JAROD BONA (SBN 234327)
BONA LAW PC
4275 Executive Square, Suite 200
La Jolla, CA 92037
Tel: (858) 964-4589
Fax: (858) 964-2301

Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

NORTHERN CALIFORNIA MINIMALLY INVASIVE CARDIOVASCULAR SURGERY, INC., a California Medical Corporation, and RAMZI DEEIK, M.D., an individual,

Plaintiff,

v.

NORTHBAY HEALTHCARE CORPORATION, a California public benefit corporation, and NORTHBAY HEALTHCARE GROUP, INC., a California public benefit corporation, and NORTHBAY HEALTHCARE MEDICAL GROUP, INC.,

Defendants.

Case No.:

COMPLAINT

INJUNCTIVE RELIEF SOUGHT

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Ramzi Deeik, M.D., alleges as follows upon actual knowledge with respect to himself and his own acts, and upon information and belief as to all other matters:

NATURE OF THE ACTION

1. Heart surgeon Dr. Ramzi Deeik fights tirelessly for his patients as both an innovator and advocate. As a medical staff leader, he promoted stringent peer review and putting patient safety first; as a surgeon, he maintained the best surgery outcomes and worked with hospitals to develop cutting-edge minimally invasive and robotic cardiothoracic surgery programs. He was the first surgeon to perform a robotic cardiac surgery in Northern California, and his high regard in the community led more referrals to him than any other cardiothoracic surgeon in each of the three hospitals to which he had privileges (including NorthBay Medical Center).

2. Dr. Deeik has an innovative method for practicing cardiac surgery. Unfortunately for Dr. Deeik, as sometimes happens, the value of these services and innovations to customers and patients created for competitors a threat that must be eliminated. In this case, those innovations threatened the profits of two hospitals, which compete against one another but have colluded to protect their common interest in attaining higher margins. The two hospitals and competing surgeons enforced a tacit agreement to deprive Dr. Deeik of the hospital facilities he requires to, among other things, enlarge their market share.

3. At the center of these unlawful acts is NorthBay Medical Center. NorthBay was positioned to become the premiere cardiovascular surgery center in Solano County and the surrounding area, but it had a problem: Dr. Deeik. His outspoken commitment to patient safety concerns threatened NorthBay's new vascular surgery program. NorthBay faced a dilemma: keep Dr. Deeik and risk losing the entire vascular service line (which would jeopardize NorthBay's aspirations for a

Level II Trauma designation and a progression of multimillion dollar bond sales, among other things), or get rid of Dr. Deeik and risk Dr. Deeik taking a substantial share of the area's cardiac surgeries to a competing hospital. NorthBay found a third route: it conspired with Dr. Deeik's competitors and even another hospital (where he did not have privileges) to gradually force him out of the market altogether. Patients died or had complications, and competition in the market for cardiovascular and thoracic surgical services suffered as a result.

4. The independent centers of decision making that formed this conspiracy competed at multiple levels, each dependent upon the other, and competition was ultimately harmed on all accounts: NorthBay's primary hospital competitor lost more than two-thirds of its annual cardiovascular surgery volume; several competing surgeons were forced out of the market comprising Napa and Solano counties; and minimally invasive and robotic cardiac and thoracic surgeries are no longer an option to most patients within the relevant geographic market.

5. This is a civil action for treble damages, injunctive, and declaratory relief under Section 1 of the Sherman Act, 15 U.S.C. § 1, Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 26, and California law for injunctive relief and damages.

JURISDICTION AND VENUE

6. This Court has primary subject-matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1337(a) and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26 because this action arises under the antitrust laws of the United States.

7. This Court has supplemental jurisdiction over the state law claims of this complaint under 28 U.S.C. § 1367 because they arise from the same nucleus of operative facts as the federal claim such that they form part of the same case or controversy.

8. Venue is proper in the Northern District of California under 28 U.S.C. § 1391(b) and 15 U.S.C. §§ 15, 22 because Defendants transact business in this district

and because a substantial part of the events giving rise to this complaint occurred in this district. More specifically, the conspiracy targeted Plaintiffs and other entities located in Napa County; NorthBay also transacted business with and made payments to Plaintiffs at addresses located in this district.

9. Defendants are subject to personal jurisdiction in California because they are each a California corporation that has a California address and conducts business in California.

THE PARTIES

10. Plaintiff Ramzi Deeik, M.D., is a double board-certified cardiothoracic surgeon who at all relevant times was admitted with full surgical privileges at NorthBay Medical Center, Queen of the Valley Medical Center, and Santa Rosa Memorial Hospital. Dr. Deeik is an accomplished surgeon with an extraordinary surgery outcome record who led the effort to establish the cardiac, thoracic, and vascular surgery services now offered at NorthBay Medical Center.

11. Plaintiff Northern California Minimally Invasive Cardiovascular Surgery, Inc. ("MICS"), is the California medical corporation through which Dr. Deeik provides surgical services.[1]

12. Defendant NorthBay Healthcare Corporation ("NorthBay") is a California public-benefit corporation. Defendant NorthBay owns, through NorthBay Healthcare Group, two licensed general acute care hospitals including Defendant NorthBay Medical Center ("NBMC") located in Fairfield, California.

13. Defendant NorthBay Healthcare Group, Inc. is a California public benefit corporation with its principal place of business in Fairfield, California. It is the NorthBay entity that operates NorthBay Medical Center.

14. Defendant NorthBay Healthcare Medical Group, Inc. is a California public benefit corporation with its principal place of business in Fairfield, California.

[1] References to Dr. Deeik in this Complaint are also references to MICS where applicable.

It is the entity through which NorthBay employs physicians at NorthBay Medical Center.[2]

15. Various persons and entities participating in the conspiracy, the identities of which are presently unknown, are hereby named as DOES 1–10.

AGENTS AND CO-CONSPIRATORS

16. Each Defendant acted as the principal of or agent for each other Defendant as to the acts, violations, and common course of conduct alleged in this complaint.

17. Various persons and entities not named as Defendants in this lawsuit and persons and entities, the identities of which are presently unknown to Plaintiffs, have participated as co-conspirators with the Defendants in the offenses alleged in this complaint, and have performed acts and made statements in furtherance of the conspiracy or in furtherance of the anticompetitive conduct. Plaintiffs reserve the right to name some or all of these persons and entities as defendants at a later date.

18. Dr. Robert Klingman is a cardiac surgeon with privileges at NorthBay, the Queen, and Santa Rosa. Dr. Sepehre Naficy is a vascular surgeon who formerly had privileges at NorthBay, the Queen, and Santa Rosa.

