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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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**ALLEN ROTHPEARL, M.D., P.C., doing
business as JERICHO SPECIALTY IMAGING,**

Plaintiff,

-against-

AMENDED COMPLAINT

2:08-cv-01917 (LDW)(ETB)

**CARECORE NATIONAL, LLC,
CARECORE MANAGEMENT SERVICES
INC., NEW YORK MEDICAL IMAGING IPA,
INC., NYMI IPA-O, LLC, NYMI IPA-M, LLC,
CCN-HI IPA, LLC, CCN IPA, INC., CCN WNY
IPA, Inc., and NASSAU RADIOLOGIC
GROUP, P.C.,**

Defendants.

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Plaintiffs by their undersigned attorneys, Eisenberg & Carton, bring this civil action against the defendants named herein and allege as follows:

SUMMARY OF CLAIMS

1. This case concerns an illegal horizontal conspiracy and other improper conduct among a group of competing radiologists to preclude their competitors, including Allen Rothpearl, M.D., P.C., doing business as Jericho Specialty Imaging (“JSI”), from providing outpatient medical diagnostic imaging (or “radiology”) services to patients residing in Nassau, Suffolk, Queens and Kings Counties. This conspiracy has distorted the competitive landscape for the provision of these services and has harmed and will continue to harm not only the diagnostic imaging practices that it targets, but also the patients in need of such services.

2. In particular, this case concerns the actions of CareCore National, LLC (“CCN”) and its principals.

3. CCN is owned and controlled by a group of competing diagnostic imaging practices located throughout the state.

4. CCN has entered into exclusive agreements with most of the large health care insurance plans in Nassau, Suffolk, Queens and Kings Counties (hereinafter collectively referred to at times as “Geographic Long Island”) -- including Oxford Healthcare, Aetna/U.S. Healthcare, GHI, Healthfirst, Healthnet and HIP -- to administer insurance reimbursement to their beneficiaries (patients).

5. Upon information and belief, the total number of beneficiaries covered by the plans with which CCN contracts amounts to at least half of the lives covered by commercial insurance in Nassau County and Geographic Long Island as a whole.

6. Pursuant to its exclusive contracts with payers, CCN “certifies” diagnostic imaging practices for admission into CCN’s network and, in turn, acceptance of health insurance reimbursement from the contracted health plans.

7. Diagnostic imaging practices in Nassau County and Geographic Long Island as a whole not receiving CCN certification are thus effectively precluded from servicing at least half of patients who have their diagnostic imaging services reimbursed by commercial health insurance plans. Accordingly, these patients are precluded from receiving treatment from such diagnostic imaging practices, notwithstanding that these practices may offer them superior and innovative diagnostic imaging services.

8. CCN and its owner-practices have allocated the market for diagnostic imaging services in Nassau County and Geographic Long Island as a whole among themselves by boycotting competing diagnostic imaging practices’ access to CCN’s network.

9. CCN has further allocated the market for such services by “steering” patient referrals towards its owner-practices and away from non-CCN owner-practices in its network.

10. In light of its substantial market power, CCN’s illegal conduct has yielded anticompetitive effects in the market for diagnostic imaging services; notably by reducing the output and quality of such services and by hampering innovation by diagnostic imaging practices.

11. Moreover, CCN's boycott of competing diagnostic imaging practices, including JSI, is not driven by any legitimate business or medically-valid purpose. Indeed, numerous practices denied certification in CCN's network offer the highest-quality, state-of-the-art diagnostic imaging services.

12. The request for injunctive relief in this case stems from CCN's refusal to admit JSI into its provider network on the ground that there is no purported geographic need for JSI's services. This, despite that JSI is staffed by radiologists educated by premier medical institutions, that JSI uses special equipment and that JSI offers unique services (detailed below) not offered by any other radiology service provider in Nassau County and Geographic Long Island as a whole, other than at hospitals.

13. If JSI is not permitted to obtain reimbursement for treating patients in CCN's network, and CCN is not precluded from "steering" patients away from JSI, physicians will stop referring any of their patients to JSI, whether or not those patients are covered by CCN's network. That is because referring physicians are not going to take the time to figure out which patients are in CCN's network and which patients are not.

14. This anticompetitive conduct therefore irreparably threatens the goodwill that JSI's principal, Dr. Rothpearl, has built with referring physicians over his many years of practice and, more particularly, the goodwill that JSI has garnered since its establishment two years ago.

15. Moreover, because of the large costs associated with its operation -- including the costs of purchasing radiology and other equipment -- JSI will likely be unable to survive without having the CCN sponsored boycott enjoined. Indeed, because of the CCN sponsored boycott, JSI is losing money every month.

16. The amount of money that JSI is losing due to the CCN sponsored boycott can be easily measured at its minimum, but beyond that minimum cannot be measured with specificity.

17. Accordingly, JSI is currently incurring immediate and irreparable harm from CCN's anticompetitive conduct.

18. CCN's actions amount to a group boycott and market allocation under Section 1 of the Sherman Act, whether analyzed under antitrust's *per se* rule or Rule of Reason.

19. JSI seeks injunctive relief to remedy the ongoing harm it is suffering.

20. JSI also seeks treble damages to compensate it for its losses.

JURISDICTION AND VENUE

21. This Complaint is filed under Section 16 of the Clayton Act, 15 U.S.C. § 26 to prevent and restrain violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, and for damages under Section 4 of the Clayton Act, 15 U.S.C. § 15. This Court has jurisdiction over the federal antitrust law claims alleged herein under 15 U.S.C. § 15, and 28 U.S.C. §§ 1331, 1337.

22. Defendants, through their ownership of diagnostic imaging practices and their treatment of patients, are found and transact business in this state and district.

23. In addition, defendant CCN's headquarters are located in this state.

24. The acts complained of herein have had, and will continue to have, substantial anticompetitive effects in this district.

25. A substantial amount of interstate trade and commerce involved in this case and affected by the alleged violations of antitrust law occurs within this district.

26. Accordingly, venue is proper in this district under 28 U.S.C. § 1392(a) and (b).

27. Defendant diagnostic imaging practices as well as the practices with which they compete are located in several states and offer their services to patients traveling in interstate commerce.

