BRIANE NELSON MITCHELL, Cal. Bar No. 116037
E-mail: mitchellbn@sec.gov
LORRAINE B. ECHAVARRIA, Cal. Bar No. 191860
E-mail: echavarrial@sec.gov
DAVID VAN HAVERMAAT, Cal Bar No. 175761
E-mail: vanhavermaatd@sec.gov
WILLIAM G. BERRY, Cal. Bar No. 206348
E-mail: berryw@sec.gov

Attorneys for Plaintiff
Securities and Exchange Commission
Randall R. Lee, Regional Director
Michele Wein Layne, Associate Regional Director
5670 Wilshire Boulevard, 11th Floor
Los Angeles, California 90036-3648
Telephone: (323) 965-3998
Facsimile: (323) 965-3908

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CV-07-2144 RGK (AGRx)

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. TENET HEALTHCARE CORPORATION, a Nevada corporation, DAVID L. DENNIS, THOMAS B. MACKEY, CHRISTI R. SULZBACH, and RAYMOND L. MATHIASEN, Defendants.	Case No. **COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS**

Plaintiff Securities and Exchange Commission (the "Commission") alleges as follows:

1. This civil fraud case involves material misrepresentations and omissions made by defendants Tenet Healthcare Corporation ("Tenet") and four of its former senior officers, David L. Dennis ("Dennis"), Thomas B. Mackey ("Mackey"), Christi R. Sulzbach ("Sulzbach"), and Raymond L. Mathiasen ("Mathiasen") (collectively, "defendants"), in Tenet's filings with the Commission.

I. JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)(1), and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77t(b), 77t(d)(1), and 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e), and 27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(d)(1), 78u(d)(3)(A), 78u(e) and 78aa. Defendants have directly or indirectly made use of the means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the transactions, acts, practices and courses of business alleged in this Complaint.

3. Venue is proper in this district pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 78aa, because defendants resided within this district during the relevant time period and certain of the transactions, acts, practices and courses of conduct constituting violations of the laws alleged in this Complaint occurred within this district.

II. SUMMARY

4. Tenet is one of the largest publicly traded healthcare companies in the United States. From 1999 through 2002, Tenet engaged in an unsustainable strategy to improve its earnings by deliberately exploiting a loophole in Medicare's reimbursement system. During this time, Tenet never disclosed its scheme and the material impact it had on Tenet's earnings to the investing public in any of its

filings with the Commission and, as a result, misled its investors by creating a false impression of the true reasons behind its financial performance.

5. Medicare compensates hospitals for treating extraordinarily sick Medicare patients with a form of reimbursement known as outlier payments. Tenet management discovered that it could artificially inflate its revenue from outlier payments without doing anything more than just simply increasing one of the numbers used in the formula by Medicare to calculate a hospital's outlier payment, namely the gross charges listed by a hospital.

6. Defendant Mackey, Tenet's former chief operating officer and co-president, was the principal architect of Tenet's scheme to exploit Medicare and inflate Tenet's outliers. In 1999 and under Mackey's direction, Tenet management calculated the precise increase to Tenet's gross charges needed to boost its revenue from outlier payments to a level that would allow Tenet to reach its earnings targets. Mackey and other members of Tenet's management then directed Tenet's hospital managers to implement these aggressive gross charge increases.

7. For the next three years, Mackey continued to oversee aggressive gross charge increases by Tenet. Tenet's outlier revenue more than tripled by 2002 and accounted for over 40% of Tenet's earnings per share in fiscal year 2002, as Tenet's earnings goals were surpassed year after year.

8. As Tenet's general counsel and chief compliance officer, defendant Sulzbach knew, or was reckless in not knowing, about the strategy to aggressively increase gross charges in order to inflate Tenet's outlier revenues. As early as 1999, Mackey's subordinates and other Tenet managers and employees approached Sulzbach with questions and concerns regarding the legality of implementing gross charge increases that triggered outlier payments. By 2002, Sulzbach had requested, received, and discussed data showing that Tenet's outlier payments were a significant portion of its Medicare revenue.

9. Defendant Mathiasen was Tenet's chief accounting officer and was

responsible for Tenet's books and records and for preparing Tenet's annual report. Mathiasen repeatedly received information reflecting the significant impact Tenet's strategy to aggressively increases its gross charge was having on its outlier revenue. He knew, or was reckless in not knowing, that such a strategy was having a material impact on Tenet's earnings and that it was not sustainable, yet he signed Tenet's misleading filings. Mathiasen also oversaw the creation of inappropriate general reserves at Tenet totaling approximately $107 million by the end of fiscal year 2002. These inappropriate reserves resulted in material misstatements to Tenet's financial statements for fiscal years 2000 through 2004.

10. As Tenet's chief financial officer, defendant Dennis certified Tenet's misleading filings even though he knew, or was reckless in not knowing that such filings were misleading because they omitted material information regarding Tenet's unsustainable scheme to increase gross charges in order to boost its outlier revenue and thereby improve its earnings.

11. Tenet's scheme likely would have remained a secret from the investing public but for the research of an analyst from the investment banking firm of UBS Warburg. In or around October 2002, the analyst discovered Tenet's exploitation of Medicare and published a report suggesting that Tenet's financial success was likely fueled by its manipulation of Medicare outliers. Tenet's stock price immediately dropped about 14% on the news.

12. Within about nine days following the UBS Warburg analyst's report, Mackey was asked to retire and Dennis resigned. Tenet's stock price plummeted as much as 46%. In total, Tenet's shareholders lost more than $11 billion in market capitalization after the outlier scheme was disclosed.

13. Dennis, Mackey, Sulzbach, and Mathiasen were substantially involved in preparing, reviewing and approving of Tenet's public reports with the Commission, including the Form 10-Q for Tenet's third quarter ending February 28, 2002 ("2002 Third Quarter Form 10-Q"), the Form 10-K for Tenet's fiscal year

ended May 31, 2002 ("Tenet's 2002 Form 10-K"), and the Form 10-Q for Tenet's first quarter ending August 30, 2002 ("Tenet's 2003 First Quarter Form 10-Q").

14. Each of these filings omitted material information necessary to make the statements made not misleading, such as information regarding Tenet's unsustainable strategy to aggressively increase its gross charges and the impact that strategy had on Tenet's Medicare outlier revenue, its overall revenues, income, financial condition, and results of operation.

15. Defendants knew, or were reckless in not knowing, that these filings were misleading because they knew material information regarding Tenet's unsustainable strategy to increase gross charge to inflate its Medicare outlier revenue was not disclosed in the filings.

16. Also, in June 2002, Tenet filed a prospectus supplement in connection with a $400 million debt offering. The prospectus supplement incorporated Tenet's 2001 fiscal year-end filing, as well as all subsequent quarterly filings in fiscal year 2002. These filings also omitted material information regarding Tenet's gross charge increases and their impact on Tenet's Medicare outlier revenue, financial condition, and results of operation, thereby rendering the prospectus misleading.

17. Dennis, Mackey, Sulzbach, and Mathiasen were substantially involved in the preparation, review and approval of the filings incorporated in the June 2002 prospectus supplement and each of them knew, or was reckless in not knowing, that these filings were misleading.

18. Mackey and others in Tenet's management participated and made statements regarding Tenet's financial performance and operations in earnings calls and presentations made by Tenet to Wall Street analysts and investors. During these earnings calls and presentations, Mackey and others in Tenet's management misled the investing public by failing to reveal material information regarding Tenet's gross charge increases and their impact on Tenet's Medicare

outlier revenue.

19. Accordingly, Tenet violated Section 17(a) of the Securities Act and Sections 10(b), 13(a), and 13(b)(2)(A) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, and 13a-13 thereunder.

20. Dennis, Mackey, Sulzbach, and Mathiasen violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and aided and abetted Tenet's violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder.

21. Mathiasen also violated Rule 13b2-1 under the Exchange Act and aided and abetted Tenet's violations of Section 13(b)(2)(A) of the Exchange Act.

III. DEFENDANTS

22. Tenet Healthcare Corporation is a Nevada corporation with its principal executive offices in Dallas, Texas. From 1999 through 2002, Tenet maintained its principal executive offices in Santa Barbara, California and its common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and listed on the New York and Pacific Stock Exchanges. From at least 1999 through at least November 2002, Tenet's fiscal year ended on May 31st of each calendar year.

23. Defendant David L. Dennis is a resident of Los Angeles, California. Dennis was the chief financial officer and co-president of Tenet from February 2000 until November 2002.

24. Defendant Thomas B. Mackey is a resident of Keswick, Virginia. Mackey was the chief operating officer and co-president of Tenet from January 1999 until November 2002. From 1999 through 2002, Mackey was a resident of Montecito, California.

25. Defendant Christi R. Sulzbach is a resident of Santa Barbara, California. Sulzbach joined Tenet in 1983 as an assistant general counsel and served as the chief compliance officer, executive vice president, and general

counsel of Tenet from February 1999 until September 2003. Sulzbach has been licensed with the California State Bar since 1980.

26. Defendant Raymond L. Mathiasen is a resident of Los Angeles, California. Mathiasen was the chief accounting officer of Tenet from March 1996 until November 2002. Mathiasen retired from Tenet in April 2004. Mathiasen joined Tenet (then known as National Medical Enterprises) in 1985 as a vice president in its accounting department. Mathiasen has been licensed as a CPA in California since 1969. His license is currently inactive.

IV. TENET'S PRIOR HISTORY

27. Tenet was formerly known as National Medical Enterprises ("NME"). In or around July 1994, NME consented to the entry of a permanent injunction against future violations of the antifraud and reporting provisions of the federal securities laws, following a complaint filed by the Commission in federal district court alleging improper and fraudulent revenue recognition practices by NME in its psychiatric and substance abuse treatment facilities.

28. At about the same time, NME also entered into a settlement agreement with the United States Department of Justice ("DOJ") and the Department of Health and Human Services ("HHS") related to civil and criminal charges against NME in connection with its improper psychiatric billing practice.

29. As part of NME's settlement agreement with DOJ and HHS, NME agreed to pay a then record $379 million (including a $33 million criminal fine) and to enter into a five-year "Corporate Integrity Agreement," which required, among other things, that NME implement a corporate integrity program and retain an independent third party to audit its billing practices.

