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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

BIO-REFERENCE LABORATORIES, INC.,

Plaintiff,

-against-

MATT CAREY and SAM RUTA,

Defendants.

Case No. 2:09-cv-05093-DMC-MF

**DEFENDANTS' ANSWER AND
COUNTERCLAIMS**

Defendants Matt Carey and Sam Ruta (collectively, "Defendants"), by and through their undersigned counsel, hereby answer the First Amended Complaint of Plaintiff Bio-Reference Laboratories, Inc. ("BRL"), on personal knowledge as to their own actions and on information and belief as to the actions of others, as follows:

1. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1.
2. The allegations contained in Paragraph 2 are legal conclusions to which no response is required.
3. Defendants admit that Ruta resides in Pennsylvania and conducted business in New Jersey.

4. Defendants admit that BRL and Ruta are parties to an employment agreement, but deny knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in Paragraph 4.

5. The allegations contained in Paragraph 5 are legal conclusions to which no response is required.

6. Defendants admit that the quoted language is contained in Ruta's employment agreement, but state that the remainder of the allegations contained in Paragraph 6 are legal conclusions to which no response is required.

7. Defendants admit that the quoted language is contained in Ruta's employment agreement, but state that the remainder of the allegations contained in Paragraph 7 are legal conclusions to which no response is required.

8. Defendants admit that the quoted language is contained in Ruta's employment agreement, but state that the remainder of the allegations contained in Paragraph 8 are legal conclusions to which no response is required.

9. Defendants deny the allegations in Paragraph 9.

10. Defendants deny the allegations in Paragraph 10.

11. Defendants deny the allegations in Paragraph 11.

12. Defendants deny the allegations in Paragraph 12.

13. Defendants deny the allegations in Paragraph 13.

14. Defendants deny the allegations in Paragraph 14.

15. Defendants deny the allegations in Paragraph 14(a).

16. Defendants deny the allegations in Paragraph 14(b).

17. Defendants deny the allegations in Paragraph 14 (c).

18. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15.

19. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16.

20. Defendants deny the allegations set forth in Paragraph 16(a), except state that they deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning CGI's business.

21. Defendants deny the allegations set forth in Paragraph 16(b), except state that they deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning CGI's business.

22. Defendants deny the allegations set forth in Paragraph 16(c).

23. Defendants deny the allegations set forth in Paragraph 16(d).

24. Defendants deny the allegations set forth in Paragraph 16(e).

25. Defendants deny the allegations set forth in Paragraph 16(f).

26. Defendants deny the allegations set forth in Paragraph 16(g).

27. Defendants deny the allegations set forth in Paragraph 16(h).

28. Defendants deny the allegations set forth in Paragraph 16(i).

29. Defendants deny the allegations set forth in Paragraph 16(j).

30. Defendants admit that Carey resides in Connecticut and conducted business in New Jersey.

31. Defendants admit that BRL and Carey are parties to an employment agreement and a key employee agreement, but deny knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in Paragraph 18.

32. Defendants admit that the quoted language is contained in Carey's employment agreement, but state that the remainder of the allegations contained in Paragraph 19 are legal conclusions to which no response is required.

33. Defendants admit that the quoted language is contained in Carey's employment agreement, but state that the remainder of the allegations contained in Paragraph 20 are legal conclusions to which no response is required.

34. Defendants admit that the quoted language is contained in Carey's employment agreement, but state that the remainder of the allegations contained in Paragraph 21 are legal conclusions to which no response is required.

35. Defendants deny the allegations in Paragraph 22, except admit that Mr. Carey advised BRL of his intention to resign on or about September 18, 2009.

36. Defendants deny the allegations in Paragraph 22(a).¹

37. Defendants deny the allegations in Paragraph 23.

38. Defendants deny the allegations in Paragraph 24.

39. Defendants deny the allegations in Paragraph 25.

40. Defendants state that the allegations in Paragraph 26 are legal conclusions to which no response is required, and further state that they deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning what BRL "believes".

41. Defendants deny the allegations in Paragraph 26(a).

42. Defendants deny the allegations in Paragraph 26(b).

43. Defendants deny the allegations in Paragraph 26(c).

¹ The paragraphs in the Amended Complaint are misnumbered and there are two paragraphs numbered 22. Defendants have denominated the second Paragraph 22 as 22(a) here for ease of reference.

44. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27.

45. Defendants deny the allegations in Paragraph 28.

46. Defendants deny the allegations in Paragraph 28(a).

47. Defendants deny the allegations in Paragraph 28(b).

48. Defendants deny the allegations in Paragraph 28(c).

49. Defendants deny the allegations in Paragraph 28(d).

**COUNT ONE
(Breach of Contract)**

50. Defendants repeat and reallege their answers to the allegations contained in Paragraphs 1 through 28 above as though fully set forth herein.

51. Defendants deny the allegations in Paragraph 30.

52. Defendants deny the allegations in Paragraph 31.

53. Defendants deny the allegations in Paragraph 32.

54. Defendants deny the allegations in Paragraph 33.

**COUNT TWO
(Breach of Duty of Loyalty)**

55. Defendants repeat and reallege their answers to the allegations contained in Paragraphs 1-33 as though fully set forth herein.

56. Defendants state that the allegations in Paragraph 35 are legal conclusions to which no response is required.

57. Defendants deny the allegations in Paragraph 36.

58. Defendants deny the allegations in Paragraph 37.

59. Defendants deny the allegations in Paragraph 38.

COUNT THREE
(Tortious Interference)

60. Defendants repeat and reallege their answers to the allegations contained in Paragraphs 1 through 38 as if fully set forth herein.

61. Defendants deny the allegations in Paragraph 40.

62. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 41.

