow services. MSCI justifiably relied upon this fraudulent misrepresentation and did not seek a reversal of the decision from the St. Louis office of US BANK's Commercial Trust department and instead contacted US BANCORP NA's ANDREW CESERE, to try and resolve the problem, unintentionally angering LARS ANDERSON and SUSAN PAINE.

173. The defendants ANDREW CESERE, LARS ANDERSON, SUSAN PAINE BRIAN KABBES and PRIVATE CLIENT GROUP, CORPORATE TRUST, INSTITUTIONAL TRUST AND CUSTODY, AND MUTUAL FUND SERVICES, LLC., UNKNOWN HEALTHCARE SUPPLIER, US BANCORP NA and US BANK caused this fraudulent misrepresentation to be communicated to MSCI with knowledge of its falsity or reckless disregard as to whether it was true or false to the point of not checking and realizing that the increased duties of the "know your customer" for new account holders had not been enacted. Or, the defendants caused this fraudulent misrepresentation to be communicated with reckless disregard as to whether it was true or false to the point of not checking and realizing MSCI and Sam Lipari were established existing customers of US BANK the increased duties of the "know your customer" did not apply to.

174. MSCI relied on the Defendants fraudulent misrepresentation to MSCI's detriment. MSCI was harmed by the Defendants actions, resulting in the loss of from three hundred thousand to four hundred and fifty thousand dollars and the inability to act on the opportunity it had planned to realize with the funds, including the recruitment and training of a nationwide network of independent representatives and the revenue the representatives would create through MSCI's entry into commerce.

COUNT XIII: VIOLATION OF GOOD FAITH AND FAIR DEALING

175. Plaintiff re-alleges paragraphs 1-174 above.

176. The defendants ANDREW CESERE, LARS ANDERSON, SUSAN PAINE and BRIAN KABBES were trust officers in a fiduciary relationship with MSCI that was established at the point BRIAN KABBES began working with Sam Lipari to draft MSCI's escrow form. As trust officers in a confidential relationship they had the duty of providing a professional service for MSCI in good faith performance of that duty including keeping abreast of the current status of federal account reporting regulations the duty of disclosure of obstacles to US BANK's ability to perform for MSCI the services it was seeking. The defendants ANDREW CESERE, LARS ANDERSON, SUSAN PAINE, BRIAN KABBES, US BANCORP NA and PRIVATE CLIENT GROUP, CORPORATE TRUST, INSTITUTIONAL TRUST AND CUSTODY, AND MUTUAL FUND SERVICES, LLC., breached their duty of good faith performance when they failed to alert MSCI to the possibility US BANK would not perform the services MSCI was seeking.

177. The defendants ANDREW CESERE, LARS ANDERSON, SUSAN PAINE and BRIAN KABBES breached their duty of good faith performance when they failed to apply the current status of the USA Patriot Act to MSCI's requirements.

178. The defendants ANDREW CESERE, LARS ANDERSON, SUSAN PAINE and BRIAN KABBES breach their duty of good faith and fair dealing when they misuse the USA Patriot Act to injure MSCI.

179. MSCI was harmed by the Defendants breach of their duty of good faith and fair dealing, resulting in the loss of from three hundred thousand to four hundred and fifty thousand dollars and the inability to act on the opportunity it had planned to realize with the funds, including the recruitment and training of a nationwide network of independent representatives and the revenue the representatives would create through MSCI's entry into commerce, and including the ability to obtain sensitive banking services required by the business model and future growth of MSCI.

PRESENT AND FUTURE INJURY

180. The actions taken by the Defendants have resulted in dramatic losses to MSCI its stakeholder, associates, suppliers and customers. As of 11/1/02 under traditional Robinson-Patman Act (Clayton Antitrust Act sec. 13) damages calculations, the Defendants have caused substantial short and long-term losses that are not recoverable due to MSCI's injury and delay in obtaining banking services. According to the formula utilized under a Robinson-Patman Act proceeding, the first 3 months losses are \$15,000,000. In the alternative, MSCI

business plan losses are \$300,000 to \$450,000 in addition to the last three months of MSCI's 3-year financials, which combined, are \$24,547,576.

