**FILED**

**May 30, 2017**

KAREN MITCHELL
CLERK, U.S. DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF TEXAS**

**FORT WORTH DIVISION**

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| Highmark Inc., | § | Civil No: 4:17-cv-00030 |
| Plaintiff, | § | |
| v. | § | JURY TRIAL DEMANDED |
| Allcare Health Management Systems, Inc., W. Halden Conner, Thomas G. Plaskett, and Robert H. Shelton, | § | |
| Defendants. | § | |

**SECOND AMENDED COMPLAINT**

Plaintiff Highmark Inc. ("Highmark"), by and through its undersigned counsel and pursuant to Fed. R. Civ. P. 15(a)(1)(B), hereby files this following Second Amended Complaint. As Highmark noted in its January 9, 2017 "Notice of Related Case," (Doc. No. 5), this action is related to a previous case before this Court—*Highmark, Inc. v. Allcare Health Management Systems, Inc.*, Civil No. 4:03-CV-1384-Y ("*Highmark I*"). This action—for fraud, alter ego and piercing the corporate veil—springs from the final judgment entered in *Highmark I* and is predicated upon a predatory, fraudulent and long-standing scheme developed by Allcare Health Management System, Inc. ("Allcare") in concert with its Directors/Officers/Shareholders W. Halden Conner ("Conner"), Thomas G. Plaskett ("Plaskett") and Robert H. Shelton ("Shelton") (together the "Principals") (and together with Allcare, the "Defendants") to use false claims of patent infringement, threats of litigation and litigation itself as leverage to induce third parties, including particularly Highmark, into expending huge sums of money and investment of employee time to investigate the possible merit of the false allegations of infringement so as to place the targeted companies in the Hobson's Choice of paying the demand or paying the fees, expenses and costs associated with a hugely expensive patent infringement litigation.

Accordingly, Highmark now files this Complaint against Allcare and Allcare's three principals—W. Halden Conner, Thomas G. Plaskett, and Robert H. Shelton (collectively, the "Principals")—asserting constructive and actual fraud and alter ego in order to pierce Allcare's corporate veil and, by doing so, recover the Award directly from the Principals who had plotted the scheme that harmed Highmark.

**~ Parties ~**

1. Plaintiff Highmark is a Pennsylvania non-profit hospital and professional health services corporation with its principal place of business in Pennsylvania. In *Highmark I*, Allcare asserted that Highmark infringed claims of U.S. Patent No. 5,301,105 (the "'105 patent") but, on summary judgment, this Court found that Highmark did *not* infringe any claims of the '105 patent asserted by Allcare. Highmark was thus the prevailing party over Allcare. Thereafter, on Highmark's motion, finding Allcare to be a "patent troll" that had asserted frivolous claims, thus making the case "exceptional." This Court entered a final order and judgment pursuant to which Allcare was ordered to pay to Highmark's attorneys' fees in the amount of **$5,279,754.01**, plus statutory 0.42 percent interest pursuant to 28 U.S.C. § 1961, running from April 1, 2010 (the "Award"). *Highmark I* at Doc. No. 639 (the "Fees Order"). This judgment was made final on June 23, 2015 and thus binding on Allcare and its Principals. *Highmark I,* Doc. 707.

2. Defendant Allcare Health Management Systems, Inc. ("Allcare") is now, upon information and belief, a Virginia corporation with its principal place of business in Fort Worth, Texas. Allcare was originally incorporated by the Principals as a Texas corporation, moved its state of incorporation to Delaware and then, as part of a scheme to defraud Highmark, and after

Highmark filed the Complaint that initiated *Highmark I,* the Principals incorporated a new entity in Virginia and then merged the Delaware corporation into that Virginia corporation.

3. Defendant W. Halden Conner, an individual, is, upon information and belief, a Texas citizen and resident. Upon information and belief, Conner resides and/or regularly does business at the following addresses: 1741 Hulen Street, 2nd Floor, Fort Worth, TX 76107; and/or 100 East 15th Street, Suite 620, Fort Worth, TX 76102. Conner is the President, a Director, and co-founder of Allcare and is an owner of Allcare and, with the two other Principals, is a majority owner and de-facto controller of Allcare.

4. Defendant Thomas G. Plaskett, an individual, is, upon information and belief, a Texas citizen and resident. Upon information and belief, Plaskett resides and/or regularly does business at the following address: 3911 Fox Glen Drive, Irving, TX 75062. Plaskett is the Chairman and a Director of Allcare and is an owner of Allcare and, with the two other Principals, is a majority owner and de-facto controller of Allcare.

5. Defendant Robert H. Shelton, an individual, is, upon information and belief, a California citizen who has, for all purposes relevant to this action, committed the actions complained of within Texas and this jurisdiction and, in doing so, has purposefully and repeatedly availed himself and his activities to Texas in general and to the Fort Worth area in particular. Upon information and belief, Shelton resides and/or regularly does business at the following addresses: 3102 Telmo Drive, Irvine, CA 92618; and/or 11 Keats Court, Coto de Caza, CA 92679. Shelton is a Vice-President, a Director, and co-founder of Allcare and is an owner of Allcare and, with the two other Principals, is a majority owner and de-facto controller of Allcare.

**~ The Scheme ~**

6. Simply put, Allcare was not created to be an operational entity but rather was created as a "patent troll" (as previously found by this Court, *Highmark I*, Doc. 566 at 27 and n.6). It operated as part of a scheme to extort money from innocent third parties through a fraudulent pattern and practice of "licensing-by-litigation" (the "Scheme") without performing any reasonable investigation prior to asserting patent infringement. Allcare was not, at any time, a legitimate business, nor did it follow basic rules that govern the operation of corporations in Texas (Allcare's original state of incorporation) or Virginia (Allcare's state of incorporation *after* Highmark commenced the *Highmark I* action). Most importantly, Allcare was created and operated as the Alter Ego of the Principals who intentionally and chronically underfunded and undercapitalized Allcare through its entire existence by the intentional exhaustion of Allcare's operating capital.

7. The creation of Allcare was concocted in late 1993 or early 1994 by the Principals in a Scheme that began when Conner negotiated with the inventor (Desmond Cummings) to acquire the United States Patent No. 5,301,105 (the "'105 patent") for a mere $75,000. The invention relates to a managed health care system that uses a computer system to interconnect and integrate interaction of the patient, health care provider, bank or other financial institution, insurance company, utilization reviewer, and employer so as to include within a single system each of the essential participants to provide patients with complete and comprehensive pretreatment, treatment and post-treatment health care and payment for such health care. In short, it requires a system that interconnects six entities (or individuals), permitting them to interact, and requires the entry of data symbolic of patient systems for tentatively identifying a proposed mode of treatment as previously found by this Court in *Highmark I*, Doc. 375.

8. Obtaining the patent and incorporating Allcare was part of a Scheme by the Principals to assert meritless claims for infringement against hundreds of entities and demand payment of "royalties" in exchange for litigation avoidance. Conner, Plaskett and Shelton were each involved in developing the Scheme and in implementing it over time. Although Conner was the principal architect of the Scheme, Shelton provided the "legwork" for identifying and making the threats to targets as well as acting as a paralegal to support Allcare's contingent-fee counsel when litigations were commenced. He personally drafted cease and desist letters and other documents, he reviewed the patent and developed theories. Plaskett approved these actions and provided funding when needed and endorsed the plan of Conner and Shelton.

9. From that time forward, Allcare's only business was suing third-party companies through using contingent fees lawyers. This Scheme to misuse the '105 patent was a violation of implied duties of a patent holder not to misuse its patent to assert frivolous claims of infringement or risk being found to have filed an "exceptional-case" under 35 U.S.C. §285.

10. Before the Principals caught Highmark in the net of their Scheme and threatened Highmark with suit if it did not pay exorbitant amounts, Allcare targeted many other companies. For example, Defendants filed suit on June 11, 1999 at <u>Allcare Health Mngmt. Sys., Inc. v. Cerner Corp. et al.</u>, (4:99 CV 464-Y) (N.D. Texas) (Judge Means presiding) and asserted infringement against the following parties: Cerner Corp.; Eclipsys Solutions Corp.; Envoy Corp.; Express Scripts; Diversified Pharmaceuticals; Healtheon Corp.; IDX Systems Corp.; McKesson HBOC; Medicalogic, Inc.; Merck-Medco Managed Care, LCC; PCS Health Systems, Inc.; Science Applications, International Corp.

11. Shortly thereafter, on October 12, 2000, Allcare filed suit against thirteen additional parties in <u>Allcare Health Mnmgt. Sys., Inc. v. Advance Paradigm, Inc.</u>, (400-CV-

1683-E) (N.D. Texas) (J. McBryde). These defendants included Advance Paradigm, Inc., Avaz Group, Inc., Argus Health Systems, Inc., Caremark, Inc., Consultec, LLC, First Health Services Corp, Managed Pharmacy Benefits, Inc., MedImpact Healthcare Systems, Inc., National Medical Health Care Systems, Inc., National Prescription Administrators, Inc., Pro Vantage Health Services, Inc., TDI Managed Care Services, Inc., d/b/a Eckerd Health Services, and WHP Health Initiatives, Inc.

12. Every defendant in each of these two actions refused to take a license from Allcare, each was then sued, and each separately reached a settlement with Allcare after suit under which each defendant agreed to take a license under the '105 Patent. The royalties paid by these defendants ranged from $40,000 to $950,000 but averaged only $281,600. All of the settlement payments were only a tiny fraction of the demand against Highmark as well as the cost to litigate a patent infringement action to trial, and were a tiny percentage of the monetary claim asserted by Allcare against Highmark in this action. None of the defendants in either action admitted infringement or validity of the '105 patent.