63. Defendants deny the allegations in Paragraph 42.

64. Defendants state that they allegations contained in Paragraph 43 are legal conclusions to which no response is required.

65. Defendants deny the allegations in Paragraph 44.

66. Defendants deny the allegations in Paragraph 45.

67. Defendants deny the allegations in Paragraph 46.

COUNT FOUR
(Unfair Competition and Diversion of Business Opportunity)

68. Defendants repeat and reallege their answers to the allegations contained in Paragraphs 1 through 46 as if fully set forth herein

69. Defendants deny the allegations in Paragraph 48.

70. Defendants deny the allegations in Paragraph 49.

71. Defendants deny the allegations in Paragraph 50.

COUNT FIVE
(Breach of the Covenant of Good Faith and Fair Dealing)

72. Defendants repeat and reallege their answers to the allegations contained in Paragraphs 1 through 50 as if fully set forth herein.

73. Defendants deny the allegation in Paragraph 52.

74. Defendants deny the allegations in Paragraph 53.

75. Defendants deny the allegations in Paragraph 54.

76. Defendants deny each and every allegation not specifically admitted herein and deny that Plaintiff is entitled to the relief requested in the WHEREFORE clause.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state any claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by Plaintiff's own breach or breaches of agreement, or otherwise by Plaintiff's own conduct.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver and estoppel, and further by Plaintiff's unclean hands.

FOURTH AFFIRMATIVE DEFENSE

To the extent that Plaintiff prevails on and is awarded damages for any of its claims, its recovery should be offset by the damages to which Defendants are entitled under their counterclaims against Plaintiff.

FIFTH AFFIRMATIVE DEFENSE

Upon information and belief, the injuries and/or damages alleged to have been sustained by Plaintiff were not reasonably foreseeable by Defendants.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's injuries and/or damages, if any, were caused by intervening and/or superseding factors which relieve Defendants from any liability in this action.

SEVENTH AFFIRMATIVE DEFENSE

Any award made to Plaintiff for its alleged injuries and/or damages for which Defendants are liable must be reduced in proportion to Plaintiff's failure to mitigate its liabilities, or to the extent said damages or liabilities pre-existed the incident at issue.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff has not suffered any damages as a result of the conduct alleged in the Complaint.

COUNTERCLAIMS

Defendants and Counterclaimants Matt Carey and Sam Ruta, as and for their Counterclaims herein against Plaintiff and Counterclaim-Defendant Bio-Reference Laboratories, Inc. (“BRL” or “Counterclaim Defendant”), on personal knowledge as to their own actions and on information and belief as to the acts of others, allege as follows:

Preliminary Statement

1. For nearly three years, Counterclaimants Sam Ruta and Matt Carey were victims—along with other sales personnel—of an extortion scheme carried on by BRL’s senior management that, according to BRL’s own unreleased internal calculations, eventually netted one of the management perpetrators over 1.6 million dollars.

2. The extortion scheme was so pervasive and so brazen that it would be easy to dismiss as fiction were it not explicitly documented in e-mails from one of the management perpetrators (from his internal BRL account) demanding, among other things, secret meetings, envelopes full of cash and an \$8,000 Rolex watch from Counterclaimant Carey.

3. After several years, upon information and belief, the extortion scheme became so out of hand that BRL determined it would have to be shut down.

4. However, rather than commence a full internal investigation and disclose the results (including the unlawful conduct of its senior management) to its shareholders, BRL selected a single manager—vice-president John Littleton, who was, in fact, a major perpetrator of the scheme—and fired him. The company issued a short press release and filed an 8-K stating that “Mr. Littleton agreed to pay the Company \$1,600,000 for payments made to Mr. Littleton and others that were, from the Company’s perspective, improperly paid to Mr. Littleton or parties related to him as expense or fee reimbursements” and that “[m]anagement regards this as

an internal matter”. (A true and correct copy of BRL’s press release is attached hereto as Ex. A.)

5. None of the \$1.6 million “repaid” to BRL was ever returned to the victims of the extortion scheme, including Counterclaimants. In fact, Senior Vice President of Sales Charles Todd laughingly announced at a meeting of sales managers that BRL had just lowered its overhead by \$1.6 million—in other words, BRL simply accepted the proceeds of the extortion scheme as profit.

6. Although BRL had reason to believe that other members of senior management, including Todd, had been involved in or at least aware of the scheme or others related to it, the company took no steps to investigate or deal with the pervasive corruption. Todd remains in his position and is the person at BRL most responsible for the present litigation.

7. When Counterclaimant Ruta attempted to inform BRL’s CEO and Chairman of the Board, Marc Grodman, of Todd’s involvement, he was informed that Todd would not be investigated.

8. Thus far, BRL has managed to keep the extortion scheme largely quiet, among other things by inaccurately describing it in its short press release and Form 8-K, intimidating its present and former employees and agreeing not to prosecute Littleton despite his allegedly having “stolen” \$1.6 million from the company.

9. BRL and Todd are aware, however, that Counterclaimants have extensive knowledge and written evidence of the extortion scheme, and of Todd’s and senior management’s involvement in similar and related improper conduct by BRL set out in detail below, including, but not limited to:

- pervasive and continued expense fraud and abuse;
- extensive misrepresentations and nondisclosures to shareholders;
- retaliatory employment practices by BRL senior management including Todd;

- self-dealing, including awarding of no-bid contracts to companies owned by BRL senior management; and
- improper incentives for disclosure of, and improper use of, competitors' confidential business information.

10. Fearing exposure of these and other facts and continuing its practice of using bullying and intimidation to effect its ends, BRL, led by Todd, has filed this frivolous lawsuit and engaged in "scorched-earth" litigation tactics in an effort silence Counterclaimants.

