

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE SEIBEL

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GOVINDLAL K. BHANUSALI, M.D.

Plaintiff,

Index No.:

- against-

10 CIV 6694
COMPLAINT

JURY TRIAL DEMANDED

ORANGE REGIONAL MEDICAL CENTER, domestic non-profit organization; **CRYSTAL RUN HEALTHCARE LLP; BOARD of DIRECTORS of the ORANGE REGIONAL MEDICAL CENTER; LOU HEIMBACH, M.D.** in his representative capacity as Chairman of Orange Regional Medical Center's Board of Directors; **HAL D. TEITELBAUM M.D.**, individually and as Chief Executive Officer of CRYSTAL RUN HEALTH CARE; **SCOTT BATULIS**, individually and as President and Chief Executive Officer of Orange Regional Medical Center, **GREGORY SPENCER, MD**, individually and as Chairman of Staff and as Chairman of the Medical Executive Committee at Orange Regional Medical Center; **GERARD J. GALARNEAU, M.D.** individually and as Chief of Staff at Orange Regional Medical Center; **JAMES E. OXLEY, DO**, individually and as Vice President Medical Affairs/Medical Director of Orange Regional Medical Center.; **KEVIN TRAPP M.D** individually and as the Department Chair of Orthopedics at Orange Regional Medical Center ; and **CHRISTOPHER INZERILLO,MD** individually and as the Vice Chair of the Orthopedics Department at ORMC

Defendants.
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U.S. DISTRICT COURT
2010 SEP --8 PM 4: 50
S.D. OF N.Y.

Plaintiff, GOVINDLAL K. BHANUSALI, M.D., by and through his attorneys Leffler Marcus & McCaffrey, LLC., alleges as and for his complaint against the defendants as follows:

NATURE OF ACTION

i.) This action will determine whether sham peer review proceedings can be used by to hide illegal attempts by powerful corporate medical businesses to drive out competition,

deprive minority and small medical practitioners of their civil rights and to reshape health care in defendants desired corporate image.

ii) Plaintiff, GOVINDLAL K. BHANUSALI, M.D is an Asian Indian -American Orthopedic Surgeon who in addition to his working on the Medical Staff at Orange Regional Medical Center maintains a solo private practice in Middletown, Orange County New York. He is known for providing medical services to low income and or uninsured patients. He has been licensed to practice medicine in the State of New York since 1983. He has worked 26 years at the Orange Regional Medical Center without any incidents until he became targeted by certain medical personnel at the hospital who had a clear conflict of interest and bias against Dr. Bhanusali. He is one of the few medical practitioners in Orange County, New York who is not a member of the large private medical practice group known as CRYSTAL RUN HEALTHCARE LLP. CRYSTAL RUN HEALTH CARE LLP members also hold key positions at ORANGE REGIONAL MEDICAL CENTER (Hereinafter "ORMC"). After a pattern of harassment directed against Dr BHANUSALI., they finally instituted sham administrative and peer review proceedings that resulted in the suspension of Dr. BHANUSALI's medical staff privileges at defendant ORMC on October 5, 2009. This suspension is not final and is currently under appeal pursuant to ORANGE REGIONAL MEDICAL Center's bylaws. This action is filed to preserve Plaintiff's rights under federal and state anti discrimination statutes that are governed by Plaintiff's right to sue letter from the EEOC dated June 10, 2010.

iii.) Plaintiff brings an action for illegal restraint of trade pursuant to 15 U.S.C. Section 1 (the Sherman Act) and the New York State General Business Law Section 340 against defendants ORANGE REGIONAL MEDICAL CENTER and; CRYSTAL RUN

HEALTHCARE LLP and against the individuals associated with those entities who are misusing their institution's medical peer review procedures in order to drive out medical practitioners in Orange County New York who are not or will never become members of CRYSTAL RUN HEALTHCARE LLP.

iv.) This is also an action for age, national origin, and racial discrimination and retaliation arising under: Title VI of the 1964 Civil Rights Act 42 U.S.C §§2000d- 2000d-7; Title VII of the Civil Rights Act of 1964, as amended, 42.U.S.C. §2000(e) et seq. ;42 U.S.C. §1981, 1983; The Age Discrimination in Employment Act of 29 U.S.C. §623 §626 ("ADEA") and the New York State Human Rights Law, Executive Law Section 291, 296 et seq. as against defendant s ORANGE REGIONAL MEDICAL CENTER, CRYSTAL RUN HEALTH CARE LLP, and the individuals associated with those entities who conspired with those entities and/ or aided and abetted in the illegal discrimination against the Plaintiff. It is also an action for intentional infliction of emotional distress; slander, defamation, against the individual ORMC defendants and for any other cause of action which may be inferred from the facts set forth herein.

iv.) Plaintiff alleges that the defendants have illegally targeted him for termination and economic oblivion by defendants' bad faith misuse of the defendant ORMC's non departmental administrative review, peer review, and corrective action procedures.

JURISDICTION AND VENUE

1. This Court has jurisdiction of the claims herein pursuant to 28 U.S.C. §1331 and 1343, as well as U.S.C. § 12117 to incorporate by reference Title VII of the Civil Rights Act

of 1964 (Title VII), 42 U.S.C. §2000(e)-5, 29 U.S.C. §1001 et seq. This court also has supplemental jurisdiction of all State causes of action, pursuant to 28 U.S.C. §1367.

2. Venue is properly placed in this District in that defendants have a principle place of business in this District and also the events which gave rise to this action occurred within this District.

3. This action properly lies in the United States District Court, Southern District of New York, pursuant to 28 U.S.C. §1391(b) (1), in that the defendants do business in this district.

4. This action is timely commenced within ninety days of Plaintiff's receipt of his right to sue letter dated June 10, 2010 from the U.S. Equal Employment Opportunity Commission.

PARTIES

5. Plaintiff GOVINDLAL K. BHANUSALI, M.D., is an Orthopedic Surgeon and licensed to practice medicine in the in the State of New York since 1983 whose medical staff privileges at defendant ORANGE REGIONAL MEDICAL CENTER were suspended on October 5, 2009 by ORANGE REGIONAL MEDICAL Center's (Hereinafter "ORMC") Administrative Committee consisting of: **JAMES E. OXLEY , DO**, individually and as Vice President Medical Affairs/Medical Director of ORMC, **KEVIN TRAPP M.D** individually and as the Department Chair of Orthopedics at ORMC, and **GERARD J. GALARNEAU, M.D.** individually and as Chief of Staff at ORMC; which although said suspension was modified by ORMC's Medical Executive Committee on June 30, 2010, still imposes terms and conditions on the Plaintiff that render it economically and professionally impossible to perform his duties as an orthopedic surgeon.