13. Other litigations filed before *Highmark I* include <u>Allcare Health Mngmt. Sys., Inc. v. Trigon Healthcare, Inc.</u>, (CA 1:02-CV-756-A) (E.D. Va.) (May 24, 2002) (the "<u>Trigon</u> Action") and <u>Allcare Health Mngmt. Sys., Inc. v. Harvard Pilgrim</u>, (CA No. 503-CV-89 (E.D. Texas) (filed May 5, 2003). The defendant in the *Trigon* Action, an entity completely unrelated to Highmark, was a member of the wholly independent Blue Cross Blue Shield Association, just as Highmark was.

14. In addition to these prior actions, and as a result of being caught in the Principals' Scheme, a declaratory judgment action was asserted against Allcare in 2004 from another healthcare insurer. *See* <u>Wellchoice, Inc. v. Allcare Health Mngmt. Sys., Inc.</u>, CA 1:04 CV-1566

(S.D.N.Y.) (filed February 24, 2004). This too was settled for a sum far less than the median litigation cost for a patent infringement action.

15. Only one of these actions made it as far as having the claims of the ‘105 patent construed. That was the *Trigon* Action in the Eastern District of Virginia. Allcare would, eventually, base its infringement analysis against Highmark on Allcare's understanding of how Trigon's claim submission and approval system worked, even though Allcare's Principals were well aware that Highmark and Trigon were not related and, thus, not even an unreasonable inference could be drawn that they share the same system.

16. In or about 2002, and again as part of its on-going Scheme, Shelton commissioned Seaport Surveys to survey healthcare-related companies on Allcare's behalf solely to identify companies that Allcare could target for licensing the ‘105 Patent (the "Survey"). As previously found by this Court, the Principals, notably Shelton, designed this telephone "Survey" to target hundreds of entities in the health care industry. *Highmark I*, Doc. 566 at 44.

17. After having been engaged by Shelton and having adopted his survey questions, telephone interviews were conducted over a ten-month period with 328 managed healthcare companies targeted by the Defendants. These companies were chosen, in large part by Shelton, because they had, *or intended to develop*, plans to use "the kinds of features and activities that are covered by the broader allowed claims of the ‘105 Patent." In other words, many of these targets were not using the claimed system of the ‘105 patent and the Defendants were aware of that when they targeted the companies.

18. While the Survey asked target companies whether their health care claims submission system was electronic and whether it permitted the entry of ICD 9 codes and CPT codes (i.e., codes that, respectively, indicate the symptoms and the prescribed treatment for

patients), it was intentionally not designed to question the targeted companies about whether their system actually met any of the claims of the '105 patent. Nonetheless, the Principals used this Survey as part of their fraudulent Scheme by falsely claiming, in demand letters to targets, including Highmark, that any unnamed employee of the target had responded to a survey by admitting that the target's systems met the claim elements of the '105 patent when, in fact, the target's employee had never been questioned about the elements of any claim of the '105 patent. The Survey was a fraudulent ruse used to create an unfair leverage over the Defendants' targets.

19. Eventually, after having successfully forced more than two dozen entities to make payments that were unnecessary under the patent, Defendants turned their attention to Highmark. On February 7, 2002, prior to commencement of this action, an individual named "Robert" (Shelton's first name) acting on behalf and at the direction of Allcare, and reading questions from the Survey developed and commissioned by Shelton as part of the Scheme, contacted Highmark's Vice-President of Provider Relations and stated as follows (emphasis not in original):

> Hello. My name is Robert. I am a consultant working on a project in which we *are attempting to identify organizations that are leaders in the electronic processing* of authorizations and referral requests. I have several questions regarding Highmark's capabilities to connect to providers and process authorizations and referrals electronically.

The identity of the Highmark employee who was contacted (the VP of Provider Relations) was not disclosed to Highmark by Allcare until into well into the discovery phase of *Highmark I.*

20. The statements made by "Robert" to Highmark were not true; that is, it was not true that the purpose of the Survey was to identify leaders in electronic processing. Rather, this false statement was part of the fraudulent Scheme. The Principals' goal—as confirmed by Shelton—was to identify potential licensing targets for Allcare, and the statements made to

Highmark by Allcare's representative, *i.e.*, that "Robert" was trying *to identify industry leaders*, was a fraudulent ruse to trick Highmark (and other targets) into expansively stating their electronic capabilities in order to be known as a "leader" in the field and, thereby, falling prey to the fraudulent Scheme of Principals. The Principals, at all times, knew that the representations made in the Survey about "leaders" in the field were false because the Survey had been drafted by Shelton and approved by Plaskett and Conner for the contrary purpose of inducing Highmark, and other companies, into relying on this statement to "puff" the scope and character of their own systems so as to be known as a leader in the field, thereby unwittingly setting themselves up to be targets of the Scheme.

21. Then on April 16, 2002, Shelton authored and sent, with, on information and belief, approval of Plaskett and Conner, a demand letter to Highmark (the "Demand Letter") asserting knowingly fraudulent and baseless claims of infringement based upon Highmark's Navinet system.[1] This Demand Letter made the false and fraudulent statement that "Allcare recently commissioned an independent research organization to conduct an analysis of Highmark's transaction processing systems." Highmark would not learn until years later—after it was found not to infringe any claim of the '105 patent in *Highmark I*—that no such independent analysis had been done and that Shelton's letter referred to—but did not provide a copy—of the Survey. This was a completely fabricated claim.

22. The Demand Letter also included a claim that Allcare has "previously negotiated license agreement on a running royalty basis with firms at the leading edge of implementing state-of-the-art medical information system," and this too was a fabrication. Finally, Shelton

[1] This system was designed by Highmark, with Navinet, to permit submission to Highmark of health claims for reimbursement for services rendered by providers to Highmark's insureds.

falsely claimed that Allcare had "litigated it rights" against "several dozens" of companies when, in fact, Allcare had litigated two prior cases against a total of 26 entities.

23. Although the Demand Letter drafted by the Principals did not directly state that Highmark would be sued for infringement, it clearly indicated (1) that Shelton believed Highmark infringed, and (2) that Allcare had sued in the past and was willing to sue again; thereby constituting a clear threat of suit. As a direct result of the Principals' letter, Highmark entered into a year-long negotiation with Allcare in an attempt to dissuade Allcare from its infringement contentions.

24. As previously found by this Court in *Highmark I*, these statements were made by the Principals to induce Highmark to act upon the Principals' statements by taking a license that Highmark did not need under the '105 patent or be put at risk of suit where Defendants would demand a multi-million dollar royalty (calculated by the Defendants to be as much as $142 million dollars). As a result of this Demand Letter, and relying on the statements made in the letter, Highmark engaged, at great expense and intrusion into its business, in a year-long effort to dissuade Allcare's Principals from pursuing their fraudulent claims.

25. At the behest of Shelton, on October 14, 2002, a meeting occurred between Shelton, Allcare's attorney Hill and Highmark and its counsel (the "Meeting"). The nominal purpose of the Meeting was to discuss settlement but, in fact, the Meeting was requested and arranged by Shelton—with authorization from Plaskett and Conner—as part of the Scheme and so as to provide additional false information to Highmark with the intent of creating further pressure and leverage to induce Highmark to make a payment. During this Meeting, Shelton discussed the existence of a purported survey of Highmark that, he contended, showed that Highmark infringed claims of the '105 patent. Shelton represented that the Survey was done by

telephone, was of a management-level person at Highmark with knowledge of Highmark's system but Shelton refused to provide Highmark more information or even to disclose the identity of the individual at Highmark who had provided the responses.

26. As a direct result of, and relying upon, Shelton's letter and the statements made in the October 2002 meeting, Highmark was forced to undergo the very time consuming and expensive process of reconstructing the history of Highmark's own pre-authorization and claims processing systems beginning with the late 1960s, thus taking untold hours of time from employees of Highmark at all levels of management and staff. Dozens of employees were redirected from their day-to-day duties to assist Highmark in building its defense against Allcare's claims. These employees had to take time away from the business of Highmark to be interviewed, to search their files and provide documents, all at great detriment and expense to Highmark. Thus, the attorneys' fees awarded by this Court in *Highmark I* are a small fraction of the true cost to Highmark of fighting against being snared by the Defendants' fraudulent Scheme.

27. On December 11, 2002 in another letter, this time from counsel to Allcare (copying Shelton), Highmark was advised of the "substantial damages" that Allcare would be seeking if it sued Highmark and that, in an unrelated case by Allcare against Trigon Healthcare, Inc., Allcare expected that Trigon had already expended more than two million dollars in fees trying to fight against Allcare. Highmark relied on these statements by furthering its investigation efforts.

28. The licensing demand by the Defendants was so extraordinary, so detrimental to Highmark's business, and the risk that Highmark's Navinet system might be enjoined from use—so integral to its business model—and Allcare's continuing threat of infringement so

eminent that Highmark, relying on Allcare's threats and not knowing the false nature of Shelton's statements, was forced to commence a declaratory judgment action for non-infringement (*Highmark I*). Despite having had their fraudulent and false claims of infringement challenged by Highmark, throughout *Highmark* I, Allcare's Principals elected to continue to press the claim of infringement and to make false representations to Highmark (and this Court) throughout the litigation as part of their Scheme to force payment from Highmark. As a result, Highmark suffered more than $7 million in actual damages in the nature of attorneys' fees, expert fees, costs and the like. These damages do not include the unquantifiable harm caused to Highmark by employee time lost to mount a defense against the Defendants' fraudulent Scheme.[2]

29. During all this time, the Principals were aware that the Patent Statute provided for payment by the losing party of attorneys' fees in exceptional-cases, and yet took no steps to properly capitalize Allcare so that it could make such a payment in the event that it lost any of the many cases it brought or caused to be brought. Instead, Allcare distributed its royalty revenues (over $14 million) to its Principals and otherwise used cash from Allcare to benefit the Principals personally.