28. In addition, the medical equipment used in providing such services is purchased across state borders.

THE PARTIES

A. Plaintiff

29. JSI is a “dba” of plaintiff Allen Rothpearl, M.D., P.C. a professional corporation duly formed and existing under the laws of the State of New York.

30. JSI is located at 1510 Jericho Turnpike, New Hyde Park, New York, 11040.

31. JSI provides state-of-the-art outpatient diagnostic imaging services to patients residing in Queens, Kings, Nassau and Suffolk Counties.

32. JSI is operated by Allen Rothpearl, M.D., a highly trained physician-radiologist certified through the American Board of Radiology and licensed in New York State.

33. JSI's radiologists also includes Gurmeet Dhillon, M.D., also a highly trained physician-radiologist certified through the American Board of Radiology and licensed in New York State.

34. JSI is a unique and highly specialized MRI imaging facility devoted primarily to providing imaging services to pediatric neurology patients, autistic children, and adult phobia patients.

35. Pediatric patients represent 64% of JSI's total patients.

36. Pediatric and special needs patients are typically not served by most private imaging facilities because of the attention and special treatment they require.

B. Defendants

37. CareCore National, LLC is a New York limited liability company with its principal place of business at 169 Myers Corners Road, Wappingers Falls, New York. Its ostensible purpose is to contract with physicians and third party payers to administer insurance reimbursement to qualified diagnostic imaging practices that serve insurers' beneficiaries (patients). CCN has combined and conspired for its own benefit with other defendants in the unlawful acts alleged herein.

38. CCN's corporate evolution began in 1995 with the formation of New York Medical Imaging, PLLC ("NYMI"). NYMI was formed for the purpose of contracting with health insurance companies to administer reimbursement for outpatient diagnostic imaging services.

39. In its initial stages, NYMI approached a small group of high-profile, geographically selected radiologist practices to invest money and become members (*i.e.*, owners).

40. In its solicitations of these practices, NYMI represented that its ultimate goal was to consolidate and control commercial payer reimbursement of diagnostic imaging services in New York.

41. After successfully recruiting numerous practices, NYMI formed a series of independent practice associations ("IPAs") to contract with various commercial health insurers.

42. NYMI was thereby founded, and continues to be controlled by, a small, handpicked group of practicing radiologists who own and operate their own independent diagnostic imaging practices ("owner-practices").

43. Radiologists that own these owner-practices sit on NYMI (now CCN) boards and approve themselves as for-profit practices in NYMI's (now CCN's) network.

44. In 2001, NYMI Management Services, LLC, was formed, and most of the IPAs were dissolved.

45. In May 2002, NYMI Management Services, LLC, changed its name to CareCore National, LLC.

46. Defendant CareCore Management Services Inc. ("CMS") is a New York corporation with a principal place of business at 169 Myers Corners Road, Wappingers Falls, New York.

47. Upon information and belief, CMS has combined and conspired for its own benefit with other defendants in the unlawful acts alleged herein.

48. Defendant New York Medical Imaging IPA, Inc. is a New York corporation with a principal place of business at 169 Myers Corners Road, Wappingers Falls, New York. Upon information and belief, New York Medical Imaging IPA, Inc. has combined and conspired for its own benefit with other defendants in the unlawful acts alleged herein.

49. Defendant NYMI IPA-O, LLC is a New York corporation with a principal place of business at 169 Myers Corners Road, Wappingers Falls, New York. Upon information and belief, NYMI IPA-O, LLC has combined and conspired for its own benefit with other defendants in the unlawful acts alleged herein.

50. Defendant NYMI IPA-M, LLC is a New York corporation with a principal place of business at 169 Myers Corners Road, Wappingers Falls, New York. Upon information and belief, NYMI IPA-M, LLC has combined and conspired for its own benefit with other defendants in the unlawful acts alleged herein.

51. Defendant CCN-HI IPA, LLC is a New York corporation with a principal place of business at 169 Myers Corners Road, Wappingers Falls, New York. Upon information and belief, CCN-HI IPA, LLC has combined and conspired for its own benefit with other defendants in the unlawful acts alleged herein.

52. Defendant CCN-IPA, Inc. is a New York corporation with a principal place of business at 169 Myers Corners Road, Wappingers Falls, New York. Upon information and belief, CCN-IPA, Inc. has combined and conspired for its own benefit with other defendants in the unlawful acts alleged herein.

53. Defendant CCN WNY IPA, Inc. is a New York corporation with a principal place of business at 169 Myers Corners Road, Wappingers Falls, New York. Upon information and belief, CCN WYN IPA, Inc. has combined and conspired for its own benefit with other defendants in the unlawful acts alleged herein.

54. CareCore National, LLC, CMS, New York Medical Imaging IPA, NYMI IPA-O, LLC and NYMI IPA-M, LLC will hereinafter be referred to collectively as CCN.

55. Defendant Nassau Radiologic Group, P.C. (“Nassau Radiologic”), a radiology practice with 7 offices located in Nassau County, New York, with its principal executive office located at 990 Stewart Avenue, Garden City, New York.

56. Upon information and belief, each of Nassau Radiologic’s offices are admitted to the CCN provider network

57. Upon information and belief, one or more of Nassau Radiologic’s principals is an owner of CCN.

58. Nassau Radiologic is a direct competitor to JSI in the delivery of radiology services, except that, upon information and belief, Nassau Radiologic does not offer the specialized services offered by JSI (as detailed below).

59. Upon information and belief, Nassau Radiologic has combined and conspired for its own benefit with other defendants in the unlawful acts alleged herein.

C. Co-Conspirators

60. Upon information and belief, various persons, firms, corporations, organizations and other business entities have participated as co-conspirators in the violations alleged herein and have performed acts in furtherance of the conspiracies. Some of these persons, firms, corporations, organizations and business entities are known and some are unknown.

61. The aforementioned unnamed individuals and business entities include, without limitation, certain of CCN's executives, board members, owner-practices and employees, as well

as other competing diagnostic imaging practices throughout Queens, Kings, Nassau and Suffolk Counties.