6. Plaintiff resides and maintains a solo private practice in Middletown, Orange County New York. At all times mentioned herein, Plaintiff was and is a citizen of the United States and a resident of the State of New York.

7. Plaintiff was at all times relevant herein, an “employee” of the defendant ORMC for the purposes of federal and state anti discrimination in employment laws invoked in this complaint.

8. Upon information and belief, defendant Orange Regional Medical Center (ORMC), is a 501(c) (3), domestic non-profit organization formed pursuant to the state of New York. It was formed by the merger of Arden Hill Hospital and Horton Medical Center, Orange Regional provides 450 beds and employs over 2,400 healthcare professionals. More than 570 doctors have privileges at the hospital and treat thousands of area families. In addition to two main hospital campuses, Orange Regional provides several outpatient locations. The largest outpatient facility, the Orange Regional Medical Pavilion in the Town of Wallkill, offers both outpatient surgical and diagnostic services and private physician offices.

9. Upon information and belief Orange Regional Medical Center is consolidating two existing campuses onto a single site in the Middletown, New York situated on 61 acres, building a new the 600,000+ square-foot medical campus. ORMC is aggressively raising funds for the project under the rubric of its “Building for Excellence Capital Campaign.”

10. On information and belief defendant **CRYSTAL RUNHEALTHCARE LLP** is a significant monetary contributor to that campaign.

11. Upon information and belief defendant the **BOARD of DIRECTORS of the ORANGE REGIONAL MEDICAL CENTER** is responsible for overseeing and establishing policies for the proper governance of ORMC, the approval of contractual

relationships of ORMC with its staff and other entities, compliance with the laws and regulations of the United States and of the State of New York, and is the final decision maker at ORMC with respect to the granting of medical staff privileges and the suspension or curtailment of Plaintiff's privileges at ORMC.

12. Defendant **LOU HEIMBACH, MD** is Chairman of Orange Regional Medical Center's Board of Directors. He is sued herein only in his representative capacity as Chairman of Orange Regional Medical Center's Board of Directors.

13. Upon information and belief a significant majority of the physicians with medical staff privileges at ORMC are employees of, partners of, or otherwise affiliated with a private practice group known as CRYSTAL RUN HEALTHCARE LLP.

14. Upon information and belief defendant ORMC receives federal and state funds and financial assistance.

15. Upon information and belief ORMC receives compensation for its surgical procedures by billing Medicare, Medicaid and its patients' private insurance plans.

16. Upon information and belief defendant ORMC is a covered "program" or "activity" under Title VI of the Civil Rights Act Section 2000d-4a (3)

17. Upon information and belief defendant CRYSTAL RUN HEALTHCARE LLP (hereinafter "CRYSTAL RUN HEALTHCARE"), is and was at all times relevant herein, a domestic registered limited liability partnership formed under the laws of New York State with offices at 155 Crystal Run Road Middletown, New York 10941.

18. On information and belief, Crystal Run Healthcare employs in excess of 170 physicians in multiple locations throughout the Mid-Hudson Valley and lower Catskill New York regions.

19. On information and belief Crystal Run Healthcare has nine offices in Orange County with offices in: Goshen, Harriman, Middletown, Monroe, Newburgh, and Warwick plus two offices in Sullivan County located in Liberty and Rock Hill.

20. On information and belief, according to their website, CRYSTAL RUN HEALTH CARE LLP has three locations in Middletown where Plaintiff is attempting to maintain his solo practice.

21. Upon information and belief defendant CRYSTAL RUN HEALTHCARE LLP receives federal and state funds and financial assistance.

22. Upon information and belief defendant CRYSTAL RUN HEALTHCARE receives compensation for its surgical procedures by billing Medicare, Medicaid and its patients' private insurance plans.

23. Upon information and belief defendant CRYSTAL RUN HEALTH CARE is a covered "program" or "activity" under Title VI of the Civil Rights Act Section 2000d-4a (3).

24. On information and belief **HAL D. TEITELBAUM M.D** is the President and the Chief Executive Officer of Crystal Run Health Care and has medical staff privileges at ORMC.

25. On information and belief **HAL D. TEITELBAUM M.D.** has informed other physicians at ORMC that they will not be able to practice at ORMC or anywhere in Orange County unless those practitioners joined or became otherwise affiliated with CRYSTAL RUN HEALTHCARE.

26. On information and belief **CRYSTAL RUN HEALTHCARE** has contributed in excess of one million dollars to ORMC's building programs and has entered into joint ventures or partnerships with ORMC.

27. On information and belief, it is well known in the medical community that concerted efforts by CRYSTAL RUN HEALTHCARE physicians caused a boycott and a financial crisis followed by a change in management at CATSKILL REGIONAL MEDICAL CENTER in Sullivan County.

28. **HAL D. TEITELBAUM M.D** is sued herein individually and as an aider and abettor pursuant to New York State Human Rights Law and 42 USC 1981 and for illegal restraint of trade and is sued herein in his representative capacity as Chief Executive officer of Crystal Run Healthcare LLP.

29. Each and all of the acts of **HAL D. TEITELBAUM M.D**, were done in his personal capacity, as well as in his official capacity as an employee of ORMC and a principal of CRYSTAL RUN HEALTHCARE LLP.

30. On information and belief **SCOTT BATULIS** is the President and Chief Executive Officer of ORMC.

31. Upon information and belief **KEVIN TRAPP MD** is a white male who is the Chief of the Department of the Orthopedics at ORMC. He is younger than Doctor Bhanusali.

32. Kevin Trapp, MD is also a member of, or employed by defendant Crystal Run Healthcare at their Middletown and Rock Hill offices.

33. **KEVIN TRAPP MD** is sued herein individually and in his representative capacity as the Chairman of the Orthopedics Department at ORMC pursuant to New York State Human Rights Law and 42 USC 1981, and 1983.

