UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
Case No. ______-Civ-(_______/______)

STATE OF FLORIDA, OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LEGAL AFFAIRS, BERT FISH MEDICAL CENTER, INC., CAPE MEMORIAL HOSPITAL, INC., HALIFAX HOSPITAL MEDICAL CENTER, HENDRY COUNTY HOSPITAL AUTHORITY, HOLMES COUNTY HOSPITAL CORPORATION, JACKSON COUNTY HOSPITAL DISTRICT, LEE MEMORIAL HEALTH SYSTEM, NORTH BREVARD COUNTY HOSPITAL DISTRICT, NORTH BROWARD HOSPITAL DISTRICT, PUBLIC HEALTH TRUST OF MIAMI-DADE COUNTY, FLORIDA, SARASOTA COUNTY PUBLIC HOSPITAL DISTRICT, SOUTH BROWARD HOSPITAL DISTRICT, and WEST ORANGE HEALTHCARE DISTRICT,

Plaintiffs,

vs.

TENET HEALTHCARE CORPORATION,

Defendant.

COMPLAINT

Plaintiff, State of Florida, Office of the Attorney General, Department of Legal Affairs, along with Plaintiffs, Bert Fish Medical Center, Inc., Cape Memorial Hospital, Inc., Halifax Hospital Medical Center, Hendry County Hospital Authority, Holmes County Hospital Corporation, Jackson County Hospital District, Lee Memorial Health System, North Brevard County Hospital District, North Broward Hospital District, Public Health Trust of Miami-Dade County, Florida, Sarasota County Public Hospital District, South Broward Hospital District, and

West Orange Healthcare District (collectively the "Hospital Plaintiffs"), sue Tenet Healthcare Corporation ("Tenet") and allege as follows:

I.

Introduction

1. This action involves the operation of the Medicare outlier trust fund or pool for inpatient hospital services. Medicare, established at title XVIII of the Social Security Act, 42 U.S.C. § 1395 *et seq*., is the federal program that provides health care insurance to the Nation's aged and disabled. Medicare is administered by the Centers for Medicare & Medicaid Services ("CMS"), a non-independent agency within the United States Department of Health and Human Services ("HHS"), and has over 40 million beneficiaries.

2. Traditional Medicare consists of two parts—Parts A and B. The hospital insurance program, known as Part A, provides certain benefits covering inpatient hospital services, nursing facility services, home health services, and hospice services. Payments for Part A services are made from the Federal Hospital Insurance Trust Fund. *See* 42 U.S.C. § 1395i.

3. Hospitals that wish to participate in the Medicare program must execute a contract, known as a provider agreement, with CMS. Each Tenet hospital has executed at least one provider agreement with CMS. Provider agreements are executed upon a provider's initial enrollment into the Medicare program, renewal, and upon any change in its business structure. In these provider agreements, each Tenet hospital certified that it would adhere to the Medicare laws, regulations, and program instructions. *See, e.g.*, CMS Form 855A at 51. The program instructions include the provisions of the Provider Reimbursement Manual issued by CMS.

4. The provider agreement also requires each hospital, including each Tenet hospital, to acknowledge that any deliberate omission, misrepresentation or falsification of any communication supplying information to CMS may be punished by criminal, civil or administrative penalties, including fines, civil damages and/or imprisonment. *See id.*

5. The Hospital Plaintiffs each executed provider agreements with CMS.

6. CMS withholds 5.1% from the payments each hospital should have received for treating hospitalized Medicare patients to fund a common pool or trust account (the "Outlier Pool"). Each time a hospital incurs costs to treat a severely ill Medicare patient that far exceed the amount the hospital would be paid under normal Medicare reimbursement guidelines, it may be eligible to receive special compensation from that Outlier Pool. Like an excess insurance program, this Outlier Pool only pays if the losses exceed a deductible (or threshold). Each year the threshold is adjusted by CMS through the use of a computer program based on prior experience. If the amount paid out to hospitals by the Outlier Pool exceeds the amount withheld by CMS for the year, then the threshold is raised for all participating hospitals in subsequent years.

7. In this case, Tenet developed and implemented a scheme to take more out of this Outlier Pool than it was entitled to claim, causing the threshold to be raised the following years and thereby directly injuring the Hospital Plaintiffs. The amount that Tenet improperly took from the Outlier Pool exceeds $1 billion. This action seeks damages for the injury caused by Tenet's improper scheme.

II.

Jurisdiction and Venue

8. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question) because this action arises under the laws of the United States, 18 U.S.C. § 1964(c), and because this action alleges violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-1968. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because complete diversity of citizenship exists and the matter in controversy exceeds $75,000, exclusive of interest and costs. This Court has jurisdiction, pursuant to the principles of supplemental jurisdiction and 28 U.S.C. § 1367, over the state law claims.

9. This Court has personal jurisdiction over Tenet. Venue is proper pursuant to 18 U.S.C. § 1965(a) and 28 U.S.C. § 1391(b) because Tenet resides in, has agents within or transacts its affairs in this District. Tenet's registered agent is located in this District.

III.

Parties

A. The Hospital Plaintiffs

10. Bert Fish Medical Center, Inc. is a Florida non-profit corporation with its principal place of business in New Smyrna Beach, Florida. Bert Fish Medical Center, Inc. is a direct support organization for Southeast Volusia Hospital District, an independent special district. The governing board of Bert Fish Medical Center, Inc. consists of the same individuals who serve as the governing board of Southeast Volusia Hospital District.

11. Cape Memorial Hospital, Inc. is a Florida non-profit corporation with its principal place of business in Cape Coral, Florida. Cape Memorial Hospital, Inc. is a direct support

organization for Lee Memorial Health System, an independent special district. The governing board of Cape Memorial Hospital, Inc. consists of the same individuals who serve as the governing board of Lee Memorial Health System.

12. Halifax Hospital Medical Center is an independent special district with its principal place of business in Daytona Beach, Florida.

13. Hendry County Hospital Authority is an independent special district with its principal place of business in Clewiston, Florida.

14. Holmes County Hospital Corporation is an independent special district with its principal place of business in Bonifay, Florida.

15. Jackson County Hospital District is an independent special district with its principal place of business in Marianna, Florida.

16. Lee Memorial Health System is an independent special district with its principal place of business in Fort Myers, Florida.

17. North Brevard County Hospital District is an independent special district with its principal place of business in Titusville, Florida.

18. North Broward Hospital District is an independent special district with its principal place of business in Hollywood, Florida.

19. Public Health Trust of Miami-Dade County, Florida is a public health trust with its principal place of business in Miami, Florida.

20. Sarasota County Public Hospital District is an independent special district with its principal place of business in Sarasota, Florida.

21. South Broward Hospital District is an independent special district with its principal place of business in Hollywood, Florida.

22. West Orange Healthcare District is an independent special district with its principal place of business in Ocoee, Florida.

B. Tenet

23. Tenet is a Nevada corporation with its principal place of business in Dallas, Texas.

24. Tenet is the nation's second-largest for-profit hospital chain. Tenet, through its subsidiaries and affiliates, owns or operates 78 acute care hospitals with 19,668 licensed beds. At all times relevant hereto, Tenet owned or operated approximately 100 hospitals. Tenet owns or operates hospitals in 13 states, including Florida. Tenet owns or operates 15 hospitals in Florida, all of which are in this District.

