APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KAN-DI-KI, LLC, a California limited liability company doing business as Diagnostic Laboratories, Plaintiff-Appellant, v. JOHN LESLIE SORENSON and TIMOTHY JAMES PAULSON, Defendants-Appellees.	No. 16-56139 D.C. No. 8:15-cv-01372-JLS-E MEMORANDUM*

Appeal from the United States District Court for the Central District of California
Josephine L. Staton, District Judge, Presiding

Argued and Submitted February 6, 2018
San Francisco, California

Before: THOMAS, Chief Judge, and D.W. NELSON and CHRISTEN, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Kan-Di-Ki, LLC, d/b/a Diagnostic Laboratories ("DL"), appeals the district court's order dismissing its federal claims with prejudice and declining to exercise supplemental jurisdiction over its state law claims. We affirm. Because the parties are familiar with the history of the case, we need not recount it here.

I

To state a claim under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962(c), a plaintiff must allege "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." *Odom v. Microsoft Corp.*, 486 F.3d 541, 547 (9th Cir. 2007) (en banc) (citation omitted). To allege a "pattern of racketeering activity," a plaintiff must plead that "the racketeering predicates are related, *and* that they amount to or pose a threat of continued criminal activity." *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239 (1989) (emphasis in original). To adequately allege the continuity prong, a plaintiff must allege either "a closed period of repeated conduct" that persisted over a "substantial period of time" ("closed-ended" continuity) or "past conduct that by its nature projects into the future with a threat of repetition" ("open-ended" continuity). *Id.* at 241–42.

A

The district court properly concluded that the amended complaint does not adequately plead closed-ended continuity. DL alleges that John Sorensen and Timothy Paulsen perpetrated a fraud scheme that lasted ten months, from January 2012 to October 2012. Even accepting the factual allegations as true and construing them in the light most favorable to DL, the alleged scheme was limited in scope. DL has not

adequately alleged that Sorensen and Paulsen perpetrated multiple schemes or that they defrauded any vendors aside from the three x-ray and laboratory vendors named in the amended complaint. We have declined to adopt a bright-line rule for how long an alleged scheme must last to establish closed-ended continuity. *Allwaste, Inc. v. Hecht*, 65 F.3d 1523, 1528 (9th Cir. 1995). However, under the circumstances present here, which involved a limited number of participants and a limited number of alleged actual victims, the alleged scheme was too limited and short in duration to sufficiently establish closed-ended continuity.

B

The district court properly concluded that the amended complaint does not adequately plead open-ended continuity. DL argues that Sorensen and Paulsen's conduct during 2012 was part of a regular way of doing business, and thus that their conduct stretches into the future with a threat of repetition. However, the three vendors targeted provided the same types of services (x-ray and laboratory services), and all three were targeted in the same time period. The fact that DL does not identify any other vendors targeted during 2012 suggests that this was a one-time scheme that was aimed at cutting costs in those service categories (whether fraudulently or legitimately).

DL cites a spreadsheet prepared for Sorensen and Paulsen that lists the total amount of credits received from the three vendors with the words "Total so far" inscribed next to the amounts. The spreadsheet only listed credits received from x-ray and laboratory

vendors, and it does not permit the inference that Sorensen and Paulsen were going to begin targeting new categories of vendors. They may merely have intended to seek further credits from the x-ray and laboratory vendors listed on the spreadsheet, whom they had already targeted. Thus, the allegations in the amended complaint are not sufficient to establish open-ended continuity.

C

The district court properly concluded that the amended complaint does not adequately plead post-2012 conduct that would bolster its arguments for closed-ended and open-ended continuity.

1

DL argues that three internal emails sent in 2013 are evidence that fraudulent conduct continued beyond 2012. As the district court observed, these emails may simply reflect that Sorensen and Paulsen were lawfully working to negotiate with vendors. DL does not plausibly allege that these emails are more likely to reflect an intent to defraud than an intent to reduce costs through legal means. Nor has DL plausibly alleged that these emails were "incident" to a post-2012 fraud scheme, because there are no well-pled allegations that there was any scheme to defraud vendors after 2012. The amended complaint contains no specific facts about any fraudulent conduct toward any identifiable third parties after 2012. Thus, the post-2012 fraud allegations do not bolster DL's arguments for closed-ended or open-ended continuity.

2

DL alleges that Sorensen and Paulsen engaged in conduct after 2012 that was designed to protect and

maintain the 2012 scheme, including extortion, obstruction of justice, and witness tampering. The post-2012 non-fraud allegations are not adequately pled, and on that ground alone cannot extend the 2012 fraud scheme. Even if they were adequately pled, actions that merely shield defendants from liability for a past fraudulent scheme do not extend that scheme unless other circumstances suggest that the scheme is not yet complete. *Cf. Sun Sav. and Loan Ass'n v. Dierdorff*, 825 F.2d 187, 194 (9th Cir. 1987) (actions taken to conceal kickbacks posed a threat of continuity because they "in no way completed the criminal scheme"). Thus, the post-2012 non-fraud allegations do not bolster DL's arguments for closed-ended or open-ended continuity.

II

The district court's jurisdiction over this case was premised on the existence of federal law claims. *See* 28 U.S.C. § 1367(c)(3). The district court properly dismissed DL's federal law claims with prejudice. Thus, the court acted within its discretion when it declined to exercise supplemental jurisdiction over the state law claims and dismissed those claims without prejudice. We need not, and do not, determine any other issue urged by the parties.

All pending motions are denied as moot.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 15-1372-JLD (Ex) Date: August 5, 2016
Title: Kan-Di-Ki, LLC v. John Leslie Sorenson et al.

Present: **Honorable JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE**

Terry Guerrero	N/A
Deputy Clerk	Court Reporter
ATTORNEYS PRESENT FOR PLAINTIFF:	ATTORNEYS PRESENT FOR DEFENDANT:
Not Present	Not Present

PROCEEDINGS: (IN CHAMBERS) ORDER GRANTING DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT (Doc. 63)

Before the Court is a Motion to Dismiss the First Amended Complaint filed by Defendants John Sorensen and Timothy Paulsen. (Mot., Doc. 63.) Plaintiff Kan-Di-Ki, LLC opposed, and Defendants replied. (Opp., Doc. 69; Reply, Doc. 78.) Having taken

the matter under submission and having read and considered the parties' briefs, the Court GRANTS Defendants' Motion as to Plaintiff's RICO claims and DECLINES to exercise supplemental jurisdiction over the remaining state-law claims.

I. BACKGROUND

The First Amended Complaint alleges the following facts:

Plaintiff Kan-Di-Ki, LLC [1] provides mobile diagnostic laboratory, ultrasound, x-ray and other ancillary services to long-term patient care facilities in the western United States. (FAC ¶ 18, Doc. 57.) First Choice Mobile Radiology Services, LLC, Schryver Medical Sales and Marketing, Inc., Pacific Coast Laboratories, and West Valley Radiology are ancillary service vendors that provide similar services to patient care facilities. (*Id.* ¶¶ 20–25.)

Defendant John Sorensen is the President and Chief Executive Officer of North American Health Care, Inc. ("NA"), and Defendant Timothy Paulsen is the Chief Operating Officer of NA. (*Id.* ¶¶ 32, 37.) NA provides services to thirty-five patient care facilities, and it assists these facilities with their relationships to ancillary service vendors like DL, First Choice, and Schryver Medical. (*Id.* ¶¶ 28, 29.) NA helps identify and negotiate with potential vendors, makes recommendations on the selection and termination of vendors, and deals with other vendor issues like billing. (*Id.*) Until 2012, DL had written contracts

[1] Plaintiff Kan-Di-Ki LLC indicates in the FAC that it does business as Diagnostic Laboratories, and it refers to itself as "DL" throughout the amended complaint. (*See, e.g.*, FAC at 2.)

with twenty-seven NA facilities to provide various services. (*Id.* ¶ 39.) DL alleges that in late 2011 or early 2012, Sorensen and Paulsen made a decision to cause the NA facilities to terminate all contracts with all existing ancillary service vendors. (*Id.* ¶ 2.)

In January 2012, Paulsen retained Robert Suer to review Plaintiff's bills for x-ray and laboratory services, and Paulsen encouraged Suer to "extract payments, credits[,] and other financial concessions from [multiple] vendors." (*Id.* ¶¶ 58–60.) In March 2012, Sorensen and Paulsen informed DL it had overcharged the NA facilities. (*Id.* ¶ 65.) DL alleges that Defendants knowingly, willfully, and unlawfully misrepresented that (1) they performed an audit of DL's invoices and (2) they found certain charges to be improper, thereby creating a "good faith billing dispute." (*Id.* ¶¶ 66–67, 70.) However, DL alleges that Defendants never performed this audit. (*Id.* ¶ 121.) Paulsen allegedly used these misrepresentations to create a pretext for negotiation to demand payments or credits from DL. (*Id.* ¶ 67.) DL alleges that similar misrepresentations were made to First Choice and Schryver. (*Id.* ¶¶ 122–51.) Despite issuing credits or continuing to provide services on an unpaid basis in response to the misrepresented billing disputes, (*id.* ¶¶ 78, 133, 147), First Choice's contracts were canceled in March 2012, (*id.* ¶ 148), Schryver's contracts were canceled in June 2012, (*id.* ¶ 134), and DL's contracts were cancelled in August 2012, (*id.* ¶ 119).

DL alleges that in or around October 2012, Suer prepared a spreadsheet for Paulsen listing each NA facility, the amount credited from vendors, and the type of contract held by the vendor (x-ray or lab). (*Id.*

¶ 152.) At the bottom of the spreadsheet was a line reflecting the total amount of credits received, and next to the total were the words: "Total so far." (*Id.*) DL also alleges that during this time frame, with the knowledge and approval of Defendants, Suer solicited or accepted money in excess of $10,000 from competitors to replace the ancillary vendors at NA facilities. (*Id.* ¶¶170–82.)

Before Defendants hired Suer, Suer was introduced to them as a possible auditor by Shaun Dahl, an administrator of a NA facility. (*Id.* ¶¶ 56–57.) However, Suer was a former employee of DL. (*Id.* ¶ 42.) Suer was a party to two purchase agreements in July 2008 and May 2009 that restrained him from (a) disclosing or using any confidential information relating to DL's business, (b) competing with DL for a five-year period in the geographic area of its business, (c) soliciting, diverting, or interfering with current customers or suppliers to secure business competition with DL, or (d) taking any action designed to encourage any of DL's lessors, licensors, suppliers, distributors, or customers from altering their relationship in a manner adverse to DL. (*Id.* ¶¶ 43–44.) Based on Suer's work for NA and the alleged breaches of the above two purchase agreements, DL filed an action against Suer in Delaware Chancery Court in October 2012 for injunctive and monetary relief. (*Id.* ¶ 49.) DL sought to enjoin Suer from, among other things, working at NA. (*Id.* ¶ 155.) Soon after the Delaware lawsuit was filed, Sorensen and Paulsen "mobilized" to defend against DL's objectives in the Delaware lawsuit. (*Id.* ¶ 156.) Defendants allegedly (1) "loan[ed]" Suer the funds to hire counsel "to mount a vigorous and bad faith defense," (2) delayed the

Delaware action "to run out the clock until Suer's contractual covenants to DL expired," (3) withheld relevant documents and impeded discovery, (4) caused Suer to file for chapter 7 bankruptcy to stay the Delaware action, and (5) ultimately perjured themselves. (*Id.* ¶ 157.) DL alleges that Defendants did so to "prevent Suer from being enjoined and to keep him working on their lucrative Fraudulent Shakedown Scheme." (*Id.* ¶ 156.)

In 2013, Muir Laboratories—the laboratory service provider that replaced DL regarding at least one NA facility—announced it would no longer provide mobile laboratory services. (*Id.* ¶ 210.) DL reached out to the NA facility to request an opportunity to again work with the facility. (*Id.* ¶ 211.) When asked about DL by a representative from the facility, Suer recommended a different laboratory vendor. (*Id.* ¶ 215.) DL alleges that "Sorensen and Paulsen's overbilling accusations thus continued to cause DL to be shut out of this business opportunity." (*Id.*)

On April 21, 2014, DL filed an adversary proceeding against Suer in Bankruptcy Court. (*Id.* ¶ 230.) DL alleges that Defendants obstructed the adversary proceeding. (*Id.* ¶¶ 258–91.) The adversary proceeding is currently pending. (*Id.* ¶ 51.) On July 22, 2015, the Delaware court held that Suer had breached his non-compete covenants and that Plaintiff was entitled to injunctive relief against him. (*Id.* ¶ 254–55.)

On August 28, 2015, DL filed the instant action against Sorensen and Paulson for the following claims: (1) federal civil RICO, 18 U.S.C. § 1962(c); (2) federal civil RICO conspiracy, 18 U.S.C. § 1962(d), (3) tortious

interference with contract, and (4) tortious interference with prospective economic advantage. (Compl. ¶¶ 35–148, Doc. 1.) On March 24, 2016, the Court dismissed DL's RICO claims without prejudice and declined to exercise supplemental jurisdiction over DL's state-law claims. (Dismissal Order, Doc. 50.) Specifically, the Court found that DL failed to adequately allege continuity or racketeering activity. (*Id*. at 5–20.) On April 21, 2016, DL filed a First Amended Complaint. (FAC.) Defendants now move to dismiss the FAC in its entirety.

II. LEGAL STANDARD

In deciding a motion to dismiss under Rule 12(b)(6), courts must accept as true all "well-pleaded factual allegations" in a complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). Furthermore, courts must draw all reasonable inferences in the light most favorable to the non-moving party. *See Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010). However, "courts 'are not bound to accept as true a legal conclusion couched as a factual allegation.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). And while judicial review is generally limited to the face of a complaint, courts may properly consider "documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Harris v. Amgen, Inc.*, 738 F.3d 1026, 1035 (9th Cir. 2013) (quoting *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007)).

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'"

Iqbal, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556). Although a complaint "does not need detailed factual allegations," the "[f]actual allegations must be enough to raise a right to relief above the speculative level . . . ." *Twombly*, 550 U.S. at 555. Thus, a complaint must (1) "contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively[,]" and (2) "plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation." *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

III. DISCUSSION

A. RICO

Defendants first move to dismiss DL's claims for violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(c). To state a claim under RICO, "a plaintiff must allege '(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.'" *Odom v. Microsoft Corp.*, 486 F.3d 541, 547 (9th Cir. 2007) (en banc) (quoting *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985)). Private plaintiffs must also establish that they suffered an injury to business or property. *Steele v. Hosp. Corp. of Am.*, 36 F.3d 69, 70 (9th Cir. 1994) (citing 18 U.S.C. § 1964(c)). As to DL's RICO claims, Defendants argue that DL fails to allege (1) a cognizable injury to business or property, (2) causation,

(3) a proper RICO enterprise, (4) racketeering activity, and (5) a pattern of continuing racketeering. (Mem. at 4-23, Doc. 63.)

1. Continuity

The Court first addresses element (5) above, whether DL sufficiently alleges a pattern of continuing racketeering. To adequately allege a pattern of racketeering activity, a plaintiff's allegations must demonstrate that "the racketeering predicates are related, *and* that they amount to or pose a threat of continued criminal activity." *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239 (1989). "'Continuity' is both a closed- and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition." *Id.* at 241 (citing *Barticheck v. Fid. Union Bank/First Nat'l State*, 832 F.2d 36, 39 (3d Cir. 1987)). "It is, in either case, centrally a temporal concept[.]" *Id.* at 241–42.

Defendants argue that DL's alleged predicate acts fail to establish either closed- ended or open-ended continuity. (Mem. at 4–7.) DL alleges a wide range of predicate acts: (1) mail and wire fraud spanning from January 2012 to early October 2012 related to the purported billing disputes and resulting cancellation of vendor contracts, (FAC ¶¶ 350–419), (2) mail and wire fraud in June 2013 related to DL's Delaware action against Suer, (*id.* ¶¶ 421–22), (3) bribery undertaken by Suer with Defendants' knowledge and approval between early 2012 to June 2012 to replace vendors with competitors, (*id.* ¶¶ 427–33), (4) extortion to coerce DL and other vendors to issue monetary credits in April and June 2012, (*id.* ¶¶ 436,

439), (5) extortion to coerce DL into giving "full and unfettered access to exercise the intellectual property in Suer's possession for [Defendants'] own benefit" in May 2014, (*id.* ¶¶ 448–50), (6) obstruction of justice related to DL's adversary proceeding as well as this action for conduct occurring after April 2014 and August 2015, respectively, (*id.* ¶¶ 451–79), and (7) tampering with DL's witness in the adversary proceeding, (*id.* ¶¶ 480–87). When addressing DL's initial Complaint, the Court found that DL failed to adequately allege either closed-ended or open-ended continuity. (Dismissal Order at 5–9.) For the following reasons, the Court finds that DL has not remedied these deficiencies.

i. *Closed-Ended Continuity*

The Court first addresses closed-ended continuity. A plaintiff may allege closed-ended continuity "by proving a series of related predicates extending over a substantial period of time." *H.J. Inc.*, 492 U.S. at 242. "The underlying rationale is that the duration and repetition of the criminal activity carries with it an implicit threat of continued criminal activity in the future." *Midwest Grinding Co. v. Spitz*, 976 F.2d 1016, 1022–23 (7th Cir. 1992). Because "Congress was concerned in RICO with long-term criminal conduct," "[p]redicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement[.]" *H.J. Inc.*, 492 U.S. at 242. At issue in this action is Defendants' purported scheme to "shake down" ancillary vendors, which Defendants allegedly effectuated through the predicate acts identified above. To adequately allege closed-period continuity in this case, Plaintiff must plead facts demonstrating that the "shake down"

scheme itself "extend[ed] over a substantial period of time." *See id*.

As noted above, the crux of the alleged scheme took place in 2012. To extend the duration of the alleged scheme, DL points to actions that were purportedly undertaken to perpetuate the scheme beyond 2012. First, DL identifies alleged misconduct related to the Delaware action and the bankruptcy adversary proceeding. (Opp. at 17.) In our prior Dismissal Order, the Court noted that to the extent any actions to extort or obstruct the Delaware action were for the purpose of concealing the "shake down" scheme and allowing it to continue, the actions did *not* extend the duration of the purported scheme. (Dismissal Order at 6.) When addressing the question of closed-ended continuity, courts have held that actions allegedly performed to conceal a party's wrongdoing, "even if" those actions themselves "qualify as predicate acts," nevertheless "do nothing to extend the *duration* of the underlying . . . scheme." *See Midwest*, 976 F.2d at 1024; *see also Aldridge v. Lily-Tulip, Inc*., 953 F.2d 587, 593–94 (11th Cir. 1992) (predicate acts to conceal the underlying wrongdoing in a RICO suit did not extend the six-month duration of the underlying scheme).

In its amended complaint, DL provides additional allegations of Defendants' litigation misconduct and re-characterizes the purported relevance of these allegations. DL now alleges that during the scope of litigation, Defendants made material misrepresentations to DL, attempted to extort money and intellectual property, and obstructed justice all "to prevent Suer from being enjoined from working at NA[] so that he could and can keep working *on the continuing* Fraudulent Shakedown Scheme." (FAC

¶ 10 (emphasis added).) However, these allegations assume there was a fraudulent scheme *still in place after 2012*. To plausibly allege that the fraudulent scheme extended beyond 2012, it is insufficient to assert only that Defendants sought to retain Suer as an employee; DL must also adequately allege facts suggesting the scheme was, in fact, "continuing," such that Suer "could . . . keep working on the . . . Scheme." (*Id*.) Accordingly, on their own, the above allegations of litigation misconduct do not extend the duration of the alleged scheme.

DL then points to allegations of 2013 communications that "are not in and of themselves fraudulent," but are allegedly "part of the execution of the Scheme and demonstrate that it continued after 2012." (Opp. at 16–17.) These communications include the following:

1. A May 30, 2013 email sent by Paulsen to NA personnel in which (a) he asserts Suer is assisting Defendants with "ancillary services/vendor contract renegotiations" and is "currently focusing on pharmacy services," and (b) encourages NA personnel to ask vendors to re-price contracts where vendors have been "over charging" for years (FAC ¶ 490);
2. A May 30, 2013 email from Suer to Dahl regarding a vendor that had recently had its contract canceled. (*Id*. ¶ 494.) Suer advised Dahl to deny this vendor the opportunity to rebid because it did not renegotiate its contract terms when asked. (*Id*.)

3. A July 9, 2013 email from Paulsen to NA facilities wherein Paulsen indicates that Suer "has two pharmacy proposals for your review that would result in significant savings for your facility." (*Id.* ¶ 497.) Paulsen then directs the facilities personnel to send the attached 60 day cancellation notice to the then-contracting vendor to "move this process along." (*Id.*)

As alleged, these communications do not suggest the scheme continued in 2013. The above communications, which DL acknowledges are "not in and of themselves fraudulent," (Opp. at 16), reflect lawful intent and common business sense. The communications encourage clients to try renegotiating unfavorable contract terms, advise clients to ignore re-bids from a prior vendor because the vendor would not renegotiate its terms, and encourage clients to provide 60-day cancellation notices to current vendors after finding alternative vendors with more favorable terms. These communications do not "tend[] to exclude the possibility that the alternative explanation is true," that Defendants were lawfully working to negotiate with vendors and recoup costs. *See Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 996–97 (9th Cir. 2014).

DL correctly notes that in *Schmuck v. United States*, 489 U.S. 705 (1989), the Supreme Court held that an innocent or routine mailing "'incident to an essential part of the scheme' . . . satisfies the mailing element of the mail fraud offense." *Id.* at 712 (quoting *Pereira v. United States*, 347 U.S. 1, 8 (1954)); (Opp. at 16). In *Schmuck*, the defendant "was charged with devising and executing a scheme to defraud Wisconsin retail

automobile customers who based their decisions to purchase certain automobiles at least in part on the low-mileage readings provided by [] tampered odometers." *Schmuck*, 489 U.S. at 711. The Court reasoned that although innocent or routine "registration-form mailings may not have contributed directly to the duping of either the retail dealers or the customers, they were necessary to the passage of title, which was in turn essential to the perpetuation of Schmuck's scheme." *Id*. at 712. Accordingly, the Court held "a rational jury could have found that the title-registration mailings were part of the execution of the fraudulent scheme, a scheme which did not reach fruition until the retail dealers resold the cars and effected transfers of title." *Id*.

Here, DL fails to allege that the 2013 communications are "incident to an essential part of the scheme." *Id*. (quoting *Pereira*, 347 U.S. at 8). The Court notes that the purported "shake down scheme" involved (1) material misrepresentations that Defendants had conducted an audit and had discovered instances of overbilling as to existing vendors, creating a mistaken impression of a good faith billing dispute, (2) demands for money or credits by Defendants from the existing vendors while, at the same time, falsely representing there was an opportunity for existing vendors to maintain their contracts with the NA facilities if the disputes were resolved, and (3) the withholding of payment for vendor services to account for the alleged "overcharges." (FAC ¶¶ 4–8.) Notably, there are *no* well-pleaded factual allegations that in 2013, Defendants made any material misrepresentations of audits, demanded credits while falsely promising that

vendors' contracts could be maintained, or withheld payment for falsified overcharges.[2] There are therefore *no* well-pleaded factual allegations that the fraudulent scheme continued into 2013. Standing alone, the above 2013 communications—which are "not in and of themselves fraudulent" and, as noted above, reflect lawful intent and common business sense—do *not* "demonstrate [the scheme] continued after 2012." (Opp. at 16.) Accordingly, for the purposes of continuity, the above allegations do not extend the duration of the scheme.

Finally, DL points to allegations that DL was later "shut out from doing business with NA facilities based on the false overcharge accusations" it suffered in 2012. (Opp. at 17.) These assertions argue that DL continues to suffer the *effects* of the alleged shakedown scheme. "The fact that . . . [the plaintiff] continues to suffer the effects thereof [] is of no import to the Court's 'continuity' determination." *Streamcast Networks, Inc. v. Skype Tech., S.A.*, No. CV 06-391 FMC (Ex), 2006 WL 5437323, at *8 (C.D. Cal. Sept. 14, 2006) (citing *Pier Connection v. Lakhani*, 907 F. Supp.

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[2] The Court notes that in paragraph 420 of the FAC, DL alleges that on dates "unknown to Plaintiff" between 2012 and the present, Defendants engaged in mail and wire fraud as to unidentified vendors that "reflect the same pattern of conduct as exhibited with DL, Schryver Medical, First Choice and other x-ray and laboratory vendors." (FAC ¶ 420.) "[C]onclusory allegations that other, unidentified . . . 'customers' were affected by the alleged [] scheme . . . [are] insufficient to allege" continuity. *Higgins v. Farr Fin., Inc.*, No. C 07-022000 JSW, 2009 WL 3517597, at *3 (N.D. Cal. Oct. 26, 2009) (citing *Emery v. Am. Gen. Fin. Inc.*, 71 F.3d 1343, 1348 (7th Cir. 1996); *Jepson, Inc. v. Makita Corp.*, 34 F.3d 1321, 1328 (7th Cir. 1994); *Schreiber Distributing Co.*, 806 F.2d at 1401).

72, 76 (S.D.N.Y. 1995)); *Concorde Equity II, LLV v. Miller*, 732 F. Supp. 2d 990, 999 (N.D. Cal. 2010). Accordingly, DL fails to provide any allegations that extend the scheme beyond the ten months previously identified as insufficient in the Court's prior Dismissal Order. (*See* Dismissal Order at 7–8); *Religious Tech. Ctr. v. Wollersheim*, 971 F.2d 364, 366–67 (9th Cir. 1992) (collecting cases and stating "[w]e have found no case in which a court has held the [closed-period continuity] requirement to be satisfied by a pattern of activity lasting less than a year."); *Primary Care Inv'rs, Seven, Inc. v. PHP Healthcare Corp.*, 986 F.2d 1208, 1215–16 (8th Cir. 1993) (collecting cases and holding that a ten to eleven month period is "insubstantial" for purposes of closed-ended continuity).

In its opposition brief, DL argues the Ninth Circuit has rejected any bright-line rule as to how much time constitutes a "substantial period." (Opp. at 15.) In *Allwaste, Inc. v. Hecht*, 65 F.3d 1523 (9th Cir. 1995), the Ninth Circuit asserted courts would "be misguided . . . if [they] construed the[] observations [in *Religious Tech. Ctr.*] as establishing a hard and fast, bright line, one-year rule." *Id.* at 1528. The Ninth Circuit asserted such a "rigid requirement . . . would contradict the fluid concept of continuity enunciated by the Supreme Court in *H.J. Inc.*" *Id.* As noted by DL, at least one California district court has declined to dismiss a RICO claim that alleged a six-month scheme because "it cannot be determined at the pleading stage, as a matter of law, that a six-month period does or does not constitute a 'substantial period' of time." *UtheTech. Corp. v. Aetrium, Inc.*, No. C 95-02377 WHA, 2012 WL 4470536, at *5 (N.D. Cal. Sept. 27, 2012) (citing *Allwaste*, 65 F.3d at 1528).

The Court notes that "[t]he requirement of 'continuity' distinguishes ordinary commercial disputes from civil RICO violations." *N. Shore Med. Ctr., Ltd. v. Evanston Hosp. Corp.*, No. 92 C 6533, 1995 WL 723761, at *7 (N.D. Ill. Dec. 5, 1995). "Continuity has [therefore] evolved as a judicially created means of developing a meaningful concept of pattern, in light of the failure of Congress to do so." *Id.* (citing *H.J. Inc.*, 492 U.S. at 237–37). The underlying rationale for the requirement that a "series of related predicates extend[] over a *substantial* period of time" is to respect Congress' concern with "long-term criminal conduct." *H.J. Inc.*, 492 U.S. at 242 (emphasis added). Thus, "[p]redicate acts extending over a few weeks or months *and threatening no future criminal conduct* do not satisfy th[e] requirement" of closed-ended continuity. *Id.* (emphasis added). DL does not identify, and the Court has not found, any case where a ten-month scheme that concluded approximately three years before the filing of the complaint satisfied the closed-ended continuity requirement. Following *Allwaste*, courts continue to dismiss RICO claims at the pleading stage where the plaintiff fails to allege a scheme extending over a "substantial period of time." *See, e.g.*, *Vaugh v. Diaz*, No. 12-cv-1181 BEN, 2013 WL 150487, at *4 (S.D. Cal. Jan. 14, 2013) (dismissing RICO claim for pattern that allegedly lasted eight to nine months); *Northwest Osteoscreening, Inc. v. Mountain View Hospital, LLC*, No. 4:13-cv-00414-BLW, 2014 WL 4955673, at *5 (D. Idaho Oct. 2, 2014) (same for pattern that allegedly lasted seven months).

Moreover, the Court notes that the Ninth Circuit's caution against the application of any bright-line rule in *Allwaste* was because the district court had

"concluded that the closed-ended continuity requirement under RICO meant that the alleged predicate acts *must* span at least one year." *Allwaste*, 65 F.3d at 1526 (emphasis added). The Court makes no such proclamation. Rather, based on the nature of the allegations at issue in this action—an alleged pattern of no more than ten months that concluded approximately three years before the filing of the complaint, with no well-pleaded factual allegations plausibly threatening future criminal conduct—the Court finds that DL fails to satisfy the closed-ended continuity requirement.

ii. *Open-Ended Continuity*

DL also fails to allege open-ended continuity. "[T]o allege open-ended continuity, a RICO plaintiff must charge a form of predicate misconduct that 'by its nature projects into the future with a threat of repetition.'" *Turner v. Cook*, 362 F.3d 1219, 1229 (9th Cir. 2004) (quoting *Religious Tech. Ctr.*, 971 F.2d at 366). This threat may be "either implicit or explicit." *H.J. Inc.*, 492 U.S. at 242. For example, a plaintiff may demonstrate this requisite threat by alleging that "the racketeering acts themselves include a specific threat of repetition extending indefinitely into the future," "the predicate acts or offenses are part of an ongoing entity's regular way of doing business," or the "predicates [are] attributed to a defendant operating as part of a long-term association that exists for criminal purposes." *Id.* at 242–43. "Although the Supreme Court does not define the bounds of open-ended continuity [in *H.J., Inc.*], 'its illustrations [in that case] indicate a requirement of far more than a hypothetical possibility of further predicate acts.'" *Higgins v. Farr Fin. Inc.*, No. C 07-02200 JSW, 2009

WL 3517597, at *2 (N.D. Cal. Oct. 26, 2009) (quoting *Pyramid Sec. Ltd. v. IB Resolution, Inc.*, 924 F.2d 1114, 1119 (D.C. Cir. 1991)).

As explained above, the crux of DL's allegations as to the "shake down" scheme involve predicate acts occurring only in 2012. To assert open-ended continuity, DL relies on the above allegations concerning Defendants' purported litigation misconduct and DL's subsequent inability to obtain contracts with NA facilities. (Opp. at 18–19.) DL also asserts that the 2013 communications demonstrate it "was a regular and repeated practice for NA, directed by Paulsen," to engage in "fraudulent shakedown tactics" that were initially directed towards the "x-ray and laboratory vendors in 2012." (FAC ¶¶ 491, 498.) Finally, DL alleges that Suer prepared a spreadsheet in October 2012 that listed each NA facility, the amount credited by vendor, and the type of contract at issue with each vendor. (FAC ¶ 152.) At the bottom of the spreadsheet was a line reflecting the total credits received, and the words "Total so far" was allegedly written next to this amount. (*Id.*) DL asserts the presence of these words suggests the scheme "was a trend that seems likely to continue." (*Id.* ¶ 153.)

These allegations fail to adequately assert "predicate misconduct that 'by its nature *projects into the future with a threat of repetition*.'" *Turner*, 362 F.3d at 1229 (emphasis added). For the reasons asserted above, DL's reliance on allegations of Defendants' purported litigation misconduct, DL's subsequent inability to obtain NA contracts, and the non-fraudulent 2013 communications are misplaced. DL fails to identify *any* victims of Defendants' alleged scheme after DL, First Choice, and Schryver Medical

were replaced by other vendors, and there are *no* well-pleaded factual allegations that after 2012, Defendants engaged in any conduct that extended the alleged scheme. Notably, DL fails to allege that Defendants continued to make material misrepresentations of audits to vendors, to demand credits while falsely promising that vendors' contracts could be maintained, or to withhold payment for falsified overcharges. At most, DL alleges a short-term fraudulent scheme concerning laboratory and radiology providers that concluded in 2012 when NA facilities replaced those vendors. Alleged misconduct that "occur[s] entirely within the context of a single [event] do[es] not 'by nature' project into the future or constitute 'a regular way of doing business.'" *Steam Press Holdings, Inc. v. Hawaii Teamsters*, 302 F.3d 998, 1011 (9th Cir. 2002) (quoting *Howard v. Am. Online Inc.*, 208 F.3d 741, 750 (9th Cir. 2000)). Approximately three years have elapsed between the last alleged predicate act affirmatively effectuating the scheme and the filing of the Complaint, which provides "a strong indication that the alleged racketeering activity has come to an end." *Sea-Land Serv., Inc. v. Atlantic Pac. Int'l, Inc.*, 61 F. Supp. 2d 1102, 1117 (D. Haw. 1999). Thus, based on the nature of its own allegations, DL fails to assert "more than a hypothetical possibility of further predicate acts.'" *Higgins*, 2009 WL 3517597, at *2 (citation omitted).

For the above reasons, DL fails to allege either closed-ended or open-ended continuity. The Court notes that its prior dismissal of DL's RICO claims rested in part on DL's failure to adequately allege continuity. (Dismissal Order at 6–9.) Thus, even after stretching the operative complaint from sixty-two to

140 pages, DL fails once again to state a § 1962(c) RICO claim. "The district court's discretion to deny leave to amend is particularly broad where [the] plaintiff has previously amended the complaint." *Arya v. CalPERS*, 943 F. Supp. 2d 1062, 1072 (E.D. Cal. 2013) (quoting *Metzler Inv. GMBH v. Corinthian Colls., Inc.*, 540 F.3d 1049, 1072 (9th Cir. 2008)). In its opposition brief, DL broadly asserts it "should be permitted to amend to allege additional documents and information from NA's production in the Adversary Proceeding that Defendants will not allow DL to use in this Action." (Opp. at 17.) However, DL fails to assert beyond a conclusory fashion how any additional information would be *relevant to the issue of continuity*, and DL "fail[s] to come forward with [any] additional facts that would meet the [continuity] requirement." *DSAM Global Value Fund v. Altris Software, Inc.*, 288 F.3d 385, 391 (9th Cir. 2002). Dismissal with prejudice is therefore proper. *Id.* Because the Court grants dismissal with prejudice, we need not address Defendants' other arguments for dismissal of this claim.