11. In so doing, as further detailed below, BRL has filed false affidavits under oath with the Court and used other improper means to attempt to interfere with Counterclaimants' ability to do business and earn a living. Such activities, and the underlying extortion scheme and other improper employment practices, are the basis for the present counterclaims.

Parties and Jurisdiction

12. Counterclaimant Matt Carey is citizen of the state of Connecticut.

13. Counterclaimant Sam Ruta is a citizen of the state of Pennsylvania.

14. Counterclaim Defendant Bio-Reference Laboratories, Inc. ("BRL") is a laboratory company incorporated in the state of New Jersey with its principal place of business in Elmwood Park, New Jersey.

15. These counterclaims arise out of Counterclaim Defendant's egregious acts of fraud, extortion, abuse of the judicial system and breach of contract, as a result of which it owes hundreds of thousands of dollars to Counterclaimants.

16. To the extent that this Court has jurisdiction over Plaintiff's claims herein, this Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1367(a).

17. This Court has personal jurisdiction over Counterclaim Defendant, as BRL is a citizen of New Jersey.

18. Venue is proper in this district under 28 U.S.C. § 1391(b)(2), since a substantial part of the events and omissions giving rise to these Counterclaims occurred in this district.

Facts

Mr. Carey and Mr. Ruta Commence Employment at BRL

19. In or about June 2003, Mr. Carey was hired as a sales representative for BRL's oncology products and services. Mr. Carey's duties involved cultivating and maintaining relationships with hospitals and doctors' offices in his territory, and acting as a liaison between those clients and BRL. His sales territory involved portions of the tri-state area and the Hudson Valley region.

20. When he was hired, Mr. Carey entered into an employment agreement with BRL dated June 17, 2003 (the "Carey Employment Agreement"). (A true and correct copy of the Carey Employment Agreement is attached hereto as Ex. B.)

21. The agreement provided, among other things, that Mr. Carey "w[ould] be reimbursed for normal business related expenses such as travel, food, lodging, and entertainment in accordance with the then-current company policy related to such expenses." (Ex. B, Carey Employment Agmt. ¶ 3.) There was no BRL expense policy in place until early 2009.

22. The Carey Employment Agreement also set out the commissions that Mr. Carey was entitled to on his accounts. It stated that for new accounts that he brought into BRL, he would be paid 9 percent of the net cash receipts for the first 15 months the account was open, and 4.5 percent thereafter. For existing accounts that were assigned to him, he would receive 4.5 percent of net cash receipts. (*Id.* ¶ 2.)

23. In or about May 2003, Mr. Ruta was hired as a sales manager at BRL. His duties included supervising a staff of sales representatives, including Mr. Carey, and acting as a liaison

between sales representatives and BRL management. He was to be compensated through a combination of base pay and performance-based bonus.

BRL's Lawless Culture of Intimidation and Fraud

24. After a time at BRL, Mr. Carey and Mr. Ruta discovered a culture of corruption—a place with little regard for basic rules, where extortion, fraud, and intimidation were routine. A few examples of the conduct Mr. Carey and Mr. Ruta discovered at BRL, which BRL seeks to cover up by this litigation, are set out below.

Self-Dealing and Violations of Corporate Governance Standards

25. Counterclaimants learned that BRL has little regard for fundamentals of corporate governance that would prohibit self-dealing among the corporation's senior management.

26. For example, Warren Erdman, Senior Vice-President of Operations, awarded no-bid contacts for trash collection, cleaning, moving, and specimen pick-up services from BRL to a company known as Warren Delivery Services, Inc.

27. Warren Delivery Services is a private company founded and, for many years, run by Warren Erdman. It is still owned by Warren Erdman, though, according to its website, it is now run by his son (Warren Erdman III).

28. This sort of conflict and self-dealing might be expected, though still improper, in a small family company, but BRL is a \$500 million public company traded on the NASDAQ.

Materially False and Misleading Statements to Shareholders

29. Upon information and belief the Warren Delivery Services relationship was neither disclosed to, nor approved by the BRL shareholders, through this was hardly the only fact withheld from BRL shareholders.

30. In or about July 2009, concerned about its failure to reach targets, BRL raised the prices it charged insurance companies for its services up to thirty percent. BRL subsequently falsely advised investors that its strong performance was due to growth in its new women's health division, which, in fact, had barely begun to operate at that time. BRL never acknowledged that, in fact, increased prices, not sales growth, accounted for much of its ability to reach sales targets.

31. In addition, as more fully set forth below, BRL never disclosed to its shareholders the illegal \$1.6 million extortion scheme carried on by its senior management, referring to that scheme only in passing as payments "that were, from the Company's perspective improperly paid to Mr. Littleton . . . as expense or fee reimbursements."

Bid Rigging and Improper Use of Confidential HMO Information

32. Counterclaimant Ruta also learned that Todd caused a senior BRL employee to ask a friend who worked for a particular HMO to surreptitiously acquire and provide to BRL information concerning the bids of competitors that were competing for the HMO's business.

33. With this information, Todd and BRL were able to match those bids and obtain the HMO's business.

Misuse of Corporate Assets

34. Counterclaimants also became aware of widespread misuse of corporate assets by senior management, including Todd and Littleton.

35. For example, Counterclaimants were informed and believe that Littleton and Todd arranged for the company to purchase season tickets to the basketball games at Littleton's and Todd's *alma mater*, Seton Hall. The tickets were for personal, not company, use and Todd and Littleton shared them.

36. Once Littleton became aware that he was to be terminated, he attempted to sell the tickets to the highest bidder. (*See* 1/6/2009 e-mail from J. Littleton attached as Ex. C.)

