

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
CHATTANOOGA DIVISION**

BLUECROSS BLUESHIELD OF
TENNESSEE, INC.,

Plaintiff,

v.

NELMED HOLDINGS, LLC and
NELANDES COLES,

Defendants.

Civil Action No. _____

COMPLAINT

Plaintiff BlueCross BlueShield of Tennessee, Inc. (“BCBST”), by and through its attorneys, hereby alleges against Defendants Nelmed Holdings, LLC (“Nelmed”) and Nelandes Coles the following:

INTRODUCTION

1. Nelmed is a Florida-based shell corporation that is operated and controlled by its President Nelandes Coles and was established for the sole purpose of purchasing struggling rural hospitals to perpetrate extensive, improper billing schemes involving laboratory testing services for non-hospital patients. To effectuate its schemes, Nelmed acquires small rural hospitals and then uses their unique contracts with health insurers to channel massive amounts of laboratory claims for people who have never visited the hospital and who are often living and receiving treatment thousands of miles from the hospital (*i.e.*, “non-patients”). A second aspect of Nelmed’s scheme is to direct the hospital to submit reimbursement claims to insurers that misrepresent the laboratory services that are provided or its relationship to the persons for whom the laboratory services are performed in order to improperly inflate payments from insurers. Once the Nelmed-

owned hospitals receive the payments from the insurers, Nelmed then funnels the money back to itself and to its owners.

2. In one such instance, Nelmed purchased Perry Community Hospital, LLC (“Perry”), a small rural hospital located in Linden, Tennessee. Shortly after acquiring the hospital, Nelmed exploited a legacy rural hospital contract between Perry and BCBST whereby Nelmed directed Perry to submit to BCBST thousands of intentionally miscoded health care claims for laboratory testing services in order to obtain greater payments than what Perry was entitled to receive had the claims been accurately billed and full disclosures provided. As a result of this improper billing scheme, BCBST, employer-sponsored self-funded group plans administered by BCBST, and government employee health plans administered by BCBST overpaid Perry millions of dollars. Once Perry received the improper payments, and instead of reinvesting the money in the hospital or the local community, Nelmed then syphoned the money away from Perry to distribute the ill-gotten gains to its own coffers and to its owners and investors, including Coles.

3. Since 1996, Perry had a network contract with BCBST under which BCBST agreed to pay Perry at specified rates in exchange for Perry’s agreement to participate in BCBST’s provider network, provide health care services to BCBST members, and follow BCBST’s billing policies and procedures, among other responsibilities. The network agreement was entered into by BCBST and Perry so that residents in Linden and the greater Perry County, Tennessee area who are enrolled in health care coverage sponsored or administered by Blue Cross and Blue Shield Plans (hereinafter, “Members”), would have access to critical medical treatment at the hospital.

4. For many years, the claims for services Perry submitted to BCBST were predictable, consistent and in accordance with the network contract and BCBST’s expectations as to the services Perry was furnishing to Members. For example in 2016, 2017 and the beginning

of 2018, in a typical month, Perry billed approximately \$350,000 in hospital charges. Perry's billings, however, changed dramatically in the summer of 2018 shortly after Nelmed acquired Perry.

5. Indeed, within a matter of months of Nelmed's acquisition, Perry's billings submitted to BCBST skyrocketed to over \$4.5 million per month. A subsequent investigation conducted by BCBST's Provider Audit and Special Investigations Unit uncovered evidence that almost all of the increased billings involved laboratory services provided to people who were not even patients at Perry. The investigation further uncovered evidence that starting in the summer of 2018, shortly after Nelmed and Coles took control of Perry, Perry began to submit claims using the wrong revenue codes that misrepresented the services as non-categorized outpatient services when they should have been billed as non-patient laboratory services.

6. Under the contract between BCBST and Perry, outpatient services not categorized by the contract are paid at higher rates than non-patient laboratory services. It is imperative that services are correctly coded and properly submitted at the outset as BCBST relies on those representations to determine the payment amount owed. Each type of service is represented by different types of codes to indicate to BCBST what services were being provided and what the relationship was between Perry and the person receiving the services. Prior to Nelmed's acquisition of Perry, the hospital historically had applied the correct revenue codes in compliance with BCBST's billing guidelines when billing for such non-patient laboratory services.

7. The change in billing practices regarding Perry's claims that occurred in the summer of 2018 was no coincidence. Once it acquired Perry, Nelmed and Coles took over control of the finances, policies, and practices for the hospital as needed to effectuate their billing scheme. Nelmed and Coles then orchestrated the scheme under which Nelmed manipulated Perry's network

contract with BCBST to exploit Perry's payment rates provided under the contract. Nelmed and Coles controlled and otherwise directed Perry's billings, and continuously mischaracterized or otherwise disguised the non-patient laboratory services as non-categorized outpatient services using wrong revenue codes in order to induce BCBST to pay improperly inflated rates under the contract. Those misrepresentations triggered immense overpayments by BCBST for those claims.

