74. MSCI is now fearful of where these documents were sent or who has reviewed them. The documents that were copied or faxed contain all confidential details to the business, business model, management team, investors, industry experts, advisors, business practices, market strategies, revenue model, service structure, formula, algorithms and financials including 5 year details, 5 year condensed and break even analysis. Sam Lipari is fearful this information will fall into the wrong hands further blocking or eliminating entry to market.

75. On or about 11/7/02 Sam Lipari received a complimentary D&B report dated 10/31/02 on MSCI. The report indicated MSCI started in 2000 and has a clear credit history and a strong financial condition.

CAUSES OF ACTION

COUNT I: VIOLATIONS OF THE SHERMAN ANTITRUST ACT

76. Plaintiff re-alleges paragraphs 1-75 above.

77. Defendants have violated Section 1of the Sherman Anti Trust Act prohibition against combination or conspiracy, in restraint of commerce.

78. Defendants are a vertically integrated commercial banking, private banking, trust and investment banking concern with investment and underwriting trade concentrated in the healthcare supplier market. In this specific market of

companies supplying new products, services and technology, new entrants are dependant on the approval and endorsement of the Defendants to healthcare supply distributors dominated by Healthcare Group Purchasing Organizations or GPO's due to the Defendants' monopoly power.

79. Defendants are believed to be the largest holder of healthcare supplier equity issues through their direct investments and the investments of funds they manage. Defendants are believed to be the largest promoters of healthcare supplier stock issues and provide the largest amount of industry analysis for investor evaluation of healthcare supplier stock issues. On information and belief, US BANCORP NA, US BANK, PRIVATE CLIENT GROUP, CORPORATE TRUST, INSTITUTIONAL TRUST AND CUSTODY, AND MUTUAL FUND SERVICES, LLC and US BANCORP PIPER are alter egos of each other in that they now and at all relevant times (a) held themselves out to the public as a single, integrated, full-service, professional business enterprise; (b) completely dominated and controlled each other's assets, operations, policies, procedures, strategies, and tactics; (c) failed to observe corporate formalities; (d) and used and commingled the assets, facilities, employees, and business opportunities of each other, as if those assets, facilities,

employees, and business opportunities were their own -- all to such an extent that any adherence to the fiction of the separate existence of any of these defendants distinct from the others would be inequitable, would permit egregious wrongdoers to abuse a corporate, limited liability corporation, and/or similar privilege of limited liability, if any, and would promote injustice by allowing these defendants to evade liability or veil assets that should be attachable.

80. Defendants' predatory practices in the capitalization of healthcare suppliers have been found to be in violation of regulatory statutes. In June of 2002, US BANCORP PIPER JAFFRAY was censured and fined $250,000.00 by the National Association of Securities Dealers for threatening to deny Antigenetics, Inc. a critical service of analyst coverage if it did not select US BANCORP PIPER JAFFRAY as a lead underwriter for a second issuing of stock.i

81. US BANCORP has participated in underwriting syndicates for 131 IPO's worth nearly 10 billion dollars since January 1999. iiUS BANCORP is named as a defendant in shareholder law suits investigating US BANCORP's role in a scheme to allocate equity shares of Commerce One to particular customers on the condition that these customers would then buy additional equity shares in the securities markets at agreed upon times to create a false increase in the prices of Commerce One shares**.iii** Commerce One is an electronic marketplace technology company providing supply chain management services in the

business to business market and specifically through Medibuy in a “strategic relationship” to provide these services to healthcare facilities. Medibuy is a partner of the largest GPO which is also the main subject of federal healthcare supply marketplace inquiry, Premier, Inc. Medibuy is also the exclusive e-commerce supplier for HCA.

82. The Defendants maintain control over the day-to-day operations of healthcare supplier companies they invest in or provide services for. iv This control extends to interlocking directors when Defendants place corporate officers of US BANCORP NA on the boards of the healthcare supplier corporations that the Defendants have participated with in creating anti competitive sole source supplier contracts with healthcare GPO’s that are "agreements whose nature and necessary effect are so plainly anticompetitive . . . no elaborate study of the industry is needed to establish their illegality-they are 'illegal per se.'" *National Society of Professional Engineers v. United States*, 435 U.S. 679, 692, 98 S. Ct.1355, 1365, 55 L. Ed. 2d 637 (1978).