25. The Tenet hospitals that were part of the inflated charging scheme described in this Complaint include: Atlanta Medical Center, Alvarado Community Hospital, Brookwood Medical Center, Brotman Medical Center, Brownsville Medical Center, Centinela Hospital Medical Center, Century City Hospital, Desert Regional Medical Center, Doctors Hospital of Manteca, Doctors Medical Center of Modesto, Doctors Medical Center of San Pablo, Encino-Tarzana Regional Medical Center, Fountain Valley Regional Medical Center, Garfield Medical Center, Greater El Monte Community Hospital, Houston Northwest Medical Center, John F.

Kennedy Memorial Hospital, Kenner Regional Medical Center, Los Alamitos Medical Center, Midway Hospital Medical Center, Monterey Park Hospital, Park Plaza Hospital, Piedmont Medical Center, Queen of Angels – Hollywood Presbyterian Medical Center, Sierra Vista Regional Medical Center, St. Louis University Hospital, Twin Cities Community Hospital, USC University Hospital, Western Medical Center – Santa Ana, and Whittier Hospital Medical Center. These hospitals will be referred to hereafter as the "Tenet Hospitals."

IV.

Factual Background

A. The Prospective Payment System

26. In 1983, CMS implemented an Inpatient Prospective Payment System ("IPPS") for virtually all acute care hospitals (*i.e*., ordinary hospitals). IPPS pays participating hospitals fixed, predetermined amounts for defined services.

27. Specifically, under IPPS, each patient's condition is classified into one of over 520 Diagnosis-Related Groups ("DRG") to which CMS has assigned a numeric weight reflecting the amount of resources needed, on average, to treat a patient with the corresponding diagnosis. Greatly simplified, a hospital's payment for treating a specific patient is determined by multiplying the numeric weight for that DRG by a standardized amount. The standardized amount is based on the average resources used to treat cases in all DRGs and is adjusted to take into account regional wage rates as well as certain other factors. The normal operating IPPS payment may be supplemented with add-ons applicable to teaching hospitals or hospitals that treat a disproportionately large share of low-income patients. In addition to reimbursement of operating costs, hospitals can recover capital expenditures through a separate DRG calculation.

B. The Outlier Pool

28. Although IPPS assumes that fixed payments based on cases of average complexity will provide adequate compensation to efficiently run hospitals, Congress recognized that an extremely costly case could undermine any averaging. Accordingly, the Social Security Act provides for extra payments (in addition to payments received under IPPS) for especially costly hospital stays, referred to as "Outliers." Outlier payments are designed to supplement standard IPPS payments "for extraordinarily high-cost cases." *See* 42 C.F.R. § 412.84. Specifically, the Outlier provision permits hospitals to "request additional payments in any case where charges, adjusted to cost," exceed an amount specified by the Secretary. *See* 42 U.S.C. § 1395ww(d)(5)(A)(ii). According to CMS, "[t]his additional payment is designed to protect the hospital from large financial losses due to unusually expensive cases." 68 Fed. Reg. 10420, 10421 (March 5, 2003). The Outlier payment is meant to "approximate the marginal cost of care." *See* 42 U.S.C. § 1395ww(d)(5)(A)(iii).

29. Under IPPS, a hospital may receive Outlier payments when the costs it incurs to treat a patient exceed the normal IPPS payment by a fixed amount (*i.e.*, a deductible), the exact magnitude of which is established by a computer program on an annual basis, *i.e.,* the "Outlier Threshold."

30. The higher the Outlier Threshold, the fewer the number of cases that qualify as Outliers, and for those that qualify, the lower the Outlier payments. According to CMS:

> [t]he actual determination of whether a case qualifies for outlier payments takes into account both operating and capital costs and DRG payments. That is, the combined operating and capital costs of a case must exceed the fixed-loss outlier threshold to qualify for an outlier payment. The operating and capital costs are computed separately by multiplying the total covered charges by the operating

> and capital cost-to-charge ratios. The estimated operating and capital costs are compared with the fixed-loss threshold after dividing that threshold into an operating portion and a capital portion. . . . The thresholds are also adjusted by the area wage index (and capital geographic adjustment factor) before being compared to the operating and capital costs of the case. Finally, the outlier payment is equal to 80 percent of the combined operating and capital costs in excess of the fixed-loss threshold.

68 Fed. Reg. at 10422.

31. Each hospital, including Tenet hospitals, use what is called a "charge master," a listing of the charges for each item or service that the hospital provides. Thus, by way of example, the charge master might list the charge for an aspirin at $5, a double occupancy standard hospital room at $800 per day, the use of an operating room for a 2-hour surgical procedure at $2,500, and so on.

32. The Outlier system is based on the costs that a hospital incurs to treat a specific Medicare patient. The charges can act as a surrogate for a hospital's costs if there is a rational relationship between a hospital's charges and its underlying costs. Each hospital has a "cost-to-charge ratio" or "CCR." The CCR, which is an average, can be used to transform a charge into a cost. For example, if a hospital's CCR is 0.5 and its charges for a patient total $10,000, then its costs to treat that patient would be roughly $5,000. The Outlier system assumed**,** and CMS issuances required**,** that a hospital's charges be reasonably and consistently related to its costs of providing the services. *See, e.g.*, Prov. Reimb. Man., Part I, §§ 2202 – 2203; *see also* 42 C.F.R. § 413.53(b)(2)(ii) ("Implicit in the use of charges as the basis for apportionment is the objective that charges for services be related to the cost of the services").

33. The Outlier payment is 80% of the difference between the hospital's costs for treating a patient (calculated by adjusting its charges by its CCR), less the sum of the IPPS payment and the Outlier Threshold, as given in the equation below:

Outlier Payment = 80% x [(Charges x CCR) – IPPS Payment – Outlier Threshold]

In the above equation, charges are the hospital's charges for services provided to the patient; the CCR is derived from the hospital's latest "Settled Cost Report" (as audited by CMS' Fiscal Intermediary); the IPPS payment is the standard DRG payment plus any applicable add-ons (*e.g.*, indirect medical education, disproportionate share of low income patients); and the Outlier Threshold is the amount established annually by CMS.

C. Tenet's Scheme: Manipulating the Outlier System

34. The amount of Outlier payments, if any, depended on various factors, including: (a) the hospital's charges and (b) the hospital's CCR. As CMS indicated in September of 1988, "the use of hospital-specific cost-to-charge ratios is essential to ensure that outlier payments are made only for cases that have extraordinarily high costs, and not merely high charges." 68 Fed. Reg. at 10423 (March 5, 2003) (citing 53 Fed. Reg. 38476, 38503 (Sept. 30, 1988)).

35. Tenet improperly manipulated the Outlier system by artificially inflating its charges when its real costs remained constant or even declined.

36. By artificially inflating their billed charges, the Tenet Hospitals transformed ordinary or average-cost IPPS patients into Outlier patients, even though the costs actually incurred by the hospital to treat those patients fell within the norm and, therefore, would not entitle the hospital to receive Outlier payments. By dramatically increasing their billed charges, the Tenet Hospitals represented to CMS that their costs had similarly increased.

37. Thus, when the Tenet Hospitals artificially inflated increased their charges, their "costs," computed by using CCRs that predated the charge increases, dramatically increased even though their real costs remained the same or even declined. By inflating charges, the Tenet Hospitals improperly obtained more Outlier payments than they were entitled to claim or receive.

38. For example, suppose that in 2001 a hospital's latest audited CCR (from 1999) was 0.5. Suppose that the hospital decided to double its charges even though its costs had remained stable. Thus, its "real" CCR was 0.25. Suppose that a patient incurred $100,000 in charges for a hospitalization and the hospital received an IPPS payment of $25,000. The hospital's actual costs to treat that patient were $25,000 (0.25 x $100,000). However, because the hospital artificially doubled its charges in 2001, its CCR from its 1999 cost reports was outdated, and if the hospital applied that CCR to its 2001 inflated charges, it would yield costs of $50,000, double its actual costs. The hospital should not have received an Outlier payment because its real costs were not sufficient to trigger an Outlier payment; indeed, in this example, the hospital's IPPS payment actually equaled its true costs to treat that patient. The hospital could have improperly received an Outlier payment by using its inflated "costs," as compared to its actual costs.