181. As a direct result of MSCI'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 MSCI's evaluation and hiring practices; in addition to due diligence and market evaluation activities. Sustained losses of revenue for associate/representatives outlined in the last three months of MSCI's 3-year financials are \$4,819,515.

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

183. The direct result of MSCI injury and inability to perform its services to customers are the lost savings and additional revenue MSCI generates for its customers through its services. Losses to MSCI customers are directly due to the actions of the Defendants and are 20% of the total supplies spend health systems currently pay out annually. Sustained losses of revenue for MSCI health system customers outlined in the last three months of MSCI's 3-year financials are \$13,759,800.

184. The above claims reflect the immediate losses suffered by MSCI its stakeholders, associates, suppliers and customers as of 11/1/02 excluding legal representation. To date MSCI and its counsel have performed over 378 hours in legal work on the antitrust based preliminary injunction remedy.

185. Failure to resolve this matter increases MSCI damages over time. Stakeholders, associates, suppliers and customers will also suffer far more in damages. MSCI will directly suffer \$2,901,600 in revenue the 1st year, \$27,366,576 in revenue the 2nd year and \$74,798,940 in the 3rd year, as a combined total of \$105,067,116.

186. Failure to resolve this matter increases the damages MSCI will suffer for injury to associate/representatives including in the 1st year \$490,320, in the 2nd year \$5,293,315, and in the 3rd year \$14,779,788 as a total combined \$20,563,423.

187. Failure to resolve this matter increases the damages MSCI will suffer over time, through harm to its suppliers which will suffer losses in the 1st year of \$540,000, the 2nd year of \$540,000 and in the 3rd year \$540,000 as a total combined \$1,620,000.

188. Failure to resolve this matter increases the damages MSCI's customers will suffer over time, including losses in the 1st year of \$1,705,400, the 2nd year of \$244,032,960 and the 3rd year of \$697,486,200 as a total combined \$943,224,560.

189. MSCI's customers are healthcare systems consisting of hospital groups. The actions of the Defendants to preserve an anticompetitive marketplace in

healthcare supplies keeps in jeopardy over 2000 of the nation's 6,500 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.

PRAYER FOR DECLARATORY RELIEF

190. Paragraphs 1 through 189 are incorporated herein by this reference as if fully pled herein.

191. As a direct result of the conduct of said defendants as set forth in Counts I, II, III and IV, V, VI, VII, VIII, IX, X, XI, XII, and XIII and herein, plaintiff has sustained actual damages in excess of \$75,000.00. Such actual damages also include, but are not limited to, damages for injury to business associates, including suppliers, partners, independent representative candidates, prospective customers, other lost benefits, reasonable attorney's fees, expert fees, and costs.

192. Plaintiff's Sherman I & II and Clayton antitrust claims against the Defendants include claims against the noncorporate "Persons" in their individual and official capacities: JERRY A. GRUNDHOFER, ANDREW CESERE, BRIAN KABBES, LARS ANDERSON, and SUSAN PAINE for constructive knowledge of intentional denial of services and critical facilities to injure the Plaintiff and delay or obstruct its entry into commerce.

193. Because elements of malice, wantonness and oppression mingle in the conduct of the defendant County and its agents, plaintiff is entitled to recover damages against the County for violation of plaintiff's rights as claimed herein

and guaranteed under Title VII, the Civil Rights Act of 1991, the Kansas Act Against Discrimination, 42 U.S.C. § 1981, 1981 (a) and 1981 (a)(b)(4).

PRAYER FOR URGENT INJUNCTIVE RELIEF

194. **WHEREFORE**, the Plaintiff respectfully prays for the following urgent injunctive prospective relief in exceptional circumstances including:

195. The Plaintiff seeks injunctive relief in the form of a court order mandating the above named Defendants who are the subject of causes of action based in criminal law and to which the above Defendant persons and entities have varying degrees of culpability or liability ; obtain separate and independent counsel for any future civil claims seeking monetary damages for the purpose of avoiding conflicts of interest among commonly represented parties prohibited under Kansas law and which may jeopardize recovery under future resulting judgments.