34. On information and belief the defendants were responsible for the manner of the appointment of the medical staff members and administrators who sat on the non-departmental review, departmental review, "corrective action" and so called "peer" review

committees that “reviewed” Dr. Bhanusali and suspended and curtailed Plaintiff’s privileges and /or they individually participated in those proceedings against the Plaintiff.

35. On information and belief each of the defendants actions were in bad faith and were motivated by personal animus against the Plaintiff and/or a conflict of interest.

36. Each and all of the acts of **SCOTT BATULIS**, were done in his personal capacity, as well as in his official capacity as a principal of ORMC.

37. Upon information and belief the Physician Excellence Committee and the Medical Executive Committee were composed of an overwhelming number of CRYSTAL RUN HEATHCARE employees or partners.

38. Upon information and belief the ORMC Ad Hoc Committees, Physician Excellence Committee and the Medical Executive Committee were composed mostly of white non Asian physicians.

39. Upon information and belief the Ad Hoc Committee, the Medical Executive Committee, and Physician Excellence Committee who reviewed Dr. Bhanusali were composed of a majority of physicians who were younger than Dr. Bhanusali.

40. **SCOTT BATULIS**, is sued herein individually and as an aider and abettor pursuant to, New York State Human Rights Law, 42 USC 1981, 1983 individually and in his representative capacity as an officer of ORMC .

41. **GREGORY SPENCER, MD** is a white male physician younger than and is Chairman of ORMC’ s Staff and Chairman of the Medical Executive Committee which suspended Dr. BHANUSALI.

42. In addition to presiding as the Chairman of ORMC’s Medical Executive Committee that suspended Dr. Bhanusali’s privileges, **GREGORY SPENCER, MD is also the Chief Medical Officer of defendant Crystal Run Healthcare.**

43. **GREGORY SPENCER, MD**, is sued herein individually and as an aider and abettor and in his representative capacity as an officer of ORMC and the Chairman of ORMC's Medical Executive Committee pursuant to 42 USC 1981, New York State Human Rights Law, and in his representative capacity for illegal restraint of trade, negligence, intentional infliction of emotional distress, defamation, and prima facie tort.

44. Each and all of the acts of **GREGORY SPENCER MD** were done in his personal capacity, as well as in his official capacity as an employee/ representative of ORMC and an employee/ principal of CRYSTAL RUN HEALTHCARE LLP

45. **GERARD J. GALARNEAU, M.D** is Chief of Medical Staff at ORMC and a member of ORMC's board of directors.

46. **GERARD J. GALARNEAU, M.D**, is sued herein individually and as an aider and abettor and in his representative capacity as an officer of ORMC and the Chief of Medical Staff at ORMC pursuant to 42 USC 1981, 1983 New York State Human Rights Law, representative capacity.

47. Each and all of the acts of **GERARD J. GALARNEAU, M.D.**, were done in his personal capacity, as well as in his official capacity as an employee of ORMC.

48. **JAMES E. OXLEY, DO**, is the Vice President of Medical Affairs/Medical Director of Orange Regional Medical Center.

49. **JAMES E. OXLEY, D.O.** is sued herein individually and as an aider and abettor and in his representative capacity as the Vice President Medical Affairs/Medical Director of ORMC pursuant to 42 USC 1981, 1983 and New York State Human Rights Law.

50. Each and all of the acts of **JAMES E. OXLEY, D.O.** were done in his personal capacity, as well as in his official capacity as an employee of ORMC

51. Kevin Trapp, MD is a white male physician who is the Chairman of the Orthopedics Department at ORMC. He is younger than Doctor Bhanusali.

52. Kevin Trapp, MD is also a member of or employed by defendant Crystal Run Health Care at their Middletown and Rock Hill offices.

53. KEVIN TRAPP MD is sued herein individually and as an aider and abettor and in his representative capacity as the Chairman of the Orthopedics Department at ORMC pursuant to 42 USC 1981, 1983 and the New York State Human Rights Law.

54. Each and all of the acts of **KEVIN TRAPP, MD** were done in his personal capacity, as well as in his official capacity as an employee/ of ORMC and an employee/ principal of CRYSTAL RUN HEALTHCARE LLP

55. Upon information and belief, the ORMC employed in excess of five hundred employees and is now and was at all times mentioned herein an employer within the meaning of Title VI of the 1964 Civil Rights Act 42 U.S.C §§b2000d- 2000d-7; Title VII of the Civil Rights Act of 1964, as amended, 42.U.S.C. §2000(e) et seq. ;42 U.S.C. §1981, 1983; The Age Discrimination in Employment Act of 29 U.S.C. §623 §626 (“ADEA”) and the New York State Human Rights Law, Executive Law Section 291, 296 et seq. .

56. Upon information and belief, the CRYSTAL RUN LLP employed in excess of two hundred employees and is now and was at all times mentioned herein an employer within the meaning of Title VI of the 1964 Civil Rights Act 42 U.S.C §§b2000d- 2000d-7; Title VII of the Civil Rights Act of 1964, as amended, 42.U.S.C. §2000(e) et seq. ;42 U.S.C. §1981, 1983; The Age Discrimination in Employment Act of 29 U.S.C. §623 §626 (“ADEA”) and the New York State Human Rights Law, Executive Law Section 291, 296 et seq. .

57. At all times referred to herein, **HAL D. TEITELBAUM M.D**, acted under the color of the rules, policies, customs, and usages of ORMC and CRYSTAL RUN HEALTHCARE and the laws State of New York.

58. Despite acting under the color of said rules, policies, customs, and usages of ORMC and CRYSTAL RUN HEALTHCARE and the laws State of New York, **HAL D. TEITELBAUM M.D**, acted in bad faith as against the Plaintiff.

59. At all times referred to herein, **SCOTT BATULIS**, acted under the color of the rules, policies, customs, and usages of ORMC and the laws of the State of New York.

60. Despite acting under the color of said rules, policies, customs, and usages of ORMC and the laws of the State of New York, **SCOTT BATULIS**, acted in bad faith as against the Plaintiff.

61. At all times referred to herein, **GREGORY SPENCER, MD**, acted under the color of the of the rules, policies, customs, and usages of ORMC and CRYSTAL RUN HEALTHCARE and the laws of the State of New York.