39. Logically, as in any system where audits follow the payments, the audited CCR should have eventually caught up with the hospital. That was not the case here. Instead, many of the Tenet Hospitals dramatically increased their charges over time to the extent that their CCRs fell precipitously below the range that was considered reasonable under Medicare regulations (*i.e.*, three standard deviations from the mean of the log distribution of CCRs for all hospitals) by the next settled cost report. The Fiscal Intermediary then assigned a Statewide Average ("SWA") CCR to these hospitals instead of the hospital-specific CCR figure. CMS

allowed the use of a SWA CCR based on its belief that a hospital-specific CCR falling outside this range was "unreasonable and probably due to faulty data reporting or entry." 53 Fed. Reg. 38476, 38508 (Sept. 30, 1988). CMS stated that it "[believed] that 3.0 standard deviations represents an appropriate range and that the accuracy of cost-to-charge ratios falling outside that range is questionable." *Id.* at 38504. However, the use of a SWA CCR for many of the Tenet Hospitals was not due to any data reporting or entry errors, but the intentional conduct of Tenet.

40. The SWA, which replaced the CCR in that case, was considerably higher than the hospital's actual CCR. For example, certain of the Tenet Hospitals in California had a CCR below 0.19 in 2002 due to dramatically increased charges, thus triggering the use of the California-applicable SWA, such that their CCR became 0.34. The higher SWA was then applied by the Fiscal Intermediary pursuant to the above reimbursement formula to compute that hospital's Outlier payment and, therefore, generated excessive Outlier payments to Tenet.

41. A CCR would only fall below the national threshold for legitimate reasons in unusual circumstances. Indeed, only 67 hospitals (out of approximately 4,000) have had their CCR reset to the SWA one or more times between 1997 and 2003. Yet nearly half of those were Tenet hospitals. Twenty-eight Tenet hospitals had their CCRs reset to the SWA between 2000 and 2003. For instance, Doctors Medical Center in Modesto, California had a CCR of 0.0801 in 2000, 0.0764 in 2001, and 0.0726 in 2002. This means that Doctors Medical Center's charges were more than twelve times higher than its costs (*i.e.*, a 1200% markup). In each of these years, Doctors Medical Center's CCR was reset to the SWA. Tenet's dominance in this group of hospitals is strong evidence that Tenet was intentionally increasing its charges to lower its CCRs and generate excess Outlier payments.

D. The Effects of Excessive Outlier Payments

42. In accordance with 42 U.S.C. § 1395ww(d)(2)(E), CMS withholds 5.1% from the payments that hospitals should have received under IPPS to make up the fund that is used to cover Outlier payments for the benefit of all participating hospitals in the nation.

43. According to the CMS Administrator, "[o]utlier payments can be viewed as insurance for hospitals against the large losses that could result from extremely expensive cases. . . . [The] fixed-loss threshold [*i.e.*, the Outlier Threshold] operates like the deductible in a typical insurance policy. When the cost of a case exceeds the fixed-loss threshold, [CMS] pay[s] the hospital an additional amount equal to 80 percent of the estimated costs beyond that loss threshold – similar to coinsurance required in most insurance policies." Thomas A. Scully, Testimony Before the Senate Appropriations Subcommittee on Labor, Health and Human Services, and Education (March 11, 2003).

44. Based on prior experience, the Secretary uses a computer algorithm that automatically "set[s] the fixed-loss threshold [*i.e.*, the Outlier Threshold] each year at an amount that [when used to compute Outlier payments] is projected to generate [total] outlier [p]ayments equal to 5.1 percent of total payments under the [IPPS]. Medicare then pays 80 percent of hospitals' costs above their fixed-loss threshold amounts." *Id.* In other words, the Outlier Threshold is designed so that the Outlier payments for the upcoming year will approximately equal the payments into the Outlier Pool during that year, assuming participating hospitals act honestly.

45. "[A]s hospitals claim more and more outlier cases, [CMS has] been forced to raise the fixed-loss threshold to remain close to the 5.1 percent target (and we have not been close)."

Id. Further, "[a]s outlier claims increased (and the agency had no idea why) the outlier threshold has skyrocketed – from $14,050 in 2000 to $33,560 in 2003 – as the agency raised the bar to try (very unsuccessfully) to stay within the 5.1 percent target." *Id.*

46. Notwithstanding CMS's upward adjustments of the Outlier Threshold in each of the years 2000-2002, actual Outlier spending in those years exceeded the projected 5.1%. Outlier payments totaled 7.6% of total IPPS payments in 2000 ($5.3 billion in total, or $1.8 billion more than projected); 7.7% of total IPPS payments in 2001 ($5.5 billion in total, or $1.9 billion more than projected); and 7.9% of total IPPS payments in 2002 ($6.2 billion in total, or $2.5 billion more than projected).

47. Specifically, the Outlier Threshold for 2000 was set at $14,600; was raised to $17,550 for 2001; was raised to $21,025 for 2002; and, then, it was raised again to $33,560 for 2003. *See* 68 Fed. Reg. 34494, 34496 (June 9, 2003). For 2004, following changes in the Outlier rules, the Outlier Threshold was set at $31,000. For 2005, it has been set at $25,800. The huge cost overruns by the Outlier Pool and the accompanying sharp increases in the Outlier Threshold coincide with the implementation of the inflated charging scheme by Tenet. Likewise, the recent decreases in the Outlier Threshold coincide with a change in the regulatory scheme preventing a continuation of the abusive practices of Tenet.

48. Thus, as the Outlier Threshold has been raised as a result of Tenet's scheme, the Hospital Plaintiffs have received less in Outlier payments than they would have received but for the wrongful conduct of Tenet.

49. Suppose, for example, that a hospital incurred costs of $100,000 to treat a Medicare patient, but only received $35,000 under IPPS. If the Outlier Threshold was $15,000, then that hospital would have received an Outlier payment of $40,000, computed as follows:

Outlier Payment= 80% x [Cost – IPPS payment – Threshold]
= 80% x [$100,000 - $35,000 - $15,000] = $40,000

However, if the Outlier Threshold was instead $30,000, the hospital's Outlier payment would have been $28,000, a loss of $12,000.

50. Tenet knew or should have known that its improper and excessive claims for Outlier payments would result in a reduction in Outlier compensation for the Hospital Plaintiffs. Thus, the Hospital Plaintiffs are foreseeable victims.

51. Explaining the consequences of raising the Outlier Threshold, CMS's Administrator, Thomas A. Scully, stated that "[a]s a direct result, more hospitals have been forced to absorb the costs of the complex cases they treat, while a relatively small number of hospitals that have been aggressively gaming the current rules benefit by getting a hugely disproportionate share of outlier payments. As you can see, the behavior of a few hundred hospitals – those that took advantage of the outlier program – [is] the main cause of the sharp increases in the loss threshold." *Id.*

E. Tenet Inflates its Charges

52. Beginning in 1999 and continuing into 2003, Tenet engaged in a scheme to improperly maximize its Outlier payments by inflating its charges. Tenet received Outlier payments of $346 million between June 1, 2000 and May 31, 2001 or 14.8% of its total Medicare revenues (both inpatient and outpatient). Tenet received Outlier payments of $455 million

between June 1, 2001 and May 31, 2002 or 16.1% of its total Medicare revenues. Tenet received Outlier payments of $305 million between June 1, 2002 and December 31, 2002 or 17.9% of its total Medicare revenues. Thus, in a period of only 31 months, Tenet collected more than $1.1 billion from the Outlier Pool, or more than $35 million per month. In contrast, if Tenet's Outlier payments had been 5.1% of its IPPS payments, Tenet would have received roughly $6 million per month during the same time period.