30. NME's Corporate Integrity Agreement expired on June 13, 1999, at approximately the same time that Tenet first began to implement the outlier scheme.

31. Sulzbach was primarily responsible for overseeing Tenet's

compliance with the provisions of the Corporate Integrity Agreement.

V. DEFENDANTS' FRAUDULENT CONDUCT

A. Background: Tenet's Financial Struggles In 1999

32. Tenet was struggling financially in 1999. By May 31, 1999 (the end of its fiscal year), Tenet's year-end filings showed a drop in its earnings per share to about $1.65 from about $1.73 the previous year. Tenet was also experiencing "anemic" cash flow by 1999. Tenet management pointed to the Balanced Budget Act, passed by Congress in 1997, which had dramatically reduced Medicare reimbursement, as a cause of Tenet's financial problems.

33. In or around June 1999, Mackey (who had just been appointed as the chief operating officer and co-president) and others in Tenet management decided that Tenet must "reestablish[] credibility" with investors and industry analysts. Mackey and others in Tenet's management agreed to set an earnings per share target of $1.95 to $2.00 for fiscal year 2000. This target represented an almost 20% increase from 1999.

34. Mackey, along with other members of Tenet management, concluded that in order to reach the target they had set for fiscal year 2000, Tenet needed to aggressively increase its gross charges. Mackey understood that increasing gross charges would result in an increase in Tenet's Medicare outlier payments.

35. In the healthcare industry, gross charges are the listed retail prices for a hospital's services, but gross charges are not the same as prices. In other words, gross charges typically do not reflect what the hospital ultimately gets paid for its services. In fact, the majority of hospital reimbursement consists of fixed fee payments and is not impacted by the hospital's gross charges. In general, private insurance companies pay for hospital services based on prices negotiated between the insurance company and a hospital. In the Medicare context, the substantial majority of reimbursement consists of fixed fee payments set by the Center for Medicare & Medicaid Services ("CMMS"), the agency responsible for

administering the Medicare program. Such payments are generally not impacted by the gross charges of a hospital.

36. There are two significant components of hospital revenue that are impacted by gross charge increases: Medicare outlier payments and private insurer stop loss payments.

37. Medicare outlier payments are supplemental payments to hospitals that are designed to compensate hospitals for treating extraordinarily sick Medicare patients. Literally, such patients are considered statistical "outliers" in the Medicare outlier formulation because, when treating these patients, hospitals typically incur treatment costs exceeding the fixed fee payment determined by Medicare.

38. The Medicare formula used from at least 1999 through November 2002 to calculate outlier payments included a hospital's gross charges in determining the reimbursement paid to hospitals for providing treatment to Medicare patients.

B. The Loophole in the Medicare Outlier Formula

39. From at least 1999 through November 2002, the Medicare outlier calculation contained multiple steps, including thresholds designed to prevent increases in gross charges from artificially inflating the calculated outlier payment. However, Mackey and others in Tenet management identified a loophole in the outlier calculus that, in practice, allowed arbitrary increases in gross charges to cause substantial increases to the calculated outlier payment.

40. The loophole in the Medicare outlier calculus involved at least two components: the cost-to-charge ratio and the statewide average ratio

1. The Cost-to-Charge Ratio

41. The cost-to-charge ratio was intended to offset increases in gross charges so that the computed outlier amount could not be inflated by arbitrary increases to gross charges. Mackey, along with others, recognized the cost-to-

charge ratio could nonetheless be exploited to increase Medicare earnings.

42. From at least 1999 through November 2002, the cost-to-charge ratio was calculated as a hospital's average costs for a certain period divided by the hospital's average gross charges for the same period. To calculate outliers, Medicare began with the gross charge set by a hospital for each procedure. Medicare paid a fraction of the gross charges after reducing them by applying the cost-to-charge ratio. A higher cost-to-charge ratio resulted in a higher computed fraction of the gross charge being paid, and so a higher outlier payment.

43. From at least 1999 through November 2002, Medicare fiscal intermediaries calculated the cost-to-charge ratios for hospitals using charge and cost data from a hospital's most recent audited cost report. Medicare required hospitals to submit cost reports on an annual basis and the cost reports were audited by a fiscal intermediary. Yet, the audits of cost reports submitted by hospitals from 1999 through 2002 typically lagged approximately two to four years behind. In other words, in 2002, the fiscal intermediaries were generally auditing hospital cost reports from fiscal years 1998 through 2000 to calculate the cost-to-charge ratios.

44. Mackey, and others in Tenet management, realized that Medicare often used outdated cost-to-charge ratios. As a result, Tenet hospitals could drive up their gross charges without recognizing a corresponding immediate adjustment to their cost-to-charge ratio.

2. <u>The Statewide Average Ratio</u>

45. Mackey and others in Tenet management also identified that the statewide average ratio could be exploited to increase outlier revenue. The statewide average ratio consisted of the average cost-to-charge ratio for hospitals in a particular state.

46. From at least 1999 through November 2002, Medicare regulations provided that if a hospital's cost-to-charge ratio fell below a certain pre-determined

amount, then the statewide average ratio would be used in the outlier calculation instead of the cost-to-charge ratio.

47. Mackey and others in Tenet management realized that increasing a hospital's gross charges could drive the cost-to-charge ratio below the pre-determined number so that the higher statewide average ratio would be used in the Medicare outlier formula instead. Tenet management also recognized that from at least 1999 through November 2002, the statewide average ratio for many Tenet hospitals was generally higher than the cost-to-charge ratio calculated by Medicare for those hospitals.

48. Mackey and others in Tenet management understood that hospitals received even higher outlier payments when the statewide average ratio was applied rather than the cost-to-charge ratio.

49. Accordingly, Mackey and others in Tenet management determined that Tenet could artificially inflate its outlier revenue by increasing its gross charges and exploiting the Medicare outlier formula with respect to the application of the cost-to-charge ratio and the statewide average ratio.

C. <u>The Direct Impact of Additional Medicare Outlier Payments on Tenet's Financial Performance</u>

50. Mackey, and others in Tenet management, also recognized that any additional outlier revenue resulted in a direct increase to earnings per share from operations for Tenet. In other words, Mackey knew that the additional outlier revenue generated by gross charge increases went straight to Tenet's bottom line.

51. Additional outlier revenue directly impacted Tenet's earnings for at least two reasons. First, hospital patient care is primarily a fixed cost business. Facility and equipment costs are not significantly affected by the volume of patients. For example, hospitals must maintain minimum staffing levels regardless of patient volume or the level of care required. Accordingly, any incremental increase in revenue has a disproportionate impact on income. Second, Tenet was

legally required to treat the Medicare patients that prompted reimbursement through outlier payments. As a result, even without outlier payments, Tenet would have incurred the same costs to treat those Medicare patients. Thus, any additional outlier revenue generated by increases in gross charges resulted in Tenet receiving more money for the same level of service without incurring additional costs. Mackey was fully aware of this impact when he and Tenet management set the new earnings target for fiscal year 2000.

D. The Scheme: Exploit Medicare To Reach Earnings Targets

52. After setting the new earnings target for fiscal year 2000, Tenet management prepared an analysis estimating the impact of different gross charge increases on Tenet's earnings per share, ranging from a 5% increase in gross charges to a 25% increase (in increments of 5%). The purpose of the analysis was to determine how much to increase gross charges during the fiscal year 2000 budget process to reach the earnings target set for the year. The report analyzed the impact of gross charge increases on the only two areas that would be impacted: Medicare outlier payments and stop loss payments.

53. Tenet's analysis concluded that increasing Tenet's gross charges by 15% at two of its three divisions would generate the additional income necessary for Tenet to reach the $2.00 earnings target set for fiscal year 2000.

54. As a result, Mackey ordered a 15% gross charge increase for two of Tenet's three operating divisions (in addition to an 8% increase already proposed for all Tenet hospitals). In or around June 1999, Tenet hospitals formally implemented the additional 15% gross charge increase.

55. From about June 1999 to October 2002, and under Mackey's direction, Tenet hospitals continued to increase gross charges in order to exploit Medicare and inflate outlier payments to meet earnings targets.

56. During the budget process for fiscal year 2001 through fiscal year 2003, Mackey instructed Tenet operations managers to prepare reports calculating

the impact of a 1% gross charge increase on outlier reimbursements for each hospital. Tenet managers used these analyses, referred to within Tenet as the "infamous 1-percent rate increase schedule," to determine the level of gross charge increases necessary to meet Tenet's earnings targets.

57. In addition, Tenet hospitals implemented unbudgeted gross charge increases (i.e., gross charge increases on top of the increases authorized in the budget process). These unbudgeted increases were also made under Mackey's supervision. Tenet's hospitals drove up their gross charges by an average of approximately 75% from 1999 to 2002.

58. Tenet's focus on driving substantial earnings growth through gross charge increases created an atmosphere in which increasing gross charges became a central strategy of the company.

E. <u>The Disconnect Between Tenet's Aggressive Gross Charges and Its Costs</u>

59. Tenet's budgeted and unbudgeted gross charge increases did not relate to its actual costs. Consequently, Tenet's gross charges grew to arbitrarily high levels.

60. For example, as June 2002, the Tenet hospital in Redding, California charged approximately $240 for a green sterile towel that cost only about 74 cents, approximately $455 for one gram of antibiotics that cost about $4.24, and approximately $2,700 for 100 milliliters of a plasma solution that cost about $31.93.

61. From 1999 to 2002, Tenet's gross revenues (a calculation of revenues based on the assumption that payers paid gross charges) increased by 118% whereas its actual costs only increased by 16.5%.

62. For the most part, the Medicare patients treated by Tenet from 1999 to 2002 were not sicker and did not require additional services compared to the Medicare patients that Tenet historically had treated. Thus, the resultant growth in

outliers was driven primarily by the strategy to increase gross charges. As such, the increase in Tenet's outlier revenue meant that Tenet was receiving more money for the same level of service simply by increasing its gross charges.

F. **The Result: Tenet Surpasses Earnings Targets With Inflated Outliers**

63. Tenet's multi-year strategy of aggressively raising gross charges resulted in a growth in its revenue from outlier payments. In particular, Tenet's outlier revenue grew from about $231 million in fiscal year 1999 to about $758 million in fiscal year 2002.