62. Despite acting under the color of said rules, policies, customs, and usages of ORMC and CRYSTAL RUN HEALTHCARE and the laws State of New York, **GREGORY SPENCER, MD**, acted in bad faith as against the Plaintiff.

63. At all times referred to herein, **GERARD J. GALARNEAU, M.D**, acted under the color of the of the rules, policies, customs, and usages of ORMC and the laws State of New York.

64. Despite acting under the color of said rules, policies, customs, and usages of ORMC and the laws State of New York, **GERARD J. GALARNEAU, M.D**, acted in bad faith as against the Plaintiff.

65. At all times referred to herein, **JAMES E. OXLEY, DO**, acted under the color of the of the rules, policies, customs, and usages of ORMC and the laws State of New York.

66. Despite acting under the color of said rules, policies, customs, and usages of ORMC and the laws State of New York, **JAMES E. OXLEY, DO**, acted in bad faith as against the Plaintiff.

67. At all times referred to herein, **KEVIN TRAPP M.D**, acted under the color of the of the rules, policies, customs, and usages of ORMC and CRYSTAL RUN HEALTHCARE and the laws State of New York.

68. Despite acting under the color of said rules, policies, customs, and usages of ORMC and CRYSTAL RUN HEALTHCARE and the laws of the State of New York, **KEVIN TRAPP M.D** acted in bad faith as against the Plaintiff.

69. At all times referred to herein, **CHRISTOPHER INZERILLO, M.D.**, acted under the color of the of the rules, policies, customs, and usages of ORMC and CRYSTAL RUN HEALTHCARE and the laws State of New York.

70. Despite acting under the color of said rules, policies, customs, and usages of ORMC and CRYSTAL RUN HEALTHCARE and the laws of the State of New York, **Christopher Inzerillo, M.D.** acted in bad faith as against the Plaintiff.

71. **Christopher Inzerillo, M.D.** is a white male physician who is the Vice Chair of the Orthopedics Department at ORMC. He is younger than Doctor Bhanusali.

72. **Christopher Inzerillo, M.D.** is also a member of or employed by defendant Crystal Run Health Care at their Middletown and Rock Hill offices.

73. CHRISTOPHER INZERILLO, M.D is sued herein individually and as an aider and abettor and in his representative capacity as the Vice Chair of the Orthopedic department at ORMC pursuant to 42 USC 1981, 1983 and the New York State Human Rights Law.

74. Each and all of the acts of CHRISTOPHER INZERILLO, M.D were done in his personal capacity, as well as in his official capacity as an employee/ of ORMC and an employee/ principal of CRYSTAL RUN HEALTHCARE LLP

FACTS

75. Plaintiff **GOVINDLAL K. BHANUSALI, M.D.** is Asian Indian-American orthopedic Surgeon who maintains a solo private practice in Middletown, Orange County New York. He has been licensed to practice medicine in the in the State of New York since 1983.

76. Dr. BHANUSALI. was born on November 12, 1948.

77. Dr. BHANUSALI has been board certified in Orthopedics since 1991 by the AMERICAN BOARD OF ORTHOPAEDIC SURGERY. He was recertified on January , 1 2002

78. Plaintiff was appointed to ORMC Medical Staff on July 1983 as an Orthopedic Surgeon on Staff.

79. He has worked 26 years at the Orange Regional Medical Center without any incidents questioning his quality of care until this recent pattern of harassment.

80. Dr. BHANUSALI's race is Asian.

81. Dr. BHANUSALI's national origin is Indian.

82. Dr. BHANUSALI has a dark complexion and speaks with an Indian accent.

83. On information and belief the Board of Directors and the Medical Staff of Orange Regional Medical Center have established Medical Staff Bylaws as well as standards and

policies for its members and for ORMC which includes criteria and procedures for recommending to the Board of Directors the privileges to be granted to individual practitioners.

84. On information and belief the relevant bylaws governing the granting of Medical Staff privileges or curtailment of said privileges fail to establish an express management policy of not discriminating against physicians on the basis of age, disability, gender, background, national origin, culture, race, spiritual or religious beliefs when granting or revoking or modifying employment or practice privileges at ORMC .

85. On information the bylaws and procedures in effect at ORMC are inadequate in that they negligently or deliberately permit the use of sham peer reviews and sham corrective actions against illegally targeted staff members .

86. On information and belief a "Sham peer review" is a "corrective action" proceeding or peer review commenced by a hospital medical staff against a physician to discipline the physician motivated by other concerns than the quality of patient concerns - such as hospital politics, competitive advantage or retaliation or illegal bias.

87. On information and belief the bylaws and procedures in effect at ORMC with respect to the suspension of medical staff privileges lack clear, definitive standards for denial or non-renewal of privileges.

88. The bylaws and procedures in effect at ORMC with respect to the granting of or suspension of privileges permit each physician participating in the process to bring his or her own "standards" no matter how subjective to the process.

89. The bylaws and procedures in effect at ORMC with respect to the granting of or suspension of privileges and the process as applied to the Plaintiff fail to address the issue of the existence of an "insider" clique of physicians who fiercely maintain control of peer

review and credentials positions and pass key medical staff positions back and forth among themselves - while excluding "outsiders."

90. The bylaws and procedures in effect at ORMC with respect to the granting of or suspension of privileges and the process as applied to the Plaintiff failed to address the issue of the existence of personal animus and retaliatory intent and a conflict of interest on the part of those participating in the investigative or hearing process .

91. The bylaws and procedures in effect at ORMC with respect to the granting of or suspension of privileges and the process as applied to the Plaintiff fail to address the existence of a conflict of interest on the part of those measuring or participating in the peer review proceedings and thus violate fundamental conflict of interest principles - casting doubt on the genuineness of espoused quality of care concerns.

92. ORMC is and especially, its orthopedic department is dominated by white non Asians who are partners or otherwise affiliated with defendant CRYSTAL RUN HEALTH CARE.

93. CRYSTAL RUN HEALTHCARE LLP is managed by and dominated by white non Asian practitioners who tend to hire medical practitioners who are younger than Dr. Bhanusali.

94. On information and belief The CEO of defendant CRYSTAL RUN HEALTHCARE LLP, HAL D. TEITELBAUM M.D. , has told other physicians at ORMC that if they do not join or become affiliated with his company they will have no future at ORMC or anywhere in Orange County.

