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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

Columbia Health District, a municipal corporation, Columbia Health District, by and through Brady Preheim, and Joe Cason, Trustees,

Plaintiffs,

v.

Tony Hyde, Earl Fisher, Henry Heimuller, Thomas Sponsler, Eileen Eakins, Sarah Hanson, Jay Tappan, Gary Heide, Lisa Galovich, Diane Hutson, Karen Ladd, Chad Olsen, The Public Health Foundation of Columbia County, an Oregon Corporation.

Defendants.

No. 3:12-cv-01854-HZ

AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

COME NOW PLAINTIFFS, and allege as follows:

1.

Parties: Plaintiff Columbia Health District (hereafter CHD) is a special district under Oregon Revised Statutes Chapter 198 and comprises approximately 60% of the real property value of the County. The 2004 Charter of the CHD restricted its activities to building and operating a Critical Access Hospital. The CHD is the successor in interest and assignee of all the rights, title and interest of assets and claims of the predecessor CHD prior to its dissolution in

2004, and in particular, owner of the rights against defendants Karen Ladd, Gary Heide, Jay Tappan and possibly others, due to conduct consisting of adverse domination of the CHD, and conversion, fraud, and misappropriation of approximately \$1,000,000 of assets of the CHD that occurred prior to its dissolution in the 2004 election.

Defendants Tony Hyde, Earl Fisher and Henry Heimuller are fraudulently claiming to be trustees of the newly created CHD in dissolution.

Defendants Thomas Sponsler, Aiken Blitz, and Eileen Eakins are former lawyers for the CHD. Defendant Sarah Hanson is now and has been at all material times herein the attorney for Hyde, Fisher and Heimuller and Columbia County.

Defendants Jay Tappan, Lisa Galovich, Diane Hutson and Gary Heide were former directors of the board of the CHD. Their terms ended June 30, 2012. Defendant Karen Ladd was a chief executive of the pre-2004 CHD, post 2004 CHD and Gary Heide was a director of the pre-2004 CHD and post 2004 CHD. Ladd also acted as the chief administrator for defendant The Public Health Foundation of Columbia County, a corporation.

Defendant Chad Olsen was the City Administrator for the City of St. Helens during the time the fraud which is the subject of this suit took place until his resignation January 2012. Defendant Olsen and Mayor Randy Petersen are the only persons identified to date in emails obtained from CHD records representing the City of St. Helens. Plaintiff believes that other St. Helens actors may be identified upon further discovery. Olsen was consciously aware of the fraudulent scheme and he aided, abetted and encouraged it and agreed on behalf of the City of St. Helens to receive the property stolen from CHD in the fraudulent scheme. Olsen was informed of the fraudulent methods of concealment of the material facts and he was aware that the CHD board members, Tappan, Galovich, Heide and Hutson were committing adverse domination and

conversion of the CHD property when he agreed to accept the Millard Road real property owned by the CHD and valued at \$3.3 Million.

Defendant The Public Health Foundation of Columbia County holds fraudulently transferred real and personal property and money of the CHD valued at up to \$1,000,000. Said defendant's board of directors included a number of the former CHD board members during the formation and conduct of the criminal conspiracy complained of herein, including Tappan and Heide.

Uncharged co-conspirators include former board members of the CHD, and attorneys, staff and elected officials of the City of St. Helens, and CHD attorney Daniel Barnhart, who represented the former CHD board members during their fraudulent activities, both before and after they held the office of Board member for the CHD.

The CHD property which is the object of the fraud described in this suit includes two pieces of real property, referred to as the Gable Road Property, valued at approximately \$350,000, and the Millard Road property, valued at approximately \$3,300,000; money in the approximate amount of \$650,000; and personal property valued at approximately \$100,000. These numbers are plaintiffs' current estimates and are not based on actual appraisals.

2. Jurisdiction and Venue

The court has subject matter jurisdiction of Racketeer Influenced and Corrupt Organizations Act Claims under 18 USC § 1962 and pendent jurisdiction over the state law claims under 28 U.S.C. § 1367. The State Law claims are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. The predicate offenses under 18 USC § 1962 include mail and wire fraud, and Hobbs Act violations involving threats of harm.

