UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

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| OSF HEALTHCARE SYSTEM, an Illinois not-for-profit corporation, d/b/a SAINT FRANCIS MEDICAL CENTER,<br><br>Plaintiff,<br><br>v.<br><br>DR. JOSEPH J. BANNO and PEORIA DAY SURGERY CENTER, LTD.,<br><br>Defendant. | Case No.: 08- 1096 |

## COMPLAINT AND JURY DEMAND

COMES NOW the plaintiff, OSF HEALTHCARE SYSTEM, an Illinois not-for-profit corporation, d/b/a SAINT FRANCIS MEDICAL CENTER ("SFMC"), by and through its attorneys, HINSHAW & CULBERTSON LLP, and for its complaint, states as follows:

### I. PARTIES, JURISDICTION, AND VENUE

1. The plaintiff, SFMC, is a not-for-profit provider of healthcare services offered at its hospital in Peoria, Illinois, and at other facilities and is operated by the Sisters of the Third Order of St. Francis.

2. The defendant Dr. Joseph J. Banno is a licensed medical doctor certified in urology and was or is the president of Peoria Urological Associates, S.C. and Peoria Day Surgery Center, S.C. (later known as Peoria Day Surgery Center, Ltd.), and a partner in Peoria Urological Investment Partnership. Dr. Banno has at all material times been a "person" as defined by 18 U.S.C. § 1961(3).

3. The defendant Peoria Day Surgery Center, Ltd. f/k/a Peoria Day Surgery Center, S.C. ("PDSC") and f/k/a Peoria Urological Associates, S.C., is an Illinois corporation and multi-specialty ambulatory surgery center located in Peoria, Illinois. When this facility opened in the

early 1990's, it was known as Peoria Urological Associates, S.C. and continued operating under that name until on or about 1994. PDSC provides operating rooms, equipment, and nursing personnel for ambulatory surgery performed by physicians and bills patients and their employers or health insurance companies for these facilities charges. PDSC was founded by Dr. Banno and is currently owned by approximately 40 surgeons who perform surgery at PDSC. PDSC has at all material times been an "enterprise," as defined by 18 U.S.C. § 1961(4), and has been engaged in, and its activities have affected, interstate commerce through its purchase of equipment and supplies and its billing for services.

4. Peoria Urological Associates, S.C. ("PUA"), n/k/a Midwest Urological Group, was at all material times a corporation whose employees/physicians practiced medicine and specialized in the field of urology and which opened an ambulatory surgery center in the early 1990's.

5. Peoria Urological Investment Partnership has since the early 1990's owned the real property and building in which PDSC is located and has leased those facilities to PDSC.

6. At all material times Dr. Banno has participated directly and extensively in the operation and management of PDSC, PUA, and Peoria Urological Investment Partnership.

7. Physicians Advantage, Inc. is an Illinois corporation created in 2000. It is owned by Bryan Zowin and Josh Bellamy and since 2000 has overseen and managed the business operations of PDSC.

8. Caterpillar Inc. is a manufacturer of earth-moving and mining equipment with its world headquarters in Peoria, Illinois. Caterpillar provides and funds healthcare benefit and group health insurance plans for its employees, retired employees, and their dependents and is the largest payer for healthcare services in the Peoria area.

9. Jurisdiction over this action is founded on 28 U.S.C. § 1331 (federal question jurisdiction) and 18 U.S.C. § 1962(a) (RICO jurisdiction) and 28 U.S.C. § 1367 (supplemental jurisdiction).

10. Venue for this action is founded on 18 U.S.C. § 1965(a) and 28 U.S.C. § 1391(b). This action may be brought in this district as the defendants reside in this district and a substantial part of the events and omissions giving rise to the claims occurred in this district.