95. Dr. Bhanusali's immediate supervisor at ORMC was Dr. Kevin Trapp.

96. Dr. Kevin Trapp is a white non Asian male orthopedic surgeon who is younger than Dr. Bhanusali.

97. In addition to being the Department Chairman of Orthopedics at ORMC, Dr Trapp is also a partner or employee of CRYSTAL RUN HEALTHCARE LLP.

98. From the very beginning of his association with ORMC, Plaintiff GOVINDLAL K. BHANUSALI, M.D. became the target of increased age related and ethnic abuse by members of the ORMC staff .

99. One example of such abuse is that beginning in 1983 operating room technician Mr. Patrick Kerrigan obviously feeling comfortable in reflecting bias of management, called Dr. Bhanusali an “idiot” and “stupid” and made comments about Dr. Bhanusali’s ethnicity saying “you Indians are stupid, or “you bunch of stupid Indians” and “The best Indian is a dead Indian”

100. On information and belief Mr. Kerrigan was never disciplined for this behavior despite complaints by Dr. Bhanusali. There were other incidents of ethnic abuse by other employees that went without corrective action despite Dr. Bhanusali’s complaints.

101. This failure to discipline employees for such incidents is evidence of a pattern and policy of discrimination in existence at ORMC against persons of Indian heritage.

102. In addition to being subjected to biased statements by ORMC staff, Dr Bhanusali’s repeated requests to have a Physician Assistant assigned to his surgeries were denied by Dr. Oxley and Dr. Trapp.

103. Defendants Trapp and Oxley responded that Plaintiff could only have another Board certified Orthopedic surgeon assigned to assist him in his surgeries.

104. Dr. Bhanusali responded that this was an unnecessary expense to the patients because a Physician Assistant was adequate and he would like a Physician’s Assistant assigned to his surgeries.

105. On information and belief the Medicare/Medicaid and private insurance reimbursement rates for a Physician Assistant are less than that for the assistance of another Board Certified Surgeon.

106. On information and belief Dr. Bhanusali's declining the unnecessary assistance of another surgeon placed ORMC on notice that ORMC and its medical staff had a pattern and practice of billing Medicare, Medicaid, and private insurers for unnecessary duplicative surgical services.

107. On information and belief ORMC came to view Dr. Bhanusali as a potential whistleblower with regard to Medicare, Medicaid and insurance overcharges.

108. On information and belief ORMC also viewed Dr. Bhanusali's request to work with the aid of a Physicians' Assistant rather than another Board Certified surgeon as a precedent that could be used against ORMC in Medicare/Medicaid or private insurance audits.

109. In retaliation for Dr. Bhanusali's repeated requests to have a Physician Assistant assigned to his surgeries rather than another Orthopedic Surgeon, Dr. Bhanusali's supervisor Dr. Trapp assigned himself to assist Dr. Bhanusali on a shoulder surgery on May 4, 2009.

110. Rather than assist Dr. Bhanusali in the surgery, Dr. Trapp merely criticized Dr. Bhanusali throughout the surgery and then referred Dr. Bhanusali to a departmental Physicians Excellence Committee for a sham "Peer review" committee made up entirely of white physicians that were associated with CRYSTAL RUN HEALTHCARE LLP.

111. On information and belief September 29, 2009 Dr Bhanusali took over the treatment of an orthopedic patient at ORMC's Horton Clinic who had been refused treatment by another ORMC staff surgeon because the patient lacked insurance.

112. Feeling that the patient was in immediate need of the surgery, Dr. Bhanusali went forward with the surgery.

113. On information and belief, during the course of the surgery an operating room technician broke a drill bit due to the mechanical failure of the drill. The issue was addressed by Dr. Bhanusali and the patient suffered no adverse consequences. The patient was informed of the event. As the patient spoke Spanish, his family was also informed of the broken drill bit.

114. Although there was no lasting disciplinary actions taken against the Operating room staff, Dr Trapp expressed anger that Dr. Bhanusali had went forward with surgery on an indigent uninsured patient and instituted a corrective action proceeding against Dr. Bhanusali pursuant to Article 10 of ORMC's Medical Staff Bylaws.

115. On October 1, 2009 a "committee" consisting of Dr. Oxley, Dr. Trapp, and Dr. GALARNEAU, informed Dr. Bhanusali that he had three choices, resign, face suspension or agree to not conduct any further surgery at ORMC.

116. Dr. Bhanusali agreed to do none of the above.

117. On information and belief broken drill bits are not an unusual occurrence in Orthopedic surgery and are not an indicia of malpractice or poor quality care.

118. ORMC bylaws provide that corrective action can be requested by any officer of the ORMC staff, by the Chairman of any clinical department, by the chairman of any standing committee of the Medical Staff, by the Chief Executive Officer, Vice President of Medical Affairs/Medical Director or by the governing body.

119. The request for corrective action was required to be in writing, was required to be made to the Executive Committee and was required to have been supported by reference to the specific activities or conduct which constitute the grounds for the request.

120. On information and belief the Chairman of the Executive Committee was **GREGORY SPENCER, MD** who is a white male younger than Dr. Bhanusali and

Chief Medical Officer for Dr. Bhanusali's competitor defendant CRYSTAL RUN HEALTH CARE LLP

121. According to the bylaws then in effect, Dr. Bhanusali matter was referred to an ORMC AD Hoc Committee consisting of physicians appointed by **KEVIN TRAPP M.D** as the Department Chair of Orthopedics at ORMC.

122. **KEVIN TRAPP M.D. is white ORTHOPEDIC SURGEON, younger than Dr. Bhanusali and a member or employee of Dr. Bhanusali's competitor defendant CRYSTAL RUN HEALTH CARE LLP.**

123. On information and belief the Ad Hoc Committee appointed by Dr. Trapp consisted entirely of white physicians younger than Dr. Bhanusali,

124. On information and belief the Plaintiff was never provided with the written request for corrective action prior to his meeting with the AD Hoc Committee and was only generally informed of the complaints against him.

125. The complaints against him consisted of matters which neither white nor younger nor non CRYSTAL RUN affiliated physicians were subjected to corrective action inquires or suspension.

126. On information and belief The Medical Staff AD Hoc committee's initial recommendation was to lift Dr. BHANUSALI's suspension provided he performed high risk surgery with the assistance of a ORMC Board certified surgeon.