3. Allegations common to all counts

Common allegations – including the specificity of the fraud claims required by FRCP 9(b):

1. Plaintiff CHD formed in as a Special District in 2004 with a tax rate collecting approximately \$1,000,000 per year in tax levies. It was the successor to a municipal hospital district that had ceased to function, but continued in operation on a fraudulent basis since the early 1990's. The prior CHD had a permanent tax rate limit resulting in a tax levy of approximately \$100,000 per year on CHD real property owners within the District. The CHD hospital closed several decades ago because it was no longer economically feasible to operate. Nevertheless, the tax continued to be levied and the funds were unlawfully expended on non-hospital functions by an and irresponsible board of directors and administrators, including defendant Karen Ladd, executive director and chief administrator of the Columbia Health District. Public Health does not require any financial support from property tax levies, and all the funds collected since the hospital was sold in 1994 have been fraudulently converted by the adverse domination of the CHD board of directors. All of the funds collected by the pre-2004 CHD were fraudulently misappropriated by Karen Ladd and a board of directors, including Board Member Gary Heide, for the unlawful purpose of subsidizing defendant Karen Ladd's salary and power base.

In 2004, the CHD board fraudulently determined to embark on construction of a new hospital. In order to increase the tax levy, CHD went through a pretextual dissolution and then simultaneously re-formed the district to circumvent the constitutional prohibition of increasing the "permanent" tax rate limits.

The new 2004 CHD Charter limited the powers of the CHD to building and operating a

Critical Access Hospital. That purpose was never possible and Karen Ladd and the defendants Heide, Tappan, Galovich and Hutson knew it was not possible. State of Oregon officials cautioned the CHD against spending money for a hospital that had not been authorized by the State of Oregon Certificate of Need Program. The electorate became increasingly dissatisfied with the CHD board as money was being spent and the State of Oregon Certificate of Need Program officials continued to say “no” to a new hospital.

2. In December 2009 a citizen initiative, Measure 5-209, was qualified for the ballot to repeal and suspend the CHD tax, and to refund to the taxpayers all the tax money collected. The CHD board resisted placing the initiative on the ballot and manipulated and stalled the election date.

3. The election on Measure 5-209 was held on the November 2010 ballot and it passed by 72% ‘yes’ vote. The former CHD board hired attorneys to declare 5-209 unenforceable. They were successful in doing so through judicial fraud. The CHD attorneys were successful in squelching all citizen attempts to oppose the suit, and defendants Hyde, Fisher, and Heimuller fraudulently served as defendants feigning opposition to the CHD suit. They purposely defaulted on a summary judgment motion and cooperated in the CHD board’s effort to challenge the citizen passed initiative. They then hid behind the fraudulent judgment claiming 5-209 was void.

4. In response to the public opposition to the continued tax levy, the defendants Tappan, Heide, Hutson and Galovich adopted a fraudulent resolution on or about April 6, 2011. The resolution was conceived by CHD attorneys Thomas Sponsler, and Aiken Blitz. This document contained material misrepresentations and concealed a secret determination to illegally and fraudulently transfer all of the assets of the CHD to entities that were not permitted by law to receive the assets. At the same time, the CHD board, consisting of Tappan, Heide, Galovich, and

Hutson, continued to state in public sessions of the board, and in news reports, and in letters mailed to other public officials, that the Board intended to follow the will of the electors expressed in Measure 5-209 which called for a refund of the tax moneys collected from CHD property owners. These statements were false because the resolution did the exact opposite of the defendants' announced intention. In addition, the plan called for the Board to hide behind a false claim as to what the Oregon law required for the disposition of the assets. The scheme included the agreement by Attorneys Sponsler, Blitz and Hanson to render a fraudulent legal opinion as a cover story to be used by defendants Hyde, Fisher, Henry Heimuller, Tappan, Heide, Galovich, and Hutson. The false cover story was the false claim that they were just "following the law." In truth and in fact the defendants were violating the law.

5. April 6, 2011 – A fraudulent letter was sent through the US Mail with the false statement that "The CHD Board has moved by resolution to take the necessary steps 'to effectuate, to the extent possible, the will of the people in passing Measure 5-209 and thereby start the dissolution process.'" The letter is attached hereto and incorporated herein, and it is addressed to the Columbia County Board of Commissioners.

6. April 2011 – The fraudulent resolution referred to in the April 6, 2011 letter was filed and published to the general public with the Columbia County Clerk.