FACTUAL BACKGROUND

A. Diagnostic Imaging Services

62. Diagnostic imaging services include a variety of specialized diagnostic imaging procedures, including but not limited to Magnetic Resonance Imaging (“MRI”) scans, used in the detection, diagnosis and treatment of diseases such as cancer, muscle-trauma, stroke and neurological disorders.

63. MRI scans generate images through the combination of a strong magnetic field, radio waves and a computer to produce images of body structures.

64. An MRI scan can be used as an accurate method of detecting head trauma, brain aneurysms, stroke, tumors and other abnormalities of the brain, including abnormalities that may produce childhood seizures and behavioral disorders, tumors or inflammation of the spine, and abnormalities of the joints and extremities.

65. Radiologists review and interpret radiographic images for referring physicians to assist in the detection and diagnosis of diseases in patients.

66. Practicing radiologists are often specialized in the detection and diagnosis of diseases for which they provide radiology services.

67. As specialty care providers, radiologists receive their overwhelming majority of patients (and thus income) through physician referrals.

68. Physician referrals are obtained by cultivating good-will in the medical community through achieving a reputation for quality in the treatment of patients.

69. For radiologists, the capital outlay for radiographic equipment, including MRI equipment, is very high.

70. In addition, margins for radiology practices are very low.

71. As such, a practice’s ability to finance the cost of such equipment is dependent on treating a steady flow of patients.

72. Referrals are therefore essential to a practice’s economic survival.

73. Radiology practices compete with one another to attract the greatest possible number of referrals from physicians.

74. Referring physicians select a radiology practice first and foremost on the basis of the nature and quality of the practice's radiologists and equipment.

75. Physicians refer patients to radiology practices and subsequently rely on the specialized radiologists at that practice to assist them in diagnosing their patients' condition

76. Under such circumstances, it is essential to the referring physician that the radiologist be of the best quality and that their equipment be state-of-the-art.

77. The quality of the radiologist and their equipment will directly impact referring physicians' ability to treat their patients.

78. Not all radiology practices provide the same highly trained and specialized radiologists or the same innovative equipment.

79. Radiologists spend years specializing in particular fields of medicine in order to provide the most accurate possible reading of studies to specialized referring physicians. In order to better serve physicians, radiology practices compete fiercely to attract the best educated and trained practitioners and invest large sums in ensuring that they have access to the most innovative equipment possible.

80. The nature and quality of equipment and services made available to patients' referring physicians will also vary considerably from one practice to the next. For example, concerning other private diagnostic imaging offices in JSI's immediate area, Nassau County, and in its extended service area, Kings, Queens, Bronx and Suffolk Counties, none are better equipped than JSI to provide sedation services. Among other things, JSI performs state of the art highly sophisticated physiological monitoring, has two recovery rooms, and has oxygen available in every room with crash carts and emergency defibrillators.

81. Currently, if a patient wishes to obtain similar services to JSI's, they must choose to be admitted to a hospital as an ambulatory patient at much greater financial cost, and greater emotional cost to the patient and his/her parents (when the patient is a child).

82. Notably, CCN owner-members actually benefit each time a patient goes to a hospital for services that otherwise could have been provided by JSI. That is because CCN's capitated contracts with managed care providers are all exclusive of hospital-based imaging.

That is, a procedure such as sedation with MRI performed in a hospital setting *versus* JSI (if JSI were a CCN provider), affects CCN's coffers in the latter case, but not in the former.

83. Although many other imaging offices may claim to perform sedation, most of them use chloral hydrate administered by a radiologist for this purpose, often without adequate monitoring. Chloral hydrate is a significantly inferior agent compared to intravenous ("IV") propofol administered and monitored by an anesthesiologist. Chloral hydrate is irreversible once administered, with a higher risk profile to IV propofol. Those few practices that do offer IV propofol administered and monitored by an anesthesiologist, offer it only at very limited times on certain days of the week, and with low-grade monitoring equipment for their patients. Moreover, in contrast to JSI, none of those other offices have recovery rooms and oxygen available routinely, nor do they have the sophisticated monitoring equipment that JSI possesses and uses routinely; in contrast to most monitoring equipment, JSI's equipment monitors four parameters: O2 saturation, EKG, BP, and Et CO2. Notably, the current standard of care for the monitoring of sedated/anesthetized patients using IV propofol requires only the first three of these parameters. However, in order to provide the finest care for its patients, JSI has purchased the equipment required to monitor all four of those parameters.

84. Referring physicians also choose practices on the basis of the wait time that is required of their patient by the practice. Some practices offer significantly more efficient scheduling procedures than others. JSI offers its services at any time of day, on as many days of the week as necessary, with virtually no delay in scheduling. The delay in getting access to a practice may be particularly important in instances where the radiology services are required to immediately diagnose or treat the patient -- such as, for example, where the referring physician needs to diagnose whether the patient requires urgent surgery. Such differences can strongly influence a physician's decision on which practice to use.

85. Referring physicians may also choose a practice on the basis of whether the patient is a repeat-study, *i.e.* one that has come to the referring physician from another physician in which a radiological scan had already been performed. In such cases, the physician will refer the patient to the same radiology practice the patient previously used in order to assure continuity of medical treatment.

86. As a matter of business and professional practice, once referring physicians have selected a radiology practice that meets the above concerns and considerations, they make sure that such a practice is able to see the vast majority, if not the totality, of their patients.

87. In addition to wanting to ensure that all their patients are treated by highly qualified radiologists using state-of-the-art equipment, it is not administratively or economically feasible for physicians to determine whether a given radiology practice is certified to see only a portion of its patients -- due, for instance, to limitations on the insurance plans the practice can accept.

88. As such, if for instance, CCN excludes a practice from treating patients insured by several large health plans, referring physicians will not develop a new referral relationship, or even wish to continue an existing referral relationship, with such a practice.

89. Because of the high volume, low margin nature of radiology practices, the loss of such a relationship can quickly spell economic ruin.

90. In addition, physicians tend not to refer patients to practices not approved to treat patients from established health care plans -- such as those in CCN's network -- as they fear that the practices' lack of approval reflects a failure by those practices to meet high standards of care.