8. At the same time, Nelmed and Coles developed a plan that drastically increased the number of health care claims Perry submitted to BCBST for non-patient laboratory services. Most of the claims involved laboratory services that were purportedly rendered to Members of Blue Cross and Blue Shield Plans receiving medical treatment in Florida, California, and North Carolina, among other individuals whom had never visited Perry. Nelmed and Coles similarly misrepresented those services on claims forms submitted through Perry.

9. Nelmed and Coles conducted Perry's business through this pattern of misrepresenting the services provided for several months until they were caught through the investigation by BCBST's Provider Audit and Special Investigations Unit teams. Despite BCBST's quick detection of the improper billing scheme, over \$4.5 million in improper payments were made. BCBST subsequently issued multiple demands that the prior overpayments it provided to Perry be returned. Not surprisingly, Perry has refused to voluntarily repay the funds and has indicated it does not have sufficient funds to repay BCBST.

10. Tellingly, Nelmed and Coles never disclosed that they had acquired Perry shortly before implementing the aforementioned billing scheme, even though the network agreement required Perry to notify BCBST of any change of ownership. Nelmed and Coles similarly never disclosed that they would be using Perry to funnel thousands of non-patient laboratory claims through the Perry contract with BCBST. Indeed, had Nelmed or Coles disclosed the scheme or

that there was a change of ownership, BCBST would have investigated Nelmed and Coles, identified their billing scheme, and otherwise would never have paid millions of dollars in overpayments for intentionally miscoded claims.

11. As a result of Nelmed's and Coles's conduct, Nelmed and Coles tortiously interfered with the existing contract and business relationship between BCBST and Perry, negligently misrepresented billing information, and are liable to BCBST for additional claims under an alter ego/piercing the corporate veil theory, unjust enrichment, fraud, and constructive fraud. Because of Nelmed's and Coles's improper conduct, BCBST is entitled to recover the millions of dollars in overpayments it issued for laboratory service claims that were based upon the various misrepresentations and omissions Nelmed and Coles committed through Perry.

PARTIES

12. BCBST is a not-for-profit corporation incorporated in Tennessee with its principal office in Chattanooga, Tennessee. BCBST provides health insurance coverage and administers health benefit plans sponsored by Tennessee-based employers as well as federal government and Tennessee governmental entities, such as the State of Tennessee and various city and county governments. Consequently, when improper payments are made to health care providers, those overpayments not only harm BCBST, but also its customers, including its Members, employer sponsors, and the local, state, and federal governments.

13. Nelmed is a Delaware limited liability corporation with its principal place of business located at 13630 Northwest Eighth Street, Suite 215, Sunrise, Florida 33325. Nelmed can be served with process through its registered agent, CT Corporation System, at 1200 South Pine Island Road, Plantation, Florida 33324. Upon information and belief, none of Nelmed's members are Tennessee citizens and are instead all citizens of Florida.

14. Nelandes Coles is the President and primary officer of Nelmed. Coles is also the President and primary officer of Perry. Upon information and belief, Coles is a citizen of Florida and resides in Sunrise, Florida.

JURISDICTION AND VENUE

15. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332. The amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and this action is between citizens of different States as BCBST is a citizen of Tennessee, and Nelmed and Coles are citizens of Florida.

16. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to BCBST's claims occurred in Chattanooga, Tennessee which is located within this District.

17. Alternatively, venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3) because Nelmed and Coles are subject to this Court's personal jurisdiction with respect to this action.

18. Nelmed and Coles have submitted to the personal jurisdiction of this Court because they have purposefully directed the improper billing scheme they orchestrated at BCBST and because BCBST's claims arise out of Defendants' scheme in this forum. By doing business in this forum and by knowingly directing their fraudulent billing scheme towards BCBST, Nelmed and Coles have purposefully availed themselves of the privilege and opportunity of conducting business in Tennessee and within this district.

FACTUAL ALLEGATIONS

I. BCBST'S CONTRACTUAL RELATIONSHIP WITH PERRY.

19. As a managed care company, BCBST contracts with various health care facilities, physicians, and other health care providers across the state of Tennessee to establish networks of preferred providers to provide high quality and cost-effective health care services for its Members.

20. Perry has been a contracted, in-network provider with BCBST for more than two decades. In 1996, BCBST and Perry entered into a BlueCross BlueShield of Tennessee Institution Agreement (the "Institution Agreement"). A copy of the Agreement is attached as **Exhibit A**. As part of the Agreement, the parties entered into the Perry Community Hospital Annual Contract Rate Adjustment, effective July 1, 2016 (the "CRA"). A copy of the CRA is attached as **Exhibit B**.