83. The Defendants use the creation of anticompetitive sole source contracts between their client healthcare suppliers and healthcare

GPO's the Defendants have developed to promote and inflate the value of equity shares they are marketing**.**

The Defendants operate a conspiracy among their subsidiaries and parent companies and through their employees as "Persons" engaged in combination with healthcare GPO's including UNKOWN HEALTHCARE SUPPLIER for the purpose of restraining commerce. On information and belief, Defendants, in agreement, concert, and conspiracy with each other, directly or indirectly initiated, directed, participated in, aided and abetted, furthered, otherwise caused, and/or concealed the anticompetitive denial of services and critical facilities, or related events, for the purpose of preserving their directorships and/or other positions with US BANCORP NA, keeping their contracts with US BANCORP NA, their income, compensation, and fringe benefits, supporting the value of their US BANCORP NA securities, and/or concealing their participation in and liability for anticompetitive activities.

84. The Defendants prevented MSCI from establishing escrow accounts it was intending to use as a unique banking service with special escrow account agreements reviewed and approved by the Defendants to finance MSCI's entry into to commerce in competition to reduce prices and increase manufacturers of healthcare devices and other healthcare suppliers access to markets in competition with sole source healthcare suppliers and healthcare GPO's.

85. The escrow account contracts are novel and could not be duplicated at another bank in the short time between the Defendants surprise announcement that they were not going to host the accounts, breaching their contract or duty to MSCI based falsely on the USA Patriot Act, and the deadlines MSCI was in reliance on for receipt of funds. The escrow accounts developed between MSCI and US BANK, along with the line of credit tying arrangement based on the contract guaranteed portion were "unique and unusual financing terms which are unavailable from competing financial institutions." If other financial institutions have the required presence of bank branches and familiarity with MSCI candidates in several states, along with commercial trust departments capable of acting as escrow agent for accounts that provide fractional secured interests for a bank commercial loan line of credit, they were not present with the capability of putting the arrangement together in Blue Springs or Independence MO. Sam Lipari turned to US BANK for the escrow accounts after evaluating and visiting other banks within driving range of his Blue Springs office. US BANK's branch office on Noland Rd. in Independence, MO was able to perform this custom financial service and proceeded to do so with a regional US BANK commercial trust office in St. Louis pooling resources for a multi state district. Once US BANK decided to withdraw the service, there was no financial institution MSCI could turn to that was capable of meeting its requirements in the few days remaining in which to get out the escrow contracts to the candidates for their examination in advance of the November 1st deadline. If US BANK had made its reversal earlier;

there still was no competing national financial institution capable of providing such a complex custom service without having a pre-established banking relationship. US BANCORP NA was a financial institution lending upon a unique, novel or custom escrow financial instrument in the commercial money market with sufficient economic power to give rise to a claim under the Sherman Act as contemplated in *United States Steel Corporation v. Fortner Enterprises, Inc.*, 429 U.S. 610, 51 L. Ed. 2d 80, 97 S. Ct. 861 (1977).

86. Defendants through their financial institutions act as a supplier of financial services to companies in the healthcare industry. Defendants own and control other supplier companies including medical device manufacturers, biotechnology producers, healthcare distributors and health system end users. Defendants have conspired with, aided and abetted and participated in the financing of efforts to limit or prevent competition in healthcare supply. Defendants have prevented MSCI from entering the healthcare supply market by refusing to act as a supplier of escrow accounts at any price to MSCI. Such conduct constitutes a contract, combination or conspiracy in restraint of trade in *per se* violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

87. The Defendants have acted in furtherance of the combine's conspiracy to deny MSCI access to services and essential facilities through a refusal to deal, denial of services, boycott or withholding of critical facilities which is conducted "to exclude a person or group from the market, or to accomplish some other anti-competitive

objective, or both," *DeFilippo v. Ford Motor Co.,* 516 F.2d 1313, 1318 (3d Cir.) (citations omitted), cert. denied, 423U.S. 912, 96 S. Ct. 216, 46 L. Ed. 2d 141 (1975), and is a per se violations of § 1.

88. Defendants through their financial institutions have discriminated against MSCI in provision of services and facilities in the form of the five escrow accounts MSCI had mailed out contracts for and the five escrow accounts for candidates committing to payment of funds by November 1st which MSCI was in the process of sending contracts to and the future escrow accounts for its ongoing future quarterly medical supply chain strategist certification programs.