B. CCN's Contracts With Commercial Insurers and Practices

91. CCN contracts with commercial insurance payers to administer insurance reimbursement to radiology practices that serve their beneficiaries.

92. The contracts entered into between CCN and the health care payers it services -- known as Health Services Agreements ("HSAs") -- grant CCN broad authority to manage the health plans' network of radiology practices.

93. Specifically, CCN is granted the authority to: (1) review and pre-authorize procedures requested by referring physicians; (2) determine whether a particular practice will be "certified" as part of CCN's network -- and thus be permitted to serve payers' beneficiaries; and (3) determine which of its certified practices will be assigned or "steered" a given referral.

94. Through this broad grant of authority, CCN possesses outright control over practices' access to at least one half of the commercially-insured lives in Geographic Long Island (and the income to be derived from that access). According to CCN's web site, CCN has

implemented management contracts with Aetna, Oxford Healthcare, GHI-HMO, GHI-PPO, Healthfirst, Healthnet, Healthplus, HIP, Horizon, MDNY, and United-NJ.

95. CCN exercises its authority to review and pre-authorize treatment by requiring referring physicians to submit requests for approval for more costly radiology services, such as MRI.

96. Until such approval is obtained, reimbursement for the radiology services performed is not granted.

97. CCN exercises its certification authority -- choosing which practices it will accept as part of its network -- by having practices sign a Health Care Provider Network Participation Agreement ("Provider Agreement").

98. CCN only enters into Provider Agreements with professional medical practices, not the individual radiologists who may own or provide services on behalf of these entities -- even though a professional corporation may include several such radiologists.

99. Upon information and belief, CCN owner-practices receive a higher reimbursement rate per procedure than do non-CCN owner-practices that are approved in CCN's network.

100. According to at least one of the Provider Manuals governing the relationship between CCN and the payers with which it contracts, when determining whether to certify a particular practice for its network, CCN is required to consider, among other things, the quality and quantity of a practice's medical staff, administrative apparatus, medical and financial records, physical plant, and medical equipment.

C. JSI

1. Description of Facility and Practice

101. JSI is a unique and highly specialized MRI imaging (and ultrasound) facility devoted primarily to providing imaging services to pediatric neurology patients, autistic children, and adult phobia patients.

102. Pediatric patients represent 64% of JSI's total patients.

103. Pediatric and special needs patients are typically not served by most private imaging facilities because of the attention and special treatment they require.

104. JSI offers its services on an outpatient basis, in a private, comfortable office setting and provides the necessary physiological monitoring as well as two recovery rooms with oxygen, crash carts and emergency defibrillators.

105. JSI is unique among private imaging centers because it has the highest quality sedation and monitoring equipment.

106. JSI also is unique because of its specialized staff.

107. The physicians providing services at JSI staff include a specially trained pediatric neuroradiologist to interpret the pediatric neuroimaging examinations, board-certified anesthesiologists to administer and monitor the IV propofol anesthesia, and a pediatric neurologist who is one of the few pediatric neurologists in the area who is certified to deactivate and activate Vagal Nerve Stimulators (VNS).

108. The VNS device is used to control intractable seizures in children. It needs to be deactivated before an MRI is performed. Since these children often require MRI's related to their seizure disorders, JSI is unique in having a pediatric neurologist on-site to deactivate the device right before the MRI and reactivate it immediately following the MRI, thereby minimizing the time that the child goes without the device being active.

109. The onsite VNS device deactivation and activation is a very significant service that JSI provides, as there are approximately 10,000 of these devices currently deployed in the New York Metropolitan Area.

110. JSI also maintains an on-call phlebotomist to draw blood from autistic children under sedation.

111. JSI is also unique because of the extent to which it strives to reduce anesthesia risk to its patients.

112. Specifically, a pediatric neurological patient (i.e. seizure patient) often requires multiple anesthesia sessions for various other procedures (i.e. blood drawing to monitor medication levels and EEG's). By coordinating the MRI with the patient's other physicians, JSI minimizes the anesthesia risk to these patients by allowing them to undergo only one anesthesia session for the MRI and to obtain any other tests simultaneously.

113. Referring physicians consistently praise JSI for its high quality and unique services.

114. In addition to providing specialized care to pediatric neurological and autistic patients, JSI also accommodates children with severe behavioral difficulties who cannot be accommodated anywhere else due to the nature and severity of their condition.

115. JSI is also praised for its specialized care for claustrophobic adult patients in need of MRIs.

116. Even where specialized care is not necessary, many referring physicians chose to send all patients to JSI for the high image quality and exceptional patient care it provides to all of its patients.

117. JSI currently offers only MRI and Ultrasound services. JSI would expand to offer other modalities of radiologic diagnostic services, were it not being financially decimated by CCN's improper exclusion of JSI from CCN's network.

2. CCN's Exclusion of JSI

118. JSI has repeatedly applied and appealed to CCN for inclusion in the Oxford, Aetna, HIP and Health Net physician networks from 2006 through April of 2008.

119. Each time, CCN denied JSI, claiming a lack of "geographic need" for its services.

120. All of JSI's applications and appeals included a specific explanation of the uniqueness of JSI's services for admission to the CCN network.

121. As JSI provides the unique medical services described above, there is clearly geographical need for its services.

122. For example, JSI directly competes with defendant Nassau Radiologic, which operates imaging facilities in Garden City, Hempstead, and Lake Success, New York, which surround JSI in New Hyde Park.

123. However, Nassau Radiologic does not provide all of the same highly specialized services that JSI does, nor does any radiology practice in the immediate (i.e., Nassau County) or extended (the additional counties comprising Geographic Long Island) area.

124. Moreover, the relevant geographic area for purposes of the analysis and consideration of JSI's claims is arguably as narrow as whatever geographic area CCN applied when it determined to exclude JSI from its network in the purported ground of no "geographic need."

125. CCN's exclusion of JSI from its network denies innovative, quality service to subscribers of health plans who are in the CCN network.

3. Impact of CCN's Exclusionary Conduct

126. Referring physicians prefer to send all of their patients to a single practice that can accommodate all of their patients' radiology care.

127. An important factor in being selected as the practice of choice for a referring physician is whether or not the practice is approved to treat the vast majority, if not the totality, of patients covered by the large commercial insurance payers in New York.