37. Todd and other senior management also routinely abused their access to BRL's plane, using it for personal pleasure trips and, in at least one instance, to take children to college, without reimbursing the company.

38. In addition, by fraudulently mischaracterizing the nature of various expenses, Todd used, and continues to use, the corporate expense account as his personal checkbook, having himself reimbursed by the company for, among other things, multiple cases of wine to stock his wine cellar, personal use of the company's car service, and expensive meals with his wife.

39. Although these and other offenses were serious and ran to the highest levels of senior management, the true extent of BRL's "wild west" culture was only revealed in late 2006, when Mr. Carey first fell victim to the extortion scheme.

The BRL Extortion Scheme

40. In the course of performing his duties for BRL, Mr. Carey routinely incurred travel and lodging expenses for meetings and conferences, expenses related to providing meals for doctors' offices and hospitals when he visited his accounts, and expenses related to client meals and entertainment. These expenses were incurred on behalf of BRL and in order to generate business for BRL.

41. These expenses often reached several thousand dollars a month.

42. Mr. Carey itemized his expenses and attached original receipts for them to his expense reports, which he submitted for reimbursement.

43. In or about September 2006, Mr. Carey realized that over \$25,000 of his submitted expenses were not being reimbursed.

44. When he sought to have the expenses reimbursed, Littleton, the vice president of sales, informed Mr. Carey that his expenses would not be paid unless Mr. Carey bought Littleton a \$6,000 Rolex watch. (See 9/18/2006 e-mail from J. Littleton attached as Ex. D.)

45. Initially, Mr. Carey resisted, but some months later he was forced to comply or risk losing both his expense reimbursements and his job.

46. At that point, apparently unashamed by his blatant extortion and entirely unconcerned about his use of his BRL e-mail account, Littleton decided to up the ante to a more expensive, \$8,000 Rolex. "Let's switch it to a platinum Yacht-Master, with a 'red' second hand. I have a picture in my office in case you need to see it," he wrote to Mr. Carey. "Stop in when you are free, and I will give you the book." (2/7/2007 e-mail from J. Littleton attached as Ex. E.)

47. Mr. Carey bought the watch and signed the paperwork over to Littleton, who later wrote yet another e-mail demanding an appraisal of the watch for insurance purposes. (See receipt and warrantee card attached as Ex. F; 3/19/2008 e-mail from J. Littleton attached as Ex. G.)

48. In May 2007, in a scene straight out of the *Sopranos*, Littleton arranged to meet Carey at the back of a diner to hand over the Rolex.

49. But the extortion did not stop there. Indeed, it had barely started.

50. Having secured his chosen timepiece, Littleton moved on to more prosaic demands for envelopes full of cash (again using his BRL e-mail account), dribbling Mr. Carey's expense reimbursements out a little at a time and taking a piece of each one, never permitting Mr. Carey to recover what he was owed.

51. From in or about late 2006 until just days before he was terminated in January 2009, Littleton demanded a monthly payment of between \$1,000 and \$2,000 from Mr. Carey in return for ensuring that Mr. Carey's expenses—expenses to which Mr. Carey was entitled under his contract and that were incurred to generate business for BRL—were processed and repaid by BRL.

52. At one point Littleton refused to pay three months of expenses totaling many thousands of dollars, and wrote to Mr. Carey's immediate supervisor—Mr. Ruta—that Carey would have to pay up to get them processed. “August – Gold / September – Frankincense / October – Myrrh / Matt needs to drop off the Trifecta or they just sit.” Littleton forced Mr. Ruta to pass this information to Mr. Carey, who was compelled to provide the “cash envelope” as demanded. (11/14/2007 e-mail from J. Littleton attached as Ex. H.)

53. When Mr. Ruta and Mr. Carey complained about this system to Littleton, he informed them that this was “business as usual” in the company and that there was nothing they could do about it. Mr. Ruta and Mr. Carey reasonably believed that, had they complained further, they would have lost their jobs or worse.

BRL Takes the Profits of the Extortion Scheme and Protects Senior Management

54. When BRL eventually decided to terminate Littleton, it did so as quietly as possible.

55. BRL retained an outside accountant, Neville Brooks, to determine the scope of payments to Littleton. It then hired Brooks as a compliance employee to prevent him from discussing his work with anyone outside the company.

56. Although BRL commenced its review at least as early as the fall of 2008, it did nothing to stop Littleton or any other members of senior management from continuing their pattern of extortion.

57. In or about December 2008, in connection with the review, Mr. Ruta advised Todd that Mr. Carey had been a victim of some of Littleton's conduct. Todd shut down the inquiry, telling Mr. Ruta that the issue was already resolved, that BRL would be settling with Littleton, and that a meeting with Mr. Carey was not necessary.

58. Around that time, while the investigation was ongoing, Mr. Ruta also met with Marc Grodman, BRL's CEO and Chairman of the Board. In that conversation, Mr. Ruta asked Grodman why BRL "let that bully run the playground for so long." Grodman told Mr. Ruta that BRL, aware of Littleton's conduct, had tried to fire him over a year before but had been "unable" to do so.

59. Mr. Ruta advised Grodman at this meeting that he believed Todd was also involved in improper activities, and said it was plain that Todd knew about, among other things, fraudulent expense reports and the improper season tickets. Grodman abruptly stopped the conversation, telling Mr. Ruta, "we are not here to discuss Chuck."

60. On January 26, 2009, BRL issued a press released (Ex. A), stating that Littleton would be paying BRL "\$1,600,000 for payments made to Mr. Littleton and others that were, from the Company's perspective, improperly paid to Mr. Littleton or parties related to him as expense or fee reimbursements". It further stated that Littleton had been terminated effective January 21, 2009.