196. The Plaintiff seeks injunctive relief in the form of a court order mandating the above named Defendants cease reporting information related to MSCI under the USA PATRIOT Act or Anti Money Laundering laws until the Plaintiffs can exhaust administrative relief from the Defendants misconduct available through the US Office of the Comptroller of Currency.

197. The Plaintiff seeks injunctive relief in the form of a court order mandating the above named Defendants disclose the names of bank or trust officers that performed any diligence duty regarding MSCI and the names of any AML or USA PATRIOT Act compliance officers consulted regarding MSCI's escrow accounts.

198. The Plaintiff seeks injunctive relief in the form of a court order mandating the above named Defendants provide their employees adequate training regarding their duties and responsibilities enforcing the USA PATRIOT Act.

199. The Plaintiff seeks injunctive relief in the form of a court order mandating the above named Defendants provide their employees adequate training regarding their duties and responsibilities avoiding antitrust prohibited conduct in their non traditional banking activity including investment banking , trusts and escrow services.

200. The Plaintiff seeks injunctive relief in the form of a court order mandating the corporate governance organ of above named Defendants review and audit their relationships with healthcare companies engaging in restrictive trade practices, including the assistance Defendants have provided in purchasing or selling healthcare supplier equity to healthcare companies or corporate officers engaging in restrictive trade practices.

201. The Plaintiff seeks injunctive relief in the form of a court order mandating the above named Defendants including US BANCORP PIPER JAFFRAY be barred from publicizing a sole source, multi year or exclusive contract to provide healthcare supplies related to any company the Defendants own part of or control an interest in or to which the Defendants currently market investment opportunities, including venture fund and equity shares or anticipate marketing in the future.

202. The Plaintiff seeks injunctive relief in the form of a court order mandating the above named Defendants provide escrow accounts for MSCI and its independent representative candidates and future banking services for reasonable fees, equal to the fees charged other corporate customers for similar services for the duration of the preliminary relief order.

203. The Plaintiff seeks injunctive relief in the form of a court order mandating the above named Defendants provide escrow accounts and escrow agency for MSCI and its independent representative candidates and future banking services

for reasonable fees, equal to the fees charged other corporate customers for similar services for the duration of the preliminary relief order.

204. The Plaintiff seeks injunctive relief in the form of a court order mandating the above named Defendants provide a letter stating the delay and resumption of banking services to MSCI's associates, customers, credit references and independent representative candidates.

205. The Plaintiff seeks injunctive relief in the form of a court order mandating the above named Defendants correct any negative reporting made to government or industry agencies regarding MSCI.

206. The Plaintiff seeks injunctive relief in the form of a court order mandating the above named Defendants reimburse the Plaintiff for all legal fees and costs related to obtaining injunctive relief under the Clayton Act.

207. The Plaintiff seeks injunctive relief in the form of a court order mandating the above named Defendants pay interest on the Plaintiff's damages from the date a complaint for injunctive relief was first filed until any award is paid by the Defendants.

208. The Plaintiff seeks injunctive relief in the form of a court order mandating the above named Defendants are restrained from copying, circulating, disclosing or transmitting MSCI's business information including trade secrets derived from MSCI's business plan or associate program amongst employees of US BANCORP NA and its subsidiaries or outside persons and entities.

209. The Plaintiff seeks injunctive relief in the form of a court order mandating the above named Defendants participate in expedited discovery including depositions and document production related to the dissemination of MSCI's confidential business information and trade secrets.

210. The Plaintiff seeks injunctive relief in the form of a court order allowing the Plaintiff to assist a United States Marshal in searching the premises of the Defendants for evidence of their violations of Misappropriation of Trade Secrets.

REQUEST FOR ORAL HEARING

WHEREAS the above stated facts are true based on information and belief of the Plaintiff MSCI, attested to by its chief executive officer Samuel Lipari and in a previously filed affidavit of facts, the Plaintiff respectfully requests the above stated injunctive relief is granted. In the event that the Defendants oppose the granting of the above relief or challenge the truthfulness of the above stated facts, the Plaintiff requests the opportunity to supply the court evidence, expert testimony and memorandums in support of the contested facts and the appropriateness of the relief requested. Additionally, the Plaintiff requests an oral hearing on the evidence and memorandum filed in support of or opposing the above requested relief.