128. Because referring physicians typically send all of their patients to one practice regardless of whether patients are covered by public or commercial insurance plans, a radiology practice must be able to treat patients under all insurance plans to be considered by referring physicians as an acceptable choice for radiology care.

129. Although JSI receives physician referrals based on word-of-mouth for its high quality of care, upon information and belief, many other referring physicians are discouraged from sending patients to JSI because of its non-participation in CCN's network.

130. To preserve its referral relationships, JSI needs to offer its specialized services to all patients who require such treatment, regardless of the type of insurance a patient carries.

131. Because it has been denied admission to CCN's network by the defendants, JSI is constrained to treat patients who have Oxford, Aetna, HIP, and Health Net insurance, notwithstanding that it receives no insurance payment reimbursement. (Of course, JSI cannot, and does not, seek any reimbursement from the referred patients themselves.)

132. JSI must do this to preserve referrals made to it for patients covered by other insurance.

133. The patients in these types of plans have become a high percentage of JSI's total patients.

134. Although JSI has been denied access to the CCN network, many of these patients are referred to JSI by word-of-mouth and by direct referral from their treating physician, clinical specialists or sub-specialists.

135. As a result, JSI treats a significant number of patients covered by commercial insurance for free.

136. It is JSI's policy to treat all patients referred to JSI who are in need of specialized care.

137. The combination of JSI's policy to not turn away any patient in need of JSI's services in conjunction with its need to accept all referrals from its referring physicians in order to keep their paying referrals, is producing a significant drain on JSI's resources, since as a result, JSI has performed hundreds of thousands of dollars worth of exams free of charge in an effort to both maintain referrals in the hope of generating income from those insurance plans that are not covered by the CCN network, from which JSI has been excluded, and to ensure that the patients who need highly-specialized services receive the care needed.

138. Between May 2006 and May 2008, JSI has provided its services free of charge to patients covered under the CCN plans.

139. This represents a \$258,400 loss to JSI through May 6, 2008.

140. That is JSI's MINIMUM loss caused by defendants' exclusion of JSI from the CCN network. That is because JSI obviously knows how many patients were referred to it by "word of mouth" and for which it provided services at no charge to the patient.

141. However, JSI currently has no way of determining the loss of business and revenue that it has suffered by reason of its having been not listed as a provider in CCN's network, which would have permitted physicians and patients unfamiliar with JSI's services looking for a pediatric radiology center to know of JSI's existence and unique services.

142. Moreover, upon information and belief, patients insured under plans which permit them to seek treatment "out of network," but who still must call CCN for prior approval of radiologic services, are steered to CCN owner-members even when they ask for approval for services to be rendered at JSI.

143. Because of the monetary losses that JSI has been forced to incur due to defendants' exclusion, JSI may be forced to (1) stop accommodating patients who need its specialized care (thereby leaving them dependant on stressful and costly inpatient hospital care), (2) lose the business of referring physicians who prefer to send all patients to one facility, and (3) leave these patients without access to innovative, specialized healthcare, at great financial burden to our health care system and greater emotional cost to the patient.

144. Dr. Rothpearl had every expectation that by establishing JSI he would be able to receive reimbursement for CCN covered patients, making an investment in such a practice economically viable.

145. Dr. Rothpearl had no reason to believe that defendants would use a lack of geographic need for such a unique practice as justification for refusing to approve JSI into CCN's network.

146. If JSI is not allowed to accept insurance reimbursement from the health plans that contract with CCN's program, it stands to lose at least \$160,000 per year as a result of having to provide services at no charge in order to maintain its base of referring physicians.

147. Again, JSI has no currently known way to calculate the loss of business and revenue that it will suffer in the future if it continues not to be listed as a provider in CCN's network, which would have permitted physicians and patients unfamiliar with JSI's services looking for a pediatric radiology center to know of JSI's existence and unique services.

148. Furthermore, JSI, upon information belief, expects that CNN will continue to steer from JSI to CCN owner-practices patients insured under plans which permit them to seek treatment "out of network," but who still must call CCN for prior approval of radiologic services.

149. Moreover, as referring physicians have made clear, if JSI cannot accept patients from CCN payers, they will stop referring *any* of their patients to JSI -- notwithstanding the type of insurance that they have.

150. As described below, referring physicians have also made clear that it will be difficult for them to send patients to JSI since CCN has been "steering" patients to its owner-practices.

151. Accordingly, even if CCN is enjoined from refusing JSI admission to its network, CCN will continue steering patients away from the practice and towards its owner-practices.

152. Unless CCN is also enjoined from engaging in such steering practices, JSI's economic survival will be jeopardized.

153. Without the requested injunction, JSI projects that it will not be able to survive.

154. JSI cannot afford to continue providing services to CCN-covered patients free of charge, and physicians will quickly start referring patients to competing practices in Nassau

County and the balance of Geographic Long Island if JSI stops providing services to such patients.

155. In that case, pediatric patients requiring the type of specialized services provided by JSI will be required to instead go to a hospital, where wait times can be as long as a month.

156. If JSI begins to refuse treatment to CCN-covered patients, or if JSI must cease operations due to the lack of income that it should be generating from such patents, Dr. Rothpearl's reputation will irrevocably suffer.

157. Most importantly, however, patients -- both from JSI and other referral sources -- will lose the benefit of competition in the radiology services market.

158. They will be unable to benefit from JSI's investment in new state-of-the-art technologies and from JSI's superior quality care as highly specialized radiologists.

D. Anticompetitive Conduct

159. CCN is granted broad power by healthcare payers to manage the reimbursement of radiology services to their beneficiaries.

160. Rather than manage a network of qualified, quality practices for payers, CCN and its owner-practices have used their power to create their own exclusive network to reduce competition in the market for radiology services in Geographic Long Island.

161. Specifically, CCN and its owner-practices have: (1) conspired to boycott JSI and other competing practices by denying them access to CCN's network; and (2) conspired to allocate the market for radiology services by steering patients away from competing practices and towards CCN owner-practices.