64. As Tenet management admitted in December 2002, Tenet's outlier growth from fiscal year 1999 through fiscal year 2002 accounted for over 54% of its cumulative growth in earnings per share from operations. Tenet management also admitted that Tenet's outlier revenue constituted approximately 28% of its earnings per share from operations in fiscal year 1999 when Tenet's Medicare outlier revenue was approximately $231 million. By fiscal year 2002, Tenet's outlier revenue topped $758 million and represented approximately 41% of its earnings per share from operations.

65. Tenet's fiscal year 2002 outlier ratio also significantly exceeded a target established by CMMS for the nationwide outlier ratio. CMMS had set the nationwide outlier ratio at 5% to 6%. Indeed, Tenet's outlier payments as a percentage of overall Medicare inpatient revenue, known as an outlier ratio, tripled in four years to exceed 21% in fiscal year 2002. Tenet's fiscal year 2002 outlier ratio was also far more than the 4% to 5% average outlier ratio of its publicly traded competitors in the same period.

66. Tenet could not continue its aggressive increases in gross charges indefinitely, particularly in the face of such Medicare limits to the nationwide outlier ratio, which Tenet had surpassed by 2002. As a result, Tenet's strategy to aggressively increase its gross charges to inflate its outlier revenue, which was

having a material impact on its earnings by at least 2002, was not sustainable.

G. Tenet Employees Raise Concerns Regarding the Legality of the Scheme

67. In or around June 1999, some Tenet managers raised concerns to Sulzbach and others in Tenet management regarding the legality of implementing gross charge increases to trigger additional outlier payments.

68. In response, Sulzbach spoke to the head of Tenet's government programs department. After that conversation, she understood that increasing Tenet's gross charges resulted in increased outlier payments to Tenet. Sulzbach then drafted a memo to Mackey and others stating that the critical issue to her analysis was the intent behind the gross charge increases. Sulzbach concluded that the 15% gross charge increase was defensible because, in part, the increase was based on what she understood to be legitimate business objectives.

69. In or around January 2001, Sulzbach was again confronted with concerns about the legality of the outlier scheme and the resultant growth in outlier payments. A number of Tenet managers expressed these concerns to her and informed her that the strategy of increasing gross charges had resulted in a significant increase in outlier payments and outliers being paid for treatments that previously had not generated outlier payments.

70. In or around March 2001, Sulzbach was informed that Medicare's Office of the Inspector General had, in its annual work plan, noted to Tenet that it would "examine the financial impact of outlier Medicare payments."

71. In or around January 2002, mid-level managers at Tenet raised concerns to Sulzbach again about the growth in outlier payments caused by Tenet's increasing gross charges.

72. In or around January or February 2002, Sulzbach met with a manager in Tenet's government programs department to discuss Tenet's outlier payments and was given a binder of outlier data summarizing the outlier ratio received by

Tenet's hospitals individually and collectively. According to the data, the outlier ratio for Tenet as a whole was about 26.9% for the fiscal year to date and that ratio had substantially increased since fiscal year 2000, when it was about 12.9%. The binder of data provided to Sulzbach also showed that Tenet hospitals' outlier ratio significantly exceeded the outlier ratios for competing hospitals during the same period. In addition, the outlier data given to Sulzbach showed that Tenet's total outlier payments had substantially increased since fiscal year 2000. The manager explained the spreadsheets, information, and data contained in the binder to Sulzbach. Sulzbach kept the binder and labeled it attorney-client privileged.

73. The Office of Inspector General ("OIG") for HHS annually prepares a work plan for HHS's major entities and programs, including CMMS and Medicare. The annual OIG work plan sets forth various projects to be addressed during the fiscal year, including audits of Medicare.

74. In or around January or February 2002, Tenet's internal audit department began a review of outlier payments received by Tenet because outlier payments continued to be listed as part of the annual OIG work plan. When Sulzbach learned of the internal audit report, she instructed Tenet's head of internal audit to send the report directly to her. Sulzbach's call was unusual and surprising to Tenet's head of internal audit because Sulzbach rarely, if ever, had initiated a call to him before. After receiving the internal audit report, Sulzbach labeled it as a privileged attorney-client communication. The internal audit report described Tenet's large outlier ratio and listed the outlier ratios and payments for each of the Tenet hospitals. Sulzbach instructed that this report be sent to her and it was kept in her office. No one else received a copy of this report. The front page of the internal audit report stated that "[t]he average Tenet hospital [of the over 100 hospitals audited] received outlier payments of approximately 29% of the total payments received in 2001." The report further stated that "[a]pproximately 65% of Tenet hospitals received outlier payments in excess [*sic*] 10% of the total

payments in 2001." The second page of the internal audit report indicated that, in 2001, eight of the over 100 Tenet hospitals audited received a ratio of outlier payments to total payments in excess of 50%, and four hospitals received a ratio of outlier payments to total payments in excess of 60%.

75. On or about July 16, 2002, Sulzbach met with Tenet employees who tracked government reimbursement and who also expressed concerns about Tenet's growth in outliers. In connection with that meeting, Sulzbach received an e-mail with questions from the concerned employees for her to address, including the following:

- "[C]learly as the result of our pricing practices/increases, our Hospitals are often receiving Outlier payments for many patients that are typical or usual and not atypical. Is this legal or do we in fact have a practice that is violating provisions of the Medicare Law?"
- "[Outlier] reimbursement ... clearly seems out-of-line from what Medicare intended in terms of reimbursement fund levels for a hospital to receive, and the intent of the Outlier payment provisions. Is this result in conformance with Medicare's reimbursement rules and/or regulations?"
- "Has Tenet's pricing practices and more specifically the resulting outcome and/or intention of increased Outliers payments, been presented to and reviewed/approved by Tenet's Board of Directors [or] any other collective group of Tenet Senior Managers?"

VI. TENET'S PUBLIC FILINGS

76. Tenet reported its financial results in quarterly reports on its Form 10-Q and in year-end annual reports on its Form 10-K filed with the Commission, as well as through earnings and press releases and conference calls with analysts and investors.

77. From at least 1999 through at least November 2002, Tenet's formal

annual report was incorporated into its annual Form 10-K filings. The annual report by Tenet included the audited financial statements of Tenet and the required Management's Discussion and Analysis of Financial Condition and Results of Operations (commonly referred to as the "MD&A").

78. The MD&A is intended to give the investing public an opportunity to look at the company through the eyes of management by providing both a short and long-term analysis of the business of the company and a narrative explanation of the financial statements.

79. Pursuant to 17 C.F.R. § 229.303, Tenet and its senior officers were required to discuss, among other things, the following items in Tenet's MD&A:

- significant components of revenues . . . that . . . should be described in order to understand the registrant's results of operations;
- any known trends . . . that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on . . . revenues or income from continuing operations; and
- to the extent that the financial statements disclose material increases in . . . revenues, provide a narrative discussion of the extent to which such increases are attributable to increases in prices ....

80. Tenet and its senior officers also had a duty to disclose any trend, demand, commitment, event or uncertainty, of which its senior officers presently knew, or were reckless in not presently knowing, and which was reasonably likely to have material effects on Tenet's financial condition or results of operation.

VII. DEFENDANTS' SUBSTANTIAL PARTICIPATION IN MAKING TENET'S PUBLIC FILINGS

81. Dennis, Mackey, Sulzbach, and Mathiasen substantially participated

in and were intricately involved in preparing, reviewing, and filing Tenet's public reports with the Commission, including but not limited to Tenet's 2002 Form 10-K and Tenet's 2003 First Quarter Form 10-Q.

A. <u>Dennis' Review, Approval, and Certification of Tenet's Filings</u>

82. While Dennis was chief financial officer of Tenet, he received draft copies of the Form 10-K and Form 10-Q filings to review substantively before they were filed to ensure they were accurate and that they fairly presented, in all material respects, Tenet's financial condition and results of its operations. After his substantive review, Dennis also signed the filed versions of Tenet's 2002 Form 10-K and 2003 First Quarter Form 10-Q Form 10-Q.

83. In addition, pursuant to 18 U.S.C. § 1350, Dennis certified the accuracy of Tenet's 2002 Form 10-K (and incorporated annual report) by signing the following statement:

> *I, David L. Dennis, the Vice Chairman, Chief Corporate Officer and Chief Financial Officer in the Office of the President of Tenet Healthcare Corporation, certify that (i) the Annual Report on Form 10–K for the fiscal year ended May 31, 2002 (the "Form 10–K"), filed with the Securities and Exchange Commission on August 14, 2002, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and (ii) the information contained in the Form 10–K fairly presents, in all material respects, the financial condition and results of operations of Tenet Healthcare Corporation.*

84. Dennis also certified the accuracy of Tenet's 2003 First Quarter Form 10-Q under Section 302 of the Sarbanes-Oxley Act (15 U.S.C. §7241) by signing the following statement:

> *I, David L. Dennis, Vice Chairman, Chief Corporate Officer and Chief Financial Officer in the Office of the President of Tenet Healthcare Corporation ("Tenet"), certify that:*

> 1. *I have reviewed this quarterly report on Form 10–Q of Tenet;*
> 2. *Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;*
> 3. *Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report . . .*

B. <u>Mackey's Participation In Tenet's Filings</u>

85. While Mackey was chief operating officer and co-president of Tenet, he received draft copies of the Form 10-K and Form 10-Q filings to review before they were filed in order to ensure they were accurate and that they fairly presented, in all material respects, Tenet's financial condition and its results of operations.

86. Mathiasen, who had the primary responsibility for preparing Tenet's annual report, relied on Mackey's review of the operational aspects of Tenet's Form 10-K and 10-Q filings.

C. <u>Sulzbach's Participation In Tenet's Filings</u>

87. While Sulzbach was general counsel of Tenet, she had supervisory responsibility for drafting Tenet's Form 10-K. Two attorneys reporting directly to her were responsible for collecting the information for and drafted much of the text in the Form 10-K.

88. Sulzbach received draft copies of the Form 10-K to review substantively before it was filed to ensure it was accurate and fairly presented, in all material respects, Tenet's financial condition and results of its operations.