21. In addition, through the Institution Agreement and by participating in BCBST's network, Perry agreed to follow the BCBST Provider Administration Manual ("PAM," and collectively with the Institution Agreement and CRA, the "Agreements"). *See Ex. A*, § 14.8; *see also* the relevant excerpts of the PAM, attached as **Exhibit C**, p. 11.

22. The Agreements dictate the terms of Perry's participation in BCBST's network. These terms include, but are not limited to, the methods and rates that BCBST agreed to compensate Perry for providing certain specified health care services to Blue Cross and Blue Shield Plan Members, the manner in which Perry must bill, code, and submit claims to BCBST for those services, and circumstances in which Perry must notify BCBST of a material change in its status, such as a change in ownership or affiliation with a new entity.

A. To Be Eligible for Reimbursement, Perry Must Correctly Code and Bill Claims in Accordance with the PAM.

23. Under the Institution Agreement, BCBST agreed to pay Perry for providing “Covered Services,” as that term is defined in the Agreement, “in accordance with the terms set forth in this Institution Agreement and the applicable Network Attachment.” **Ex. A**, § 6.1. To be eligible for payment, Perry, pursuant to the Institution Agreement, must “abide by recognized standards of coding, as determined by BCBST” and “bill BCBST on forms and in a manner acceptable to BCBST.” *Id.*, § 6.8. The PAM contains, among other things, clear requirements for claim coding and submissions so providers like Perry can abide by these requirements. *Id.*; *see, e.g.*, **Ex. B**, pp. 3, 6, 9 (referencing the PAM for appropriate use of CPT and revenue codes); *see also* **Ex. C**, pp. 37-189. “Claim payments made by BCBST are contingent upon the accuracy of diagnostic and other information provided by [Perry] to BCBST.” *See* **Ex. A**, § 6.11.

24. For BCBST to accept a claim for payment, providers like Perry must correctly apply various codes that correspond with the type, level, and method of services or supplies that are provided to the member on a claim form. *See* **Ex. C**, pp. 75-76. Among these codes is a “Revenue Code.” *See id.* The “Revenue Code is the initial indicator to the claims administration system as to what type of services were performed.” *Id.*, p. 75. BCBST advises providers that BCBST follows Optum’s Uniform Billing Editor (“UBE”) for determining the appropriate Revenue Code for a given service. **Ex. C**, pp. 149, 167, 385.

25. Under the UBE, claims for laboratory services must be billed with revenue code 03XX (*e.g.*, 0300, 0301, etc.). The PAM also explicitly states that laboratory services be billed using revenue code 03XX. *Id.*, pp. 165-66.

26. By contrast, the PAM states that revenue codes 0240, 0241, and 0770, among others, apply to other outpatient services furnished by the provider (in this case, Perry) “that are

not categorized for reimbursement” elsewhere in the applicable agreement between BCBST and the provider. **Ex. C**, p. 189. In other words, if the services *can* be categorized for payment within the fee schedule that is part of the agreement between BCBST and the provider, then “[revenue codes 0240, 0241, and 0770, among others] do not apply.” *Id.*

B. The Agreements Contain Different Payment Rates and Methodologies for Different Types of Services, and Revenue Codes Signal What Methodology Should Be Applied.

27. The CRA contains various types of payment rates and methodologies by which BCBST pays Perry for its provision of “Covered Services” to Blue Cross and Blue Shield Members and meets the other requirements of the Institution Agreement and PAM. *See generally Ex. B.* Schedule 1 of the CRA addresses inpatient services, while Schedule 2 “regulates reimbursement between BCBST and [Perry], for [Perry]’s provision of outpatient Covered Services to BCBST members who are treated in [Perry]’s outpatient facilities . . .” **Ex. B**, p. 5.

28. Schedule 2 contains seven different sections to address different rates and methodologies for various services. **Ex. B**, pp. 5-9. Section IV of Schedule 2 addresses payment for laboratory and radiology services. *See Ex. B*, p. 6. Laboratory services that are eligible for payment are paid according to BCBST’s “Institution Laboratory Fee Schedule.” *Id.*

29. The final section, Section VII, only applies to “other Outpatient Services . . . that cannot be appropriately categorized for reimbursement in Sections I – VI of this Schedule 2 and are approved for reimbursement by BCBST.” *Id.*, p. 9. For such “other Outpatient Services” eligible for payment under Section VII, BCBST agreed to pay 70% of Perry’s “Covered Charges.” *Id.* Because Sections I – VI contain a comprehensive listing of services provided by Perry and Section VII applies only to Blue Cross and Blue Shield Plan Members who *actually visit* Perry in

rural Linden, Tennessee to receive “other Outpatient Services,”¹ BCBST anticipated that few, if any, claims would be reimbursed under Section VII.