7. June 7, 2011 – The fraudulent ballot title was filed with the elections office and signed by Defendant Jay Tappan. The ballot title was prepared and approved by Thomas Sponsler, Aiken Blitz, Jay Tappan, Gary Heide, Lisa Galovich, and Diane Hutson. The ballot title fraudulently omits all details of the distribution plan. The resolution which was ostensibly referred to in the ballot title also failed to describe the intended distribution of the Millard Road real property owned by the CHD. The fraudulent ballot title merely states that there is a plan of

distribution. Oregon law requires the public to vote on a plan of dissolution, and in this instance the plan of dissolution was never voted on because the plan was never revealed or described to the public to enable them to approve it. The intentional misrepresentation and concealment of material facts included the failure of the defendants to disclose the defendants' intention to rely upon a provision of the dissolution statute which they intended would result in the CHD's Millard Road property being forfeited and transferred to the City of St. Helens, which is one of the enterprises involved in the fraud described in this complaint. The defendants believed this secret and concealed intention would be triggered when the newly elected CHD board failed to act to stop the fraudulent scheme. The trigger was the "resolution" later prepared by defendant Eileen Eakins, which was intended to accomplish the fraudulent scheme by divesting the CHD of the Millard Road Property the moment the fraudulent September Resolution was signed by the new board. The fraudulent resolution prepared by CHD attorney Eileen Eakins has now been rescinded, but the defendants Hyde, Heimuller, and Fisher are presently seeking a court order to declare that the fraudulent resolution could not be rescinded so they can accomplish the conspiracy goals to cheat and defraud the CHD.

8. June 7, 2011 – Defendant Tappan filed the fraudulent ballot title filed with Columbia County elections department. The fraudulent statements published on the ballot titles were the product of Jay Tappan, Gary Heide, Lisa Galovich, Diane Hutson, Thomas Sponsler and Aiken Blitz.

9. August 6, 2011 – Ballots addressed to overseas and military absentee electors were deposited in the US Mail. The fraudulent statements published on the ballot titles were the product of defendants Jay Tappan, Gary Heide, Lisa Galovich, Diane Hutson, Tom Sponsler and Aiken Blitz.

10. August 22, 2011 - Fraudulent ballot titles were mailed to out of state absentee electors by deposit in the US Mail. These fraudulent ballots were the product of defendants Jay Tappan, Gary Heide, Lisa Galovich, Diane Hutson, Tom Sponsler and Aiken Blitz.

11. September 2, 2011 – regular electors – Defendants caused the fraudulent ballots to be mailed to regular electors of the CHD by the County Elections Department to the non absentee voters

12.. September 20, 2011. The Dissolution election with fraudulent ballot titles takes place and the County received over 9,000 ballots in the US Mail containing the fraudulent ballot titles after voters mailed them back to be counted.

13. June 2011 – Defendants fraudulent transferred approximately \$500,000 of bank funds from CHD bank accounts to defendants Hyde, Fisher, and Heimuller, who in turn transferred the funds to defendant The Public Health Foundation of Columbia County. Some of the funds have been kept by defendants Heimuller, Hyde and Fisher and are currently and unlawfully under their control. These funds approximate the sum of \$100,000.

14. June 2011 – Defendants fraudulently transferred CHD Gable road real property from CHD to Columbia County. Defendants Fisher, Hyde, and Heimuller then fraudulently leased back the real property to defendant The Public Health Foundation of Columbia County for no consideration. This transaction was executed in furtherance and in conformance with the RICO conspiracy, which defendant Jay Tappan and Karen Ladd, referred to as the “deal” in the defendants’ emails set forth below in this complaint.

15. June 2011 - A citizen suit was filed by the newly elected board of directors of the CHD seeking to stop the fraudulent transfer of the Gable Road real property. Uncharged co-conspirator Daniel Barnhart appeared in the suit as CHD attorney and he participated in the

issuance of the deed of conveyance of the CHD Gable Road property to be conveyed to defendants Fisher, Heimuller and Hyde with the cooperation and assistance of defendant Sarah Hanson. The fraudulent deed was signed by defendant Karen Ladd. Defendants also fraudulently transferred approximately \$500,000 in cash and thousands of dollars of personal property to defendants Hyde, Fisher and Heimuller, who then transferred the cash and personal property to defendant The Public Health Foundation of Columbia County, a private corporation also controlled by defendants Hyde, Heimuller, Fisher, Tappan and others. This transfer took place while the above suit was pending against defendants the CHD Board, and Tappan, Hutson, Heidi and Galovich, to stop the fraudulent transfer. Barnhart, and defendants Hanson, Blitz, Sponslor, Heide, Tappan, Galovich, Hutson, Fisher, Hyde, and Heimuller conspired to execute and deliver the deed before the Circuit Court could hear the request for an injunction, and the deed was signed on or about June 20th, 2011. The court hearing on the injunction took place in July 2012, and co-conspirator Barnhart was successful in gaining a court decision denying the injunction on the grounds that the deed had already been executed and delivered thus making the injunction moot. Co-conspirator Barnhart then made an illegal threat to the CHD board to impose personal liability against the plaintiffs who, at the time of the threat, were public officials on the Board of directors of Barnhart's client, the CHD.