19. North Bay Cardiac, Thoracic, and Vascular Surgery, Inc. is a California medical corporation with its principal place of business in Fairfield, California and is wholly owned by Dr. Klingman. Dr. Klingman practices at NorthBay through this entity.

20. Napa Valley Cardiothoracic and Cardiovascular Surgery, Inc. is a California medical corporation with its principal place of business in Napa, California and is wholly owned by Dr. Klingman. Dr. Klingman practices at Queen of the Valley through this entity.

[2] NorthBay Healthcare Corp., NorthBay Healthcare Group, and NorthBay Healthcare Foundation are referred to throughout this complaint as "NorthBay" except where referred to separately.

21. St. Helena Hospital, Inc. is a California public benefit corporation with its principal place of business in St. Helena, California and is the entity that operates St. Helena Hospital. Dr. Gansevoort Dunnington, who played a substantial role in the later phases of the conspiracy, is a foundation-employed surgeon at St. Helena Hospital who also has privileges at NorthBay and the Queen.

22. NorthBay administrators Deborah Sugiyama, Kathy Richerson, Dr. Mitish Patel, and Dr. Thomas Erskine played substantial roles in the conspiracy. Sugiyama was the president and Richerson was the chief nursing officer and vice president of NorthBay Healthcare Group. Dr. Patel was the chief medical officer and Dr. Erskine was the chief of medical staff at NorthBay Medical Center.

SUMMARY

23. Dr. Deeik brings this complaint because he was excluded from the market by an agreement among two hospitals and multiple competing physicians to force him (and several others) out of the market for cardiovascular and thoracic (and related) surgical services. As further detailed below, this conspiracy began with a simple proposition: to push Deeik out of NorthBay. NorthBay, Klingman, and Naficy realized that would create its own problems: Dr. Deeik would simply take all his surgeries—and significant market share—to the Queen of the Valley. As the conspiracy evolved, it recruited new players—St. Helena Hospital and Dr. Dunnington—and created more victims—Drs. Kanaan and Minasayan. The result is fewer surgeons and a reduced competitive threat from the Queen of the Valley. As a direct result of the conspirators' unlawful conduct, patients have fewer choices and face more invasive procedures for cardiac and related surgery services.

24. The anticompetitive conduct described in this complaint harmed the market for cardiovascular and thoracic surgical services (to include valve, thoracic, and vascular surgery) in Napa and Solano counties in California, which roughly compose the area of effective competition.

25. Though cardiac, thoracic, and vascular surgeries are related and overlapping, they are distinct specialties. Dr. Deeik, for example, is a cardiac specialist who also performs thoracic surgeries, while Dr. Kanaan is a thoracic specialist who also performs cardiac surgeries, and Dr. Naficy is a vascular specialist who also performs cardiac surgeries.

26. Surgeons like Dr. Deeik perform these surgeries through their own practice entities (though some hospitals employ surgeons through their foundation and medical staff subsidiaries). They are the sellers. Their patients are the customers. Hospitals provide the necessary facilities to conduct these surgeries, and compete amongst themselves for surgeons and patients alike. Hospitals generally have a vertical relationship to surgeons, but the unique aspects of the healthcare industry can also lead to horizontal relationships; an area with relatively few surgeons can lead to surgeons taking market share away from one hospital in favor of a competing hospital. In this situation, the hospitals themselves cooperated and contracted with surgeons, but also competed with them, as surgeons (including the ones described in this Complaint) maintained privileges to conduct surgeries at multiple area hospitals. Thus, Dr. Deeik, for example, directly competed with NorthBay because he pulled volume from NorthBay when he brought patients to other hospitals for surgery. NorthBay thus viewed him as a direct competitor. Similarly, Dr. Klingman, who held leadership positions at both NorthBay and Queen, cooperated with and competed with both of these hospitals.

27. The exclusionary practices further described below were a multi-faceted effort to ultimately exclude Dr. Deeik from the relevant market. Those practices include depriving Dr. Deeik of resources necessary for him to remain viable to compete effectively, and persuading and coercing others not to do business with him. The acts were intricate and varied, but were all calculated to achieve their anticompetitive purpose.

SUBSTANTIVE ALLEGATIONS

28. NorthBay Medical Center is a 132-bed hospital in Fairfield, California. It is one of the only remaining private, independent, locally owned and managed hospitals in the nation that is not part of a larger hospital network or healthcare system. In 2012, it became the first Level III trauma center in Solano County. In 2014 NorthBay was promoted to Level II trauma center status by the American College of Surgeons.

29. NorthBay primarily faces competition for cardiovascular surgery services from the Queen of the Valley Medical Center in Napa, California. It also faces competition from St. Helena Hospital in St. Helena and John Muir Medical Center in Walnut Creek.

30. NorthBay for some time faced significant "outmigration" from the area to these other hospitals. That is, NorthBay was losing local patients to competitors in neighboring locales. In response, its strategy has been to focus on building specialty services such as open-heart surgery, cardiac catheterizations, minimally invasive thoracic surgery, vascular surgery, and a chest-pain center.

31. The Queen of the Valley Medical Center is a 191-bed general acute care hospital in Napa, California operated by St. Joseph Health and, prior to the events described herein, was the premiere facility for cardiovascular surgery services in the relevant market, hosting over 300 cardiac surgeries annually in 2007. As a result of Defendants' anticompetitive conduct, the Queen of the Valley now hosts less than 80 such surgeries annually. The number of thoracic surgeries has also declined significantly.

32. St. Helena Hospital Napa Valley is a 181-bed community hospital and a regional center for cardiac surgical services.

33. St. Helena faces competition from other hospitals in the area, including Queen of the Valley Medical Center in Napa, California, and Santa Rosa Memorial Hospital in Santa Rosa, California. It also faces competition from NorthBay.

34. Like other area hospitals, St. Helena employs physicians through a "foundation" entity.

35. Starting in 2007, NorthBay Medical Center contracted with Napa Valley Cardiac & Thoracic Surgery, Inc. ("NVCTS"), a practice jointly owned by Dr. Deeik and Dr. Robert Klingman, to develop the hospital's cardiac, thoracic, and vascular surgery programs as part of its strategic focus on specialty services. From 2007 to 2009, Dr. Deeik built the program from the ground up and performed the first open heart surgery in Solano county in April 2009.

36. By the end of 2009, NorthBay had an active and successful cardiac surgery program in large part owing to Dr. Deeik's efforts in building the program and the success of his own practice. Dr. Deeik was elected chair of the cardiovascular surgery section by the medical staff and lead the peer-review committee. Dr. Deeik was appointed director of cardiac surgery by the hospital administration.