## II. BACKGROUND AND SCHEME TO DEFRAUD

### A. The 1992 Caterpillar/SFMC Participating Provider Agreement

11. In 1990 and 1991, Caterpillar embarked upon a strategy to reduce its considerable healthcare costs while at the same time eliminating or minimizing co-payments by members of its healthcare benefit plans ("Caterpillar Members"). Caterpillar ultimately concluded that the best means of accomplishing this goal was to enter into an exclusive contract with a single hospital or a joint venture of hospitals in the Peoria area. In exchange for this exclusivity, Caterpillar expected the hospital it selected to deeply discount its charges. Caterpillar circulated a request for proposals and received proposals from the three Peoria hospitals, including SFMC.

12. On or about July 1, 1992, Caterpillar entered into an exclusive Participating Provider Agreement with SFMC for a period of five years ("1992 PPA"). Under the terms of the 1992 PPA, but for Pekin Hospital, SFMC was to be the exclusive, fully-reimbursed provider of hospital services, including outpatient ambulatory surgery, for Caterpillar Members in the Peoria area (Peoria, Tazewell, and Woodford Counties), meaning that if a Member chose to have ambulatory surgery at a facility other than SFMC, the Member would be responsible for a co-insurance payment of 30 percent of the allowed costs. The 30 percent co-insurance payment was part of Caterpillar's design of the health benefit plans it offered to its members.

13. As a result of entering into an exclusive agreement with Caterpillar for hospital services under which SFMC could expect a high volume of Caterpillar Member patients, SFMC was able to offer Caterpillar a significant discount on its charges, thereby enabling Caterpillar and ultimately Caterpillar Members to save millions of dollars in healthcare costs.

14. Imposing a co-insurance payment obligation on Caterpillar Members who chose not to use SFMC was a key component of the 1992 PPA and later PPAs between Caterpillar and SFMC. This co-insurance obligation on Caterpillar Members provided SFMC assurance that, despite the deep discounts it was giving Caterpillar, there would be a sufficient volume of Caterpillar Member patients using SFMC to generate enough revenue so that it would remain a viable provider of quality healthcare services in the Peoria area. The co-insurance provision further provided Caterpillar with assurance that, despite allowing its members to obtain services elsewhere, there would be sufficient volume at SFMC to enable SFMC to offer the deep discounts which Caterpillar sought.

15. The 1992 PPA provided for two exceptions for facility charges for ambulatory surgery ("the Carve-Out") to this exclusivity arrangement. It was agreed that PUA would be fully reimbursed (*i.e.*, no co-insurance requirements) for facility charges by Caterpillar for <u>urological</u> ambulatory surgery procedures performed at its facility and Orthopedic Associates of Peoria would be fully reimbursed for the facility charges for <u>orthopedic</u> ambulatory surgery procedures provided to Caterpillar Members at its facility.

16. Also in 1990-92, Caterpillar began to enter into agreements with physicians and physician groups who agreed to provide services to Caterpillar Members pursuant to an agreed upon fee schedule. The physician charges are separate from the facility charges levied by the facility at which the physician performs medical services. These physicians and physician

groups, along with SFMC, became part of the "Caterpillar Network" of health care providers in the Peoria area with whom Caterpillar had contracted.

## B. PUA's Agreement With Caterpillar and With PDSC In The 1990s

17. On or about October 1, 1992, PUA, the physician group, became a Caterpillar Network member for medical services and entered into a Letter of Understanding with Caterpillar. PUA, of which Dr. Banno was a member and president, agreed to provide medical services for Caterpillar Members at fees established by Caterpillar. Pursuant to the Letter of Understanding, PUA agreed to use Network hospitals and facilities when possible.

18. At no time prior to April 1, 2007, did PDSC have an agreement with Caterpillar regarding healthcare services. In other words, PDSC was not "in Network" and, therefore, was not entitled to an agreed upon payment for its services provided to Members. Because it had no negotiated contract with Caterpillar, the fees of PDSC were generally higher than the fees Caterpillar negotiated with SFMC.

19. On or about July 31, 1996, PUA changed its name to "Peoria Day Surgery Center, S.C." by filing documents with the Illinois Secretary of State. On or about the same date, July 31, 1996, the officers and directors of PUA formed a "new" corporation with the same name they had used previously, "Peoria Urological Associates, S.C." On information and belief, these actions were done to confuse the identities of the two corporations in an attempt to extend the Carve-Out for facility charges from PUA to PDSC.