30. Unknown to Highmark, and believed to be unknown to any of the other targeted companies, Allcare and its Principals never performed any reasonable investigation into the systems actually used by the targeted companies. Instead, the Defendants relied upon the fatally flawed and intentionally designed Survey, the conclusions drawn by Shelton from that Survey and the false representations made by Shelton (on behalf of the other Principals) in demand letters. And Defendants did this despite the fact that, by at least Shelton's admission in his

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[2] This $7 million figure is higher than the amount awarded by the Court because Allcare continued to press its frivolous claims after the filing of the motion for exceptional-case but, having already sought more than $5 million in fees and costs, Highmark did not update its request from its original request.

deposition in the *Trigon* Action on November 6, 2002, Shelton was not competent to determine questions related to patentability or scope of the patent. In other words, as part of their Scheme, the Principals never intended to engage anyone with experience to assess whether any target—including Highmark—actually infringed any claim of the '105 patent. This was by design. The Scheme recognized that only 2% of all patent cases ever make it to trial. Most are settled for the payment of some sum of money.

31. It was only in 2009, in *Highmark I* and in response to Highmark's motion for an exceptional-case finding that Allcare and its Principals finally disclosed in a Declaration filed with this Court in opposition to that motion that its infringement contentions against Highmark were based—not on a consideration of Highmark's system but on the unrelated system used by Trigon. (*Highmark I*, Doc. 526, at its Exh. Q).

32. In the same filing, Shelton tried to cover up the fraudulent Survey by filing a completely false declaration claiming that he was uninvolved in the Survey other than to merely commission it to be done. *Id.* at Exh. M. This Court acknowledged Shelton's false statements about the Survey, finding that Shelton designed the Survey and Allcare controlled all aspects except for the making of the actual phones and, further, that Shelton had made representations to the Western District of Pennsylvania (where *Highmark I* was initiated) that was "at best obfuscatory." *Highmark I*, Doc. 566 at 43-45.

33. Rather than perform any competent pre-filing investigation, the Defendants relied on Shelton and the Survey that never actually surveyed whether a target's system contained any of the elements of the '105 patent to create the impression that Allcare had a reasonable basis to claim infringement. This bluff was a critical part of the Principals' Scheme. The Survey was simply a ruse, another part of the Scheme to make targets like Highmark believe that someone—

an unidentified someone—within their company had admitted infringement when, in fact, no one ever had.

34. On April 10, 2003, Allcare tried to move its Scheme against Highmark further along through a letter sent by Allcare's then counsel, Stephen Hill. Shelton is copied on the letter and, on information and belief, participated in the drafting of the letter. At this time, Trigon had already been sued by Allcare and, after a long year of litigation, had settled with Allcare. Hill, at the behest of Shelton and the other Principals, writes that Allcare is providing information about its potential damage claim against Highmark:

> [t]o see if we can reach a non-litigated resolution that [Allcare] can use as a basis to determine to other payor organizations how ill-reasoned it is for a firm to adopt Trigon's prior strategy of leaving Allcare no choice but to pursue a litigated resolutions.

*Highmark I,* Doc. 615 at 111. This letter contained a heavily redacted attachment that purported to be Allcare's royalty calculation. The redaction was so extensive that little of import was left to see except that Allcare was claimed a royalty from Highmark of $142,939,467.

35. The royalties set forth in this April 10th letter were inherently overstated and thus false. At the time of the letter, approved by the Principals and sent at their instruction, the Principals were aware that their royalty calculation had no basis in fact or law and was, instead, on information and belief, another prong of the Scheme designed to put fear into Highmark so as to coerce Highmark into relying upon their fraudulent calculation and paying Allcare a settlement.

36. The intent of the April 10th letter was to pressure, or leverage, Highmark into succumbing to the fraudulent Demand Letter, the baseless purported royalty calculation, and the false claims about the Survey made at the Meeting.

37. In short, the business model adopted by Allcare's Principals—designed to assert false claims to extort payments against literally dozens of entities while targeting hundreds of others—was an ongoing fraudulent Scheme, accomplished by the Principals by making false claims of infringement and while concurrently insuring Allcare would never have sufficient assets to be able to satisfy the attorneys' fees it would owe if it lost any of the many cases that it filed.

**~ Jurisdiction and Venue ~**

38. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds $75,000, exclusive of interest and costs, and complete diversity exists between the parties.

39. This Court additionally has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this case arises under the United States Patent Act, 35 U.S.C. § 285, in that Highmark's entitlement to the Award is based upon a patent-infringement (tort) lawsuit and the Court's associated exceptional-case finding in *Highmark I*.

40. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because this action is a related case to *Highmark I*, in which venue in this judicial district has already been deemed proper. Venue is also proper pursuant to 28 U.S.C. § 1391 because Defendant Allcare resides in this judicial district, and a substantial part of the events or omissions giving rise to Highmark's claims occurred in this judicial district, including but not limited to the Principals' involvement with both *Highmark I* and with the conduct of Allcare's business in this judicial district.

**~ Relation of this Action to *Highmark I* ~**

41. This case flows from this Court's prior finding of non-infringement in *Highmark I* (*Highmark I* at Doc. No. 504) and this Court's associated exceptional-case finding in that action (*Highmark I* at Doc. No. 566) that was predicated upon Section 285 (35 U.S.C. § 285) of the United States Patent Act (35 U.S.C. § 1, *et seq*.) which, itself, permitted this Court to exercise its discretion and award Highmark its attorneys' fees and certain costs totaling $5,279,754.01 (plus interest) (*Highmark I* at Doc. No. 639) (the "Award"). This newly-filed action to recover the Award is thus a "related case" to *Highmark I*; and, both by its relation to *Highmark I* and by virtue of the underlying legal bases for the award to be recovered, is—and should be treated as—an action that arises pursuant to the United States Patent Act, 35 U.S.C. § 1, *et seq*,, including but not limited to 35 U.S.C. § 285.

42. The relief sought in this case—piercing the corporate veil—is pursued as a remedy for Highmark to collect upon the Award from the Principals who designed and implemented the fraudulent patent-trolling Scheme.

43. Highmark has initiated this new case in lieu of attempting to move in the now final and closed *Highmark I* case for post-judgment corporate veil piercing to err on the side of extreme procedural caution because, *inter alia*, the Principals were not named as individual parties in *Highmark I* and were not served as individual parties to this action, although these Principals participated in *Highmark I*, including through filing of numerous affidavits. Highmark believes this Court should treat *Highmark I* and this action as consolidated.

44. Highmark's initiation of this case for this purpose is consistent with, and guided by, this Court's prior pre-judgment ruling that veil-piercing at an earlier stage in *Highmark I* was

not ripe and that movement at that time in *Highmark I* for veil-piercing raised concerns about imposing judgment against "persons who are not parties to [the *Highmark I*] lawsuit." *Highmark I* at Doc. No. 671 (April 25, 2011 Order). The Court denied Highmark's prior motion without prejudice, presumably so that the request to pierce the corporate veil could be raised again by Highmark at a later date, as now, when jurisdiction could be obtained over the Principals. *Id.*

45. Notwithstanding the foregoing paragraphs and the initiation of this new action, the Principals—at all times in *Highmark I*, and as set forth more fully below—had full notice and opportunity to defend the collective and aligned interests of themselves and Allcare in *Highmark I*, and the Principals, in fact, did actively participate and defend those interests in *Highmark I*.

**~ Brief Background of Allcare's Principal Asset, the '105 Patent ~**

46. The '105 patent was issued on April 5, 1994. Allcare obtained the '105 patent in 1994 for $75,000 through an assignment from the inventor, Desmond Cummings. Mr. Cummings was issued roughly 7500 shares of Allcare stock. Upon information and belief, these shares were issued in lieu of payment by Allcare of the $75,000.

47. The invention of the '105 patent relates to a managed health care system that uses a computer system to interconnect and integrate interaction of the patient, health care provider, bank or other financial institution, insurance company, utilization reviewer, and employer so as to include within a single system each of the essential participants to provide patients with complete and comprehensive pretreatment, treatment, and post-treatment health care and payment for such health care.

48. Allcare has never practiced under the patent; it never developed any system based on the '105 patent, much less the described complex managed health care system. Neither Allcare nor its Principals invested money in research and development of the claimed invention.

49. Rather than being an operational company with products and services offerings, Allcare's sole business is, and was at all relevant times, its Scheme to license the '105 patent through demand letters claiming infringement based on the fraudulent Survey, threats of patent-infringement litigation, and through initiating patent-infringement litigation.

**~ Intentional Undercapitalization of Allcare by its Principals ~**

50. Allcare was incorporated in Texas, on information and belief, in late 1993 by Conner solely for the purpose of acquiring the '105 patent to use to generate royalty income by whatever means necessary. Conner then invited Shelton and Plaskett to join him as officers and directors and, initially, the only shareholders of Allcare. Conner, Shelton and Plaskett are unquestionable the principals who control the operation of Allcare and have done so from its beginning.

51. At all times after its incorporation, and throughout the course of *Highmark I,* the Principals—Conner, Shelton, and Plaskett—exercised collective and total control over Allcare and its business, legal, and financial activities and decision-making as Allcare's officers and as its majority owners. One of the decisions made by these Principals was to underfund Allcare.

52. There were other shareholders of Allcare, including family members of Conner. A number of shareholders received their shares in lieu of payment by Allcare for services rendered. Upon information and belief, some of these services directly benefitted the Principals in their individual capacities.

53. There were some shareholders who received their shares of Allcare stock as "gifts" from Conner or Allcare without having provided any compensation to Allcare.

54. Upon information and belief, none of the Principals invested any money in Allcare as of its incorporation or for years thereafter. During its first year of incorporation, a handful of small investors purchased roughly a total of only $30,500 worth of stock and this amount provided the meager initial operating capital for Allcare.

55. Except for Allcare's Principals, none of the shareholders of Allcare exercised any control over Allcare's business, legal, and financial activities and decision-making. None were permitted to vote on whether to adopt the Principals' patent-trolling Scheme that eventually caught Highmark within its broad net.

56. Over the years from its original incorporation in Texas, through its re-incorporation in Delaware and its being merged into a Virginia corporation also named "Allcare Health Management System, Inc." just as the original Texas corporation, Allcare remain unfunded and undercapitalized by the Principals, much of the time with barely even hundreds of dollars of operating capital.