1. CCN and its Owner-Practices Conspired to Boycott JSI and Competing Radiology Practices

162. As the manager of its health plan clients' network of radiology practices, CCN has the authority to determine whether a particular practice will be "certified" and thus permitted to serve a health plan's beneficiaries.

163. Through this broad grant of authority, CCN possesses outright control over practices' access to almost at least half of the commercially covered lives in Nassau County and Geographic Long Island as a whole -- and the income to be derived from that access.

164. Defendants CCN and its owner-practices have colluded to use their certification authority to illegally exclude competing practices such as JSI from access to reimbursement from commercial insurers.

165. Rather than face competition from practices offering innovative treatment and superior services, CCN's owner-practices have used CCN as a means through which to boycott competitors, thus significantly reducing competition in the market for radiology services.

166. Instead of determining whether to allow a practice into its network by considering objective criteria such as the quality and quantity of a practice's medical staff, administrative apparatus, medical and financial records, physical plant, medical equipment or, even whether there is truly a need within a geographical area for the services -- as required by at least one of its agreements with healthcare payers -- defendants have adopted a fictitious and arbitrary "geographical necessity" test designed to protect owner-practices from competitors by excluding non-CCN owner-practices from its network when useful to do so.

167. CCN uses "geographical necessity" as a pretext for denying approval to, and removing non-CCN owner-practices from, its network, while at other times ignoring the standard to avoid obstructing the business interests of its owner-practices -- such as by letting them open several new practices in a geographic area after denying other requests within the same area.

168. At no time has CCN developed any objective criteria to implement its "geographic necessity" test.

169. Alternatively, to the extent that CCN has developed any objective criteria to implement its "geographic necessity" test, that test is not applied equally to its owner-practices.

170. Defendants used the fictitious "geographic necessity" test as a pretext to repeatedly deny JSI from participating in CCN's network. The real reason for that denial is that JSI is a direct competitor to defendant Nassau Radiologic.

171. Defendant Nassau Radiologic and other CCN owner-practices conspired to boycott JSI's approval into CCN's network in order to limit competition and allocate the market for radiology services in Nassau County and Geographic Long Island as a whole.

172. CCN has no legitimate reason for denying approval to JSI, particularly in light of the fact that JSI offers the specialized services described above.

173. Nor do defendants have any legitimate business or medical purpose for their anticompetitive conduct.

174. In fact, many of the practices boycotted from CCN's network, including JSI, offer state-of-the-art services not available in the alleged "geographical area," as well as more efficient scheduling procedures, shorter waiting times, and superior administrative services to patients and referring physicians.

175. CCN's anticompetitive boycott of JSI and other radiology practices is having the effect of depriving continuity of care to patients, as well as reducing output of superior and state-of-the-art and timely radiology services to both patients and referring physicians who treat those patients.

176. Indeed, radiology practices that have been boycotted from CCN's network have found themselves in a very precarious financial situation.

177. Since referring physicians require that a practice be able to accept *all* its patients - - irrespective of their insurance coverage -- several radiology practices, such as JSI, have been required to perform radiology services covered by CCN payers free of charge in order to continue receiving referrals from physicians for those patients not covered by CCN payer plans.

2. CCN and its Owner-Practices Conspired to Allocate the Market for Radiology Services by Steering Patients to CCN Owner-Practices

178. CCN does not deny that it steers patients to radiology practices.

179. In letters sent to referring physicians and on its web site, it has explained its use of mandatory scheduling procedures whereby referring physicians are not entitled to decide which radiology practice to use and pursuant to which CCN elects where patients will be treated.

180. Nor does CCN deny that it steers patients to its owner-practices.

181. On its web site, CCN states that: "Owner members of CareCore may be listed before other members of the network."

182. Defendants continue steering patients to their owner-practices despite having previously been advised by the office of the Attorney General that such a practice is impermissible and ought to be stopped.

183. Defendants use their control over the referral process to steer patient referrals for highly reimbursed procedures to CCN owner-practices and away from non-owner-practices.

184. In this way, CCN owners, themselves competing practices, have colluded to allocate the market for radiology services to the detriment of their competitors.

185. By overriding the referring physician's prerogative to refer a patient to a high quality convenient office, CCN has effectively controlled competition in the market for radiology services.

186. By using the control of the referral process to benefit practices that are CCN owner-practices, defendants have allocated the market for radiology services between a limited group of radiology practices.

187. CCN's illegal allocation of radiology services is eliminating competitors and reducing output in the market for such services.

188. The illegal conduct is also reducing innovation in state-of-the-art imaging technology and superior services to the detriment of patients and physicians who treat them.

189. CCN has in fact created a network within a network under which CNN owners benefit, other radiology practices are effectively boycotted, and patients in most cases receive less than optimal care.

190. In addition, such an illegal allocation of the market for radiology services has interfered with referring physicians' exercise of their professional judgment in selecting a facility for their patients, thus jeopardizing their patients' health.

191. The New York Medical Society of the State of New York has passed a resolution requesting that the state Department of Health investigate CCN's practice of steering patients away from practices chosen by referring physicians.

192. Referring physicians have complained that CCN allocates the market for radiology services by steering referrals away from non-CCN owner-practices in three ways.

193. First, by delaying the authorization of requested treatment referred to a non-owner-practice for an unreasonable period of time without any valid justification -- while conversely providing a prompt and difficulty-free authorization to CCN owner-practices.

194. Second, by falsely informing referring physicians that a non-owner-practice is not part of a given plan's network and that the patient must be referred to another, CCN owner-practice.

195. Third, by creating automated referral procedures in which physicians are denied the ability to select non-CCN owner-practices and/or forced to select a limited number of preferred practices.

196. CCN has no legitimate business or medical justification for its anticompetitive conduct.

197. Steering does not reduce the cost of services rendered since both the CCN owner-practices and the non-CCN owner-practices receive the same payment rate.

198. Moreover, upon information and belief, CCN's claim that its steering is aimed at increasing patients' choice in selecting a radiology practice is false.

199. Upon information and belief, at least one patient has received a letter indicating (falsely) that he has no choice but to receive treatment at a specific CCN designated practice (a CCN owner).

200. Upon information and belief, the letter states that "failure to obtain the procedure listed above at the approved location will result in you being held financially responsible for any payment of service."