30. BCBST expects facilities like Perry to use revenue codes as “the initial indicator to the claims administration system as to what type of services were performed,” **Ex. C**, p. 75, so these revenue codes often signal what methodology should be used to price the claim. For example, applying Revenue Code 03XX signals that the claim is for laboratory services and should be paid according to the Institution Laboratory Fee Schedule. **Ex. B**, p. 6; **Ex. C**, pp. 75, 165-66. Applying revenue codes 0240, 0241, or 0770, on the other hand, signals that the claim is for “other Outpatient Services” that cannot appropriately be categorized within the first six sections in the CRA and therefore should be reimbursed according to 70% of the Covered Charges. **Ex. B**, p. 9; **Ex. C**, pp. 75, 189.

C. The Agreements Require Perry to Fully Refund BCBST for Any Payments That BCBST Makes to Perry in Error within 30 Days.

31. If Perry fails to abide by the requirements of the Agreements, including the requirement to accurately bill and code its claims for medical services, then Perry is not entitled to payment for such services. *See Ex. A*, §§ 6.8, 6.11, 14.8; **Ex. C**, pp. 11, 75, 385-87. “If BCBST determines that it has accepted responsibility for payment based on erroneous or incomplete information provided by [Perry], or if benefits are misapplied by BCBST . . . the full refund shall be made in a manner that is acceptable to BCBST within thirty (30) days of notice from BCBST.” **Ex. A**, § 6.11; *see also id.*, § 6.7 (Perry agreed that it “shall allow BCBST to recover any payments made to [Perry] in error”); *cf. id.*, § 10.4 (“If, as a result of an audit by BCBST or a designated

¹ *See, e.g.*, Tenn. Comp. R. & Regs. 1200-13-05-.01(9) (defining “Outpatient Services” as “[s]ervices that are provided by a hospital *to patients in the outpatient department of the hospital* and patients receiving outpatient observation services.”) (emphasis added);

vendor, it is determined that [Perry] has overcharged BCBST for payment for services rendered, [Perry] agrees to reimburse BCBST for such overpayment.”); **Ex. C**, pp. 385-86, 390.²

32. To evaluate compliance with BCBST’s billing, coding, and other requirements, BCBST has the right to audit Perry’s claims. *See Ex. C*, p. 385 (“All claims submitted to [BCBST and its affiliates] for reimbursement are subject to audit for the purpose of verifying the information submitted is correct, complete, in accordance with Provider contract requirements, and supported by established coding guidelines.”); *see also id.* (adding that under the audit process, “All claims are reviewed for correct coding and billing compliance and accurate reimbursement based on applicable regulatory governing agencies and [BCBST] guidelines as published in this [PAM], Medical Policies and Medical Necessity.”).

D. Perry Must Notify BCBST if Perry Becomes Affiliated with New Owners.

33. Also under the Agreements, Perry is obligated to “promptly notify BCBST” under certain material circumstances. **Ex. A**, § 4.11.

34. Those circumstances include, among other reasons, if Perry is “being acquired by or merging with, or otherwise affiliating with, another entity.” *Id.*

II. UNBEKNOWNST TO BCBST, PERRY IS ACQUIRED IN MID-2018, DRAMATICALLY INCREASES ITS BILLINGS FOR NON-PATIENT LABORATORY SERVICES, AND INTENTIONALLY MISAPPLIES REVENUE CODES TO INFLATE REIMBURSEMENTS.

35. In or around May 2018, Perry was acquired by Nelmed. Nelmed has purchased other rural hospitals as part of a broader scheme to exploit the generous reimbursement rates under the contracts those hospitals have with health insurers. Specifically, Defendants’ scheme involves dramatically increasing the hospital’s claims for non-patient services, such as laboratory services, misrepresenting the nature of the non-patient services to inflate reimbursements, billing insurers

² If Perry fails to refund overpayments within thirty days, BCBST is entitled to, among other things, recoup the funds from new payments that are due to Perry. *See Ex. A*, §§ 6.7, 6.11.

under those generous contracts, and then funneling the reimbursements to the hospital back to Nelmed, Coles, and other owners and investors of Nelmed. In essence, upon information and belief, Nelmed and Coles use the rural hospitals that they acquire as mere conduits to bilk insurers and their employer and government sponsors out of millions of dollars.

36. Because Perry is a rural hospital serving a town of only 930 people, the acquisition by a Florida holding company like Nelmed would have raised significant concerns for BCBST. Those concerns include Nelmed's lack of history operating in Tennessee, BCBST's subsequent investigation of the company, and BCBST's awareness during that same time period, there were multiple schemes throughout the United States in which different shell companies purchased rural hospitals to exploit the hospitals' contracts through the billing of non-patient laboratory services, leading to a number of investigations, lawsuits and criminal convictions.

37. Yet, Nelmed, Coles and Perry intentionally withheld Nelmed's acquisition from BCBST. This intentional omission occurred even though the network contract between BCBST and Perry requires Perry to notify BCBST of any change of ownership.