57. Because Allcare's business, and that of the Principals, is, and has been, to threaten third-parties with claims of patent infringement based on the fraudulent Survey and to litigate a sub-set of those patent-infringement claims, the Defendants voluntarily chose to run Allcare as an undercapitalized entity even while electing to engage in business activities that ordinarily required sufficient capitalization to fund adequate pre-litigation investigations, retain legal counsel, experts, and consultants, and accommodate other routine and pay foreseeable legal costs and expenses. Instead of funding the corporation, the Principals paid consultants and patent

lawyers and even some employees with shares of stock, and utilized contingent-fee lawyers for litigation services so as to avoid the need for available cash.

**~ The Chronically Insolvent Allcare Did Not Engage in Traditional Business Activities ~**

58. Contrary to recognized standards of corporate conduct, and on information and belief, the Principals, with apparent purpose and intent, engaged in a pattern and practice of maintaining Allcare in an insolvent or near-insolvent position at all times while holding itself out as a reasonably capitalized and solvent entity. In so doing, Allcare and its Principals consistently violated, among other things, their most fundamental legal and equitable obligation to maintain Allcare in good-standing. On information and belief, Allcare was unable to meet its financial obligations as they became due, a condition that places greater obligations upon Allcare's management and its Principals to preserve Allcare assets for the benefit of its creditors and shareholders and for the targets of its of its licensing-by-litigation Scheme that would be impacted by the Principals Scheme.

59. Allcare did not and does not engage in traditional business activities. However, because Allcare's business, and that of the Principals, is, and was at all relevant times, to threaten third-parties with claims of patent infringement by using false and fraudulent assertions, including the Survey, as leverage to induce target companies to make payments, Allcare and the Principals at all times were at risk of being sued for a declaratory judgment of non-infringement and being subject to an exceptional-case finding together with a potential resulting obligation to pay material sums of money including costs under Federal Rule of Civil Procedure 54(d)(1), fees under 35 U.S.C. § 285, and/or sanctions under Federal Rule of Civil Procedure 11.

60. Thus, even the non-traditional licensing-by-litigation Scheme engaged in by Defendants required the Principals to sufficiently capitalized Allcare to allow for the possibility

that, by engaging in such activities, Defendants could be subject to the payment of attorneys' fees and other costs under Federal Rule of Civil Procedure 54(d)(1), fees under 35 U.S.C. § 285, and/or sanctions under Federal Rule of Civil Procedure 11. The failure by Allcare and its Principals to maintain appropriate capitalization was part of the Principals' Scheme to ostensibly free them to use the Survey as a stalking horse, coerce payments or maintain frivolous actions to coerce payments, as was the case in *Highmark I*, in the calculated and intentional hope that this could be done without risking any capital investment by the Principals. Instead, and in accordance with the fraudulent Scheme developed by the Principals, the ultimate costs of the hugely expensive patent litigation were improperly shifted on to Allcare's targets, including particularly Highmark.

61. Despite knowing of the possibility that Allcare could be assessed attorneys' fees, the Principals intentionally engaged in a pattern and practice of maintaining Allcare in an insolvent or near-insolvent position at all times.

62. The fraudulent pattern and practice engaged in by Allcare's Principals kept Allcare in an insolvent or near-insolvent state at all times and, therefore, assured that any targeted company—like Highmark—could have no recovery from Allcare itself in the event that the targeted company prevailed in litigation, just as Highmark did. Part of the Principals' Scheme was to use the nominally functional Allcare as a screen to shield the Principals from paying any target—including Highmark—who might successfully defend the claims of infringement based on nothing more than the fraudulent survey and the unsophisticated and purported analysis of Shelton and the other Principals.

63. For example, at the end of its first year of existence, 1994, Allcare had, roughly only $136.95 in its checking account and no other assets besides the unproven (and ultimately

invalid) '105 patent. Despite this, Allcare's Principals intentionally and willfully provided no capitalization to Allcare to support its business patent-trolling Scheme thus shifting all risks of loss from the Principals to the targeted companies.

64. In *Highmark I,* Allcare admitted that between 2001 and 2005 alone, it received at least $12.6 million in licensing settlements, yet its Principals retained little or essentially no working capital in Allcare during this time period, instead, in large part, passing the funds to themselves instead or using Allcare funds to benefit themselves or other businesses owned by the Principals.

65. In all or almost all years of Allcare's existence as an active business entity, Allcare's Principals engaged in a pattern and practice of funneling large sums of money to themselves in the form of purported salaries, bonuses, and distributions, while at the same time consistently leaving Allcare with little or no retained earnings and little or no cash on hand.

66. By the way of example but not limitation, in 2004—the year after *Highmark I* was filed—Allcare, upon information and belief: had a total listed income of $3,584,704; made payments to its contingent-fee lawyers of $1,924,114; and then Allcare's Principals paid themselves $703,617 in the form of salaries and bonuses, and then paid themselves again another $470,000 in the form of a distribution to themselves as majority shareholders of the company.

67. This funneling-through of nearly $1.2 million in payments to the Principals in 2004 left Allcare with a *negative* retained earnings figure of $48,902, despite Allcare's pending litigations in *Highmark I* and elsewhere. Retaining earnings would have been critical to Allcare's long-term solvency because these monies could have been re-invested in Allcare's core business (should have been) to assure that Allcare had sufficient funds to maintain its litigations and to pay any judgments that may have arisen against Allcare from any litigation, including

particularly *Highmark I*. In other words, Allcare was obliged to retain earnings to invest in its litigation strategy, especially with *Highmark I* pending.

68. From 2003 through 2012, Allcare purports to have leased office space from Keystone Equity Partners and/or Keystone Exploration, Ltd., both entities that operate to the benefit of Conner. On information and belief, Allcare did not, in fact, operate out of the leased premises but that the rental was paid to the benefit of Conner who was, on information and belief, a partner of Keystone Equity Partners and/or Keystone Exploration, Ltd.

69. In 2006, upon information and belief, Allcare's Principals—again while *Highmark I* was pending and with full knowledge that Highmark's complaint in that action requested an award of attorneys' fees—further stripped Allcare of assets by transferring a newly-issued patent (U.S. Patent 7,028,049, issued April 11, 2006) out of Allcare and into a separately-formed entity called "Private Access, LLC" (which was then converted into "Private Access, Inc."). This was not an arms-length transaction, as Private Access, Inc. was, upon information and belief, owned by Allcare's Principals.

70. Private Access, Inc. was, in 2009, named to Forbes Magazine's List of America's Most Promising Companies.

71. On information and belief, in 2006, the Principals determined to, and did, make a "dividend" distribution of shares of Private Access, LLC to the shareholders of Allcare even though Private Access was a separate company owned by the Principals, not by Allcare. This mixing of the Principal's own assets with those of Allcare was improper and a violation of governing corporate law and/or principles.

72. On March 19, 2007, as part of the systematic process of shedding what few assets Allcare owned, the Principals approved of selling off another asset, a domain name ("allcare.com") owned by Allcare but not used by it in its business; not use to sell products or to offer services.

73. As part of its fraudulent Scheme, the pattern and practice engaged in by Allcare's Principals thus used Allcare's corporate form as a combination of a financial pass-through and a shield, such that funds and assets coming to Allcare were passed-through to its Principals while, at the same time, the intentionally-insolvent state that Allcare was kept in by its Principals in an attempt to ensure that Allcare would effectively be judgment-proof in the event that—as is the case with Highmark—an entity threatened by Allcare prevailed in litigation and obtained a monetary award against Allcare.

74. As of March 4, 2016, Allcare claimed it has "intangible assets," potential claims for malpractice against several of the law firms that had represented it in *Highmark I*. As part of its Scheme to defraud Highmark out of royalty payments and assure no liability against Allcare or the Principals, the Principals made an intentional decision to either let these intangible assets lapse or to release those assets for a fraction of their value.

75. Allcare specifically excluded the firm of McKool Smith through a Settlement Agreement on October 29, 2014 between McKool Smith and Allcare *and each of the Principals (individually)* whereby Allcare *and each Principal* expressly waived any claims of malpractice against McKool Smith in return for which McKool Smith would pay Allcare and its Principals money to be used by the Principals to continue their fight against paying the Award due to Highmark. At that time, when, as now, this Court's judgment against Allcare was outstanding,

the Principals determined not to convert Allcare's intangible assets to pay the Award due to Highmark, even though Highmark was owed over $5.4 million dollars.

76. Subsequent to the entry by this Court of the Award, Allcare's Principals, continued to sell off assets that might have been used to pay the judgment owed to Highmark and to use the proceeds to benefit themselves.

77. The Principals made the determination not to turn these "intangible assets" into liquid assets that could be used to pay the Award and did so as part of their Scheme against Highmark.

**~ Other Abuses of Allcare's Corporate Form by its Principals ~**

78. At all relevant times, the Principals—Conner, Shelton, and Plaskett—exercised collective and total control over Allcare and its business, legal, and financial activities and decision-making as Allcare's officers and as its majority owners.

79. Allcare's Principals have engaged in Scheme that includes a pattern and practice of ignoring Allcare's corporate form in order to use Allcare as a pass-through for their personal gain and as a shield against liability.

80. Allcare's Principals' pattern and practice has included maintaining Allcare at an insolvent or near-insolvent state while, at the same time, selectively participating in and funding litigation when it suited the Principals' needs.

81. For example, despite being or purporting to be nearly insolvent, Allcare was represented by counsel in *Highmark I*, as well as in other litigation and as well as with respect to its pre-litigation attempts to license its patent and to obtain threat-of-litigation settlements from entities. The principal law firms that have represented Allcare have included: Sidley Austin

LLP; Finnegan, Henderson, Farabow, Garrett & Dunner LLP; Hill, and Kertscher & Wharton, LLP, Brackett & Ellis, and McKool Smith.

82. Despite being shown on its financial statement as being insolvent, *Allcare* itself is represented in this veil-piercing case by at least two attorneys from two different law firms, and both of those attorneys presently do and/or have represented a Principal or Principals of Allcare in prior legal matters. Upon information and belief, the Principals of Allcare are using their own personal funds, or non-Allcare funds, to pay for these attorneys for Allcare.