127. The matter was then referred to the Medical Executive committee which was chaired by **GREGORY SPENCER, MD, a white male younger than Dr. Bhanusali and employed by or affiliated with his competitor CRYSTAL RUN HEALTHCARE LLP.**

128. At the start for the Medical Executive Committee meeting on October 26, 2009 the former Chief of Staff ex Chairman DR. Ronald RASPA looked at Dr. Bhanusali and said “*In America* we have a saying, no good deed goes unpunished.”

129. On October 26, 2009 The MEC, consisting mostly of white physicians younger than Dr. Bhanusali, most of whom were affiliated with Dr. BHANUSALI’s competitor CRYSTAL RUN HEALTHCARE LLP and chaired by CRYSTAL RUN Employee Dr. Spencer voted to revoke all of Dr. BHANUSALI’s Medical Staff privileges and membership on the ORMC Medical Staff and voted to continue his precautionary suspension pending final resolution of the corrective action process.

130. On March 29, 2010, Dr. Bhanusali filed his complaint of discrimination under Title VII, the ADEA and New York Human Rights Law with the EEOC and the New York State Human Rights Division.

131. Dr Bhanusali also requested a hearing of the MEC decision pursuant to ORMC’s bylaws which was held on April 29, 2010 and May 17, 2010.

132. The Committee found that the complete removal of Dr Bhanusali’s privileges by the MEC and the prior ad hoc committee was unreasonable based on the lack of severity of the alleged adverse outcome of the cases presented, his genuine concern for the overall well being of his patients, and his long history of dedicated service to ORMC and the community but never the less recommended that his operative privileges be relegated to low risk procedures and relegated to status as an assistant surgeon on high risk procedures.

133. On June 28, 2010 the MEC reviewed the Ad Hoc committee report and on June 30, 2010 informed Dr. Bhanusali that the MEC will recommend to the ORMC Board that Dr.

Bhanusali 's precautionary suspension be lifted provided that he agreed to severely restricted privileges limiting him to minor procedures .

134. Thus the MEC in retaliation for Dr. BHANUSALI's EEOC and Human Rights Division Complaint filed on March 29, 2010 went far beyond the restrictions suggested by the second AD Hoc Committee , and required that he be assisted on even minor surgical procedures by Board Certified Orthopedic surgeon fully credentialed by ORMC.

135. These restrictions in effect make it economically unfeasible for Dr. Bhanusali to conduct surgery at ORMC or anywhere in Orange County, ending his practice unless he agrees to conduct surgery in a duplicative unnecessarily expensive manner that would result in his inability to serve his indigent clients and the over billing his insured clients.

136. On information and belief this restriction was improperly communicated to St. Anthony's hospital's Chief of Surgery by ORMC staff on or before September 30, 2009 **before** Dr, Bhanusali was even informed of it on October 5, 2009.

137. As a result thereof St. Anthony's hospital, where Dr. Bhanusali had privileges has now required a similar restriction on Dr. Bhanusali, due solely to the restrictions placed on him at ORMC, in effect severely comprising his ability to perform major Orthopedic surgery in Orange County.

138. On information and belief when patients call the ORMC emergency department, they are told by staff to see another ORMC orthopedist as Dr. Bhanusali is "semi retired."

139. As a result of this suspension of privileges, Dr. Bhanusali has suffered and continues to suffer severe emotional distress, humiliation, damage to his reputation and loss of income in excess of \$206,000 from October 2009 to July 2010 and continuing to date.

140. As a result of this suspension of privileges since October 2009, Dr. Bhanusali has suffered and continues to suffer severe emotional distress, humiliation, and damage to his reputation.

FIRST CAUSE OF ACTION
VIOLATION OF 42 U.S.C. §1981, 1981(a) & 1983

141. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraph 1 through 140 as if more full set forth herein.

142. The plaintiff is a member of a protected class based on national origin, race, and ethnicity.

143. The plaintiff's job performance was satisfactory or better at all times.

144. Plaintiff was and continues to be entitled to advancement opportunities and privileges, and promotions.

145. The defendants denied plaintiff promotion, medical privileges and subjected plaintiff to harassment and termination on the basis of his national origin, race or ethnicity.

146. The defendants retaliated against plaintiff and continue to retaliate against plaintiff on the basis that he complained about discriminatory treatment.

147. The defendants have intentionally discriminated, continue to intentionally discriminate against plaintiff and have participated, and continue to engage in a pattern and practice of intentional discrimination and disparate treatment against plaintiff.

148. The defendants have violated, and continue to violate, federal law and state law, including the Fourteenth Amendment to the United States Constitution.

149. Under the rubric of purporting to be enforcing Public Health law and federal and state regulations regarding quality of care, Defendants have denied plaintiff's privileges and employment and have damaged his reputation while acting under the color of law.

150. As a result of the foregoing, the defendants have violated and continue to violate 42 U.S.C. §1981, 1981(a) and 1983 as amended.

151. As a result of the foregoing, the plaintiff has suffered and continues to suffer significant financial and emotional damage including but not limited to lost income, diminished prospective earnings, and loss of benefits, loss of prestige, humiliation, embarrassment, emotional pain, and other distress.

**SECOND CAUSE OF ACTION
AGE DISCRIMINATION**

152. Plaintiff repeats, reiterates and realleges each and every allegation set forth in Paragraphs 1-151.

153. The termination of Dr. BHANUSALI was because of Dr. Bhanusali's age and as such constitutes a violation of 29 U.S.C. §623 and therefore entitles Dr. BHANUSALI to relief under the provisions of 29 U.S.C. §626.

154. The termination of Dr. Bhanusali employment and privileges with ORMC. constitutes a willful violation of 29 U.S.C. §623 and as such entitles plaintiff to recover double damages.

155. Because his privileges were terminated for the illegal and discriminatory reason of his age in willful violation of the law Dr. BHANUSALI seeks the following relief: (1) compensatory damages; (2) front pay; (3) back pay; (4) attorney's fees; (5) double damages.

**THIRD CAUSE OF ACTION
AGE DISCRIMINATION
(State)**

156. Plaintiff repeats, reiterates and re alleges s each and every allegation set forth in Paragraphs 1-155.

157. The termination of Dr. BHANUSALI by ORMC. was because of Plaintiff's age and as such constitutes a willful violation of New York Executive Law §296.