61. In the months of the investigation, while fully aware of the extortion, BRL did *nothing* to stop, or even reign in, Littleton's activities. In fact, as late as January 6, 2009—mere

weeks before his termination became effective—Littleton wrote to Mr. Carey attempting to sell BRL’s Seton Hall tickets to the highest bidder (presumably to help pay for his restitution) (*see* Ex. C) and demanding a final cash payment. Mr. Carey offered to leave the cash for him, but Littleton wanted it delivered to him personally: “I would rather u drop off fedex when I am there. Sometimes the girls open it.” (1/6/2009 e-mail from J. Littleton attached as Ex. I.)

62. BRL brought no criminal prosecution of Littleton (though his actions were self-evidently criminal), it did not inform its shareholders of the details of his actions, nor would it agree to extend its probe to other in senior management, though Mr. Ruta, at least, informed the CEO that Todd was also involved in similar misconduct.

63. BRL simply accepted the \$1.6 million—the proceeds of extortion—without returning any of it to the victims of the scheme, including Counterclaimants.

64. In or about early January 2009, in a conversation with Todd, Mr. Carey explained again that he had been a victim of Littleton’s tactics and raised the issue of repayment for the money that Littleton had extorted from him. Once again, Todd threatened Mr. Carey in response, telling him: “you are lucky we don’t come to your house and arrest you in front of your wife and kids.”

65. Thus, rather than terminating and prosecuting Littleton and disclosing his misconduct as broadly as possible—as it would have done in the case of a “rogue” employee—BRL covered up the pervasive malfeasance of its senior management, isolated and terminated a scapegoat and found a way to profit from the entire scheme, all the while threatening and harassing any employee who attempted to complain.

BRL Management's Additional and Continuing Malfeasance

66. Mr. Carey's monthly extortion payment to Littleton was just the tip of the iceberg of the improper conduct by Littleton, conduct that Todd was aware of and in which he acquiesced.

67. In addition to demanding a large cash payments simply to process expenses to which Mr. Carey was already entitled, Littleton also added fake expenses to Mr. Ruta's expense reports and then forced Mr. Ruta to turn the money over to him, on pain of losing his job.

68. For example, Mr. Ruta saw one such falsified expense report, purportedly in his name. It contained numerous receipts that Mr. Ruta had not submitted, including handwritten receipts not in Mr. Ruta's handwriting, and in at least one case, no receipt at all for a purported expense of \$6,000.

69. Littleton submitted these falsified expense reports, in the case of Mr. Ruta and others, and recouped the extra money from the sales staff on whose behalf he purportedly submitted them.

70. Upon information and belief, as his direct superior, Todd was well aware of Littleton's scheme, and acquiesced in it until it became politically expedient to reveal it.

71. Moreover, when Mr. Ruta received occasional calls from Accounts Payable asking for more information on "phantom" expenses (information he invariably did not have, given that the expenses had generally been made up of whole cloth by Littleton), he was informed by both Littleton and Todd that the mysterious expense was "taken care of".

72. In addition, upon information and belief, Todd himself conducted a similar scheme, padding the expenses of two other salespeople and being reimbursed by them for the differential between their actual expenses and the amount submitted.

73. Littleton and Todd thus conspired to use the sales staff as a conduit for their activities (in addition to the more traditional extortion described above). Though false expenses passed through the employees in these cases, the amounts ended up with senior management.

74. In addition, as set forth above, Todd submitted, and was reimbursed for, expenses for big-ticket personal items beyond the Seton Hall basketball tickets and the use of the company plane. For instance, by fraudulently mischaracterizing the nature of various expenses, Todd was reimbursed by the company for, among other things, numerous cases of wine to stock his wine cellar, personal use of the company's car service, and expensive meals with his wife.

75. In addition to expense fraud, manipulating sales commissions—and through them sales representatives—was a routine management strategy at BRL.

76. Mr. Carey's sales commissions were continuously and wrongfully altered and manipulated in an effort to ensure that Mr. Carey continued to pay Littleton's extortion demands and did not reveal this or other improper and illegal conduct occurring at the company. Despite the plain language of the Carey Employment Agreement, BRL acted without any regard whatsoever for its contractual obligations to Mr. Carey.

77. Within a year after starting at BRL, Mr. Carey brought in a lucrative account worth \$1.3 million a year to BRL. Rather than paying Mr. Carey the commissions to which he was entitled on the entire amount BRL actually received from this account—the “net cash receipts collected on [his] accounts”—Todd told Mr. Carey that, contrary to his agreement, BRL would pay him commissions only on certain types of business from that account. (Ex. B, Carey Employment Agmt. ¶ 2.) Todd advised that Mr. Carey would receive no commissions whatsoever on the remaining portions of the account, despite the fact that Mr. Carey alone was responsible for bringing the entire account to BRL. Unsurprisingly, Mr. Carey objected.

78. Despite the plain wording of the Carey Employment Agreement, Todd was infuriated by Mr. Carey's objection to this arrangement. Todd and Littleton proceeded to unpredictably alter Mr. Carey's commissions to make it clear to Mr. Carey who was in control, thus maintaining the culture of intimidation that BRL fostered and effectuating their own improper purposes.

79. For example, in or about December 2007, Todd took from Mr. Carey a particular account that Mr. Carey was responsible for opening and had serviced since its inception. This account, called Cal Labs, brought in over \$1.3 million in net revenues to BRL annually.

80. Upon information and belief, this account was assigned to another sales representative at Todd's direction to ensure that Mr. Carey remained mindful of the control Todd had over his income and his livelihood, and to reinforce that he would be unwise to complain about the various improprieties occurring at the company.