B. Conspiracy to Violate RICO

Section 1962(d) of the Anti-Racketeering Act provides: "It shall be unlawful for any person to conspire to violate any of the [other RICO] provisions." 18 U.S.C. § 1962(d). "Plaintiffs cannot claim that a conspiracy to violate RICO existed if they do not adequately plead a substantive violation of RICO." *Sanford v. MemberWorks, Inc.*, 625 F.3d 550, 559 (9th Cir. 2010) (quoting *Howard*, 208 F.3d at 751). Because DL's RICO claims fail, so does its RICO conspiracy claim. The Court thereby GRANTS Defendant's

Motion as to the claim for conspiracy to violate RICO, which is also DISMISSED WITH PREJUDICE.[3]

C. State-Law Claims

The Court's jurisdiction over this matter is premised on the existence of federal- law claims. (*See* FAC ¶ 16.) Having dismissed Plaintiff's federal-law claims with prejudice, the Court declines to exercise supplemental jurisdiction over the state law claims and dismisses those claims without prejudice. *Lacey v. Maricopa County*, 649 F.3d 1118, 1137 (9th Cir. 2011) (citation omitted) ("[T]he district court retains discretion whether to exercise supplemental jurisdiction over state law claims even after all federal claims [have been] dismissed."); *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988) (citations omitted) ("[W]hen the federal-law claims have dropped out of the lawsuit in its early stages and only state-law claims remain, the federal court should decline the exercise of jurisdiction by dismissing the case without prejudice.").

IV. CONCLUSION

For the foregoing reasons, the Court GRANTS Defendants' Motion as to Plaintiff's RICO claims and conspiracy to violate RICO claims, which are DISMISSED WITH PREJUDICE. The Court DECLINES to exercise supplemental jurisdiction over Plaintiff's state-law claims, which are DISMISSED

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[3] With their Motion to Dismiss, Defendants requested that the Court take judicial notice of certain documents. (RJN, Doc. 63-1.) Because the Court need not rely on any identified documents in Defendants' first request for judicial notice for the purposes of this Order, it does not address this request.

WITHOUT PREJUDICE to being filed in a proper court.

Initials of Preparer: tg

APPENDIX C

18 U.S.C. Pt. I
CHAPTER 96—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

Sec.

18 U.S.C. § 1961. Definitions

As used in this chapter—

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States

Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891–894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1351 (relating to fraud in foreign labor contracting), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461–1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of

passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581–1592 (relating to peonage, slavery, and trafficking in persons).,[1] sections 1831 and 1832 (relating to economic espionage and theft of trade secrets), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), section 1960 (relating to illegal money transmitters), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances),

section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341–2346 (relating to trafficking in contraband cigarettes), sections 2421–24 (relating to white slave traffic), sections 175–178 (relating to biological weapons), sections 229–229F (relating to chemical weapons), section 831 (relating to nuclear materials), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain, or (G) any act that is indictable under any provision listed in section 2332b(g)(5)(B);

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) " unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the

Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

Footnotes

1 So in original.

18 U.S.C. § 1962. Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign

commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

18 U.S.C. § 1963. Criminal penalties

(a) Whoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment), or both, and shall forfeit to the United States, irrespective of any provision of State law—

(1) any interest the person has acquired or maintained in violation of section 1962;

(2) any—

(A) interest in;

(B) security of;

(C) claim against; or

(D) property or contractual right of any kind affording a source of influence over;

any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962; and

(3) any property constituting, or derived from, any proceeds which the person obtained, directly or

indirectly, from racketeering activity or unlawful debt collection in violation of section 1962.

The court, in imposing sentence on such person shall order, in addition to any other sentence imposed pursuant to this section, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this section, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(b) Property subject to criminal forfeiture under this section includes—

(1) real property, including things growing on, affixed to, and found in land; and

(2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

(c) All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (l) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(d)(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or

take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section—

(A) upon the filing of an indictment or information charging a violation of section 1962 of this chapter and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the

United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than fourteen days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time, and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(e) Upon conviction of a person under this section, the court shall enter a judgment of forfeiture of the property to the United States and shall also authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following the entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to, or derived from, an enterprise or an interest in an enterprise which has been ordered forfeited under this

section may be used to offset ordinary and necessary expenses to the enterprise which are required by law, or which are necessary to protect the interests of the United States or third parties.

(f) Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with or on behalf of the defendant be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with or on behalf of the defendant, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm or loss to him. Notwithstanding 31 U.S.C. 3302(b), the proceeds of any sale or other disposition of property forfeited under this section and any moneys forfeited shall be used to pay all proper expenses for the forfeiture and the sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and court costs. The Attorney General shall deposit in the Treasury any amounts of such proceeds or moneys remaining after the payment of such expenses.

(g) With respect to property ordered forfeited under this section, the Attorney General is authorized to—

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this chapter;

(2) compromise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(h) The Attorney General may promulgate regulations with respect to—

(1) making reasonable efforts to provide notice to persons who may have an interest in property ordered forfeited under this section;

(2) granting petitions for remission or mitigation of forfeiture;

(3) the restitution of property to victims of an offense petitioning for remission or mitigation of forfeiture under this chapter;

(4) the disposition by the United States of forfeited property by public sale or other commercially feasible means;

(5) the maintenance and safekeeping of any property forfeited under this section pending its disposition; and

(6) the compromise of claims arising under this chapter.

Pending the promulgation of such regulations, all provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the Customs Service or any person with respect to the disposition of property under the customs law shall be performed under this chapter by the Attorney General.

(i) Except as provided in subsection (l), no party claiming an interest in property subject to forfeiture under this section may—

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that

the property is subject to forfeiture under this section.

(j) The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(k) In order to facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

(l)(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of

notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or

interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(m) If any of the property described in subsection (a), as a result of any act or omission of the defendant—

(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with, a third party;

(3) has been placed beyond the jurisdiction of the court;

(4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

18 U.S.C. § 1964. Civil remedies

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a

reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

18 U.S.C. § 1965. Venue and process

(a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.

(b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

(c) In any civil or criminal action or proceeding instituted by the United States under this chapter in

the district court of the United States for any judicial district, subpenas issued by such court to compel the attendance of witnesses may be served in any other judicial district, except that in any civil action or proceeding no such subpena shall be issued for service upon any individual who resides in another district at a place more than one hundred miles from the place at which such court is held without approval given by a judge of such court upon a showing of good cause.

(d) All other process in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides, is found, has an agent, or transacts his affairs.

18 U.S.C. § 1966. Expedition of actions

In any civil action instituted under this chapter by the United States in any district court of the United States, the Attorney General may file with the clerk of such court a certificate stating that in his opinion the case is of general public importance. A copy of that certificate shall be furnished immediately by such clerk to the chief judge or in his absence to the presiding district judge of the district in which such action is pending. Upon receipt of such copy, such judge shall designate immediately a judge of that district to hear and determine action.

18 U.S.C. § 1967. Evidence

In any proceeding ancillary to or in any civil action instituted by the United States under this chapter the proceedings may be open or closed to the public at the

discretion of the court after consideration of the rights of affected persons.

18 U.S.C. § 1968. Civil investigative demand

(a) Whenever the Attorney General has reason to believe that any person or enterprise may be in possession, custody, or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

(b) Each such demand shall—

(1) state the nature of the conduct constituting the alleged racketeering violation which is under investigation and the provision of law applicable thereto;

(2) describe the class or classes of documentary material produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(3) state that the demand is returnable forthwith or prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(4) identify the custodian to whom such material shall be made available.

(c) No such demand shall—

(1) contain any requirement which would be held to be unreasonable if contained in a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation; or

(2) require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation.

(d) Service of any such demand or any petition filed under this section may be made upon a person by—

(1) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such person, or upon any individual person;

(2) delivering a duly executed copy thereof to the principal office or place of business of the person to be served; or

(3) depositing such copy in the United States mail, by registered or certified mail duly addressed to such person at its principal office or place of business.

(e) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be prima facie proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f)(1) The Attorney General shall designate a racketeering investigator to serve as racketeer document custodian, and such additional racketeering investigators as he shall determine from time to time to be necessary to serve as deputies to such officer.

(2) Any person upon whom any demand issued under this section has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person, or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to this section on the return date specified in such demand, or on such later date as such custodian may prescribe in writing. Such person may upon written agreement between such person and the custodian substitute for copies of all or any part of such material originals thereof.

(3) The custodian to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to this chapter. The custodian may cause the preparation of such copies of such documentary material as may be required for official use under regulations which shall be promulgated by the Attorney General. While in the possession of the custodian, no material so produced shall be available for examination, without the consent of the person who produced such material, by any individual other than the Attorney General. Under such reasonable terms and conditions as the Attorney General shall prescribe, documentary material while in the possession of the custodian shall be available for examination by the person who

produced such material or any duly authorized representatives of such person.

(4) Whenever any attorney has been designated to appear on behalf of the United States before any court or grand jury in any case or proceeding involving any alleged violation of this chapter, the custodian may deliver to such attorney such documentary material in the possession of the custodian as such attorney determines to be required for use in the presentation of such case or proceeding on behalf of the United States. Upon the conclusion of any such case or proceeding, such attorney shall return to the custodian any documentary material so withdrawn which has not passed into the control of such court or grand jury through the introduction thereof into the record of such case or proceeding.

(5) Upon the completion of—

(i) the racketeering investigation for which any documentary material was produced under this chapter, and

(ii) any case or proceeding arising from such investigation,

the custodian shall return to the person who produced such material all such material other than copies thereof made by the Attorney General pursuant to this subsection which has not passed into the control of any court or grand jury through the introduction thereof into the record of such case or proceeding.

(6) When any documentary material has been produced by any person under this section for use in any racketeering investigation, and no such case or proceeding arising therefrom has been instituted within a reasonable time after completion of the

examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the Attorney General, to the return of all documentary material other than copies thereof made pursuant to this subsection so produced by such person.

(7) In the event of the death, disability, or separation from service of the custodian of any documentary material produced under any demand issued under this section or the official relief of such custodian from responsibility for the custody and control of such material, the Attorney General shall promptly—

(i) designate another racketeering investigator to serve as custodian thereof, and

(ii) transmit notice in writing to the person who produced such material as to the identity and address of the successor so designated.

Any successor so designated shall have with regard to such materials all duties and responsibilities imposed by this section upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

(g) Whenever any person fails to comply with any civil investigative demand duly served upon him under this section or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such

court for the enforcement of this section, except that if such person transacts business in more than one such district such petition shall be filed in the district in which such person maintains his principal place of business, or in such other district in which such person transacts business as may be agreed upon by the parties to such petition.

(h) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

(i) At any time during which any custodian is in custody or control of any documentary material delivered by any person in compliance with any such demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section.

(j) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section.

APPENDIX D

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KAN-DI-KI, LLC, d/b/a DIAGNOSTIC LABORATORIES, a California limited liability company, Plaintiff, v. JOHN LESLIE SORENSEN, an individual; and TIMOTHY JAMES PAULSEN, an individual, Defendants.	CASE NO. 8:15-cv-01372-JLS (Ex) Assigned for all purposes to Honorable Josephine L. Staton **FIRST AMENDED COMPLAINT FOR:** **1. CIVIL RICO VIOLATIONS (18 U.S. C. §§ 1962(c), (d));** **2. TORTIOUS INTERFERENCE WITH CONTRACTS; and** **3. TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE** **DEMAND FOR JURY TRIAL**

Plaintiff Kan-Di-Ki, LLC, doing business as Diagnostic Laboratories ("DL"), for its Amended Complaint against Defendants John Leslie Sorensen ("Sorensen") and Timothy James Paulsen ("Paulsen"), states:

NATURE OF THE ACTION

1. This is an action for damages for violations of 18 U.S.C. § 1962(c) and § 1962(d), tortious interference with contract, and tortious interference with prospective economic advantage. Sorensen and Paulsen each conducted, participated in and conspired with each other and with co-conspirator, Robert Suer, in acts of racketeering activity comprising a pattern of racketeering activity, including mail fraud under 18 U.S.C. § 1341, wire fraud under 18 U.S.C. § 1343, bribery under Cal. Penal Code § 641.3, extortion under 18 U.S.C. § 1951, obstruction of justice under 18 U.S.C. § 1503, and witness tampering under 18 U.S.C. § 1512, all of which are incorporated under 18 U.S.C. § 1961(1).

SUMMARY OF THE RICO SCHEME

2. In late 2011 or early 2012, Sorensen and Paulsen made a decision to cause approximately 35 skilled nursing facilities ("NA Facilities") operated by North American Health Care, Inc. ("NA" or "North American") to terminate all contracts with all existing ancillary service vendors (including vendors for x-ray, laboratory, oxygen, pharmacy and other services), and replace them with other vendors. Before causing the termination of these contracts, Sorensen and Paulsen planned to and did defraud the existing vendors, including DL, out of cash, credits and services to the

personal financial benefit of Sorensen and Paulsen (the "Fraudulent Shakedown Scheme").

3. As an early step in the Fraudulent Shakedown Scheme, Sorensen and Paulsen identified vendors to replace the existing vendors, and negotiated contracts with the replacement vendors so that they would be ready to commence service upon the termination of the existing vendors. Sorensen and Paulsen did not disclose to the existing vendors that the decision had been made to terminate their contracts and to replace them with new vendors.

4. As another early step in the Fraudulent Shakedown Scheme, Sorensen and Paulsen misrepresented to existing vendors that they had conducted an audit, which they said established that NA Facilities had been overbilled. In fact, as Sorensen and Paulsen knew, there had been no audit, and there had been no overbilling. Sorensen and Paulsen used these misrepresentations to mislead the existing vendors into believing, incorrectly, that there was a "good faith billing dispute." Sorensen and Paulsen used the purported good faith billing dispute as a pretext for a negotiation so as to demand payments, credits and other concessions from existing vendors.

5. After setting up the pretext for negotiations, as the next step in the Fraudulent Shakedown Scheme, Sorensen and Paulsen demanded money from the existing vendors. At the same time, Sorensen and Paulsen represented, falsely, that there was an opportunity for the existing vendors to maintain their contracts with, or even obtain new or expanded business from, NA Facilities if they would pay money or provide credits to settle the "good faith billing

dispute." In fact, as Sorensen and Paulsen knew, there was not an opportunity for the existing vendors to maintain their contracts or obtain new or expanded business. Indeed, as noted, Sorensen and Paulsen already had made the decision to cause the NA Facilities to cancel their contracts with existing vendors.

6. As another aspect of the Fraudulent Shakedown Scheme, during the period when NA Facilities were still ordering and receiving services from existing vendors, Sorensen and Paulsen stopped paying for the services. Sorensen and Paulsen represented that they were withholding payment due to the "overcharges" revealed by the "audit" while a resolution of the billing dispute was negotiated. Because the vendors believed, incorrectly, that there was a good faith dispute that could be resolved, they were lulled into continuing to provide services without payment. Had the vendors known the true facts—that there had been no audit, that there was not a good faith dispute, that Sorensen and Paulsen did not intend to pay amounts owed, and that their contracts with NA Facilities were going to be terminated regardless of whether they capitulated to Sorensen's and Paulsen's demands for money—the vendors would not have continued to provide services without payment but instead would have terminated the contracts due to nonpayment.

7. As another aspect of the Fraudulent Shakedown Scheme, Sorensen and Paulsen defrauded NA's Facility Administrators. Specifically, Sorensen and Paulsen told the Administrators of NA's Facilities that they were recommending termination of the contracts because audits had revealed that existing

vendors had overbilled them. The Administrators, in justifiable reliance on their mistaken belief that they had been overcharged, terminated the then-existing vendors contracts.

8. As another aspect of the Fraudulent Shakedown Scheme, Sorensen and Paulsen defrauded numerous NA Facilities' Administrators into entering into new contracts with replacement vendors that had paid bribes to their co-conspirator, Robert Suer. Sorensen and Paulsen financially benefited from the bribes because the amounts Suer received from the replacement vendors provided part of Suer's compensation that NA did not have to pay. This savings to NA inured personally to Sorensen and Paulsen due to NA's ownership and compensation structure.

9. As another aspect of the Fraudulent Shakedown Scheme, Sorensen and Paulsen have fraudulently prevented DL from obtaining new contracts with NA Facilities. Since the termination of DL's contracts, DL has tried to obtain such contracts, and NA Facilities Administrators have expressed interest in utilizing DL's services due to severe service problems with replacement vendors. However, the NA Facilities Administrators, in continuing reliance on Sorensen's and Paulsen's false representations about the audit revealing DL's overcharges, have not entered into new contracts with DL or even communicated with DL about the possibility of doing business.

10. As another aspect of the Fraudulent Shakedown Scheme, Sorensen and Paulsen have engaged in extortion, obstruction of justice, witness tampering, bribery and other wrongful acts to prevent

Suer from being enjoined from working at NA, so that he could and can keep working on the continuing Fraudulent Shakedown Scheme. Sorensen and Paulsen committed these wrongful acts in connection with a lawsuit DL filed against Suer in Delaware Chancery Court and in an adversary case DL filed against Suer in the United States Bankruptcy Court for the Central District of California.

11. The Fraudulent Shakedown Scheme victimized DL and multiple other diverse ancillary vendors throughout 2012 and 2013 and beyond, and were part of Sorensen's and Paulsen's regular way of doing business. Due to the nature of the Fraudulent Shakedown Scheme, there was and is a specific threat of repetition.

12. Sorensen and Paulsen financially benefited from the scheme personally as a result of the corporate structure of, and the business and compensation model for, NA and the NA Facilities.

THE PARTIES

13. Plaintiff DL is a California limited liability company, with its principal place of business in Burbank, California.

14. Defendant Sorensen is an individual who, upon information and belief, resides in Orange County, California.

15. Defendant Paulsen is an individual who, upon information and belief, resides in Orange County, California.

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 18

U.S.C. § 1964(a) because it arises under 18 U.S.C. § 1961 *et seq.*, the Racketeering Influenced and Corrupt Organizations ("RICO") provisions of the Organized Crime Control Act of 1970. This Court has supplemental jurisdiction over DL's state law claims under 28 U.S.C. § 1367(a), because they are so related to claims in the action within the Court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

17. Venue is proper in the Central District of California under 28 U.S.C. § 1391 and 18 U.S.C. § 1965(a) because it is the judicial district in which all Defendants reside, and a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district.

BACKGROUND ABOUT THE PARTIES

Plaintiff DL

18. DL is engaged in the business of providing mobile diagnostic laboratory, ultrasound, x-ray and other ancillary services to nursing homes, assisted living facilities, jails and other long-term patient care facilities in the western United States.

19. DL provides and bills for its services to patient care facilities in accordance with written contracts.

Other Ancillary Service Vendors

20. First Choice Mobile Radiology Services, LLC ("First Choice") is engaged in the business of providing mobile diagnostic x-ray services to patient care facilities in the western United States.

21. First Choice provides and bills for its services to its patient care facility clients in accordance with written contracts.

22. Schryver Medical Sales and Marketing, Inc. ("Schryver Medical") also is engaged in the business of providing mobile diagnostic laboratory, x-ray and other ancillary services to the long term care market in the western United States.

23. Schryver Medical also provides and bills for its services to patient care facilities in accordance with written contracts.

24. Pacific Coast Laboratories ("Pacific") is engaged in the business of providing laboratory services to the long term care market in southern California.

25. West Valley Radiology ("West Valley") is engaged in the business of providing x-ray services to the long term care market in the western United States.

26. There are numerous other ancillary service vendors providing and billing for x-ray, laboratory, oxygen, therapeutic services, pharmacy, food, acute care hospitals' explanations of benefits ("EOB"), equipment such as hospital beds, and a host of other services to patient care facilities in the western United States in accordance with written contracts.

27. Pharmerica and Omnicare were pharmacy vendors to the long term care market. PulmoCare and Pulmonaire were oxygen vendors to the same market.

Sorensen, Paulsen, North American Health Care, Inc., and the NA Facilities

28. North American Health Care, Inc. ("NA") provides services to approximately 35 separate patient care facilities (the "NA Facilities" or "NA Facility") pursuant to written service agreements. NA charges each NA Facility service fees pursuant to the relevant service agreement.

29. Pursuant to the service agreements, NA assists the NA Facilities with, among other work, their relationships with ancillary service vendors, including identifying and negotiating with potential vendors, making recommendations on the selection and termination of vendors, and dealing with other vendor issues, including communicating with vendors about service, billing, and problems that may arise. NA Facilities work with a total of approximately 40 to 50 ancillary service vendors at any one time.

30. In addition to assisting with ancillary vendor matters, NA provides the NA Facilities with bookkeeping and accounting, strategic planning, marketing and public relations, supply procurement, record storage, payroll, insurance procurement, information technology, human resources, legal and other services.

31. At all relevant times, the NA Facilities were: Orchard Park Care Center, Lomita Post Acute Care Center, Ramona Nursing & Rehab Center, Garden View Post Acute Rehab, Chatsworth Park Health Care, Courtyard Care Center, Fireside Convalescent Hospital, University Post Acute Rehab, Apple Valley Post-Acute Rehab, Woodland Nursing & Rehab, Coventry Court Health Center, Palm Terrace Care

Center, Pacifica Nursing & Rehab, Terrace View Care Center, Danville Rehabilitation, Villa Health Care Center, Alamitos Belmont Rehab Hospital, Broadway by the Sea, Petaluma Post Acute & Rehab, Linda Mar Care Center, Cottonwood Healthcare Center, Rosewood Rehabilitation, Scottsdale Nursing & Rehab, Lake Balboa Care Center, Brentwood Health Care Center, Beachside Nursing Center, Fairfield Post Acute Rehab Center, Grand Terrace Care Center, Park West Care Center, Park Ridge Care Center, Edgewater Convalescent Hospital, Fairmont Rehabilitation Hospital, Issaquah Nursing & Rehab Center, Burien Nursing & Rehab Center, Lincoln Square Post Acute Care, Chapman Convalescent, North Coast Rehab, and Chapman Hospice. The NA Facilities operate in various states in the western United States, specifically, California, Washington, Utah and Arizona.

32. At relevant times, Sorensen was the President and Chief Executive Officer of NA. Sorensen also has an ownership interest in investors in NA and the NA Facilities. Sorensen serves as a director and Chairman of the Board for NA and for each of the NA Facilities.

33. NA Facilities are required to contract with and pay fees to not only NA, but also to numerous other affiliated business owned by Sorensen. This structure allows Sorensen's other businesses to siphon all profit from the NA Facilities, leaving the Facilities with no significant assets to pay judgments or settlements in personal injury cases brought by nursing home patients and their families. As a result of this structure, any financial benefit or savings achieved by the NA Facilities is siphoned off by NA.

34. Sorensen, as the owner of these judgment-proof nursing homes and his other private businesses that are profit centers, insulated from liability, is a very wealthy man. Sorensen's net worth has been reported at $180,000,000 (one hundred eighty million dollars). Sorensen benefits financially and personally from any financial benefit or savings achieved by the NA Facilities and NA.

35. Sorensen is not just a shrewd business man. Sorensen has admitted while under oath at a deposition in another matter to engaging in criminal conduct relating to directing the payment of bribes to physicians to obtain their endorsements in support of a Medicare five-star quality rating for NA Facilities. Sorensen's deposition transcript in that matter provides:

> Q. You're the owner, and you run North American Health Care, and you're telling the administrator to pay whatever price you have to. You're telling the administrator to take that to the doctor and say, look, I'll pay you whatever price it takes to get you to sign this letter. Don't you have concerns about that course of conduct?
>
> A. Yes.
>
> Q. Do you have concerns about it being criminal?
>
> ***
>
> A. Yes.

36. As discussed further below, Sorensen perjured himself in DL's Lawsuit Against Suer.

37. At relevant times, Paulsen was the Chief Operating Officer of NA. Upon information and belief, as a result of NA's compensation structure, Paulsen financially benefits personally from any financial benefits that he is able to achieve for NA Facilities.

38. As discussed further below, Paulsen perjured himself in DL's Lawsuit Against Suer.

39. Until 2012, DL had written contracts with 27 of the NA Facilities to provide various services, including mobile radiology and/or laboratory services, including specifically the following NA Facilities: Lomita Post Acute Care Center, Ramona Nursing & Rehab Center, Garden View Post Acute Rehab, Courtyard Care Center, Fireside Convalescent Hospital, University Post Acute Rehab, Woodland Nursing & Rehab, Coventry Court Health Center, Palm Terrace Care Center, Pacifica Nursing & Rehab, Terrace View Care Center, Danville Rehabilitation, Villa Health Care Center, Alamitos Belmont Rehab Hospital, Broadway by the Sea, Petaluma Post Acute & Rehab, Cottonwood Healthcare Center, Rosewood Rehabilitation, Scottsdale Nursing & Rehab, Brentwood Health Care Center, Beachside Nursing Center, Fairfield Post Acute Rehab Center, Grand Terrace Care Center, Park Ridge Care Center, Edgewater Convalescent Hospital, Fairmont Rehabilitation Hospital, and Lincoln Square Post Acute Care. DL's relationships with NA Facilities had been ongoing for many years.

40. Until 2012, Schryver Medical had written contracts to provide various services, including mobile

x-ray and/or laboratory services, to the following NA Facilities: Orchard Park Care Center, Issaquah Nursing & Rehab Center, Burien Nursing & Rehab Center, Park Ridge Care Center, Park West Care Center, and Scottsdale Nursing & Rehab Center.

41. Until 2012, First Choice had written contracts to provide mobile x-ray and EKG services, to the following NA Facilities: Chatsworth Park Health Care and Lake Balboa Care Center. First Choice's contractual relationship with NA Facilities started in or around 2008.

Robert Suer, His Work at DL, and the DL-Suer Agreements

42. Robert "Bobby" Suer ("Suer" or "Robert Suer") is an individual who, at all relevant times until May 20, 2012, was associated with DL or a predecessor, historically in sales. Robert Suer was on DL's payroll through approximately May 20, 2012 pursuant to an employment agreement.

43. In or around July 2008, Robert Suer signed, and he is a party to, the Contribution and Equity Interest Purchase Agreement, dated July 28, 2008, between DL Group Holdings, LLC, Diagnostic Labs, LLC, Kan-Di-Ki-Incorporated (doing business as Diagnostic Laboratories) and the sellers thereto (the "DL Purchase Agreement"). Under the DL Purchase Agreement, Robert Suer was generally required to refrain from, among other things: (a) disclosing or using any confidential information relating to the business of DL or its predecessor; and (b) competing with DL for a five-year period after the Closing Date in the geographic area of DL's business. In

consideration for the agreements in the DL Purchase Agreement, Suer was paid in excess of $4 million.

44. In or around May 2009, Robert Suer signed, and he is a party to, the Asset Purchase Agreement. Under the Asset Purchase Agreement, Robert Suer was generally required to refrain from, among other things: (a) disclosing or using any confidential information relating to the business of DL; (b) competing with DL for a five-year period after the Closing Date in the geographic area of DL's business; and (c) taking any action that is designed or intended to have the effect of encouraging any customer of DL from altering the relationship in a manner adverse to DL.

45. The DL Purchase Agreement and the Asset Purchase Agreement are collectively referred to herein as the DL-Suer Agreements.

46. Also on or around May 20, 2009, Suer signed an employment agreement ("Employment Agreement"). The term of the Employment Agreement was three years, until May 20, 2012. The Employment Agreement includes a provision restricting Suer from using, disclosing or otherwise seeking to obtain the benefit from DL's confidential and proprietary information, which "will continue to apply after [his] employment terminates . . . for a period of five (5) years." Thus, Mr. Suer continues to be bound by this restrictive covenant until at least May 20, 2017. The Employment Agreement also includes a provision acknowledging that DL will be irreparably harmed by any breach of the covenants in the Employment Agreement, and that DL would be

entitled to injunctive relief against Suer in the event of any breach.

47. At a deposition regarding his previous conduct in the industry, Suer invoked his fifth amendment privilege against self-incrimination.

Suer's Work at NA, and DL's Lawsuits

48. As described in detail below, in late 2011 or 2012, Suer began consulting for NA and had significant involvement in the Fraudulent Shakedown Scheme that resulted in DL's loss of its contracts with 27 NA Facilities, and its losses from NA Facilities failures to pay and from DL's inability to win back NA Facilities' business.

49. As described further below, in October 2012, DL filed an action against Suer for monetary and injunctive relief in the Delaware Chancery Court, based on claims of breach of contract, misappropriation of trade secrets and tortious interference with contract (the "Delaware Action Against Suer" or the "Delaware Lawsuit"). Among other things, DL sought an injunction to prevent Suer from doing any further consulting work for North American (which would have prevented Suer from continuing his work on the Fraudulent Shakedown Scheme).

50. On January 7, 2014, while DL's Delaware Lawsuit was pending, Suer filed a chapter 7 bankruptcy petition in the United States Bankruptcy Court for the Central District of California ("Suer's Chapter 7 Case"), which caused DL's Delaware Lawsuit Against Robert Suer to be stayed. DL obtained a modification of the stay to pursue injunctive relief on its breach of contract claims, which

included injunctive relief to prevent Suer from working at NA (which would include preventing him from working on the Fraudulent Shakedown Scheme).

51. On April 21, 2014, DL filed an adversary proceeding against Suer in the bankruptcy court ("DL's Adversary Proceeding Against Suer" or the "Adversary Proceeding"), seeking that Suer's debts to DL not be discharged and generally objecting to any discharge of Suer's debts. The Adversary Proceeding remains pending in the Bankruptcy Court.

52. On July 22, 2015, after a five-day trial held from September 29 through October 3, 2014, the Delaware Chancery Court issued an opinion that, among other things, held that Suer was in breach of his covenants to DL due to his work for NA, and that DL was entitled to injunctive relief against Suer (opinion ("Delaware Chancery Court Opinion in the Robert Suer Case," "Opinion in the Robert Suer Case," or "Opinion"). Certain findings by the Delaware Chancery Court that are relevant to this action are set forth below.

53. The Delaware Chancery Court also granted DL's motion against Suer for sanctions for suppression and spoliation of evidence.

54. On October 5, 2015, the Delaware Chancery Court issued an Order (the "Delaware Injunction and Sanctions Order Against Suer" or the "Delaware Order") implementing its Opinion and enjoining Suer from engaging in, for a period of two years, among other broad and sweeping matters, "the adjudication or auditing of invoices for [NA]." As further detailed below, although DL sought to enjoin Suer from working at NA in any capacity (which would have

prevented his further work on the Fraudulent Shakedown Scheme), the Delaware Chancery Court's Order did not grant DL the full injunctive relief that was sought, and allowed Suer to remain at NA while severely limiting his activities there. The Delaware Order also required Suer to reimburse DL for its attorneys' fees incurred in filing and prosecuting its motion for sanctions for suppression and spoliation of evidence, an Order from which Suer is in contempt.

CHRONOLOGY

2011

55. In October 2011, Sorensen and Paulsen devised a scheme to extract, for their own ultimate enrichment, payments, credits, concessions, and other financial benefits from all ancillary vendors of NA Facilities. At the time, NA Facilities collectively used about 40 separate vendors.

56. In 2011, Shaun Dahl, an Administrator at Coventry Court, an NA Facility, approached Suer because he knew Suer was experienced in the mobile radiology and laboratory business. Dahl specifically wanted Suer to advise "whether or not there might be . . . ways that [Dahl] could save" in connection with vendor costs.

57. In late 2011 or early 2012, Dahl introduced Suer to Paulsen.

2012

Suer's Retention By NA And His Compensation

58. By January 5, 2012 at the latest, Suer was working for NA or NA Facilities. With Sorensen's knowledge and approval, Paulsen retained Suer as a

consultant, to be paid in an amount totaling at least $15,000 per month.

59. Based on Suer's knowledge and experience in the industry on the vendor side, including DL's confidential and proprietary trade secret information that Suer obtained during his years working at DL, Paulsen thought Suer could be valuable. Among other things, Suer could provide Sorensen and Paulsen with tactical information and intellectual property that would allow them to extract payments, credits, concessions and other financial benefits from all of NA Facilities' vendors, including vendors for x-ray, laboratory, oxygen and pharmacy and others. According to deposition testimony of Mark Schryver of x-ray vendor Schryver Medical, Suer told him that Suer had been hired to try to get credits for NA. Asked at his deposition which service providers, aside from DL, were the focus of this effort to get credits, Suer testified: "Oh God, I don't know. All of them—I mean a lot of them."

60. Paulsen and Sorensen motivated Suer to extract payments, credits and other financial concessions from NA Facilities' vendors in the Fraudulent Shakedown Scheme by making Suer demonstrate that the financial benefits that he obtained from existing vendors on behalf of NA Facilities were significantly greater than the amount Suer was being paid by NA. Early in his tenure at NA, Suer submitted invoices that justified his compensation (of approximately $15,000 per month) by showing that it more than paid for itself through the vendor credits that had been extracted. Specifically, for his services from January 16, 2012-February 27, 2012, Suer submitted an invoice for

$15,000. Attached to the invoice was a listing of credits obtained from vendors (specifically, First Choice, Pacific Coast and West Valley Radiology), totaling approximately $98,240.97. Also attached was a page that showed, under the $98,240.97 total, a "15% collection fee" in the amount of $14,736.14. Under that figure was the handwritten notation "PAID." Suer thus submitted information showing Sorensen and Paulsen that his compensation for the month totaled approximately 15% of the total credits thus far extracted from vendors.

In Early 2012, The Decision Is Made To Terminate Contracts With Existing Vendors And Replace Them With Contracts With New Vendors

61. The Delaware Chancery Court in the Robert Suer Case found: "Documentary evidence from the end of March 2012 indicates that [NA] was planning to cancel contracts with DL relating to all of [NA's] skilled nursing facilities in the southern California area."

62. On March 22, 2012, Paulsen sent an email to a sales representative for B.O.N. Clinical Laboratories, one of DL's laboratory competitors, advising that he and Suer wanted to move forward with contracts with B.O.N., with May and June start times. These contracts were for laboratory services for the NA Facilities in southern California DL was servicing.

63. Also on March 22, 2012, Paulsen wrote an email to NA Facilities Administrators providing that new contracts for x-ray and laboratory vendors would be rolled out soon, and that he needed the

Administrators' cooperation to send cancellation notices to existing vendors and sign new contracts.

Fraudulent Shakedown of DL

64. By February 2012, DL became aware of Paulsen reviewing its vendor contracts and charges. On February 14, 2012, Joe Cleberg of DL emailed Paulsen, writing, in part: "It was good talking with you as you go forward with looking at your contracts let me know if there is any way I can help. I would be more than happy to come down to visit & go over our charges and services."