83. Despite being shown on its financial statements as being insolvent, *Allcare* has, at times, retained and used an independent consulting firm or firms for use in connection with litigation and/or in connection with its pre-litigation attempts to license its patent and to obtain threat-of-litigation settlements from entities.

84. Despite being or purporting to be nearly insolvent, Allcare has, at times, retained and used an independent expert or experts for use in connection with litigation and/or in connection with its pre-litigation attempts to license its patent and to obtain threat-of-litigation settlements from entities.

85. Upon information and belief, some or all of Allcare's Principals have commingled and used their personal funds and/or non-Allcare funds otherwise available to the Principals in order to pay Allcare's costs and expenses incurred in connection with retaining and using these attorneys, consulting firms, and experts, selectively doing so at times when it has suited the personal needs of Allcare's Principals.

86. By way of example, Plaskett paid from his personal account the fees owed by Allcare to National Registered Agents, Inc. for "statutory representation in the Commonwealth

of Virginia." Conner, for his part, used Allcare as a means to pay personal debts owed to him by other shareholders, including by Gregory Conner. In 2003, Gregory Conner, as an Allcare shareholder, was owed a dividend distribution from Allcare by virtue of the settlement of the *Trigon* Litigation but a portion of that distribution was withheld from Gregory Conner by Allcare at the direction of Halden Conner as a Principal of the company so that it could be paid, instead, to Halden Conner to settle the personal debt.

87. Allcare's Principals' pattern and practice of ignoring Allcare's corporate form in order to use Allcare as a pass-through for their personal gain and as a shield against liability is additionally evidenced by other corporate irregularities.

88. For example, upon information and belief, Allcare's Principals have, at times, not noticed or conducted regular annual meetings of Allcare's shareholders, not conducted regular meetings of its directors, not kept minutes of meetings conducted, and not distributed financial statements to shareholders.

89. Upon information and belief, Allcare's Principals are, or have also at times, elected themselves as Allcare's sole board members in lieu of conducting a vote of Allcare's shareholders.

90. Upon information and belief, Allcare's Principals have also, at times, mingled and used Allcare's funds for their own non-Allcare interests. By way of example, this includes but is not limited to: support of an office maintained in California by Shelton for his real estate development business and personal activities; and support of an office and a personal assistant maintained in Texas by Conner for his personal businesses other than Allcare. This improper and personal use and mingling of corporate funds was implicitly or explicitly endorsed by all Principals.

91. Upon information and belief, Allcare's funds were used to make payments for the benefit of unrelated entities owned by one or more of Allcare's Principals, in whole or in part.

**~ Allcare's Lack of Ties to Virginia and its Incorporation There As Part of the Scheme ~**

92. Allcare was originally incorporated in Texas. It moved its incorporation to Delaware and then, in 2003, immediately after Highmark filed the complaint that began *Highmark I*, Allcare incorporated a new entity in Virginia and then merged the Delaware corporation into that Virginia corporation.

93. On information and belief, this change to a Virginia corporation was to engage in the worst form of forum shopping. In 2002, Allcare had sued Trigon and settled with Trigon in early 2003 before any trial. But, in the view of Allcare's Principals, Allcare had obtained a favorable construction of the claims of the '105 patent and hoped to force that non-final construction on other Allcare targeted companies. In other words, Allcare's incorporation as a Virginia corporation was part of the fraudulent Scheme put into place by Allcare's Principals, and, because Allcare was done in an attempt to force entities that wanted to sue for declaratory judgment to have to sue Allcare in Virginia, the forum that the Principals had "shopped."

94. Allcare has, at various times in prior litigations, identified its Virginia place of business as 1800 Diagonal Road, Suite 600, Alexandria, VA. But this location houses a business called "Carr Workplaces," https://carrworkplaces.com/locations/metro-dc/virginia/king-street-station/ that offers "coworking space." On information and belief, no payments in any form, much less for rental space, have been made to Carr Workplaces or any other place associated with 1800 Diagonal Road, Suite 600, or any other Virginia locale. Additionally, Defendants have office staff employed to staff this purported office, keeps no files in that office nor is there any indication whatsoever that any business has been transacted there. The officers of Allcare do

not work out of Carr Workplaces. On information and belief, Allcare does not conduct business in Virginia and fraudulently uses this address to suggest that it does.

95. On information and belief, this space, however provisioned, was set up as part of the Defendants' scheme to defraud Highmark (and others) and induce it into making payment of royalties where none were appropriate. Despite refusing to pay those royalties, Highmark was nonetheless damaged by the Defendants' fraudulent Scheme by being forced to incur millions of dollars in legal fees, costs and other expenses as well as losing the inestimable value of its employees' times who were charged with finding information to respond to discovery and to fight Defendants' frivolous allegations of infringement.

96. On information and belief, the Virginia corporation was never validity incorporated or maintained. It is not now and never was a valid corporation but rather, the actions of the Principals in creating the fiction of the Virginia corporation after Highmark initiated *Highmark I* was part of their fraudulent Scheme against Highmark. On information and belief, the actions taken in the name of Allcare, by its Principals, were at all times solely to their benefit and part of the fraudulent Scheme perpetrated against Highmark and dozens of others.

**~ *Highmark I* Procedural Background and Prior Rulings of this Court~**

97. On April 3, 2003, *Highmark I* was commenced against Allcare by Highmark, a Pennsylvania company that does business in Pennsylvania, through the filing in the United States District Court for the Western District of Pennsylvania (Civ. Action No. 03-0462) of a Complaint for Declaratory Judgment of non-infringement, invalidity and unenforceability of the '105 Patent. The *Highmark I* action was brought in response to repeated demands by Allcare that Highmark infringed the '105 Patent, that a license was required to avoid suit by Allcare and

continued threats by Allcare that it would institute litigation if Highmark did not buy a license under the '105 patent for in excess of $142 million. *Highmark I,* Doc. 615 at HA 127, 113-14.

98. Within a week of being sued by Highmark in the Western District, and as part of its fraudulent Scheme (as discussed elsewhere), Allcare changed it state of incorporation from Delaware to Virginia.

99. On June 10, 2003, Allcare filed a motion to dismiss the complaint filed in the Western District of Pennsylvania on the grounds that there was no personal jurisdiction over Allcare. *Highmark I*, Doc. 4. In principal part, Allcare relied upon the Declaration of Shelton who advised the court that and that Allcare's business activities were "patent licensing negotiations and enforcement efforts." Shelton identified twenty-six (26) licenses that Allcare had obtained at that point through its licensing-by-litigation strategies. *Highmark I*, Doc. 5 at Exhibit 1. Finally, Shelton advised the court that Allcare's principal place of business was in Fort Worth, Texas.

100. On November 17, 2003, Judge Gary L. Lancaster of the United States District Court for the Western District of Pennsylvania, in response to Allcare's motion to dismiss and apparently relying on Allcare's claims of doing business in Texas (Allcare did not claim to do business in Virginia) transferred this action to the Northern District of Texas (Fort Worth Division) because this District could have personal jurisdiction over Allcare. *Highmark I,* Doc. 17.

101. On December 16, 2003, Allcare filed its Answer and Counterclaim asserting infringement by Highmark of eight claims of the '105 Patent: Claims 1-2, 16, 34, 52-53, 55 and 85. *Highmark I,* Doc. 22, at ¶ 21. Over the years of *Highmark I,* these claims of infringement

were narrowed to Claims 52, 53 and 102 and ultimately limited to Claims 52 and 53 when Allcare withdrew, on February 6, 200,8 the previously asserted claims 1 and 102.

102. The day after *Highmark I* was transferred to this Court, Allcare filed an emergency motion in the Western District of Pennsylvania for reconsideration asking that the transfer be stayed while the parties briefed whether the action should be transferred to Allcare's new state of incorporation, Virginia. More specifically, Allcare sought transfer to the Eastern District of Virginia where Allcare previously had sued Trigon and, only in the view of Allcare's Principals, obtained a favorable construction of the claims of the '105 patent. In other words, Allcare's incorporation as a Virginia corporation was part of the fraudulent licensing-by-litigation scheme put into place by Allcare's Principals, attempting to force targeted companies to sue Allcare in forum that the Principals had "shopped" on the mistaken belief that they would receive favorable treatment in that district.

103. On April 14, 2004, Highmark made available to Allcare and one of its Principals (Shelton) an inspection of the Highmark systems that Allcare alleged to infringe the '105 patent. That inspection demonstrated non-infringement by Highmark of all of the claims asserted by Allcare.

104. After years of discovery, the process of claim construction ultimately resulted in a construction of the asserted claims that made it impossible for Highmark's system to be found to infringe any claim of the '105 patent. Additionally, during discovery of Allcare's expert, that expert admitted that Highmark's system did not include required elements of the asserted claims. As a result, Highmark moved for summary judgment of non-infringement of the asserted claims of the '105 patent and this Court granted that motion finding that Highmark did not infringe any asserted claim.

105. Over the many years of this litigation, the Principals have been extensively personally involved in the proceedings. Shelton filed nearly a dozen Declarations of purported "facts" and, often times, his opinion, on different issues; Conner filed at least three or four. Once the exceptional-case order had been entered in *Highmark I*, and consistent with Allcare's practice of retaining only law firms that would work on a contingent fee basis, Conner and Shelton asked this Court if they could represent Allcare themselves so that Allcare could act *pro se*. *Highmark I*, Doc. 622 (this was denied).

106. The Award order by this Court in *Highmark I* that Allcare was ordered to pay to Highmark was predicated on an "exceptional-case" finding made by this Court under the fee-shifting provision of the United States Patent Act, 35 U.S.C. § 285. That portion of the Patent Act provides: "The court in exceptional-cases may award reasonable attorney fees to the prevailing party." Because Highmark was the prevailing party, this Court considered voluminous submissions by both parties and made binding findings of fact and conclusions of law to support an exceptional-case Award in favor of Highmark and against Allcare. *Highmark I* at Doc. No. 566 (the "EC Order").