38. Shortly after Nelmed acquired Perry, Nelmed and Coles dramatically increased the number of claims Perry submitted to BCBST for non-patient laboratory services. The persons for whom Perry was claiming to provide these non-patient laboratory services lived in Florida, California, North Carolina, and other states and to individuals who had never visited Perry or Linden, Tennessee. Moreover, and unbeknownst to BCBST, upon information and belief, Nelmed directed Perry to intentionally misapply the revenue codes on the claims for medical services that misrepresented non-patient laboratory services as non-categorized outpatient services, causing grossly inflated reimbursements.

39. In just three months, Nelmed used Perry to bill BCBST nearly ***\$8 million***.

III. BCBST INVESTIGATES AND DISCOVERS NELMED'S SCHEME TO BILL BCBST THROUGH PERRY FOR INFLATED NON-PATIENT LABORATORY SERVICES.

40. In the fall of 2018, BCBST received complaints from Blue Cross Blue Shield licensed health plans in Florida, California, and North Carolina that they were observing sudden surges in laboratory service claims from a single rural hospital in Perry County, Tennessee. Around that same time, BCBST received a tip from a physician who informed BCBST that Perry's ownership had changed in May 2018 and that the new ownership was leveraging improper reimbursement payments through Perry and Perry's laboratory billing arrangements with BCBST. As a result of the complaints and the tip, BCBST launched an investigation.

41. As part of its investigation, BCBST performed a site visit to Perry. The hospital appeared to have laboratory equipment on site, but it was unclear whether the hospital actually owned that laboratory equipment or whether the equipment was being used to process some or all of the thousands of laboratory tests for Blue Cross and Blue Shield Members being treated in Florida, California, and North Carolina, and for which Perry was billing BCBST each month. Confusingly, Perry also did not have any medical records onsite for the non-patient laboratory services it was supposedly performing.

42. During the site visit, Perry's hospital administrator and other personnel could not explain how or why the small rural hospital suddenly was receiving thousands of referrals from out-of-state providers for laboratory services. When asked about the referrals of laboratory services, the hospital administrator repeatedly responded that he would have to check with management, referring to Coles and Nelmed.

43. In furtherance of its investigation, BCBST also inspected the claims Perry submitted for non-patient laboratory services. BCBST discovered that Perry had correctly applied revenue codes in its claims for non-patient laboratory services historically and until July 2018.

However, Perry began systematically miscoding revenue codes in August 2018, at the same time its billings for non-patient laboratory services exploded and shortly after Perry had been acquired by Nelmed.

44. Historically, Perry submitted only a handful of claims each month for non-patient laboratory services. The typical total charges each month for these services were about \$20,000. All of the non-patient laboratory services between January 2018 and July 2018 were properly coded with the correct Revenue Code (*e.g.*, 0300); thus, all claims were appropriately reimbursed according to the rate specified in Perry's and BCBST's network contract.

45. Suddenly, in August 2018, Nelmed and Coles, through Perry, billed nearly 3,000 lines of services for non-patient laboratory services. While the total charges in Perry's claims for non-patient laboratory services had been around \$20,000 in each of the first seven months in 2018, in August 2018, the total charges exceeded \$2.3 million. Further, while Perry had consistently applied the correct revenue code for non-patient laboratory services claims in the first seven months in 2018, in August 2018, Nelmed and Coles, through Perry, began intentionally using incorrect revenue codes for most of these same services.

46. Nelmed and Coles used their ownership, dominion, and control over Perry to submit false claims for reimbursement of non-patient laboratory services through improper coding to disguise the laboratory services as certain outpatient services. By purposefully using incorrect revenue codes, BCBST paid Perry's claims for non-patient laboratory services as outpatient services not categorized under the contract. As a result, BCBST paid the claims at a rate higher than the rate assigned to non-patient laboratory services under the contract. Through such intentional miscoding, Nelmed and Coles, through Perry, billed BCBST nearly \$2.3 million in August 2018.

47. In September 2018, Nelmed and Coles again used their dominion and control of Perry to bill over 4,300 lines of services for non-patient laboratory services—nearly 1,300 more than the previous month. Over 4,000 of these lines of services were improperly billed using incorrect revenue codes, which led to the incorrect pricing of the claims as non-categorized outpatient services. As a result of Nelmed’s and Coles’s scheme, Perry’s charges for these services was over \$4.5 million.

48. In October 2018, Nelmed and Coles used Perry to bill BCBST over \$1.2 million in non-patient laboratory services.

49. In November 2018, Perry submitted over 9,600 lines of services for non-patient laboratory services. By then, BCBST had caught on to Defendants’ scheme with Perry and stopped payment on claims for services that were improperly billed with incorrect revenue codes.

BCBST’s investigation revealed that in just three months in 2018, BCBST had overpaid nearly \$4.7 million due to Defendants’ scheme in which they had Perry submit miscoded claims to make the claims look like unclassified outpatient services when the claims were for non-patient laboratory services. Over \$4.5 million of the overpayments still remains unpaid to BCBST.