201. Similarly, upon information and belief, CCN's alleged claim that steering serves the needs of patients by finding them a practice next to their home has been shown to be false by CCN's own statements and actions.

RELEVANT MARKETS

202. There are two relevant product markets in this case. The market for outpatient medical diagnostic imaging services, and the market for commercially-insured outpatient medical diagnostic imaging services.

203. For both relevant product markets, the relevant geographic market is Nassau County and is in no case larger than Geographic Long Island.

204. Moreover, the relevant geographic area for purposes of the analysis and consideration of JSI's claims is arguably as narrow as whatever geographic area CCN applied when it determined to exclude JSI from its network in the purported ground of no "geographic need."

205. The market for outpatient medical diagnostic imaging services is a relevant product market since few, if any, feasible alternatives exist to purchasers of such services -- in this case insurers in Nassau County and Geographic Long Island as a whole who purchase the services as agent for their beneficiaries (the ultimate consumer).

206. Such purchasers do not, for example, view cardiology or obstetric services as acceptable substitutes for diagnostic imaging services.

207. In addition, inpatient diagnostic imaging services obtained in a hospital setting are not generally good substitutes for outpatient diagnostic imaging services provided at free-standing practices in the eyes of such purchasers.

208. Inpatient diagnostic imaging services are typically used in emergency medical situations where immediate care is needed, and are accordingly priced at significantly higher price points than the same services provided in an outpatient setting.

209. The market for commercially-insured outpatient medical diagnostic imaging services is also a relevant product market since a substantial number of consumers obtaining health care services through a commercial insurer would not be able to alternatively obtain publicly-provided insurance coverage (*i.e.*, Medicare or Medicaid) if faced with a price increase or a reduction in quality of services.

210. For example, employers, who contract with health insurers on behalf of their employees, typically do not have the option of switching employees from a commercial insurance plan to the publicly-sponsored Medicaid or Medicare program since only individuals meeting specific eligibility criteria (*e.g.*, income or age restrictions) may enroll.

211. Due to the general non-substitutability between private and public forms of insurance, outpatient diagnostic imaging services provided to commercially-insured individuals is a separate relevant product market in this matter.

212. The relevant geographic market in this matter is Nassau County and is in no case larger than Geographic Long Island.

213. Very few individuals needing outpatient diagnostic imaging services in Nassau would leave Nassau County in order to obtain such services, even if faced with a price increase or a reduction in quality of such services in the county.

214. Even fewer individuals, if any, would leave Geographic Long Island to obtain such services if faced with a price increase or reduction in quality -- demonstrating that the geographic dimensions of the relevant market is no larger than those four counties.

215. In addition, when purchasing diagnostic imaging services, commercial health insurers seek to contract with radiologists and practices that are in close proximity to where their enrollees live or work.

216. If an insurer is unable to build a local network of healthcare practices that offers sufficient access to its enrollees, it will not be successful in selling its products in that geographic market.

217. It follows that purchasers, such as health insurance companies that market health benefit plans to employers located in Nassau County, typically would not find diagnostic imaging practices located outside Nassau County to be acceptable substitutes for diagnostic imaging practices located in Nassau County.

218. Even if such purchasers were able to market health benefit plans to employers located in Nassau County by offering radiology services located in other areas, in no case would they be successful in marketing such plans to employers by offering services outside of Geographic Long Island (*e.g.*, in Boston). For these reasons, the relevant geographical market is Nassau County, is in no case larger than Geographic Long Island as a whole, and may be as narrow as whatever geographic area is considered by CCN in excluding JSI from its network on the purported ground of no “geographic need.”

MARKET POWER

219. Upon information and belief, CCN contracts with insurers to cover at least one half of the commercially-insured lives in Nassau County and Geographic Long Island as a whole.

220. CCN's shares within these defined geographic areas are substantial and imply that CCN commands market power over such areas.

221. CCN and its owner-practices manage reimbursement for commercial payers and have the authority to decide which diagnostic imaging practices will be permitted to see patients covered by such payers.

222. As such, CCN is the *de facto* if not *de jure* exclusive provider of diagnostic imaging services to such payers.

223. Diagnostic imaging practices in Nassau County and Geographic Long Island as a whole that are not members of CCN's provider network are thus effectively foreclosed from competing for at least one half of commercially-insured lives in Nassau County and Geographic Long Island as a whole.

224. Such practices that are not members of CCN's provider network cannot effectively compete against CCN owner-practices without having access to such a large share of the commercially-insured outpatient medical diagnostic imaging services market.

HARM TO COMPETITION

225. Through their group boycott and market allocation, defendants have harmed competition by reducing output and hampering innovation in the relevant downstream markets.

226. Defendants' anticompetitive conduct has resulted in the exclusion of competition from superior, state-of-the-art practices not currently part of CCN's network.

227. It has also resulted in the exclusion of competition from superior, state-of-the-art practices within CCN's network but not from owners of CCN.

228. Defendants' illegal conduct prevents patients from obtaining the full panoply of care available from participating practices of their choice, and inhibits or prevents physicians from delivering that care at all or with any continuity.

229. Defendants' conduct has reduced output of diagnostic imaging services by driving practices out of business and reducing introduction of new systems at existing offices, thus visiting dual harm upon practices ousted from the market and upon the patient's interest in having a range of choices in healthcare practices.

230. Defendants' conduct has also interfered with referring physicians' exercise of their professional judgment in selecting a facility for their patients thus jeopardizing their patients' health.

231. In addition, defendants' conduct with respect to pre-authorization and steering has in many cases harmed patients and increased costs by having incorrect examinations approved and requiring second, correct examinations performed.

FIRST CLAIM FOR RELIEF

(*Per Se* or Rule of Reason Group Boycott)

232. Plaintiff repeats and realleges each and every allegation of this complaint as if fully set forth herein.

233. Each of the defendants, along with their co-conspirators, have entered into continuing illegal contracts, combinations, agreements or conspiracies in restraint of trade, the purpose and effect of which are to eliminate competition from non-CCN owner-practices in providing services to patients.