65. On March 22, 2012, Paulsen sent an email to Surina Smith, David Baldwin and Joe Cleberg of DL, which had been drafted by Suer, with the subject line "Our audit of past invoices/possible billing errors." In summary, Paulsen wrote:

> ***The North American service center started an audit of ancillary services in facilities due to the October 2011 Medicare cuts. Part of our audit included a review of billing statements from multiple vendors including [DL]. In the course of this review, several discrepancies have come to light.
>
> *** We are currently auditing the Southern California region for both [x-ray and laboratory] services.
>
> Listed below is a summary of errors that were discovered in the course of our audit. ***

> At facilities where [DL] is not our radiology provider, we . . . are never charged for travel or set up feels.
>
> ***We would like some answers immediately, immediately [repetition in original]. *** Between all of our Southern California facilities our audits from 12/2009 in laboratory and 12/2008 in radiology, although not complete, demonstrates overcharges in excess of $650,000 for lab and radiology services. ***
>
> At this time we are currently holding all payments to [DL] until we have some type of response from your company in regard to the errors that have occurred, and work out a refund to our facilities. ***

66. Paulsen's email knowingly misrepresented the facts. In fact, NA had not conducted an audit of DL's invoices, nor had NA established that NA Facilities had been overbilled by DL.

67. Paulsen used these misrepresentations to mislead DL into believing, incorrectly, that there was a "good faith billing dispute." One objective of Paulsen's email was to create a pretext for a negotiation so as to demand payments or credits from DL. Another objective was to lull DL into continuing to provide services even though payment was being withheld.

68. At the time of receipt of Paulsen's email, DL believed that Paulsen was telling the truth about the audit. DL believed that Paulsen was acting in good

faith, but that he was misinformed and mistaken about the alleged overcharges of which he complained. Accordingly, DL believed that the matter could be resolved by further dialog with Paulsen. DL's belief was mistaken, however, because Paulsen was not acting in good faith.

69. Based on Paulsen's decision to withhold payment, DL could have terminated its contracts with the NA Facilities. DL did not opt to terminate, however, because DL thought that Paulsen was acting in good faith and that the matter could be resolved. DL's belief was mistaken, because Paulsen was not acting in good faith. The result was that DL was lulled into not terminating and continuing to provide services on an unpaid basis while the parties talked.

70. DL did not learn the true facts until they were revealed in discovery in the Delaware Action and other cases. As set forth in detail below, discovery has since revealed that: (1) there was no audit; and (2) Paulsen did not have a good faith belief that DL had overbilled NA Facilities.

71. DL reacted to Paulsen's March 22, 2012 email promptly, with concern and in good faith. That same day, David Baldwin from DL responded to Paulsen by email, writing: "I read your letter & understood it clearly. We will meet with the appropriate personnel to examine the information provided & properly address your concerns. I will be back to you with our findings. This may require some time; however, I will keep you apprised of the progression."

72. Paulsen did not want DL to take the time conduct a review of the charges, because Paulsen knew that his accusations of overcharges were without any

factual basis. On March 30, 2012, Dahl of NA Facility Coventry Court emailed Paulsen, attaching a letter to DL with notice of cancellation of its contract, and writing: "I was going to send something simple like this to cancel them today on our letterhead. Do you want me to add or take away anything? If I don't hear from you I will just send this today." About an hour later, Paulsen responded by email: "That looks fine." About an hour later, Dahl emailed Paulsen, writing: "I have sent it out so you may hear from them shortly, at least ***let's hope they call and it gets their attention***." Paulsen had Dahl send the cancellation notice not for its stated purpose but as a tactic to cut off DL's review of the bills and expedite the shakedown. In other words, the cancellation notice was sent as a threat and as leverage to raise the stakes and coerce DL to negotiate a credit even though DL had not had time to complete its review of the issues. DL knows this because of how events unfolded as set forth below, and also because documents from 2013 relating to other vendors (discussed below) showed that Paulsen repeated this tactic with other ancillary vendors. The idea was to provide notice of cancellation to get the venders to, as Suer phrased it, "come running."

73. On April 3, 2012, Paulsen emailed David Baldwin of DL, with a copy to Joe Cleberg, writing, in part:

> I appreciate your prompt responses to my emails and I look forward to meeting Tom [Calhoun]. However, I don't want to continue to drag this issue out. So, before we meet, I still need a response from you and/or another authority of

> [DL], in writing, what you plan on doing regarding the $650,000 plus (we are still auditing) in overcharges and billing errors that I specifically noted in my letter dated March 22, 2012.
>
> The above request is not optional, Dave. I need an answer now—before we meet! Once that is done, then you and Tom and I can meet and discuss repayment options.
>
> I must reiterate, Dave, we will be holding all payments to DL until this important matter is resolved.

74. In early April 2012, there was a meeting between and among Paulsen and various DL representatives. When the meeting ended, DL again advised Paulsen that they were undertaking a detailed review.

75. On April 18, 2012, Tom McCaffery, DL's General Counsel, spoke by telephone with Suer's attorney and advised, among other things, that Suer is precluded by his restrictive covenants from working for NA in any capacity.

76. On April 27, 2012, Matt Mantelli of DL emailed Dahl, writing, in part:

> I just wanted to follow up one more time regarding your proposed cancellation letter. I heard our corporate folks have had some good productive talks & meetings with your corporate folks so hoping we can rescind your cancellation request for now if possible? Perhaps this will all work out.

> As mentioned below, we greatly value your business and would be happy to continue servicing your great facility and staff. Please contact me if you are interested in staying on board with us?

77. On April 30, 2012, Dahl emailed Mantelli, responding: "I too have heard our people are talking and so am willing to push back the cancellation letter for lab for 30 days in good faith." This led DL to believe, incorrectly, that Paulsen was acting in good faith, and thus DL continued to be lulled into providing services even though Paulsen and Sorensen were withholding payment. Had DL known the truth, it would have terminated its contracts and cut its losses rather than continuing to allow the amount that NA Facilities owed to increase.

78. On April 30, 2012, Mantelli emailed Dahl, responding: "Ok, will do. Services will not be interrupted." DL continued to provide services to Coventry Court and the other NA Facilities on an unpaid basis.

79. On May 2, 2012, Paulsen emailed David Baldwin and Tom Calhoun of DL, with copies to Kelly McCullum and Surina Smith, with the subject line "Follow up to our meeting on 04/26/2012," writing, in part:

> Thank you for your time last Thursday.
>
> ***[O]ur audits have uncovered certain billing discrepancies in both laboratory and ultrasound bills received from DL.
>
> ***The most straight-forward solution to this problem would be for DL (through

> your computer billing system) to credit back these charges to each facility.
>
> ***Again, I believe your computer system would have the billing history for each of the facilities allowing for credits to be applied to each of these accounts.

80. On May 3, 2012, Tom McCaffery, DL's General Counsel, emailed Suer, writing, in part: "As DL's attorney, I see merit in communicating one thing to you and your attorney: You should stand down from your current activities with DL's competitors and customers and comply in full with all applicable agreements to which you are a party with us."

81. On May 7, 2012, Robert Ducatman of Jones Day, counsel to DL, sent a letter to Sorensen to provide notice of DL's contracts with Suer and the various restrictive covenants in those contracts, including covenants not to compete with DL, not to interfere with DL's confidential relationships, and not to use or disclose DL's confidential information. Sorensen received the letter and made Paulsen aware of it.

82. The Delaware Chancery Court subsequently found that, by this time of the notice letter, Suer was in clear breach of his contractual covenants to DL. Yet, Sorensen and Paulsen ignored the letter and deliberately continued to use Suer on work related to DL that was in flagrant violation of his restrictive covenants.

83. At the time of the notice letter, Suer had been consulting for NA for only four months, on a part time basis. As a short-term, part-time, at-will consultant, it would have posed no risk to NA to simply stop using Suer or at least limit his projects to ones that did not

involve DL. Yet, Sorensen and Paulsen made the decision to continue having Suer work in direct violation of his restrictive covenants. This is plainly because the Fraudulent Shakedown Scheme was so lucrative that Sorensen and Paulsen calculated that that continuing Suer's work on the scheme was even worth risking personal liability to DL.

84. On May 15, 2012, Sorensen and Paulsen met with Tom Calhoun of DL purportedly to discuss DL's billing.

85. On May 15, 2012, Mr. Calhoun of DL sent an email to Mr. McCullum of DL reporting on that same meeting. He wrote, in part: "We are still 'agreeing to disagree' and they are fishing for money. I spent about 15 minutes with John Sorensen the CEO and he admitted that it isn't service they like us and want to stay but want money."

86. Also on May 15, 2012, in a separate email from Calhoun to McCullum reporting on the meeting, Calhoun wrote: "It was clear from John [Sorensen] (Tim [Paulsen] agreed) it's not about service that in fact most facilities are very happy and would not want to switch but it's about the money."

87. At Sorensen's deposition, the above excerpt was read to him and he was asked: "Do you recall that that was something that you said to DL at some time? In response, Sorensen testified: "Yes."

88. In one of Calhoun's May 15, 2012 emails to McCullum, Calhoun wrote: "[Sorensen and Paulsen] indicated that they have facilities that do not use us (specified in Washington State) are very unhappy with the provider and would consider switching to us if we found resolution." Their representation that they

would "consider switching to us if we found a resolution" was false. Because a decision already had been made to contract with new vendors, Sorensen and Paulsen knew that they had no intention of switching to DL. They told the lie to lull DL into continuing to provide services on an unpaid basis, and to induce DL to pay money. Although DL was not misled into paying money, DL was mislead and lulled into continuing to provide services on an unpaid basis, which increased NA Facilities' accounts payable, which was never paid in full. DL thus incurred financial loss in justifiable reliance on Sorensen's and Paulsen's representation.

89. On May 16, 2012, Tom Calhoun emailed Paulsen, addressing each of the issues that Paulsen purported to raise, and explaining why the charges were correct. In addition, Calhoun wrote: "Looking at our A/R aging I noticed that there is a delay in payment so I hope this letter will address that." He also provided: I would love to sit down and address a contract going forward that makes you comfortable. . . ."

90. On May 25, 2012, Paulsen sent a letter to McCullum, writing, in part:

> Please accept this letter as my final request to resolve and reimburse (credit?) certain [NA Facilities] for significant billing errors and overcharges committed by [DL] over the past few years. *** I am growing more impatient by the day from your lack of response.

> *** Since no resolution has been . . . proposed to date, I have to assume that one is doubtful without legal proceedings. So, unless I receive confirmation from you or someone of authority by Thursday, May 31st that the [NA Facilities] will receive credit for the DL billing errors, these facilities may be cancelling their service contracts with DL.
>
> [NA] and [NA Facilities] reserve[] all legal rights and remedies to the foregoing issues and may proceed with legal action if we cannot resolve this matter.

91. McCullum responded promptly to request a meeting. On May 31, 2012, Paulsen emailed McCullum, providing, in relevant part: "I appreciate your intention to meet today and I assume you are recognizing my May 31st 'deadline' for possible cancellation. Since I am not available to meet in person today, I will not act on that deadline at this time." McCullum was thus lulled, again, into not cancelling for nonpayment and into continuing to provide services.

92. In the same email of May 31, 2012, Paulsen provided: "Mr. Suer is not a party to this matter and has not and will not be involved in any meetings or discussions."

93. Although DL did not succumb to Paulsen's demands for payments or credits, DL relied to its detriment on Paulsen's representations that he was negotiating in good faith. Specifically, DL was lulled

by Paulsen's false representations to continue providing services on an unpaid basis, which allowed the accounts payable to DL from NA Facilities to increase over a several month period. The representations caused DL to believe, incorrectly, that the dispute could be resolved and its contracts could be saved or expanded.

94. On June 1, 2012, Paulsen caused Dahl to communicate with Matt Mantelli at DL, and advise that "[a]s of now I believe we are still trying to work things out and so yes lets [*sic*] continue the lab for another 30 days." These representations again lulled DL into providing services rather than terminating even though payment was being withheld.

95. On June 5, 2012, McCullum emailed Paulsen, providing in relevant part: "I'm glad we had a chance to meet yesterday afternoon and I wanted to follow up on that meeting. I am having our folks gather and scan the contracts for your facilities as well as a couple of the addendum sheets for ultrasound. I will be in our office tomorrow and will be forwarding them to you with a couple of notes of explanation of the points and an intent to discuss with you on the phone tomorrow or Thur/Fri if that works for you. I will also be identifying a person or two who can come sit with Dave Lonsway and review specific charges and definitions that I am hopeful will explain invoiced amounts in doubt. I will have them reach out to him tomorrow to schedule a meeting for Friday or Monday if possible (whatever works for Dave). *** Let me know if I have forgotten anything or if there is something additional you would like for me to address."

96. On June 5, 2012, Paulsen responded to McCullum: "I spoke with Dave Lonsway and he will await the call from you staff. I am out of the office on Friday but will be available most of the day by phone—or I will contact you next week."

97. On June 6, 2012, McCullum responded to Paulsen: "I spoke with Dave and next Thursday at 11am worked best for him. We will have someone there to meet with him to review pricing and contract definitions. I will be forwarding you existing contract copies this afternoon or tomorrow a.m. as we discussed and am working on a contract template that clarifies new pricing opportunities, quarterly business reviews and notification processes for policy/pricing changes that come from Medicare, Medicaid, your facilities or DL. I'll try your office once I've forwarded contracts and you've had a chance to look at."

98. On June 8, 2012, Paulsen forwarded the above email chain to Suer without comment.

99. On June 8, 2012, McCullum provided a proposed new contract to Paulsen and wrote, in relevant part: "as we discussed, I have attached a draft contract that would be used for all North American facilities as a template. *** I will contact you or you can call me to discuss at your convenience.

100. On June 12, 2012, Paulsen emailed McCullum with a settlement demand for DL to give a credit in the amount $400,000 along with new contract terms going forward, writing: "I don't see any advantage for Dave Lonsway and some other D.L. employee to come and review invoices at our office."

101. Also in the June 12, 2012 email, Paulsen held out the possibility of new contracts as a carrot, even

though a decision already had been made to replace DL with other vendors. Paulsen wrote: "If this settlement proposal doesn't work for your organization, then we intend to move forward with other vendors. . . ."

102. In the same June 12, 2012 email, Paulsen referenced "our audits showing that DL has overbilled our facilities $700,000 through the end of February 2012."

103. In the same June 12, 2012 email, Paulsen threatened if that matter could not be settled to "hold all accounts payable until we can settle this matter legally." Paulsen also implicitly threatened that DL would be disparaged in the market absent a settlement, writing: "We would also be willing to sign some type of nondisclosure agreements with your company, keeping your massive errors out of the view of others to the best of our ability, if that would be of benefit to you and bring this matter to a close."

104. On June 13, 2012, McCullum wrote to Paulsen, noting that he had provided Paulsen with the relevant contracts had left two messages with no response. McCullum provided, in part: "I am disappointed that you are not interested in clarifying what you are mistakenly referring to as overbilling though we are doing our best to explain." McCullum also pointed out that certain NA Facilities had been underbilled by DL for certain services. McCullum wrote: "We remain of the strong opinion that our practices are supported by our contract, by the market, and by your years of clear acceptance of the terms in practice and payment." McCullum indicated that DL

would not consider giving a $400,000 credit but was open to discussing solutions

105. On June 21, 2012, McCullum and Paulsen had a phone call in which settlement terms were discussed.

106. On June 26, 2012, Paulsen sent a number of NA Facilities Administrators an email, attaching a cancellation letter to DL. Paulsen wrote:

> Attached is a copy of a cancellation notice for you to print, sign and send to [DL] via fax (818) 241-4819 and Certified mail. Please fax today and send certified mail. As most of you are aware we have had severe over billing issues (Not charging the facility according to the contracts).
>
> At this time those issues have gone unresolved. We will no longer wish to utilize their services moving forward. When the cancellations have gone out and if anyone from [DL] tries to discuss this with you please refer them to me.
> ***
>
> We have spent an extensive amount of time looking for new providers and we will be forwarding you new contracts from certain vendors. These providers will save your facility a significant amount of money from what you paying now. We have tried them in some of our facilities already and have had no issues and had superior service.
>
> One of our new providers is Dignity Health (formally known as Catholic Hospitals West) they are a large chain of

> hospitals with a laboratory outreach program. They have hospitals located in all of our operating areas. Each hospital will handle a certain region (i.e. St Marys for Long Beach and Orange County facilities, St Bernadines hospital for Riverside facilities and Northridge Hospital for Santa Monica and the Valley facilities. This should work very well for all facilities with better and faster service, along with the fact they are a hospital chain instead of a private lab. We also have found an excellent new radiology provider. We feel it is advantageous to work with these regional specialty vendors.
>
> We want all of you to recognize that we are trying to make some improvements to our current contracting services, by using group buying and service providers that are regionally located.
>
> New agreements will be provided by each vendor shortly. The new providers will contact you directly and set up in-services for your staff for an August 1 st, 2012 (or sooner) start date. As always please feel free to call me with any questions or concerns.

107. On June 26, 2012, Paulsen caused Jonathan Sloey of Alamitos-Belmont Rehab Hospital, a NA Facility, to send a letter to Kelly McCullum of DL, which provided notice of termination of DL's contract and represented that "this termination is directly

related to disputed contractual overbilling inconsistencies and practices going unresolved," when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that billing concerns were not the reason for the termination.

108. On June 28, 2012 at 11:18 AM, Paulsen sent an email to Terrace View Administrator Brendan Dahl with a copy to Bryan Tanner and others. Paulsen wrote, in part:

> Attached is a copy of a cancellation notice for you to print, sign and send to [DL] via fax (818) 241-4819 and Certified mail. Please fax today and send certified mail. As most of you are aware we have had severe over billing issues (Not charging the facility according to the contracts).
>
> At this time those issues have gone unresolved. We will no longer wish to utilize their services moving forward. When the cancellations have gone out and if anyone from [DL] tried to discuss this with you please refer them to me. Please open the attached cancellation notice with your named facility and sign then fax and mail (certified mail).
>
> We have spent an extensive amount of time looking for new providers and we will be forwarding you new contracts from certain vendors. These providers will save your facility a significant amount of money from what you paying now. We have tried them in some of our

> facilities already and have had no issues and had superior service.
>
> One of our new providers is Dignity Health (formally known as Catholic Hospitals West) they are a large chain of hospitals with a laboratory outreach program. They have hospitals located in all of our operating areas. Each hospital will handle a certain region (i.e. St Marys for Long Beach and Orange County facilities. St Bernadines hospital for Riverside facilities and Northridge Hospital for Santa Monica and the Valley facilities. This should work very well for all facilities with better and faster service, along with the fact they are a hospital chain instead of a private lab. We also have found an excellent new radiology provider. We feel it is advantageous to work with these regional specialty vendors.
>
> We want all of you to recognize that we are trying to make some improvements to our current contracting services, by using group buying and service providers that are regionally located.
>
> New agreements will be provided by each vendor shortly. The new providers will contact you directly and set up in-services for your staff for an August 1st, 2012 (or sooner) start date.

109. On June 28, 2012, Paulsen caused Suer to communicate with Donna Markley of Park Ridge Care,

a NA Facility, and provide instructions for the cancellation of DL's contracts and represent that there were serious contractual billing errors. This representation was false for reasons discussed further below.

110. On June 28, 2012, Paulsen communicated with various NA Facility administrators including Jay Zwahlen, Mark Hall, Jason Roberts, Jonathan Sloey, Chandler Call, JD White, Julie Javier, Bryan Tanner, Jeremy Jergensen and Darian Dahl, and provided instructions for the cancellation of DL's contracts and represented that there were serious contractual billing errors. This representation was false for reasons discussed further below.

111. On July 1, 2012, Roger Faselt of DL's competitor Quality Medical Imaging ("QMI") signed a contract for NA Facility Petaluma. Bill Treese, an independent marketing representative for QMI testified in the Delaware Lawsuit that Faselt had paid Suer a bribe in exchange for access to NA Facilities' business.

112. On July 3, 2012, Jared Bake, Administrator for NA Facility University Post-Acute Rehab, mailed McCullum a notice cancelling DL's radiology contract effective August 15, 2012.

113. On July 3, 2012, Brett Moore, Administrator for NA Facility Woodland Nursing & Rehabilitation, mailed McCullum a notice cancelling DL's radiology contract effective August 15, 2012.

114. On July 5, 2012, and again on July 16, 2012, Paulsen communicated with various NA Facility administrators including Jacob Beaman, Christian Reinarz, Jared Bake, Brett Moore, Matthew Robison,

Beverly Mannon, Joanne VanDyke, Spencer Brinton, Gordon Hodnett, Kyle Dahl, JJ Webb, Stephen Shipley and James Ellis Sherinian, and provided instructions for the cancellation of DL's contracts and represented that (A) there were serious contractual billing errors and (B) the selected replacement vendors will save the NA Facilities money and provide superior service. These representations were false and misleading for reasons discussed further below.

115. On July 16, 2012, Paulsen emailed numerous NA Facilities Administrators, forwarding his July 5, 2012 email, on the Subject "FW: Radiology providers," writing, in part:

> Attached is a copy of a cancellation notice for you to sign and send to Community Mobile Diag/[DL] via fax (818) 241-4819 and Certified mail. Please open the attached cancellation notices with your named facility, sign, fax and mail (certified mail). As most of you are aware we have disputed over billing issues that remain unresolved and have cost us a lot of money. At this time, NAHC no longer recommends utilizing their services moving forward. After the cancellations have been sent out, if anyone from [DL] tries to discuss this with you, please refer them to me.
>
> Apple Valley and Linda Mar we recognize that you utilize a different Provider. Please send the attached cancellation for Axiom as well.

We have spent an extensive amount of time looking for new providers and we will be forwarding you new contracts from certain vendors. These providers will save your facility a significant amount of money from what you are paying now. NAHC has tried them in some of their client facilities already and have had no issues. One of the recommended new providers is Town and Country and the other is Quality Medical Imaging for radiology providers. We will be splitting up the providers for services. The Bay area can utilize Quality Medical Imaging and the Sacramento areas can use Town and Country. Both Companies will save your facility 20–30% of what your paying now Please recognize that we are attempting to improve the current way NAHC and its client facilities contract, i.e., utilizing group buying and service providers regionally located. New agreements will be brought in by the providers and I have already signed off on them. Please sign the agreements and forward a copy to me. The new providers will contact you directly to set up in-services for your staff. They will begin August 15th, 2012.

We also are in negotiations with Dignity Health Care (formally known as Catholic Hospital West) for laboratory we will let you know when that it complete. They have multiple hospitals all over

> California and are willing to provide us lab services all over the state. We are currently switching down in Southern California. Do not discuss this information with representatives from [DL]/Community Mobile Radiology or Axiom.

116. This Paulsen email from July 16, 2012 attached cancellation letters to DL from the following NA Facilities: Pacifica (radiology); Petaluma (radiology); University (lab and radiology); Woodland (lab and radiology); Lincoln Square (radiology); Fairmont (radiology); Fairfield (radiology); Danville (radiology); Cottonwood (radiology); Rosewood (radiology); Apple Valley (unspecified); and Linda Mar Care (unspecified).

117. On July 24, 2012, Paulsen caused Suer to communicate with Shawn McAffee of Scottsdale, a NA Facility, and provide a draft letter cancelling DL's contract and represent "this termination is directly related to disputed contractual overbilling inconsistencies and practices going unresolved." This representation was false for reasons discussed further below.

118. On July 25, 2012, Paulsen required Suer to sign a confidentiality agreement to protect, among other things, information about NA's contracting practices.

119. As of August, 2012, all x-ray and/or laboratory contracts between DL and any NA Facility had been terminated.

120. During the period from August 6 to October 1, 2012, Paulsen caused Spencer Olsen to send a letter

on behalf of each of the NA Facilities with which DL had contracts, to DL's accounts receivable department, purporting to advise of the amounts by which the Facility had been overbilled and remitting a check for amounts that supposedly were owed. Each Olsen letter contained different dollar amounts, but otherwise Olsen's letters generally provided, in part:

> We have concluded our audit of laboratory and radiology services provided by [DL] to date. Attached is our reconciliation of over charges that were billed to our facility over the past 3 years that were not a part of our contracts.
>
> ***
>
> After careful review of our bills and analysis of our contract terms we have determined that we were over billed. . . .
>
> The amount invoiced by your company monthly which was held due to auditing from our facility is $[] for radiology services and $[] for laboratory services. . . .
>
> After reconciling the above set forth overcharges with the total amount billed by your company to date for services, the amount we owe you is $[].
>
> Enclosed is a check for payment in full.
>
> If your company has any issues or is in disagreement with our accounting please contact Tim Paulsen at [NA], our service center.

121. Significantly, as explained below, as of August 22, 2012, no audit of DL's invoices against the relevant contracts had ever been conducted.

Fraudulent Shakedown of Schryver Medical

122. On or before March 28, 2012, Sada Pullman of Schryver Medical emailed Tate Wilder and others at Schryver Medical, writing:

> I just received a phone call from a gentleman named Bob [Suer] from North American Corp., he handles contracting.
>
> Their facilities include: Burien, Issaquah, Park West, Orchard Park UT. They are holding all payments for these four facilities.
>
> Bob recently conducted a audit of our facilities. He said we cannot bill trip and set up for Ultrasounds and EKG's.
>
> He states per Medicare guidelines there are no such codes for ultrasounds and EKG's, only x-ray exams. They are doing a audit for a couple of years back to see how much they have paid for these charges. Payment will be held until this issue is resolved. He also inquired about a refund for charges they have already paid.

123. On April 9, 2012, Jennifer Holt at Schryver Medical emailed Mark Schryver, writing: "When you are able if you could please [call Suer] as he continues to harass us."

124. On April 12, 2012, Paulsen emailed Mark Schryver, writing, in part:

> Through our auditing to date, we have found in excess of $80,000 of overcharges in the past three years. . . .
>
> ***[P]lease contact me so we can agree on a credit back (or reimbursement) to each of these facilities. The sooner we can resolve this matter, the sooner we can release payment to you from our AP department.
>
> Also, Mark, if you want us to sign a confidentiality agreement regarding this matter, I am open to that.

125. On April 12, 2012, Mark Schryver emailed Paulsen, responding: "I'm sure you know that you are starting a fight with your dialog on our billing. We will get our legal team involved immediately and discontinue service as well. The charges are clearly stated on the price sheet that is attached. Please pay your bill now. You are way past due."

126. On April 16, Mark Schryver again emailed Paulsen, writing, in part:

> I have looked at your argument and do not see how it holds water. We clearly state that we will use a Medicare fee schedule. We do not say that we will follow Medicare billing guide lines. As you know, whether Medicare pays something or not, that doesn't mean that we cannot bill it. Obviously, the Medicare fee schedules are wholly inadequate in many areas. So we bill only what makes sense like a transportation and set-up fee for these

> mobile services. We also clearly show these codes on the price sheets attached to your contracts. Again, please send us the past due accounts owed in full. I am happy to work with you on a go forward contract. ***

127. On April 24, 2012, Suer emailed Mark Schryver, providing a copy to Paulsen and writing, in part: "For settlement purposes, I have spoken with Tim Paulsen our Chief Operating Officer, and he would be willing to take a $40,000 credit to settle this matter. [NA] would request new contracts, to review for all their facilities in Washington, Utah and Arizona. *** Please let either myself or Tim [Paulsen] know if this works."

128. Asked at his deposition in the Delaware Action about his reaction to this settlement proposal, Mark Schryver testified: "I didn't trust what he was saying, and I didn't trust the settlement, and I did not agree with anything that they were coming up with. So I wouldn't settle with it."

129. On May 10, 2012, Attorney Strout sent a letter by email and certified mail to Mark Schryver, providing a copy to Paulsen and writing, in part:

> ***Tim Paulsen, the COO of [NA], requested that I reach out to you regarding the erroneous or, possibly, fraudulent billing practices that he has been inquiring about.
>
> ***We believe, after finishing a very thorough audit, that your company has overbilled the above [referenced NA Facilities] over $80,000.

> ***Your last email, dated May 9, 2012, to Tim Paulsen was that you "completely disagree with this assessment." If that is the stance you are going to take, each of the facilities will be terminating their services with your company and retaining all legal rights and remedies, including, pursuing your company for breach of contract, including the implied covenant of good faith and fair dealing, and fraud, among other causes of action.
>
> If you would like to reconsider and come to a mutually agreeable resolution of this matter without legal intervention, please reach out to either Tim Paulsen or myself no later than May 18, 2012. If we do not hear from you by that date, we will proceed immediately as outlined above.

130. Asked at his deposition in the Delaware Action if he understood Attorney Strout to be making a threat, Mark Schryver testified: "Absolutely." Asked whether Attorney Strout was threatening to terminate Schryver Medical's contracts and file a lawsuit, Mark Schryver testified: "Yes."

131. Upon receipt of Attorney Strout's letter, Schryver Medical involved its attorneys in the dispute. Mark Schryver testified:

> Q. Did [your attorneys] reach out to Ms. Strout?
>
> A. Yes.
>
> Q. Do you know what happened as a result of their communications with Ms. Strout?

A. Yes.

Q. What happened?

A. They—North American, Ms. Strout, backpedaled and said, I see your point. They paid their bill and sent us cancellation notices.

Q. Anything else?

A. Basically no. I mean, at that point in time, . . . when I got the cancellation notices, I sent an email to Tim Paulsen and said, you know, this wasn't fair dealings. You know, we had done nothing wrong, and we provided the service. They paid their bill and then cancelled the contract and went to a company that Bobby [Suer] had in the wings that he was working with anyway.

Q. *** [W]ho was the company that replaced Schryver?

A. Quality Mobile Imaging.

132. Mark Schryver testified further about what had been said by [NA] regarding Schryver Medical's charges: "Jay said that—that they had understood that indeed they were—the contract did say that we did it right. . . .

133. After receiving the payment in full from the NA Facilities, Mark Schryver decided to and did have Schryver Medical issue a $10,000 credit to NA Facilities. At his deposition, asked to explain his reasoning, Mark Schryver testified: "When they paid their bill in full, I said, you know, as a—going through

this, I thought [of] it as good faith that I would give them a $10,000 credit and that we could press on, you know, with the business relationship. And then—and that was with the understanding that we could get contracts and press on."

134. On or around June 29, 2012, NA Facilities faxed notices to Schryver Medical that is contracts were being cancelled.

135. After receiving the faxed notices of cancellation, Arno Bergstrom of Schryver Medical emailed Mark Schryver, writing, about his communications with an NA Facility Administrator regarding the cancellation of Schryver Medical's contract.

136. On June 29, 2012, Mark Schryver emailed Mr. Bergstrom, responding: ***"If it is North American Healthcare, they are the guys that tried to extort us for the billing past."*** Asked at deposition if he thought they were extorting him, Mark Schryver testified: "Yes."

137. On July 18, 2012, Mark Schryver emailed Paulsen, writing, in part:

> At this point all I can say is that I am very disappointed in the outcome of your endeavor to extract discounts from Schryver Medical. As I'm sure you know, we gave you a 10K discount on your billing in good faith even though we had done nothing wrong. We also sent a new proposed contract to you per your request. We worked with your in-house counsel with our legal team to explain the billing and show that we had done

> nothing wrong. Bobby Suer was wrong with his allegations of wrongdoing. It's truly too bad that someone can come in and make allegations like that and ruin a relationship that has been in place for years. We have now received the cancellation notices from your facilities and wonder if this was your intention all along. There was never any ask for negotiation on the new proposed contract. Why not? Anyway, none of this feels right to me.

138. Explaining this email further, Mark Schryver testified: "And I did email Tim Paulsen and said, What are you doing? Why? And got no—no response from him. So I knew it was over."

139. Asked if it was his belief that NA was acting in bad faith, Mark Schryver testified: "Yes."

140. Suer's counsel also asked Mark Schryver questions at his deposition. In relevant part, Mark Schryver's testimony in response to Suer's counsel's questions is as follows:

> Q. Why did you agree to [give a deposition]? Isn't DL a competitor of yours?
>
> A. Yes.
>
> Q. A pretty major competitor of yours; isn't that a fair characterization?
>
> A. They're the largest.
>
> Q. All right. So if you're helping DL's interest, you're not helping Schryver's interest; isn't that right?

A. Well, had you been on the receiving end of what Bobby [Suer] and [NA] had done, you wouldn't like it either.

***

Q. ***[W]hat do you mean by that?

A. I mean that I was taken advantage of by Bobby and by North American, and they didn't deal fairly. So absolutely I'd be willing to testify to that.

***

Q. Is it your view . . . that Tim Paulsen doesn't understand his contracts with you?

A. He understands it. He—he was just trying to get something for nothing. . . .

Q. So it's your belief that Mr. Paulsen's unfairly trying to take advantage of Schryver?

A. Yes.

Fraudulent Shakedown of First Choice

141. In January 2012, at Sorensen's and Paulsen's instruction and with their approval, Suer called ancillary services vendors for NA Facilities including First Choice, an x-ray and EKG provider. Suer spoke with Teri, First Choice's billing manager, about a purported billing dispute. Suer concealed his true identity on the telephone call and falsely represented his name as "Dave." This was because Suer knew that Kurt Stewart ("Stewart"), CEO of First Choice, had a business relationship with McCullum, and Suer did

not want Stewart to tell McCullum about Suer's work for NA, as such work was in direct violation of his restrictive covenants to DL. By way of background, there was an NA employee by the name of Dave Lonsway whom Paulsen would purport to involve when he wanted to conceal Suer's involvement from DL and others, such as Stewart, who had relationships with DL.

142. After the telephone call with "Dave" [Suer], Teri told Stewart, "You need to talk to this guy. He's coming on pretty strong." This is according to Stewart's testimony at deposition in the Delaware Action.

143. Still in January 2012, Stewart telephoned "Dave" [Suer] back. "Dave" [Suer] represented to Stewart that there were irregularities in First Choice's invoices and First Choice owed money back. Stewart disagreed and explained why the charges were correct. "Dave" [Suer] did not listen to Stewart's explanation but instead became aggressive and combative.

144. "Dave" [Suer] told Stewart that he was pulling First Choice's invoices back to 2008 and was conducting "research" on the charges.

145. Subsequently, during multiple telephone calls, "Dave" [Suer] and Stewart engaged in back and forth about pricing. "Dave" [Suer] ultimately represented to Stewart that he could make things right and keep the accounts by issuing a credit in an amount between $17,000 and $25,000.

146. Stewart testified:

> So after some consideration, which I didn't want to do this, I said, well, they are really great accounts, you know. I

> want the integrity of my name to remain high because, you know, that's what's important in this type of industry. So I agreed to a $17,000 credit back, thinking that it would help alleviate this issue. I changed the fee scheduling to what they are requiring of me to do.