50. Because Nelmed and Coles used Perry as a mere conduit for their scheme, the overwhelming majority of the \$4.5 million in overpayments were funneled to Nelmed, Coles and other owners and/or investors of Nelmed.

CLAIMS FOR RELIEF

Count I - Tortious Interference with Contract
(Against Both Defendants)

51. BCBST re-alleges and incorporates by reference the allegations in paragraphs 1-50 as if fully set forth herein.

52. Nelmed and Coles are liable to BCBST based on their intentional interference with the network contract between Perry and BCBST by directing Perry to submit false and misleading claims to BCBST for reimbursement of health care services.

53. BCBST has a valid contract with Perry for Perry to serve as a participating provider in BCBST's network. Pursuant to the contract, Perry agreed to abide by recognized standards of coding, as determined by BCBST, and bill claims in a manner acceptable to BCBST.

54. Nelmed, as owner and operator of Perry, was aware of Perry's contract and ongoing business relationship with BCBST.

55. Coles, as the President and controlling officer of Nelmed and Perry, also was aware of Perry's contract and ongoing business relationship with BCBST.

56. Nelmed and Coles willfully and intentionally interfered with BCBST's rights under the contract by purposefully directing Perry to submit, or causing the submission of, false and misleading claims to BCBST for reimbursement that misrepresented the services Perry provided.

57. Perry historically submitted claims to BCBST for laboratory services applying the correct revenue codes, but upon Nelmed's acquisition and subsequent control of Perry's billing, Perry submitted claims to BCBST for non-patient laboratory services applying the wrong revenue codes in order to induce BCBST to pay significantly higher reimbursements for the claims.

58. Nelmed and Coles's conduct in interfering with the Perry contract with BCBST was intentional, malicious and wrongful, and such interference was neither justified, privileged, nor excusable.

59. Nelmed and Coles's intentional misapplication of revenue codes for claims for non-patient laboratory services submitted through Perry was a breach of the contract between Perry and BCBST, and Nelmed and Coles intended to induce Perry's breach of that contract.

60. The breach was the result of Nelmed and Coles's willful and malicious conduct.

61. Nelmed and Coles's interference with Perry's contract with BCBST was contrary to Perry's own economic interests. Notably, Perry has refused to refund the overpayments it received despite BCBST's repayment demands and thereby caused BCBST to sue Perry. Perry also has indicated that it has insufficient funds to repay the overpayments despite its contractual obligation to repay overpayments. Nelmed and Coles also employed fraudulent and wrongful means when tortuously interfering with Perry's contract with BCBST by using Perry as a conduit to collect inflated reimbursements from BCBST for false and misleading claims.

62. As a result of Defendants' willful and malicious conduct, BCBST has suffered damages.

Count II - Tortious Interference with Business Relationship
(Against Both Defendants)

63. BCBST re-alleges and incorporates by reference the allegations in paragraphs 1-62 as if fully set forth herein.

64. Nelmed and Coles are liable to BCBST for their intentional interference with the business relationship between Perry and BCBST by directing Perry to submit false and misleading claims to BCBST for reimbursement of health care services in contravention to BCBST's rights under the contract.

65. The contract between Perry and BCBST imposes an ongoing business between the parties to the contract. Nelmed and Coles were not a party to the contract between Perry and BCBST at the time Nelmed, however, acquired Perry in or around May of 2018.

66. As the owner and operator of Perry, Nelmed and Coles had actual knowledge of the ongoing business relationship Perry maintained with BCBST pursuant to the parties' network contract.

67. As the President of Nelmed and Perry, Coles also had actual knowledge of the ongoing business relationship Perry maintained with BCBST pursuant to the parties' network contract.

68. Despite Nelmed and Coles's actual knowledge of Perry and BCBST's ongoing business relationship, Nelmed and Coles caused Perry to submit to BCBST thousands of false and misleading claims for laboratory services with knowledge of their falsity in furtherance of their own financial gain.

69. Nelmed and Coles's willful and intentional interference with Perry and BCBST's rights under their network contract has destroyed the business relationship between Perry and BCBST and caused BCBST to overpay millions of dollars. By using Perry as a conduit for its improper scheme, Nelmed and Coles intended to destroy the relationship between Perry and BCBST while exploiting Perry's contract with BCBST, and leaving Perry in a position where it could not repay the money that Nelmed and Coles had bilked out of BCBST and its employer and government sponsored health plan customers.

70. As a result of Defendants' conduct, BCBST suffered damages.

Count III - Violation of Section 47-50-109 of the Tennessee Code
(Against Both Defendants)

71. BCBST re-alleges and incorporates by reference the allegations in paragraphs 1-70 as if fully set forth herein.

72. BCBST and Perry had a valid network contract under which Perry agreed to submit claims to BCBST in accordance with the billing procedures determined by BCBST.