20. On or about January 1, 1997, PUA and PDSC entered into a Management Services Agreement whereby PUA agreed to perform billing services for PDSC and submit bills for PDSC's facility charges to insurers and employers.

## C. The 1997 Caterpillar/SFMC Participating Provider Agreement

21. Effective July 1, 1997, Caterpillar and SFMC entered into a new exclusive contract for five years (the "1997 PPA"). The 1997 PPA maintained the same Carve-Out for facility charges for ambulatory urological surgery at PUA and ambulatory orthopedic surgery at Orthopedic Associates of Peoria as had been in the 1992 PPA.

## D. Dr. Banno's and PDSC's Fraudulent Billing to Caterpillar

22. Beginning in at least as early as 1997, various PDSC owner-surgeons began performing non-urological surgery at PDSC on Caterpillar Member patients. As owners of PDSC they shared in its profits.

23. Dr. Banno and PDSC thereafter caused claims to be submitted to Caterpillar for facility charges for non-urological surgery performed at PDSC, knowing that such claims should have a co-insurance payment to be collected from the Caterpillar Member patients.

24. Beginning in about 1997 and continuing until April 2006, Caterpillar repeatedly informed PDSC, Dr. Banno, and physicians performing surgery at PDSC that it would reimburse PDSC for only 70 percent of its allowed facility charges for non-urological procedures performed there, that PDSC was obligated to bill and attempt to collect a 30 percent co-insurance payment from the Caterpillar Member patient, and that the co-insurance payment could not be waived. In February 2006 the co-insurance payment increased to 50 percent.

25. As Dr. Banno and PDSC knew, Caterpillar Member patients were highly unlikely to use the facilities at PDSC if they were obligated to pay a 30 percent (later 50 percent) co-insurance payment, often amounting to several thousand dollars, to PDSC when they could have the same surgery performed by the same physician at SFMC without incurring any co-insurance payment for the facility charges.

26. To hide from Caterpillar the fact that PDSC was billing for facility charges for non-urological surgery and to improperly shift the co-insurance obligation from Caterpillar Member patients to Caterpillar, PDSC, as directed by Banno, submitted its bills for facility charges for non-urological surgery to Caterpillar under the name and taxpayer identification number of PUA. It is believed this was done to obscure the fact that PDSC was billing for facility charges for non-urological surgery performed at PDSC as if that surgery were urological surgery and, therefore, in-network, with the goal of having payment made by Caterpillar at 100 percent, rather than at 70 percent, of PDSC's billed charges.

27. In furtherance of the above-described scheme to defraud, Dr. Banno and PDSC knowingly caused claims to be submitted, directly or indirectly, through the mail or through interstate wire transmissions to Caterpillar or Caterpillar's third-party administrator, United Healthcare, at its offices located outside Illinois, on a regular basis, and at least monthly, from about January 1, 1997, to about April 1, 2006. Payments from Caterpillar or United Healthcare to PDSC for those claims were sent through the mail or by electronic means on hundreds of occasions during this same time period. The documents showing the specific mailings or interstate wire transmissions are not within the control of the plaintiff, but are believed to exist and are obtainable through discovery. Also in furtherance of the above-described scheme to defraud, Dr. Banno and PDSC knowingly took and received, or caused to be taken and received, checks from the mail representing payments based on the bills submitted by or on behalf of PDSC to Caterpillar or United Healthcare.

**E. The 2001 Caterpillar/SFMC Participating Provider Agreement**

28. Effective July 1, 2001, Caterpillar entered into a new exclusive contract for hospital services with SFMC in the Peoria area, including ambulatory surgery ("the 2001 PPA"). The 2001 PPA was substantially the same as the 1997 PPA in regard to ambulatory surgery,

except that it provided that Caterpillar and SFMC would monitor ambulatory surgery capacity and mutually determine the need to continue ambulatory surgery services provided by PUA and Orthopedic Associates of Peoria pursuant to the Carve-Out. The 2001 PPA further provided that at such time as Caterpillar and SFMC mutually agreed that SFMC was able to meet Caterpillar's ambulatory surgery expectations, Caterpillar would terminate the Carve-Out with PUA and/or Orthopedic Associates of Peoria.