147. In March 2012, First Choice issued a credit in the amount of approximately $17,000.

148. Subsequently, toward the end of March 2012, Paulsen caused NA Facility Lake Balboa to send a letter to First Choice providing notice of cancellation of First Choice's contract, and also caused NA Facility Chatsworth Park to send a letter to First Choice providing notice of cancellation of First Choice's contract. Asked at deposition in the Delaware Action who at NA was responsible for that cancellation of First Choice's contracts with Lake Balboa and Chatsworth Park, Stewart testified that it was Tim Paulsen.

149. Stewart further testified: "So after I did the credit back, we got the cancellation. So, in the end, I lost the accounts."

150. Asked what vendor replaced First Choice at Chatsworth and Lake Balboa, Stewart testified that he understood that the replacement vendor was Town & Country. Asked if he had an understanding as to why Town & Country was selected, Stewart testified: "My understanding is, well, word on the street was that Bobby [Suer] was the one who found Town & Country, . . . but that he was getting a—I don't know, word on the street was he was getting a piece of whatever they performed moneywise.

151. Asked why he was willing to give a deposition at the request of DL, a competitor, Stewart testified: "Moral obligation, sure. And, you know, how it went down with North American wasn't right."

Sorensen And Paulsen Redirect The Shakedown To Other Vendors

152. By late summer/early fall 2012, the NA Facilities' existing x-ray and laboratory vendors had been terminated and replaced by new vendors. Documents produced by NA in the Delaware Lawsuit show that, in or around October 2012, Suer prepared a spreadsheet for Paulsen, showing the financial benefits extracted to date from Fraudulent Shakedown Scheme as applied to x-ray and laboratory vendors for each of the NA Facilities. Suer's spreadsheet lists each NA Facility, the amount credited, and the type of contract (lab or xray). At the bottom of the spreadsheet is a line reflecting the total credits. Significantly, next to the total is written "Total ***so far***."

153. Notably, the definition of "so far" is: "(***of a trend that seems likely to continue***) up to this time." (Emphasis added.) Thus, this NA spreadsheet expressly asserts that the Fraudulent Shakedown Scheme was ***a trend that seems likely to continue.*** Thus, Sorensen and Paulsen had no intention of stopping after shaking down the x-ray and laboratory vendors. As of October 2012, Sorensen and Paulsen fully expected and intended the trend to continue with other ancillary service vendors.

154. On his deposition in the Delaware Action, Paulsen testified that Sorensen and Paulsen determined that Suer had done a "good job" respecting

the xray and laboratory vendors and so, after replacement vendors had been put in place for x-ray and laboratory, they decided to have him continue to provide the same services for all ancillary vendors for all NA Facilities. According to Paulsen's testimony, Suer's responsibilities respecting all ancillary services vendors, was to "show where he saw possible overbilling of invoices relative to the contract pricing that the facility had." Paulsen testified that Suer did the same thing "from vendor to vendor in a variety of different areas."

DL Files Action Against Suer For Monetary And Injunctive Relief Seeking, Among Other Things, That Suer Be Enjoined From Working At NA.

155. On October 10, 2012, DL filed the Delaware Suit Against Suer. As of that date, DL was actively pursuing injunctive relief against Suer. DL sought for Suer to be enjoined from, among other things, working at NA. Thus, if DL were to achieve its objectives in DL's Lawsuit Against Suer, Suer would be enjoined from working at NA (and consequently from working on the Fraudulent Shakedown Scheme).

156. Soon after the Delaware Lawsuit was filed, Sorensen and Paulsen actively and aggressively mobilized in defense against DL's objectives in the Delaware Lawsuit. They did this to prevent Suer from being enjoined and to keep him working on their lucrative Fraudulent Shakedown Scheme.

157. There were a number of tactics employed by Sorensen and Paulsen in an effort to keep Suer from being enjoined and to keep him working on the Fraudulent Shakedown Scheme. Sorensen's and Paulsen's tactics are set forth in detail below, and can

be summarized as follows: (1) "loaning" Suer the funds to hire counsel to mount a vigorous and bad faith defense; (2) using every means possible to delay the Delaware Action, in an attempt to run out the clock until Suer's contractual covenants to DL expired; (3) withholding relevant documents and information that DL sought in discovery; (4) causing Suer to file, and "loaning" him money for counsel for, a chapter 7 bankruptcy petition to automatically stay the Delaware Action; (5) both Sorensen and Paulsen perjuring themselves in deposition; (6) Paulsen perjuring himself at trial; and (6) improperly and unlawfully impeding any discovery in DL's Adversary Proceeding that would reveal the nature of Suer's current conduct, to preclude DL from establishing Suer's actual malice in the Bankruptcy Court, in an effort to prevent DL from obtaining an injunction that would preclude Suer from working at NA.

158. At sometime before December 2012, Suer approached Paulsen about borrowing money to pay his legal fees in the Delaware matter. Paulsen then approached Sorensen, who ultimately agreed to cause NA to loan Suer funds for attorneys fees. The first loan, reflected by a promissory note dated December 12, 2012, was for $50,000.

159. Suer used the funds to pay counsel to delay the proceedings through an unsuccessful motion to stay pending arbitration and motion to stay discovery. In Suer's motion to stay discovery, representations were made that there was no reason for concern that Suer's relevant documents and electronically stored information ("ESI") would be destroyed. Suer's counsel, paid with NA's funds, did not collect Suer's ESI, however, and by the time the stay was lifted, Suer

supposedly had "lost" his cell phone. For this and other spoliation, the Delaware Chancery Court granted DL's motion and held that Suer had spoliated and suppressed evidence, drawing adverse inferences and awarding DL its attorneys' fees for preparing the motion.

160. Sorensen agreed at his deposition that NA's loans to Suer were unusual. Asked at his deposition in the Delaware Action if North American had a business reason or purpose for making Suer the loans, Sorensen testified: "That's a confidential matter." Asked the same question again, he testified: "Simple business decision." Asked again, Sorensen's counsel objected and instructed him not to answer. Sorensen refused to provide the business reason because he wanted to deprive DL of information that would have supported enjoining Suer from working at NA (and from working on the Fraudulent Shakedown Scheme).

161. While DL's Action Against Suer was pending, Paulsen and Suer were at first focusing on oxygen vendors, which involved cancelling the current provider. On November 29, 2012, Paulsen emailed numerous NA Facilities, copying Suer, on the subject "New O2 provider… Interactive Medical Systems," writing:

> Bobby Suer will be sending you a new contract shortly for O2 services from Interactive Medical Systems (IMS). You should see about a 30% to 40% savings from your current expense.
>
> Apple Valley is already using this provider (JJ, you will also get a new contract with better terms).

> Please send (and copy Bobby Suer) a 30-day cancellation notice to your current O2 provider (except you, JJ) so that the new provider can start January 1st.

162. On November 30, 2012, Doug Callant, Vice President of IMS, emailed Suer, attaching 12 contract proposals for various NA Facilities, with the subject "IMS O2 Agreements with 2nd Business Day + Business Associate Agreements."

163. On December 5, 2012, Suer forwarded the email to Paulsen, with the cover message: "Contracts for oxygen in bay area."

164. Later on December 5, 2012, Paulsen forwarded the same email chain to a number of NA Facilities Administrators, writing:

> Attached are contracts and business agreements for your facilities for O2 supplies with IMS, Inc.
>
> Please review and, if in agreement, sign. Hold onto the contract as a representative from IMS will be calling you to meet and pick it up.
>
> If you have questions re this agreement, call Bobby Suer at 310-387-8700 or at NAHC.

165. While Paulsen was busy causing the cancellation of oxygen vendors and replacing them with at least one, PulmoCare, that had bribed Suer (as explained further below), NA Facilities were advising them of severe problems with CERF, one of the laboratory vendors that had replaced DL. Certain of these communications are set forth below. Although

CERF's problems threatened the health of NA Facilities' patients and caused serious upset to patients' families, there was never any recommendation from Paulsen to reach out to DL, even though Facilities' personnel preferred DL's service. DL was shut out of doing business with the Facilities due to Paulsen's prior misrepresentations about overbilling.

166. At his deposition Dahl testified about CERF's service problems, including an incorrect laboratory test result, which caused a Coventry Court patient to be sent to the hospital unnecessarily, to the dismay of the patient's family and Dr. Max Diamond, the physician for Coventry Court and other NA Facilities. On December 3, 2012, Terrace View's administrator wrote a text message to Suer as follows: "I don't know if you heard about the lab machine being down. CERF will not be processing bmps for several residents at our facility. Suer texted his response, "No I didn't hear that. They should send them out to quest. I will find out. The Terrace View administrator responded by text: "We have 7–10 pending. Elena [CERF] as they won't send them out unless critical. I told Sally at [Terrace View] that they should send them out," to which Suer texted, "Ok checking it out." The Terrace View administrator texted the response: "U give better customer service than CERF."

167. On or around December 4, 2012, one of CERF's laboratory machines again malfunctioned, resulting in delays in test results to Coventry Court, according to Dahl.

168. The problems with CERF were so significant that Dr. Diamond recommended contracting with

another laboratory to try to avoid delays with critical lab work, which could require sending patients to the hospital. Yet, DL was not contacted and was shut out of this laboratory business due to the prior dealings, including Paulsen's misrepresentation to NA Facilities that DL had overbilled.

169. Another replacement laboratory vendor that did not work out, according to Paulsen's deposition testimony, was Bio Data. As a result, the NA Facilities that Bio Data was servicing "moved on" to another vendor. Again, DL was shut out of this business due to the prior misrepresentations of overbilling.

Suer's Additional Compensation Due To New Vendors' Payments Of Bribes

170. By January 5, 2012 at the latest, Suer started acting as a liaison between potential replacement vendors and NA or NA Facilities. As detailed below, in exchange for his assistance, Suer was demanding and taking bribes from the potential replacement vendors.

171. The documents that DL has obtained in discovery in the Delaware Action establish that, as of January 5, 2012, Suer was acting as a liaison between DL's x-ray competitor, Quality Medical Imaging ("QMI"), and NA Facility Coventry Court. QMI was submitting contract proposals for x-ray services to Coventry Court. The documents show that attempts were made to conceal Suer's involvement in QMI's communications with Coventry Court. Suer was copied on emails but his name was never used. Instead, Suer was identified as "our mutual friend" and "BS." Suer's email address was

xray4you@aol.com and so did not include any reference to his name. Suer at one point was using an email address at NA was bobbie@nahci.com, which misspells his first name and does not include his last name.

172. QMI made proposals for numerous NA Facilities based on DL's pricing. DL's pricing was confidential, non-public information. QMI obtained the pricing information from Suer in violation of his restrictive covenants with DL.

173. During the same general time period in or about early 2012, Suer proposed a bribe to QMI. Specifically, accordingly to trial testimony by Treese in the Delaware action, Suer offered to help QMI acquire NA Facilities' mobile x-ray business in exchange for a $10,000-per-month "consulting fee." Suer made this proposal directly to Treese and Roger Faselt ("Faselt") – the owner of QMI – at QMI's offices in Las Vegas.

174. Faselt accepted Robert Suer's offer, and arranged for QMI to pay the fee. Specifically, QMI instructed Treese to cash a check and deliver the cash to Robert Suer. The delivery was made to Robert Suer at a restaurant in Southern California, along Interstate 15 from Las Vegas to San Diego.

175. After receiving the bribe, Suer used his position to benefit QMI. Prior to cancelling DL's contracts, Paulsen announced that QMI would be one of the new providers replacing DL. QMI contracts were circulated to NA Facilities and, in July and August of 2012, QMI replaced DL as an x-ray provider at a number of them. Paulsen testified at the trial of DL's Lawsuit Against Robert Suer that QMI provides

x-ray services to at least 12 of NA's southern California facilities.

176. Additional bribes that Suer solicited and/or was paid by the new vendors were the subject of trial testimony in the Delaware Lawsuit, by Treese, who was, at all relevant times until mid-April 2012, an independent consultant to certain vendors that were DL's competitors, including B.O.N. and QMI.

177. At the trial in DL's Lawsuit Against Robert Suer, Treese's testimony was as follows. In or around early 2012, Suer pitched a deal to Treese regarding B.O.N. Suer proposed that he would help B.O.N. acquire NA Facilities' laboratory business in southern California if B.O.N. would pay Robert Suer $2,000 per facility. B.O.N. decided not to pay the proposed bribe.

178. At the trial in DL's Lawsuit Against Robert Suer, Treese testified that Suer told him that he had approached Town & Country about paying him to secure x-ray business from NA. Town & Country was another x-ray vendor that replaced DL at NA Facilities.

179. Further, on August 16, 2012, upon information and belief, at least one oxygen vendor, Pulmocare Respiratory Services, Inc. ("PulmoCare"), bribed Suer for the opportunity to bid on NA Facilities' oxygen business. By way of background, in September 2010, in connection with PulmoCare's interest in retaining Suer as a consultant, PulmoCare extended four loans to Suer an amount exceeding $37,000 (which Suer represented were for attorneys' fees in the event DL sued Suer for breach of his covenants). On January 2011, because Suer had not repaid the loan, PulmoCare filed an action against Suer to recover the

full amount. On August 16, 2012, Pulmocare filed a notice of dismissal without prejudice.

180. PulmoCare dismissed the case against Suer as a bribe to Suer, in exchange for Suer's giving PulmoCare the opportunity to bid on NA Facilities' business, along with his strong recommendation. On October 24, 2012, Suer wrote Dahl an email about PulmoCare, providing: "This contract will save you a bunch of money monthly. *** I showed all this to Tim [Paulsen] and he said let's do it. *** I never heard back from Kevin at Pulminaire, so I assume he's not too worried about losing accounts." Dahl Dep. Ex. 30. Pulmocare ultimately obtained contracts with NA Facilities. Pulmocare never refiled its action against Suer for recovery of the more than $37,000 that Suer had borrowed and not repaid. Thus, the amount of PulmoCare's bribe was approximately $37,000.

181. By June 2012 at the latest, Paulsen knew about and approved of the bribes paid to Suer. Around June 2012, Kelly McCullum and Treese met with Paulsen regarding the purported billing dispute. Treese told Paulsen that Suer was selling the NA Facilities' business under the table, in other words, that Suer was taking bribes. Paulsen responded that he had no knowledge of Suer's activities at North American and that Suer was not working there, and he proceeded thereafter to cause the NA Facilities to enter into contracts with the vendors that had paid Robert Suer bribes, including QMI.

182. Also in 2012, Sorensen and Paulsen and Sorensen personally benefitted financially from the bribery scheme. Specifically, Suer received additional compensation in his work for NA in the form of bribes

paid to him by new vendors in exchange for his assistance in obtaining contracts with NA Facilities. The amount Suer received in bribes was compensation that NA did not have to pay him. Due to the ownership and compensation structure of NA, any financial benefit to NA inured to Paulsen (through compensation, commissions and/or bonuses) and Sorensen (as a result of his ownership).

2013

183. In early 2013, DL issued a subpoena *duces tecum* on NA in the Delaware Lawsuit. NA at first invoked Suer's ultimately unsuccessful motion to stay discovery (which had been funded with NA loans authorized by Sorensen and Paulsen) as a basis for not producing documents. Once the stay was denied, NA conducted itself in bad faith to deprive DL of information, and further delay providing information that would have supported enjoining Suer from working at NA (and from working on the Fraudulent Shakedown Scheme).

184. NA initially retained counsel Mr. Villasenor, who served objections. Counsel for DL and Mr. Villasenor engaged in protracted meet and confer communications. As soon as they reached an agreement, which would have required NA to produce documents, NA fired its counsel and retained new counsel to replace the prior counsel. NA's new counsel immediately reneged on prior counsel's agreements to produce documents. DL was forced to file two petitions to enforce the subpoena in the spring and summer of 2013 in attempt to compel NA's compliance.

185. On March 21, 2013, Sorensen and Paulsen again caused NA to loan Suer funds—this time $35,000—for his legal fees in the Delaware Lawsuit.

186. On March 21, 2013, Suer signed an indemnification agreement, which provides that he will hold harmless not only NA, but also its individual directors, officers, agents and employees (which of course includes Paulsen and Sorensen) for claims relating to Suer's prior employment, including claims relating to noncompetition or interference with contractual relationships.

187. By March 2013, the Fraudulent Shakedown Scheme was focused on pharmacy vendors. On March 29, 2013, Paulsen wrote an email to a number of NA Facilities Administrators, copying Suer, on the subject "Pharmacy contracting, providing:

> We are in the process of negotiating new pharmacy agreements. A "Request for Proposal" (RFP) will be sent to a number of national and regional pharmacy providers. If you are aware of a pharmacy provider that you would like us to consider, please forward contact information to Bobby Suer, Meg Gelvezon or myself and we will include them in the process.
>
> At this time, please do not attempt to "negotiate" any new contract terms with a pharmacy provider in your area.

188. On May 14, 2013, Sorensen and Paulsen caused NA to loan Suer another $25,000 for his attorneys' fees in the Delaware Lawsuit.

189. On May 15, 2013, Bottorff (Paulsen's assistant) emailed Suer five draft contract cancellation letters for pharmacy vendors, which Suer forwarded to Paulsen.

190. On May 16, 2013, Paulsen emailed a number of NA Facilities Administrators, on the Subject "FW: Letters Attached," writing, in part: "As the first step to renegotiating pharmacy contracts, we must notify PharMerica of our intent to cancel their contract. *** Please sign and send the original to Bobby at NAHC office."

191. On May 29, 2013 at 9:26 AM, Suer wrote to Sam Rokes at Del's Pharmacy, attaching the same drafts and writing: "Sam per our attorney can you change the wording on those two contracts for Coventry and beachside really quick so I can get these out."

192. On May 29, 2013 at 9:52 AM, Sam Rokes responded in part that he "agreed on all of the changes."

193. On May 29, 2013 at 9:54 AM, Suer forwarded Rokes's email to Paulsen without comment.

194. On May 29, 2013 at 10:19 AM, Paulsen emailed certain NA Facilities Administrators (Shaun Dahl at Coventry Court and Craig Orgill at Beachside), copying NA's Bryan Tanner and Brendan Dahl at Terrace View, with the subject "FW: Pharmacy services –beachside.docx," and writing, in part:

> Attached are the new pharm contracts for Del's Pharmacy. These rates with Del's are significantly below your current providers.

> (Shaun, please send your cancel notice to Omnicare with a 30 day–June 30th–term date and see if they accept it. Craig, your cancel to PharMerica is already done.
>
> Sam Rokes from Del's will be contacting you to set up a meeting.
>
> Call Bobby if you have any questions.

195. On May 29, 2013 at 10:28 AM, Paulsen emailed all NA Facilities Administrators (at the email address administrators@nahci.com), and a number of NA personnel (Stephen Shipley, Bryan Tanner, Darian Dahl, James Ellis-Sherinian, Jeremy Jergensen, and Justin Allen), (with copies to Meg Gelvzon and Suer), with the subject "Pharmacy contracting," and writing, in part: "We are in the process of negotiating new pharmacy agreements. A 'Request for Proposal' (RFP) will be sent to a number of national and regional pharmacy providers. *** At this time, please do not attempt to "negotiate" any new contract terms with a pharmacy provider in your area.

196. On May 30, 2013, Paulsen sent an email to a number of NA's personnel (Bryan Tanner, Darian Dahl, James Ellis-Sherinian, Jeremy Jergensen) and NA Facilities Administrators (Jacob Beaman at Pacificare, Craig Barron at Lake Balboa Care, and Brendan Dahl of Terrace View). Paulsen wrote:

> As you know, ***about a year ago we asked Bobby Suer to consult with us in the area of ancillary services/vendor contract renegotiations***. He brings many years of experience from the vendor side of our business and has been able to reduce our

> costs in a number of areas. ***Bobby . . . is currently focusing on pharmacy services*** and is having some excellent success in finding new providers with much improved pricing.
>
> ***
>
> ***If a vendor you work with has been over charging you for years, why not ask them to re-price your contract retroactively for 6 months or a year since they obviously could have given you much better pricing before. . . . If they cheated you already, why give them an opportunity to do it again (unless they will pay you back)? They "sold" you (and me) a poor contract once, let's not let them do it again.***
>
> ***
>
> Your time is very precious and spending a lot of time with vendors is not putting it to good use. ***Let us help you in this negotiation process.*** (Emphasis added.)

197. One of NA's Facilities, Cottonwood Post-Acute Rehab, withheld this document and listed it on its privilege log. The privilege log provided the following description for a May 30, 2013 listing: "An email from Tim Paulsen to various NAHCI personnel and various client service facility administrators re: ***strategies for negotiations with pharmaceutical vendors—containing highly proprietary and trade secret information.***" (Emphasis added.)

198. In addition, Courtyard Care Center, another NA Facility, withheld as privileged and listed on its privilege log a string of emails dated from May 13, 2013 to June 3, 2013, described as "Emails between NAHCI General Counsel Catherine Strout, Bobby Suer and Courtyard Care Center Administrator Julie Javier regarding contractual terms from Western Pharmacy Services."

199. In Paulsen's May 30, 2013 email, Paulsen calls it "cheating" when a vendor charges prices that are correct under the applicable contracts. Paulsen concedes that the prices were correct under the contracts but nevertheless knowingly mischaracterizes them as "overcharges" because, in his view, it was a "poor [higher priced] contract" in the first place. In this way, Paulsen purports to justify demanding that vendors charge reduced prices "retroactively"—in other words, give credits—even though the prior charges were correct under the contracts.

200. Also in or around May 2013, Dahl cancelled Coventry Court's contract with Omnicare, a pharmacy. Subsequently, Omnicare contacted Dahl to try to reestablish their relationship. Dahl forwarded Omnicare's communication to Paulsen and Suer, asking for their advice on how to proceed. On May 30, 2013, Suer emailed Dahl, advising that Omnicare not be permitted to rebid because, in part: "My opinion we reached out to Mike Wood [of Omnicare] and explained what we were looking for and they never got back to us. They also have been continually raising rates for years. Now when you cancel they come running. I don't think it's in your best interests to allow them to bid now. I realize they have been your pharmacy for years.

I just think it's funny how all these vendors only budge when they get a cancellation notice. Otherwise they keep increasing rates and stick it to the facilities. What's your thoughts Tim?? ***Also they threatened they would hold you to your terms.*** That wasn't nice either. Not a fan of them. At least pharmerica worked with us." (Emphasis added.)

Sorensen And Paulsen Continue Their Efforts To Thwart DL's Quest For Injunctive Relief And/Or Get DL To Back Off

201. Meanwhile, on June 18, 2013, in connection with DL's Lawsuit Against Suer, Paulsen caused Attorney Strout to communicate with DL's counsel Thomas McCaffery and request DL's outside counsel to hold off on enforcing the subpoena, and represented that there was "real opportunity" for DL and NA "potentially working together again."

202. In the same email, Attorney Strout admitted: "[C]ertain client facilities of NAHC need DL's lab services." In the course of many posttermination communications between DL and NA Facilities, Facility personnel expressed a need for DL's services and disclosed that certain replacement vendors provided low quality services. Due to Sorensen's and Paulsen's representations about overbilling, however, DL continued to be shut out of doing business with NA Facilities.

203. It took a significant number of months to obtain documents from NA and NA Facilities and, even then, NA withheld a significant volume of highly relevant and responsive materials. This was done at Paulsen's direction to deprive DL of information that would support enjoining Suer from working at NA

(and from working on the Fraudulent Shakedown Scheme). It is undeniable that NA withheld these materials because NA later produced them in response to a subpoena in DL's Adversary Proceeding against Suer, as alleged further below.

204. On June 26, 2013, Paulsen caused Attorney Strout to communicate with DL's counsel Thomas McCaffery and make an implicit threat to "reach out to some of our colleagues and associates in the industry and relevant geographic areas to assist in assessing the viability of our disputes," and represent that "the revelation of these [billing] problems was a result of a thorough audit process of the records and nothing more." The objective of this threat was to intimidate DL into foregoing its attempt to enjoin Suer from working at NA (and from working on the Fraudulent Shakedown Scheme).

205. On June 28, 2013, Suer signed another promissory note and Sorensen and Paulsen caused NA to loan him another $50,000 to pay legal fees in the Delaware Lawsuit.

The Fraudulent Shakedown Scheme Continues With Pharmacy Vendors

206. Meanwhile, on July 9, 2013, Paulsen emailed NA Facilities Administrators Brendan Dahl at Terrace View, Mark Hall at Fireside Care, and Matthew Robison at Brentwood Nursing, with copies to Craig Barron at Lake Balboa Care, Bryan Tanner and Suer, with the subject "Pharmacy cancellation notice to Omnicare, and writing:

> Bobby Suer has two pharmacy proposals for your review that would result in significant savings for your facility.

> In order to move this process along, please send a 60 day cancellation notice to Omnicare (effective term of August 31st).
>
> I say "process" because Omnicare is not fully "cooperating" and is resisting this change in some facilities—so it may be a "process."
>
> But let's get it moving along….

207. Negotiations with Omnicare continued. The privilege log of Terrace View, an NA Facility, listed a document dated August 15–16, 2013 and described as "Emails between Catherine Strout, Brendan Dahl, and Bobby Suer re rates and contracts with Omnicare."

208. As of "late 2013," Suer's "work" on NA Facilities' pharmacy vendors was continuing, according to deposition testimony of Dan Almblade who, at the time of the deposition, was a pharmacy consultant to NA.

DL Continues To Be Excluded From Opportunities To Do Business With the NA Facilities As A Direct Result Of The Fraudulent Shakedown Scheme

209. In addition to their work on the Fraudulent Shakedown Scheme directed at other ancillary vendors, Sorensen and Paulsen also continued into the fall of 2013 and beyond to injure DL by shutting it out from doing business with the NA Facilities due to the purported "overbilling."

210. In 2013, Muir Laboratories ("Muir") announced that it would no longer provide mobile

laboratory services effective November 2, 2013. Muir was a laboratory service provider in northern California that, after DL's termination, replaced DL as the laboratory vendor for Cottonwood Post-Acute Rehab ("Cottonwood"), an NA Facility, and perhaps other NA Facilities.

211. Muir's announcement gave DL a reason to reach out to Cottonwood and make a pitch for its laboratory business. Muir was one of very few laboratory providers in the region and there were very few labs, aside from DL, that could have replaced Muir. On September 10, 2013, Mark McGee of DL wrote a letter to Cottonwood, providing, in part:

> I want to take the opportunity to re-introduce you to [DL] and our services, particularly our laboratory services.
>
> In light of Muir Laboratories' decision to stop its lab services on November 2nd, 2013, we are ramping up our resources in an effort to meet your diagnostic testing needs, should you choose to utilize our services.
>
> ***
>
> We urge you to contact us as soon as possible if you would like to use our laboratory services.

212. Less than a week after DL sent its letter and undoubtedly prompted by DL's letter, on September 16, 2013, James Ellis-Sherinian emailed Suer, writing, in relevant part: "Do you have any updates on a lab company for NorCal? Who are you looking at?"

213. Regarding this email, Suer testified at the trial in the Delaware action as follows:

> This is—this was Monday, September 16th, 2013, well after the litigation started. And they—well, he wrote me the e-mail because the laboratory in Northern California went out of business completely and all of the nursing homes up there were going to be without lab service. So they were frantically—North American was frantically looking for a laboratory since they had a dispute with [DL], and they were looking for a laboratory. And they had asked me to just research if I knew any laboratories up there just because nobody knew where the patients were going to get their lab work done.

214. Even though the NA was "frantically looking for a laboratory" and even though DL reached out to Cottonwood about the work, DL did not get the Cottonwood lab business or even an opportunity to bid. According to Suer, this was because of NA's "dispute with [DL]."

215. On September 26, 2013, Mr. Ellis-Sherinian forwarded Suer an email he received from a lab that was not DL, with the cover email providing: "I received this in the email. Is this the company you have already been speaking with?" Two minutes later, Suer responded in an email: "James yes. I will call u later yo [sic] discuss." Suer thus recommended a different laboratory vendor for Cottonwood and failed to recommend talking to DL. Sorensen and Paulsen's

overbilling accusations thus continued to cause DL to be shut out of this business opportunity.

216. In November 2013, upon information and belief, Attorney Strout, at Sorensen's and Paulsen's direction, intervened to thwart any attempt by DL to obtain new business with NA Facilities. On November 6, 2013, Strout wrote an email to various Facility Administrators regarding "letter from DL sent to facilities." Upon information and belief, the purpose of the communication was to instruct the facilities not to respond to DL's attempts to obtain business from them after Muir's announcement. This document was withheld from production but is listed on an NA Facilities' (Petaluma's) privilege log from the Delaware Action.

217. Returning to DL's Lawsuit, in the fall of 2013, DL's pursuit of injunctive relief against Suer, and Sorensen's and Paulsen's efforts to prevent an injunction, and thus continue the Fraudulent Shakedown Scheme, continued. In September 2013, DL issued deposition subpoenas for the depositions of Paulsen and Strout (and, later, for Sorensen's deposition). As set forth below, Sorensen and Paulsen conducted themselves in bad faith in attempt to deprive DL of the depositions and prevent or delay DL from obtaining information that would have supported enjoining Suer from working at NA (and from working on the Fraudulent Shakedown Scheme). Indeed, the goal with the deposition scheduling, as with the document production, was to maximize delay and run out the clock, given that Suer was arguing that his covenants to DL expired in May 2014.

218. On September 19, 2013, DL served a subpoena for the deposition of Paulsen, to be conducted on October 23, 2013. In early October 2013, NA's outside counsel proposed that Paulsen's deposition be scheduled for the first full week of November 2013, to which the parties agreed.

219. On October 2, 2013, DL served a subpoena for the deposition of Sorensen, to be conducted on October 22, 2013.

220. On October 10, 2013, DL served a subpoena for the deposition of Attorney Strout, to be held November 8, 2013.

221. On October 22, 2013, Sorensen caused NA to file a protective order, supported by sworn perjurous declarations from Sorensen, to prevent his deposition from proceeding. Sorensen's declarations are addressed further below.

222. On October 21, 2013, NA's counsel advised that the early November dates would no longer work and the deposition was postponed again, until December 16–17.

223. On November 27, 2013, the court adjudicating the motion for protective order respecting Sorensen's deposition denied the motion and ordered the deposition to proceed. The deposition was scheduled for January 2014.

224. On December 2, 2013, NA's counsel advised that the agreed deposition date for Attorney Strout would have to be postponed.

225. On December 9, 2013, NA's counsel sent an email advising that Paulsen was no longer available on December 16–17 and counsel rescheduled the

deposition for January 21–22, 2014. Suer's deposition also was scheduled in January.

2014

Funded By Sorensen And Paulsen, Suer Files Chapter 7 Bankruptcy Petition

226. On January 7, 2014, Suer filed a chapter 7 bankruptcy petition in a last ditch attempt to thwart DL's Lawsuit. The chapter 7 petition caused DL's Lawsuit Against Suer to be automatically stayed. The depositions of Paulsen, Sorensen and Suer, all of which were scheduled in January 2014, were necessarily cancelled due to the stay.

227. Sorensen and Paulsen conspired with Suer respecting the timing and strategy of filing the chapter 7 petition. Indeed, Sorensen testified at deposition that some of the funds that Suer borrowed from NA were used in connection with Suer's bankruptcy. The objective of the chapter 7 filing was to prevent DL's injunction and keep Suer working on the Fraudulent Shakedown Scheme at NA. Sorensen and Paulsen wanted to run out the clock in the hope that, as Suer was arguing, Suer's restrictive covenants would be held to expire in May 2014.

228. On January 27, 2014, DL filed a motion for relief from the stay in the bankruptcy court. On March 27, 2014, the United States Bankruptcy Court for the Central District of California ("Bankruptcy Court") modified the stay to allow DL to pursue injunctive relief against Suer for breach of contract in the Delaware Lawsuit. The stay remained in place respecting DL's claim for misappropriation of trade secrets seeking damages and injunctive relief, and for

tortious interference seeking money damages. Those claims remain pending but are stayed.

Sorensen And Paulsen Fund Suer's Motion For Summary Judgment Regarding The Expiration Date For His Restrictive Covenants

229. On April 7, 2014, Suer moved for partial summary judgment in the Delaware Lawsuit, arguing, among other things, that his restrictive covenants to DL would expire in May 2014, before trial. Suer's defense was still being funded by loans from NA, which were authorized and approved by Sorensen and Paulsen. Had the argument about the duration of the restrictive covenants prevailed (it did not), Sorensen's and Paulsen's objective to delay, impede and run out the clock would have succeeded in preventing an injunction and continuing Suer's ability to work on the Fraudulent Shakedown Scheme. Suer's motion for summary judgment was denied, however, and DL continued in its pursuit of an injunction to prevent Suer from working at NA.

DL Files Its Adversary Proceeding Against Suer In Bankruptcy Court

230. On April 21, 2014, DL filed an Adversary Proceeding against Suer in the Bankruptcy Court. In the Adversary Proceeding, which is presently pending, DL is, among other things, objecting to discharge of Suer's debts generally and also seeking a determination that Suer's debts to DL are not dischargeable because he caused willful and malicious injury to DL.

Sorensen And Paulsen Threaten DL In An Attempt To Make DL Stop Pursuing Injunction Against Suer

231. On May 22, 2014, desperate to stop the Delaware Chancery Court from issuing an injunction so as to continue with the Fraudulent Shakedown Scheme, Paulsen sent a letter to Kelly McCullum of DL, demanding dismissal of DL's Lawsuit and providing, in part (emphasis added):

> I have been contacted by a number of vendors and SNF providers who ask me why DL is requesting information from them regarding your issue with Robert Suer. To date I have been reluctant to share with any of these providers information about the serious, willful and fraudulent DL contract overbilling problem discovered at the facilities which [North American] services. If this effort on your/DL's part continues, I feel I must inform these other providers of your billing issues.
>
> You need to be aware that John Sorensen, our President and CEO, is held in high esteem by the post acute/SNF community both here in California and nationally. Moreover, he maintains a close personal and professional relationship with CEOs of the major companies to whom you provide services. Sorensen is becoming very irritated and concerned that you and your attorneys are taking our

> employees away from their work to appear at depositions for hours and days, only to ask many off-the-wall and non-[North American] related questions. Taking our team away from their duties on this matter hurts our business. Sorensen will be attending the CEO/Owners conference here in south Orange County next week (May 28 and 29) and has told me that he may be expressing his frustrations concerning DL to this large group of SNF providers if you do not respond to this letter immediately. ***His irritation with this issue will lead him to proceed with full disclosure if you do not commit to a cease and desist this lawsuit [against Robert Suer] by Jun 1st. Furthermore, if this lawsuit continues, and whether or not Robert Suer continues with us, [North American] will never entertain contracting with DL in the future.****

232. DL did not cease and desist in response to this threat and continued to pursue injunctive relief to stop Suer from working at NA.