73. Nelmed, as owner and operator of Perry, had sufficient knowledge of the contract between Perry and BCBST.

74. Coles, as the President of Nelmed and Perry, also had sufficient knowledge of the contract between Perry and BCBST.

75. Nelmed and Coles intentionally directed Perry to submit thousands of false and misleading claims to BCBST in breach of the contract between Perry and BCBST, and Nelmed and Coles intended to induce Perry's breach of that contract. Perry had consistently billed claims using the correct revenue codes for years until Nelmed acquired Perry and altered Perry's billing practices in furtherance of Defendants' improper scheme.

76. Nelmed and Coles's interference with the contract between Perry and BCBST was malicious and wrongful and in furtherance of its own financial gain.

77. As a result of Nelmed and Coles's intentional and malicious interference by submitting claims using Perry to apply wrong revenue codes, Nelmed and Coles caused BCBST to overpay millions of dollars.

78. Due to Defendants' conduct, BCBST suffered damages.

Count IV - Negligent Misrepresentation
(Against Both Defendants)

79. BCBST re-alleges and incorporates by reference the allegations in paragraphs 1-78 as if fully set forth herein.

80. Nelmed and Coles are liable to BCBST for negligent misrepresentation as a result of supplying false billing information to BCBST upon which Nelmed and Coles knew BCBST would rely, and upon which BCBST did rely by overpaying millions of dollars.

81. Nelmed and Coles failed to disclose material facts to BCBST, including that they had acquired Perry and were intending to use Perry as a conduit for their improper billing scheme by dramatically increasing the hospital's claims for non-patient laboratory services, misrepresenting the nature of the non-patient services to inflate reimbursements from BCBST, and then funneling the reimbursements to the hospital back to Nelmed, Coles, and others.

82. Nelmed and Coles knowingly made material misrepresentations to BCBST regarding the type of services Perry performed by directing Perry to bill the incorrect revenue codes for laboratory services.

83. Nelmed and Coles failed to exercise care when communicating, or failing to communicate, the aforementioned information, and the information was in fact false.

84. BCBST justifiably relied on the information that Nelmed and Coles communicated, or failed to communicate.

85. As a result of Defendants' conduct, BCBST suffered damages.

Count V - Breach of Contract under an Alter Ego/Piercing the Corporate Veil Theory
(Against Both Defendants)

86. BCBST re-alleges and incorporates by reference the allegations contained in paragraphs 1-85 as if fully set forth herein.

87. Nelmed, as owner and operator of Perry, controlled and dominated Perry to the extent that Nelmed is an alter ego of Perry. Nelmed had control over the finances, affairs, policies, practices, and finances of Perry to effectuate its improper scheme such that any individuality or separateness between Nelmed and Perry have ceased.

88. Nelmed and Perry share the same President and primary officer, Nelandes Coles.

89. Coles similarly controlled and dominated Perry to the extent that Coles is an alter ego or pierced Perry's corporate veil. Coles had control over the finances, affairs, policies, practices, and finances of Perry to effectuate the improper scheme such that any individuality or separateness between Coles and Perry have ceased.

90. Nelmed and Coles, through their control over Perry, altered the billing practices of Perry to bill BCBST using different and incorrect revenue codes in order to induce BCBST to issue greater payments for the claims Perry submitted than if Perry had correctly billed the claims. Specifically, Nelmed and Coles used their control of Perry to intentionally apply the wrong revenue codes when billing BCBST for non-patient laboratory services.

91. Nelmed's and Coles's improper application of the wrong revenue codes when billing for non-patient laboratory services was a breach of the contract between Perry and BCBST and in contravention to BCBST's rights under the contract.

92. Nelmed's and Coles's control of Perry and actions in causing the breach of Perry's contract with BCBST proximately caused severe financial injury to BCBST. By using Perry as a conduit for their improper scheme and funneling the overwhelming majority of the overpayments

to Nelmed, Coles, and other owners and/or investors, Nelmed and Coles abused the corporate form, disregarded any formal distinctions between Nelmed, Coles, and Perry, and left Perry unable to repay BCBST. Recognizing the separate existence of Nelmed, Coles, and Perry would promote injustice and fraud under the circumstances and permit abuse of the corporate privilege.

93. BCBST has performed all of its obligations under the network contract and issued millions of dollars in overpayments to Perry for non-patient laboratory services as result of Perry's misrepresentations.

94. As a result of Nelmed's and Coles's conduct and Perry's breach of the network contract, BCBST suffered damages.

Count VI - Unjust Enrichment
(Against Both Defendants)

95. BCBST re-alleges and incorporates by reference the allegations in paragraphs 1-94 as if fully set forth herein.

96. Perry is entitled to no more than a reasonable fee for those services that it performed and properly billed.

97. Nelmed and Coles directed or otherwise caused Perry to submit thousands of claims for laboratory services that misrepresented the services that were performed.