107. This Court's exceptional-case holding was subsequently upheld by the United States Supreme Court in *Highmark Inc. v. Allcare Health Management Systems Inc.*, 134 S.Ct. 1744 (Apr. 29, 2014) in which the Court required that the Federal Circuit provide deference to exceptional-case findings made by district court judges. This required deference to district court judges is known in patent law as the "*Highmark* standard."

108. Following the issuance of the United States Supreme Court's opinion in *Highmark I*, the case proceeded on remand to the Federal Circuit and, ultimately, back to this

Court. This Court reaffirmed its exceptional-case finding and the full Award on June 23, 2015. *Highmark I* at Doc. No. 707.

109. Post-judgment discovery conducted by Highmark in aid of execution of the judgment has confirmed that Allcare is or purports to be, and at relevant times has been or purports to have been, operating as a nearly-insolvent shell entity, thereby making recovery of the Award from Allcare impossible or nearly impossible. On information and belief, this discovery confirmed that during the course of the proceedings in *Highmark I*, the Principals used Allcare as their alter ego, funneling Allcare money to pays bills of the Principals, and paying staff through Allcare that worked for other businesses of the Principals.

**~ The Conclusive Effect of this Court's Findings in *Highmark I* ~**

110. In deciding *Highmark I*, this Court entered judgments, and made findings of fact and conclusions of law that are binding and final. As a predicate matter, this Court entered a judgment of non-infringement of the '105 patent claims, Doc. 503; Allcare appealed that judgment and the United States Court of Appeals for the Federal Circuit affirmed this Court's determination that there was no infringement by Highmark of any asserted claim of the '105 patent. That judgment is final and cannot be attacked by Allcare or the Principals.

111. This Court—in *Highmark I* at Doc. No. 566—considered an extensively briefed motion by Highmark to find the case exceptional under Section 285 of the Patent Statute. Shelton participated in that briefing, even submitted more than one declaration in opposition, as did Conner. After careful consideration of the entirety of the briefing (which spanned more than eight months), this Court determined a number of facts pertinent to this instant case, *inter alia*:

(a) "In this case Allcare's actions align with the sort of conduct that gives the term 'patent troll' its negative connotation. Allcare used a survey [—referred to as the 'Seaport Survey'—] with a stated purpose of identifying leaders in the medical-information-processing industry as a ruse to identify potential targets for licensing demands, accused Highmark of infringing the '105 patent and, ultimately, filed counterclaims for infringement against Highmark having never performed an adequate investigation of such claims, and, along the way engaged in questionable and, at times, deceitful conduct."

(b) "The threat of a suit forces the alleged infringer to investigate the patentee's allegations and the existence of a valid patent, which is itself difficult and costly, and forces the alleged infringer to decide whether to deny infringement and be exposed to costly litigation or enter into licensing negotiations."

(c) With respect to Shelton and his active role as a Principal in *Highmark I* and otherwise: "[T]he Court is convinced that it is highly probably that the only pre-filing assessment of the Seaport Survey responses was performed by Shelton."

(d) The Survey "did not ask about certain essential elements of claims 52 and 102."

(e) "Allcare had not done its homework when it began trolling for dollars and threatening litigation."

(f) "Highmark clearly has shown that Allcare's conduct was not part of normal litigation conduct."

(g) "Allcare appears to acknowledge that it continued to pursue meritless allegations as insurance or leverage in relation to the opposing party's contentions."

(h) "[D]espite Allcare's knowledge that the defenses [of res judicata and collateral estoppel] were without merit, it nevertheless asserted them."

(i) "The evidence of these actions firmly convinces the Court of Allcare's use of frivolous and vexatious tactics and supports an exceptional-case finding."

(j) "Allcare's vexatious and, at times, deceitful conduct did not stop there [with use of the Seaport Survey 'to force . . . companies to purchase a license of the '105 patent under threat of litigation']. Allcare maintained infringement claims well after such claims had been shown by its own experts to be without merit and did so as a tactic to provide leverage against Highmark's pending claims. It also asserted defenses it . . . knew to be frivolous. Indeed, just to have its case transferred to this Court, Allcare . . . misrepresented their involvement in the Seaport Survey to the Western District of Pennsylvania."

112. These same findings of fact and conclusions of law are equally binding on the Principals, both because the Principals were and are in privity with Allcare and because Allcare is the alter ego of the Principals.

113. These same findings of fact and conclusions of law are equally binding on the Principals, as well, because the Principals had a full and fair opportunity and incentive to defend against them in *Highmark I* and the Principals did, in fact, defend against them in *Highmark I*.

114. Among other things, the Principals collectively made and filed in excess of ten declarations in support of Allcare in *Highmark I* and the Principals, Conner and Shelton,

authored and attempted to file a *pro se* brief in support of Allcare in *Highmark I* that they advised the Court was authored exclusively by them.

**Count I:**
**Piercing the Corporate Veil – Alter Ego**

115. Highmark reasserts, re-alleges, and incorporates by reference the allegations in all other paragraphs of this Complaint, both above and below, as if fully set forth herein under Count I.

116. There was and is a unity between the corporation, Allcare, and the three individual defendants, the Principals, on the grounds that Allcare's corporate separateness from the Principals has either never existed or, in the alternative, that it has ceased to exist.

117. This lack of separation has permitted the Principals to use and misuse Allcare's corporate form for their individual or personal use.

118. In the course of doing so, the Principals have used Allcare's corporate form for injustice and inequity.

119. At all relevant times, Allcare's Principals—Conner, Shelton, and Plaskett—exercised collective and total control over Allcare and its business, legal, and financial activities and decision-making as Allcare's officers and as its majority owners.

120. At all relevant times, statements or actions purportedly made on behalf of Allcare by any one of Conner, Shelton, or Plaskett were explicitly or implicitly ratified, adopted, and endorsed by the other two individual Principals and by Allcare itself, such that—collectively—the three individual Principals, at all times, effectively individually and collectively stood in the shoes of Allcare and, additionally, in each other's shoes to the extent that Allcare-related matters were involved.

121. Further, this pattern and practice of the three individuals acting in the shoes of Allcare and of each other unfolded in such a way that, for all events relevant to the claims asserted herein, two of the individual Principals (Plaskett and Conner) consistently adopted and ratified statements and actions made or undertaken by the third Principal (Shelton) with respect to matters relating to Allcare and Allcare's affairs. These intentional misrepresentations made by the Principals with respect to matters relating to Allcare and Allcare's affairs constitute actual fraud.

122. The conduct individually and collectively engaged in by Allcare's Principals was designed to permit them to use the corporate form as an alter ego of themselves so that the three Principals developed a fraudulent Scheme to use Allcare as a "patent troll"—as the court found Allcare to be—in such a way that baseless litigation, like *Highmark I*, could thereafter be threatened and filed by Allcare without Allcare or the Principals having to worry about the repercussions of having to pay exceptional-case sanctions or other sanctions should they lose these litigations.

123. As set forth more fully above, this was achieved by Allcare's Principals because they consistently and intentionally under-capitalized Allcare, thereby using Allcare as a mechanism for passing cash from litigation settlements, etc., through to themselves (the Principals) while at the same time using Allcare as a shield in litigation, exploiting Allcare's chronic and intentional insolvency in a plan to insulate the Principals from having to pay exceptional-case sanctions or other sanctions.

124. Allcare's Principals knew that Allcare's business of threatening and pursuing litigation could result in Allcare's having to pay a monetary award to a prevailing opponent.

125. Allcare's Principals were well aware of, and actively participated in, the *Highmark I* litigation, and they continued their pattern and practice of passing cash through to themselves while maintaining Allcare in an insolvent or near-insolvent state.

126. By doing to, Allcare's Principals achieved the result that they intended. That is, they ensured that—when Allcare was ordered to pay the Award to Highmark in *Highmark I*—Allcare had and has no funds with which to do so.

127. The intentional and chronic insolvency of Allcare and the other conduct above is not limited to the period in time after which Allcare was ordered to pay an exceptional-case award to Highmark. It, instead, is representative of the way that Allcare's Principals ran Allcare at all times since its formation.

128. Here, Allcare's Principals have used and abused the corporate form to evade their obligations and to facilitate the conduct for which Allcare was sanctioned in *Highmark I*.

129. As also noted above, upon information and belief, Allcare's Principals, at times, comingled and used their own funds—or other, non-Allcare funds in their control—to financially support and back Allcare when doing so appeared advantageous, such as in supporting litigation efforts against Highmark.

130. As also noted above, upon information and belief, Allcare's Principals, at times, also comingled funds by using the funds and assets of Allcare to support their own, personal purposes and/or their own, non-Allcare business activities, including using Allcare's funds to facilitate office-space payments and administrative staff payments for personal or non-Allcare activities.

131. As also noted above, upon information and belief, Allcare and the Principals, at times, used Allcare to make gifts to third parties of shares of Allcare stock, and to use Allcare stock to pay indebtedness.

132. As also noted above, upon information and belief, Allcare's Principals, at times, conducted the business of Allcare without following basic corporate formalities, including with respect to the conduct of meetings and associated corporate governance matters.

133. Contrary to recognized standards of corporate conduct, and on information and belief, the Principals, with apparent purpose and intent, engaged in a pattern and practice of maintaining Allcare in an insolvent or near-insolvent position at all times while holding itself out as a reasonably capitalized and solvent entity. In so doing, Allcare and its Principals consistently violated, among other things, their most fundamental legal and equitable obligation to maintain Allcare in good-standing. On information and belief, Allcare was unable to meet its financial obligations as they became due, a condition that places greater obligations upon Allcare's management and its Principals to preserve Allcare assets for the benefit of its creditors and shareholders and for the targets of its of its licensing-by-litigation Scheme that would be impacted by the Principals Scheme.