37. NorthBay's next step was a vascular surgery program; it began searching for a vascular surgeon to supplement the two vascular surgeons currently on staff. Those two surgeons performed a significant portion of their surgeries at the competing Queen of the Valley; they also did not have ACGME fellowship training in endovascular skills thought necessary to the hospital's desires for a top-tier vascular surgery program. To that end, NVCTS recruited and hired Dr. Sepehre Naficy, a newly minted vascular surgeon straight out of fellowship, who then began conducting vascular surgeries and assisting with cardiac surgeries until he could gain the necessary experience to become a primary cardiac surgeon.

38. Dr. Deeik's role as chief of cardiovascular surgery required him to conduct and supervise the hospital's cardiovascular surgical peer-review program. Dr. Naficy's vascular surgical outcomes were of concern, even for a new surgeon. Dr. Deeik began expressing concern about the outcomes. In 2011, NorthBay was not pleased that its increasingly problematic vascular surgery outcomes would come to light at a time when its vascular surgery program was still in its infancy, so NorthBay

discontinued the peer review committee that reviewed both cardiac and vascular surgery complications.

39. In 2010, Dr. Deeik and Dr. Klingman's relationship began to sour as they engaged in protracted renegotiations of their relationship. The negotiations ultimately failed and eventually (with NorthBay's encouragement) led to Dr. Klingman defaming Dr. Deeik with false accusations of embezzlement and other criminal activity, among other wrongful acts.

40. NorthBay saw an opportunity in the dispute between Dr. Klingman and Dr. Deeik. Dr. Deeik, despite his phenomenal surgery outcomes, was a problem because he was a threat to the vascular program (due to his concerns about Dr. Naficy) and a critic of the hospital's decision to cease peer review at a time where the hospital planned a major bond deal that depended, in part, on the success of the full range of its surgical specialty-related service lines, including cardiovascular and minimally invasive thoracic surgery. Offering full service lines was also important because achieving Level III (and later Level II) trauma center status (the latter of which would improve Medicare reimbursement rates across the board) depended upon it. But if NorthBay were to simply get rid of Dr. Deeik, he would pose a competitive threat to the cardiac surgery program: he commanded the highest number of referrals and could perform surgeries on Solano county patients at the nearby competing hospital Queen of the Valley. Dr. Deeik also had a good working relationship with the only specialized minimally invasive thoracic surgeon in the market area, Dr. Kanaan, who performed surgeries at both NorthBay and the Queen. Dr. Deeik and Dr. Kanaan have performed multiple robotic thoracic surgeries together as co-surgeons at the Queen on patients from Solano County.

41. In early 2011, NorthBay administrators, Dr. Klingman, and Dr. Naficy, and possible other unknown parties (the "conspirators") commenced a series of clandestine discussions evincing a new relationship to replace NVCTS upon expiration of its contract with NorthBay in 2012.

42. A future relationship, however, would not completely solve the Deeik problem. NorthBay needed Dr. Naficy to secure substantial, profitable vascular surgery business. Moreover, Dr. Deeik was a formidable competitor with privileges at a competing hospital—it was well-known that his surgical outcomes were consistently better than those of any other cardiac surgeon affiliated with NorthBay.

43. Dr. Klingman was tasked by the conspirators with destroying Dr. Deeik's credibility and reputation, which he gladly accepted. Dr. Klingman made false accusations that Dr. Deeik had engaged in various criminal activities, including embezzlement from NVCTS. An arbitration arising from the dissolution of NVCTS resulted in a finding that Dr. Klingman had defamed Dr. Deeik, causing over $600,000 in damages to Dr. Deeik's professional reputation.

44. To enhance the credibility of Dr. Klingman's accusations among the community and to place Dr. Klingman in a position of control to assure the desired results, NorthBay abruptly removed Dr. Deeik from his position as director of cardiac surgery and terminated a valve program that Dr. Deeik had been developing with NorthBay. Dr. Klingman was immediately appointed as Dr. Deeik's replacement. Placing Dr. Klingman in this position of control would assure the desired results of cutting off Dr. Deeik while also lending strong circumstantial credibility to Dr. Klingman's accusations as rumors abound.

45. Dr. Deeik—through NVCTS—was still contractually obligated to NorthBay and continued to provide call coverage and conduct surgeries at NorthBay. But as the end of the contract drew closer, the conspirators (including Dr. Klingman and NorthBay) concocted a scheme as part of the conspiracy to phase Dr. Deeik out by changing and selectively enforcing a new call coverage policy designed specifically to preclude Dr. Deeik from substantially all of his income opportunities at NorthBay.

46. Dr. Deeik contacted NorthBay's administration January 10, 2012 to inquire about any changes that would occur in call coverage upon termination of the NVCTS contract that would occur on February 12, 2012. A key administrator falsely

told Dr. Deeik—assuming that he was on call at two other hospitals—that a primary surgeon could not be on call at another organization at the same time.

47. During January and February 2012, Dr. Deeik created the monthly call schedule as he had always done (as part of NVCTS contract with NorthBay). Dr. Deeik listed Dr. Naficy (with the backup of a senior cardiac surgeon), Dr. Klingman, and himself all sharing equally in the cardiac call schedule for NorthBay.

48. NorthBay and Dr. Klingman crossed Dr. Deeik off the call schedule completely, with Dr. Naficy's name in his place, purportedly because Dr. Deeik could not take call simultaneously at another facility—even though Dr. Deeik was in compliance with this rule. Dr. Klingman, however, was scheduled for calls at all three hospitals at the same time and was never subjected to the requirement. The insertion of Dr. Naficy in Dr. Deeik's place was a substantial risk to patient safety as Dr. Naficy was not sufficiently skilled and experienced as an independent primary cardiac surgeon.

49. Dr. Deeik, who still held his elected position as chair of cardiovascular surgery, wrote an urgent letter to Dr. Thomas Erskine (NorthBay's chief of staff) and Dr. John Peter Zopfi (NorthBay's chief of surgery) dated February 2, 2012, seeking medical executive committee assistance in resolving the quality of care issues that had resulted from the decisions made by Dr. Klingman and NorthBay's key administrators regarding call.

50. At a later meeting between Dr. Deeik, representatives of the medical staff, and NorthBay administrators held February 14, 2012 to discuss the issues raised in the letter, these concerns were largely ignored. Instead, the meeting simply furthered the resolve of the conspirators in their plan to eliminate Dr. Deeik and his new practice, MICS, as a future competitor.