**F. Removal of the Carve-Out for PUA**

29. In September 1999, SFMC received approval from the Illinois Health Facilities Planning Board to construct a new facility, the Center for Health, on Illinois Route 91 in Peoria County, Illinois, which facility would include six new ambulatory surgery operating suites.

30. On or about October 1, 2002, SFMC's Center for Health opened.

31. On or about March 2, 2004, SFMC informed Caterpillar that SFMC had sufficient capacity to perform the expected volume of ambulatory urological surgery allowed under the Carve-Out in the 2001 PPA. Caterpillar agreed that SFMC had sufficient capacity.

32. Pursuant to the 2001 PPA, on or about May 6, 2004, Caterpillar informed PUA that it would no longer be considered "in Network" for ambulatory urological procedures as of August 1, 2004, meaning that after that date PUA or its alter ego, PDSC, would be reimbursed for facility charges by Caterpillar at the rate of 70 percent of usual and customary facility charges for urological surgery performed at PDSC, with the balance of 30 percent to be collected as co-insurance from the Caterpillar Member patients.

**G. Dr. Banno's and PDSC's Expanded Fraudulent Billing to Caterpillar**

33. After the exclusion of PUA from the Carve-Out in the 2001 PPA, PUA became out-of-network for facility charges for ambulatory urological procedures for Caterpillar Members. Despite this fact, Dr. Banno caused PDSC to expand its practice of waiving co-

insurance payments from Caterpillar Member patients and correspondingly inflating the charges to Caterpillar to include facility charges for urological surgery done at PDSC.

34. Beginning no later than August 1, 2004, PDSC's false billings covered both those Caterpillar Members who had received urological procedures and, as in the past, those who had received non-urological procedures. By means of this fraudulent scheme, Dr. Banno and PDSC were able to attract many more Caterpillar Member patients to PDSC than they otherwise would have been able to do. Indeed, had Dr. Banno and PDSC engaged in accurate billing to Caterpillar, the number of Caterpillar Members having surgery performed at PDSC would have virtually evaporated.

35. By billing Caterpillar under the PUA name and tax identification number and by waiving the co-insurance payments from Caterpillar Member patients, PDSC, as directed by Dr. Banno, submitted false and fraudulent bills for services to Caterpillar for reimbursement, because the charges did not reflect the true charges of the services provided by PDSC, but instead inflated those costs by over 30 percent. For example, if PDSC submitted a bill for services to Caterpillar for reimbursement for its facilities charge in the amount of $10,000.00, knowing that it would make no effort to bill or collect the $3,000.00 co-insurance payment from the Caterpillar Member patient, its true charge to Caterpillar was not $10,000.00 but, instead, $7,000.00. Had Caterpillar known the true charge ($7,000.00), it would then have paid 70 percent of this amount, or $4,900.00, to PDSC. As a result of the false billings, Caterpillar in this example would thus pay $2,100.00 more to PDSC than PDSC was entitled to receive as a non-Network provider.

36. As a result of the above-described conduct of Dr. Banno and PDSC in billing for facility charges for non-urological surgery under the PUA name and identifiers and later in causing PDSC to bill for facility charges for both urological and non-urological surgery as if

PDSC were in-network rather than out-of-network, it is estimated that hundreds of Caterpillar Members had ambulatory surgery performed at PDSC instead of SFMC. As a direct consequence, SFMC was deprived of several million dollars of revenue from (a) non-urological ambulatory surgery from about 1997 to on or about April 1, 2006, and (b) urological ambulatory surgery from about August 1, 2004 to April 1, 2006.