234. These contracts, combinations, agreements or conspiracies are illegal both *per se* and under the Rule of Reason under Section 1 of the Sherman Act, 15 U.S.C. § 1.

235. Each of CCN and its owners collectively possess and exercise market power in the market for healthcare network access services in Nassau County and Geographic Long Island as a whole.

236. These contracts, combinations, agreements or conspiracies have caused substantial anticompetitive effects.

237. These contracts, combinations, agreements or conspiracies have excluded competition from non-CCN owner-practices, have restricted the variety of diagnostic imaging services available to consumers, have reduced the quality of medical care to patients, and have artificially reduced output of diagnostic imaging services in Nassau County and Geographic Long Island as a whole.

238. These contracts, combinations, agreements or conspiracies have no legitimate business purpose.

239. These contracts, combinations, agreements or conspiracies achieve no legitimate efficiency benefit to counterbalance the anticompetitive effects that they cause.

240. As a result of these violations of Section 1 of the Sherman Act, plaintiff has been injured in his business and property in an amount not presently known, but which is, at a minimum, \$258,400, prior to trebling.

241. As a result of these violations of Section 1 of the Sherman Act, plaintiff also faces irreparable injury.

242. Such violations and the effects thereof are continuing and will continue unless injunctive relief is granted.

243. Plaintiff has no adequate remedy at law.

SECOND CLAIM FOR RELIEF

(*Per Se* or Rule of Reason Market Allocation)

244. Plaintiff repeats and realleges each and every allegation of this complaint as if fully set forth herein.

245. Each of the defendants, along with their co-conspirators, have entered into continuing illegal contracts, combinations, agreements or conspiracies in restraint of trade, the purpose and effect of which are to steer non-CNN owner-practices and/or to provide and allocate the market for commercially-insured outpatient diagnostic imaging services in Nassau County and Geographic Long Island as a whole among themselves.

246. These contracts, combinations, agreements or conspiracies are *per se* illegal under Section 1 of the Sherman Act, 15 U.S.C. § 1.

247. These contracts, combinations, agreements or conspiracies are also illegal under the antitrust Rule of Reason standard.

248. These contracts, combinations, agreements or conspiracies have caused substantial anticompetitive effects.

249. These contracts, combinations, agreements or conspiracies have excluded competition from non-CCN owner-practices, have restricted the variety of diagnostic imaging services choices available to consumers, have reduced the quality of medical care to patients, and have artificially reduced output of diagnostic imaging services in Nassau County and Geographic Long Island as a whole.

250. These contracts, combinations, agreements or conspiracies have no legitimate business purpose.

251. These contracts, combinations, agreements or conspiracies achieve no legitimate efficiency benefit to counterbalance the anticompetitive effects that they cause.

252. As a result of these violations of Section 1 of the Sherman Act, plaintiff has been injured in his business and property in an amount not presently known, but which is, at a minimum, \$ 258,400, prior to trebling.

253. As a result of these violations of Section 1 of the Sherman Act, plaintiff also faces irreparable injury.

254. Such violations and the effects thereof are continuing and will continue unless injunctive relief is granted.

255. Plaintiff has no adequate remedy at law.

THIRD CLAIM FOR RELIEF

(Tortious Interference With Business Relations)

256. Plaintiff repeats and realleges each and every allegation of this complaint as if fully set forth herein.

257. By inserting themselves between the defendant healthcare plans and JSI, and by refusing JSI admission to the CCN networks, defendants are interfering (and have interfered) with JSI's business relations with the healthcare plans controlled by defendants as well as with JSI's patients.

258. Defendants are interfering (and have interfered) with JSI's business relations through wrongful means by purporting to act as a management service for the healthcare plans covered by the CCN networks and by hiding their true purpose to eliminate competition for the defendants' owner/members.

259. Moreover, under New York State law (specifically, Article 45 of the Public Health Law) it is illegal to "engage in for profit, any business or service which in whole or in part includes the referral or recommendation of persons to a physician" Pub. H. Law § 4501, 4502.

260. Federal law provides similar prohibitions against physician self-referral.

261. The defendants are for-profit organizations (and individuals) that directly and indirectly control the referral of patients to certain physicians, as detailed more specifically above.

262. Thus, through these wrongful means, they have tortiously interfered with JSI's business relations with its patients and the health care plans covered by the CCN networks.

263. As a result of defendants' wrongful conduct, plaintiff has been injured.

FOURTH CLAIM FOR RELIEF

(Common Law Unfair Competition)

264. Plaintiff repeats and realleges each and every allegation of this complaint as if fully set forth herein.

265. The defendants' conduct unreasonably interferes (and has unreasonably interfered) with and is damaging (and has damaged) JSI's business.

266. Defendants gained an unfair competitive advantage for their owner/member radiologists by using their positions as the establishers, maintainers, and administrators of networks of radiologists for the healthcare plans to exclude potential competitors, including JSI.

267. The defendants' conduct constitutes a misappropriation of a commercial advantage belonging to JSI.

268. Defendants have acted together in bad faith to wrongfully deprive JSI the ability to be paid for providing services to patients insured by the healthcare plans covered by the CCN networks.

269. As a result of defendants' wrongful conduct, plaintiff has been injured.

RELIEF SOUGHT

WHEREFORE, plaintiff respectfully requests the following relief:

A. That the Court declare, adjudge and decree that defendants have committed the violations of federal and state law alleged herein;

B. That defendants, their directors, officers, members, employees, agents, successors, and assigns be enjoined and restrained from, in any manner, directly or indirectly, (1) precluding JSI from offering various radiological services to beneficiaries covered by commercial payers that contract with CCN; (2) "steering" patients that have been referred to JSI

away from it and towards CCN owner-practices; and (3) committing any other violations of Section 1 of the Sherman Act and/or the state law alleged herein;

C. That plaintiff be granted a judgment against the defendants, jointly and severally, with damages, in an amount to be proven at trial, to be trebled according to law, plus interest -- including prejudgment interest -- to compensate it for the damages it incurred from defendants' violations of the federal antitrust laws and/or the state law alleged herein.

D. That the Court award plaintiff attorneys' fees and costs of suit, and such other and further relief this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

DATED: Bellmore, New York
June 25, 2008

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