158. Because he was fired for the illegal and discriminatory reason of his age in willful violation of the, Dr. BHANUSALI seeks the following relief: (1) compensatory damages; (2) attorney's fees; (3) punitive damages.

159. Plaintiff repeats, reiterates, and realleges each and every allegation set forth in Paragraphs 1 through 107 as if more fully set forth herein.

160. By its actions detailed above, ORMC has unlawfully discriminated against **GOVINDLAL K. BHANUSALI, M.D.** on the basis of his age in violation of the New York State Human Rights Law.

161. By reason of the foregoing, **GOVINDLAL K., M.D.** suffered damages, including emotional pain and mental anguish, in an amount to be determined at trial.

162. The purported termination of GOVINDLAL K. BHANUSALI, M.D. by ORMC was because of GOVINDLAL K. BHANUSALI, M.D.'s age and as such constitutes a willful violation of Executive Law Section 296.

163. By its actions detailed above, defendants have unlawfully discriminated against GOVINDLAL K. BHANUSALI, M.D. on the basis of his race and national origin.

164. By reason of the foregoing, GOVINDLAL K. BHANUSALI, M.D. suffered damages, including emotional pain and mental anguish, in an amount to be determined at trial.

165. Defendants' discriminatory conduct was taken with reckless indifference to plaintiff's rights. GOVINDLAL K. BHANUSALI, M.D. is therefore entitled to punitive damages.

AS AND FOR A FOURTH CAUSE OF ACTION

Title VI of the 1964 Civil Rights Act 42 U.S.C §§b2000d- 2000d-7

166. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraph 1 through 165 as if more full set forth herein.

167. The plaintiff is a member of a protected class based on national origin, race, and ethnicity.

168. The plaintiff's job performance was satisfactory or better at all times.

169. Plaintiff was and continues to be entitled to advancement opportunities and privileges, promotions.

170. The defendant ORMC denied plaintiff privileges promotion, and subjected plaintiff to harassment and termination on the basis of his national origin, race or ethnicity.

171. The defendants retaliated against plaintiff and continue to retaliate against plaintiff on the basis that he complained about discriminatory treatment.

172. The defendants have intentionally discriminated, continue to intentionally discriminate against plaintiff and have participated, and continue to engage in a pattern and practice of intentional discrimination and disparate treatment against plaintiff.

173. The defendants have violated, and continue to violate, federal law and state law, including the Fourteenth Amendment to the United States Constitution.

174. As a result of the foregoing, the defendant ORMC has violated and continue to violate Title VI of the 1964 Civil Rights Act 42 U.S.C §§b2000d- 2000d-7;

AS AND FOR A FIFTH CAUSE OF ACTION
Title VII of the 1964 Civil Rights Act 1964,
as amended, 42.U.S.C. §2000(e) et seq.
(discrimination and retaliation)

175. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraph 1 through 174 as if more full set forth herein.

176. The plaintiff is a member of a protected class based on national origin, race, and ethnicity.

177. The plaintiff's job performance was satisfactory or better at all times.

178. Plaintiff was and continues to be entitled to advancement opportunities and privileges, promotions.

179. The defendants denied plaintiff promotion, privileges and subjected plaintiff to harassment and termination on the basis of his national origin, race or ethnicity.

180. The defendants retaliated against plaintiff and continue to retaliate against plaintiff on the basis that he complained about discriminatory treatment.

181. The defendants have intentionally discriminated, continue to intentionally discriminate against plaintiff and have participated, and continue to engage in a pattern and practice of intentional discrimination and disparate treatment against plaintiff.

182. The defendants have violated, and continue to violate, federal law and state law, including the Fourteenth Amendment to the United States Constitution.

183. As a result of the foregoing, the defendant ORMC has violated and continue to violate Title VI of the 1964 Civil Rights Act 42 U.S.C §§b2000d- 2000d-7;

AS AND FOR A SIXTH CAUSE OF ACTION
Restraint of Trade 15 U.S.C. Section 1 (the Sherman Act)
New York General Business Law Section 340

184. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraph 1 through 183 as if more fully set forth herein.

185. The defendants are engaged in providing orthopedic and medical and health care services to the people of Orange and Sullivan County New York.

186. On information and belief defendants ORMC and CRYSTAL RUN LLP and their employees named as defendants herein have conspired or are engaged in a reciprocal

relationship to monopolize medical care services in especially orthopedic services in Orange County and Sullivan County New York.

187. Part of this agreement is the use of “Sham Peer review “proceedings against physicians who compete with defendants or refuse to join their practice group or against physicians whom defendants do not wish to invite to join their group or hospital due to discriminatory reasons based on those physicians age , race, national origin , or those physicians tendency to service the indigent or uninsured,

188. The effect of this conspiracy or reciprocal relationship is to drive up medical costs in Orange County and or deprive Medicare and Medicaid patients of the services of small practitioners who serve low income patients and or patients who use Medicaid or Medicare.

189. As a result of the foregoing, the defendants have violated and continue to violate 15 U.S.C. Section 1 (the Sherman Act), and New York General Business Law Section 340.

190. As a result thereof Plaintiff has been damaged by lost profits in excess of \$206,000.00 since October 2009 till July 2010 and continuing.

AS AND FOR AN SEVENTH CAUSE OF ACTION

Negligence

191. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraph 1 through 190 as if more full set forth herein.

192. **Defendants BOARD of DIRECTORS of the ORANGE REGIONAL MEDICAL CENTER ,ORANGE REGIONAL MEDICAL CENTER; and SCOTT BATULIS** individually and as Chief Executive Officer of ORMC had a duty to provide proper procedures that in addition to providing quality care to its patients would safeguard the civil rights and property rights of its staff and employees.

193. **Defendants BOARD of DIRECTORS of the ORANGE**

REGIONAL MEDICAL CENTER ,ORANGE REGIONAL MEDICAL

CENTER and SCOTT BATULIS; individually and as Chief Executive Officer of

ORMC failed to properly promulgate said rules and procedures and or failed to enforce those in effect in order to protect the civil rights and property of the Plaintiff.

194. Defendants negligently permitted a clique of biased physicians to misuse the Hospital's peer review and corrective action procedures for their own personal purposes.