37. By means of the above-described scheme to receive excessive reimbursement for ambulatory surgery on Caterpillar Member patients and to attract such patients, Dr. Banno was able to sell his and additional shares of stock in PDSC to investor/physicians who were then induced to perform additional non-urological surgery at PDSC when, as Network physicians, they otherwise would have been obligated to perform the surgery at SFMC, thereby causing additional lost business to SFMC.

38. The charges by PUA/PDSC were reimbursed by Caterpillar at rates that are believed generally to have been in excess of the deeply discounted rates charged by SFMC for the same services.

39. On or about March 1, 2006, following an audit and investigation by Caterpillar that determined PDSC was not billing or collecting the co-insurance payments which Caterpillar required be paid by Caterpillar Member patients, Caterpillar informed Dr. Banno and PDSC that it would not pay any facility charges for services provided by PDSC as of April 1, 2006. This non-payment continued until April 1, 2007, when Caterpillar entered into a preferred provider agreement with PDSC.

**H. Dr. Banno's and PDSC's Fraudulent Billing to the City of Peoria**

40. At about the same time that PDSC and Dr. Banno were engaging in the above-described conduct of waiving co-insurance under the Caterpillar plans, they were employing a similar scheme in regard to the employee benefit plan of the City of Peoria, Illinois.

41. The City of Peoria from 1994 to at least 2006 had a healthcare plan for its employees, retirees and their dependents ("City Plan Members"). That plan had two "in-network" hospitals, Methodist Medical Center of Illinois and Proctor Community Hospital, that provided ambulatory surgery services for a negotiated rate. If City Plan Members living within a 50-mile radius of Peoria used an out-of-network facility, such as PDSC, to provide ambulatory surgery services, the City of Peoria would pay only 60 percent of the charges and the City Plan Member would be responsible for the balance of 40 percent. In addition, the City Plan Member was obligated to pay the Plan administrator a penalty of $250.00 for using a non-network facility for ambulatory surgery costing more than $500.00.

42. To attract City Plan Members to use its facility, PDSC paid them the amount of the penalty and waived the co-insurance of 40 percent. As a result of PDSC's conduct, it is believed the City of Peoria paid more on the claims than if the City Plan Members had used a network facility and the City's network providers were deprived of business. In April 2004, after learning of PDSC's practice of writing off co-insurance and reimbursing penalty payments, the City of Peoria informed PDSC it would no longer pay for services otherwise available in its network.

## III. ALLEGATIONS

### COUNT I
### (Dr. Banno)
### Racketeer Influenced and Corrupt Organizations ("RICO")
### 18 U.S.C. § 1962(c)

43. Paragraphs 1-42 are realleged and incorporated as Paragraph 43.

44. Dr. Banno, while associated with PDSC, which is an enterprise engaged in, and the activities of which affect, interstate commerce, conducted and participated, directly and indirectly, in the conduct of PDSC's affairs through a pattern of racketeering activity, including

mail fraud, in violation of 18 U.S.C. § 1341, and wire fraud, in violation of 18 U.S.C. § 1343, all in violation of 18 U.S.C. § 1962(c).

45. Dr. Banno devised and intended to devise a scheme or artifice to defraud Caterpillar, SFMC, and others of money and property by means of the above-described false and fraudulent pretenses, representations, and promises. For the purpose of executing the scheme and artifice to defraud and attempting to do so, Dr. Banno (a) knowingly caused to be placed in the post office or authorized depository for mail matter various billing documents and payments and caused those documents and payments to be delivered by the Postal Service or commercial interstate carrier, according to the direction thereon, and (b) knowingly caused such documents to be transmitted by means of interstate wire communications, in violation of the mail and wire fraud statutes.

46. By reason of Dr. Banno's conduct described in this count, SFMC has suffered loss of money and property and other incidental and consequential damages, including, but not limited to, loss of revenue for ambulatory surgery services for Caterpillar Member patients, which it should have received under the 1992, 1997, and 2001 PPAs.