51. Dr. Deeik then emailed Dr. Klingman with dates he would be available in March to take call at NorthBay (times when he was not on call elsewhere). Klingman reacted by imposing additional terms that he knew Dr. Deeik could not

comply with, while simultaneously declaring that Naficy would no longer backup Dr. Deeik in the event he needs backup coverage. Dr. Klingman acknowledged that the specific purpose behind these terms was to keep Dr. Deeik off the NorthBay call schedule.[3]

52. The new terms of Dr. Klingman's agreement required that a surgeon covering more than one hospital at the same time must have a qualified backup cardiac surgeon available who would be listed as second call on the schedule. Dr. Deeik already planned and had arranged to take call at only one hospital at a time, so he had no problem meeting this requirement. Dr. Klingman continued to take call at all three hospitals as described above, with no back-up or with Dr. Naficy—not an independent primary cardiac surgeon yet—as his backup.

53. Dr. Patel informed Dr. Deeik that he would need to sign Dr. Klingman's agreement in order to be on the call panel, and so he did on February 23, 2012. Despite meeting all the criteria, Dr. Klingman's response was "you do not qualify for call and are not on the March call schedule. I don't know how much clearer I can be!" Key administrators and medical staff leaders at NorthBay encouraged, supported, and ratified Dr. Klingman's conduct.

54. As part of the conspirators' plan to eliminate Dr. Deeik as a future competitor, NorthBay instructed the head of NorthBay's hospital security to conduct a clandestine investigation into Dr. Deeik for any useful information that could be used against him. NorthBay proceeded to conduct an extensive investigation into Dr. Deeik's history—even contacting law enforcement agencies—in an effort to uncover some evidence of past criminal, psychological, or moral turpitude on the part of Dr. Deeik. The investigation did not yield any results for their cause.

55. The conspirators' disregard for Dr. Deeik's dignity and privacy quickly spread to his patients' HIPAA rights. Dr. Klingman obtained some of Dr. Deeik's

[3] At that time, Dr. Deeik had no knowledge that NorthBay key administrators and medical staff leadership were actively involved in these efforts to exclude Dr. Deeik and eliminate him as a future competitor.

patients' private medical information from the Queen through an anesthesiologist, Dr. Heather Hagerman, as a further effort in the conspirators' desperate attempt to find *something* with which to assassinate Dr. Deeik's character—this time to claim that he had performed unnecessary surgeries. Dr. Klingman hand-delivered the patients' folders from the Queen to Sugiyama and Dr. Erskine for their review. This effort, too, yielded no fruit for the conspirators.

56. Dr. Deeik continued to attempt to meet the morphing and increasingly burdensome requirements of the call schedule by securing a backup surgeon, Dr. Samer Kanaan, for his on-call duty. Dr. Deeik informed NorthBay administrators and Dr. Klingman that Dr. Kanaan—a highly respected and board-certified cardiothoracic surgeon—would provide his backup.

57. NorthBay and Dr. Klingman were thrown for a loop: NorthBay president Deborah Sugiyama wrote an email to other administrators stating, "Well must admit I didn't see this one coming! Guess we will have to see what or if Rob has thoughts about this." Kathy Richerson, NorthBay's vice president and chief nursing officer responded with, "Probably need a conversation with Rob on Mon and a call to [Dr. Kanaan] also. I will do that first thing on Mon morning" and "I still think we need to make clear the title 22 issues." Dr. Patel responded that "Another way to think about this is that Dr. Kanaan is being brought to NorthBay and we will not be crossing swords with Dr. Zopfi." Zopfi, a general surgeon who performed the majority of thoracic surgeries at NorthBay, was a competitor of Dr. Kanaan, a specialized minimally invasive thoracic surgeon with privileges at both NorthBay and the Queen.

58. The group decided to attempt to derail the agreement with Dr. Kanaan. Dr. Patel and Dr. Klingman directly pressured Dr. Kanaan, and Dr. Klingman contacted good friend Dr. Bruce Scarborough, Dr. Kanaan's top boss at Queen of the Valley, to run interference. Scarborough obliged by threatening Dr. Kanaan's employment should he make good on his agreement to back up Dr. Deeik at NorthBay. Dr. Klingman informed the group that "Bruce Scarborough is the

president of the Foundation of the Queen, Susan is the VP. They have instructed Samer to not respond to emails from [Dr. Deeik]." Dr. Kanaan told Dr. Deeik that as a result of Patel, Klingman, and Scarborough's pressure, he felt "beat down," "embarrassed," and "sorry," but that he could not back up Dr. Deeik at NorthBay after all.

59. Dr. Deeik continued to push the issue that he was in compliance with the policy because he was not taking call at any other hospital while taking call at NorthBay. He made clear that there was no lawful basis or quality of care issues to exclude him from the call schedule. The group addressed the issue by enlarging the backup requirement to all times—not just while taking call elsewhere—this time through NorthBay's president. Only Dr. Deeik was required to sign this new agreement, and when later confronted, Sugiyama stated that NorthBay "chose not to enforce" the call requirements against Dr. Klingman and Dr. Naficy. Dr. Kanaan was the only other qualified surgeon with privileges at NorthBay.

60. In the summer of 2012 a new cardiac surgeon, Dr. Sarah Minasyan, joined the NorthBay medical staff as an associate of Dr. Deeik. Dr. Minasyan and Dr. Deeik met with NorthBay administrators in the spring of 2013 to make arrangements to restore Dr. Deeik to the call schedule, with Dr. Minasyan as his backup. Sugiyama responded by stating that Dr. Minasyan could not provide backup because her proctoring was incomplete (which had never been a requirement to qualify for the call schedule). The administrators then imposed new and lengthier proctorship requirements on Dr. Minasyan before giving her full privileges—even though she had not been flagged for any quality issues in what had now been six months of time she was at NorthBay.

61. The conspirators, including Dr. Klingman, Dr. Naficy, and NorthBay, were ultimately successful in their plan to exclude Dr. Deeik from taking call at NorthBay. But Dr. Deeik remained a formidable competitor:

a. Call or no call, Dr. Deeik made clear that he would stay and fight.

b. Dr. Deeik was highly regarded among referring cardiologists in the community.

c. Dr. Deeik continued receiving referrals from other members of the medical staff.

d. Dr. Deeik also had privileges at Queen of the Valley and Santa Rosa, and could operate on patients at those hospitals, thereby taking business away from NorthBay.

e. Dr. Deeik continued to take elective surgeries.