81. Todd (called "Chuck" at the company) chose to send this message through Littleton who wrote an e-mail to Mr. Carey in which he stated: "Effective immediately, please stay away from Cal Labs [the Carey account] for everything, whether it is clinical or pathology." To make clear on whose authority he was delivering this devastating economic news, Littleton signed the e-mail: "Love, Chuck". (12/17/2007 e-mail from J. Littleton attached as Ex. J.)

82. These sorts of apparently arbitrary decisions were common at BRL: their purpose was, in part, to reinforce to Mr. Carey and others that, despite their contracts, their commissions and thus their livelihoods were entirely in the hands of BRL and subject to Todd's and Littleton's control. BRL, and BRL only, would decide who got paid for what and when.

83. Upon information and belief, the decision to strip Mr. Carey of his entitlement to commissions on the particular account described above also had another improper purpose—to

reward other employees who assisted Todd with still another corrupt scheme, this one involving wrongfully obtained information about competitors.

84. As described above, Counterclaimants are informed and believe that, at Todd's behest, a senior BRL employee asked a friend who worked for a particular HMO to surreptitiously acquire and provide to BRL information concerning the bids of competitors that were competing for the HMO's business. This allowed Todd and BRL to match those bids and obtain the HMO's business. Upon information and belief, to reward the BRL employee for improperly obtaining such information, Todd took a portion of the commissions to which Mr. Carey was entitled and assigned them to the BRL employee.

85. On or about December 2008, Littleton decided to take away yet another account Carey had brought in, and gave it to this same employee. This account provided approximately \$200,000 of net revenue to BRL annually.

BRL and Todd Continue to Intimidate Ruta and Carey After They Leave BRL

86. After Mr. Carey and Mr. Ruta resigned from BRL, in October 2009, BRL continued the pattern of intimidation that had characterized their employment there.

87. Mr. Carey advised BRL on or about September 18, 2009 that he would be resigning. His last day at the company was to be October 2, 2009.

88. Mr. Ruta provided oral notice of his resignation on or about September 4. On or about September 25, 2009, he declined a counteroffer BRL made to him, and confirmed his departure.

89. Mr. Carey was told by an administrative assistant in the sales department to come in for an exit interview with Todd on September 24, 2009. Several days later, she called to ask

Mr. Carey to come in on October 1 instead. This was rescheduled to coincide with Mr. Ruta's exit interview, which was also scheduled for October 1.

90. Told he was coming in for an exit interview, Mr. Carey was unprepared for the scene that awaited him when he arrived in Todd's office that day.

91. Todd, Glenn Miller, Plaintiff's attorney, and Vaughn Klug, Todd's son-in-law and an employee of BRL, were assembled in Todd's office. Todd handed Mr. Carey a stack of papers that he insisted Carey sign. Included in the papers were a draft complaint and temporary restraining order. Mr. Carey refused to sign the papers. A similar confrontation awaited Mr. Ruta at his purported "exit interview."

92. Mr. Ruta and Mr. Carey were both told by BRL's human resources department around the time of their departures that they would receive reimbursement for expenses, and would also receive a payout for unused vacation time. Neither has been paid these outstanding amounts.

93. Despite efforts by Mr. Ruta's and Mr. Carey's attorney to address BRL's concerns, BRL commenced an action on or about October 5, 2009, filing a complaint (with no claims), and seeking a temporary restraining order requiring the return of all BRL-related information and prohibiting Messrs. Ruta and Carey from working.

94. On or about October 8, 2009, the Court entered the TRO in substantially the form BRL had proposed, enjoining Messrs. Ruta and Carey from "commencing any direct or indirect association with a Bio-Reference competitor," despite the fact that no contractual provision whatsoever entitled BRL to this relief.

95. In fact, the complaint, verified by Todd, and Todd's affidavit in support of BRL's motion for a temporary restraining order contained numerous and serious misrepresentations.

96. BRL and Todd have used these misrepresentations and others in an attempt to secure from the Court an order compelling laborious and expensive electronic discovery, purportedly to ensure the return of BRL's confidential and proprietary information, but actually designed to ensure that Messrs. Ruta and Carey no longer have access to information evidencing the numerous illegal and improper activities of Mr. Todd and BRL.

97. Despite the fact that BRL's application for a preliminary injunction was denied by the Court, BRL has sought this same relief through its recently filed Amended Complaint and in its November 11 Order to Show Cause.

98. In short, BRL and Todd are desperate to ensure that incriminating information is out of the hands of former employees, and, consistent with BRL's and Todd's conduct generally, will stop at nothing, including lying to this Court and abusing the legal process, to ensure that this is so.

99. In his affidavit in support of BRL's claim for injunction relief, Todd makes numerous statements that are patently false. Some of the most egregious sworn statements Todd made to the Court include the following.

100. Todd claims Messrs. Carey and Ruta violated a company policy against use of personal e-mail addresses and computers when they independently decided to use their personal e-mail addresses for BRL business. (Affidavit of Charles J. Todd, dated October 9, 2009 ("Todd Aff."), attached hereto as Ex. K, ¶ 2.) This assertion is the fundamental basis for *all* of the relief sought.

101. In fact, however, an e-mail from BRL management mere days before Mr. Todd's affidavit was filed, shows that this statement—made by Mr. Todd to the Court under oath—was simply false. That e-mail states:

Please tell Christian and Jose not to use his personal e-mail address when sending e-mails to the company. All company related business should be done via the company e-mail address. Chuck [Todd] is creating a policy that will go out to everyone in the next week or so. But for now I know that Christian and Jose are using their personal e-mail addresses.

(9/30/09 e-mail from D. Lopez attached as Ex. L.)