WHEREFORE, the plaintiff, OSF HEALTHCARE SYSTEM, an Illinois not-for-profit corporation, d/b/a SAINT FRANCIS MEDICAL CENTER, prays for a judgment against the defendant, Dr. Joseph J. Banno, and for relief as follows: Award of damages to compensate it for the loss of revenue and other incidental and consequential damages, including, but not limited to, loss of revenue for ambulatory surgery facilities charges, along with statutory treble damages, attorneys' fees and costs, and such other relief as the Court deems just and proper.

**COUNT II**
**(PDSC & Dr. Banno)**
**RICO – 18 U.S.C. § 1962(c)**

47. Paragraphs 1-42 are realleged and incorporated as Paragraph 47.

48. PDSC, PUA, Peoria Urological Investment Partnership, and Physicians Advantage, Inc. have associated together from at least the early 1990s (or, in the case of Physicians Advantage, Inc., since 2000) to the present date for the purpose of constructing, maintaining, promoting, managing, and operating an ambulatory surgery center at 7309 N. Knoxville Avenue in Peoria, Illinois. This association constitutes an "enterprise" as defined by RICO and for the purposes of this count and Count III shall be referred to as the "ASC Enterprise." At all material times the ASC Enterprise has been engaged in interstate commerce and its activities have affected interstate commerce through its purchase of equipment and supplies and its billing for services.

49. PDSC and Dr. Banno, while associated with the ASC Enterprise, conducted and participated, directly and indirectly, in the conduct of the ASC Enterprise's affairs through a pattern of racketeering activity, that is, mail fraud, in violation of 18 U.S.C. § 1341, and wire fraud, in violation of 18 U.S.C. § 1343, all in violation of 18 U.S.C. § 1962(c), as described in Paragraphs 1 through 42.

50. The pattern of racketeering activity consisted of PDSC and Dr. Banno devising and intending to devise a scheme and artifice to defraud Caterpillar, SFMC, and others of money and property by means of the above-described false and fraudulent pretenses, representations, and promises. For the purpose of executing the scheme and artifice to defraud and attempting to do so, Dr. Banno and PDSC (a) knowingly caused to be placed in an authorized depository for mail matter various billing documents and payments and caused those documents and payments to be delivered by the Postal Service or commercial interstate carrier, according to the direction thereon, and (b) knowingly caused such documents to be transmitted by means of interstate wire communications, in violation of the mail and wire fraud statutes.

51. By reason of PDSC's and Dr. Banno's conduct described in this count, SFMC has suffered the loss of money and property and other incidental and consequential damages, including, but not limited to, loss of revenue for ambulatory surgery services for Caterpillar Member patients, which it should have received under the 1992, 1997, and 2001 PPAs.

WHEREFORE, the plaintiff, OSF HEALTHCARE SYSTEM, an Illinois not-for-profit corporation, d/b/a SAINT FRANCIS MEDICAL CENTER, prays for a judgment against the defendants, PDSC and Dr. Joseph J. Banno, and for relief as follows: Award of damages to compensate it for the loss of revenue and other incidental and consequential damages, including, but not limited to, loss of revenue for ambulatory surgery facilities charges, along with statutory treble damages, attorneys' fees and costs, and such other relief as the Court deems just and proper.

**COUNT III**
**(PDSC)**
**RICO – 18 U.S.C. § 1962(a)**

52. Paragraphs 1-42 and 48 are realleged and incorporated as Paragraph 52.

53. PDSC received income derived, directly and indirectly, from a pattern of racketeering activity and used and invested, directly and indirectly, a part of such income, and the proceeds of such income, in the establishment and operation of the ASC Enterprise, which is engaged in, and the activities of which affect, interstate commerce, in violation of 18 U.S.C. § 1962(a).

54. The pattern of racketeering activity consisted of PDSC devising and intending to devise a scheme and artifice to defraud Caterpillar, SFMC, and others of money and property by means of the above-described false and fraudulent pretenses, representations, and promises. For the purpose of executing the scheme and artifice to defraud and attempting to do so, PDSC (a) knowingly caused to be placed in an authorized depository for mail matter various billing

documents and payments and caused those documents and payments to be delivered by the Postal Service or commercial interstate carrier, according to the direction thereon, and (b) knowingly caused such documents to be transmitted by means of interstate wire communications, in violation of the mail and wire fraud statutes.