53. Indeed, in 2000, Outlier payments were more than 46% of Doctors Medical Center's IPPS payments. In 2001, that percentage jumped to 57.28%; in 2002, it went up to an extraordinary 109.92%; and in 2003, its Outlier payments were 197.71% of the IPPS payments. Upon information and belief, Doctors Medical Center in Modesto, California received over $100 million in overpayments through the inflated charging scheme.

54. Similarly, Garfield Medical Center in California had a CCR of 0.0936 in 2001, and 0.0970 in 2002, improperly triggering the use of the SWA each of those years. Garfield Medical Center's Outlier payments as a percentage of IPPS payments rose from 36.49% in 2001 to 48.91% in 2002, and then shot up to 84.73% in 2003. Upon information and belief, Garfield Medical Center received over $50 million in overpayments through the inflated charging scheme.

55. As a final example, Brownsville Medical Center in Texas had a CCR of 0.1243 in 2000, 0.1101 in 2001, and 0.1043 in 2002, improperly triggering the use of the SWA each of those years. Brownsville Medical Center's Outlier payments as a percentage of IPPS payments in 1998 was only 4.6%. In 2001, after Tenet implemented its inflated charging scheme, the percentage of Outlier payments soared to an astonishing 46.83%. In 2002, the percentage of Outlier payments increased to 75.70% and then increased again to 105.77% in 2003. Upon

information and belief, Brownsville Medical Center received over $75 million in overpayments through the inflated charging scheme.

56. More than a third of the Tenet hospitals had dramatic increases in their Outlier payments since 2000. Doctors Medical Center, Garfield Medical Center, and Brownsville Medical Center hold positions in the top 10 of the 200 hospitals nationwide with the greatest increases in Outlier payments since 2000. Doctors Medical Center holds the top spot. In total, approximately 39 Tenet hospitals made the top 200 list.

57. A study of Medicare cost reports for fiscal year 2000/2001 revealed that of the top 100 hospitals with the lowest CCRs, 64 were Tenet hospitals, and the top 14 hospitals were all Tenet hospitals. *The IHSP Hospital 200: The Nation's Most – and Least – Expensive Hospitals* at Table 4, Institute for Health and Socio-Economic Policy (publisher) (June 2003). Overall Tenet hospitals averaged gross markups of 477% over costs, indicating that Tenet was inflating gross charges to make windfall profits from the Outlier Pool in violation of the Medicare rules and policies. *Id*.

58. Although Tenet Hospitals file claims for Outlier reimbursement, and are the initial recipients of the payments, the money is channeled to Tenet. As Tenet improperly siphoned money from the Outlier Pool to the detriment of honest hospitals, its profits increased and its stock prices soared.

59. Tenet's scheme caused direct, foreseeable, and substantial economic harm to the Hospital Plaintiffs. As a direct and foreseeable result of Tenet's scheme and the resulting depletion of the Outlier Pool, the Outlier Threshold has been increased in each of the last four years through 2003, consequently reducing the frequency and amount of the Hospital Plaintiffs'

Outlier payments. The Hospital Plaintiffs continued to experience the effects of Tenet's scheme even after Tenet changed its practices as of January 1, 2003, since the Outlier Threshold calculation is based, in part, on prior experience.

60. The damages suffered by the Hospital Plaintiffs consist therefore of significant amounts of unpaid Outlier costs that were actually incurred by the Hospital Plaintiffs. These Outlier costs were not reimbursed as a direct, proximate, and foreseeable consequence of Tenet's scheme.

61. Tenet knew that the natural, direct, proximate, foreseeable—and, indeed, expected and automatic—consequence of its scheme would be an increase in the Outlier Threshold in the following years. That increase would and did adversely affect the Hospital Plaintiffs, a fact known to Tenet.

62. On January 2, 2003, Tenet announced that it had received an administrative investigative demand subpoena from the Department of Justice. The subpoena sought documents from Tenet and 19 subsidiary hospitals related to Outlier payments.

63. Four days later, Tenet announced that it had volunteered to adopt a new policy on Medicare Outlier payments as of January 1, 2003. Under the new policy, the CCR used to calculate Outlier payments would be based on the most recent cost report available. In addition, the SWA would not be used in place of the hospital-specific CCR. Tenet's Outlier payments for 2003 were only $101 million, as compared to $513 million for 2002, a more than 80% decrease.

Count I

<u>Violation of RICO through Transporting and Receiving Stolen or Converted Money</u>
<u>18 U.S.C. § 1962(c)</u>

64. The Hospital Plaintiffs repeat and reallege each and every allegation contained in ¶¶ 1 - 63, *supra.*

65. This is an action pursuant to 18 U.S.C. § 1964(c), by the Hospital Plaintiffs asserting a private right of action against Tenet for its conduct of an enterprise through a pattern of racketeering activity in violation of RICO, 18 U.S.C. § 1962(c).

66. At all time periods relevant hereto, Tenet, its officers, directors, managers, employees, agents, and representatives, by, through, and with each of the Tenet Hospitals, including those owned as part of a joint venture (*e.g.*, Encino-Tarzana Regional Medical Center in Tarzana, California) and those leased by Tenet (*e.g.*, Doctors Medical Center in San Pablo, California), and their officers, directors, managers, employees, agents, representatives, and outside consultants devised and engaged in a scheme whereby it formed a separate association-in-fact enterprise in order to wrongfully obtain Outlier payments that it was not entitled to, resulting in the receipt of Outlier overpayments in excess of $1 billion, to the direct, obvious, and inescapable injury to the business and property of the Hospital Plaintiffs. The Tenet Hospitals that were part of the RICO enterprise are listed in Paragraph 25 of the Complaint. The outside consultants met with Tenet's officers shortly after the enactment of the Balanced Budget Act of 1997, Pub. L. No. 105-33 ("BBA"), to advise Tenet of alternative revenue sources in light of the adverse financial impact of the BBA. The outside consultants recommended that Tenet artificially increase its charges in order to maximize Outlier payments, a recommendation that Tenet subsequently followed.

67. In violation of 18 U.S.C. § 1962(c), Tenet conducted or participated in the affairs of the association-in-fact enterprise identified herein through a pattern or racketeering activity as set forth herein.

68. The pattern of racketeering activity described in this count is but one more example in Tenet's long history of fraud, corruption, and other criminal acts. Tenet has reached the pinnacle of corporate wrongdoing, with ongoing criminal activity spanning at least fourteen years.

69. The Hospital Plaintiffs are each "persons" within the meaning of 18 U.S.C. §§ 1961(3) and 1964(c).

70. Tenet is a "person" within the meaning of 18 U.S.C. § 1961(3).

Tenet's RICO Enterprise

71. The RICO "enterprise" is an association-in-fact consisting of Tenet, Tenet Hospitals, including those owned as part of a joint venture (*e.g.*, Encino-Tarzana Regional Medical Center in Tarzana, California) and those leased by Tenet (*e.g.*, Doctors Medical Center in San Pablo, California), their officers, directors, managers, employees, agents, representatives, and outside consultants who assisted in devising and implementing the inflated charging scheme ("Tenet's RICO Enterprise").