62. The conspirators engaged in a coordinated, multipronged campaign designed to dampen Dr. Deeik's viability as a competitor:

a. Dr. Klingman, with the active encouragement and support of NorthBay administrators, continued his campaign of disparagement against Dr. Deeik in order to spoil his reputation in the broader medical community. Klingman has since been found liable by an arbitrator for defamation and intentional infliction of emotional distress for that conduct.

b. Dr. Klingman and certain NorthBay administrators began spreading word that Dr. Deeik had moved to Santa Rosa and was no longer conducting surgeries at (the much closer) NorthBay and Queen of the Valley with the purpose and effect of diluting referrals to Dr. Deeik.

c. Dr. Klingman, in furtherance of the conspiracy and with the active encouragement and support of NorthBay administrators, convinced his close friend Dr. Vincent Morgese (who was also chief operating officer and chief medical officer at Queen of the Valley) to appoint him as the sole director of surgical services when NVCTS dissolved (a position that was previously shared by Drs. Klingman and Deeik). Klingman thereafter supported the conspiracy by reducing Dr. Deeik's call schedule and soiling his reputation at Queen of the

Valley, all while keeping NorthBay apprised of his progress, stating in various emails to NorthBay administrators: "Queen will be ending any contracts with [Dr. Deeik] and only using [Klingman's] group"; "no one at Queen will be sending business to Deeik" (email to Richerson); "[The Queen] actually do not want to work with [Dr. Deeik] and [Dr. Vince Morgese] will confirm all this for you" (email to Sugiyama). Dr. Klingman then succeeded in convincing Dr. Morgese to not renew Dr. Deeik's clinical outcome consultation contract by offering to perform Dr. Deeik's consultation responsibilities at no charge. Dr. Deeik's minimally invasive valve surgery directorship was cancelled immediately after Dr. Patel confirmed these facts with Dr. Morgese (both being the chief medical officers at their respective hospitals) at Sugiyama's request.

d. NorthBay, in furtherance of the conspiracy, tracked referral patterns to identify which cardiologists made the most referrals to Dr. Deeik; NorthBay subsequently offered lucrative employment contracts to the top four cardiologists. Three accepted the offer, and their referrals to Dr. Deeik abruptly ceased.

e. NorthBay, in furtherance of the conspiracy, abruptly terminated a valve surgery program that Dr. Deeik had been developing for NorthBay between 2010 and 2011. These surgeries were elective surgeries for patients with valve disease. Dr. Deeik was the surgeon expert in valve surgery, and could have continued to take these surgeries to the Queen whether or not he was on the call schedule.

f. NorthBay administrators Sugiyama, Richerson, and Dr. Patel, in furtherance of the conspiracy, plotted to implement a new protocol directed solely at Dr. Deeik that would impose a "summary suspension" on Dr. Deeik (and only Dr. Deeik) if any of his post-

operation patients needed intervention while Deeik was unavailable, in violation of the NorthBay medical staff bylaws.

g. With NorthBay's encouragement, Dr. Klingman used his influence to enlarge the conspiracy to include St. Helena. St. Helena hired Dr. Gansevoort Dunnington as a hospital foundation-employed surgeon on a lucrative, guaranteed salary. During the first 18 months of his employment at St. Helena in 2013, Dr. Dunnington met privately with Sugiyama and other NorthBay administrators, and he would go on to conduct the vast majority of his surgeries at NorthBay despite the fact that he was a paid, full-time employee of St. Helena. With Dr. Dunnington on the call schedule at NorthBay and the Queen, he could not only provide backup coverage for Dr. Klingman and Dr. Naficy, he could take Dr. Deeik's share of the call schedule so that if and when Deeik overcame Klingman's call-policy obstacles, there would be even fewer opportunities for him at both NorthBay and the Queen. Though Dr. Dunnington takes a quarter of the call schedule at Queen of the Valley, he rarely operates there and takes non-emergent consultations for surgery to St. Helena or refers patients to surgery at NorthBay.

h. Dr. Dunnington came at a time when NorthBay's reliance on Dr. Naficy was beginning to fail. The medical community—most importantly, the area cardiologists—had, with experience, begun to share the same concerns about Dr. Naficy that Dr. Deeik had expressed two years earlier.

i. Cardiac surgeries at the Queen have since decreased drastically, in part due to the actions taken against Dr. Deeik, while surgeries at NorthBay and St. Helena have increased drastically.

MOTIVES

63. The relationships and incentives described in this complaint are complex. Hospital administrators and medical personnel, despite working together in a common, mutually beneficial system, often have divergent and conflicting interests (even within the same hospital or system). The fact that Dr. Klingman holds supervisory, gatekeeping roles at multiple hospitals, including one of the hospitals that was targeted by the conspiracy is illustrative. So surgeons will often work with a hospital one day and compete against them the next. Each surgeon is thus her own economic unit that enters temporary arrangements with multiple other surgeons (including, for example, back-up on call) and hospitals at the same time. Similarly, the surgeons compete with the hospitals and the hospitals compete with the surgeons, even though hospitals and surgeons also work together to serve patients. Powerful sets of players—hospitals and surgeons—can thus act collectively to "freeze out" one of the other players.

64. Given NorthBay's acknowledgment that Dr. Deeik had "much better" surgical outcomes than Dr. Klingman or Dr. Naficy, at first glance it may seem unlikely that NorthBay was likely to take sides with inferior surgeons, one of whom had a record of patient care issues. But NVCTS, with its three physicians, played a vital role at NorthBay. Dr. Klingman actively courted the administration prior to the dissolution and had made them aware that (1) Dr. Naficy would continue at NorthBay, and (2) that Dr. Klingman had interviewed surgeons from other locales and planned to hire at least one.

65. Dr. Naficy, in particular, was important to NorthBay. NorthBay had heavily relied upon its specialty services lines in seeking tax-exempt bonds to finance its operations, and vascular surgery was integral to boasting a full suite of profitable cardiovascular surgical service lines. Dr. Naficy was the only fellowship-trained vascular surgeons in the area, and the other two vascular surgeons primarily

performed their surgeries at Queen of the Valley. And those surgeries provided lucrative profits that NorthBay sought to capture.

66. Moreover, NorthBay was, at the time, vying for Level II Trauma Center status which, in addition to making the hospital look like a more attractive investment, would drastically increase reimbursement rates for Medicare/Medicaid and Medi-Cal. Full cardiothoracic and vascular surgery service lines were necessary to achieve that designation due to competition among hospitals for the designation.