55. By reason of PDSC's conduct, SFMC has suffered the loss of money and property and other incidental and consequential damages, including, but not limited to, loss of revenue for ambulatory surgery services for Caterpillar Member patients, which it should have received under the 1992, 1997, and 2001 PPAs.

WHEREFORE, the plaintiff, OSF HEALTHCARE SYSTEM, an Illinois not-for-profit corporation, d/b/a SAINT FRANCIS MEDICAL CENTER, prays for a judgment against the defendant, PDSC, and for relief as follows: Award of damages to compensate it for the loss of revenue and other incidental and consequential damages, including, but not limited to, loss of revenue for ambulatory surgery facilities charges, along with statutory treble damages, attorneys' fees and costs, and such other relief as the Court deems just and proper.

**COUNT IV**
**(PDSC)**
**Illinois Consumer Fraud and Deceptive Business Practices Act – 815 ILCS 505/1**

56. Paragraphs 1-42 are realleged and incorporated as Paragraph 56.

57. At all relevant times the Consumer Fraud and Deceptive Business Practices Act (the "Consumer Fraud Act"), 815 ILCS 505/1, *et seq.*, was in full force and effect in Illinois.

58. Pursuant to Section 2 of the Consumer Fraud Act, 815 ILCS 505/2, it is an unfair or deceptive act or practice to use or employ any deception, fraud, false pretense, false promise, misrepresentation, or to conceal, suppress, or omit any material fact with the intent that others rely on the concealment, suppression, or omission, regardless of whether any person has in fact been misled, deceived, or damaged thereby.

59. By engaging in the practices of waiving co-insurance and submitting claims to Caterpillar showing PDSC's charges without deducting the waived portion, PDSC engaged in a deceptive act and practice when it concealed, suppressed, and omitted a material fact, that is, that its claimed charges did not accurately reflect the amount of co-insurance that it was waiving or the true cost to the Caterpillar Member.

60. PDSC intended Caterpillar to rely on the deceptive practice and concealment described above and make payments to PDSC based upon the claimed "full" charges, rather than the amount actually charged to the Caterpillar Members.

61. PDSC also intended Caterpillar Members to rely on its deceptive practices and concealment as described above by allowing them to use the facilities of PDSC without being required to pay co-insurance.

62. SFMC has suffered actual damages as a result of PDSC's deceptive practices, as SFMC has been deprived of several million dollars of revenue for ambulatory surgery services for Caterpillar Members it would otherwise have expected to receive under its 1992, 1997 and 2001 agreements with Caterpillar but for PDSC's unfair and deceptive acts and practices.

63. The deceptive statements and material concealment described in Paragraphs 11-42 occurred in the course of conduct involving trade and commerce, specifically the provision of healthcare services and reimbursement for such services.

64. The conduct of PDSC in submitting false claims to Caterpillar and waiving co-insurance implicates consumer protection concerns. As a result of PDSC's fraudulent actions, Caterpillar incurred greater healthcare expenses than it would otherwise have with the resulting consequence that Caterpillar passed along part of those increased healthcare costs to Caterpillar Members, who are consumers of healthcare services, and itself paid the balance of those

increased costs. Those increased expenses to Caterpillar were in the form of ambulatory surgery services charges from PDSC that were more expensive than those provided by SFMC.

65. Pursuant to 815 ILCS 505/10(a), SFMC is entitled to bring an action pursuant to the Consumer Fraud Act.

66. A copy of this complaint has been mailed to the Attorney General of the State of Illinois, pursuant to 815 ILS 505/10a(d).

WHEREFORE, the plaintiff, OSF HEALTHCARE SYSTEM, an Illinois not-for-profit corporation, d/b/a SAINT FRANCIS MEDICAL CENTER, prays for judgment in the amount of its damages, reasonable attorney's fees, its costs, and punitive damages, and such other relief as the Court deems just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY.

Respectfully submitted,

/s/ L. Lee Smith

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