72. Tenet's RICO Enterprise is an ongoing and continuing organization consisting of both corporations and individuals that have been associated for the common or shared purpose of inflating patient charges in order to improperly obtain and then retain higher amounts of Outlier payments for Tenet. This scheme caused a consistent and direct increase in the Outlier

Threshold so that the Outlier Threshold was at an artificially high level, thereby decreasing the number of the Hospital Plaintiffs' claims that would qualify for Outlier payments as well as decreasing the dollar amount of qualifying Outlier payments to the Hospital Plaintiffs.

73. At all relevant times, the association of entities that form Tenet's RICO Enterprise was also associated for the lawful purpose of engaging in the business of hospital management, hospital management consulting, and providing medical services in the Tenet Hospitals.

74. Tenet constructed and implemented a common network with each of the Tenet Hospitals through various contractual relationships, financial ties, and coordinated reporting, billing, and information systems. Tenet and each of the Tenet Hospitals are separate and distinct corporations. Each of the Tenet Hospitals is a separate ongoing business with its own customer base that is separate and distinct from Tenet.

75. At all relevant times, Tenet owned, controlled or operated, in whole or in part, each of the Tenet Hospitals and engaged outside consultants which were part of Tenet's RICO Enterprise and coordinated and agreed with each of the Tenet Hospitals and outside consultants to engage in a course of business dealing in order to further its illegal scheme and the RICO enterprise.

76. The revenues and profits generated by the unlawful activities of Tenet's RICO enterprise (the excessive and improper Outlier compensation stolen and/or converted from the Outlier Pool) have been transported in interstate commerce to Tenet.

Conduct of the Affairs of Tenet's RICO Enterprise

77. Tenet exercised ownership and/or control over the Tenet Hospitals, whether or not wholly owned by Tenet, in order to conduct, or participate in the conduct of, Tenet's RICO Enterprise through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c). Such conduct and participation was carried out in the following ways:

(a) Each of the Tenet Hospitals was controlled and/or, directly or through subsidiaries, owned by Tenet;

(b) Each of the Tenet Hospitals was a party to the provider agreement with CMS;

(c) Tenet, together with each of the Tenet Hospitals, directly controlled the charges for each Outlier patient submitted to CMS for reimbursement from the Outlier Pool;

(d) Tenet, together with each of the Tenet Hospitals, directly controlled, or was directly aware of, the costs for care of each Outlier patient submitted to CMS for reimbursement from the Outlier Pool;

(e) Tenet relied on the Tenet Hospitals and their officers, directors, managers, employees, agents, and representatives to have direct contact with CMS and its representatives and submit to CMS inflated patient charges in order to promote the inflated charging scheme of Tenet's RICO Enterprise;

(f) Tenet implemented and controlled the inflated charging scheme it devised with the assistance of outside consultants through each of the Tenet Hospitals, their officers, directors, managers, employees, agents, and representatives;

(g) Each of the Tenet Hospitals received reimbursement from CMS for such inflated Outlier patient charges on a regular and constant basis and, at the direction of Tenet, through its officers, directors, managers, employees, agents, and representatives, transmitted, transported or transferred those proceeds through interstate commerce to Tenet; and

(h) Tenet caused the transfer and received the monies that constituted stolen and/or converted Outlier payments to each of the Tenet Hospitals.

Tenet's Pattern of Racketeering Activity –

Transfer and Receipt of Stolen or Converted Money

78. At all time periods relevant hereto, Tenet knowingly, willfully, and unlawfully conducted or participated, directly or indirectly, in the conduct of the affairs of Tenet's RICO Enterprise, through a pattern of racketeering activity, including multiple predicate acts chargeable under 18 U.S.C. § 2314 (transporting stolen or converted money) and 18 U.S.C. § 2315 (receiving stolen or converted money) in violation of 18 U.S.C. § 1962(c).

79. Tenet, through its RICO Enterprise, willfully and knowingly engaged in, or furthered, a systematic, ongoing course of conduct with the goal and intent to steal and/or convert money from the Outlier Pool. It was the common and intended practice of Tenet, through its RICO Enterprise, to submit claims to CMS and its representatives for Outlier reimbursement that were wrongfully based on inflated charges. This improper conduct was

carried out by a wide array of Tenet's and the Tenet Hospitals' officers, directors, employees, managers, agents, and representatives, as well as with assistance and guidance from outside consultants.

80. As a foreseeable, willful, and intentional result of the inflated charging scheme perpetuated by the Tenet RICO Enterprise, the Tenet Hospitals received excessive Outlier compensation on thousands of occasions.

81. The money (*i.e.,* Outlier overpayments) sought and received by the Tenet Hospitals did not belong to them. At no time did Tenet or the Tenet Hospitals have a legitimate ownership or possessory right, entitlement or interest in that money from the Outlier Pool. Thus, Tenet and the Tenet Hospitals' exercise of control over the money was unauthorized and wrongful.

82. Tenet caused these payments to be transported, transmitted or transferred from the thirty Tenet Hospitals, through interstate commerce, to itself through mail, wire and/or other delivery, and reported this money as revenue for Tenet. Therefore, Tenet's pattern of racketeering activity, upon information and belief, involved thousands of separate instances of transporting, transmitting or transferring stolen or converted monies through interstate commerce from the Tenet Hospitals to Tenet over the course of several years.

83. Tenet at all times knew this money was stolen or converted and indeed devised and implemented the inflated charging scheme for the purpose of stealing and converting money from the Outlier Pool that was held for the benefit of the Hospital Plaintiffs.

84. Tenet willfully and knowingly caused these stolen or converted monies to be transmitted, transported or transferred to it and willingly received this money after it traveled interstate knowing it was stolen or converted.

85. The payments Tenet received were far in excess of what it was entitled to, thereby depleting money from the Outlier Pool and directly and proximately causing injury to the Hospital Plaintiffs. The Hospital Plaintiffs suffered injury in that they were forced to absorb the costs of care for Outlier patients that they would have otherwise been compensated for from the Outlier Pool but for Tenet's improper and illegal acts. Tenet, therefore, took for itself money that would have gone to benefit the Hospital Plaintiffs which had valid Outlier claims that went unpaid or underpaid as a direct and foreseeable consequence of the actions of the RICO Enterprise.

86. It is evident that Tenet had a clear indication of the effects its scheme had on its Outlier revenues and on the Outlier Threshold because it continued to inflate its charges and submit claims based on overly inflated charges for several years. Indeed, the year after Tenet implemented its criminal scheme it stated in its 10-K, "Congress has mandated that [CMS] limit Outlier Payments to equal between 5% and 6 % of total DRG payments. In order to bring expected Outlier Payments within this mandate, [CMS] has proposed raising the threshold standard used to determine the patients for which a hospital will receive Outlier Payments, effective October 1, 2000." Tenet Healthcare Corp., Form 10-K (FY ended May 31, 2000) filed August 15, 2004, p.14. In addition, during this time, Tenet saw the extraordinary increase in its Outlier payment receipts that were not related to its actual costs incurred for Outlier patient care.

87. Tenet witnessed and experienced the effects of the increase in the Outlier Threshold during these years, as did the Hospital Plaintiffs. However, only Tenet knew that there was a significant increase in the Outlier Threshold as a result of its own inflated charging scheme and knew that it was its transportation and receipt of these stolen or converted monies that had a direct impact on other participants in the Medicare system. All the while, Tenet was directly and immediately benefiting from the increased revenue the charging scheme provided.

88. Therefore, Tenet's illegal acts were tainted with the deliberate intent to commit the predicate acts and cause the injury alleged in this Complaint.