Paulsen Obstructs DL And Perjures Himself At Deposition

233. On June 12, 2014, Paulsen's deposition was finally taken. Although Paulsen was identified to testify as NA's corporate representative on a number of topics, Paulsen did nothing to prepare for any of the specific topics on which he was NA's corporate

designee. This was a deliberate flouting of his obligations and an attempt to prevent DL from obtaining information that would support enjoining Suer from working at NA.

234. Paulsen repeatedly perjured himself at deposition to thwart DL's efforts to prevent Suer from working at NA (and so prevent him from working on the Fraudulent Shakedown Scheme). In particular, Paulsen lied about Suer's involvement in the Fraudulent Shakedown Scheme as it pertained to DL in an attempt to thwart DL's quest for an injunction.

In June 2014, Paulsen Continues To Use Suer On The Vendor Shakedown

235. Paulsen testified that, as of the date of his deposition, Suer was focusing on "all of our pharmacy vendors, all of our patient service vendors essentially," and Paulsen had asked him to "start looking into food costs and food vendors."

Consistent With Sorensen's And Paulsen's Strategy, Attorney Strout And Her Counsel Obstruct DL's Attempt To Depose Her

236. On June 13, 2014, NA's outside counsel advised that Attorney Strout's deposition had to be postponed. On July 1, 2014, Attorney Strout's deposition was finally taken.

237. Although DL's counsel had advised in advance that the deposition could take a full day, NA's outside counsel, over objection, terminated the deposition after a half a day. Counsel did this at the instruction and with the approval of Sorensen and Paulsen in an attempt to prevent the injunction and keep Suer working at NA on the Fraudulent Shakedown Scheme.

Sorensen Obstructs DL And Perjures Himself At Deposition

238. On June 19, 2014, Sorensen's deposition was finally taken.

239. Sorensen perjured himself at deposition in attempt to prevent the injunction and keep Suer working at NA on the Fraudulent Shakedown Scheme. As with Strout's deposition, Sorensen's counsel terminated the deposition after a half day, over DL's counsel's objection and before the deposition had been completed. Sorensen's perjury and other testimony is further detailed below.

Sorensen And Paulsen Cause NA To Loan Suer Additional Funds.

240. On July 18, 2014, NA advanced another loan to Suer in the amount of $25,000, accordingly to papers filed in NA's chapter 11 bankruptcy case. This loan, like the others, was authorized and approved by Sorensen and Paulsen to fund Suer's defense and prevent DL from obtaining an injunction to stop Suer from working at NA. Sorensen testified at deposition: "The circumstances [of the loans to Suer] were centered around his mounting legal fees in this matter and his bankruptcy."

Suer and Suer's Counsel, Funded By NA Loans Approved By Sorensen And Paulsen, Spoliate And Suppress Evidence And Make Misrepresentations To The Court Regarding Same

241. On August 8, 2014, in the Delaware Lawsuit, DL filed a motion for sanctions for suppression or spoliation of evidence. Suer's lawyer, again paid through loans from NA, which were authorized and

approved by Sorensen and Paulsen, argued that Suer was merely negligent and should not be held accountable. The Delaware Chancery Court disagreed, granted DL's motion, drew certain adverse inferences against Suer, and awarded DL's its fees incurred in bringing the motion. The Delaware Chancery Court findings are discussed further below.

Sorensen And Paulsen Voluntarily Travel From California To Delaware To Defend Against DL's Efforts To Obtain An Injunction To Stop Suer From Working At NA

242. From September 29 through October 3, 2014, the Delaware Chancery Court held a trial.

243. Paulsen flew to Delaware to testify on behalf of Suer. Paulsen fought against DL's attempt to enjoin Suer from working at NA:

> Q. Are you aware that this Court—DL is asking this Court to order Mr. Suer to stop working at North American?
>
> A. I've heard that, yes.
>
> Q. What's your reaction to that?
>
> A. It's crazy. I—there—I don't get it. I—against, there's—what issue they would have with him doing the work for us that he's doing, I have no idea.
>
> Q. Are you getting anything in return for doing this?
>
> A. No. No. I don't—I'm not getting anything. I mean—I just hope we can get beyond this and go on with our—our work.

244. The Delaware Chancery Court found Paulsen's testimony not to be credible or reliable in numerous instances. The Court specifically found:

> Based on the totality of the documentary and testamentary evidence surrounding these events, I do not find [Paulsen's] assertion [that he and not Robert Suer wrote a certain email] credible and find, instead, that Suer had a major role in drafting the email. *** Paulsen's [denial that Suer wrote the contract cancellation notices to DL] is not credible. *** As in the situations previously noted, however, I consider Paulsen's efforts to minimize the importance of Suer's role in [NA's] decision to cancel its contracts with DL to be unreliable, at a minimum. *** Paulsen's and McCullum's testimony differed as to how many meetings took place between Paulsen and Treese. [Citation omitted.] McCullum's testimony was more credible in this regard….

245. Sorensen took the same flight as Paulsen and also appeared voluntarily to testify on behalf of Suer. This is remarkable given Sorensen's sworn declarations in support of a motion for protective order to preclude Sorensen's deposition, in which he claimed that he had no knowledge and that, as a result of his responsibilities at NA, it would be unduly burdensome for him to attend a half day deposition at his office in California.

Medliance, An Independent Third Party Bill Adjudicator For Skilled Nursing Facilities, Advises DL That Suer And Suer's Counsel, Funded By NA Loans Approved By Sorensen And Paulsen, Conspired In A Nefarious Scheme To Obtain Revenge On DL And Put Pressure On DL To Back Off On Its Quest For Injunctive Relief

246. On August 15, 2014, Suer's counsel, funded by NA loans approved by Sorensen and Paulsen, deposed a third party, Dan Almblade, who was an employee of Medliance/LTC, a company that provides bill adjudication and contract review services to skilled nursing facilities. At the time of Almblade's deposition, he was evaluating a major proposal that DL had submitted to Medliance in response to a request for proposal by DL's major customer Plum. DL could not fathom what possible information Almblade might have that would be relevant to the Delaware Action.

247. At the deposition, Almblade admitted that he knew nothing about the dispute between Suer and DL, and he testified that Suer asked him to be deposed because Almblade would find it "very informative." Suer's counsel marked as an exhibit Paulsen's March 22, 2012 letter to DL and showed Almblade Paulsen's allegations of overbilling.

248. In September 2014, Almblade was fired by Medliance. Almblade claimed that he was fired because he appeared to be deposed by Suer's counsel in the Delaware Action and blamed DL.

249. Almblade voluntarily appeared at trial at Suer's request to testify in support of the claim by Suer's counsel, funded by NA loans authorized and

approved by Sorensen and Paulsen, that DL had engaged in witness tampering. The Delaware Chancery Court rejected Suer's counsel's argument and found there had been no witness tampering or other improper conduct by DL.

250. On October 1, 2014, during the trial, DL's General Counsel, Tom McCaffery, received and email from Steve Olds, the CEO of Medliance. Mr. Olds wrote:

> Approximately two months ago, Dan [Almblade] came into my office and told me that Bobby Suer had a scheme to put pressure on Diagnostic Labs in response to the litigation [Delaware Lawsuit] initiated by Diagnostic Labs. Dan wanted me to meet with Bobby Suer to work out an agreement whereby I would talk to other [skilled nursing facility] operators to put pressure on DL to back off of Bobby. […] Dan explained that Suer was going to give questions to his attorneys to use during depositions to bring out the Diagnostic Labs [alleged] overbilling practices and the appropriate auditing actions to find the overbilling. Dan [Almblade] implied that the that the agreement with Suer would be a win-win; Suer gets revenge on Diagnostic Labs and Medliance gets new business through Dan.

After Testifying For Suer At The Delaware Trial, Almblade Is Retained by North American To Provide Consulting Services

251. Within a few weeks after the trial, Almblade was retained as a consultant for NA, according to papers filed in NA's chapter 11 bankruptcy proceeding. Given their positions and responsibilities to which they testified, Sorensen and Paulsen would have been aware of and approved the retention. Upon information and belief, Almblade was engaged by Sorensen and Paulsen as a quid pro quo for his efforts to get DL to "back off" of their pursuit of injunctive relief against Suer. Asked at a subsequent deposition whether Suer helped him obtain work at NA after he testified at trial, Almblade refused to answer the question. Almblade's retention was, upon information and belief, a quid pro quo for voluntarily appearing at the Delaware trial to testify on Suer's (and so also NA's) behalf.

2015

The Delaware Chancery Court Rules In Favor Of DL

252. On July 22, 2015, the Delaware Chancery Court issued its Opinion. In addition to excerpts from the Opinion quoted herein, the Court generally concluded "that the Restrictive Covenants are enforceable under Delaware law, and that [DL] proved [Defendant] breached those Covenants in the specific instances identified herein. Plaintiff, therefore, is entitled to injunctive relief…." In addition, the Court granted DL's motion for sanctions for spoliation, due to Suer's intentional and reckless destruction of evidence.

253. On October 5, 2015, the Delaware Chancery Court issued its Order implementing its Opinion. The recitals in the Order provided: "WHEREAS, trial in the above-captioned action took place from September 29 to October 3, 2014; WHEREAS, on July 22, 2015, the Court issued its Memorandum Opinion (the "Opinion") setting forth its post-trial findings and conclusions; WHEREAS, [DL's] alleged damages claims remain outstanding and were not resolved in the Opinion as a result of the stay imposed by Defendant, Robert Suer's ('Defendant'), bankruptcy proceeding."

254. The Order further provided: "Defendant breached the Non-Competition Provisions, the Non-Interference Provision, and the Confidentiality Provision of the DLPA (as defined in the Opinion) and the APA (as defined in the Opinion).

255. The Order provided for sweeping injunctive relief, as follows:

> Defendant is enjoined for a period of two years from the date of entry of this Order from:
>
> a. Directly or indirectly engaging in the Business of Plaintiff, specifically providing mobile diagnostic laboratory, x-ray, pharmacy, and other services to nursing homes, assisted living facilities, jails and other long-term care facilities, in the states of Delaware, California, Oregon, Washington, Idaho, Nevada, Arizona, Utah, Wyoming, Montana, Colorado, New Mexico, Texas, Oklahoma, Kansas, Nebraska, South

> Dakota, North Dakota, Minnesota, Iowa, Missouri, Arkansas, and Louisiana;
>
> b. Taking any action that is designed or intended to have the effect of encouraging any lessor, licensor, supplier, distributor, or customer of Plaintiff or its affiliates from altering its relationship with Plaintiff or its affiliates in a matter adverse to Plaintiff or its affiliates;
>
> c.Disclosing or using Plaintiff's confidential or proprietary information, or any trade secret information, involving or relating to Plaintiff's Business;
>
> d. Engaging in the adjudication or auditing of invoices for North American Health Care, Inc, any other skilled nursing management company, or any skilled nursing facility for which Plaintiff currently provides services.

256. Although the injunction is broad and sweeping and significantly curtails the work DL can do at NA, the Order does not preclude Suer from working on the Fraudulent Shakedown Scheme.

257. The Order also provides: "Defendant shall reimburse Plaintiff for its reasonable attorneys' fees and expenses incurred in filing and prosecuting its Motion for Sanctions [for Spoliation and Suppression of Evidence]. . . ."

Sorensen and Paulsen Obstruct The Adversary Proceeding

258. On August 25, 2015, DL served a subpoena *duces tecum* issued to NA ("Subpoena") in the Adversary Proceeding, a matter in which DL's and NA's interests were not adverse and in fact were aligned to the extent both parties were creditors to which Suer owed significant amounts. NA did not respond or object by the deadline and so defaulted on the subpoena.

259. On August 28, 2015, DL filed its initial complaint in this Action.

260. On September 17, 2015, DL's counsel sent a letter by overnight mail and by email to Attorney Strout, providing notice that, absent assurances of compliance, DL would file a petition to enforce the Subpoena and for sanctions.

261. In connection with its receipt of a third party subpoena for documents in the Adversary Proceeding, NA retained the same law firm that Paulsen and Sorensen had engaged to represent them in their individual capacities in this Action.

262. Pressing to obtain NA's responsive documents in the Adversary Proceeding due to discovery cut-off deadlines imposed by the Bankruptcy Court, DL's counsel diligently met and conferred with NA's counsel throughout the remainder of 2015. In attempt to expedite obtaining discovery without court intervention, DL capitulated to a number of NA's counsel's demands, including agreeing to a protective order that limited the use of documents to the Adversary Proceeding, and agreeing to pay NA's costs of collection by an electronic discovery vendor.

263. As of the end of 2015, NA had produced fewer than a handful of pages in response to DL's Subpoena.

2016

264. In February 2016, having received almost nothing in response to the Subpoena issued nearly six months before and facing the fact discovery deadline, counsel for DL met and conferred with NA's attorney (who is also Sorensen's and Paulsen's individual attorney) and threatened to seek court intervention.

265. On February 25, 2016, NA's counsel (who is also Sorensen's and Paulsen's counsel in this Action) advised that they would produce the first installment of a rolling production the first week of March, but as of March 7, the installment had not been provided, nor was there any explanation or revised timetable.

266. On March 7, 2016, DL's counsel sent another demand for the documents. NA's counsel (who is also Sorensen's and Paulsen's counsel in this Action) did not produce the first installment until March 10, 2016. The remaining installments were received March 19, March 26, 2016, and April 7, 2016. Thus, Attorney Strout and NA's counsel (who is also Sorensen's and Paulsen's counsel in this Action), delayed document discovery in the Adversary Proceeding for six months.

267. Sorensen's and Paulsen's obstructive and bad faith objectives in delaying its response to the Subpoena were: (1) To delay DL from acquiring documents that would support further injunctive relief preventing Suer from working at NA (and, thus, preventing him from working on the Fraudulent Shakedown Scheme); and (2) Deprive DL of NA documents and information that would support DL's claim of malicious injury, which, if found, would

provide a basis for an argument that the duration of Suer's covenants (and of any related injunction) should be extended. Thus, Sorensen's and Paulsen's objectives for obstructing DL's Subpoena in the Adversary Proceeding were for the purpose of thwarting any injunctive relief that would prevent Suer from working at NA and from working on the Fraudulent Shakedown Scheme.

268. DL's potential entitlement to further injunctive relief against Suer (and NA) derives from Suer's Employment Agreement (which was not at issue at the trial of the Delaware Action) and the injunctive remedy DL sought in connection with its misappropriation of trade secrets claim, which was stayed by Suer's chapter 7 filing and so remains to be adjudicated.

269. On April 6, 2016, three days before the fact discovery cut-off, DL deposed Mr. Suer in the Adversary Proceeding. Suer is represented by counsel that, upon information and belief, is funded in whole or in part by NA (as a result of authorization by Paulsen and Sorensen). Because the NA document production had not been completed, DL was deprived of relevant materials with which to depose Suer, and Suer's deposition was left open. Significantly, Suer either refused to answer or said he did "not recall" in response to questions about his current activities at NA involving vendors. Paulsen and Suer want to deprive DL of information that will support further injunctive relief against Suer, or that will allow contempt proceedings in connection with the Delaware Order, either of which likely would prevent Suer from working at NA or on the Fraudulent Shakedown Scheme.

Paulsen Causes NA's Counsel (Who Is Also Sorensen's And Paulsen's Counsel In This Action)To Obstruct The Deposition Of Dan Almblade In The Adversary Proceeding

270. Because DL is required to prove malice in connection with one of its claims in the Adversary Proceeding, DL sought to depose Almblade to ask him about, among other things, the Suer-Almblade scheme (described above in the email written by Almblade's former boss, Mr. Olds), in which Suer sought to "get revenge" on DL by deliberately sabotaging DL's customer relationships.

271. On February 9, 2016, Almblade was served with a deposition subpoena (the "Almblade Subpoena"). There was a period of about three weeks after issuance in which DL's counsel communicated with Almblade, who at that time had not retained counsel, about scheduling. Neither Almblade nor Suer objected to the Almblade Subpoena. Nor did either of them seek a protective order or file a motion to quash.

272. Almblade let Paulsen know that he had been subpoenaed. Almblade testified that he did this because the matter involved Suer, an NA contract employee. Almblade also told Suer that he had been subpoenaed. Suer recommended that Almblade get a lawyer.

273. At deposition, Almblade testified that, at some point after the Subpoena was served and before he retained counsel, he received a call from one of NA's lawyers (who also represents Sorensen and Paulsen in this Action). NA's counsel asked Almblade about the deposition and if he was going to retain counsel. NA's

counsel said that if Almblade decided to retain counsel, he would make a recommendation.

274. DL's counsel asked Almblade: "Did [NA's counsel] say that North American would pay for your counsel?" Almblade's objected: "Form. I'm going to instruct him not to answer that question." Almblade then asserted: "I'm not going to answer that question." Upon information and belief, [Sorensen and] Paulsen authorized and caused NA to pay Almblade's counsel's fees incurred in connection with the Almblade deposition.

275. About 10 days prior to the deposition, Almblade retained counsel, James Bennett. Bennett had been recommended by NA and NA's counsel (also Sorensen's and Paulsen's counsel). Bennett also has been retained by NA to represent Scottsdale Nursing, an NA Facility, in a separate action brought by DL.

276. Asked at his deposition whether Almblade was paying for Bennett's services, Bennett objected on attorney-client privilege grounds and instructed Almblade not to answer. DL's counsel asserted that the question did not ask for privileged information, and repeated the question. Bennett made the same objection and gave the same instruction, and Almblade followed his counsel's instruction and did not answer the question. Thus, upon information and belief, Paulsen authorized and caused NA to pay Almblade's attorneys' fees.

277. At the eleventh hour—the evening prior to Almblade's deposition and while DL's counsel was on a plane, traveling to Arizona to take the deposition—Bennett emailed DL's counsel a letter regarding the deposition. The letter did not include any objections.

It provided: "I will be very careful in allowing any questions related to conversations or events past the bankruptcy petition date [January 7, 2014]."

278. At the deposition, DL's counsel explained why Bennett's stated refusal to allow Almblade to provide significant testimony relating to DL's malice claim was improper and unlawful. DL's counsel informed Bennett and Almblade that he would ask the questions and establish a record and, if Almblade refused to answer, DL reserved its rights to seek intervention from the Bankruptcy Court.

279. In response to DL's reservation of rights, Bennett went on the record in an attempt to justify his conduct and intentions. Regarding the timing of his letter to DL's counsel, Bennett asserted: "[I]n regards to the timing of this letter, as you know we were retained, by Mr. Almblade's own testimony himself today, about ten days ago which gave me very little time to get up to speed in speaking with him. *** So do I wish the letter could have been sent earlier or something could have been done in front of the Court? I do, but there just wasn't time." Bennett's assertion—that 10 days was insufficient to address the issues that he waited until the evening before the deposition to raise—does not withstand scrutiny.

280. Bennett also asserted that he intended to ***instruct Almblade not to answer—on grounds of relevance***—any questions about matters after January 7, 2014.

281. Bennett repeatedly instructed Almblade not to answer questions about matters involving the Suer-Almblade scheme as described by Olds. In the relatively short deposition (approximately two hours),

Bennett instructed Almblade not to answer no fewer than 43 times.

282. Significantly, Bennett instructed Almblade not to answer the following questions: What are the purposes of your once-a-month interactions with Mr. Suer? Do you have an understanding as to whether Mr. Suer is still working for North American? Do you have an understanding as to what services Mr. Suer currently provides for North American?

283. Bennett asserted on the record: "And, Lucas, just so that we're clear. We're not trying to obstruct anything here."

284. As a result of Bennett's improper and unlawful objections and instructions, DL was forced to file a Motion For Issuance Of An Order (1) To Show Cause Why Daniel Almblade Should Not Be Held In Contempt; (2) Compelling The Appearance Of Daniel Almblade At A Telephonic Deposition; And (3) Awarding Fees And Costs. That motion is presently pending.

285. As noted above, in the Adversary Proceeding, DL is objecting generally to any discharge of Suer's debts (to any creditor) and also seeking a determination that his debt to DL is nondischargeable. Like DL, NA is one of Suer's creditors; schedules show Suer owes NA at least $185,000. NA has not forgiven that debt and allegedly wants to be repaid. Thus, both DL and NA are creditors of a debtor that want to be repaid and, in that regard, DL's and NA's interests should be aligned in the Adversary Proceeding.

286. DL's and NA's aligned interest begs the question of why NA would retain and pay for counsel with the primary objective of depriving DL of relevant

testimony from Almblade in the Adversary Proceeding and, specifically, testimony about Suer's malicious intentions towards DL and about Suer's recent work at North American. There is only one plausible reason for the obstruction. Paulsen wants to deprive DL of evidence that will allow DL to obtain injunctive relief against Suer to keep him working on the Fraudulent Shakedown Scheme.

Paulsen Directs NA's Counsel To Prevent DL From Disclosing Relevant Information To This Court In This Action

287. On April 5, 2016, DL's counsel sent a letter to NA's counsel noting that, in the Adversary Proceeding, NA had improperly designated as "Confidential" materials that did not warrant that designation. DL's counsel requested either that NA de-designate the documents or, alternatively, agree to a limited release of confidentiality to allow them to be used in this RICO Action.

288. On April 5, NA's counsel refused both of DL's alternative requests.

289. Once any additional meet and confer obligations are satisfied, DL plans to seek relief in the Bankruptcy Court. DL intends to pursue an order that the materials produced by NA in the Adversary Proceeding do not qualify for confidentiality protection under the protective order or, alternatively, that the "limited use" provision of the protective order be modified to allow DL to use information from the documents in this RICO Action.

290. Because it will take time to litigate this issue, DL cannot presently use any of the documents NA

produced in the Adversary Proceeding, or information contained in them, in this Amended Complaint.

291. DL expects that this Amended Complaint satisfies the applicable standard for pleading DL's three RICO-based claims. In the event that this Court determines that the allegations in this Amended Complaint are insufficient, assuming DL obtains the anticipated relief from the Bankruptcy Court relating to release of the NA production documents, DL expects to be in a position to provide this Court with additional documents and information that will satisfy any aspect of the standard that the Court deems unmet.

CHRONOLOGY OF EVENTS AND COMMUNICATIONS SPECIFICALLY INVOLVING JOHN SORENSEN

292. At relevant times until the fall of 2015, Sorensen was the President and Chief Executive Officer of NA. In the fall of 2015, Sorensen stepped down as CEO and Paulsen was promoted to that position. Until Sorensen stepped down, at relevant times, Paulsen reported to Sorensen.

293. At all relevant times including presently, Sorensen has an ownership interest in investors in NA and the NA Facilities. As an owner, Sorensen personally benefited financially from any increased profits or reduced costs at NA Facilities. In fact, under the business model, NA siphoned all profits out of NA Facilities, leaving them essentially judgment proof, and Sorensen, in turn, siphoned his share of profits out of NA. This model has made Sorensen a wealthy man, with net worth estimated at $180,000,000. Since November 2015, Sorensen has served solely as

Chairman of the Board for NA and, also, upon information and belief, for each of the NA Facilities.

294. Sorensen was deposed in DL's Delaware Action Against Suer. The Superior Court of the State of California for the County of Orange ordered that Sorensen's deposition proceed, after denying the petition for protective order filed by North American and supported by two declarations of Sorensen. Many of the factual allegations set forth below are from Sorensen's deposition and declarations in the Delaware Lawsuit.

295. Sorensen testified that Paulsen introduced Suer to Sorensen in 2011 or early 2012. Sorensen knew at the time that Suer was an officer of DL for many, many years. Sorensen approved NA's retention of Suer. Sorensen testified that Suer was retained in late 2011 or early 2012.

296. Sorensen testified that, leading up to Suer's retention, there were between three and 10 meetings or telephone conferences with Paulsen, Shaun Dahl and Suer. Sorensen testified that he was informed of these meetings and/or conferences after the fact.

297. Sorensen testified that Suer was retained to deal with ancillary service vendors in general (and not DL or x-ray and laboratory vendors only). Sorensen further testified that Suer was hired to look at vendor invoices and billing practices

298. Sorensen admitted in his deposition that he was involved in selecting vendors for NA Facilities.

299. Sorensen testified that, when there were disputes with vendors, he was involved as an advisor.

300. Starting no later than March 8, 2012, Sorensen was invited to and attended internal meetings at NA—which Paulsen and Suer also attended—regarding vendors. This is demonstrated by NA's Privilege Log in the Delaware Case. A listing of "Documents from John Sorensen's computer" includes an entry, dated March 8, 2012, with the Title/Subject "Meeting Tomorrow (Friday)," and described as: "Email from Tim Paulsen to John Sorensen, NAHCI counsel Catherine Strout and Bobby Suer, asking to meet tomorrow re: Suer's reviewing of past charges and future notification to vendors." The fact that Sorensen's computer was searched for documents responsive to DL's subpoena shows that NA's counsel determined that Sorensen was a percipient witness in possession of relevant electronic communications and materials. Asked if he attended this meeting, Sorensen testified: "I think so." Sorensen's counsel refused to let Sorensen answer other questions about the meeting on the ground of privilege.

301. Asked if, by March 8, 2012, Suer had already begun reviewing vendor charges, Sorensen testified: "Yes."

302. Sorensen testified that, on or before Paulsen's email to NA executives on March 22, 2012 about replacement vendors, he was aware of the meetings with other ancillary service vendors.

303. Sorensen testified that he also was aware at that time that there were several replacement vendors bidding that "certainly were going to give us a lot better price than DL was charging us."

304. Sorensen testified that he also was aware at that time of pricing terms of the replacement contracts

and that, as Paulsen wrote in his March 22, 2012 email to NA executives: "For x-ray services, it would mean a 20 percent to 40 percent reduction in cost (Shaun is using one of the new vendors at Coventry)! For lab, we see a 10 percent to 20 percent reduction."

305. Asked whether he had "any understanding of whether Mr. Suer was involved in communicating with any of these vendors regarding these new contracts, Sorensen initially testified: "I have reason to believe that he was, gratefully." Similarly, asked whether Suer was on the project to engage new vendors to replace DL, Sorensen initially testified: "Amongst many others, yes." This was a key admission that Suer had breached his restrictive covenants to DL. This admission established that Suer's work at NA was not only a breach of his covenants but also fundamentally adverse to DL's interests, and so the admission supported DL's request that Suer be enjoined from working at NA.

306. After Sorensen gave these admissions, there was a break at the deposition. Upon return from the break, Sorensen retracted his testimony. Sorensen advised: "I have one correction. *** During the break I went and met with Mr. Paulsen, Tim Paulsen, and asked him about, specifically, Bobby's involvement as it pertains to document Exhibit 8 and Bobby's involvement with vendor selection, of which he informed me that Bobby has not and does not meet with any of the potential vendors that Tim is thinking about contracting with. Because I wanted to make sure I had my testimony correct. Earlier I may have alluded to that Bobby was involved with Tim on selecting vendors, and I wanted to double-check that. And Tim said, 'No, he has not been present, he does

not see the pricing and he does not see the contract at all.'"

307. Asked whether he was basing his testimony on what Paulsen told him, Sorensen testified: "He has no reason to lie to me." The Delaware Chancery Court, however, ultimately made numerous findings about Suer's involvement that were contrary to the corrected testimony of Sorensen, and consistent with Sorensen's prior admissions. Sorensen and Paulsen conspired to have Sorensen retract his admissions in an attempt to deprive DL of injunctive relief and keep Suer working at NA on the Fraudulent Shakedown Scheme.

308. Asked "[w]as there consideration of ceasing using Bobby [Suer] after the project regarding the invoices was complete," Sorensen testified: "Yes. Bobby has been very open with us. As soon as his work is complete, he doesn't expect us to keep paying him. And we've been very open with him, if he can add value and look at ways to help us in his consulting agreement, the relationship continues. It is a win-win situation."

309. On May 7, 2012, Robert Ducatman of Jones Day, counsel to DL, sent a letter to Sorensen to provide notice of DL's contracts with Suer and the various restrictive covenants in those contracts, including covenants not to compete with DL, not to interfere with DL's confidential relationships, and not to use or disclose DL's confidential information.

310. Asked whether he received Mr. Ducatman's letter on or around May 7, 2012, Sorensen testified that he had. Asked whether he kept the letter, Sorensen testified: "No." Asked whether he threw it away, Sorensen testified: "I think so." Asked whether

he read it, Sorensen testified that he read the letter but not the attachments.

311. Asked whether he discussed the letter with Paulsen, Sorensen testified that he had. Asked what was said, Sorensen testified: "I can't recall, but I'm guessing that we have a letter asking us to not work with Bobby."

312. Asked whether he was concerned about the substance of the letter, Sorensen testified: "Not really."

313. Asked whether there was "any further action taken by the company in connection with this letter," Sorensen testified: "None."

314. Asked whether there was "any attempt to figure out if the statements in the letter were true," Sorensen testified: "None."

315. Asked whether there was "any attempt to determine what Mr. Suer had promised to DL," Sorensen testified: "None."

316. Asked whether he "ever asked Suer about it," Sorensen testified: "About this letter, no."

317. On May 15, 2012, Sorensen and Paulsen met with Tom Calhoun of DL purportedly to discuss DL's billing.

318. On May 15, 2012, Mr. Calhoun of DL sent an email to Mr. McCullum of DL reporting on that same meeting. He wrote, in part: "We are still 'agreeing to disagree' and they are fishing for money. I spent about 15 minutes with John Sorensen the CEO and he admitted that it isn't service they like us and want to stay but want money."

319. Also on May 15, 2012, in a separate email from Calhoun to McCullum reporting on the meeting, Calhoun wrote: "It was clear from John [Sorensen] (Tim [Paulsen] agreed) it's not about service that in fact most facilities are very happy and would not want to switch but it's about the money."

320. At Sorensen's deposition, the above excerpt was read to him and he was asked: "Do you recall that that was something that you said to DL at some time? In response, Sorensen testified: "Yes."

321. In one of Calhoun's May 15, 2012 emails to McCullum, Calhoun wrote: "[Sorensen and Paulsen] indicated that they have facilities that do not use us (specified in Washington State) are very unhappy with the provider and would consider switching to us if we found resolution." Their representation that they would "consider switching to us if we found a resolution" was false. Because a decision already had been made to contract with new vendors, Sorensen and Paulsen knew that they had no intention of switching to DL. They told the lie to lull DL into continuing to provide services on an unpaid basis, and to induce DL to pay money. Although DL was not misled into paying money, DL was misled and lulled into continuing to provide services on an unpaid basis, which increased NA Facilities' accounts payable, which was never paid in full. DL thus incurred financial loss in justifiable reliance on Sorensen's and Paulsen's representation.

322. In his second declaration in support of North American's petition for protective order, Sorensen wrote: "I was 'cc'd' on various emails from Tim

Paulsen regarding his ongoing talks/negotiations with Diagnostic Laboratories."

323. Asked whether Paulsen reported to him on his attempts to negotiate with DL, Sorensen testified: "[Paulsen] said that DL dug in really hard. They said no."

324. Sorensen testified that NA Facilities Administrators have billing problems with "different types of vendors at different times."

325. On July 25, 2012, Suer signed a Confidentiality Agreement, which provided that Suer was being given access to NA's Confidential Information and specifically provided that he would have access to Sorensen's Confidential Information. No other NA officer, director or employee aside from Sorensen was specifically referenced in Suer's Confidentiality Agreement.

326. On July 31, 2012, Paulsen emailed DL confirming cancellation of the contracts. Sorensen received a "blind copy" of the email. Asked if he saw the email, Sorensen testified: "Yes, I'm confident it is probably still in my e-mail."

327. Asked whether he approved the decision to cancel DL's contracts, Sorensen testified: "Yes, I think I did." Asked whether Paulsen sought his approval before cancellation, Sorensen testified: "Probably, yes."

328. Asked if he was aware that the NA Facilities stopped paying DL, Sorensen testified: "I'm not going to discuss that." Asked the same question again, Sorensen again testified: "I'm not going to discuss that." After these questions, over DL's counsel's objection, Sorensen's counsel ended the deposition.

329. As of October 8, 2012, Sorensen continued to be provided copies of documents relevant to the cancellation of DL's contracts. Another entry from NA's Privilege Log is document dated October 8, 2012, described as: "Email from NAHCI counsel Catherine Strout to various NAHCI client management leaders (Sorensen, Paulsen, Dahl, Tanner, Shipley, Jergensen, Ellis-Sherinian), with Bobby Suer cc'd, re: contact from Diagnostic Laboratories after the cancellation of their contracts with [DL]."

330. Sorensen testified that, at sometime before December 2012, Suer approached Paulsen about borrowing money. Sorensen testified that it was unusual for NA to make a loan. On those rare occasions when NA has made a loan, Sorensen testified it was a business loan and not a personal loan.

331. Sorensen testified that he was "totally involved" in all decisions relating to NA business loans—"why, when, how." Paulsen also would have been involved, according to Sorensen.

332. The promissory notes for such loans were dated December 12, 2012 ($50,000), March 21, 2013 ($35,000), May 14, 2013 ($25,000), and June 28, 2013 ($50,000).

333. Sorensen testified that, in general, the circumstances that gave rise to these loans "were centered around [Suer's] mounting legal fees in this matter and his bankruptcy." Sorensen further testified: "And Bobby and Tim and I met, and I agreed, on behalf of North American, to loan him the money. And it is, as you said earlier, unusual. As I replied, it is unusual."

334. Asked if North American had a business reason or purpose for making Suer the loans, Sorensen testified: "That's a confidential matter." Asked the same question again, he testified: "Simple business decision." Asked a variation of the question, Sorensen's counsel objected and instructed him not to answer.

335. Asked if he was confident that Suer could pay the loans back based on his compensation/stipend from North American, Sorensen testified: "Not just from his stipend. Bobby is a very accomplished businessman." Upon information and belief, Sorensen was aware that Suer was soliciting and receiving bribes from replacement vendors, as that was the only other "business" Suer was conducting at that time.

336. As of March 11, 2013, Sorensen continued to be provided documents relating to DL and Suer. Another entry on NA's Privilege Log from the Delaware Case lists a document dated March 11, 2013, regarding "Indemnification," which is described as: "Email from NAHCI counsel Catherine Strout to John Sorensen re: draft of, and thoughts pertaining to, the indemnification agreement with Bobby Suer." The Indemnification Agreement itself, dated March 21, 2013, provides that Suer will indemnify NA for losses "resulting from or related to" Suer's "prior employment" including "claims for non-competition, interference with contractual relationships or any other matter." Thus, as of March 21, 2013, NA and Sorensen recognized a risk of exposure based on Suer's conduct vis-a-vis DL.

337. On or before March 21, 2013, Suer approached Paulsen, and Paulsen in turn approached Sorensen,

about another loan, according to Sorensen's testimony. Sorensen testified that Bobby said that he "was under tremendous financial pressure, and would the company, in light of all he's done for us, consider loaning him additional moneys. And I said "Yes." Sorensen thus authorized a loan in the amount of $35,000.