89. Sulzbach also received draft copies of the Forms 10-Q from Mathiasen and the company's finance team to review substantively before they were filed in order to ensure they were accurate.

90. During Sulzbach's review of the draft fiscal year 2001 Form 10-K, Sulzbach raised a substantive issue with respect to one of its paragraphs that discussed outliers. She wrote a note in the margin asking whether Tenet should "quantify the percentage of [Tenet] hospitals that received . . . outliers." She wrote this note next to the paragraph in the Form 10-K that stated, "Congress has mandated [CMMS's predecessor] to reduce Outlier Payments such that they account for between five and six percent of total [Medicare inpatient] payments..."

91. After Sulzbach wrote that note in the draft 2001 Form 10-K, another Tenet attorney, who reported to Sulzbach, asked the head of Tenet's government programs via e-mail, "Can we quantify how important the Outlier Payments are to some of our hospitals?" The head of Tenet's government programs responded, in an e-mail (on which Sulzbach was not copied), "We do not want to get into the issue of how much we gain or lose in the 10K [*sic*]."

D. <u>Mathiasen's Review, Approval, and Signing of the Filings</u>

92. While Mathiasen was Tenet's chief accounting officer, he had primary responsibility for preparing Tenet's annual report, which was incorporated by reference into the Form 10-K.

93. Tenet accountants reporting to Mathiasen drafted the MD&A, the financial statements, and other portions of Tenet's Form 10-K. Mathiasen reviewed drafts of the Form 10-K and annual report and signed the filed version of the Form 10-K.

94. Mathiasen also had primary responsibility for preparing each of the Forms 10-Q filed by Tenet. Mathiasen's staff drafted the Forms 10-Q in their entirety and Mathiasen signed the filed versions.

95. Mathiasen signed the filed versions of Tenet's 2002 Form 10-K and

2003 First Quarter Form 10-Q.

E. Sub-Certifications of the Filings by Defendants Mackey, Mathiasen, and Sulzbach

96. Because of proposed new requirements set forth in the Sarbanes-Oxley Act of 2002 requiring Tenet's chief executive officer and chief financial officer to certify the accuracy of Tenet's filings, Tenet formalized its process for reviewing its Forms 10-K and 10-Q, starting with Tenet's 2002 Form 10-K, and created a disclosure committee. The disclosure committee consisted of Tenet's senior management, including Dennis, Mackey, Sulzbach, and Mathiasen.

97. An assistant general counsel who reported directly to Sulzbach formulated and drafted the rules and procedures of Tenet's disclosure committee.

1. Tenet's 2002 Form 10-K

98. On or about July 22, 2002, Tenet's disclosure committee (including Dennis, Mackey, Sulzbach, and Mathiasen) met to discuss Tenet's 2002 Form 10-K. The purpose of the meeting was for the committee members to certify the accuracy of Tenet's filing, both orally and in writing, to Tenet's chief executive officer and to Dennis so each of them could certify the Form 10-K.

99. The members of Tenet's disclosure committee were told that the meeting was part of the "foundation necessary for [Tenet's chief executive officer and chief financial officer] to deliver the certifications required by the [Commission]."

100. For the meeting, Sulzbach's subordinate prepared a list of questions for committee members to answer, including whether "investors [had] received all information essential to their understanding [of] Tenet's financial performance and results of operations[.]"

101. During the meeting, all members of the committee, including Mackey, Sulzbach, and Mathiasen, attested to their substantive review of the filing and provided oral assurances to Tenet's chief executive officer and to Dennis that

Tenet's 2002 Form 10-K was accurate and not misleading and did not omit any material information of which they were aware.

102. During the meeting, Dennis, Mackey, Sulzbach, and Mathiasen did not raise any questions or concerns about Tenet's gross charge increases, their impact on Tenet's outlier revenue or on Tenet's earnings, the sustainability of Tenet's outlier revenue, or the need to disclose such information.

103. On or about August 14, 2002, Mackey, Sulzbach, and Mathiasen also signed written certifications, often referred to as sub-certifications, that confirmed their verbal representations during the disclosure committee meeting attesting that Tenet's 2002 Form 10-K was accurate, not misleading, and did not omit any material information. The sub-certifications signed by Mackey, Sulzbach, and Mathiasen stated, among other things, that "[t]he information contained in the Form 10-K fairly presents, in all material respects, the financial condition and results of operations of Tenet Healthcare Corporation."

104. The sub-certifications signed by Mackey, Sulzbach, and Mathiasen further stated that:

> *[N]o covered report [including Tenet's 2002 Form 10-K] omitted to state a material fact necessary to make the statements in the covered report, in light of the circumstances under which they were made, not misleading as of the end of the period covered by such report . . .*

105. Based, in part, on the sub-certifications and oral assurances provided by the disclosure committee members, including Mackey, Sulzbach, and Mathiasen, Tenet's chief executive officer and Dennis certified the accuracy of Tenet's 2002 Form 10-K, which incorporated its annual report and MD&A.

2. <u>Tenet's 2003 First Quarter Form 10-Q</u>

106. On or about October 8, 2002, Tenet's disclosure committee met to discuss Tenet's 2003 First Quarter Form 10-Q. The purpose of the meeting was for the committee members, including Mackey, Sulzbach, and Mathiasen, to attest

to the accuracy of Tenet's filing, both orally and in writing, to Tenet's chief executive officer and Dennis so they could certify the Form 10-Q pursuant to the requirements of the Sarbanes-Oxley Act.

107. During the disclosure committee meeting on or about October 8, 2002, Mackey, Sulzbach, and Mathiasen again confirmed that they had substantively reviewed the filing. Each of them also orally assured Tenet's chief executive officer and Dennis that Tenet's 2003 First Quarter Form 10-Q was accurate, not misleading, and did not omit any material information.

108. During the meeting, Dennis, Mackey, Sulzbach, and Mathiasen did not raise any questions or concerns about Tenet's gross charge increases, their impact on Tenet's outlier revenue or on Tenet's earnings, the sustainability of Tenet's outlier revenue, or the need to disclose such information.

109. On or about October 11, 2002, Mackey, Sulzbach, and Mathiasen also signed written sub-certifications verifying that the information included in Tenet's 2003 First Quarter Form 10-Q "fairly present[s] in all material respects the financial condition, results of operations and cash flows" of Tenet.

110. The sub-certifications signed by Mackey, Sulzbach, and Mathiasen also stated that:

> *Based on my knowledge, the Form 10-Q does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report . . .*

111. Based, in part, on these sub-certifications and oral assurances provided by the disclosure committee members, including Mackey, Sulzbach, and Mathiasen, Tenet's chief executive officer and Dennis each certified the accuracy of Tenet's 2003 First Quarter Form 10-Q. Such certifications were made pursuant to Rule 13a-14 of the Exchange Act and were filed in conjunction with Tenet's

2003 First Quarter Form 10-Q.

VIII. TENET'S MISLEADING PUBLIC FILINGS

112. Tenet's 2002 Third Quarter Form 10-Q, 2002 Form 10-K, and 2003 First Quarter Form 10-Q were misleading because they misrepresented and omitted material information about Tenet's increases in gross charges, the impact on its outlier revenue and its earnings growth.

A. Mackey Viewed The Outlier Scheme As A Secret Competitive Advantage

113. Tenet's scheme of exploiting Medicare with aggressive gross charge increases allowed Tenet to mitigate against changes in Medicare regulations that unfavorably impacted Medicare reimbursement for the healthcare industry. Mackey fully appreciated the significance of keeping such a successful strategy secret and he did not want to share the scheme, which he considered to be a critical advantage over Tenet's competitors.

114. Certain Tenet officers found it difficult to explain the company's growth in earnings without disclosing Tenet's aggressive gross charges increases and resultant outlier revenues. For example, when Tenet's head of the investor relations department was tasked with crafting a public explanation of Tenet's growth, he commented in an email to Mackey's second-in-command dated on or about June 15, 2000, that "it is getting tougher to explain these [revenue] trends without mentioning price increases." By "price," Tenet's head of the investor relations department was referring to, at least in part, Tenet's gross charges.

115. In every quarter from fiscal year 2000 through the first quarter of fiscal year 2003, the growth in outlier payments was a significant -- but undisclosed -- component of Tenet's earnings. For the thirteen quarters from fiscal year 2000 through the first quarter of fiscal year 2003, none of Tenet's public filings or statements disclosed Tenet's significant growth in outlier revenues.

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B. **Tenet Did Not Disclose The Outlier Scheme and Its Results in Fiscal Year 2002**

116. Tenet's Forms 10-Q filed with the Commission for the first, second, and third quarters of fiscal year 2002 failed to disclose the growth in Tenet's outlier revenue caused by its unsustainable strategy to aggressively increase gross charges.

117. On or about April 12, 2002, Tenet filed its Form 10-Q for the third quarter of fiscal year 2002, which was signed by Dennis and Mathiasen. Tenet's Form 10-Q for the third quarter fiscal year 2002 identified a number of factors as driving the financial performance of the company, such as unexplained one-time contract changes, growth in higher acuity services, general changes in the Medicare laws (which impacted the whole industry), and improved pricing from renegotiations with private, non-government payers. The quarterly filing did not discuss outlier payments or gross charges increases.

118. Tenet made misleading statements in telephonic conference calls with Wall Street analysts covering Tenet in fiscal year 2002. Tenet's senior officers, including Mackey, never revealed any information about Tenet's increased gross charges and the impact on its outlier revenue.

119. For example, on or about April 2, 2002, Tenet held an analysts' call in advance of filing Tenet's 2002 Third Quarter Form 10-Q. Mackey participated in the call and made public statements about Tenet's financial performance and results of operations during the call. Rather than disclose information about the outlier scheme and Tenet's inflated outlier revenue for the quarter, Mackey highlighted a growth in admissions of baby boomer patients in Tenet hospitals. Moreover, in a question and answer session during the same call, Mackey also discussed negotiated price increases and a shift in business from sub-acute services to acute services. Mackey, however, said nothing regarding outliers or increases in gross charges.