195. Defendants failed to properly supervise and oversee the actions of the Hospital's Administrative ad hoc committees, Peer review Committee, Medical Executive Committee and Corrective action process.

196. Plaintiff was damaged by defendants' negligence.

197. As a result thereof Plaintiff has been damaged by loss profits in excess of \$206,000.00 since October 2009 to July 2010 and continuing, damage to his reputation which continues today.

AS AND FOR A EIGHTH
CAUSE OF ACTION
(Defamation/breach of Confidentiality)

198. Plaintiff repeats and realleges each and every allegation in paragraphs 1 through 197 as if more fully set forth herein.

199. Defendants and the ORMC have defamed plaintiff by slander per se insofar as their communications to unknown members of the ORMC and the community in general, and to the Chief of Surgery at St. Anthony's Hospital and did disparage plaintiff in his profession.

200. Defendants and ORMC have defamed plaintiff by slander per se insofar as their communications to unknown members of the ORMC and the community in general, and the

Chief of Surgery at St. Anthony's hospital did accuse plaintiff of professional incompetence and impugned his integrity.

201. Said communications were in bad faith and breached the confidentiality procedures and rules surrounding the peer review process and upon which Plaintiff was induced to rely.

202. By reason of the above, the Plaintiff has suffered and will continue to suffer irreparable damage from loss of income and benefits as a consequence of his discharge and injury to his personal and professional reputation in the community, in which he lives, as well as extreme physical suffering and mental distress, all in the sum of \$13,000,000.00.

203. Defendants, and the ORMC, acted maliciously and with a reckless disregard for truth entitling Plaintiff to punitive damages in the amount of \$39,000,000.00.

**AS AND FOR A NINTH
CAUSE OF ACTION
(Breach of Contract)**

204. Plaintiff repeats and realleges each and every allegation in paragraphs 1 through 203 as if more fully set forth herein.

205. In or about January 1, 1983, defendants ORMC offered, and plaintiff accepted a position as a medical staff physician at ORMC. Plaintiff also contracted to provide Clinical services at the Hospital's Orthopedic clinic. Plaintiff was advised of and provided a job description and defendants further represented to plaintiff that plaintiff would not be treated in a discriminatory fashion. Plaintiff relied on those representations, commitments, and condition of his employment relationship with defendants, and as an inducement to accept the position of medical staff physician and Orthopedic surgeon with the ORMC.

206. Defendants conduct through their wrongful and discriminatory practices constituted a breach of these representations and commitments.

207. Defendants are liable to plaintiff for breach of contract and breach of confidentiality.

208. As a result of the defendants' acts GOVINDLAL K. BHANUSALI., M.D., suffered and is entitled to damages to date and future damages in the amount of \$13,000,000.00.

**AS AND FOR A TENTH
CAUSE OF ACTION
PUNITIVE DAMAGES**

209. That plaintiff repeats and reiterates the allegations set forth in paragraphs 1 through 208 as if more fully set forth herein.

210. The acts of defendants complained of herein were willful, wanton, malicious, and oppressive. They acted with callous disregard, recklessness, and deliberate indifference toward the rights of the plaintiff GOVINDLAL K. BHANUSALI., M.D. and without concern for the damage, they would cause. Defendants' acts were motivated by a desire to not accommodate plaintiff's medical needs without regard for plaintiff's well-being and were based on a lack of concern and ill will towards plaintiff. Such acts therefore deserve and award of THIRTY NINE MILLION Dollars (\$39,000,000.00) as punitive damages.

**AS AND FOR A ELEVENTH
CAUSE OF ACTION
42 U.S.C. §1985**

211. The plaintiff repeats and reiterates the allegations set forth in paragraphs 1 through 210 as if more fully set forth herein.

212. Each of the defendants knew and/or had reason to know that their actions and inactions would deprive plaintiff of equal protection under the laws, yet the defendants agreed and conspired with each other to deprive such rights. Said acts violate 42. U.S.C. §1985.

213. As a result of said violations, plaintiff suffered economic and severe emotional damages and has suffered tremendous emotional distress, embarrassment, humiliation, inconvenience, anxiety, and frustration.

214. Accordingly, plaintiff seeks compensatory and punitive damages, in the sum of not less than \$ 39,000,000.00.

AS AND FOR A TWELFTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

215. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs 1 through 214 as if more fully set forth herein.

216. Defendants negligently and/or intentionally inflicted emotional and psychological distress upon plaintiff by repeatedly ignoring the use of derogatory remarks based on his age, race and national origin in evaluating him and remarks, and stereotypes, illegally suspending his privileges, which caused plaintiff emotional and psychological harm, humiliation, embarrassment, loss of self-esteem, emotional and psychological distress, and duress.

217. Defendants negligently and or intentionally inflicted emotional and psychological distress upon plaintiff in that they knowingly allowed and permitted a work environment hostile to persons of plaintiff's age, race and national origin and by not enforcing the policies and/or laws against discrimination and/or harassment and misconduct.

AS AND FOR A FOURTEENTH
CAUSE OF ACTION declaratory judgment

218. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs 1 through 217 as if more fully set forth herein.

219. Should it be determined that the ORMC did follow its procedures in denying a Physician the right to an unbiased board and proper peer review, and deny him the right properly defend himself during these proceedings, then said administrative proceeding is inherently improper and unlawful for the reasons set forth above and as may be adduced at trial and thus the procedures and bylaws should be stricken and declared void and the ORMC should be ordered to provide GOVINDLAL K. BHANUSALI., M.D. and its employees and medical staff with a procedure and policy that does provide meaningful due process.

PRAYER FOR RELIEF

WHEREFORE, plaintiff demands judgment against defendants:

(a) directing defendants to make plaintiff whole for all earnings he would have received but for defendants' unlawful conduct, including, but not limited to: back and front wages, pension, bonuses, and other lost benefits; directing defendants to pay plaintiff an additional amount as compensatory damages for his pain and suffering; directing defendants to pay plaintiff an additional amount as punitive damages for their willful and/or reckless disregard for plaintiff's statutory rights; reasonable attorney fees, and entry of a judgment declaring the corrective action , peer review procedures and bylaws , void and unlawful as applied to plaintiff or any other employees.

It is further requested that the Court grant reasonable attorneys' fess and the costs and disbursements of this action and any other relief to which plaintiff may be entitled.

Dated: September 8, 2010

New York, New York



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