16. July- August 2012. Attorney Mersereau illegally interfered with CHD's written request to Thomas Sponslor and Aiken Blitz for copies of its client files. Mersereau answered the CHD requests for its files on behalf of the defendant Sponslor, and illegally refused to surrender copies of the client files to CHD.

17. July 2012. Attorney Mersereau illegally threatened CHD real estate agent with a formal ethics complaint if she listed the Millard Rd. Property for sale. Co-conspirator City of St.

Helens then demanded that it be joined as a party to the civil suit No. 12-2000 and filed a notice of lis pendens to unlawfully interfere with the sale of the CHD property. The filing of the notice of lis pendens was done as part of the scheme to defraud the CHD of its property by the firm of attorney Andrew Jordan, which is also an un-charged co-conspirator with City of St. Helens and former administrator, Chad Olsen.

18. June 2012. Attorney Mersereau informed defendant Eakins that the CHD was contemplating asserting a claim against her for malpractice for causing the CHD Millard Road property to become subject to the current claims by the City of St. Helens due to professional negligence. The statement that Mersereau passed on to Eakins was that his current client, the SDAO, was going to be responsible for the acts of defendant Eakins for having recruited her to participate in the conspiracy to defraud the CHD, and that if Mr. Mersereau was successful in the current action, his client, the SDAO, would still have to be responsible for damages caused by its surrogate, defendant Eakins for betraying her client by securing signatures to the fraudulent September resolution from the new board of CHD under threats of personal liability if they refused to sign it. This instrument is now being used by the defendants of the associated in fact RICO enterprise in their ongoing attempt to complete the fraudulent scheme.

19. The defendants constitute an associated-in-fact enterprise within the meaning of §§ 1961(4) and 1962(c). The defendants' conduct constitutes a pattern of racketeering activity. The plaintiffs have suffered a direct harm and the damages suffered by plaintiffs are a direct and proximate result of the pattern of racketeering activity. The plaintiffs have standing to seek damages for the harm caused by the defendants racketeering activity. Defendants constitute a group of persons associated together for a common purpose of engaging in a course of conduct to wrongfully deprive the plaintiff of all of its property through fraud. The fraudulent scheme is the

direct and proximate cause of all the damage suffered by the plaintiff in this complaint.

20. The predicate crimes upon which the RICO complaint is based involve interstate commerce, Hobbs Act violations and federal Mail and wire fraud. The threats made against the public officials and the real estate agent by Mersereau, Eakins and Barnhart constitute violations of the Hobbs Act. The US Mail and interstate wire communications and bank wire transfers were used by defendants to develop and carry out the fraudulent scheme. Defendants also mailed deeds, ballot titles, resolutions and other written instruments that were necessary to execute all of the fraudulent acts, and to transfer funds. The fraudulent schemes have prevented the transfer of hundreds of thousands of dollars of property through interstate commerce. Millions of dollars of real property are affected which are owned by persons residing outside the State of Oregon.

21. Each mailing in furtherance of the scheme constitutes a separate violation of the mail fraud statute. The mailing of each fraudulent ballot constitutes mail fraud. Nineteen thousand two hundred eight (19,208) ballots were mailed by the County Clerk which contained the fraudulent statements prepared by Jay Tappan, Gary Heide, Lisa Galovich, Diane Hutson, and attorneys Thomas Stoloff and Akin Bitz. In addition, the defendants mailed many fraudulent letters through the US Mail, including the April 6, 2011 letter to the Columbia County Board of Commissioners signed by Jay Tappan which falsely stated that the CHD commissioners intended to abide by the mandate of measure 5-209 and refund the taxes collected by the CHD levy.