120. Tenet also held an analysts' call on or about July 11, 2002 in advance of the filing of Tenet's 2002 Form 10-K to discuss the fiscal year end results. During this call, Tenet representatives continued to highlight purported trends and strategies without discussing the growth in outlier payments or the increase in Tenet's gross charges. Tenet representatives discussed a number of different strategies unrelated to the outlier strategy or the resultant growth in outlier revenues. In fact, during the July 11, 2002 call, Mackey described a purported shift in treating sicker patients and improved negotiations with insurance companies as reasons for Tenet's financial success during the year. Mackey and other Tenet representatives failed to disclose that Tenet had engaged in a deliberate and unsustainable strategy to aggressively increase its gross charges since at least the start of fiscal year 2000 or that outlier revenue had grown approximately 227% as a result of this strategy.

C. <u>Tenet's 2002 Third Quarter Form 10-Q Was Misleading</u>

121. Tenet filed its 2002 Third Quarter Form 10-Q with the Commission on or about April 15, 2002. The filing identified a number of factors as driving the financial performance of the company (such as unexplained one-time contract changes, growth in higher acuity services, general changes in the Medicare laws (which impacted the whole industry), and improved pricing from renegotiations with private, non-government payers). The quarterly filing did not discuss outlier payments or gross charges increases.

122. Tenet's 2002 Third Quarter Form 10-Q was misleading because it omitted material information necessary to make the statements made not misleading, such as information regarding Tenet's unsustainable strategy to aggressively increase its gross charges and the impact that strategy had on Tenet's Medicare outlier revenue, its overall revenues, income, financial condition, and results of operation.

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D. <u>Tenet's 2002 Form 10-K Was Misleading</u>

123. Tenet filed its 2002 Form 10-K with the Commission on or about August 14, 2002. By the end of Tenet's 2002 fiscal year, Tenet's outlier revenue had grown to about $758 million. This growth in Tenet's outlier revenue accounted for over 54% of its growth in earnings per share from operations. Tenet's total outlier revenue represented approximately 41% of Tenet's earnings per share from operations.

124. Tenet's 2002 Form 10-K did not disclose Tenet's unsustainable strategy to increases its gross charges from 1999 to 2002, the resultant growth in outlier revenue during the same time period, and the material impact of outliers on earnings per share from operations. Rather than disclose Tenet's inflated outlier revenue, Tenet's aggressive gross charge increases, or the material impact of outlier revenue on Tenet's earnings, Tenet's 2002 Form 10-K attributed the company's financial successes to various factors other than its outlier revenue.

125. A letter to shareholders incorporated into Tenet's 2002 Form 10-K noted that "[f]iscal 2002 was a terrific year for Tenet" and that "[t]he energy we unleashed three and a half years ago through our intense focus on improving and growing our company continued to drive Tenet's financial and operational performance to record levels." The letter, however, never identified Tenet's strategy to exploit the Medicare outlier system by increasing its gross charges or the significant impact that strategy had on its earnings.

126. Tenet's 2002 Form 10-K was also misleading in connection with its references to outliers:

> *Congress has mandated [CMMS] to reduce Outlier Payments such that they account for between five and six percent of total [Medicare inpatient] payments. In order to bring expected Outlier Payments within this mandate, [CMMS] has proposed substantially raising the cost threshold used to determine the cases for which a hospital will receive Outlier Payments. The*

proposed change in the cost threshold will substantially reduce total Outlier Payments by reducing (a) the number of cases that qualify for Outlier Payments and (b) the amount of Outlier Payments for cases that continue to qualify.

This portion of the Form 10-K was misleading because it did not disclose Tenet's deliberate increases of gross charges to boost its outlier revenue, thereby counteracting the intent of, and the efforts by, Medicare to decrease outlier payments nationwide.

127. This portion was also misleading because it failed to state that Tenet's outlier revenue grew significantly during a three-year period despite Medicare's efforts to decrease outlier payments. Tenet's outlier payments grew 34% in fiscal year 2002 (227% over three years).

128. Tenet's references to outliers in its 2002 Form 10-K were also misleading because they failed to disclose that Tenet's outlier ratio exceeded 21% by fiscal year 2002, thereby significantly exceeding the 5% to 6% CMMS target identified in the filing.

129. Later, in the same section of Tenet's 2002 Form 10-K, Tenet stated:

The Company does not expect the implementation of CMMS' proposed change to significantly impact the Company's business, financial position or results of operations.

This statement was also misleading, in that it failed to disclose that the true reason Tenet did not expect CMMS' proposed changes to significantly impact Tenet's results was its undisclosed aggressive gross charge increases, which counteracted the effect of CMMS's efforts to reduce outlier payments.

130. In Tenet's 2002 annual report, which was incorporated into Tenet's 2002 Form 10-K, Tenet stated in the MD&A that:

As a result of the Balanced Budget Refinement Act, the Company began to receive improved Medicare payments on October 1, 2000. This trend *continues with the implementation of the new Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000, which became effective in April 2001.*

Although this language discussed improved Medicare reimbursement, it was misleading because it failed to note or explain that a significant portion of Tenet's increased Medicare reimbursement came from increased outlier payments.

131. The next paragraph of the MD&A in Tenet's 2002 Form 10-K stated that:

The pricing environment for managed care and other nongovernment payors also has improved and the Company expects this trend will continue throughout the next fiscal year as it renegotiates and renews contracts with improved terms.

This language was misleading because Tenet failed to disclose that it had been increasing its gross charges with the intent to increase outlier reimbursement. This statement was also misleading because the phrase "managed care and other nongovernment payors" excluded government reimbursement and thereby failed to address the impact of Tenet's increases in gross charges on its outlier revenue.

132. The significant growth in Tenet's outlier revenue from 1999 to 2002 represented a trend that was likely to have material effects on Tenet's revenue, income, financial condition, and results of operation. Yet, Tenet's 2002 Form 10-K did not disclose this material trend.

133. Tenet's inflated outlier revenue was also a significant component of its revenue by at least fiscal year-end 2002. Accordingly, disclosure of such information was necessary in order for an investor to understand Tenet's results of operations. Yet, Tenet's 2002 Form 10-K did not disclose this material information.

134. Tenet's 2002 Form 10-K also disclosed material increases in revenues for the corresponding periods, but failed to discuss the extent to which such

increases were attributable to increases in Tenet's gross charges.

135. Tenet's 2002 Form 10-K also failed to disclose that its strategy of aggressively increasing its gross charges, which resulted in inflated outlier revenue, was not sustainable.

E. <u>Tenet's 2003 First Quarter Form 10-Q Was Also Misleading</u>

136. Tenet filed its 2003 First Quarter Form 10-Q with the Commission on or about October 11, 2002. As with its previous filings, Tenet's 2003 First Quarter Form 10-Q did not disclose its inflated outlier revenue or its aggressive gross charge increases when it discussed the company's results for the first quarter of 2003.

137. Tenet received about $247 million in outlier payments for the first quarter of its fiscal year 2003. Outlier revenue for the first quarter of fiscal year 2003 increased by approximately 30% from the first quarter of fiscal year 2002. It also increased by more than five times from the corresponding quarter in fiscal year 1999, before Tenet began pursuing the strategy to aggressively increase gross charges.

138. Tenet's 2003 First Quarter Form 10-Q announced that its earnings per share from operations grew by about 39%, yet Tenet failed to disclose that outlier payments accounted for about 44% of Tenet's earnings per share from operations. It also omitted any discussion of the growth in outlier payments or that such growth was almost exclusively driven by Tenet's strategy to increase gross charges.

IX. <u>DEFENDANTS KNEW, OR WERE RECKLESS IN NOT KNOWING, THAT TENET'S FILINGS WERE MISLEADING</u>

139. Dennis, Mackey, Sulzbach, and Mathiasen knew, or were reckless in not knowing, that Tenet's public filings were misleading. As officers and managers of the company, their knowledge and conduct are imputed to Tenet.

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A. <u>Dennis Knew, Or Was Reckless In Not Knowing, That Tenet's Filings Were Misleading</u>

140. Dennis understood that Tenet's hospitals were aggressively raising gross charges and that outlier payments were a significant component of Tenet's earnings.

141. Throughout 2001, Dennis was informed through e-mail by Tenet's divisional managers that aggressive gross charge increases caused significant growth in outlier revenue and improved the financial performance of Tenet's hospitals.

142. Dennis understood that the divisions had implemented various unbudgeted gross charge increases because he decided that Tenet's western division needed to reduce gross charges by 10% in fiscal year 2001.

143. Dennis also understood that increases in gross charges impacted outlier reimbursement. As part of the budget process, Dennis reviewed budget assumptions directing hospitals to quantify the impact of gross charge increases on outlier revenue. Furthermore, on multiple occasions, senior officers at Tenet's western division informed Dennis that gross charges impacted the level of outlier reimbursement.

144. In February 2002, Dennis met with Mathiasen, Mackey, Sulzbach, and Tenet's chief executive officer for approximately twenty to thirty minutes and discussed, among other things, the company's outlier revenue.

145. On or about March 12, 2002, Dennis attended a dinner presentation for Tenet's board of directors, at which Mackey discussed Tenet's gross charge strategy.

146. Dennis also had received an email from Mathiasen approximately one week before the March 12, 2002 board dinner meeting stating that "[a] significant amount of our revenue now comes from Medicare outlier and stop loss payments."

147. In May 2002, Dennis, along with Mathiasen and Mackey, participated

in discussions about the unprecedented 60% increase that Medicare proposed for a threshold in the outlier calculation. Tenet's government reimbursement department calculated that the change in the threshold would result in an approximate $162 million reduction of Tenet's outlier reimbursement. Dennis also received data showing the impact of the increase in the threshold.

148. About five days after the filing of Tenet's 2002 Form 10-K, Mackey ordered changes to Tenet's fiscal year 2003 budget based, in part, on the increase of the outlier threshold. Dennis received copies of this instruction by Mackey.

149. Dennis knew, or was reckless in not knowing, that Tenet's 2002 Form 10-K and Tenet's 2003 First Quarter Form 10-Q were misleading because they omitted material information necessary to make the statements made not misleading, such as information regarding Tenet's unsustainable strategy to aggressively increase its gross charges and the impact that strategy had on Tenet's Medicare outlier revenue, its overall revenues, income, financial condition, and results of operation.