67. Dr. Deeik's use of cutting-edge technology for minimally invasive procedures was a threat in particular to Dr. Klingman, NorthBay, and St. Helena. The Queen of the Valley is the only area hospital that has invested in and has the capability to host robotic surgeries. Dr. Deeik's minimally invasive procedures, including robotic surgery, allow him to conduct operations in a closed chest. In those surgeries, Dr. Deeik makes three incisions less than a quarter-inch wide each. The traditional methods, in contrast, would require an eight- to fourteen-inch incision, spreading the patient's rib cage open, with the surgeon literally putting his hands inside the open cavity.

68. The minimally invasive surgeries that Dr. Deeik performs mean far less pain, far less blood loss, fewer complications, shorter hospital stays, and a speedier recovery. Dr. Deeik and the Queen represented a disruptive competitive threat to the conspirators.

69. But for the conspirators' success in the scheme above, Dr. Deeik would have taken a substantial portion of NorthBay's cardiac surgery patients—especially valve surgery patients, in particular—to its chief competitor, Queen of the Valley and most of the vascular surgeries in the area would have also been performed at the Queen if Dr. Naficy's vascular surgery practice was restricted. Either of these problems for NorthBay would have lessened the probability that NorthBay would raise the $140 million in bonds that it set out to accomplish.

70. Likewise, Dr. Klingman had the power to preclude Dr. Deeik from income opportunities at Queen of the Valley in his two roles as director of surgical services and the director of cardiac surgery. This was important to NorthBay because Dr. Deeik remained a highly regarded surgeon with strong referral power. Without interference at Queen of the Valley, Dr. Deeik remained a competitive threat to NorthBay's market share, and thus its profits.

71. Dr. Naficy saw Dr. Deeik as a threat to his vascular surgery career and an obstacle to his ambitions in cardiac surgery at NorthBay. Dr. Deeik consistently raised his concerns about Naficy's surgical abilities at the time. In 2010, Dr. Deeik, as chair and director of cardiac surgery, discouraged Dr. Naficy from working as a primary cardiac surgeon at this brand new program due to his lack of experience, track record and skill as a cardiac surgeon. Dr. Deeik encouraged Dr. Naficy to gain experience and prove himself first at the Queen, which had a more mature program with a much higher volume of surgeries at that time.

72. This recommendation did not sit well with NorthBay or Dr. Naficy, as it would mean more surgeries at the Queen and fewer at NorthBay. NorthBay advertised Dr. Naficy as their primary vascular surgeon and aggressively promoted his practice in Solano County. NorthBay administrators expected Dr. Nacify to station himself at NorthBay for all of their vascular surgery needs and preferred that he did not spend any time at the Queen, even if the Queen was more suited to provide the necessary volume, experience, and training in cardiac surgery that Dr. Naficy would need to eventually operate independently as a cardiac surgeon.

73. NorthBay also holds a one-third ownership interest in Western Health Advantage, Inc., which is a major health insurance provider in the relevant geographic area. Surgeries undertaken on Western Health Advantage beneficiaries at NorthBay are more profitable because NorthBay receives its agreed-upon favorable rates and forego the marginal costs and arms-length negotiations on price for surgeries at unaffiliated hospitals. Since the Queen offered services performed by

Dr. Deeik that are not available at NorthBay, NorthBay was concerned that they would lose the profit margins on these beneficiaries' surgeries.

74. St. Helena participated—and was willing to lend its new foundation-employed surgeon (Dr. Dunnington) to conduct his surgeries elsewhere—because a weakened Queen of the Valley was an opportunity for St. Helena. St. Helena and NorthBay each compete with Queen of the Valley. Dr. Klingman is well-connected with the medical and administrative leadership at St. Helena. So long as Dr. Deeik remained, he would continue to take surgeries at the Queen from surrounding areas.

75. St. Helena had lost considerable cardiac surgery volume to the Queen from 2005 to 2011 when Dr. Deeik was active and unobstructed. In fact, in 2007, the Queen broke records in volume and quality metrics. Without Dr. Deeik, the Queen's market share would be weakened. The Queen and Plaintiffs were thus common enemies for St. Helena and NorthBay.

76. St. Helena's extraordinary marketing effort coincided these events to present a viable alternative to a weakened Dr. Deeik and a weakened Queen of the Valley in Napa and Solano counties. After accomplishing the objectives of the conspiracy, Dr. Dunnington finally now operates primarily at St. Helena, where he continues his full-time employment.

RELEVANT MARKET AND MARKET POWER

77. The relevant service market for the purposes of this action is the market for cardiovascular and thoracic surgical services, including valve surgery, thoracic surgery, and vascular surgery. Though these types of surgeries are not substitutable for another, the surgeons who provide them generally practice in two or more of these specialties.

78. The relevant geographic market is the area comprising Solano County and Napa County, California. The vast majority of cardiac surgery patients in this area do not travel outside this area for the relevant services, and would not travel outside this area in reaction to a sustained price increase or quality decrease.

79. Dr. Deeik competes with other cardiothoracic surgeons such as Dr. Klingman, Dr. Naficy, Dr. Kanaan, and Dr. Dunnington because he generally offers surgeries to patients with the same types of conditions.

80. Dr. Deeik also competes with NorthBay and St. Helena because he has the capability of taking market share from these hospitals by operating at competing hospitals, primarily Queen of the Valley.

81. Dr. Klingman also competes with NorthBay and St. Helena because he also takes call and conducts surgeries at competing hospitals. Moreover, he is the co-director of surgical services and the director of cardiothoracic surgery at Queen of the Valley, which is NorthBay's primary competitor.

82. NorthBay has market power because it is one of only three area hospitals and had the power to exclude Dr. Deeik and other surgeons as a significant competitor in the market for cardiovascular and thoracic surgical services.[4] At NorthBay, many of these surgeries are performed by on-call surgeons due to the nature of the need for those services. NorthBay had a 40.6% share of the market composing its primary service area in 2013.

83. Dr. Klingman has market power because, due to his administrative positions at two hospitals, he had the power to exclude Dr. Deeik and other surgeons as significant competitors in the market for cardiothoracic surgery services. Dr. Klingman was, indeed, able to exclude Dr. Deeik through his power to create and enforce his own rules.

84. Combined, the conspirators had substantial market power because they could freeze out a competitor like Dr. Deeik, because surgeons and their companies cannot operate within the relevant market, without working with other hospitals and surgeons. That is, hospitals provide facilities—necessary resources without which a

[4] While NorthBay may also face some competition from Bay-area hospitals such as John Muir Medical Center in Walnut Creek, those hospitals are too distant for most of the patients for which NorthBay, the Queen, and St. Helena compete.

surgeon cannot effectively compete. Together, the conspirators possessed exclusive control of Dr. Deeik's access to those resources.