22. Each electronic mail message sent in furtherance of the conspiracy constitutes a violation of the wire fraud statute and constitutes a RICO predicate offense. The computer servers carrying the electronic mail messages were located outside of Oregon and each electronic mail message occurred in interstate commerce. The following constitute a partial list of the electronic mail messages sent in furtherance of the conspiracy:

From: Karen Fox Ladd [kfladdl@rne.com]
Sent: Thursday, March 17, 2011 10:17 AM
To: Jay Tappan; Pamela Powell
Subject: Akin and transfer

Hi Jay ~

I spoke with Akin this morning He said that the mayor, city admin, commissioner, you and Aki an I should have a meeting to discuss the transfer of assets by means of a 190 agreement. Akin can write the agreement if we all agree at the meeting Do you want to go ahead with this? If so, I will try to have Pam get us all in the same room Sent from my iPhone

From: Jay Tappan tappanj@crfr.com
TO Pam
3/24/11
Hi Pam,
Just a note ... I left a message on Randy's cell phone to call me about the CHD move to the PNP status
Jay Tappan

From: kfladd@aol.com
Sent: Monday, April 04, 2011 12:20 PM
To: phealth@chdpublichealth.com
Subject: Fwd: public health and the county commission
Here is the email chain.

-----Original Message-----

From: Jay Tappan <tappanj@crfr.com>
To: kfladd <kfladd@aol.com>
Sent: Mon, Apr 4, 2011 7:41 am
Subject: RE: public health and the county commission

Hi Karen,

I just finished talking to Earl and I think we have a good understanding of where we are going. You are actually right on the mark I think based upon your thoughts below Here's what we need to do.

- We need to send them (BOC) a letter asking to mutually terminate the PHA agreement NLT 30 Jun 11. We will agree to operate until that time under some short term agreement to continue providing PH services. We will not reference any arrangement past 30 June so as to blunt the criticism of us doing a sleight of hand with the Foundation transition. The commissioners need to have that impression of "selecting" a next provider of PH services past 30 Jun.

- The next step (and it needs to happen fast!) is for us to send a letter asking to have them dissolve the CHD. The agreements with the City on the land issues will need to be pursuant to the dissolution process. The money transfer is the same. Under no circumstance does the Foundation receive any public dollars or assets until they are transferred first to the County or the City. We (Foundation) will only be able to negotiate with them for money and

assets (Gable Road property) after the dissolution and selection of the Foundation as the next PH provider for Columbia County. Is there risk in this? - yes, but it's the only clean way to do the deal. We just can't pass assets to the Foundation until the BOC selects us as the provider through the PHA agreement

I need to get a letter on the PHA termination over to the Commissioners by their Wednesday meeting. Th very quickly. And in a cautionary note, let's not talk to anyone about the Foundation until much later in this I suspect we said too much at our last Board meeting about that (mainly me, I think). From hereon out:

we just need to talk dissolution, and following our resolution and the will of the voters: The goal is to get far enough along on the dissolution so that the angry folks who are going to take over as CHD Board members will not be able to un-do the process. Regardless, they will not have the PHA by that time anyway.

Jay

From: kfladd@aol.com [mailto:kfladd@aol.com]
Sent: Monday, April 04, 2011 10:43 AM
To: Jay Tappan
Subject: Re: public health and the county commission

In order to do a mutual dissolution of the IGA with a 60 day time frame, it has to be mutual. Us sending a letter to say we are 'outta here' by the health district is not a mutual dissolution of the agreement That is a one sided statement and really violates the terms of the IGA. Would you be willing to caftE2r~arn~sE him to go talk to Sara and~see if he can set something up with us and them to start mutual dissolution of the IGA talks.

Our message is "the health district's mission was to build and support a small hospital. That is no longer possible. CHD needs to dissolve the district. Our first step is to terminate the IGA for public health

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services with the hope of creating a transition document that would include all the pieces of the dissolution process.

@ -----Original Message-----

From: Jay Tappan <ta~~ani@crfr.com>
To: kfladd <kfladd@aol.com>
Sent: Mon. Apr 4, 2011 6:14 am
Subject: RE: public health and the county commission

Agree - - the. Commissioners are not communicating with each other. I can't seem to "get~their idea of terminating an existing agreement with no bridge agreement in place, How do we continue to legally do our public health thing without that?