102. Thus not only was there no policy at the time Todd submitted his affidavit to the Court, but the company was well aware that many salespeople used their personal accounts—Todd appears simply to have invented the “policy” to mislead the Court into giving him the relief BRL wanted.

103. Other misrepresentations include Todd’s efforts to persuade the Court that this is a case about Ruta’s and Carey’s competitive misconduct when in fact the center of the conflict is BRL’s illegal and egregious acts.

104. For example, Todd misrepresented to the Court that Mr. Carey was engaging in suspect or improper conduct when he visited Vassar Brothers Medical Center, telling the Court that “in fact, he had no reason to be there.” (Exhibit K, Todd Aff. ¶ 4.) To the contrary, Mr. Carey was responsible for sales to Vassar Brothers and received commissions on his sales there. Attached hereto as Exhibit M is the relevant section of Mr. Carey’s commission statement from the relevant period. It shows the Vassar Brothers facilities are not only in Mr. Carey’s commission runs, they are a large part of his income.

105. Contrary to what he informed the Court under oath, Todd had specifically requested that Mr. Carey check in on the hospital at least once a month to “take its pulse.”

106. Todd also states in his affidavit that Mr. Ruta had “a national customer base” and that he intentionally introduced Mr. Carey to customers outside of the “New York metropolitan area” in order to develop relationships with these other customers. (Ex. K, Todd Aff. ¶ 5.) In

fact, BRL is not a national company, and Mr. Ruta's customer base is not national. Mr. Carey's sales territory lies entirely outside the "New York metropolitan area", and indeed does not include New York City. Moreover, it was company policy, approved by Todd, that senior sales representatives would ride with junior sales representatives to help train them, apparently the practice to which Todd refers in his affidavit as evidence that Mr. Ruta and Mr. Carey engaged in some misconduct.

107. In short, Todd and BRL apparently believe that they can continue to intimidate and harass Ruta and Carey (and their potential employers), and take the same casual disregard for truth and the law that is routine in the company and apply it to the proceedings before this Court.

108. Such behavior, however, has always been, and certainly is now, improper and has caused substantial harm to Counterclaimants as set out below.

First Counterclaim for Breach of Contract
(By Carey)

109. Counterclaimant Carey repeats and realleges the allegations set out in Paragraphs 1 through 108 of the Counterclaims as though full set forth herein.

110. The Carey Employment Agreement was and is a valid and enforceable agreement.

111. Mr. Carey materially performed his obligations under the Carey Employment Agreement.

112. BRL breached its obligations to Mr. Carey under the Carey Employment Agreement by failing to reimburse Mr. Carey for expenses incurred in the performance of his duties.

113. BRL further breached the Carey Employment Agreement by failing to pay Mr. Carey the commission amounts to which he was entitled on various accounts, which amounts were validly due and owed to him for work performed.

114. These breaches were neither justified nor excused.

115. Mr. Carey has been injured as a result of BRL's breach of the Carey Employment Agreement in an amount to be determined at trial, but believed to be in excess of \$500,000 exclusive of interest.

**Second Counterclaim for Violation of Covenant of Good Faith and Fair Dealing
(By Carey)**

116. Counterclaimant Carey repeats and realleges the allegations set out in Paragraphs 1 through 115 of the Counterclaims as though full set forth herein.

117. Plaintiff owed Mr. Carey a duty of good faith and fair dealing implied in every contract.

118. Despite this duty, BRL repeatedly failed to deal with Mr. Carey in good faith, including but not limited to refusing to pay Mr. Carey the correct commissions and repeatedly and without basis altering and manipulating the amount of his commissions; BRL also failed to properly supervise Todd and Littleton; and failed to stop the extortion of sales representatives by and other misconduct of Todd and Littleton. BRL also participated in the profits of the extortion and failed to return the amounts owed to Mr. Carey.

119. As a result of plaintiff's breach of the covenant of good faith and fair dealing, Mr. Carey has suffered damages in an amount to be determined at trial but believed to be in excess of \$500,000 exclusive of interest.

**Third Counterclaim for Violation of Covenant of Good Faith and Fair Dealing
(By Ruta)**

120. Counterclaimant Ruta repeats and realleges the allegations set out in Paragraphs 1 through 119 of the Counterclaims as though full set forth herein.

121. Plaintiff owed Mr. Ruta a duty of good faith and fair dealing implied in every contract.

122. Mr. Ruta and BRL agreed that Mr. Ruta's compensation would be in the form of a salary and performance-based bonus.

123. Despite this arrangement and Mr. Ruta's repeated excellent performance, BRL simply set an annual bonus for Mr. Ruta, unrelated to his performance, and refused to engage in good faith negotiations concerning his bonus, thus denying Mr. Ruta the benefits of his contract and breaching the covenant of good faith and fair dealing.

124. As a result of plaintiff's breach, Mr. Ruta has suffered damages in an amount to be determined at trial but believed to be in excess of \$500,000 exclusive of interest.

**Fourth Counterclaim for Unjust Enrichment
(By Carey)**

125. Counterclaimant Carey repeats and realleges the allegations in Paragraphs 1 through 124 of the Counterclaims as though fully set forth herein.

126. BRL received a benefit in the amount of \$1.6 million which Littleton paid to BRL pursuant to his restitution agreement.

127. It would be unjust for BRL to retain that benefit as a portion of that money was wrongfully obtained by Littleton from Mr. Carey, not from BRL. As a result, Mr. Carey should have received a portion of the restitution that went to BRL.

128. BRL was also unjustly enriched as a result of its failure to reimburse expenses submitted by Mr. Carey, as those expenses were incurred by Mr. Carey on behalf of and to generate business for BRL.