B. Mackey Knew, Or Was Reckless In Not Knowing, That Tenet's Filings Were Misleading

150. Mackey was the architect of the scheme to boost outlier revenue in order to reach earnings targets by making aggressive and arbitrary gross charge increases in order to exploit the Medicare outlier payment system.

151. Mackey directed and supervised the analysis used to calculate the specific increase in gross charges needed to inflate Tenet's outlier revenue enough to reach earnings targets. Mackey also had Tenet track the amount of outlier revenue that it was receiving.

152. During the budget process for fiscal year 2001, Mackey requested and received a detailed explanation of the formula that Medicare used for calculating outlier payments.

153. Mackey instructed government reimbursement employees to try to

maintain Medicare's application of the statewide average ratio to the calculation of outlier payments for certain Tenet hospitals because the application of the statewide average created even larger outlier payments for those hospitals from Tenet's increases in gross charges. In fact, the only benefit to Tenet from certain hospitals having Medicare apply the statewide average ratio to their outlier calculation was to increase the level of outlier reimbursement.

154. Mackey possessed information identifying the growth in outliers as a significant factor in Tenet's financial growth. In or around December 2001, Tenet's senior management directed mid-level managers to quantify the drivers of Tenet's revenue growth. Managers for two of the three divisions (the western and central-northeast divisions) identified the significant growth in outlier payments, and their analyses were provided to Mackey. As part of the effort, the employees tracking government reimbursement also identified the substantial growth in outlier revenue.

155. In early 2002, Consejo de Latinos Unidos ("Consejo"), an organization representing uninsured Latino patients, filed a lawsuit against Tenet alleging that Tenet's gross charges increases had a discriminatory impact on uninsured, low-income Latino patients. The Consejo lawsuit prompted one of Tenet's board members to ask about Tenet's billing practices during a company retreat in or around January 2002. In response, Mackey prepared a presentation for the board on Tenet's strategies with respect to gross charges and their impact.

156. On or about March 12, 2002, Mackey presented information regarding gross charge increases and Medicare outlier payments at a dinner attended by most of Tenet's board members and various senior officers at Tenet. Mackey's notes and presentation materials explained that (i) increasing gross charges impacted only stop loss payments, the uninsured, and Medicare outlier payments, (ii) outlier payments were expected to be around $750 million in fiscal year 2002, and (iii) gross charges had increased over 75% in the previous three years.

157. Mackey knew, or was reckless in not knowing, that Tenet's 2002 Form 10-K and Tenet's 2003 First Quarter Form 10-Q were misleading because they omitted material information necessary to make the statements made not misleading, such as information regarding Tenet's unsustainable strategy to aggressively increase its gross charges and the impact that strategy had on Tenet's Medicare outlier revenue, its overall revenues, income, financial condition, and results of operation.

C. Sulzbach Knew, Or Was Reckless In Not Knowing, That Tenet's Filings Were Misleading

158. Almost immediately following the implementation of Tenet's scheme to boost outlier revenues with aggressive and arbitrary gross charge increases, Sulzbach began to receive questions from Tenet employees expressing concern over the legality of the scheme. In the course of addressing and responding to such concerns, Sulzbach was provided with significant data reflecting the extraordinary outliers payments that Tenet received as a result of its scheme.

159. In addition, Sulzbach obtained substantial information describing how the Medicare outlier formula worked and how gross charge increases would boost outlier payments.

160. In January or February 2002, Sulzbach received a binder of information tracking outlier reimbursement for Tenet and comparing that to outlier reimbursement received by other hospital companies. The comparison revealed that Tenet had an outlier ratio of about 26.9% for the fiscal year to date, significantly exceeding the outlier ratios of other hospitals. The information contained in the binder also showed that Tenet's total outlier payments had dramatically increased since fiscal year 2000. After receiving the binder, Sulzbach labeled it attorney-client privileged.

161. Also in January or February 2002, Sulzbach learned of an internal audit report reviewing Tenet's outlier payments. After learning about the internal

audit report, Sulzbach called the head of internal audit and instructed him to send the report directly to her. Sulzbach also kept this report in her office and labeled it as an privileged attorney-client communication.

162. Moreover, Sulzbach attended the March 12, 2002 dinner presentation at which Mackey discussed Tenet's gross charge strategy.

163. After the dinner, Sulzbach collected notes and materials that Mackey used during his presentation. She kept Mackey's notes and presentation materials and claimed that they were privileged attorney-client communications. These notes and materials discussed, among other things, that outlier payments were expected to be around $750 million in fiscal year 2002 and that gross charges had increased more than 75% over the previous three years.

164. When Sulzbach received the information described in Paragraphs 158 through 163 above, she knew that Congress had directed CMMS (or its predecessor, HCFA) to limit outlier payments to hospitals, including Tenet's hospitals, to equal between 5% and 6% of total Medicare inpatient payments. She also knew, or was reckless in not knowing, that Tenet's ratio of outlier payments to total Medicare payments far exceeded 5% to 6%. Indeed, she had information that Tenet's outlier ratio was 26.9% for fiscal year 2002 up through February 2002.

165. Sulzbach, however, never revealed or discussed any of this material information during the disclosure committee meetings in which she participated, nor did she cause any of it to be disclosed in Tenet's filings.

166. Sulzbach knew, or was reckless in not knowing, that Tenet's 2002 Form 10-K and Tenet's 2003 First Quarter Form 10-Q were misleading because they omitted material information necessary to make the statements made not misleading, such as information regarding Tenet's unsustainable strategy to aggressively increase its gross charges and the impact that strategy had on Tenet's Medicare outlier revenue, its overall revenues, income, financial condition, and results of operation.

D. Mathiasen Knew, Or Was Reckless In Not Knowing, That Tenet's Filings Were Misleading

167. Mathiasen received information demonstrating that Tenet's performance was caused by growing outliers that, in turn, were driven by aggressive gross charge increases.

168. During Tenet's fiscal year 2000 budget process, Mathiasen received an analysis demonstrating that a 15% gross charge increase improved Tenet's outlier revenue. Mathiasen wrote, in a memorandum to Tenet's controller, that the analysis showed "how [Tenet] 'could' get to $2.00 per share."

169. The head of Tenet's government programs department gave Mathiasen periodic reports noting that outliers were "outstripping" the budget, meaning exceeding budgeted expectations.

170. Mathiasen wrote, in an e-mail to Dennis during the fiscal year 2001 budget process, with respect to outlier reimbursement, "I believe we'll still do better than the budgeted amount for FY 2001. We always do!!"

171. On or about March 1, 2002, Mathiasen and Dennis received an e-mail from the head of investor relations about resistance from insurance companies to the constantly increasing gross charges. Mathiasen replied that "[a] significant amount of our revenue now comes from Medicare outlier and stop loss payments."

172. On March 8, 2002, Mathiasen received a report showing that Tenet's outlier payments through January 2002 exceeded $475 million. In response, he commented, "Interesting! By the end of the year we should blow through the budgets [i.e., the outlier budget] by more than $150 million."

173. Mathiasen also attended the board dinner presentation on or about March 12, 2002, during which Mackey discussed Tenet's gross charge strategy. In fact, Mathiasen assisted in preparing materials that Mackey used for the dinner presentation. Also, a few hours before the March 12, 2002 dinner, Mathiasen spoke with Tenet's outside auditor, who asked Mathiasen whether or not Tenet had

given any thought to disclosing the amount of stop loss payments in its public filings. Mathiasen understood the question to address outlier payments at least in part because stop loss payments and outlier payments were both impacted by increasing gross charges. Mathiasen dismissed the auditor's suggestion and gave no further thought to disclosing these two revenue components.

174. Mathiasen knew, or was reckless in not knowing that Tenet's 2002 Form 10-K and Tenet's 2003 First Quarter Form 10-Q were misleading because they omitted material information necessary to make the statements made not misleading, such as information regarding Tenet's unsustainable strategy from 1999 to 2002 to aggressively increase its gross charges and the impact that strategy had on Tenet's Medicare outlier revenue, its overall revenues, income, financial condition, and results of operation.

X. <u>TENET'S MISLEADING FILINGS IN CONNECTION WITH A DEBT OFFERING IN JUNE 2002</u>

175. On or about June 25, 2002, Tenet made a $400 million debt offering pursuant to a registration statement filed with the Commission on or about December 6, 2001.

176. On or about June 21, 2002, Tenet filed a supplement to the prospectus in connection with the June 25, 2002 debt offering ("Tenet's June 21, 2002 Prospectus Supplement"). Tenet's June 21, 2002 Prospectus Supplement incorporated the Tenet's Form 10-K filing for fiscal year ending May 31, 2001 ("Tenet's 2001 Form 10-K") and all subsequent Forms 10-Q filings by Tenet, including Tenet's 2002 Third Quarter Form 10-Q.

177. Tenet's June 21, 2002 Prospectus Supplement, which incorporated Tenet's 2001 Form 10-K and all subsequent Forms 10-Q, including its 2002 Third Quarter Form 10-Q, was also misleading because it failed to disclose material information regarding Tenet's gross charge increases and their impact on Tenet's Medicare outlier revenue, its overall revenues, income, financial condition, or

results of operation.

178. Dennis, Mackey, Sulzbach, and Mathiasen substantially participated and were intricately involved in the preparation and filing of reports incorporated by reference in Tenet's June 21, 2002 Prospectus Supplement, including but not limited to Tenet's 2001 Form 10-K and 2002 Third Quarter Form 10-Q.

179. As Tenet's chief financial officer, Dennis received draft copies of filings incorporated by reference in Tenet's June 21, 2002 Prospectus Supplement, including but not limited to Tenet's 2001 Form 10-K and 2002 Third Quarter Form 10-Q, for him to review substantively before they were filed. After his substantive review, Dennis also signed the filed versions of these filings.

180. As Tenet's chief operating officer, Mackey also received draft copies of filings incorporated by reference in Tenet's June 21, 2002 Prospectus Supplement, including but not limited to Tenet's 2001 Form 10-K and 2002 Third Quarter Form 10-Q, for him to review substantively before they were filed. Mathiasen relied on Mackey's substantive review of the operational aspects of these filings.