89. It was only after Tenet's inflated charging scheme was discovered, that Tenet revealed that it recognized extraordinary Outlier revenues.

90. Since 2000, the value of the stolen or converted money that was transported, transmitted, or transferred interstate and received by Tenet far exceeds $5,000, as required by 18 U.S.C. §§ 2314 and 2315, and is believed to be at least $1 billion. On each individual occasion that stolen or converted money was transferred and received through interstate commerce, the amount of the money transferred and received was over $5,000. Each transfer, as well as each receipt, of stolen or converted funds constitutes a separate predicate act.

91. The Hospital Plaintiffs have been harmed by an amount far exceeding $5,000. The Hospital Plaintiffs' damages include at least the difference between what they would have received in Outlier reimbursement and what they did receive as a direct result of Tenet's violation of 18 U.S.C. §§ 2314 and 2315. This amount exceeded $5,000 on hundreds of occasions that the Hospital Plaintiffs received Outlier payments. Therefore, Tenet's commission of these criminal predicate acts directly and proximately caused injury to the Hospital Plaintiffs'

business or property by an aggregate amount of at least $ 1 million during the time periods relevant hereto.

92. Like the majority of other crimes, tortious acts, and violations that Tenet has committed over the past fourteen years, Tenet's criminal activity in furtherance of its intent and plan to steal or convert money from the Outlier Pool was ongoing and continuous and only ceased upon Tenet being caught. CMS discovered Tenet's criminal acts and changed the Outlier compensation process, ensuring that Tenet could not continue its inflated charging scheme. Collectively, these violations constitute a "pattern of racketeering activity," within the meaning of 18 U.S.C. § 1962(c).

93. In accordance with 18 U.S.C. § 1964, Tenet is liable to the Hospital Plaintiffs for threefold the actual damages sustained by them, plus the costs of bringing this suit, including reasonable attorney's fees.

Tenet's Motive

94. The motive of Tenet in conducting or participating, directly or indirectly, in the conduct of the affairs of Tenet's RICO Enterprise was to steal or convert money from the Outlier Pool through an inflated charging scheme to increase revenues and profits for Tenet, while decreasing profits and revenues from Outlier patient treatment for the Hospital Plaintiffs and other participating hospitals.

Damages Caused by Tenet's RICO Enterprise

95. Tenet's violations of 18 U.S.C. §§ 1962(c) directly and proximately caused the Hospital Plaintiffs to be injured in their business or property by an aggregate amount of at least $1 million. The Hospital Plaintiffs had to absorb the costs of care for treatment of Outlier

patients that they were entitled to compensation for from the Outlier Pool and which they otherwise would have received but for Tenet's theft and/or conversion of these monies.

Count II

Conspiracy to Violate 18 U.S.C. § 1962(c) Through Transporting and Receiving Stolen or Converted Money in Violation of 18 U.S.C. § 1962(d)

96. This is an action pursuant to 18 U.S.C. § 1964(c), by the Hospital Plaintiffs asserting a private right of action against Tenet for its conspiracy to violate 18 U.S.C. § 1962(c), in violation of 18 U.S.C. § 1962(d). The Hospital Plaintiffs repeat and reallege each and every allegation contained in ¶¶ 1 – 63, and 66 - 92, *supra.*

97. At all time periods relevant hereto, Tenet knowingly, willfully, and unlawfully conspired and agreed with the Tenet Hospitals and the outside consultants to conduct or participate, directly and indirectly, in the conduct of the affairs and activities of Tenet's RICO Enterprise through a pattern of racketeering activity, including acts chargeable under 18 U.S.C. § 2314 (transporting stolen money) and 18 U.S.C. § 2315 (receiving stolen money), in violation of 18 U.S.C. § 1962(c) and (d), by Tenet agreeing to the objective of the conspiracy and/or by agreeing to commit at least two of the criminal predicate acts alleged herein.

98. At all relevant times, Tenet knowingly and willfully agreed to participate, and participated, in an inflated charging scheme to steal and/or convert money from the Outlier Pool and consequently, from the other participants in the Medicare program, including the Hospital Plaintiffs, in order to further Tenet's RICO Enterprise and derive increased profits from such enterprise.

99. The object of the conspiracy was to steal or convert money from the Outlier Pool to which the Hospital Plaintiffs were entitled, which money was held for their benefit, and would have been paid to them but for Tenet's improper acts. This objective was to be achieved through a scheme to misrepresent the true costs of Outlier patient care by wrongfully inflating patient charges so that the Tenet Hospitals would receive Outlier compensation to which they were not entitled. Tenet, through its officers and directors, directed, controlled, and implemented the inflated charging scheme in the Tenet Hospitals. Tenet's receipt of stolen money from the Outlier Pool was to be accomplished by causing the transportation, transmission or transfer of these monies from the thirty Tenet Hospitals through mail, wire and/or other delivery, in violation of 18 U.S.C. §§ 2314 and 2315.

100. Tenet's violations of 18 U.S.C. § 1962(d) directly and proximately caused the Hospital Plaintiffs to be injured in their business or property by an aggregate amount of at least $1 million. As a result of Tenet's false and inflated patient charges, Tenet took for itself Outlier compensation to which the Hospital Plaintiffs were entitled and which they otherwise would have received but for Tenet's theft and conversion of these monies from the Outlier Pool. The injuries suffered by the Hospital Plaintiffs as a result of the conspiracy to commit the offenses described in this complaint includes at least the difference between what the Hospital Plaintiffs would have received in Outlier compensation and what they did receive as a direct result of Tenet's violation of 18 U.S.C. §§ 2314 and 2315. This amount exceeded $5,000 on hundreds of occasions that the Hospital Plaintiffs received Outlier payments.

101. In accordance with 18 U.S.C. § 1964, Tenet is liable to the Hospital Plaintiffs for threefold the actual damages sustained by them, plus the costs of bringing this suit, including reasonable attorney's fees.

Count III

<u>Violation of Florida Civil RICO - §§ 772.103(3), and .104, Fla. Stat.</u>

102. The Hospital Plaintiffs repeat and reallege each and every allegation contained in ¶¶ 1 - 63, *supra.*

103. This is an action pursuant to § 772.104, Fla. Stat., by the Hospital Plaintiffs asserting a private right of action against Tenet for its conduct of an enterprise through a pattern of criminal activity in violation of § 772.103(3), Fla. Stat.

104. At all time periods relevant hereto, Tenet, its officers, directors, managers, employees, agents, and representatives, by, through, and with each of the Tenet Hospitals, including those owned as part of a joint venture (*e.g.*, Encino-Tarzana Regional Medical Center in Tarzana, California) and those leased by Tenet (*e.g.*, Doctors Medical Center in San Pablo, California), and their officers, directors, managers, employees, agents, representatives, and outside consultants devised and engaged in a scheme whereby it formed a separate association-in-fact enterprise in order to wrongfully obtain Outlier payments that it was not entitled to, resulting in the receipt of Outlier overpayments in excess of $1 billion, to the direct, obvious, and inescapable injury to the business and property of the Hospital Plaintiffs. The Tenet Hospitals that were part of the RICO enterprise are listed in Paragraph 25 of the Complaint. The outside consultants met with Tenet's officers shortly after the enactment of the Balanced Budget Act of 1997, Pub. L. No. 105-33 ("BBA"), to advise Tenet of alternative revenue sources in light of the adverse financial impact of the BBA. The outside consultants recommended that Tenet artificially increase its charges in order to maximize Outlier payments, a recommendation that Tenet subsequently followed.

105. In violation of § 772.103(3) Fla. Stat., Tenet conducted or participated in the affairs of the association-in-fact enterprise identified herein through a pattern of criminal activity as set forth herein.