PRAYER

WHEREFORE, plaintiff prays for judgment against all defendants for actual damages in excess of \$75,000.00; injunctive relief as indicated; costs, including all appropriate attorney's fees, expert fees and expenses allowed; and for such other and further relief as the Court may deem appropriate in law and equity.

Respectfully submitted,

Bret D. Landrith
Attorney for Plaintiff

DESIGNATION OF PLACE OF TRIAL

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

Bret D. Landrith

VERIFICATION

STATE OF KANSAS)
)
COUNTY OF WYANDOTTE)

I, Samuel Lipari, President of Medical Supply Chain, Inc., being of lawful age and being first duly sworn upon my oath, state that I am the Chief Executive Officer of the corporate plaintiff herein and that I have read the above and foregoing Second Amended Complaint and find the statements therein made to be true and correct to the best of my information, knowledge and belief.

_____ November ___ 2002
Samuel K. Lipari
CEO
Medical Supply Chain, Inc.

JURY DEMAND

Plaintiffs renew their demand for a trial by jury on all issues so triable.
Respectfully submitted this 12th of November, 2002.

Bret D. Landrith
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I caused a true and correct copy of the foregoing to be deposited in the U.S. mail, postage prepaid, on this 12th day of November, 2002 addressed to:

Patrick J. McLaughlin
Mark A. Olthoff
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Certified by,

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ⁱ Omnicell, Inc. company press release dated August 07, 2001

ⁱⁱ July 27 /PRNewswire/ -- Aspect Medical Systems, Inc.

ⁱⁱⁱ *HCA Acquires Hospital Chain* (Bloomberg) Oct. 16, 02

^{iv} Omnicell, Inc. company press release dated June 17, 2002

^v NEWTON, Mass., and ST. LOUIS, Mo., Sept. 14 /PRNewswire/ -- AmeriNet, Inc.,

^{vi} The Exclusion of Competition for Hospital Sales Through GPOs, Prof. Elhauge
June 25, 2002

^{vii} *3 Medical Supply Companies Receive U.S. Agency Subpoenas*; Walsh, Mary;
NY Times, Aug. 15, 2002

viii *2 Powerful Groups Hold Sway Over Buying at Many Hospitals*; Bogdanich, Walt; NY Times, Aug, 2002

ix *Internet Supply Management Firms Merge*
Healthdatamanagement.com December 17, 1999

x US BANCORP NA web site homepage news article regarding falling values of venture funds including those of US BANCORP NA, dated Oct. 15,2002

xi Neoforma.com, Inc Press Release; March 30, 2000

Neoforma.com, Inc. (NASDAQ: NEOF), Eclipsys Corporation (NASDAQ: ECLP) and HEALTHvision, Inc., today announced the signing of definitive agreements to merge and create a new company serving the e-healthcare business-to-business (B2B) marketplace. 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).

xii Neoforma.com, Inc Press Release; May 25, 2000

Neoforma.com, Inc. (NASDAQ: NEOF) today 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.

In a related announcement, Neoforma.com, Eclipsys Corporation (NASDAQ: ECLP) and HEALTHvision, Inc. today jointly announced that they have 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.

xiii *MedCenterDirect.com Files for IPO* MedCenterDirect.com Press Release March 28, 2000

xiv *State Steps up Probe of Research at Piper Jaffray*; Meisner, Jeff; Puget Sound Business Journal Oct 21, 2002

xv IPOmonitor.com database

xvi *Commerce One Hit With A Securities Lawsuit*; Temple, James, San Francisco Business Times, June 22, 2001

^{xvii} US BANCORP PIPER JAFFRAY Venture Fund web site April 2001

^{xviii} *Hospitals Sometimes Loose Money by Using a Supply Buying Group*; Walsh, Meier; NY Times, April30, 2002

^{xix} Federal Antitrust Law: Cases and Materials; Gifford, Raskind^{2nd} Ed, 2002