From: kfiadd@aol.com [mailto:kfladd@aol.com]
Sent: Monday, April 04, 2011 10:11 AM
To: Jay Tappan
Subject: Re: public health and the county commission

Pam remembers that we showed the draft of your letter to Akin and he said we should wait on it. I think Earl and Henry should talk and that doesn't seem to be happening. Akin said in an email on Friday that he had talked to Sara and that she would be talking to the commissioners this week. There doesn't seem to be any organization around this. I don't know what to do next. Do we just continue with the transfer stuff we need to do and let the commissioners figure it out? Or Will it settle down once Akin and Sara start working on an agreement?

All the staff are asking me what they are supposed to be working on these days. One day I think we are "on a clear path" and the next day, I fear for everything we've worked on being "thrown away".

---Original Message---

From: Jay Tappan <tacoani~crfr.com>
To: kfladd <kfladd~)aol.com>
Sent: Mon. Apr 4, 2011 5:59 am
Subject: RE: public health and the county commission

Hi Karen,

I just got back and am getting caught-up on events. Yes, I guess we need to execute on that letter I drafted awhile back. I will try to get back with the Commissioners again. They seem to be all over the place on this. I wish I could get them to talk with a unified voice. I have not seen any of the press coverage.

Jay

From: kfladd@aot.com (mailto:kji.~d~aol.con~J)
Sent: Thursday, March 31, 2011 12:57 PM
To: Jay Tappan; hutsondi@sohsu.edu
Subject: public health and the county commission

Hi,

Henry Heimuller came by today to pick up a copy of our budget as well as our last audit He was in some distress over the latest edition of the Spotlight tabloid. He thinks we have done an awful job of PR. He says that Earl is still out there talking to agencies regarding talking to agencies regarding taking on public health. He also said he and Tony are upset that nobody is terminating the CHD IGA Tony and Henry see that as the first step that needs to be happen independent of anything else. The second step I is that the county decides who provides public health services and they will decide that based on their options. The public health foundation would present to the commissioners I guess as an applicant.

Henry was going to go talk to his counterparts and see what they view as next steps.

I think we need a special meeting early next week to move to discontinue the IGA and let the commissioners do whatever they will do.

From: kfladd@aol.com
Sent: Tuesday, April 05, 2011 2:09 PM
To: phealth@chdpulichealth.com
Subject: Fwd: maybe a Wednesday morning meeting?

Can you make this happen? We need a letter on letterhead too.

-----Original Message-----

From: Jay Tappan <tappanj@crfr.com>

To: kfladd <kfladd@aol.com>

Sent: Tue, Apr 5, 2011 9:49 am

Subject: RE: maybe a Wednesday morning meetin

Hi Karen,

I'm thinking we should do that. I am available anytime after 8:00 AM or so if we can get at least three Board members there. In talking to Earl, he was asking if we should 'ratify' the letter before they actually take action on that. I think we are on a good footing with the Commissioners in terms of them not screwing us out of the deal after July 1. Its always possible that they could turn a deal with OHSU down stream, but they could actually do that regardless, even if the CHD stayed intact somehow~ I may. be wrong about all this but I think what's driving them is a total fear of working with the crazy people. They also live fear that the public perception will be that we are pulling a fast one on this.

I have not spoken to Akin on any of this - - but I'll shoot off a call to him right now to see-if he's around. This all sounds like the right way to go to "spin this thing down" and morph into a private non-profit Like I outlined yesterday, first we sunset the PHA, then we ask them to start the dissolution process. The crazies will not have a district to inherit, or at least they will be stuck with one that is being erased. Maybe I'll swing by here shortly, if I can get a few things done, and we can talk about all this, It's getting complicated!

Jay

From: kfladd~)aol.com 1mailto:kfia~~aoLçQ~J

Sent: Tuesday, April 05, 2011 10:02 AM

To: Jay Tappan

Subject: maybe a Wednesday morning meeting?

Hey Jay,

Didn't hear from you about an emergency meeting. Do you want us to schedule a Wednesday morning meeting for CHD board at the fire district office to approve your letter to the commissioners? We need to move on this if you want that to happen? Have you spoken to Akin? I called arid sent him emails yesterday, but no response. I am hoping he is talking to you, is he? I also talked to Tom Engle at the state health division. He said we should have some negotiating power as the county gave us the public health authority. Talk to me.