106. The pattern of criminal activity described in this count is but one more example in Tenet's long history of fraud, corruption, and other criminal acts. Tenet has reached the pinnacle of corporate wrongdoing, with ongoing criminal activity spanning at least fourteen years.

107. The Hospital Plaintiffs are each "persons" within the meaning of § 772.104, Fla. Stat.

108. Tenet is a "person" within the meaning of § 772.103, Fla. Stat.

Tenet's RICO Enterprise

109. The RICO "enterprise" is an association-in-fact consisting of Tenet, Tenet Hospitals, including those owned as part of a joint venture (*e.g.*, Encino-Tarzana Regional Medical Center in Tarzana, California) and those leased by Tenet (*e.g.*, Doctors Medical Center in San Pablo, California), their officers, directors, managers, employees, agents, representatives, and outside consultants who assisted in devising and implementing the inflated charging scheme ("Tenet's RICO Enterprise").

110. Tenet's RICO Enterprise is an ongoing and continuing organization consisting of both corporations and individuals that have been associated for the common or shared purpose of inflating patient charges in order to improperly obtain and then retain higher amounts of Outlier payments for Tenet. This scheme caused a consistent and direct increase in the Outlier Threshold so that the Outlier Threshold was at an artificially high level, thereby decreasing the

number of the Hospital Plaintiffs' claims that would qualify for Outlier payments as well as decreasing the dollar amount of qualifying Outlier payments to the Hospital Plaintiffs.

111. At all relevant times, the association of entities that form Tenet's RICO Enterprise was also associated for the lawful purpose of engaging in the business of hospital management, hospital management consulting, and providing medical services in the Tenet Hospitals.

112. Tenet constructed and implemented a common network with each of the Tenet Hospitals through various contractual relationships, financial ties, and coordinated reporting, billing, and information systems. Tenet and each of the Tenet Hospitals are separate and distinct corporations. Each of the Tenet Hospitals is a separate ongoing business with its own customer base that is separate and distinct from Tenet.

113. At all relevant times, Tenet owned, controlled or operated, in whole or in part, each of the Tenet Hospitals and engaged outside consultants which were part of Tenet's RICO Enterprise and coordinated and agreed with each of the Tenet Hospitals and outside consultants to engage in a course of business dealing in order to further its illegal scheme and the RICO enterprise.

<u>Conduct of the Affairs of Tenet's RICO Enterprise</u>

114. Tenet exercised ownership and/or control over the Tenet Hospitals, whether or not wholly owned by Tenet, in order to conduct, or participate in the conduct of, Tenet's RICO Enterprise through a pattern of criminal activity in violation of § 772.103(3) Fla. Stat. Such conduct and participation was carried out in the following ways:

(a) Each of the Tenet Hospitals was controlled and/or, directly or through subsidiaries, owned by Tenet;

(b) Each of the Tenet Hospitals was a party to the provider agreement with CMS;

(c) Tenet, together with each of the Tenet Hospitals, directly controlled the charges for each Outlier patient submitted to CMS for reimbursement from the Outlier Pool;

(d) Tenet, together with each of the Tenet Hospitals, directly controlled, or was directly aware of, the costs for care of each Outlier patient submitted to CMS for reimbursement from the Outlier Pool;

(e) Tenet relied on the Tenet Hospitals and their officers, directors, managers, employees, agents, and representatives to have direct contact with CMS and its representatives and submit to CMS inflated patient charges in order to promote the inflated charging scheme of Tenet's RICO Enterprise;

(f) Tenet implemented and controlled the inflated charging scheme it devised with the assistance of outside consultants through each of the Tenet Hospitals, their officers, directors, managers, employees, agents, and representatives, and thereby knowingly obtained the property of the Hospital Plaintiffs with intent to permanently deprive the Hospital Plaintiffs of a right to that property or a benefit from that property and/or to appropriate that property to Tenet's own use.

(g) Each of the Tenet Hospitals received reimbursement from CMS for such inflated Outlier patient charges on a regular and constant basis and, at the direction of Tenet, through its officers, directors, managers, employees, agents, and representatives, transmitted, transported or transferred those proceeds to Tenet; and

(h) Tenet caused the theft of the monies that constituted stolen Outlier payments to each of the Tenet Hospitals.

Tenet's Pattern of Criminal Activity – Theft

115. At all time periods relevant hereto, Tenet knowingly conducted or participated, directly or indirectly, in the affairs of Tenet's RICO Enterprise, through multiple acts constituting a pattern of criminal activity, as defined in § 772.102(1)(a)(20), Fla. Stat., in violation of § 772.103(3), Fla. Stat.

116. Tenet, through its RICO Enterprise, knowingly obtained or used the property of CMS and/or the Hospital Plaintiffs with intent to, either temporarily or permanently, deprive CMS and/or the Hospital Plaintiffs of a right to the property or a benefit from the property and/or appropriated the property to its own use in violation of § 812.014(1)(a), Fla. Stat., and/or § 812.014(1)(b), Fla. Stat. It was the common and intended practice of Tenet, through its RICO Enterprise, to submit claims to CMS and its representatives for Outlier reimbursement that were wrongfully based on inflated charges. This improper conduct was carried out by a wide array of Tenet's and the Tenet Hospitals' officers, directors, employees, managers, agents, and representatives, as well as with assistance and guidance from outside consultants.

117. As a foreseeable, willful, and intentional result of the inflated charging scheme perpetuated by the Tenet RICO Enterprise, the Tenet Hospitals received excessive Outlier compensation on thousands of occasions.

118. The money (*i.e.,* Outlier overpayments) sought and received by the Tenet Hospitals did not belong to them. At no time did Tenet or the Tenet Hospitals have a legitimate ownership or possessory right, entitlement or interest in that money from the Outlier Pool. Thus, Tenet and the Tenet Hospitals' exercise of control over the money were unauthorized and wrongful.

119. The payments Tenet received were far in excess of what it was entitled to, thereby depleting money from the Outlier Pool and directly and proximately causing injury to the Hospital Plaintiffs. The Hospital Plaintiffs suffered injury in that they were forced to absorb the costs of care for Outlier patients that they would have otherwise been compensated for from the Outlier Pool but for Tenet's improper and illegal acts. On multiple occasions, through a pattern of criminal activity, Tenet knowingly obtained or used the property of CMS and/or the Hospital Plaintiffs with intent to, either temporarily or permanently, deprive CMS and/or the Hospital Plaintiffs of a right to the property or a benefit from the property and/or appropriated the property to its own use.

120. Therefore, Tenet's illegal acts were tainted with the deliberate intent to commit the predicate acts and cause the injury alleged in this Complaint.

121. It was only after Tenet's inflated charging scheme was discovered, that Tenet revealed that it recognized extraordinary Outlier revenues.

122. Tenet's commission of these criminal predicate acts directly and proximately caused injury to the Hospital Plaintiffs' business or property by an aggregate amount of at least $ 1 million during the time periods relevant hereto.

123. Therefore, Tenet's violations of § 772.103(3), Fla. Stat., directly and proximately caused the Hospital Plaintiffs to be injured in their business or property by an aggregate amount of at least $1 million. The Hospital Plaintiffs had to absorb the costs of care for treatment of Outlier patients that they were entitled to compensation for from the Outlier Pool and which they otherwise would have received but for Tenet's theft of these monies.

124. In accordance with § 772.104, Fla. Stat., Tenet is liable to the Hospital Plaintiffs for threefold the actual damages sustained by them, plus the costs of bringing this suit, including reasonable attorney's fees.