338. A couple of months later, on or before May 14, 2013, Suer again went to Paulsen, and Paulsen went to Sorensen, to request another loan in the amount of $25,000. After a discussion about Suer's work and his financial problems, Sorensen agreed.

339. About a month later, on or before June 28, 2013, the same basic events and communications transpired in connection with a fourth loan of $50,000.

340. DL issued a subpoena that called for the production of documents from Sorensen's files. Large volumes of material that were relevant to the Delaware Lawsuit were withheld because they would have supported DL's efforts to enjoin Suer from continuing working at NA (and thus from working on the Fraudulent Shakedown Scheme). NA's withholding is demonstrated by the fact that NA produced certain materials in the Adversary Proceeding were withheld in the Delaware Lawsuit, even though they were relevant and responsive to DL's subpoena to NA. A protective order in the Adversary Proceeding currently prevents DL from using those documents in other cases. DL has sought to have the documents released from the protective order so that DL can use the documents in this action. NA has refused, but DL is proceeding to litigate the issue in the Adversary Proceeding. Should this Court dismiss

DL's claims, any order should allow DL leave to amend to give DL the opportunity to plead the facts regarding Sorensen and other matters that the recently produced NA documents have revealed.

341. On July 18, 2014, Sorensen caused NA to loan Suer another $25,000 for a total of at least $185,000. This additional loan is shown in pleadings filed in NA's chapter 11 bankruptcy proceeding.

COUNT I

(DL's Claim Against Paulsen for Violation of 18 U.S.C. § 1962(c) - Federal Civil RICO)

342. Plaintiff repeats and incorporates the allegations of the paragraphs 1 through 342 with the same force and effect as though fully rewritten herein.

343. Plaintiff seeks treble damages for injuries sustained to its business and property by reason of Defendants' violations of the Racketeer Influenced and Corrupt Organizations ("RICO") provisions of the Organized Crime Control Act of 1970 as amended, 18 U.S.C. §§ 1961–1968.

344. Sorensen, NA, the NA Facilities and Robert Suer are an enterprise, as an association in fact although not a legal entity as defined in 18 U.S.C. § 1961(4).

345. Sorensen, NA, the NA Facilities and Robert Suer are an enterprise engaged in, and the activities of which affect, interstate and foreign commerce as defined in U.S.C. §§ 1961(4) and 1962(c).

346. Defendant Paulsen is a person associated with the enterprise alleged in paragraph 345 herein as defined in 18 U.S.C. §§ 1961(3) and 1962(c).

347. Defendant Paulsen has committed two or more acts indictable under 18 U.S.C. § 1341 (relating to mail fraud), 18 U.S.C. § 1343 (relating to wire fraud), Cal. Penal Code § 641.3 as incorporated under 18 U.S.C. § 1961(1)(A) (relating to bribery), 18 U.S.C. § 1951 as incorporated under 18 U.S.C. § 1961(1)(A) (relating to extortion), 18 U.S.C. § 1503 as incorporated under 18 U.S.C. § 1961(1)(B) (relating to obstruction of justice), and 18 U.S.C. § 1951 as incorporated under 18 U.S.C. § 1961(1)(A) (relating to witness tampering), within a ten-year period, at least one of such acts being committed subsequent to October 15, 1970, and at least a second of such acts being committed within ten years of the commission of a prior such act. These acts or offenses constitute a pattern of racketeering activity by Paulsen as defined in 18 U.S.C. § 1961(5) because they relate to each other as part of a common plan with similar purposes, methods of commission and results, *i.e.*, to enrich himself by fraudulently extracting and extorting payments, credits, concessions and other financial benefits from NA Facilities' vendors, as set forth below.

348. The activity engaged in by Paulsen has been continuous, pervasive and ongoing. It was and is exhibited in many transactions among diverse victims and contributed to his—and not NA's or NA Facilities'—personal wealth and income. Defendant Paulsen has thereby conducted and participated, and currently conducts and participates, directly and/or indirectly, in the affairs of an enterprise through a pattern of racketeering activity comprised of multiple schemes, multiple artifices and multiple episodes of criminal activity in violation of 18 U.S.C. § 1962(c).

Wire Fraud – 18 U.S.C. § 1343;
Mail Fraud – 18 U.S.C. § 1341

349. In furtherance of multiple schemes and multiple artifices to defraud DL, Schryver Medical, First Choice and other vendors of NA Facilities, and to obtain and convert money and property of such vendors by means of false and fraudulent pretenses, representations, or promises, Defendant Paulsen, having devised and intending to devise the aforementioned schemes and artifices to defraud, and for the purpose of executing said schemes and artifices, did willfully, knowingly and unlawfully commit the at least the following acts of wire and mail fraud, and many additional similar acts of mail and wire fraud, which communications are set forth in detail above.

350. Defendant Paulsen, on March 22, 2012, knowingly, willfully and unlawfully transmitted or caused to be transmitted numerous signals, writings, signs and sounds by means of wire, radio or telephone communication in interstate commerce, which communications were between Paulsen and Surina Smith, David Baldwin and Joe Cleberg of DL, and which advised that payment was being withheld, requested a refund and represented that: (A) NA had conducted an audit of DL's bills to NA Facilities; (B) the audit revealed DL's charges were impermissible under the relevant contracts and under Medicare and, consequently, DL owed money back to NA Facilities; (C) at NA Facilities where DL was not the radiology provider, the NA Facilities were only charged for the technical component and never for travel or set up fees; and (D) NA Facilities never received notification from DL of new rates, charges or other increases.

351. This email communication by Paulsen knowingly, willfully and unlawfully misrepresented the facts that: (A) NA had not conducted an audit, as shown by the facts alleged below; (B) DL's charges were proper under the relevant contracts and under Medicare, and DL did not owe money back to NA Facilities, as shown by the facts alleged below; (C) at NA Facilities where DL was not the radiology provider, the NA Facilities were routinely being charged by other vendors for travel and set up fees, based on information obtained in discovery from Schryver Medical and First Choice; and (D) any contractually required notifications had been provided to NA Facilities, a point to which DL witnesses with knowledge have testified and advised.

352. Paulsen's representation that NA had conducted "audits" that uncovered "overcharges" was false, because there had been no audits. Facts demonstrating that there had been no audits include at least the following: (1) when Kelly McCullum met with Paulsen to discuss the purported billing dispute, McCullum explained the contractual bases for DL's charges; Paulsen did not engage on the specifics but instead said that he just wanted money; (2) when Tom Calhoun of DL met with Sorensen and Paulsen, they did not engage on the specifics of the charges but said that they just wanted money; (3) no audit documents have been provided or identified to DL, either during McCullum's negotiations with Paulsen, or in discovery in the Delaware Lawsuit, the Adversary Proceeding or in other cases claiming amounts due that DL has filed against NA Facilities; (4) Paulsen identified Suer as the person who conducted the so-called audit, but Suer is not a CPA, an accountant or even a bookkeeper; (5)

neither Paulsen nor Suer, when asked at deposition to account for the absence of audit documents, was able to explain why no documents had been produced; and (6) evidence shows that Suer did not even have all of the relevant DL contracts without which an audit would be impossible; indeed, Suer asked for all of the DL contracts in August 2012 for purposes of creating a summary after-the-fact "reconciliation."

353. Paulsen's representation that the audit revealed DL's charges were impermissible under the relevant contracts and under Medicare and, consequently, DL owed money back to NA Facilities, was false for the following reasons. Paulsen's March 22, 2012 email did not provide an accounting or audit of each item had been overcharged to each NA Facility under any particular contract. Instead, Paulsen sets forth generalities about the false overcharges. Because Paulsen's letter is not specific, it is impossible to set forth each and every reason why charges are generally correct under the more than 27 contracts and the voluminous Medicare regulations. However, the following explains generally why Paulsen's representations were false. Regarding Q0092 and R0070, Paulsen represented: "These codes, according to our review are not codes used for ultrasound, these are for x-ray procedures." Paulsen's representation is false because DL's invoices clearly state that DL is using the x-ray codes to charge for transportation and setup of ultrasound procedures. There is no contractual provision or Medicare regulation that provides DL's use of codes is improper. Paulsen also represented: "These codes are not billable or recognizable by the Medicare, Medical [sic] or HMO programs programs [sic] (under the part B you can't

bill using these codes)." Paulsen's representation is false because DL wasn't billing under part B using these codes. Under part A, DL can contract to bill whatever is permissible under its contracts, using whatever codes it chooses. Regulations concerning part B are simply inapplicable to the issue. Paulsen further represented: "These codes are not included in any of our contracts with your company as a billable event." Paulsen's representation is false because DL's contracts don't specify all the codes that will be used for "billable events." Furthermore, DL contracts specifically state that these codes will be used for billing transportation and setup for ultrasound. Moreover, these charges are specifically noted in the invoices to the facilities. Paulsen further represented: "At facilities where Diagnostic labs [sic] is not our radiology provider, we are only charged for the technical component; we are never charged for travel or set up fees." Paulsen's representation is false because other providers, including specifically Schryver Medical, were charging these same fees. Paulsen also represented: "Also, we are not receiving our contractual discounts in some of the facilities per our contracts (i.e. some facilities were to receive a 20% discount off the negotiated rates, and we are not receiving those discounts)." Paulsen's representation is false because a subsequent DL review was unable to identify the items to which Paulsen generally referred. That review revealed that, in total, DL had actually underbilled the NA Facilities by approximately $80,000. Paulsen represented: "We are being charged for tests that are under a capitated (per-diem rate) that are part of your laboratory normal day to day testing. Examples are listed below; [sic] Pre albumin,

T 4 free, Vanco peaks and troughs (all types of med level draws), B-type natriuretic pep, Tobimyicin peak and trough, Centrifuge charges, Send out fees, and, occasionally, at some facilities cbs's, bmp's and other normal tests handled by your lab in house." Paulsen's representation is false because: DL's contracts specifically state that there are additional charges for send out fees; whether DL does a test in-house or not is relevant to what DL charges under the contract for the test; DL's contracts specify that it may charge extra for escoteric tests, which may vary. Paulsen further represented: "We also reviewed our billing statements and up until December or [sic] 2009 we were never charged for these tests as send out or an esoteric test. Only after that date were we charged differently." Paulsen's representation is false because Suer testified under oath that he and Paulsen only looked at invoices back to 2010. Furthermore, regardless of what DL charged in the past, its contracts specifically state that what DL charges for esoteric tests "may vary." Paulsen represented: "We never received any notification from your company of new rates or esoteric changes to our contracts or any other fee increases." Paulsen's representation is false because DL's sales force notified administrators of North American facilities of price changes in person, and DL's invoices specifically identify tests that are classified as esoteric. Paulsen represented: "We also noticed that some of these so called esoteric tests are being charged at a higher than Medicare Medicare [sic] fee screen . . . ." Paulsen's representation is false because, as a matter of law, DL is not restricted to the Medicare fee schedule when determining its pricing. DL is free to set the price of its esoteric tests as it sees

fit. Paulsen represented: "In some facilities, under a Medicare fee screen that has a discount, we have been charged a higher than Medicare rate for venipuncture and travel allowance. We also receive no discounts on some tests and some discount on other tests. These issues seem to be very inconsistent." To the extent this complaint is a charge of overbilling, Paulsen's representation is false because DL had individual contracts with different terms for different NA Facilities, so inconsistencies are expected and do not show a billing error. The specific basis for Paulsen complaint is not clear and, when asked by DL at the time, Paulsen failed to explain, apparently because he could not do so. Again, DL had in total underbilled the NA Facilities in the amount of about $80,000. Paulsen represented: "Between all of our Southern California facilities our audits from 12/2009 in laboratory and 12/2008 in radiology, although not complete, demonstrates overcharges in excess of $650,000 for lab and radiology services." Paulsen's representation is false because Suer later testified that no audits had been conducted from 2008 or 2009.

354. In the Chronology section above, there are numerous other emails and letters in which Paulsen makes representations about the "audit" and "overcharges," and each such communication also constitutes an act of wire or mail fraud.

355. Defendant Paulsen, on March 22, 2012, knowingly, willfully and unlawfully transmitted or caused to be transmitted numerous signals, writings, signs and sounds by means of wire, radio or telephone communication in interstate commerce, which communications were between Paulsen and NA executives Stephen Shipley, Bryan Tanner, Darian

Dahl, Justin Allen, James Ellis Sherinian and Jeremy Jergensen, and which represented that there were serious billing errors uncovered by his audit of laboratory and radiology invoices.

356. In fact this email by Paulsen knowingly, willfully and unlawfully misrepresented the facts that there were no billing errors uncovered by any audit as detailed above.

357. Defendant Paulsen, on March 30, 2012, knowingly, willfully and unlawfully caused to be placed in an authorized depository for mail to be sent and delivered by the United States Postal Service, and knowingly took and received therefrom certain communications, which communications were between Dahl and "To Whom it May Concern" at DL, and which purported to terminate DL's contracts with Coventry Court, a NA Facility, and which represented that (A) "[w]e have been having concerns with [DL] for some time in regarding to [its] overall service," and (B) DL's agreement with Coventry Court was being terminated for "poor service."

358. In fact such communication knowingly, willfully and unlawfully misrepresented the facts that (A) there were no concerns about DL's overall service, as Dahl subsequently admitted at deposition, and (B) poor service was not in fact the reason the notice of termination was sent. Indeed, Coventry Court had no intention to immediately cancel the contract at all but sent the notice for a different reason: as a tactic for leverage in Paulsen's efforts to quickly obtain money from DL, before it could complete a review of the charges. The true facts are demonstrated by the way actual events played out between DL and Coventry

Court, as well as the fact that, in 2013, the same tactic—sending notices of cancellation—was unleashed on other vendors for purposes of getting them to "come running" to pay a credit.

359. Defendant Paulsen, on April 3, 2012, knowingly, willfully and unlawfully transmitted or caused to be transmitted numerous signals, writings, signs and sounds by means of wire, radio or telephone communication in interstate commerce, which communications were between Paulsen, and David Baldwin and Joe Cleberg of DL, and which advised that payment was being withheld, requested a refund and represented that DL had overcharged NA Facilities and, consequently, DL owed money to NA Facilities.

360. In fact this communication by Paulsen knowingly, willfully and unlawfully misrepresented the facts that DL's charges were proper under the relevant contracts and under Medicare and DL did not owe money back to NA Facilities as detailed above.

361. Defendant Paulsen, on April 10, 2012, knowingly, willfully and unlawfully transmitted or caused to be transmitted numerous signals, writings, signs and sounds by means of wire, radio or telephone communication in interstate commerce, which communications were between Paulsen and Dahl, and which represented that DL was billing Coventry Court "completely in error," when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that DL's charges were proper under the relevant contracts and under Medicare as detailed above.

362. Defendant Paulsen, on April 30, 2012, knowingly, willfully and unlawfully transmitted or caused to be transmitted numerous signals, writings, signs and sounds by means of wire, radio or telephone communication in interstate commerce, which communications were between Dahl and Matt Mantelli of DL, and in which Dahl advised that "I too have heard our people are talking and so am willing to push back the cancellation letter for lab for 30 days in good faith."

363. In fact, this representation was false because the cancellation letter was not being pushed back "because our people are talking" but instead was being pushed back to cause DL, lulled by the belief that Paulsen was acting in good faith, to provide additional services on an unpaid basis while payment was being withheld.

364. Defendant Paulsen, on May 1, 2012, knowingly, willfully and unlawfully transmitted or caused to be transmitted numerous signals, writings, signs and sounds by means of wire, radio or telephone communication in interstate commerce, which communications were between Paulsen and David Baldwin, Thomas Calhoun and Kelly McCullum of DL, and which requested a credit and represented that DL's charges were impermissible under the relevant contracts and under Medicare and, consequently, DL owed money to NA Facilities.

365. In fact such communications knowingly, willfully and unlawfully misrepresented the facts that DL's charges were proper under the relevant contracts and under Medicare, and DL did not owe money to NA Facilities, as detailed above.

366. Defendant Paulsen, on May 29, 2012, knowingly, willfully and unlawfully transmitted or caused to be transmitted numerous signals, writings, signs and sounds by means of wire, radio or telephone communication in interstate commerce, which communications were between Paulsen's assistant, Jodi Bottorff, and Kelly McCullum of DL, and which threatened legal action against DL, requested a credit, advised if resolution was not reached, NA Facilities might terminate their contracts, and represented that DL's charges were impermissible under the relevant contracts and, consequently, that DL owed money back to NA Facilities.

367. In fact such communications knowingly, willfully and unlawfully misrepresented the facts that DL's charges were proper under the relevant contracts and DL did not owe money back to NA Facilities as detailed above, and the fact that DL's contracts would be terminated regardless of any action that DL might take.

368. Defendant Paulsen, on June 1, 2012, knowingly, willfully and unlawfully transmitted or caused to be transmitted numerous signals, writings, signs and sounds by means of wire, radio or telephone communication in interstate commerce, which communications were between Dahl and Matt Mantelli at DL, and which advised that "[a]s of now I believe we are still trying to work things out and so yes lets [*sic*] continue the lab for another 30 days."

369. In fact, these representations were false because Paulsen was not "trying to work things out" and the decision already had been made, by March 2012 at the latest, that DL's contracts would be

terminated. These false representations caused DL, lulled by the belief that Paulsen was "trying to work things out" to continue providing additional services on an unpaid basis while payment was being withheld.

370. Defendant Paulsen, on or about June 12, 2012, on a specific date not known to Plaintiff but known fully to Paulsen, knowingly, willfully and unlawfully transmitted or caused to be transmitted numerous signals, writings, signs and sounds by means of wire, radio or telephone communication in interstate commerce–or alternatively caused to be placed in an authorized depository for mail to be sent and delivered by the United States Postal Service (by a specific transmission method not known to Plaintiff but known in full to Paulsen) – which communications were between Paulsen and Kelly McCullum, and which requested a credit, advised that DL's proposal for new contracts was being considered, threatened legal action against DL, offered as an implicit threat to "sign some sort of nondisclosure agreements with your company, keeping your massive errors out of the view of others to the best of our ability," and represented that DL's charges were impermissible under the relevant contracts and under Medicare and, consequently, DL owed money back to NA Facilities. Paulsen sent the same letter to McCullum via the United States Postal Service.

371. In fact such communications knowingly, willfully and unlawfully misrepresented the facts that DL's charges were proper under the relevant contracts and under Medicare, and DL did not owe money back to NA Facilities as detailed above.

372. Defendant Paulsen, on June 26, 2012, knowingly, willfully and unlawfully transmitted or caused to be transmitted numerous signals, writings, signs and sounds by means of wire, radio or telephone communication in interstate commerce, which communications were between Paulsen and various NA Facility administrators including Jonathan Sloey, Bryan Tanner, Ted Holt, Mitchell Cook, Logan Essig, Shaun Dahl, Spencer Nordfelt, Jeff Stewart and A.J. Eliason, and which provided instructions for the cancellation of DL's contracts and represented that there were serious contractual billing errors.

373. In fact such communications knowingly, willfully and unlawfully misrepresented the facts that DL's charges were proper under the relevant contracts and under Medicare as detailed above.

374. Defendant Paulsen, on or about June 26, 2012, knowingly, willfully and unlawfully caused to be placed in an authorized depository for mail to be sent and delivered by the United States Postal Service, and knowingly took and received therefrom certain communications, which communications were between Jonathan Sloey of Alamitos-Belmont Rehab Hospital, a NA Facility, and Kelly McCullum of DL, and which provided notice of termination of DL's contract and represented that "this termination is directly related to disputed contractual overbilling inconsistencies and practices going unresolved," when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that there were no actual inconsistencies and, accordingly, that such purported inconsistencies were not the reason for the termination.

375. Defendant Paulsen, on June 28, 2012, knowingly, willfully and unlawfully transmitted or caused to be transmitted numerous signals, writings, signs and sounds by means of wire, radio or telephone communication in interstate commerce, which communications were between Robert Suer and Donna Markley of Park Ridge Care, a NA Facility, and which provided instructions for the cancellation of DL's contracts and represented that there were serious contractual billing errors.

376. In fact such communications knowingly, willfully and unlawfully misrepresented the facts that DL's charges were proper under the relevant contracts and under Medicare for the reasons detailed above.

377. Defendant Paulsen, on June 28, 2012, knowingly, willfully and unlawfully transmitted or caused to be transmitted numerous signals, writings, signs and sounds by means of wire, radio or telephone communication in interstate commerce, which communications were between Paulsen and various NA Facility Administrators including Jay Zwahlen, Mark Hall, Jason Roberts, Jonathan Sloey, Chandler Call, JD White, Julie Javier, Bryan Tanner, Jeremy Jergensen and Darian Dahl, and which provided instructions for the cancellation of DL's contracts and represented that there were serious contractual billing errors.

378. In fact such communications knowingly, willfully and unlawfully misrepresented the facts that DL's charges were proper under the relevant contracts and under Medicare for the reasons detailed above.

379. Defendant Paulsen, on July 5, 2012, and again on July 16, 2012, knowingly, willfully and unlawfully

transmitted or caused to be transmitted numerous signals, writings, signs and sounds by means of wire, radio or telephone communication in interstate commerce, which communications were between Paulsen and various NA Facility administrators including Jacob Beaman, Christian Reinarz, Jared Bake, Brett Moore, Matthew Robison, Beverly Mannon, Joanne VanDyke, Spencer Brinton, Gordon Hodnett, Kyle Dahl, JJ Webb, Stephen Shipley and James Ellis Sherinian, and which provided instructions for the cancellation of DL's contracts and represented that there were serious contractual billing errors.

380. In fact such communications knowingly, willfully and unlawfully misrepresented the facts that DL's charges were proper under the relevant contracts and under Medicare for the reasons detailed above.

381. Defendant Paulsen, on July 24, 2012, knowingly, willfully and unlawfully transmitted or caused to be transmitted numerous signals, writings, signs and sounds by means of wire, radio or telephone communication in interstate commerce, which communications were between Robert Suer and Shawn McAffee of Scottsdale, a NA Facility, and which provided a draft letter cancelling DL's contract and represented "this termination is directly related to disputed contractual overbilling inconsistencies and practices going unresolved."

382. In fact such communications knowingly, willfully and unlawfully misrepresented the fact that DL's charges were proper under the relevant contract and under Medicare for the reasons detailed above, and that a decision had been made to cause the

cancellation of the contract regardless of whatever action DL took.

383. Defendant Paulsen, on or about August 6, 2012, knowingly, willfully and unlawfully caused to be placed in an authorized depository for mail to be sent and delivered by the United States Postal Service, and knowingly took and received therefrom certain communications, which communications were between Spenser Olsen of Villa Health Care Center, a NA Facility, and Accounts Receivable at DL, and which represented the specific amount by which "we were over billed" by DL, when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that DL's charges were proper under the relevant contract and under Medicare as detailed above.

384. Defendant Paulsen, on or about August 6, 2012, knowingly, willfully and unlawfully caused to be placed in an authorized depository for mail to be sent and delivered by the United States Postal Service, and knowingly took and received therefrom certain communications, which communications were between Spenser Olsen of Grand Terrace Care Center, a NA Facility, and Accounts Receivable at DL, and which represented the specific amount by which "we were over billed" by DL, when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that DL's charges were proper under the relevant contract and under Medicare for the reasons detailed above.

385. Defendant Paulsen, on or about August 16, 2012, knowingly, willfully and unlawfully caused to be placed in an authorized depository for mail to be sent

and delivered by the United States Postal Service, and knowingly took and received therefrom certain communications, which communications were between Spenser Olsen of Palm Terrace Care Center, a NA Facility, and Accounts Receivable at DL, and which represented the specific amount by which "we were over billed" by DL, when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that DL's charges were proper under the relevant contract and under Medicare for the reasons detailed above.

386. Defendant Paulsen, on or about August 16, 2012, knowingly, willfully and unlawfully caused to be placed in an authorized depository for mail to be sent and delivered by the United States Postal Service, and knowingly took and received therefrom certain communications, which communications were between Spenser Olsen of Beachside Nursing Center, a NA Facility, and Accounts Receivable at DL, and which represented the specific amount by which "we were over billed" by DL, when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that DL's charges were proper under the relevant contract and under Medicare for the reasons detailed above.

387. Defendant Paulsen, on or about August 27, 2012, knowingly, willfully and unlawfully caused to be placed in an authorized depository for mail to be sent and delivered by the United States Postal Service, and knowingly took and received therefrom certain communications, which communications were between Spenser Olsen of Alamitos-Belmont Rehab Hospital, a NA Facility, and Accounts Receivable at DL, and which represented the specific amount by

which "we were over billed" by DL, when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that DL's charges were proper under the relevant contract and under Medicare for the reasons detailed above.

388. Defendant Paulsen, on or about August 27, 2012, knowingly, willfully and unlawfully caused to be placed in an authorized depository for mail to be sent and delivered by the United States Postal Service, and knowingly took and received therefrom certain communications, which communications were between Spenser Olsen of Broadway By The Sea, a NA Facility, and Accounts Receivable at DL, and which represented the specific amount by which "we were over billed" by DL, when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that DL's charges were proper under the relevant contract and under Medicare for the reasons detailed above.

389. Defendant Paulsen, on or about August 29, 2012, knowingly, willfully and unlawfully caused to be placed in an authorized depository for mail to be sent and delivered by the United States Postal Service, and knowingly took and received therefrom certain communications, which communications were between Spenser Olsen of University Post Acute Rehab, a NA Facility, and Accounts Receivable at DL, and which represented the specific amount by which "we were over billed" by DL, when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that DL's charges were proper under the relevant contract and under Medicare for the reasons detailed above.

390. Defendant Paulsen, on or about August 29, 2012, knowingly, willfully and unlawfully caused to be placed in an authorized depository for mail to be sent and delivered by the United States Postal Service, and knowingly took and received therefrom certain communications, which communications were between Spenser Olsen of Danville Rehabilitation, a NA Facility, and Accounts Receivable at DL, and which represented the specific amount by which "we were over billed" by DL, when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that DL's charges were proper under the relevant contract and under Medicare for the reasons detailed above.

391. Defendant Paulsen, on or about August 29, 2012, knowingly, willfully and unlawfully caused to be placed in an authorized depository for mail to be sent and delivered by the United States Postal Service, and knowingly took and received therefrom certain communications, which communications were between Spenser Olsen of Fairmont Rehabilitation Hospital, a NA Facility, and Accounts Receivable at DL, and which represented the specific amount by which "we were over billed" by DL, when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that DL's charges were proper under the relevant contract and under Medicare for the reasons detailed above.

392. Defendant Paulsen, on or about August 30, 2012, knowingly, willfully and unlawfully caused to be placed in an authorized depository for mail to be sent and delivered by the United States Postal Service, and knowingly took and received therefrom certain communications, which communications were

between Spenser Olsen of Fireside, a NA Facility, and Accounts Receivable at DL, and which represented the specific amount by which "we were over billed" by DL, when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that DL's charges were proper under the relevant contract and under Medicare for the reasons detailed above.

393. Defendant Paulsen, on or about August 30, 2012, knowingly, willfully and unlawfully caused to be placed in an authorized depository for mail to be sent and delivered by the United States Postal Service, and knowingly took and received therefrom certain communications, which communications were between Spenser Olsen of Brentwood Healthcare Center, a NA Facility, and Accounts Receivable at DL, and which represented the specific amount by which "we were over billed" by DL, when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that DL's charges were proper under the relevant contract and under Medicare for the reasons detailed above.

394. Defendant Paulsen, on or about September 5, 2012, knowingly, willfully and unlawfully caused to be placed in an authorized depository for mail to be sent and delivered by the United States Postal Service, and knowingly took and received therefrom certain communications, which communications were between Spenser Olsen of Lomita Post-Acute Care Center, a NA Facility, and Accounts Receivable at DL, and which represented the specific amount by which "we were over billed" by DL, when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that DL's charges were proper

under the relevant contract and under Medicare for the reasons detailed above.

395. Defendant Paulsen, on or about September 5, 2012, knowingly, willfully and unlawfully caused to be placed in an authorized depository for mail to be sent and delivered by the United States Postal Service, and knowingly took and received therefrom certain communications, which communications were between Spenser Olsen of Ramona Nursing and Rehab, a NA Facility, and Accounts Receivable at DL, and which represented the specific amount by which "we were over billed" by DL, when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that DL's charges were proper under the relevant contract and under Medicare for the reasons detailed above.

396. Defendant Paulsen, on or about September 5, 2012, knowingly, willfully and unlawfully caused to be placed in an authorized depository for mail to be sent and delivered by the United States Postal Service, and knowingly took and received therefrom certain communications, which communications were between Spenser Olsen of Garden View Post-Acute Rehab, a NA Facility, and Accounts Receivable at DL, and which represented the specific amount by which "we were over billed" by DL, when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that DL's charges were proper under the relevant contract and under Medicare for the reasons detailed above.

397. Defendant Paulsen, on or about September 5, 2012, knowingly, willfully and unlawfully caused to be placed in an authorized depository for mail to be sent

and delivered by the United States Postal Service, and knowingly took and received therefrom certain communications, which communications were between Spenser Olsen of Courtyard Care Center, a NA Facility, and Accounts Receivable at DL, and which represented the specific amount by which "we were over billed" by DL, when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that DL's charges were proper under the relevant contract and under Medicare for the reasons detailed above.

398. Defendant Paulsen, on or about September 5, 2012, knowingly, willfully and unlawfully caused to be placed in an authorized depository for mail to be sent and delivered by the United States Postal Service, and knowingly took and received therefrom certain communications, which communications were between Spenser Olsen of Terrace View Care Center, a NA Facility, and Accounts Receivable at DL, and which represented the specific amount by which "we were over billed" by DL, when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that DL's charges were proper under the relevant contract and under Medicare for the reasons detailed above.

399. Defendant Paulsen, on or about September 5, 2012, knowingly, willfully and unlawfully caused to be placed in an authorized depository for mail to be sent and delivered by the United States Postal Service, and knowingly took and received therefrom certain communications, which communications were between Spenser Olsen of Park Ridge Care Center, a NA Facility, and Accounts Receivable at DL, and which represented the specific amount by which "we

were over billed" by DL, when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that DL's charges were proper under the relevant contract and under Medicare for the reasons detailed above.

400. Defendant Paulsen, on or about September 5, 2012, knowingly, willfully and unlawfully caused to be placed in an authorized depository for mail to be sent and delivered by the United States Postal Service, and knowingly took and received therefrom certain communications, which communications were between Spenser Olsen of Edgewater Skilled Nursing, a NA Facility, and Accounts Receivable at DL, and which represented the specific amount by which "we were over billed" by DL, when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that DL's charges were proper under the relevant contract and under Medicare for the reasons detailed above.

401. Defendant Paulsen, on or about September 27, 2012, knowingly, willfully and unlawfully caused to be placed in an authorized depository for mail to be sent and delivered by the United States Postal Service, and knowingly took and received therefrom certain communications, which communications were between Spenser Olsen of Woodland Nursing and Rehab, a NA Facility, and Accounts Receivable at DL, and which represented the specific amount by which "we were over billed" by DL, when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that DL's charges were proper under the relevant contract and under Medicare for the reasons detailed above.

402. Defendant Paulsen, on or about September 27, 2012, knowingly, willfully and unlawfully caused to be placed in an authorized depository for mail to be sent and delivered by the United States Postal Service, and knowingly took and received therefrom certain communications, which communications were between Spenser Olsen of Pacifica Nursing and Rehab, a NA Facility, and Accounts Receivable at DL, and which represented the specific amount by which "we were over billed [*sic*]" by DL, when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that DL's charges were proper under the relevant contract and under Medicare for the reasons detailed above.

403. Defendant Paulsen, on or about September 27, 2012, knowingly, willfully and unlawfully caused to be placed in an authorized depository for mail to be sent and delivered by the United States Postal Service, and knowingly took and received therefrom certain communications, which communications were between Spenser Olsen of Petaluma Post Acute Rehab, a NA Facility, and Accounts Receivable at DL, and which represented the specific amount by which "we were over billed" by DL, when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that DL's charges were proper under the relevant contract and under Medicare for the reasons detailed above.

404. Defendant Paulsen, on or about September 27, 2012, knowingly, willfully and unlawfully caused to be placed in an authorized depository for mail to be sent and delivered by the United States Postal Service, and knowingly took and received therefrom certain communications, which communications were

between Spenser Olsen of Rosewood Rehabilitation, a NA Facility, and Accounts Receivable at DL, and which represented the specific amount by which "we were over billed" by DL, when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that DL's charges were proper under the relevant contract and under Medicare for the reasons detailed above.

405. Defendant Paulsen, on or about September 27, 2012, knowingly, willfully and unlawfully caused to be placed in an authorized depository for mail to be sent and delivered by the United States Postal Service, and knowingly took and received therefrom certain communications, which communications were between Spenser Olsen of Scottsdale Nursing & Rehab Center, a NA Facility, and Accounts Receivable at DL, and which represented the specific amount by which "we were over billed" by DL, when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that DL's charges were proper under the relevant contract and under Medicare for the reasons detailed above.

406. Defendant Paulsen, on or about September 27, 2012, knowingly, willfully and unlawfully caused to be placed in an authorized depository for mail to be sent and delivered by the United States Postal Service, and knowingly took and received therefrom certain communications, which communications were between Spenser Olsen of Fairfield Post Acute Rehab, a NA Facility, and Accounts Receivable at DL, and which represented the specific amount by which "we were over billed" by DL, when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that DL's charges were proper

under the relevant contract and under Medicare for the reasons detailed above.

407. Defendant Paulsen, on or about September 27, 2012, knowingly, willfully and unlawfully caused to be placed in an authorized depository for mail to be sent and delivered by the United States Postal Service, and knowingly took and received therefrom certain communications, which communications were between Spenser Olsen of Lincoln Square, a NA Facility, and Accounts Receivable at DL, and which represented the specific amount by which "we were over billed" by DL, when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that DL's charges were proper under the relevant contract and under Medicare for the reasons detailed above.

408. Defendant Paulsen, on or about October 1, 2012, knowingly, willfully and unlawfully caused to be placed in an authorized depository for mail to be sent and delivered by the United States Postal Service, and knowingly took and received therefrom certain communications, which communications were between Spenser Olsen of Cottonwood Post-Acute Rehab, a NA Facility, and Accounts Receivable at DL, and which represented the specific amount by which "we were over billed" by DL, when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that DL's charges were proper under the relevant contract and under Medicare for the reasons detailed above.

409. Similar frauds via the United States Postal Service and the wires were perpetrated on First Choice as set forth below.