From: Jay Tappan [tappanj@crfr.com]

Sent: Thursday, April 07, 2011 11:05 AM

To: kfladd@aol.com; ghheide@comcast.net;

phealth@chdpublichealth.com;amanlcenter@comcastnet~ hutsondi@ohsu.edu;

Subject: RE: board meeting letter follow through

All that process language sounds correct, but we need to try to relate to the staff that

there is going to be an entity that will be delivering PH services after July 1. Earl had stopped by here this morning as well and asked if he should go over to PH and talk to the folks and assure them of the fact that the County wants to continue the good work being done by our folks. I said yes and I hoped he would be able to convey a positive message to the staff. As we discussed earlier, there is some risk associated with doing this dissolution but the BOC really has limited options for the service price. Right now we really need as much good will between us as possible to ensure that the next steps go the way we want them to.

From: kfladd@aol.com [mailto:kfladd@aol.com]
Sent: Thursday, April 07, 2011 10:35 AM
To: Jay Tappan; ghheide@comcast.net; amanicenter@comcast.net;
hutsondl@ohsu.edu;
phealth@thdpublichealth.com
Subject: board meeting letter follow through

Since the board voted to terminate the IGA with the county for public health services, I need to make certain that everyone is aware of the follow up tasks that I need to proceed with.

CHD will not be writing the local annual plan for public health services starting July 1, 2011. The plan is due to the state on May 1st and that task now belongs to the commissioners and the new entity providing public health services. We must give employees and all of our service contracts 60 days notice. May 1st we will give notice to all employees and contractors that their jobs and or contracts are finished 6/30/11.

Accumulated benefits will be paid out to employees in their final checks. We will not be making appointments past the last day of June. May 1st we will also send a letter to all our clients and put a copy in their files saying that CHO is terminating public health services and if on May 1st there is no provider selected for public health services provision, we will refer them to the county commissioners.

Earl came by this morning. I told him all the follow through tasks that I felt I needed to proceed with. He agreed. I also shared with him that they are only hearing from the angry people and that given Henry's comment in the commissioners meeting yesterday about wanting public comment), we will be relying on our folks that support public health services to give positive public health messages. He said he would be willing to talk to the staff if I wanted because he knew they are terribly stressed. I told him no thanks. I do not want him talking to our staff given his performance at the strategic planning meeting. The staff are still talking about that and are convinced that he is "anti" public health.

Public health services are valuable to all our communities and families. We need continuation of public health services. Public health is good. We are proceeding with those messages.

First step in the seamless transfer of public~health services is to transfer all necessary inventory to Columbia County. That includes the clinic building on Gable Road, the employees, and all of the equipment, but not the acreage on Millard Road.

Plaintiffs expect to obtain additional emails in the discovery process, some of which are

referred to in the above quoted emails.

24. All of the defendants named herein acted willfully, knowingly and with the specific intent to defraud the plaintiff of all of its property. The defendant attorneys were consciously aware that the dissolution was fraudulent, that it would defraud their client and they were aware that their client was being betrayed by their actions. These lawyers were taking actions that involved a breach of ethics and a breach of fiduciary duty owed to the client, CHD. These attorneys were the designer of the plan of concealment and fraud, and the attorneys provided the fraudulent cover story by falsely claiming the dissolution law required the transfer of the assets of CHD. The attorneys named herein participated directly in the conduct of the fraudulent enterprise and were an indispensable part of the fraud, without which the scheme would not have gone forward. The attorneys took part in directing the affairs of the enterprise and took part in exercising control over the enterprise. The attorneys knowingly implemented the decisions of the elected board members by creating fraudulent documents, including the fraudulent ballot title, the fraudulent written dissolution plan, the fraudulent deeds and conveyances, creating the time line for the accomplishment of the fraudulent conveyances, the preparation of the fraudulent resolutions, and approved all of the same and fraudulently advised the other defendants that the fraudulent scheme was legal, and fraudulently claimed that they were following the law, and fraudulently advised them that they could defend their actions to the public by fraudulently claiming that they were just following the law.

25. Non-party Conspirators

Special Districts Association of Oregon helped orchestrate the attorneys assigned to accomplish the fraud: Daniel Barnhart, Barrett Mersereau, and Eileen Eikins. John Does 1 through 20, unnamed individuals acting on its behalf of the enterprise, and other actors whose

identity remains to be discovered who participated in the fraud on behalf of the City of St. Helens. Defendant Tappan refers to communications with Randy Petersen and Chad Olson in his emails, and Defendant Tappan refers to deals that he was negotiating for with both the City of St. Helens and Columbia County. It is clear that the “deal”, as defendant Tappan calls it in his emails, which he made with defendants Heimuller, Hyde, and Fisher, was actually carried out, at least in part. Immediately after the June 20, 2012 deed was conveyed to the Columbia County for the CHD property on Gable Road, the Columbia County signed a lease with defendant The Public Health Foundation of Columbia County for the free use of the CHD Gable Road property. Also, all of the property and cash of the CHD was transferred through the hands of Fisher, Hyde and Heimuller to defendant The Public Health Foundation of Columbia County. Several different persons served as directors of the pre-2004 CHD who participated in the adverse domination of the CHD and committed conversion of CHD assets, the discovery of which was delayed by reason of the adverse domination and fraudulent concealment of the scheme to defraud the CHD.