134. By these and other actions, the Principals removed themselves from the protections of the corporate veil. Alter-ego piercing is therefore further justified by the other actions taken by Allcare's Principals that evidence a disregard for, and abuse of, Allcare's corporate form. These include, upon information and belief, ignoring corporate formalities, self-electing themselves to directorships, transferring Allcare assets to themselves or to other entities that they own, and using Allcare's funds to support personal, non-Allcare offices and personal, non-Allcare business activities.

135. Here, there is such unity between the corporation and the three individual Principals that alto-ego based veil piercing is warranted.

136. Accordingly, recognition of Allcare's corporate form in this case would lead to an inequitable result and would effectively punish Highmark—a party found not to infringe Allcare's patent in *Highmark I*—while also justifying and excusing the conduct for which Allcare was sanctioned in *Highmark I*.

137. Recognition of Allcare's corporate form in this case would also be against the public interest.

138. Accordingly, Allcare's corporate veil should be pierced and Allcare's Principals—Conner, Shelton, and Plaskett—should be held individually liable for the judgment owed to Highmark by Allcare because, under an alter-ego theory of liability that is based upon the Principals' actions and longstanding and ongoing course of conduct in operating Allcare, it would be unjust to hold only Allcare, and not the Principals, liable for the *Highmark I* judgment owed to Highmark.

139. Recognition of Allcare's corporate form in this case would lead to an inequitable result and would effectively justify and excuse the conduct for which Allcare was sanctioned.

140. Recognition of Allcare's corporate form in this case would also be against the public interest.

141. Accordingly, the Court should exercise its ability to pierce Allcare's corporate veil in this case, such that Allcare's Principals—Conner, Shelton, and Plaskett—are personally held jointly and severally liable for payment of the *Highmark I* Award to Highmark.

**Count II:**
**Piercing the Corporate Veil –**
**Sham to Perpetrate Fraud Based Upon Constructive Fraud**

142. Highmark reasserts, re-alleges, and incorporates by reference the allegations in all other paragraphs of this Complaint as if fully set forth herein under Count II.

143. Highmark's entitlement to the exceptional-case award owed to it by Allcare arises from a patent infringement lawsuit. Patent infringement is a tort, and, concomitantly, the award that Allcare owes to Highmark does not arise out of a contractual or fiduciary relationship.

144. The Principals have used Allcare's corporate form as a sham to perpetrate a constructive fraud, such that the corporate veil of Allcare should be pierced.

145. There was and is a unity between the corporation, Allcare, and the three individual defendants, the Principals, on grounds that Allcare's corporate separateness from the Principals has either never existed or, in the alternative, that it has ceased to exist.

146. This has permitted the Principals to use and misuse Allcare's corporate form for their individual or personal use.

147. In the course of doing so, the Principals have used Allcare's corporate form for injustice and inequity.

148. In the course of doing so, the Principals have used Allcare's corporate form as a sham in order to perpetrate constructive fraud.

149. At all relevant times, Allcare's Principals—Conner, Shelton, and Plaskett—exercised collective and total control over Allcare and its business, legal, and financial activities and decision-making as Allcare's officers and as its majority owners.

150. At all relevant times, statements or actions purportedly made on behalf of Allcare by any one of Conner, Shelton, or Plaskett were explicitly or implicitly ratified, adopted, and endorsed by the other two individual Principals and by Allcare itself, such that—collectively—the three individual Principals, at all times, effectively individually and collectively stood in the shoes of Allcare and, additionally, in each other's shoes to the extent that Allcare-related matters were involved.

151. Further, this pattern and practice of the three individuals acting in the shoes of Allcare and of each other unfolded in such a way that, for all relevant events, two of the individual Principals consistently adopted and ratified statements and actions made or undertaken by the third Principal with respect to matters relating to Allcare and Allcare's affairs.

152. The conduct individually and collectively engaged in by the Principals was designed to permit them to use the corporate form as an alter ego of themselves and as part of a fraudulent Scheme designed so that the three Principals could use Allcare as a "patent troll"—as the court found Allcare to be—in such a way that baseless litigation, like *Highmark I*, could be threatened and filed by Allcare without Allcare or the Principals having to worry about the repercussions of having to pay exceptional-case sanctions or other sanctions.

153. As set forth more fully above, this was achieved by the Principals because they consistently and intentionally under-capitalized Allcare, thereby using Allcare as a mechanism for passing cash from litigation settlements, etc., through to themselves (the Principals) while at the same time using Allcare as a shield in litigation, exploiting Allcare's chronic and intentional insolvency to insulate the Principals from having to pay exceptional-case sanctions or other sanctions.

154. The Principals knew or should have known prior to sending any cease and desist letter asserting patent infringement that Allcare's business of threatening and pursuing litigation could result in Allcare's having to pay a monetary award to a prevailing opponent.

155. The Principals were well aware of, and actively participated in, the *Highmark I* litigation, and they continued their pattern and practice of passing cash through to themselves while maintaining Allcare in an insolvent or near-insolvent state.

156. By doing to, the Principals achieved the result that they intended. That is, they ensured that—when Allcare was ordered to pay the Award to Highmark in *Highmark I*—Allcare had and has no funds with which to do so.

157. The intentional and chronic insolvency of Allcare and the other conduct above is not limited to the period in time after which Allcare was ordered to pay an exceptional-case award to Highmark. It, instead, is representative of the way that Allcare's Principals ran Allcare at all times after its incorporation.

158. Here, the Principals have used and abused the corporate form to evade their obligations and to facilitate the conduct for which Allcare was sanctioned in *Highmark I*.

159. The intentional and chronic insolvency of Allcare, as discussed above and the actions claimed in Count I incorporated here by reference, constituted and was part of a fraudulent Scheme operated and endorsed by the Principals pursuant to which the Principals believed that they could bring, and attempted to and at times succeeded threatening to bring or in bringing, baseless and frivolous patent lawsuits to extort exorbitant settlement amounts running to the millions of dollars without fear of repercussions in the form of exceptional-case sanctions or other sanctions or counterclaims.

160. In further connection with the Principals of Allcare's fraudulent Scheme, during a period of time that included Allcare's pre-filing activities and settlement negotiations in *Highmark I* and that included Allcare's litigation and post-litigation dealings with Highmark in *Highmark I*, the Principals consistently held Allcare out to be a legitimate and traditional corporation. This was a misrepresentation and, on information and belief, made in furtherance of the Principals' fraudulent Scheme. Allcare was, at all times, merely a shell entity designed to funnel incoming money directly to the Principals while insulating them from repercussions.

161. As found by the court in *Highmark I*, the allegations made by Allcare against Highmark, and the litigation positions taken in doing so, were frivolous and sanctionable. Allcare and its Principals knew or should have known that these allegations and positions were baseless and frivolous. But, in filing a federal court complaint and in further pursuing these allegations and positions in federal court, Allcare and its Principals made misrepresentations to both Highmark and the court that they had a case that was not frivolous and not baseless. Allcare and its Principal's characterization of, and continued actions in pursuing and support, their frivolous and baseless case were in violation, among other things, of their legal duties with respect to the standards required of federal court pleadings.

162. During at least the early proceedings in *Highmark I*, Highmark justifiably believed the misrepresentations made to it and to this Court by Allcare and the Principals—namely, that Allcare was a legitimately-operated and funded business corporation and that Allcare's court filings and representations to the court were not frivolous and not baseless.

163. Highmark was damaged, both by these representations and by its initial reliance on them, including by having to defend a frivolous lawsuit and by subsequently being unable to

collect upon the judgment awarded to Highmark as a result of having to defend a frivolous lawsuit brought by Allcare and the Principals.

164. The combination of Allcare's intentional and chronic insolvency and its bringing and maintaining frivolous and baseless litigation constituted a fraudulent Scheme executed by Allcare and its Principals. The Principals' business model, as demonstrated by their actions against Highmark in *Highmark I*, was to attempt to extort settlement money with their "patent troll" Strategy, but to do so in a manner that was calculated to insulate the individual Principals from any monetary repercussions.

165. Contrary to recognized standards of corporate conduct, and on information and belief, the Principals, with apparent purpose and intent, engaged in a pattern and practice of maintaining Allcare in an insolvent or near-insolvent position at all times while holding itself out as a reasonably capitalized and solvent entity. In so doing, Allcare and its Principals consistently violated, among other things, their most fundamental legal and equitable obligations to maintain Allcare in good-standing. On information and belief, Allcare was unable to meet its financial obligations as they became due, a condition that places greater obligations upon Allcare's management and its Principals to preserve Allcare assets for the benefit of its creditors and shareholders and for the targets of its of its licensing-by-litigation Scheme that would be impacted by the Principals Scheme.

166. Accordingly, recognition of Allcare's corporate form in this case would lead to an inequitable result and would effectively punish Highmark while also justifying and excusing the conduct for which Allcare was sanctioned.

167. Recognition of Allcare's corporate form in this case would also be against the public interest.

168. Accordingly, Allcare's corporate veil should be pierced and Allcare's Principals—Conner, Shelton, and Plaskett—should be held individually liable for the judgment owed to Highmark by Allcare because, under a sham to perpetrate constructive fraud theory of liability that is based upon the Principals' actions and longstanding and ongoing course of conduct in operating Allcare, it would be unjust to hold only Allcare, and not the Principals, liable for the *Highmark I* judgment owed to Highmark.

169. Recognition of Allcare's corporate form in this case would lead to an inequitable result and would effectively justify and excuse the conduct for which Allcare was sanctioned.

170. Recognition of Allcare's corporate form in this case would also be against the public interest.

171. Accordingly, the Court should exercise its ability to pierce Allcare's corporate veil in this case, such that Allcare's Principals—Conner, Shelton, and Plaskett—are personally held jointly and severally liable for payment of the *Highmark I* Award to Highmark.

**Count III:**
**Piercing the Corporate Veil –**
**Sham to Perpetrate Fraud Based Upon Actual Fraud**

172. Highmark reasserts, re-alleges, and incorporates by reference the allegations in all other paragraphs of this Complaint as if fully set forth herein under Count III.