129. BRL was also unjustly enriched by its failure to reimburse Mr. Carey for vacation pay to which he was entitled.

130. As a result, BRL has been unjustly enriched at Mr. Carey's expense in an amount to be determined at trial but believed to be in excess of \$100,000 exclusive of interest.

Fifth Counterclaim for Unjust Enrichment
(By Ruta)

131. Counterclaimant Ruta repeats and realleges the allegations in Paragraphs 1 through 130 of the Counterclaims as though fully set forth herein.

132. BRL received a benefit as a result of its failure to reimburse expenses submitted by Mr. Ruta prior to his resignation. It would be unjust for BRL to retain the benefit of the expenses while failing to reimburse Mr. Ruta for them as BRL received the benefit of those expenses since they were incurred on behalf of and to generate business for BRL.

133. BRL was also unjustly enriched by its failure to reimburse Mr. Ruta for vacation pay to which he was entitled.

134. As a result, BRL has been unjustly enriched at Mr. Ruta's expense in an amount to be determined at trial but believed to be in excess of \$50,000 exclusive of interest.

Sixth Counterclaim for Unfair Competition
(By Ruta and Carey)

135. Counterclaimants repeat and reallege the allegations in Paragraphs 1 through 134 as though fully set forth herein.

136. BRL knowingly, without any contractual or other basis, sought in its initial application to prevent Ruta and Carey from any “direct or indirect association” with any BRL competitor after their employment with BRL had ended.

137. The Court entered a temporary restraining order on or about October 8, 2009, pursuant to which Ruta and Carey were prohibited from direct or indirect association with a competitor of BRL.

138. Ruta and Carey complied with that Order.

139. The Court dissolved the temporary restraints contained in that Order and denied BRL’s application for a preliminary injunction on or about October 13, 2009.

140. BRL requested in its recently filed Amended Complaint that the Court enjoin Messrs. Ruta and Carey from any “direct or indirect association” with a competitor of BRL, and that, if any such association had begun (since, of course, the Court entered no injunction against Messrs. Ruta and Carey and dissolved the temporary restraints that were in place) there must be “complete cessation” of such association.

141. BRL has also contacted third parties and threatened them with litigation in an effort to prevent Messrs. Ruta and Carey from securing employment.

142. BRL has also recently secured, by the wrongful means set out below, improper and harassing discovery designed to prevent Messrs. Ruta and Carey from securing employment with potential employers.

143. The relief sought by BRL in both its first and amended complaints was far beyond the post-employment restrictions contained in Mr. Ruta’s or Mr. Carey’s employment agreement.

144. BRL has never alleged, nor can it, that Mr. Ruta or Mr. Carey has violated any of his contractual post-employment restrictions to BRL

145. BRL used wrongful acts, including but not limited to fraudulent misrepresentations to the Court, in an attempt to secure a complete bar to Messrs. Ruta's and Carey's ability to practice their livelihoods.

146. Messrs. Carey and Ruta were damaged by BRL's actions in any amount to be determined at trial but believed in excess of \$50,000, exclusive of interest and attorneys' fees.

**Seventh Counterclaim for Administrative Negligence
(by Carey)**

147. Counterclaimant Carey repeats and realleges the allegations in Paragraphs 1 through 146 as though fully set forth herein.

148. BRL had reason to know, and, upon information and belief, did know, of Littleton's abusive, intimidating and coercive attitude toward BRL sales employees, among others.

149. As a result, BRL could foresee that Littleton created a risk of harm to BRL employees.

150. Indeed, BRL had tried to terminate Littleton over a year before his actual termination in January 2009, but for some reason did not complete Littleton's termination at that time.

151. BRL failed to exercise reasonable care to control Littleton, including after the commencement of its review of his activities.

152. As a result of BRL's failure to supervise and control Littleton, Carey was damaged in an amount to be determined at trial but believed in excess of \$50,000.

**Eighth Counterclaim for Unpaid Wages in Violation of the New Jersey Wage Payment Act
(N.J.S.A 34.11-4.3)
(by Carey)**

153. Counterclaimant Carey repeats and realleges the allegations in Paragraphs 1 through 152 as though fully set forth herein.

154. Mr. Carey left BRL's employment on or about October 1, 2009.

155. BRL owed Mr. Carey for the wrongfully withheld commissions, including but not limited to as set forth above in Paragraphs 75 to 85.

156. BRL never compensated Mr. Carey for these withheld amounts.

157. As a result, Mr. Carey has been damaged in an amount to be determined at trial but believed in excess of \$500,000 exclusive of interest.

**Ninth Counterclaim for Malicious Prosecution
(by Ruta and Carey)**

158. Counterclaimants repeat and reallege the allegations in Paragraphs 1 through 157 as though fully set forth herein.

159. BRL filed the original complaint and its order to show cause maliciously, in bad faith and without probable cause, as set forth above in Paragraphs 93 through 107.

160. The Court denied BRL's application for a preliminary injunction on or about October 13, 2009.

161. Messrs. Carey and Ruta suffered a special grievance in that, before the Court denied BRL's application for equitable relief, it granted a temporary restraining order in BRL's favor in essentially the format provided by BRL, based on the misrepresentations set forth above. As a result, Messrs. Ruta and Carey were unable to work during the pendency of the temporary restraining order.

162. As a result, Messrs. Ruta and Carey have been damaged in an amount to be determined at trial but believed in excess of \$50,000, exclusive of interest and attorneys' fees.

WHEREFORE, counterclaim plaintiffs demand judgment in an amount to be determined at trial but in no event less than \$1,000,000, and any such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Counterclaimants request a jury trial on all issues triable to a jury.

Dated: November 25, 2009

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