Count IV

Conspiracy to Violate Florida Civil RICO - § 772.103(4) Fla. Stat.

125. This is an action pursuant to § 772.104, Fla. Stat., by the Hospital Plaintiffs asserting a private right of action against Tenet for its conspiracy to violate § 772.103(3), Fla. Stat., in violation of § 772.103(4), Fla. Stat. The Hospital Plaintiffs repeat and reallege each and every allegation contained in ¶¶ 1 – 63, and 104 - 122, *supra.*

126. At all time periods relevant hereto, Tenet, with the Tenet Hospitals and the outside consultants, conspired or endeavored to violate § 772.103(3), Fla. Stat., by conducting or participating, directly or indirectly, in the affairs of Tenet's RICO Enterprise through a pattern of criminal activity, including multiple criminal acts chargeable under § 772.102(1)(a)(20), Fla.

Stat., by Tenet agreeing to the objective of the conspiracy and/or by agreeing to commit at least two of the criminal predicate acts alleged herein.

127. At all time periods relevant hereto, Tenet conspired to and agreed to participate, and participated, in an inflated charging scheme to steal money from the Outlier Pool and consequently, from the other participants in the Medicare program, including the Hospital Plaintiffs, in order to further Tenet's RICO Enterprise and derive increased profits from such enterprise.

128. Tenet's violation of § 772.103(4), Fla. Stat., directly and proximately caused the Hospital Plaintiffs to be injured in their business or property by an aggregate amount of at least $1 million.

129. In accordance with § 772.104, Fla. Stat., Tenet is liable to the Hospital Plaintiffs for threefold the actual damages sustained by them, plus the costs of bringing this suit, including reasonable attorney's fees.

Count V

**<u>Violation of Florida Deceptive and Unfair Trade Practices Act
Chapter 501, Part II, Fla. Stat. (2004)</u>**

130. This is an action against Tenet pursuant to Chapter 501, Part II, Fla. Stat. Plaintiff, State of Florida, Office of the Attorney General, Department of Legal Affairs, repeats and realleges each and every allegation contained in ¶¶ 1-63*, supra.*

131. Chapter 501, Part II, Fla. Stat. is entitled, "Florida Deceptive and Unfair Trade Practices Act." Section 501.204(1) of the Act provides that "[u]nfair methods of competition,

unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

132. Plaintiff, State of Florida, Office of the Attorney General, Department of Legal Affairs, is an enforcing authority of the Act pursuant to § 501.203(2), Fla. Stat. (2004). The statutory violations alleged herein affected more than one judicial circuit in the State of Florida.

133. Plaintiff, State of Florida, Office of the Attorney General, Department of Legal Affairs, is authorized to seek damages and other statutory relief on behalf of governmental entities who have been damaged by violations of the Act pursuant to § 501.207(1)(c), Fla. Stat. The Hospital Plaintiffs are each governmental entities pursuant to § 501.207(1)(c), Fla. Stat. The Hospital Plaintiffs have suffered actual damages as a result of Tenet's violations of the Act.

134. The Attorney General has reviewed this matter and determined that an enforcement action serves the public interest.

135. As set forth in ¶¶ 1 - 63, *supra,* Tenet has engaged in unfair methods of competition; has engaged in unconscionable acts or practices; has engaged in representations, acts, practices or omissions that are material, and that are deceptive; and/or has committed acts or practices in the conduct of trade or commerce that offend established public policy and are immoral, unethical, oppressive, unscrupulous or substantially injurious to governmental entities. Thus, Tenet has engaged in unfair methods of competition and/or unconscionable, unfair or deceptive acts or practices in the conduct of any trade or commerce in violation of § 501.204(1), Fla. Stat. (2004).

136. Tenet's acts in connection with the Outlier Pool involve the conduct of trade or commerce as defined in § 501.203(8), Fla. Stat.

137. The aforesaid acts and practices of Tenet were to the injury and prejudice of the public and governmental entities, including the Hospital Plaintiffs.

Count VI

Unjust Enrichment

138. This is an action against Tenet for damages for unjust enrichment. The Hospital Plaintiffs repeat and reallege each and every allegation contained in ¶¶ 1 - 63, *supra.*

139. In accordance with 42 U.S.C. § 1395ww(d)(2)(E), the Secretary establishes a standardized amount that Medicare hospital participants are to receive under IPPS for each year. The Secretary withholds a portion of the standardized amount to make up the Outlier Pool. At all times relevant hereto, the amount withheld by the Secretary was 5.1% of the standardized amount.

140. The Outlier Pool included substantial funds withheld from the standardized amount that the Hospital Plaintiffs were to receive under IPPS.

141. The Hospital Plaintiffs have conferred a benefit on Tenet because the reductions in the standardized amount they were to receive under IPPS have been used to pay Tenet for the inflated and improper "costs" it claimed in connection with the treatment of Outlier patients. Thus, the monies received by Tenet from the Outlier Pool far exceeded the true costs of treating the aforesaid Outlier patients.

142. As a participant in the Outlier Pool, Tenet was and is fully aware of this benefit.

143. Tenet has voluntarily and knowingly accepted and retained the benefits conferred on it by the Hospital Plaintiffs. These economic benefits, which were obtained through the intentional and wrongful conduct of Tenet, rightfully belonged to the Hospital Plaintiffs.

144. It would be unjust and inequitable for Tenet to retain the Outlier payments derived from its inflated charging scheme because: (1) Tenet's actions were wrongful and intentional; (2) the payments Tenet obtained were excessive; and (3) the payments were not reasonably related to its actual costs of treating Outlier patients.

145. As a result of the foregoing, Tenet has been unjustly enriched at the pecuniary expense of the Hospital Plaintiffs, who have had to absorb the costs of Outlier treatments for which they would otherwise have been compensated from the Outlier Pool.

Prayer for Relief

WHEREFORE, Plaintiffs pray for judgment:

A. As to Count I, awarding damages to the Hospital Plaintiffs in such amount as may be determined at trial, plus costs and attorney's fees;

B. As to Count II, awarding damages to the Hospital Plaintiffs in such amount as may be determined at trial, plus costs and attorney's fees;

C. As to Count III, awarding damages to the Hospital Plaintiffs in such amount as may be determined at trial;

D. As to Count IV, awarding damages to the Hospital Plaintiffs in such amount as may be determined at trial;

E. As to Count V, awarding Plaintiff, State of Florida, Office of the Attorney General, Department of Legal Affairs, actual damages on behalf of governmental entities injured by the unfair competition or unconscionable, unfair or deceptive acts or practices of Tenet, in accordance with § 501.207(1)(c), Fla. Stat.;

F. Assessing Tenet civil penalties in the amount of ten thousand dollars ($10,000) for each violation of Chapter 501, Part II, pursuant to § 501.2075, Fla. Stat.;

G. Awarding reasonable attorney's fees and costs to Plaintiff, State of Florida, Office of the Attorney General, Department of Legal Affairs, pursuant to §§ 501.2105, and 501.2075, Fla. Stat.;

H. Awarding restitution for governmental entities that have been injured by Tenet's unlawful actions;

I. Requiring that Tenet disgorge all revenues generated as a result of the unfair competition or unconscionable, unfair or deceptive acts or practices set forth herein;

J. As to Count VI, awarding damages to the Hospital Plaintiffs in such amount as may be determined at trial;

K. Awarding prejudgment interest in favor of the Plaintiffs; and

L. Awarding such other and further relief as this Court deems just and proper.

Demand for Jury Trial

Plaintiffs demand a trial by jury on all issues so triable.

Respectfully submitted, this 2nd day of March, 2005.

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

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Motions for *pro hac vice* admission to be filed

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