173. Allcare's Principals have used Allcare's corporate form as a sham to perpetrate an actual fraud, such that the corporate veil of Allcare should be pierced.

174. There was and is a unity between the corporation, Allcare, and the three individual defendants, the Principals, on grounds that Allcare's corporate separateness from the Principals has either never existed or, in the alternative, that it has ceased to exist.

175. This has permitted the Principals to use and misuse Allcare's corporate form for their individual or personal use.

176. In the course of doing so, the Principals have used Allcare's corporate form for injustice and inequity.

177. In the course of doing so, the Principals have used Allcare's corporate form as a sham in order to perpetrate fraud.

178. At all relevant times, Allcare's Principals—Conner, Shelton, and Plaskett—exercised collective and total control over Allcare and its business, legal, and financial activities and decision-making as Allcare's officers and as its majority owners.

179. At all relevant times, statements or actions purportedly made on behalf of Allcare by any one of Conner, Shelton, or Plaskett were explicitly or implicitly ratified, adopted, and endorsed by the other two individual Principals and by Allcare itself, such that—collectively—the three individual Principals, at all times, effectively individually and collectively stood in the shoes of Allcare and, additionally, in each other's shoes to the extent that Allcare-related matters were involved.

180. Further, this pattern and practice of the three individuals acting in the shoes of Allcare and of each other unfolded in such a way that, for all relevant events, two of the individual Principals consistently adopted and ratified statements and actions made or undertaken by the third Principal with respect to matters relating to Allcare and Allcare's affairs.

181. The conduct individually and collectively engaged in by Allcare's Principals permitted them to use the corporate form as an alter ego of themselves so that the three Principals could use Allcare as a "patent troll"—as the court found Allcare to be—in such a way

that baseless litigation, like *Highmark I*, could be threatened and filed by Allcare without Allcare or the Principals having to worry about the repercussions of having to pay exceptional-case sanctions or other sanctions.

182. As set forth more fully above, this was achieved by Allcare's Principals because they consistently and intentionally under-capitalized Allcare, thereby using Allcare as a mechanism for passing cash from litigation settlements, etc., through to themselves (the Principals) while at the same time using Allcare as a shield in litigation, exploiting Allcare's chronic and intentional insolvency to insulate the Principals from having to pay exceptional-case sanctions or other sanctions.

183. Allcare's Principals knew or should have known that Allcare's business of threatening and pursuing litigation could result in Allcare's having to pay a monetary award to a prevailing opponent.

184. Allcare's Principals were well aware of, and actively participated in, the *Highmark I* litigation, and they continued their pattern and practice of passing cash through to themselves while maintaining Allcare in an insolvent or near-insolvent state.

185. By doing to, Allcare's Principals achieved the result that they intended. That is, they ensured that—when Allcare was ordered to pay the Award to Highmark in *Highmark I*—Allcare had and has no funds with which to do so.

186. The intentional and chronic insolvency of Allcare and the other conduct above is not limited to the period in time after which Allcare was ordered to pay an exceptional-case award to Highmark. It, instead, is representative of the way that Allcare's Principals ran Allcare at all times.

187. Here, Allcare's Principals have used and abused the corporate form to evade their obligations and to facilitate the conduct for which Allcare was sanctioned in *Highmark I*.

188. The intentional and chronic insolvency of Allcare, as discussed above and the actions claimed in Count I incorporated here by reference, constituted and was part of a fraudulent scheme operated and endorsed by the Principals of Allcare pursuant to which the Principals believed that they could bring, and attempted to and at times succeeded in bringing, baseless and frivolous patent lawsuits without fear of repercussions in the form of exceptional-case sanctions or other sanctions or counterclaims.

189. In further connection with the Principals of Allcare's fraudulent scheme, during a period of time that included Allcare's pre-filing activities and settlement negotiations in *Highmark I* and that included Allcare's litigation and post-litigation dealings with Highmark in *Highmark I*, the Principals consistently held Allcare out to be a legitimate and traditional corporation. This was a misrepresentation, made in furtherance of the Principals' fraudulent scheme. Allcare was, at all times, merely a shell entity designed to funnel incoming money directly to the Principals while insulating them from repercussions.

190. Further, the Principals—at all times—knew this to be a misrepresentation, misleading to both the courts and to the entities, including Highmark, that Allcare sued or threatened to sue.

191. As found by the court in *Highmark I*, the allegations made by Allcare against Highmark, and the litigation positions taken in doing so, were frivolous and sanctionable. Allcare and the Principals knew or should have known that these allegations and positions were baseless and frivolous. But, in filing a federal court complaint and in further pursuing these allegations and positions in federal court, Allcare and its Principals made misrepresentations to

both Highmark and the court that they had a case that was not frivolous and not baseless. Allcare and its Principal's characterization of, and continued actions in pursuing and support, their frivolous and baseless case were in violation, among other things, of their legal duties with respect to the standards required of federal court pleadings.

192. Further, the Principals—at all times—knew their frivolous and baseless patent-infringement allegations and positions to be misrepresentations, misleading to both the courts involved in *Highmark I* and to Highmark, and to such a degree that Allcare was sanctioned for such misrepresentations.

193. During at least the early proceedings in *Highmark I*, Highmark justifiably believed the misrepresentations made to it and to the court by Allcare and the Principals—namely, that Allcare was a legitimately-operated and funded business corporation and that Allcare's court filings and representations to the court were not frivolous and not baseless.

194. Highmark was damaged, both by these representations and by its initial reliance on them, including by having to defend a frivolous lawsuit and by subsequently being unable to collect upon the judgment awarded to Highmark as a result of having to defend a frivolous lawsuit brought by Allcare and Allcare's Principals.

195. The combination of Allcare's intentional and chronic insolvency and its bringing and maintaining frivolous and baseless litigation constituted a fraudulent scheme executed by Allcare and the Principals. The Principals' business model, as demonstrated by their actions against Highmark in *Highmark I*, was to attempt to extort settlement money as a "patent troll," but to do so in a manner that was calculated to insulate the individual Principals from any monetary repercussions.

196. Contrary to recognized standards of corporate conduct, and on information and belief, the Principals, with apparent purpose and intent, engaged in a pattern and practice of maintaining Allcare in an insolvent or near-insolvent position at all times while holding itself out as a reasonably capitalized and solvent entity. In so doing, Allcare and its Principals consistently violated, among other things, their most fundamental legal and equitable obligation to maintain Allcare in good-standing. On information and belief, Allcare was unable to meet its financial obligations as they became due, a condition that places greater obligations upon Allcare's management and its Principals to preserve Allcare assets for the benefit of its creditors and shareholders and for the targets of its of its licensing-by-litigation Scheme that would be impacted by the Principals Scheme.

197. Accordingly, recognition of Allcare's corporate form in this case would lead to an inequitable result and would effectively punish Highmark while also justifying and excusing the conduct for which Allcare was sanctioned.

198. Recognition of Allcare's corporate form in this case would also be against the public interest.

199. Accordingly, Allcare's corporate veil should be pierced and Allcare's Principals—Conner, Shelton, and Plaskett—should be held individually liable for the judgment owed to Highmark by Allcare because, under a sham to perpetrate constructive fraud theory of liability that is based upon the Principals' actions and longstanding and ongoing course of conduct in operating Allcare, it would be unjust to hold only Allcare, and not the Principals, liable for the *Highmark I* judgment owed to Highmark.

200. Recognition of Allcare's corporate form in this case would lead to an inequitable result and would effectively justify and excuse the conduct for which Allcare was sanctioned.

201. Recognition of Allcare's corporate form in this case would also be against the public interest.

202. Accordingly, the Court should exercise its ability to pierce Allcare's corporate veil in this case, such that Allcare's Principals—Conner, Shelton, and Plaskett—are personally held jointly and severally liable for payment of the *Highmark I* Award to Highmark.

**Count IV:**
**Declaratory Relief**

203. Highmark reasserts, re-alleges, and incorporates by reference the allegations in all other paragraphs of this Complaint as if fully set forth herein under Count III.

204. An actual and justiciable controversy exists between Highmark and Allcare and Allcare's Principals.

205. For the reasons set forth herein, including as set forth in Counts I and II, Allcare's Principals have each, by themselves and together, used Allcare as a mere instrumentality for their personal endeavors, including using Allcare's corporate form and its related undercapitalization as a means of attempting to avoid the financial repercussions of filing a baseless and "exceptional" patent case that are provided for in 35 U.S.C. § 285.

206. Accordingly, Highmark requests that the Court declare that Allcare is a sham entity and that Allcare's Principals are, individually and/or collectively, the alter-ego of Allcare.

## **Prayer for Relief**

WHEREFORE, Plaintiff Highmark Inc. ("Highmark") respectfully requests that this Court:

A. enter a final order holding Allcare's Principals jointly and severally liable for the full amount of the Award, based upon application of an alter-ego based piercing of Allcare's corporate veil;

B. enter a final order holding the Principals jointly and severally liable for the full amount of the Award, based upon application of a constructive-fraud based piercing of Allcare's corporate veil;

C. enter a final order holding the Principals jointly and severally liable for the full amount of the Award, based upon application of a fraud based piercing of Allcare's corporate veil;

D. enter a final, declaratory order that the Principals are, individually and/or collectively, an alter-ego of Allcare and/or otherwise individually liable for Allcare's debts pursuant to corporate-veil-piercing;

E. award Highmark fraud-based punitive damages and/or other applicable punitive or enhanced damages;

F. award Highmark its attorneys' fees and costs, to the extent recoverable by law; and

G. award Highmark any other damages and/or relief deemed appropriate by the Court.

ON BEHALF OF HIGHMARK INC.

By: */s/ Cynthia E. Kernick*

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Dated: May 12, 2017

*Counsel for Plaintiff Highmark Inc.*

**CERTIFICATE OF SERVICE**

On the 12th day of May, 2017, the foregoing Second Amended Complaint was timely filed and served upon all Defendants, via their below-listed attorneys of record, using this Court's Electronic Case Filing (ECF) system:

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