89. The public is being severely injured by the Defendants actions in restraint of trade through their combination or conspiracy, in restraint of commerce

90. MSCI has been severely injured and is in danger of further injury resulting from the Defendants actions in restraint of trade through their combination or conspiracy, in restraint of commerce. MSCI is now unable to meet its obligations, and risks damage to its corporate credit rating. MSCI is unable to procure an escrow agent to substitute for US BANK. MSCI is unable to meet its commitments to independent representatives that MSCI depended on to enter commerce. MSCI is unable to produce revenue without independent consultants who have begun its very expensive certification program. MSCI's good will with its associates and customers has been harmed by not meeting its scheduled entry to market.

91. Defendants have violated Section 2 of the Sherman Anti Trust Act prohibition against combining or conspiring with any other person or persons, to monopolize or attempt to monopolize any part of the trade or commerce.

92. Defendants have acquired, maintained and extended their monopoly power through improper means, including attempting to extort healthcare technology companies into using US BANCORP as the underwriter of capitalization against securities regulations and in denying MSCI the escrow accounts it required to capitalize its entry into commerce through extortion under the color of official right-The USA Patriot Act, fraudulently invoked to tortuously Interfere with MSCI's contracts and prospective contracts.

93. Defendants utilize their monopoly power to foreclose competition and gain a competitive advantage for their client and associate companies, in which they have invested millions of dollars and on whose behalf and acting as a combination, they have attempted to destroy MSCI, a potential competitor in violation of 15 U.S.C.S. § 2.

94. The Defendants' vertical integration is part of a calculated scheme to gain control over the 1.3 trillion dollar healthcare supplier and distribution segment of the healthcare industry and to restrain or

suppress competition, rather than an expansion to meet the legitimate business needs of US BANCORP's customers, exhibiting the requisite specific intent needed to show a violation of 15 U.S.C.S. § 2.

95. The Defendants as monopolists, or would be monopolists of the healthcare supplier/distribution marketplace engage in predatory tactics and dirty tricks including the above mentioned extortion of business customers seeking capitalization, "laddering" schemes to fraudulently inflate equity values of competitors they own interests in. Additionally, healthcare suppliers the Defendants invest in and promote engage in anticompetitive predatory sole source contract agreements with healthcare GPOs.

96. The Defendants through conspiracy and combination with healthcare suppliers and distributors have established monopoly power and have the power to control prices of healthcare supplies which they exercise in maintaining higher prices through GPO distribution channels that are higher than those negotiated directly by hospitals, sometimes 25% higher according to the Government

Accounting Officev and by excluding competition in violation of 15 U.S.C.S. § 2.

97. Anticompetitive effects have resulted from the Defendant's actions. New technologies have been prevented from entering the healthcare market to protect competitors with the capitalization provided by the actions of the Defendants to make kickback payments to GPOs in exchange for sole source contracts. This has resulted in the unavailability of superior products and services that would have been able to save lives and alleviate suffering in hospital patients

98. The public is being severely injured by the Defendants actions in restraint of trade through their combining or conspiring with any other person or persons, to monopolize or attempt to monopolize any part of the trade or commerce

99. MSCI has been severely injured and is in danger of further injury resulting from the Defendants actions in restraint of trade through their combining or conspiring with any other person or persons, to monopolize or attempt to monopolize any part of the trade or commerce.

COUNT II: VIOLATIONS OF CLAYTON ANTITRUST ACT

100. Plaintiff re-alleges paragraphs 1 through 99 above.

101. Defendants have denied MSCI escrow account services, a critical facility in violation of the Robinson-Patman Act against discrimination in price, services, or facilities; 15 U.S.C. § 13 of the Clayton Antitrust Act.

102. Defendants provide financial services and facilities to existing healthcare supply market participants on the basis of those participants maintaining exclusive dealing arrangements. The Defendants exclusive dealing criteria is directly applied where Defendants make contracts and provide investment and financing to healthcare supplier companies the Defendants proclaim and publicize as entering into and maintaining sole source or single source contracts with distributors and end user health systems. The Defendants publicize this information to solicit subscription of stocks they underwrite and to obtain

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i *State Steps up Probe of Research at Piper Jaffray;* Meisner, Jeff; Puget Sound Business Journal Oct 21, 2002

ii IPOmonitor.com database

iii *Commerce One Hit With A Securities Lawsuit*; Temple, James, San Francisco Business Times, June 22, 2001

iv US BANCORP PIPER JAFFRAY Venture Fund web site April 2001

v *Hospitals Sometimes Loose Money by Using a Supply Buying Group*; Walsh, Meier; NY Times, April30, 2002