181. As Tenet's general counsel, Sulzbach also received draft copies of filings incorporated by reference in Tenet's June 21, 2002 Prospectus Supplement, including but not limited to Tenet's 2001 Form 10-K and 2002 Third Quarter Form 10-Q, for her to review substantively before they were filed. She wrote comments during her review of the draft 2001 Form 10-K related to Tenet's discussion of outlier payments.

182. As Tenet's chief accounting officer, Mathiasen also received draft copies of filings incorporated by reference in Tenet's June 21, 2002 Prospectus Supplement, including but not limited to Tenet's 2001 Form 10-K and 2002 Third Quarter Form 10-Q, for him to review substantively before they were filed. After his substantive review, Mathiasen also signed the filed versions of these filings.

183. Dennis, Mackey, Sulzbach, and Mathiasen knew, or were reckless in

not knowing, that reports incorporated by reference in Tenet's June 21, 2002 Prospectus Supplement were misleading because they omitted material information necessary to make the statements made not misleading, such as information regarding Tenet's unsustainable strategy from 1999 to 2002 to aggressively increase its gross charges and the impact that strategy had on Tenet's Medicare outlier revenue, its overall revenues, income, financial condition, and results of operation.

XI. DEFENDANTS MACKEY, SULZBACH, AND TENET BENEFITED FROM THE FRAUD

184. In fiscal year 2002, Mackey was paid a base salary of approximately $725,000. In addition, Mackey received a bonus of approximately $2,182,250 for fiscal year 2002. In total, Mackey was paid about $2,907,250 in fiscal year 2002.

185. In fiscal year 2002, Sulzbach was paid a base salary of approximately $426,500. In addition, Sulzbach received a bonus of approximately $951,700 for fiscal year 2002. In total, Sulzbach was paid about $1,378,200 in fiscal year 2002.

186. In fiscal year 2002, Dennis and Mathiasen also received bonuses in addition to their base salaries.

187. At least in part, the bonuses received by Dennis, Mackey, Sulzbach, and Mathiasen in fiscal year 2002 were discretionary and tied to Tenet's annual earnings growth through a complex formula impacted by the portion of earnings derived from Tenet's inflated outlier revenue.

188. On or about October 4, 2002, Mackey exercised options to purchase Tenet stock and then sold approximately 277,500 shares of Tenet stock for a profit of almost $9,920,625. By doing so, Mackey capitalized on Tenet's high stock price, which was inflated, in part, due to Tenet's successful scheme to exploit the Medicare outlier system in order to reach certain earnings targets.

189. Tenet also benefited from the fraud described herein. Tenet's filings misled the investing public about the principal drivers behind Tenet's strong

financial performance from at least 2001 through 2002.

190. Tenet took advantage of this misperception by offering $3 billion worth of debt throughout fiscal year 2002, including a $400 million debt offering on or about June 25, 2002. Tenet saved a significant amount in borrowing costs because the investing market did not know about the impact of outlier payments on Tenet's financial performance.

XII. THE UBS WARBURG ANALYST'S REPORT

191. On October 28, 2002, a UBS Warburg industry analyst published a report on Tenet, which hypothesized that Tenet's earnings growth appeared to have been driven by a dramatic increase in Medicare outlier payments.

192. The UBS Warburg industry analyst report was the first public indication of Tenet's outlier scheme and the company's significant reliance on Medicare outlier payments. After the UBS Warburg industry analyst issued his report on or about October 28, 2002, Tenet's stock dropped approximately 14% (from about $49.31 to about $42.50 per share). This drop represented an approximate $3.3 billion loss in market capitalization for Tenet's stock.

193. On October 29, 2002, the UBS Warburg analyst issued another report addressing Tenet's outlier payments, as well as the company's initial press release responding to his previous report, in which Tenet pointed to a number of other factors besides gross charges (such its strategy to develop high-acuity services) as reasons for growth in its outlier revenue.

194. After the UBS Warburg industry analyst issued his second report on or about October 29, 2002, Tenet's stock again dropped to about $39.25 per share. This drop represented an approximate $1.6 billion loss in market capitalization for Tenet's stock.

195. On November 7, 2002, Tenet management held a conference call with analysts to address, in part, the company's outlier revenue and the UBS Warburg analyst's reports. Shortly before the conference call on or about November 7,

2002, Tenet announced that Mackey had retired and Dennis had resigned. In fact, Tenet's former chief executive officer had asked Mackey to retire and Dennis to resign.

196. During the November 7, 2002 conference call, Tenet management disclosed for the first time its multi-year strategy of aggressively raising gross charges and the resulting significant growth in Tenet's outlier revenue from about $350 million in fiscal year 2000 to about $758 million in fiscal year 2002. During the call, certain analysts stated they felt misled by Tenet's prior filings.

197. During the November 7, 2002 conference call, Tenet management also admitted that the operational strategies that it had previously cited as the reason for its outstanding earnings growth were not the only reasons for Tenet's financial success during the prior at least three fiscal years. Tenet's former chief executive officer further admitted during the call that Tenet's exploitation of the statewide average ratio, as part of its strategy to aggressively increase gross charges, "was the main driver of the outlier growth."

198. After the conference call on November 7, 2002, the price of Tenet's stock dropped approximately 46% in twenty-four hours and closed at about $14.90 per share on or about November 8, 2002. This drop represented an approximate $6.4 billion loss in market capitalization for Tenet's stock.

199. In total, the public revelations concerning Tenet's outlier payments from October 28, 2002 to November 7, 2002 resulted in an approximate $11.3 billion loss in market capitalization for Tenet's stock.

200. In a bulletin to its employees on or about November 15, 2002, Tenet admitted it had implemented a strategy to aggressively increase gross charges that "resulted in far higher-than-average Medicare payments." Tenet also admitted that its scheme "put [the company] on a course that was not sustainable."

201. In or around December 2002, Tenet's senior management further admitted that its strategy to aggressively increase gross charges "resulted in

disproportionately large outlier payments to Tenet."

XIII. TENET'S RESERVES FRAUD

202. In part as a result of its outlier scheme, Tenet received enough income to set aside funds in improper general reserves. Tenet divisional management, with the approval of Mathiasen, created general reserves that totaled approximately $107 million by the end of Tenet's fiscal year 2002. As a result of these improper reserves, Tenet filed financial statements that were not in accordance with Generally Accepted Accounting Principles ("GAAP") and included material misstatements with respect to its net income or loss from operations, pre-tax income, net income, earnings per share, and certain balance sheet accounts.

A. Tenet's Four Improper Contractual Allowance General Reserves

203. Mathiasen knew about, authorized, and controlled at least four improper general reserves that related to Tenet's contractual allowances.

204. In the hospital industry, contractual allowances are used to calculate a hospital's net revenue. A hospital's net revenue is the amount that it has received or is owed for the services it has provided. A hospital could calculate its net revenue based on the terms of its contracts with insurance companies or on the terms of Medicare reimbursement.

205. The general ledgers at many Tenet hospitals did not typically book just the net revenue. Instead, the general ledgers typically contained two types of accounts that could be used to calculate the net revenue number. Those account types were gross revenue accounts and contractual allowance accounts.

206. A Tenet hospital's gross revenue was based on the gross charges it attributed to its services. In general, gross revenue did not represent the actual amount paid, or expected to be paid, to the hospitals. Therefore, Tenet had to make some adjustment (i.e., the contractual allowance) to the gross revenue amount to properly report its net revenue.

207. Tenet calculated its net revenue by deducting contractual allowances

from its gross revenues. Although contractual allowances were largely automated calculations, Tenet also had manual calculations performed by Tenet's accounting personnel and applied to its contractual allowances. It was through this manual adjustment of contractual allowance reserve amounts that Mathiasen was able to authorize and control the use of at least four improper general reserves to manage Tenet's earnings.

1. <u>The Caremark Settlement Reserve</u>

208. Caremark was an insurance company that entered into bankruptcy in 1999. When personnel in Tenet's western division learned of Caremark's impending bankruptcy, Mathiasen authorized the establishment of an approximate $12 million reserve principally based on the outstanding account receivable amount owed by Caremark (the "Caremark Settlement Reserve").

209. Near the end of fiscal year 2000, Tenet resolved its claims for the amounts owed by Caremark. At that time, Mathiasen received an e-mail from the head of the western division stating, "While my preference is to take this windfall in FY 01, we have options depending upon the company's needs for the balance of FY 00. Ray [Mathiasen], please advise as you know throughout the final months of FY 00."

210. Even though the Caremark Settlement Reserve was no longer needed, Mathiasen did not permit the reversal of the reserve until the summer of 2002, when he ordered that the reserve be reversed ratably over the year. Mathiasen wanted the Caremark Settlement Reserve reversed ratably so that undoing the reserve did not distort financial results.

211. Under GAAP, Statement of Financial Accounting Standards No. 5 ("FAS 5") permits the recording of a reserve only if it is probable that a loss has been incurred at the time of the statement date and only if the loss itself can be reasonably estimated. After Tenet resolved its claims against Caremark, there was no longer any chance that a loss would occur, and thus, the FAS 5 criteria were not

met. Accordingly, Tenet's restated results for fiscal year 2000 (the year that the reserve should have been reversed) and for the Transitional Period (the period during which the reserve was improperly reversed) include adjustments to certain income statement and balance sheet accounts in order to properly account for this reserve.

212. Mathiasen was not aware of documentation identifying any specific exposures or, as required by FAS 5, any probable losses, to permit the recording of the Caremark Settlement Reserve.

213. Mathiasen was also not aware of any analysis of a reasonable estimate of the purported exposures to justify recording of the Caremark Settlement Reserve. Such undefined, unquantified exposures could not have satisfied the requirements of FAS 5 for the recording of the Caremark Settlement Reserve.

2. The Western Division General Reserve

214. Senior officers of Tenet's western division created a $16 million improper general reserve, which was unrelated to any known exposures, in the first two months of fiscal year 2002 (the "Western Division General Reserve"). Mathiasen learned about and took control of this general reserve by the end of the first quarter of fiscal year 2002.

215. Mathiasen knew that the Western Division General Reserve did not relate to any known loss contingency but instead had been created by senior officers of Tenet's western division to smooth out future earnings.

216. Throughout fiscal year 2002, Mathiasen authorized the western division to take into income portions of the Western Division General Reserve.