85. Throughout the relevant time period, only about four specialist cardiothoracic surgeons provided the services in the geographic market, on average. Thus, the exclusion of any one competitor had a significant impact on competition within the geographic area.

HARM TO THE MARKET

86. The actions of NorthBay, St. Helena, Dr. Klingman, Dr. Naficy, Dr. Dunnington, and other members of the conspiracy have resulted in significant anticompetitive harm to the market for cardiovascular and thoracic surgery in Napa and Solano counties in terms of quality of care, the range of services offered, the number of surgeons, and cost.

87. As a result of the conspirators' anticompetitive actions, Queen of the Valley's cardiac surgeries have precipitously decreased from over 300 annually in 2007 to less than 80 in 2015. At the same time, St. Helena's number of surgeries has more than doubled from less than 100 annually in 2007 to more than 250 in 2015. Likewise, NorthBay has increased its number of surgeries from zero in 2007 to over 80 in 2015. Overall, there is less competition among surgeons and hospitals as a result of the conspirators' conduct. Likewise, Dr. Deeik performed about 85 surgeries at the Queen and NorthBay in 2010; he performed zero at those hospitals in 2015.

88. Dr. Deeik is the only area surgeon who is qualified to perform minimally invasive, robotic cardiac surgery. As a result of the anticompetitive conduct of the conspiracy, many patients have unnecessarily been subjected to maximally invasive cardiac and thoracic surgery due to the efforts to exclude Dr. Deeik from the market as well as the precipitous drop in cardiac surgeries performed at Queen of the Valley, the only area hospital with a surgical robot and a "hybrid" operating room recently built especially for minimally invasive procedures. The exclusion of Dr. Deeik and abandonment of the valve surgery program at NorthBay deprived patients from the

option of advanced valve surgery at NorthBay and the Queen in general and robotic-assisted cardiac or thoracic surgery at the Queen in specific.

89. Dr. Kanaan was the only area surgeon who was qualified to perform minimally invasive, robotic thoracic surgery. Kanaan was essentially Dr. Deeik's thoracic counterpart, and was subjected to many of the same anticompetitive acts as Dr. Deeik. As a result of the anticompetitive conduct of the conspiracy, many patients have instead been subjected to unnecessarily large incisions with increased pain and morbidity associated with maximally invasive surgery. These patients encountered prolonged length of hospital stay and slower recovery.

90. Dr. Kanaan was excluded from taking call at NorthBay. Dr. Klingman also attempted to exclude him from taking call at the Queen by including thoracic surgeries in the new call requirements designed to exclude Dr. Deeik. In 2013, Dr. Kanaan had two Laparoscopic Heller myotomies scheduled at NorthBay. During the first of those surgeries, NorthBay administrators intervened—in the midst of the operation—to inform Dr. Kanaan that he did not meet the new privilege requirements for NorthBay. While he was allowed to complete the operation already underway, his second surgery was cancelled. When Dr. Kanaan attempted to take that patient to the Queen several weeks later, NorthBay-owned Western Health Advantage refused the patient's request. Kanaan eventually left California as a direct result of the conspirators' acts.

FRAUDULENT CONCEALMENT

91. NorthBay and its co-conspirators concealed their anticompetitive and unlawful conduct from the public and other non-conspirators, including MICS and Dr. Deeik, until the fall of 2013, when Dr. Deeik became aware of the coordination and agreements between NorthBay and its co-conspirators.

92. The conspirators took numerous acts to conceal their activity. NorthBay, for example, intentionally mislead Dr. Deeik regarding its future relationship with Dr. Deeik in a letter of September 23, 2011 contemplating such a relationship after

dissolution of NVCTS. The purpose of the letter was to lead Dr. Deeik to believe that NorthBay was contemplating a future relationship with him following the end of NVCTS's contract in February 2012, while in reality NorthBay had already reached an agreement with Dr. Klingman and Dr. Nacify, and the conspiracy was already underway.

93. Dr. Deeik's lack of knowledge of the conspiracy is evidenced by his continued development of a state-of-the-art minimally invasive valve surgery program in NorthBay's contemplated heart valve center, which he continued until its abrupt termination at the end of 2011. Dr. Deeik did not become aware of the reasons for the termination (in addition to his lack of knowledge of many of the other acts taken against him) until 2013, when he elicited evidence while arbitrating his defamation claims against Dr. Klingman.

COUNT I

SHERMAN ACT, 15 U.S.C. § 1

Conspiracy to Restrain Trade – Group Boycott

94. Plaintiffs reallege and incorporate by reference all paragraphs of this complaint.

95. Section 1 of the Sherman Act, 15 U.S.C. § 1 provides:

> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony . . . .

96. Defendant NorthBay, a horizontal and vertical competitor of MICS and Dr. Deeik, combined and conspired with St. Helena, a horizontal and vertical competitor of Dr. Deeik, Dr. Robert Klingman, Dr. Sephere Naficy, and Dr. Gansevort Dunnington, all horizontal competitors of MICS and Dr. Deeik, to restrain trade in interstate commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, by engaging in a concerted scheme to exclude Dr. Deeik from the market or to substantial limit competition from Dr. Deeik.

97. In furtherance of the conspiracy, NorthBay and its co-conspirators also persuaded, threatened, and coerced other market participants, including referring doctors, other surgeons, customers, and other hospitals, not to do business with MICS and Dr. Deeik. This is a group boycott under the Sherman Act.

98. NorthBay's restraints are a *per se* violation of Section 1 of the Sherman Act because its conspiracy was designed to allocate markets and exclude competitors, including Dr. Deeik, as both a vertical and horizontal competitor, from the relevant service markets.

99. NorthBay and St. Helena are direct competitors of the Queen, and Drs. Klingman, Naficy, and Dunnington are direct competitors of Dr. Deeik. In addition, the hospitals and surgeons also are direct competitors with each other as the surgeons have privileges at multiple hospitals and can pull patients from one hospital to another.

100. NorthBay holds a dominant position in that it controls a resource that Dr. Deeik and MICS require to remain viable: the facilities necessary to perform cardiac surgeries. Dr. Klingman also controls those resources through his positions of authority at NorthBay and the Queen, as is evidenced by his success in excluding Dr. Deeik from the call schedule at NorthBay and reducing his call schedule at the Queen.

101. The conspirators lacked a substantial justification for the withholding. Indeed, NorthBay and Dr. Klingman's exclusion of Dr. Deeik from the call schedule was for the improper purposes described herein, and their attempts to justify those acts with inapplicable, pretextual reasons occurred after the initial acts of excluding him.