410. Defendant Paulsen, starting in January 2012, on multiple specific dates not known to Plaintiff but known in full to Paulsen, knowingly, willfully and unlawfully transmitted or caused to be transmitted numerous signals, writings, signs and sounds by means of wire, radio or telephone communication in interstate commerce, which communications were between Robert Suer (who, in an effort to conceal his true identity, falsely represented his name as "Dave") and Kurt Stewart, Chief Executive Officer of First Choice ("Stewart"), and represented that First Choice's charges were impermissible under the relevant contracts and under Medicare, and that, consequently, First Choice owed money to NA Facilities, when in fact such communications knowingly, willfully and unlawfully misrepresented the facts that First Choice's charges were proper under the relevant contracts and under Medicare, and that First Choice did not owe money back to NA Facilities.

411. Defendant Paulsen, between January and March 2012, on a specific date not known to Plaintiff but known in full to Paulsen, knowingly, willfully and unlawfully transmitted or caused to be transmitted numerous signals, writings, signs and sounds by means of wire, radio or telephone communication in interstate commerce, which communications were between Robert Suer (again representing himself as "Dave") and Stewart, and represented that, if First Choice issued a credit, First Choice's contracts with NA Facilities might be saved, when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that the First Choice contracts could not be saved and would be cancelled regardless of any credit that First Choice might issue.

412. In March 2012, on a specific date not known to Plaintiff but known in full to Paulsen, after First Choice issued a credit in the amount of approximately $17,000, Defendant Paulsen, knowingly, willfully and unlawfully transmitted or caused to be transmitted numerous signals, writings, signs and sounds by means of wire, radio or telephone communication in interstate commerce – or alternatively caused to be placed in an authorized depository for mail to be sent and delivered by the United States Postal Service (by a specific transmission method not known to Plaintiff but known in full to Paulsen), which communications were between individuals not known to Plaintiff but known in full to Paulsen, and consisted of two letters to First Choice, one providing notice that the Lake Balboa facility was cancelling its contract with First Choice and the second providing that the Chatsworth Park facility was cancelling its contract with First Choice.

413. Similar frauds were perpetuated on Schryver Medical via the mail using the United States Postal Service and the via wires as set forth below.

414. Defendant Paulsen, on March 28, 2012, knowingly, willfully and unlawfully transmitted or caused to be transmitted numerous signals, writings, signs and sounds by means of wire, radio or telephone communication in interstate commerce, which communications were between Robert Suer and Sada Pullman at Schryver Medical, and which advised that payment was being held, requested a refund, and represented that certain charges by Schryver Medical were improper under the relevant contracts and under Medicare, when in fact such communications knowingly, willfully and unlawfully misrepresented

the fact that Schryver Medical's charges were proper under the relevant contracts and under Medicare.

415. Defendant Paulsen, on or before April 12, 2012, on a specific date not known to Plaintiff but known in full to Paulsen, knowingly, willfully and unlawfully transmitted or caused to be transmitted numerous signals, writings, signs and sounds by means of wire, radio or telephone communication in interstate commerce, which communications were between Paulsen and Mark Schryver, Chief Executive Officer at Schryver Medical, and which advised that payment was being withheld, requested a refund and represented that Schryver Medical's charges were impermissible under the relevant contracts and under Medicare and, consequently, that Schryver Medical owed money back to NA Facilities, when in fact such communications knowingly, willfully and unlawfully misrepresented the facts that Schryver Medical's charges were proper under the relevant contracts and under Medicare, and Schryver Medical did not owe money to NA Facilities.

416. Defendant Paulsen, on April 12, 2012, knowingly, willfully and unlawfully transmitted or caused to be transmitted numerous signals, writings, signs and sounds by means of wire, radio or telephone communication in interstate commerce, which communications were between Paulsen and Mark Schryver, and which advised that payment was being withheld, requested a refund and represented that Schryver Medical's charges were impermissible under the relevant contracts and under Medicare and, consequently, that Schryver Medical owed money back to NA Facilities, when in fact such communications knowingly, willfully and unlawfully misrepresented

the facts that Schryver Medical's charges were proper under the relevant contracts and under Medicare, and Schryver Medical did not owe money back to NA Facilities.

417. Defendant Paulsen, on April 24, 2012, knowingly, willfully and unlawfully transmitted or caused to be transmitted numerous signals, writings, signs and sounds by means of wire, radio or telephone communication in interstate commerce, which communications were between Robert Suer and Mark Schryver, and advised that Paulsen would be willing to take a $40,000 credit to settle the matter, and requested new contracts to review for all NA Facilities in Washington, Utah and Arizona.

418. Defendant Paulsen, on May 10, 2012, knowingly, willfully and unlawfully transmitted or caused to be transmitted numerous signals, writings, signs and sounds by means of wire, radio or telephone communication in interstate commerce, which communications were between attorney Wylie Catherine Strout ("Attorney Strout") and Mark Schryver, and which threatened legal action against Schryver Medical for fraud and other claims, advised that if Schryver Medical was going to take the stance that its billings were proper, then the NA Facilities would terminate their contracts, and represented that Schryver Medical's charges were impermissible under the relevant contracts and under Medicare and, consequently, that Schryver Medical owed money to NA Facilities, when in fact such communications knowingly, willfully and unlawfully misrepresented the facts that Schryver Medical's charges were proper under the relevant contracts and under Medicare, and Schryver Medical did not owe money to NA Facilities.

Defendant Paulsen also caused the same communication to be sent by mail.

419. After Schryver Medical had issued a $10,000 credit, Defendant Paulsen, on or before June 29, 2012, on a specific date not known to Plaintiff but known in full to Paulsen, knowingly, willfully and unlawfully transmitted or caused to be transmitted numerous signals, writings, signs and sounds by means of wire, radio or telephone communication in interstate commerce, which communications were between himself and an individual that was affiliated with one of the NA Facilities serviced by Schryver Medical, and which represented that Schryver Medical's contracts were cancelled because there were billing concerns with Schryver Medical, when in fact such communications knowingly, willfully and unlawfully misrepresented the material fact that billing concerns were not the reason for the termination.

420. Similar frauds via the United States Postal Service and the wires were perpetrated on a variety of diverse other vendors in and after 2012. Defendant Paulsen, on various dates from 2012 to the present, which dates are unknown to Plaintiff but fully known to Paulsen, knowingly, willfully and unlawfully transmitted or caused to be transmitted numerous signals, writings, signs and sounds by means of wire, radio or telephone communication in interstate commerce, which communications were between Paulsen, Robert Suer or others unknown to Plaintiff but fully known to Paulsen, and individuals affiliated with NA Facilities or their vendors including but not limited to oxygen vendors (in or around February 2013) and pharmacy vendors (in or around May 2013), the identities of which individuals are unknown by

Plaintiff but fully known to Paulsen, the specifics of which are unknown by Plaintiff but fully known to Paulsen, which communications reflect the same pattern of conduct as exhibited with DL, Schryver Medical, First Choice and other x-ray and laboratory vendors.

421. Defendant Paulsen, on June 18, 2013, knowingly, willfully and unlawfully transmitted or caused to be transmitted numerous signals, writings, signs and sounds by means of wire, radio or telephone communication in interstate commerce, which communications were between Attorney Strout and DL's counsel Thomas McCaffery, and which requested DL's outside counsel to hold off on enforcing a subpoena issued to NA, and represented that there was "real opportunity" for DL and NA "potentially working together again," when in fact such communications knowingly, willfully and unlawfully misrepresented the fact that there was no meaningful opportunity for the companies to do business, and Paulsen's actual objective was to delay DL's discovery efforts and deprive DL of information that would support an injunction against Suer.

422. Defendant Paulsen, on June 26, 2013, knowingly, willfully and unlawfully transmitted or caused to be transmitted numerous signals, writings, signs and sounds by means of wire, radio or telephone communication in interstate commerce, which communications were between Attorney Strout and DL's counsel Thomas McCaffery, and which offered as an implicit threat to "reach out to some of our colleagues and associates in the industry and relevant geographic areas to assist in assessing the viability of our disputes," and represented that "[t]he revelation of

these [billing] problems was a result of a thorough audit process of the records and nothing more. As detailed above, there had not been an audit and there had been no overcharges.

Bribery – Cal. Penal Code § 641.3, as incorporated under 18 U.S.C. § 1961(1)(A)

423. At relevant times, Suer was an independent consultant, being paid by NA, and so was NA's "employee" as defined in Cal. Penal Code § 641.3. At relevant times in connection with his acts constituting bribery, Suer was acting as agent for his principals Sorensen and Paulsen, consistent with the principal-agent relationship set forth in *Gomez v. Bank of Am., N.A.,* No. 14-55129, 2016 BL 62507 (9th Cir. Mar. 02, 2016).

424. Suer solicited, accepted, and agreed to accept money or other things of value from ancillary vendors that were not his employer. Suer did these things corruptly, with the knowledge and consent of Paulsen and without the knowledge or consent of his corporate "employer," NA, in return for using or agreeing to use his position for the benefit of those vendors.

425. Suer specifically intended to injure or defraud competitors of the ancillary vendors from which he solicited and took money and things of value, including DL and others. The direct result of the illegal bribery scheme was that NA Facilities cancelled their contracts with and thereby injured, multiple vendors including DL.

426. Specifically, at Paulsen's direction, Robert Suer identified vendors to replace DL, Schryver Medical, First Choice and other terminated vendors. With Paulsen's knowledge and approval, Robert Suer

solicited or accepted or agreed to accept money from multiple vendors in exchange for securing contracts for such vendors at NA Facilities.

427. At all relevant times until mid-April 2012, Bill Treese ("Treese") was an independent consultant to certain vendors that were DL's competitors, including B.O.N. Clinical Laboratories LTD. ("B.O.N."), a laboratory service provider, and Quality Medical Imaging ("QMI"), an x-ray service provider. At the trial in DL's Lawsuit Against Robert Suer, Treese's testimony, which was consistent with the documentary evidence, was as follows. In or about early 2012, Robert Suer pitched a deal regarding B.O.N. to Treese. Robert Suer proposed that he would help B.O.N. acquire NA Facilities' laboratory business in Southern California if B.O.N. would pay Robert Suer $2,000 per facility. B.O.N. decided not to pay the proposed bribe.

428. During the same general time period in or about early 2012, Robert Suer proposed a bribe to QMI. Specifically, Robert Suer offered to help QMI acquire NA Facilities' mobile x-ray business in exchange for a $10,000-per-month "consulting fee." Robert Suer made this proposal directly to Treese and Roger Faselt ("Faselt") – the owner of QMI – at QMI's offices in Las Vegas.

429. Faselt accepted Robert Suer's offer, and arranged for QMI to pay the fee. Specifically, QMI instructed Treese to cash a check and deliver the cash to Robert Suer. The delivery was made to Robert Suer at a restaurant in Southern California, along Interstate 15 from Las Vegas to San Diego.

430. Suer used his position to benefit QMI. Prior to cancelling DL's contracts, Paulsen announced that QMI would be one of the new providers replacing DL. QMI contracts were circulated to NA Facilities and, in July and August of 2012, QMI replaced DL as an x-ray provider at a number of them. Paulsen testified at the trial of DL's Lawsuit Against Robert Suer that QMI provides x-ray services to at least 12 of NA's southern California facilities.

431. At the trial in DL's Lawsuit Against Robert Suer, Treese testified that Robert Suer told him that he had approached Town & Country about paying him to secure x-ray business from NA.

432. As detailed above, another vendor for oxygen, Pulmocare, dismissed without prejudice an action against Suer seeking approximately $37,000 to repay a loan. Suer did not make any direct payment in exchange for the dismissal. Shortly thereafter, Suer provided proposed Pulmocare contracts to NA Facilities, with his strong recommendation. Pulmocare was awarded some of this work. Pulmocare never refiled the lawsuit.

433. By June 2012 at the latest, on a specific date unknown to Plaintiff but known in full to Paulsen, Paulsen knew about and approved of the bribery scheme. Around June 2012, Kelly McCullum and Treese met with Paulsen regarding the alleged billing dispute. Treese told Paulsen that Robert Suer was selling the NA Facilities' business under the table, in other words, that Robert Suer was taking bribes. Paulsen lied and responded that he had no knowledge of Robert Suer's activities at North American and that Robert Suer was not working there, and he proceeded

thereafter to cause the NA Facilities to enter into contracts with the vendors that had paid Robert Suer bribes.

434. Paulsen benefited personally from the bribes. Because the amount of the bribes effectively reduced the amount that NA had to pay Suer in compensation, the bribe amounts inured to the benefit of NA and, due to the compensation structure at the company, Paulsen benefited through increased compensation.

Attempted Extortion – 18 U.S.C. § 1951

Attempted Extortion of Money

435. In furtherance of multiple schemes and multiple artifices to defraud multiple vendors, and to obtain and convert money and property of such vendors by means of false and fraudulent pretenses and representations or promises, Paulsen and Sorensen attempted, by means of a threat to do an unlawful injury to DL and to expose, or to impute to DL a deformity, disgrace or crime, to extort money or property from DL by threatening in writing to damage DL's business reputation and to falsely accuse DL of fraudulent overbilling, all in an effort to coerce DL into paying money or providing other financial benefits to NA Facilities.

436. Specifically, on or about June 13, 2012, Paulsen, with Sorensen's knowledge and approval, wrote to Kelly McCullum, demanding that DL provide a credit of $400,000 to North American and adding that "[w]e would also be willing to sign some type of nondisclosure agreements with your company, keeping your massive errors out of the view of others to the best of our ability."

437. The message to DL was clear. If it did not issue the credit to North American, Defendants would damage DL's business reputation by spreading their false claims regarding DL's billing to others in the industry.

438. When DL refused to issue the credit to North American, Paulsen made good on Defendants' threat and communicated his false claims regarding DL to all of the facilities affiliated with North American, causing them to cancel their contracts with DL and costing DL millions of dollars in lost revenue.

439. Defendants' extortive threat to DL was not an isolated incident, it was part of their regular business practices in dealing with vendors. For example, on April 12, 2012, Paulsen, with Sorensen's knowledge and approval, sent an email to Mark Schryver of Schryver Medical demanding a credit and stating "if you want us to sign a confidentiality agreement regarding this matter, I am open to that." Schryver later described North American as "the guys that tried to extort us."

Attempted Extortion of Intellectual Property (Two Predicate Acts)

440. In furtherance of multiple schemes and multiple artifices to defraud multiple vendors, and to obtain and convert money and property of such vendors by means of false and fraudulent pretenses and representations or promises and also by extortion, Sorensen and Paulsen attempted, by means of a threat to do an unlawful injury to DL and to expose, or to impute to DL a deformity, disgrace or crime, to extort property from DL by threatening in writing to damage DL's business reputation, and to falsely accuse DL of

fraudulent overbilling, all in an effort to wrongfully gain possession of DL's confidential information and proprietary trade secret information and other intellectual property through Suer, and to use that information for their own gain.

441. At all relevant times until May 20, 2012, Suer was associated with DL or its predecessors, historically as a sales executive and eventually as an officer of DL. In his capacity Suer obtained what the Delaware Chancery Court described as "extensive knowledge of DL's confidential information" including, development, transition and transformation plans, methodologies and methods of doing business, strategic, marketing and expansion plans, including, without limitation, plans regarding planned and potential sales, financial and business plans, employee lists and telephone numbers, locations of sales representatives, new and existing programs and services, pricing models, methodologies, and terms, customer service, integration processes, requirements and costs of providing service, support and equipments. Suer also developed expertise in negotiating and contracting with suppliers, vendors, and skilled nursing facilities.

442. DL obtained the right to restrict Suer's use of its confidential information and the experience he gained during his long-time employment at DL through a purchase agreement entered into with Suer in 2008 and an asset purchase agreement entered into with Suer in 2009 (the "DL Purchase Agreement" and "Asset Purchase Agreement" respectively). These agreements restricted Suer from using DL's confidential information, from competing with DL, and from interfering with DL's business. Pursuant to

these agreements DL paid Suer in excess of $4,000,000. In addition, Suer's Employment Agreement with DL prevents Suer from using or disclosing DL's confidential information until at least May 20, 2017.

443. In or around January 2012, Paulsen and Sorensen engaged Suer to negotiate with vendors, specifically including DL. Defendants did not hire Suer because of his educational credentials (Suer is a high school graduate and has completed a certificate program qualifying him as an x-ray technician). Rather, as the Delaware Chancery Court found, "Paulsen believed Suer's experience in working for skilled nursing facilities service providers could be valuable to North American." Specifically, Paulsen, with Sorensen's approval, engaged Suer as a consultant because he had developed intimate knowledge regarding vendor pricing, contracts, negotiation strategies and techniques, during his long employment with DL, one of Defendants' largest vendors. At the time Defendants engaged Suer, he was still on DL's payroll and maintained access to much of DL's confidential information in his email account xray4you@aol.com.

444. Defendants combined, conspired and agreed to have Suer utilize the industry experience and expertise he gained at DL, along with DL's confidential and proprietary trade secret information, including his knowledge of DL's business model, pricing strategies, access to key decision makers within the company, financial condition (at the time DL was seeking additional funding from investors), and legal exposure (at the time DL was facing allegations of wrongdoing related to the time period

when Suer managed DL's sales and marketing efforts), all in an effort to wrongfully obtain money from DL, and other vendors, in the form of billing credits to North American's affiliate facilities. In exchange, Defendants' paid Suer a "consulting fee" of approximately $15,000 per month, along with a commission based on a percentage of the total credits Suer extracted from the vendors.

445. On May 7, 2012, outside counsel for DL sent a letter to Sorensen advising him that DL suspected that Suer was breaching his covenants with DL through an affiliation with North American. Upon receiving the letter, Sorensen threw it away. As the Delaware Chancery Court found, Defendants and Suer "attempted to conceal from DL the fact that Suer was working at North American." In late May or early June, the Delaware court found that "Paulsen falsely told McCullum . . . that he had no knowledge of Suer's activities, and that Suer was not working with North American in any capacity."

446. On October 10, 2012, DL filed suit against Suer to prevent him from further transferring, or otherwise exercising, DL's intellectual property for North American's benefit, or otherwise continuing to violate his agreements with DL. In response to DL's suit, Defendants continued with their deceit and began funding Suer's litigation defense. When it became apparent that DL was serious regarding protecting its intellectual property rights to the knowledge and confidential and proprietary trade secret information Suer had in his possession, Defendant's resorted to extortive threats.

447. First, on June 18, 2013, Attorney Strout, with Paulsen's and Sorensen's knowledge and approval, e-mailed DL's counsel Thomas McCaffery, providing: "Can you please ask Jones Day to hold [enforcing a subpoena *duces tecum* issued to NA] until we can talk? I really don't want to waste time or resources on this unless we are absolutely forced to." After Thomas McCaffery responded that "we must proceed," Attorney Strout e-mailed him again, implicitly threatening to damage DL's business reputation and to falsely accuse DL of fraudulent billing: "If you wish, we could reach out to some of our colleagues and associates in the industry and relevant geographic areas to assist in assessing the viability of our disputes."

448. When DL persisted in seeking injunctive relief against Suer, Paulsen and Sorensen made explicit what Attorney Strout had implied. Specifically, on May 22, 2014, Paulsen, with Sorensen's knowledge and approval, sent a letter to Kelly McCullum of DL, providing, in part:

> I have been contacted by a number of vendors and SNF providers who ask me why DL is requesting information from them regarding your issue with Robert Suer. To date I have been reluctant to share with any of these providers information about the serious, willful and fraudulent DL contract overbilling problem discovered at the facilities which [North American] services. If this effort on your/DL's part continues, I feel I must inform these other providers of your billing issues.

> You need to be aware that John Sorensen, our President and CEO, is held in high esteem by the post acute/SNF community both here in California and nationally. Moreover, he maintains a close personal and professional relationship with CEOs of the major companies to whom you provide services. Sorensen is becoming very irritated and concerned that you and your attorneys are taking our employees away from their work to appear at depositions for hours and days, only to ask many off-the-wall and non-[North American] related questions. Taking our team away from their duties on this matter hurts our business. Sorensen will be attending the CEO/Owners conference here in south Orange County next week (May 28 and 29) and has told me that he may be expressing his frustrations concerning DL to this large group of SNF providers if you do not respond to this letter immediately. His irritation with this issue will lead him to proceed with full disclosure if you do not commit to a cease and desist this lawsuit [against Robert Suer] by Jun 1st. ***

449. Defendants' threat was clear. If DL did not drop its suit against Suer, thereby giving Defendants' full and unfettered access to exercise the intellectual property in Suer's possession for their own benefit,

then Defendants would harm DL's reputation in the marketplace.

450. DL refused to permit Defendants to obtain its intellectual property through Suer and proceeded to obtain an injunction in the Delaware Chancery Court. However, DL was injured by being forced to devote time and resources to address these extortive threats.

Obstruction of Justice – 18 U.S.C. § 1503

Obstruction of the Adversary Proceeding

451. Paulsen's conduct respecting the Adversary Proceeding constitutes obstruction of justice under 18 U.S.C.§ 1503.

452. DL filed the Adversary Proceeding in the United States Bankruptcy Court for the Central District of California on April 21, 2014.

453. The Adversary Proceeding is a judicial proceeding in a court of the United States, which has been pending at all times since it was filed.

454. Paulsen had knowledge of the Adversary Proceeding beginning at or about the time it was filed.

455. Paulsen corruptly or by threats or force, or by any threatening letter or communication, influenced, obstructed or impeded the due administration of justice in the Adversary Proceeding.

456. Paulsen acted corruptly and with specific intent to influence, obstruct, or impede the Adversary Proceeding in its due administration of justice.

457. Paulsen's corrupt acts had a relationship in time, causation, or logic with the Adversary Proceedings.

458. Paulsen's corrupt acts are detailed above and include: (1) causing NA to loan Suer funds to defend against DL's claims in the Adversary Proceeding, for purposes of keeping Suer working on the Fraudulent Shakedown Scheme; (2) causing NA to delay producing relevant documents so as to deprive DL of evidence relevant to its claims and remedies; (3) sending a letter threatening to damage DL's reputation in the marketplace if DL did not drop its litigation against Suer (dismissing the Delaware Action would have also meant dismissing DL's claims against Suer in the Bankruptcy Court, because DL would no longer be a creditor); and (4) causing Almblade to retain counsel, at NA's expense, for purposes of obstructing the deposition and instructing Almblade not to answer questions relating to DL's claims and remedies, including relating to Suer's malicious scheme to injure DL.

459. Paulsen's corrupt acts injured DL by driving up its costs in the Adversary Proceeding, depriving DL of evidence relevant to DL's claims and remedies in the Adversary Proceeding, including relating to Suer's malicious scheme to injure DL, and depriving DL from information that would support further injunctive relief against Suer.

Obstruction of Suer's Chapter 7 Case

460. Paulsen's conduct respecting Suer's chapter 7 case in the United States Bankruptcy Court for the Central District of California ("Suer's Chapter 7 Case") constitutes obstruction of justice under 18 U.S.C.§ 1503.

461. Suer's Chapter 7 Case was filed on January 7, 2014.

462. Suer's Chapter 7 Case is a judicial proceeding in a court of the United States, which has been pending at all times since it was filed.

463. Paulsen had knowledge of Suer's Chapter 7 Case beginning at or about the time it was filed.

464. Paulsen corruptly or by threats or force, or by any threatening letter or communication, influenced, obstructed or impeded the due administration of justice in Suer's Chapter 7 Case.

465. Paulsen acted corruptly and with specific intent to influence, obstruct, or impede Suer's Chapter 7 Case in its due administration of justice.

466. Paulsen's corrupt acts had a relationship in time, causation, or logic with Suer's Chapter 7 Case.

467. The Adversary Proceeding is a proceeding in Suer's Chapter 7 Case. The outcome of the Adversary Proceeding will have a direct impact on the outcome of Suer's Chapter 7 Case. One of DL's claims in the Adversary Proceeding generally objects to a discharge of Suer's debts. If DL prevails, no creditor's debt will be discharged. Similarly, if DL discovers facts in the Adversary Proceeding that show Suer's Chapter 7 Case was fraudulently filed, the Chapter 7 Case would be impacted.

468. Thus, Paulsen's corrupt acts in obstruction of the Adversary Proceeding also constitute obstruction of justice respecting Suer's Chapter 7 Case. Those corrupt acts are detailed above and include: (1) causing NA to loan Suer funds to defend against DL's claims in the Adversary Proceeding (which Paulsen did for purposes of keeping Suer working on the Fraudulent Shakedown Scheme); (2) causing NA to delay producing relevant documents so as to deprive

DL of evidence relevant to its claims and remedies; (3) sending a letter threatening to damage DL's reputation in the marketplace if DL did not drop its litigation against Suer (dismissing the Delaware Action would have also meant dismissing DL's claims against Suer in the Bankruptcy Court, because DL would no longer be a creditor); and (4) causing Almblade to retain counsel, at NA's expense, for purposes of obstructing the deposition and instructing Almblade not to answer questions relating to DL's claims and remedies, including relating to Suer's malicious scheme to injure DL.

469. Paulsen's corrupt acts injured DL by driving up its costs in the Adversary Proceeding, depriving DL of evidence relevant to DL's claims and remedies in the Adversary Proceeding, including relating to Suer's malicious scheme to injure DL, and depriving DL from information that would support further injunctive relief against Suer.

Obstruction of This Action

470. Paulsen's conduct respecting this Action constitutes further obstruction of justice under 18 U.S.C.§ 1503.

471. DL filed this Action on August 28, 2015.

472. This Action is a judicial proceeding in a court of the United States, which has been pending at all times since it was filed until it was dismissed without prejudice with leave to amend by April 14, 2016.

473. Paulsen had knowledge of this Action at the time it was served.

474. Paulsen corruptly or by threats or force, or by any threatening letter or communication, influenced,

obstructed or impeded the due administration of justice in this Action.

475. Paulsen acted corruptly and with specific intent to influence, obstruct, or impede this Action in its due administration of justice.

476. Paulsen's corrupt acts had a relationship in time, causation, or logic with this Action.

477. Certain of Paulsen's corrupt acts are detailed above and include: (1) causing NA to impede DL from using in this Action highly significant documents produced by NA in the Adversary Proceeding; (2) causing Almblade to retain counsel, at NA's expense, for purposes of obstructing his deposition in the Adversary Proceeding and instructing Almblade not to answer questions relating to nonprivileged facts supporting DL's claims and remedies, including relating to Suer's malicious scheme to injure DL and Suer's current activities working for NA. By these acts, Paulsen not only wanted to deprive DL of information that would preclude DL from further injunctive relief (so as to continue the Fraudulent Shakedown Scheme), but also wanted to deprive DL of specific information with which to further support the concept of continuity of the Fraudulent Shakedown Scheme in this Action.

478. Paulsen's corrupt acts were committed with specific intent to hide relevant facts from this Court and thus to influence, obstruct, or impede the administration of justice by this Court in this Action.

479. Paulsen's corrupt acts injured DL by driving up its costs in the Adversary Proceeding and this Action, depriving DL of evidence relevant to DL's claims and remedies in the Adversary Proceeding,

including relating to Suer's malicious scheme to injure DL, and this Action, and depriving DL from information that would support further injunctive relief against Suer.

Witness Tampering – 18 U.S.C. § 1512

Witness Tampering Respecting Almblade's Deposition in the Adversary Proceeding

480. Paulsen's conduct respecting Almblade's deposition in the Adversary Proceeding constitutes witness tampering under 18 U.S.C.§ 1512.

481. Paulsen knowingly used intimidation and/or corruptly persuaded another person with intent to: (a) influence, delay or prevent the testimony of any person in an official proceeding; and/or (b) cause or induce any person to withhold testimony from an official proceeding.

482. Specifically, as detailed above, after Paulsen learned that Almblade, a consultant to NA, had been subpoenaed by DL for deposition in the Adversary Action, Paulsen caused Almblade to retain counsel, recommended and paid for by NA. Paulsen further caused Almblade's counsel to instruct Almblade not to testify on relevant, non-privileged matters, including facts about Suer's malice towards DL and other matters that would support further injunctive relief against Suer.

483. Paulsen's conduct resulted in direct and significant financial loss to DL because, given the significance of the factual matters to which Almblade withheld testimony, DL had no choice but to incur costs to file in the Adversary Proceeding a motion to show cause as to why Almblade should not be held in contempt.

Paulsen's Witness Tampering Respecting NA's Withholding of Documents From This Action

484. Paulsen's conduct respecting NA's withholding of documents from this Action constitutes witness tampering under 18 U.S.C.§ 1512.

485. Paulsen knowingly used intimidation, threatened and/or corruptly persuaded another person, or engaged in misleading conduct toward another person, with intent to cause or induce any person to withhold a record, document, or other object, from an official proceeding.

486. Prior to producing in the Adversary Proceeding, Paulsen caused a protective order to be demanded by NA's counsel to prevent any use of documents marked "Confidential" in any action other than the Adversary Proceeding. When the NA documents were finally produced in the Adversary Proceeding, each and every one was designated "Confidential," including documents that were produced without any protection and publicly disclosed in the Delaware Action. After discovering the improper Confidential designations along with the significance of these NA documents to the claims in this Action, DL asked counsel for NA to either de-designate the documents or, alternatively, provide a limited release for DL to use the documents in this Action. DL's request was refused. DL will now be forced to pursue relief in the Adversary Proceeding.

487. DL has suffered direct injury as a result of Paulsen's improper withholding of NA's documents in this Action. DL will be forced to incur attorneys' fees to litigate for the release of the documents. NA's withholding also drove up DL's costs to amend this

complaint, as much less time would have been needed to cure the deficiencies if DL was permitted to use the restricted documents.

Continuity

488. As demonstrated below, the predicate acts or offenses are all related to the Fraudulent Shakedown Scheme and they amount to or pose a threat of continued criminal activity.

Open-Ended Continuity

489. As set forth below, the predicate acts or offenses underlying the Fraudulent Shakedown Scheme are a regular way that Sorensen and Paulsen have of doing business, and include a specific threat of repetition. Indeed, given the nature of the ancillary vendor contracts with NA Facilities generally (can be cancelled on fairly short notice), and of the Fraudulent Shakedown Scheme specifically (with its repeatable cycle of shakedown-cancel-replace), the racketeering acts themselves include a specific threat of repetition extending indefinitely into the future. As demonstrated below, there is far more than a hypothetical possibility of further predicate acts in connection with the Fraudulent Shakedown Scheme. Given the known facts below, it is a certainty the Fraudulent Shakedown Scheme continued after 2012, and was perpetuated between and through communications via mail and wire.

490. On May 30, 2013, Paulsen sent an email to a number of NA's personnel (Bryan Tanner, Darian Dahl, James Ellis-Sherinian, Jeremy Jergensen) and NA Facilities Administrators (Jacob Beaman at Pacificare, Craig Barron at Lake Balboa Care, and Brendan Dahl of Terrace View). Paulsen wrote:

> As you know, ***about a year ago we asked Bobby Suer to consult with us in the area of ancillary services/vendor contract renegotiations***. He brings many years of experience from the vendor side of our business and has been able to reduce our costs in a number of areas. ***Bobby . . . is currently focusing on pharmacy services*** and is having some excellent success in finding new providers with much improved pricing.
>
> ***
>
> ***If a vendor you work with has been over charging you for years, why not ask them to re-price your contract retroactively for 6 months or a year since they obviously could have given you much better pricing before. . . . If they cheated you already, why give them an opportunity to do it again (unless they will pay you back)? They "sold" you (and me) a poor contract once, let's not let them do it again.***
>
> ***
>
> Your time is very precious and spending a lot of time with vendors is not putting it to good use. ***Let us help you in this negotiation process.*** (Emphasis added.)

491. This email reveals that many of the fraudulent shakedown tactics that Paulsen and Sorensen had directed toward x-ray and laboratory

vendors in 2012 were repeated in 2013 to extract financial benefits from its then-current pharmacy vendors, as regular way of doing business with vendors.

492. One tactic that is repeated here in 2013 as a regular way of doing business is the use of terms such as "over charging" and "cheating" to describe a honest and reasonable practice in which a vendor (here, a pharmacy vendor) is simply charging the contract price. In this May 30, 2013, Paulsen concedes that the prices were correct under the contracts but nevertheless represents them as "overcharges," apparently because, in his view, it was a "poor [higher priced] contract" in the first place.

493. Another tactic from 2012 that is repeated in 2013 as a regular way of doing business is the practice of making a demand that pharmacy vendors "re-price" their contracts "retroactively" for 6 months or a year. This is precisely the same thing as the practice of demanding "credits" when there were no overcharges to begin with.

494. There are other communications from 2013 that confirm that Paulsen and Suer repeatedly demanded, as a regular way of doing business, credits from vendors that had charged correctly under the contract. In or around May 2013, Dahl cancelled Coventry Court's contract with Omnicare, a pharmacy. Subsequently, Omnicare contacted Dahl to try to reestablish their relationship. Dahl forwarded Omnicare's communication to Paulsen and Suer, asking for their advice on how to proceed. On May 30, 2013, Suer emailed Dahl, providing a copy to Paulsen

and advising that Omnicare not be permitted to rebid because, in part:

> My opinion we reached out to Mike Wood [of Omnicare] and explained what we were looking for and they never got back to us. They also have been continually raising rates for years. Now when you cancel they come running. I don't think it's in your best interests to allow them to bid now. I realize they have been your pharmacy for years. I just think it's funny how all these vendors only budge when they get a cancellation notice. Otherwise they keep increasing rates and stick it to the facilities. What's your thoughts Tim [Paulsen]?? ***Also they threatened they would hold you to your terms. That wasn't nice either. Not a fan of them.*** At least pharmerica worked with us.

495. In this email, Suer claimed that Omnicare "threatened they would hold you to your terms." In other words, Omnicare (like DL in 2012) insisted on being paid the contract price and would not provide Coventry Court with a credit. Thus, it was a regular and repeated practice for NA, directed by Paulsen, to "reach[] out" to vendors and "explain[] what [they] were looking for," that is credits (or retroactive pricing of contracts). As in 2012, "what they were looking for" in 2013 was money.

496. In this email, Suer also asserted that "[a]t least pharmerica worked with us," thus favorably contrasting pharmerica with Omnicare, undoubtedly

because pharmerica did not insist on the contract price but instead capitulated and paid a credit or the equivalent. Again, it was a regular and repeated practice for NA, directed by Paulsen, to get vendors to "work with" them, that is, capitulate to their unjustified demands for money.

497. On July 9, 2013, Paulsen emailed NA Facilities Administrators Brendan Dahl at Terrace View, Mark Hall at Fireside Care, and Matthew Robison at Brentwood Nursing, with copies to Craig Barron at Lake Balboa Care, Bryan Tanner and Suer, with the subject "Pharmacy cancellation notice to Omnicare," and writing:

> Bobby Suer has two pharmacy proposals for your review that would result in significant savings for your facility.
>
> In order to move this process along, please send a 60 day cancellation notice to Omnicare (effective term of August 31st).
>
> I say "process" because Omnicare is not fully "cooperating" and is resisting this change in some facilities—so it may be a "process."
>
> But let's get it moving along….