98. BCBST relied on the representations made by Perry and issued payment to Perry for those claims.

99. Upon information and belief, Nelmed and Coles subsequently took the payments BCBST issued to Perry for the misrepresented claims and disbursed the payments to themselves and to Nelmed's owners.

100. Nelmed and Coles have wrongfully obtained the payments issued by BCBST through their improper conduct.

101. By accepting BCBST's overpayments, Nelmed and Coles have been unjustly enriched and hold money that in equity and good conscience belongs to BCBST. It would be unjust for Nelmed and Coles to retain the benefit of the overpayments that BCBST paid as a result of Defendants' improper conduct.

102. As a result of Defendants' actions, BCBST has been damaged or otherwise harmed.

103. BCBST seeks the damages and/or restitution for the payments it made to Perry that were subsequently transferred to Nelmed and Coles.

Count VII - Fraud
(Against Both Defendants)

104. BCBST re-alleges and incorporates by reference the allegations in paragraphs 1-103 as if fully set forth herein.

105. Nelmed and Coles are liable to BCBST for fraud as a result of their scheme to knowingly and intentionally submit through Perry thousands of false claims for non-patient laboratory services that purposefully applied incorrect revenue codes, thereby leading to immense overpayments from BCBST.

106. Nelmed and Coles knew that prior to Nelmed's acquisition, Perry had been billing BCBST with correct revenue codes for years in which Perry had consistently submitted claims for non-patient laboratory services using the correct revenue codes.

107. However, once Nelmed and Coles acquired Perry and asserted control over its billings and operations, Nelmed and Coles directed Perry to submit thousands of claims for purported non-patient laboratory services that intentionally misrepresented the services through the use of improper revenue codes. Nelmed and Coles's intentional miscoding of revenue codes led BCBST to issue payments at a rate designated by the network contract meant for other services.

108. Nelmed and Coles's intentional and purposeful miscoding of revenue codes was also only occurred once there was a dramatic increase in claims for non-patient laboratory services that Perry submitted to BCBST. The increase in claims along with the use of the incorrect revenue codes was done with an intention to filter claims under the Perry contract and otherwise manipulate the contract to generate higher payments from BCBST.

109. In furtherance of their fraudulent billing scheme, Nelmed and Coles intentionally failed to notify BCBST of their scheme because they knew that, given such notice, BCBST would cease to reimburse the claims at the higher rate, which was not the rate designated under the contract for the actual laboratory services that were performed.

110. As a result of its reasonable reliance upon Nelmed and Coles's material misrepresentations, BCBST made substantial overpayments to Perry that it would otherwise have paid had it known of the misrepresentations.

111. BCBST suffered damages as a result of Nelmed and Coles's fraudulent billing scheme.

Count VIII – Constructive Fraud
(Against Both Defendants)

112. BCBST re-alleges and incorporates by reference the allegations in paragraphs 1-111 as if fully set forth herein.

113. Nelmed and Coles are liable to BCBST for constructive fraud based on Nelmed and Coles's abuse of the contractual relationship between Perry and BCBST by improperly billing false and misleading claims for non-patient laboratory services through Nelmed and Coles's ownership and control of Perry.

114. Perry and BCBST had a contractual relationship under the network contract, which imposed a duty to act in accordance with the terms of the contract.

115. As a result of the contractual relationship, BCBST reasonably and justifiably relied upon Perry to act in a manner consistent with the terms of the contract by properly submitting claims for reimbursement using the correct revenue codes.

116. Upon Nelmed's acquisition of Perry, Nelmed and Coles used their ownership and control of Perry to enable Perry to misapply revenue codes when submitting claims to BCBST for reimbursement in furtherance of their own financial gain.

117. BCBST reasonably relied on Nelmed and Coles's misrepresentations because of BCBST's longstanding contractual relationship with Perry and history of correctly coding claims, causing BCBST to overpay millions of dollars. After more than two decades of contracting with one another, BCBST had no reason to suspect that Perry would suddenly misrepresent thousands of claims for laboratory services.

118. Nelmed and Coles were aware of the serious risk of harm posed by them having Perry submit to BCBST thousands of false and misrepresented claims.

119. Nelmed and Coles's billing scheme abused the contractual relationship existing between Perry and BCBST. This abuse was perpetrated through intentional deceit and disregard for BCBST's contractual rights in furtherance of Nelmed and Coles's own financial gain through their ownership and control of Perry.

120. As a result of Nelmed and Coles's conduct, BCBST suffered damages.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing BCBST prays that the Court grant the following relief and enter judgment in its favor and against Nelmed and Coles:

- a. Compensatory damages;
- b. Consequential damages;
- c. Restitution;

- d. Punitive damages;
- e. Attorneys' fees;
- f. Interest;
- g. Costs; and
- h. All such other relief this Court deems just and equitable.

Dated: December 9, 2019

Respectfully submitted,

By: _____

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