102. In the alternative, NorthBay's conduct violates Section 1 of the Sherman Act under the rule of reason or quick-look analysis.

103. Defendants' conduct and agreements harm competition within the relevant service markets by excluding one of only two specialized and experienced

cardiac surgeons and two of only four (Kanaan and Deeik) cardiothoracic surgeons in Napa and Solano counties in several ways:

a. The orchestrated exclusion of Dr. Deeik from the call schedule in the area's two primary hospitals resulted in lesser quality services, including a decline in patient outcomes and increases in complications and patient deaths especially in valve surgeries.

b. The orchestrated exclusion of Dr. Deeik from the market (including the call schedule and disrupting referrals) caused consumers to pay supracompetitive prices they would otherwise not have paid.

c. The orchestrated exclusion of Dr. Deeik from the market gave consumers fewer choices in the market for cardiovascular surgery services especially minimally invasive surgical services.

104. NorthBay and its co-conspirators' agreement and conspiracy includes acts designed to communicate to the relevant referring doctors and purchasing public that Dr. Deeik is unsuitable for the practice of medicine and/or that he has left the geographic market. This conduct thus harmed Dr. Deeik's reputation and impaired his ability to maintain a viable cardiac surgery practice. Dr. Deeik engaged in substantially fewer surgeries as a result of defendants' anticompetitive acts.

105. NorthBay's conduct has no procompetitive or business justification. Its conduct also lacks any scientific, medical, health, or safety justification.

106. MICS and Dr. Deeik lack an adequate remedy at law to prevent NorthBay from continuing its illegal acts, as Dr. Deeik's professional reputation, goodwill, and livelihood is at stake.

COUNT II

CARTWRIGHT ACT

Trust/Conspiracy to Restrain Trade

107. Plaintiffs reallege and incorporate by reference all paragraphs of this complaint.

108. Defendant NorthBay, a horizontal and vertical competitor of Dr. Deeik, combined and conspired with St. Helena, a horizontal and vertical competitor of Dr. Deeik, Dr. Robert Klingman, Dr. Sephere Naficy, and Dr. Gansevort Dunnington, all horizontal competitors of MICS and Dr. Deeik to restrain trade in interstate commerce in violation of Section 1 of the Cartwright Act, Cal. Bus. & Prof. Code § 16726, by engaging in a trust and concerted scheme to exclude Dr. Deeik from the market or to substantial limit competition from Dr. Deeik.

109. In furtherance of the conspiracy, NorthBay and its co-conspirators also persuaded, threatened, and coerced other market participants, including referring doctors, other surgeons, customers, and other hospitals, not to do business with MICS and Dr. Deeik.

110. NorthBay's restraints are a per se violation of the Cartwright Act because its conspiracy was designed to allocate markets and exclude competitors, including MICS and Dr. Deeik as both a vertical and horizontal competitor, from the relevant service markets.

111. In the alternative, NorthBay's conduct violates the Cartwright Act under the rule of reason or quick-look analysis.

112. Defendants' conduct and agreements harm competition within the relevant service markets by excluding one of only two specialized and experienced cardiac surgeons and two of only four (Kanaan and Deeik) cardiothoracic surgeons in Napa and Solano counties in several ways:

a. The orchestrated exclusion of Dr. Deeik from the call schedule in the area's two primary hospitals resulted in lesser quality services, including a decline in patient outcomes and increases in complications and patient deaths.

b. The orchestrated exclusion of Dr. Deeik from the market (including the call schedule and disrupting referrals) caused consumers to pay supracompetitive prices they would otherwise not have paid.

c. The orchestrated exclusion of Dr. Deeik from the market gave consumers fewer choices in the market for cardiovascular surgery services.

113. NorthBay and its co-conspirators' agreement and conspiracy includes acts designed to communicate to the relevant referring doctors and purchasing public that Dr. Deeik is unsuitable for the practice of medicine and/or that he has left the geographic market. This conduct thus harmed Dr. Deeik's reputation and impaired his ability to maintain a viable cardiac surgery practice. Dr. Deeik engaged in substantially fewer surgeries as a result of defendants' anticompetitive acts.

114. NorthBay's conduct has no procompetitive or business justification. Its conduct also lacks any scientific, medical, health, or safety justification.

COUNT III

UNFAIR COMPETITION

Cal. Bus. & Prof. Code § 17200

115. Plaintiffs reallege and incorporate by reference all paragraphs of this complaint.

116. Defendant NorthBay engaged in unlawful, unfair, and fraudulent business practices.

117. As a result of those practices, MICS and Dr. Deeik suffered harm in the form of reduced income opportunities and competitive disadvantages.

COUNT IV

TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

California Common Law

118. Plaintiffs reallege and incorporate by reference all paragraphs of this complaint.

119. Dr. Deeik had an existing economic relationship with patients, cardiologists, and other hospitals.

120. NorthBay knew of those relationships.

121. NorthBay committed intentional, wrongful acts designed to disrupt those relationships.

122. Those relationships were actually disrupted as a result of NorthBay's acts.

123. Dr. Deeik suffered economic harm proximately caused by NorthBay's acts.

REQUESTED RELIEF

WHEREFORE, Plaintiffs MICS and Dr. Deeik requests that this Court:

1. Enter a temporary restraining order against Defendants to enjoin them from continuing their illegal acts;

2. Declare that Defendants' conduct violates Section 1 of the Sherman Act;

3. Enter judgment against Defendants;

4. Award MICS and Dr. Deeik compensatory damages in three times the amount sustained by him as a result of Defendants' actions to be determined at trial, as provided in 15 U.S.C. § 15(a);

5. Award MICS and Dr. Deeik pre- and post-judgment interest at the applicable rates on all amounts awarded, as provided in 15 U.S.C. § 15(a);

6. Award MICS and Dr. Deeik the costs and expenses of this action, including their reasonable attorneys' fees necessarily incurred in bringing and pressing this case, as provided in 15 U.S.C. § 15(a);

7. Grant permanent injunctive relief to prevent the recurrence of the violations for which redress is sought in this complaint; and

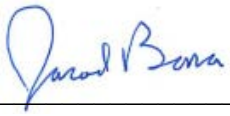
8. Order any other such relief as this Court deems appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs MICS and Dr. Deeik demand a jury trial on the claims alleged herein.

DATED: December 29, 2015

Respectfully submitted,



Jarod M. Bona
Aaron R. Gott
BONA LAW P.C.
4275 Executive Square
Suite 200
La Jolla, CA 92037
(858) 964-4589
jarod.bona@bonalawpc.com
aaron.gott@bonalawpc.com

Attorneys for Plaintiffs