498. Thus, it was a regular and repeated practice for NA, directed by Paulsen, to send vendors notices of cancellation in an effort to coerce negotiations. As in 2012, throughout 2013, Sorensen and Paulsen just wanted money.

499. In August 2013, discussions regarding Omnicare continued, with Attorney Strout involved.

The privilege log of Terrace View, an NA Facility, listed a document dated August 15–16, 2013 and described as "Emails between Catherine Strout, Brendan Dahl, and Bobby Suer re rates and contracts with Omnicare." Thus it was a repeated and regular event for NA's demands of vendors to reach a point of dispute that they would land on Attorney Strout's desk.

500. The threat of repetition of the predicate acts and offenses as a regular way of doing business also is demonstrated by the continuing practice of shutting DL out from doing business with NA Facilities based on Sorensen's and Paulsen's fraudulent representations that DL overcharged. Many of the 27 NA Facilities with which DL had contracts complained about DL's replacement after DL's termination. Attorney Strout even admitted that certain NA Facilities were in need of DL's services. Yet, the fraud perpetrated by Sorensen and Paulsen has prevented any opportunity for DL to do business with any of the 27 NA Facilities and will continue to do so.

501. Further, the threat of repetition of the predicate acts of obstruction of justice and witness tampering (and other litigation offenses) exists due to the ongoing litigation that jeopardizes Suer's work at NA (and on the Fraudulent Shakedown Scheme). Because there is a significant risk that discovery will provide DL with a factual basis to seek further injunctive relief against Suer to prevent him from working at NA (and, consequently, on the Fraudulent Vendor Scheme), it can be expected that Paulsen will continue to engage in and direct criminal activity to impede DL's discovery efforts in the pending proceedings.

Closed-Ended Continuity

502. In addition to the predicate acts of mail and wire fraud in 2012 as particularized above, Paulsen and Sorensen engaged in the additional predicate acts of bribery, extortion, witness tampering and obstruction of justice, both in and after 2012 an until the present day.

503. As discussed above, Sorensen's and Paulsen's objective in engaging in these predicate acts was and is to prevent Suer from being further enjoined from his work at NA, so that he can continue working on the lucrative Fraudulent Shakedown Scheme.

504. Paulsen's willingness to engage in unlawful acts to maintain Suer's services in connection with the Fraudulent Shakedown Scheme first manifested in May 2012, when Paulsen was give formal notice of Suer's restrictive covenants to DL, which (as the Delaware Chancery Court subsequently found) Suer was plainly breaching. At that time, Suer was only a short-term (four-month), part-time, at-will consultant, and it would have been easy for Paulsen to cut ties, given the significant risk to Paulsen of personal liability to DL for tortious interference and other torts in the event Paulsen decided to have Suer continue.

505. Paulsen was willing to risk tort liability to keep Suer working on the Fraudulent Shakedown Scheme because the Scheme was highly lucrative to Paulsen, as he was being compensated by NA based in part on the financial success of the Scheme.

506. Just as Paulsen was willing to take a substantial risk of personal tort liability because of the financial upside of the Fraudulent Shakedown Scheme, so too was he willing to authorize, direct and

participate in criminal activity to maintain the considerable cash flowing from the Scheme.

507. Paulsen became aware of (and upon information and belief told Sorensen about) the bribery scheme by May 2012 at the latest. Thereafter he recommended NA Facilities contract with QMI, one of the x-ray vendors that paid Suer a bribe. Other vendors who bribed Suer included Pulmocare and Town & Country, both in 2012. Upon information and belief, discovery will reveal additional bribes to Suer of which Paulsen was aware in and after 2012. Due to NA's ownership compensation structure, Sorensen and Paulsen benefited personally from the bribes to Suer, which provided a significant part of Suer's compensation, which allowed NA to pay him less.

508. Sorensen and/or Paulsen engaged in the multiple predicate acts of extortion alleged above. These predicate acts also were undertaken to prevent Suer from being enjoined (or further enjoined) from his work at NA, so that he can continue working on the lucrative Fraudulent Shakedown Scheme.

509. The predicate acts of extortion to perpetuate the Fraudulent Scheme occurred in June 2012, June 213 and May 2104.

510. Sorensen and/or Paulsen also engaged in the multiple predicate acts of obstruction of justice alleged above. These predicate acts were undertaken to prevent Suer from being further enjoined from his work at NA, so that he can continue working on the lucrative Fraudulent Shakedown Scheme.

511. The predicate acts of obstruction of justice in the Adversary Proceeding began in 2014 and continue presently.

512. Paulsen also engaged in the predicate act of witness tampering alleged above. These predicate acts were undertaken to prevent Suer from being further enjoined from his work at NA, so that he can continue working on the lucrative Fraudulent Shakedown Scheme.

513. The predicate acts of witness tampering respecting Almblade's deposition occurred in 2016.

COUNT II

(DL's Claim Against Sorensen for Violation of 18 U.S.C. § 1962(c) - Federal Civil RICO)

514. Plaintiff repeats and incorporates the allegations of paragraphs 1 through 514 with the same force and effect as though fully rewritten herein.

515. Plaintiff seeks herein treble damages for injuries sustained to its business and property by reason of Sorensen's violations of the Racketeer Influenced and Corrupt Organizations ("RICO") provisions of the Organized Crime Control Act of 1970 as amended, 18 U.S.C. §§ 1961–1968.

516. Paulsen, NA, NA Facilities and Robert Suer are an enterprise, as an association in fact although not a legal entity as defined in 18 U.S.C. § 1961(4).

517. Paulsen, NA, NA Facilities and Robert Suer are an enterprise engaged in, and the activities of which affect, interstate and foreign commerce as defined in U.S.C. §§ 1961(4) and 1962(c).

518. Defendant Sorensen is a person associated with the enterprise alleged in paragraph 517 herein as defined in 18 U.S.C. §§ 1961(3) and 1962(c).

519. Defendant Sorensen has committed two or more acts indictable under Cal. Penal Code § 641.3 as

incorporated under 18 U.S.C. § 1961(1)(A) (relating to bribery), 18 U.S.C. § 1951 as incorporated under 18 U.S.C. § 1961(1)(A) (relating to extortion), and 18 U.S.C. § 1503 as incorporated under 18 U.S.C. § 1961(1)(B) (relating to obstruction of justice), within a ten-year period, at least one of such acts being committed subsequent to October 15, 1970, and at least a second of such acts being committed within ten years of the commission of a prior such act. These acts or offenses constitute a pattern of racketeering activity by Sorensen as defined in 18 U.S.C. § 1961(5) because they relate to each other as part of a common plan with similar purposes, methods of commission and results, *i.e.*, to enrich himself by fraudulently extracting and extorting payments, credits, concessions and other financial benefits from NA Facilities' vendors, as set forth below.

520. The activity engaged in by Sorensen has been continuous, pervasive and ongoing. It was and is exhibited in many transactions among diverse victims and contributed to his—and not NA's or NA Facilities'—personal wealth and income. Defendant Sorensen has thereby conducted and participated, and currently conducts and participates, directly and/or indirectly, in the affairs of an enterprise through a pattern of racketeering activity comprised of multiple schemes, multiple artifices and multiple episodes of criminal activity in violation of 18 U.S.C. § 1962(c).

Bribery – Cal. Penal Code § 641.3, as incorporated under 18 U.S.C. § 1961(1)(A)

521. DL incorporates all of the allegations set forth above in the section describing the predicate act of bribery respecting Paulsen. At relevant times, Suer

was an independent consultant, being paid by NA, and was NA's "employee" as defined in Cal. Penal Code § 641.3. At relevant times in connection with his acts constituting bribery, Suer was acting as agent for his principals Sorensen and Paulsen.

522. Suer solicited, accepted, and agreed to accept money or other things of value from ancillary vendors that were not his employer. Suer did these things corruptly, with the knowledge and consent of Paulsen and Sorensen and without the knowledge or consent of the corporate employer, NA, in return for using or agreeing to use his position for the benefit of those vendors.

523. Suer specifically intended to injure or defraud competitors of the ancillary vendors from which he solicited and took money and things of value, including DL and others. The direct result of the illegal bribery scheme was that NA Facilities cancelled their contracts with and thereby injured, multiple vendors including DL.

524. After DL learned of the bribery scheme in the spring of 2012, DL informed Paulsen. Given Sorensen's involvement in the Fraudulent Shakedown Scheme, upon information and belief, Paulsen advised Sorensen of the bribes.

525. Sorensen benefited personally from the bribes. Because the amount of the bribes effectively reduced the amount that NA had to pay Suer in compensation, the bribe amounts inured to the direct benefit of NA. Due to the ownership structure, Sorensen was benefited financially due to NA's increased profit and/or reduced cost.

Attempted Extortion – 18 U.S.C. § 1951

Attempted Extortion of Money

526. In furtherance of multiple schemes and multiple artifices to defraud multiple vendors, and to obtain and convert money and property of such vendors by means of false and fraudulent pretenses and representations or promises, Paulsen and Sorensen attempted, by means of a threat to do an unlawful injury to DL and to expose, or to impute to DL a deformity, disgrace or crime, to extort money or property from DL by threatening in writing to damage DL's business reputation and to falsely accuse DL of fraudulent overbilling, all in an effort to coerce DL into paying money or providing other financial benefits to NA Facilities.

527. Specifically, on or about June 13, 2012, Paulsen, with Sorensen's knowledge and approval upon information and belief given Sorensen's extensive involvement in the Fraudulent Shakedown Scheme, wrote to Kelly McCullum, demanding that DL provide a credit of $400,000 to North American and adding that "[w]e would also be willing to sign some type of nondisclosure agreements with your company, keeping your massive errors out of the view of others to the best of our ability."

528. The message to DL was clear. If it did not issue the credit to North American, Defendants would damage DL's business reputation by spreading their false claims regarding DL's billing to others in the industry.

529. When DL refused to issue the credit to North American, Paulsen made good on Defendants' threat and communicated his false claims regarding DL to all

of the facilities affiliated with North American, causing them, with Sorensen's knowledge and consent, to cancel their contracts with DL and costing DL millions of dollars in lost revenue.

530. Defendants' extortive threat to DL was not an isolated incident, it was part of their regular business practices in dealing with vendors. On April 12, 2012, Paulsen, with Sorensen's knowledge and approval upon information and belief, sent an email to Mark Schryver of Schryver Medical demanding a credit and stating "if you want us to sign a confidentiality agreement regarding this matter, I am open to that." Based on this threat and other dealings, Schryver later described North American in an email as "the guys that tried to extort us."

Attempted Extortion of Intellectual Property

531. In furtherance of multiple schemes and multiple artifices to defraud multiple vendors, and to obtain and convert money and property of such vendors by means of false and fraudulent pretenses and representations or promises and also by extortion, Sorensen and Paulsen attempted, by means of a threat to do an unlawful injury to DL and to expose, or to impute to DL a deformity, disgrace or crime, to extort property from DL by threatening in writing to damage DL's business reputation, and to falsely accuse DL of fraudulent overbilling, all in an effort to wrongfully gain possession of DL's confidential and proprietary trade secret information and other intellectual property through Suer, and to use that information for their own gain.

532. At all relevant times until May 20, 2012, Suer was associated with DL or its predecessors,

historically as a sales executive and eventually as an officer of DL. In his capacity Suer obtained what the Delaware Chancery Court described as "extensive knowledge of DL's confidential information" including, development, transition and transformation plans, methodologies and methods of doing business, strategic, marketing and expansion plans, including, without limitation, plans regarding planned and potential sales, financial and business plans, employee lists and telephone numbers, locations of sales representatives, new and existing programs and services, pricing models, methodologies, and terms, customer service, integration processes, requirements and costs of providing service, support and equipments. Suer also developed expertise in negotiating and contracting with suppliers, vendors, and skilled nursing facilities.

533. DL obtained the right to restrict Suer's use of its confidential and proprietary trade secret information and the experience he gained during his long-time employment at DL through a purchase agreement entered into with Suer in 2008 and an asset purchase agreement entered into with Suer in 2009 (the "DL Purchase Agreement" and "Asset Purchase Agreement" respectively). These agreements restricted Suer from using DL's confidential and proprietary trade secret information, from competing with DL, and from interfering with DL's business. Pursuant to these agreements DL paid Suer in excess of $4,000,000. In addition, Suer's Employment Agreement with DL prevents Suer from using or disclosing DL's confidential and proprietary trade secret information until at least May 20, 2017.

534. In or around January 2012, Paulsen and Sorensen engaged Suer to negotiate with vendors, specifically including DL. Defendants did not hire Suer because of his educational credentials (Suer is a high school graduate and has completed a certificate program qualifying him as an x-ray technician). Rather, as the Delaware Chancery Court found, "Paulsen believed Suer's experience in working for skilled nursing facilities service providers could be valuable to North American." Specifically, Paulsen, with Sorensen's approval, engaged Suer as a consultant because he had developed intimate knowledge regarding vendor pricing, contracts, negotiation strategies and techniques, during his long employment with DL, one of Defendants' largest vendors. At the time Defendants engaged Suer, he was still on DL's payroll and maintained access to much of DL's confidential and proprietary trade secret information in his email account xray4you@aol.com.

535. Defendants combined and conspired to have Suer utilize the industry experience and expertise he gained at DL, along with DL's confidential and proprietary trade secret information, including his knowledge of DL's business model, pricing strategies, access to key decision makers within the company, financial condition (at the time DL was seeking additional funding from investors), and legal exposure (at the time DL was facing allegations of wrongdoing related to the time period when Suer managed DL's sales and marketing efforts), all in an effort to wrongfully obtain money from DL, and other vendors, in the form of billing credits to North American's affiliate facilities. In exchange, Defendants' paid Suer a "consulting fee" of approximately $15,000 per month,

along with a commission based on a percentage of the total credits Suer extracted from the vendors.

536. On May 7, 2012, outside counsel for DL sent a letter to Sorensen advising him that DL suspected that Suer was breaching his covenants with DL through an affiliation with North American. Upon receiving the letter, Sorensen threw it away. As the Delaware Chancery Court found, Defendants and Suer "attempted to conceal from DL the fact that Suer was working at North American." In late May or early June, the Delaware court found that "Paulsen falsely told McCullum . . . that he had no knowledge of Suer's activities, and that Suer was not working with North American in any capacity."

537. On October 10, 2012, DL filed suit against Suer to prevent him from further transferring, or otherwise exercising, DL's intellectual property for North American's benefit, or otherwise continuing to violate his agreements with DL. In response to DL's suit, Defendants continued with their deceit and began funding Suer's litigation defense. When it became apparent that DL was serious regarding protecting its intellectual property rights to the knowledge and confidential and proprietary trade secret information Suer had in his possession, Defendant's resorted to extortive threats.

538. First, on June 18, 2013, Attorney Strout, with Paulsen's and Sorensen's knowledge and approval, e-mailed DL's counsel Thomas McCaffery, providing: "Can you please ask Jones Day to hold [enforcing a subpoena *duces tecum* issued to NA] until we can talk? I really don't want to waste time or resources on this unless we are absolutely forced to." After Thomas

McCaffery responded that "we must proceed," Attorney Strout e-mailed him again, implicitly threatening to damage DL's business reputation and to falsely accuse DL of fraudulent billing: "If you wish, we could reach out to some of our colleagues and associates in the industry and relevant geographic areas to assist in assessing the viability of our disputes."

539. When DL persisted in seeking injunctive relief against Suer, Paulsen and Sorensen made explicit what Attorney Strout had implied. Specifically, on May 22, 2014, Paulsen, with Sorensen's knowledge and approval, sent a letter to Kelly McCullum of DL, providing, in part:

> I have been contacted by a number of vendors and SNF providers who ask me why DL is requesting information from them regarding your issue with Robert Suer. To date I have been reluctant to share with any of these providers information about the serious, willful and fraudulent DL contract overbilling problem discovered at the facilities which [North American] services. If this effort on your/DL's part continues, I feel I must inform these other providers of your billing issues.
>
> You need to be aware that John Sorensen, our President and CEO, is held in high esteem by the post acute/SNF community both here in California and nationally. Moreover, he maintains a close personal and

> professional relationship with CEOs of the major companies to whom you provide services. Sorensen is becoming very irritated and concerned that you and your attorneys are taking our employees away from their work to appear at depositions for hours and days, only to ask many off-the-wall and non-[North American] related questions. Taking our team away from their duties on this matter hurts our business. Sorensen will be attending the CEO/Owners conference here in south Orange County next week (May 28 and 29) and has told me that he may be expressing his frustrations concerning DL to this large group of SNF providers if you do not respond to this letter immediately. His irritation with this issue will lead him to proceed with full disclosure if you do not commit to a cease and desist this lawsuit [against Robert Suer] by Jun 1st. ***

540. Defendants' threat was clear. If DL did not drop its suit against Suer, thereby giving Defendants' full and unfettered access to exercise the intellectual property in Suer's possession for their own benefit, then Defendants would harm DL's reputation in the marketplace.

541. DL refused to permit Defendants to obtain its intellectual property through Suer and proceeded to obtain an injunction in the Delaware Chancery Court. However, DL was injured by being forced to devote time and resources to address these extortive threats.

Obstruction of Justice – 18 U.S.C. § 1503

Obstruction of the Adversary Proceeding

542. Sorensen's conduct respecting the Adversary Proceeding constitutes obstruction of justice under 18 U.S.C.§ 1503.

543. DL filed the Adversary Proceeding in the United States Bankruptcy Court for the Central District of California on April 21, 2014.

544. The Adversary Proceeding is a judicial proceeding in a court of the United States, which has been pending at all times since it was filed.

545. Sorensen had knowledge of the Adversary Proceeding beginning at or about the time it was filed.

546. Sorensen corruptly or by threats or force, or by any threatening letter or communication, influenced, obstructed or impeded the due administration of justice in the Adversary Proceeding.

547. Sorensen acted corruptly and with specific intent to influence, obstruct, or impede the Adversary Proceeding in its due administration of justice.

548. Sorensen's corrupt acts had a relationship in time, causation, or logic with the Adversary Proceedings.

549. Sorensen's corrupt acts are detailed above and include causing NA to loan Suer funds to defend against DL's claims in the Adversary Proceeding, for purposes of impeding DL's pursuit of claims and remedies in order to keep Suer working at NA on the Fraudulent Shakedown Scheme.

550. Sorensen's corrupt acts injured DL by driving up its costs in the Adversary Proceeding, depriving DL of evidence relevant to DL's claims and remedies in the

Adversary Proceeding, including relating to Suer's malicious scheme to injure DL, and depriving DL of information that would support further injunctive relief against Suer.

Obstruction of Suer's Chapter 7 Case

551. Sorensen's conduct respecting Suer's chapter 7 case in the United States Bankruptcy Court for the Central District of California ("Suer's Chapter 7 Case") constitutes obstruction of justice under 18 U.S.C.§ 1503.

552. Suer's Chapter 7 Case was filed on January 7, 2014.

553. Suer's Chapter 7 Case is a judicial proceeding in a court of the United States, which has been pending at all times since it was filed.

554. Sorensen had knowledge of Suer's Chapter 7 Case beginning at or about the time it was filed.

555. Sorensen corruptly or by threats or force, or by any threatening letter or communication, influenced, obstructed or impeded the due administration of justice in Suer's Chapter 7 Case.

556. Sorensen acted corruptly and with specific intent to influence, obstruct, or impede Suer's Chapter 7 Case in its due administration of justice.

557. Sorensen's corrupt acts had a relationship in time, causation, or logic with Suer's Chapter 7 Case.

558. The Adversary Proceeding is a proceeding in Suer's Chapter 7 Case. The outcome of the Adversary Proceeding will have a direct impact on the outcome of Suer's Chapter 7 Case. One of DL's claims in the Adversary Proceeding generally objects to a discharge of Suer's debts. If DL prevails, no creditor's debt will

be discharged. Similarly, if DL discovers facts in the Adversary Proceeding that show Suer's Chapter 7 Case was fraudulently filed, the Chapter 7 Case would be impacted.

559. Thus, Sorensen's corrupt acts in obstruction of the Adversary Proceeding also constitute obstruction of justice respecting Suer's Chapter 7 Case. Those corrupt acts are detailed above and include causing NA to loan Suer funds to defend against DL's claims in the Adversary Proceeding (which Sorensen did for purposes of keeping Suer working on the Fraudulent Shakedown Scheme).

560. Sorensen's corrupt acts injured DL by driving up its costs in the Adversary Proceeding, depriving DL of evidence relevant to DL's claims and remedies in the Adversary Proceeding, including relating to Suer's malicious scheme to injure DL, and depriving DL from information that would support further injunctive relief against Suer.

COUNT III

(DL's Claim Against Paulsen and Sorensen for Violation of 18 U.S.C. § 1962(d) - Federal Civil RICO Conspiracy)

561. Plaintiff repeats and incorporates the allegations of paragraphs 1 through 561 with the same force and effect as though fully rewritten herein.

562. Plaintiff seeks herein treble damages for injuries sustained to its business and property by reason of Defendants' violations of the Racketeer Influenced and Corrupt Organizations ("RICO") provisions of the Organized Crime Control Act of 1970 as amended, 18 U.S.C. §§ 1961–1968.

563. Paulsen and Sorensen each is a person as defined by 18 U.S.C. § 1961(3).

564. NA and NA Facilities are an enterprise, as an association in fact although not a legal entity as defined in 18 U.S.C. § 1961(4).

565. NA and NA Facilities are an enterprise engaged in, and the activities of which affect, interstate and foreign commerce as defined in U.S.C. §§ 1961(4) and 1962(c).

566. Paulsen and Sorensen are persons engaged in the prohibited activities described in 18 U.S.C. § 1962(c).

567. Defendant Paulsen knowingly, willfully and unlawfully combined, conspired, confederated and agreed with Defendant Sorensen and Robert Suer to violate the provisions of 18 U.S.C. § 1962(c) through a pattern of racketeering activity as detailed above, including acts of extortion, obstruction of justice, mail fraud and wire fraud.

568. Defendant Sorensen knowingly, willfully and unlawfully combined, conspired, confederated and agreed with Defendant Paulsen and Robert Suer to violate the provisions of 18 U.S.C. § 1962(c) through a pattern of racketeering activity as detailed above, including acts of extortion, obstruction of justice, mail fraud and wire fraud.

569. As set forth above and below, several acts were committed in furtherance of Paulsen and Sorensen's agreement to violate the provisions of 18 U.S.C. § 1962(c).

570. Paulsen and Sorensen agreed to a plan for extortion. Specifically, as detailed above, they agreed

to violate RICO in connection with the extortion, specifically, the agreement for Paulsen to send his email of May 22, 2014 to McCullum at DL, threatening that Sorensen would disparage DL to customers unless DL relinquished to Sorensen and Paulsen its intellectual property (specifically, its confidential and proprietary trade secret information that was known by Suer but subject to restrictive covenants).

571. In addition, and as detailed above, Paulsen and Sorensen agreed to violate RICO in connection with their obstruction of justice in the Adversary Proceeding and Suer's Chapter 7 Case. Specifically, as detailed above, Paulsen and Sorensen agreed to authorize NA to pay fees for Suer's attorney. Their specific plan in the Adversary Proceeding was and is to deprive DL of relevant discovery that would support DL's claim of malicious injury by Suer. Their objective for this obstruction is to deprive DL of evidence that would support further injunctive relief to prevent Suer from working at NA (and on the Fraudulent Shakedown Scheme). This plan also operates to obstruct Suer's Chapter 7 Case, of which the Adversary Proceeding is a part.

572. Sorensen and Paulsen also agreed to violate RICO by committing mail fraud and wire fraud, by having Paulsen dispatch the numerous mailings and emails, of which Sorensen testified he was aware and on which he was copied, that contained the misrepresentations (about audits, overcharges, putting off cancellation "in good faith," and the like) and other tactics (withholding payment, purporting to cancel contracts to "get vendors' attention," and the like) that predicate the Fraudulent Shake Down Scheme.

573. As a direct and proximate result of Paulsen's and Sorensen's conspiracy to violate 18 U.S.C. § 1962(c) and the acts in furtherance of that conspiracy, Plaintiff has been damaged in an amount to be proved at trial that exceeds $700,000, exclusive of costs and interest.

574. Paulsen's and Sorensen's conduct entitles Plaintiff to a statutory award of treble damages, costs and attorneys' fees pursuant to the provisions of 18 U.S.C. § 1964(c).

COUNT IV

(DL's Claim Against Sorensen for Tortious Interference With Contract)

575. Plaintiff repeats and incorporates the allegations of paragraphs 1 through 575 with the same force and effect as though fully rewritten herein.

576. The DL-Suer Agreements were valid and enforceable contracts between DL and Robert Suer. Included were terms obliging Robert Suer not to compete with DL, not to interfere with DL's relationships and not to use or disclose DL's confidential information. The contracts between DL and each of the 27 NA Facilities were valid and enforceable contracts. Included were terms requiring payment for services rendered.

577. Sorensen had knowledge of the DL-Suer Agreements, as well as DL's contracts with the 27 NA Facilities. On May 7, 2012, DL's outside counsel sent a letter to Sorensen at NA, providing in part:

> It has recently come to our client's attention that your organization may have affiliated itself with (or may

> otherwise be using the services of) an individual formerly employed by DL named Bobby Robert Suer. The purpose of this letter is to notify you of certain agreements between DL and Robert Suer, copies of which are enclosed. *** It has also recently come to our client's attention that Robert Suer has, in his recent dealings with your organization and others, breached these covenants and other obligations. It is possible that, inadvertently or otherwise, you may have induced a breach of these contracts.

578. Sorensen received the letter from DL's outside counsel.

579. Sorensen engaged in intentional acts designed to induce a breach of the contractual relationship. Specifically, Sorensen directly ordered, authorized and participated in tortious conduct by (a) allowing Robert Suer to continue in his work at NA, knowing that it was in violation of his contractual covenants, (b) funding Robert Suer's defense of DL's Lawsuit Against Robert Suer, and (c) obstructing DL's Lawsuit Against Robert Suer.

580. Sorensen engaged in intentional acts designed to induce a breach of DL's contracts with the NA Facilities, specifically, Sorensen authorized and participated in tortious conduct by conspiring with Paulsen to cause each of the NA Facilities to withhold payment.

581. As a result of Sorensen's conduct, Robert Suer breached his contracts with DL.

582. As a result of Sorensen's conduct, each NA Facility breached his contracts with DL.

583. There was damage to DL resulting from Sorensen's tortious acts. Specifically, as a result of Robert Suer's breaches that Sorensen intentionally permitted, encouraged and allowed to continue, DL had to incur attorneys' fees and litigation expenses in DL's Lawsuit Against Robert Suer. In addition, DL incurred losses due to the NA Facilities' failures to pay.

584. DL did not discover facts supporting this claim until Paulsen and Sorensen were deposed, on June 12, 2014 and June 19, 2014 respectively. Due to the initial stay of discovery based on Suer's motion to dismiss the Delaware Action, Paulsen's and Sorensen's bad faith failures to schedule and appear for deposition, NA's bad faith failures, authorized and approved by Paulsen and Sorensen, to produce documents responsive to DL's subpoena, and the stay resulting from Robert Suer's chapter 7 bankruptcy filing, DL was unable to take Paulsen's and Sorensen's depositions any earlier and thus was unable to discover relevant facts any earlier in spite of its reasonable diligence. Moreover, these delays were a deliberate tactic, caused at the instruction of Sorensen and Paulsen, and with the funds provided for Suer's defense as authorized by Sorensen and Paulsen.

585. DL has been damaged and continues to be damaged in an amount that is not presently ascertainable but that will be established at trial.

COUNT V

(DL's Claim Against Paulsen for Tortious Interference With Contract)

586. Plaintiff repeats and incorporates the allegations of paragraphs 1 through 586 with the same force and effect as though fully rewritten herein.

587. Like Sorensen, Paulsen had knowledge of the valid and enforceable DL-Suer Agreements and of the valid and enforceable agreements between DL and each of the 27 NA Facilities.

588. Paulsen directly engaged and participated in intentional acts designed to induce a breach of the contractual relationship. Specifically, Paulsen directly ordered, authorized and participated in tortious conduct by (a) allowing Robert Suer to continue in his work at NA, knowing that it was in violation of his contractual covenants, (b) assigning Robert Suer to specific tasks that Paulsen knew were in violation of his contractual covenants, (c) using to NA's benefit and DL's detriment DL's Confidential and Proprietary trade secret Information that Paulsen obtained from Robert Suer, knowing that the use and disclosure was in violation of Robert Suer's contractual covenants, (d) funding Robert Suer's defense of DL's Lawsuit Against Robert Suer, and (e) obstructing DL's Lawsuit Against Robert Suer.

589. Paulsen also engaged in intentional acts designed to induce a breach of DL's contracts with the NA Facilities, specifically, Paulsen, authorized by Sorensen, caused each of the NA Facilities to withhold payment.

590. As the Delaware Chancery Court found: "Paulsen's email [of July 5, 2012] identifying Suer as

a point person for making sure the [NA] [F]acilities administrators' needs for such services were met evidenced Suer's involvement [in providing assistance to DL's competitors in breach of the DL-Suer Agreements]."

591. The Delaware Chancery Court also found: "The record supports DL's allegations that, during his meetings and communications with DL, Paulsen exhibited more than public knowledge of DL's vulnerability and business practices, and that Paulsen's approach to DL was particularly hard-nosed as a result."

592. As a result of Paulsen's conduct, Robert Suer breached his contracts with DL.

593. As a result of Paulsen's conduct, each NA Facility breached his contracts with DL.

594. There was damage to DL resulting from Paulsen's tortious acts. Specifically, as a result of Robert Suer's breaches that Paulsen intentionally permitted, encouraged and allowed to continue, DL had to incur attorneys' fees and litigation expenses in DL's Lawsuit Against Robert Suer. In addition, DL incurred losses due to the NA Facilities' failures to pay.

595. DL did not discover facts supporting these claims until Paulsen and Sorensen were deposed, on June 12, 2014 and June 19, 2014 respectively. Due to the stay of discovery, Paulsen's and Sorensen's bad faith failures to schedule and appear for deposition, NA's bad faith failures, authorized and approved by Paulsen and Sorensen, to produce documents responsive to DL's subpoena, and the stay resulting from Robert Suer's chapter 7 bankruptcy filing, DL

was unable to take Paulsen's and Sorensen's depositions any earlier and thus was unable to make earlier discovery in spite of its reasonable diligence. Moreover, these delays were a deliberate tactic, caused at the instruction of Sorensen and Paulsen, and with the funds provided for Suer's defense as authorized by Sorensen and Paulsen and the stay resulting from Robert Suer's chapter 7 bankruptcy filing, DL was unable to take Paulsen's and Sorensen's depositions any earlier and thus was unable to discover relevant facts any earlier in spite of its reasonable diligence.

596. DL has been damaged and continues to be damaged in an amount that is not presently ascertainable but that will be established at trial.

COUNT VI

(DL's Claim Against Paulsen and Sorensen for Tortious Interference With Prospective Economic Advantage)

597. Plaintiff repeats and incorporates the allegations of paragraphs 1 through 597 with the same force and effect as though fully rewritten herein.

598. There was an economic relationship between DL and the 27 NA Facilities identified above. Specifically, DL had separate contracts with each of these facilities to provide mobile x-ray and/or laboratory services.

599. The relationship between DL and these facilities was such that there was a probability of future economic benefit to DL. DL already had provided services under these contracts for a number of years, and was likely to continue doing so absent some change in circumstances.

600. Paulsen and Sorensen had knowledge of the relationships between DL and each of these NA facilities.

601. Paulsen and Sorensen intentionally acted in a design to disrupt DL's relationship with each of these facilities. Specifically, Paulsen misrepresented to each facility that DL had overbilled it for services, and Sorensen directed that all of the contracts be terminated.

602. Resulting from Paulsen and Sorensen's intentional acts was an actual disruption of DL's relationship with each of these NA facilities. Specifically, each terminated its contract with DL as a result of Paulsen's acts.

603. There was economic harm to DL proximately caused by Paulsen's and Sorensen's wrongful acts. Specifically, DL lost the economic benefit of each of these contracts which, but for Paulsen and Sorensen's actions would not have been terminated but would have continued.

604. DL did not discover facts supporting this claim until Paulsen and Sorensen were deposed, on June 12, 2014 and June 19, 2014 respectively. Due to the stay of discovery, Paulsen and Sorensen's bad faith failures to schedule and appear for deposition, and the stay resulting from Robert Suer's chapter 7 bankruptcy filing, DL was unable to take Paulsen's and Sorensen's depositions any earlier and thus was unable to discovery relevant facts any earlier in spite of its reasonable diligence.

605. Paulsen's and Sorensen's acts damaged and continue to damage DL in an amount that is not

presently ascertainable but that will be established at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered in its favor against Defendants, granting Plaintiff the following relief:

1. Money damages on Count I against Defendant Paulsen in an amount as yet undetermined, to be trebled pursuant to 18 U.S.C. § 1964(c);

2. Money damages on Count II against Defendant Sorensen in an amount as yet undetermined, to be trebled pursuant to 18 U.S.C. § 1964(c);

3. Money damages on Count III against Defendants Sorensen and Paulsen in an amount as yet undetermined, to be trebled pursuant to 18 U.S.C. § 1964(c);

4. Money damages on Count IV against Defendant Sorensen in an amount as yet undetermined;

5. Money damages on Count V against Defendant Paulsen in an amount as yet undetermined;

6. Money damages on Count VI against Defendants Sorensen and Paulsen in an amount as yet undetermined;

7. Punitive damages on the tort claims in Counts IV, V, and VI;

8. Plaintiff's costs in this action, including a reasonable attorneys' fee pursuant to 18 U.S.C. § 1964(c); and

9. Such other and further relief as the Court shall deem just and proper.

Dated: April 21, 2016 Respectfully submitted,
JONES DAY

By: /s/ *Robert P. Ducatman*
Robert P. Ducatman

Counsel for Plaintiff
KAN-DI-KI, LLC, d/b/a
DIAGNOSTIC
LABORATORIES

DEMAND FOR A JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff Kan-Di-Ki, LLC, d/b/a Diagnostic Laboratories, hereby demands trial by jury of all issues or claims triable of right by a jury in this action.

Dated: April 21, 2016 Respectfully submitted,

JONES DAY

By: /s/ *Robert P. Ducatman*
Robert P. Ducatman

Counsel for Plaintiff
KAN-DI-KI, LLC, d/b/a
DIAGNOSTIC
LABORATORIES