217. At the end of fiscal year 2002, the balance of the western division reserve was about $10 million and contributed to material misstatements in Tenet's filings with respect to certain income statement and balance sheet accounts.

3. The Recoupment Reserve

218. In or about January 2001, Mathiasen authorized the creation of an

improper general reserve at various Texas region hospitals (the "Recoupment Reserve").

219. Senior managers in Tenet's Texas region requested the Recoupment Reserve in case insurance companies sought to recoup payments they had made without having received the contractually required formal notice of gross charge increases. Mathiasen authorized it without requesting any information about the likelihood of these claims occurring, or about the likelihood that these claims would succeed. In fact, Texas regional personnel had never received any such demands from insurance companies and had obtained legal opinions describing the probable success of these claims as unlikely.

220. In early 2002, managers at Tenet's Texas region informed Mathiasen that they did not think that the Recoupment Reserve, which had grown to over $30 million, was needed as no one had made a recoupment claim. Mathiasen decided that about $20 million of the Recoupment Reserve would be reversed over the upcoming fiscal year 2003. At the end of fiscal year 2002, the Recoupment Reserve totaled about $36 million.

221. Because the Recoupment Reserve did not meet the FAS 5 criteria, Tenet restated its Form 10-K filings for fiscal years 2001 through 2003 to include adjustments to certain income statement and balance sheet accounts in Tenet's filings in order to unwind this improper reserve.

4. <u>The Medicare Outpatient Reserve</u>

222. At the end of fiscal year 2002, Tenet's government department (which reported to Mathiasen) created an improper general reserve related to Medicare outpatient reimbursement (the "Medicare Outpatient Reserve"). At the time, Mathiasen and the government department believed that the Medicare Outpatient Reserve totaled approximately $56 million.

223. During the fiscal year 2002 audit, Tenet's outside auditors determined that the Medicare Outpatient Reserve was unnecessary and intended to recommend

an audit adjustment for the full amount.

224. After discussions between Tenet's outside auditors and Tenet's accounting personnel, including Mathiasen, Tenet agreed to adjust its fiscal year 2002 results to reverse $20 million of the Medicare Outpatient Reserve and to ratably reverse the remaining $36 million in fiscal year 2003. Tenet's outside auditors then concluded that the $36 million portion of the Medicare Outpatient Reserve was immaterial and simply listed it in its summary of unadjusted differences.

225. Tenet and outside auditors made a mistake in calculating the unadjusted amount of the Medicare Outpatient Reserve. The unadjusted amount of the Medicare Outpatient Reserve was approximately $49 million, not $36 million, by the time of the fiscal year 2002 audit, as Tenet's outside auditors and Mathiasen had mistakenly believed. As a result, the Medicare Outpatient Reserve also contributed to material misstatements in Tenet's filings with respect to certain income statement and balance sheet accounts.

B. <u>Tenet's Restatements</u>

226. At the close of fiscal year 2002, the Caremark Settlement Reserve, Western Division General Reserve, the Recoupment Reserve, and the Medicare Outpatient Reserve totaled over $107 million ($12 million, $10 million, $36 million, and $49 million respectively), or $66 million after taxes.

227. Combined and after taxes, the total amount of these four improper general reserves were equivalent to 8.2% of Tenet's net income for fiscal year 2002.

228. Mathiasen never informed Tenet's outside auditors that he was maintaining the additional improper contractual allowance reserves. Based on how Tenet's outside auditors had treated the Medicare Outpatient Reserve, Mathiasen knew or recklessly disregarded that Tenet's outside auditors might view the total balances of these accounts as material and require adjustments to Tenet's financial

statements.

229. On or about January 19, 2006, Tenet announced that it would restate its financial statements for fiscal years 2000 through 2004 to properly account for these four improper general reserves. In particular, Tenet restated its filings on Form 10-K filed with the Commission for fiscal years 2000 through 2002, the seven-month transitional period ending on December 31, 2002 (the "Transitional Period"), and fiscal years 2003 through 2004.

230. Through the improper general reserves maintained and authorized by Mathiasen, Tenet understated its net income in fiscal years 2000 through 2002, overstated its net income in the Transitional Period, and understated its net loss fiscal year 2003 and 2004 as described in the table below:

Fiscal Year	**Restated Net Income (Loss) Due to Improper Reserves (in millions)**	**Amount That Net Income Was Restated Due To Improper Reserves (in millions)**	**Percentage Change in Restatement**
2000	$ 327	$ 9	+ 2.8%
2001	$ 676	$ 7	+ 1.0%
2002	$ 813	$ 42	+ 5.2%
Transitional Period	$ 453	($43)	- 9.5%
2003	($ 1,564)	($ 14)	+ 1.9%
2004	($ 2,806)	($ 1)	+ 0.04%

Mathiasen reviewed, signed, and approved each of Tenet's original filings with the Commission that contained the misstated financial statements (except the filing for fiscal year 2004).

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FIRST CLAIM FOR RELIEF

FRAUD IN THE OFFER OR SALE OF SECURITIES

Violations of Section 17(a) of the Securities Act

(as to all defendants)

231. The Commission realleges and incorporates by reference ¶¶ 1 through 230 above.

232. Defendants, and each of them, by engaging in the conduct described above, directly or indirectly, in the offer or sale of securities by the use of means or instruments of transportation or communication in interstate commerce or by the use of the mails:

a. with scienter, employed devices, schemes, or artifices to defraud;

b. obtained money or property by means of untrue statements of a material fact or by omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

c. engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

233. By engaging in the conduct described above, defendants violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

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SECOND CLAIM FOR RELIEF

FRAUD IN CONNECTION WITH THE PURCHASE OR SALE OF SECURITIES

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder

(as to all defendants)

234. The Commission realleges and incorporates by reference ¶¶ 1 through 230 above.

235. Defendants, and each of them, by engaging in the conduct described above, directly or indirectly, in connection with the purchase or sale of a security, by the use of means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, with scienter:

a. employed devices, schemes, or artifices to defraud;

b. made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

c. engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

236. By engaging in the conduct described above, defendants violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

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THIRD CLAIM FOR RELIEF

VIOLATIONS OF COMMISSION PERIODIC REPORTING REQUIREMENTS

Violations of Section 13(a) of the Exchange Act, and Rules 12b-20, 13a-1, and 13a-13 thereunder

(as to all defendants)

237. The Commission realleges and incorporates by reference ¶¶ 1 through 230 above.

238. Defendant Tenet violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder, by filing with the Commission a materially false and misleading annual report on Form 10-K for the fiscal years ended May 31, 2002 and a materially false and misleading quarterly report on Form 10-Q for the quarter ended August 31, 2002.

239. Defendants Dennis, Mackey, Sulzbach, and Mathiasen knowingly provided substantial assistance to Tenet's violation of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder.

240. By engaging in the conduct described above and pursuant to Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), defendants Dennis, Mackey, Sulzbach, and Mathiasen aided and abetted defendant Tenet's violations, and unless restrained and enjoined will continue to aid and abet violations, of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Rules 12b-20, 13a-1, and 13a-13 thereunder, 17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13.

FOURTH CLAIM FOR RELIEF

RECORD KEEPING VIOLATIONS

Violations of Section 13(b)(2)(A) of the Exchange Act and Violations of Rule 13b2-1 thereunder

(against defendants Tenet and Mathiasen)

241. The Commission realleges and incorporates by reference ¶¶ 1 through

230 above.

242. Defendant Tenet violated Section 13(b)(2)(A) of the Exchange Act by failing to make or keep books, records and accounts that in reasonable detail accurately and fairly reflected its transactions and disposition of its assets.

243. Defendant Mathiasen knowingly provided substantial assistance to Tenet's violation of Section 13(b)(2)(A) of the Exchange Act.

244. By engaging in the conduct described above and pursuant to Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), defendant Mathiasen aided and abetted defendant Tenet's violations, and unless restrained and enjoined will continue to aid and abet violations, of Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A).

245. By engaging in the conduct described above, defendant Mathiasen violated Exchange Act Rule 13b2-1 by, directly or indirectly, falsifying or causing to be falsified Tenet's books, records, and accounts subject to Section 13(b)(2)(A) of the Exchange Act. Unless restrained and enjoined, defendant Mathiasen will continue to violate Rule 13b2-1, 17 C.F.R. § 240.13b2-1.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

(a) Issue findings of fact and conclusions of law that defendants committed the violations alleged and charged herein.

(b) Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining defendant Tenet and its officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them, who receive actual notice of the order by personal service or otherwise, and each of them, from violating Section 17(a) of the Securities Act, and Sections 10(b), 13(a), and 13(b)(2)(A) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, and 13a-13 thereunder.

(c) Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining each of defendants Dennis, Mackey, and Sulzbach and their agents, servants, employees, attorneys, and those persons in active concert or participation with them, who receive actual notice of the order by personal service or otherwise, from violating Section 17(a) of the Securities Act, and Sections 10(b) and 13(a) of the Exchange Act, and Rules 10b-5, 12b-20, 13a-1, and 13a-13 thereunder.

(d) Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining defendant Mathiasen and his agents, servants, employees, attorneys, and those persons in active concert or participation with them, who receive actual notice of the order by personal service or otherwise, from violating Section 17(a) of the Securities Act, and Sections 10(b), 13(a), and 13(b)(2)(A) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-13, and 13b2-1 thereunder.

(e) Enter an order, pursuant to Section 20(e) of the Securities Act, 15 U.S.C. § 77t(e), and/or Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), prohibiting defendants Mackey, Sulzbach, and Mathiasen from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 78*l*, or that is required to file reports pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

(f) Order defendants to disgorge all ill-gotten gains from their illegal conduct, together with prejudgment interest thereon.

(g) Order defendants to pay civil penalties under Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and/or Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

(h) Order defendants to provide an accounting of their ill-gotten gains.

(i) Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this

Court.

(j) Grant such other and further relief as this Court may determine to be just and necessary.

DATED: April 2, 2007

Respectfully submitted,

BRIANE NELSON MITCHELL
LORRAINE B. ECHAVARRIA
DAVID VAN HAVERMAAT
WILLIAM G. BERRY
Attorneys for Plaintiff
Securities and Exchange Commission