The defendants, acting in concert and as an associated in fact enterprise and organization, cooperated with Attorney Eakins to accomplish the scheme to defraud by arranging, through the SDAO, for her to falsely portray herself as an attorney representing CHD after the dissolution election. Eileen Eakins was informed of the controversy, she conspired with Defendant Sarah Hanson to secure the fruits of the fraudulent scheme to the control of the Fraudulent trustee defendants. She gave fraudulent legal advice to the CHD through its board of directors to coerce them to complete the fraudulent transfer. Eileen Eakins concealed the fraud from CHD. She prepared a fraudulent resolution with the purpose and intent of securing the signatures of the new board of the CHD, and she knew, that upon obtaining said signatures, that she could claim, and now does claim, that the failure to transfer title to the Millard property prior

to the signature guaranteed the Millard Road property would be owned by co-conspirator City of St. Helens and thus under the control of the fraudulent conspirators comprising the RICO associated-in -fact enterprise. Eileen Eakins had open lines of communications with SDAO lawyer, Brent Mersereau, who informed her immediately when the new CHD attorney informed him that the new CHD board had learned of Eakins betrayal and of her association as an agent for the SDAO and its associated defendants in this suit, and the likelihood that it would look to her for recoupment of the losses suffered by reason of her conduct.

The prior board of directors of CHD (whose office ended June 30, 2011) made a fraudulent, illegal, and void attempt to appoint defendants Hyde, Fisher, and Heimuller as purported trustees to carry out a proposed plan of dissolution of CHD assets before any dissolution was approved and at a time when they had no power or legal authority to make such an appointment. The election on the dissolution could not be held during the former board members term of office (Tappan, Galovich, Heidi and Hutson), and according to law, the election on the dissolution must be held prior to any alleged appointment of trustees. Only the newly elected board would have the statutory power and authority to appoint trustees, and then only if an election approved a dissolution of CHD. The former board of directors made the fraudulent and unlawful appointment of these above named defendants because the former board had conspired with the above named defendants to conduct a fraudulent and illegal conversion of substantially all of the CHD assets of a value of at least \$4,300,000, more or less, and a conveyance of CHD real property. The former board intended to use the co-conspirator defendants to control the assets of the district in order for them to accomplish the fraudulent conveyance and to prevent the newly elected board from preventing the fraudulent transfer of all, or nearly all, of the assets of CHD. The former board also conspired with the fraudulent trustee

defendants to take, seize, and withhold all of the CHD assets after the new board took office, which was July 1, 2011, (several months before the election on the proposed dissolution.) These fraudulent trustee defendants were engaged in theft of property from CHD in withholding the property and preventing the new board from obtaining legal advice and preventing the new board from investigation of the proper course of action to protect CHD assets and taxpayers. When Eileen Eikens offered to act as CHD attorney for free, the plaintiff had no other option. In fact, she was paid by SDAO, if not in cash, then in other forms of consideration. There was no colorable basis in law or fact for these defendants to take, seize and control CHD assets, and the taking is a violation of civil and criminal law.

26. After the new board of directors of CHD was elected, it declared the former board's purported appointment of the defendants Hyde, Fisher and Heimuller as trustees as void, and the new board of directors has now appointed new and different trustees to administer the dissolution of CHD. These new trustees are plaintiffs Joe Cason and Brady Preheim. The new trustees understand their fiduciary duties owed to the taxpayers. The new board supports the outcome of the dissolution election, but the new Board does not believe that there has been an election on a plan of dissolution as required by law. The new trustees have demanded the fraudulent usurper defendants to turn over all assets of the CHD but they have willfully failed, and refused to do so.

27. The most valuable single CHD asset the plaintiff has been able to discover is the parcel of real property located on Millard Road, St. Helens Oregon, described in Exhibit B attached hereto and incorporated herein. The property has been valued at \$3.3 million dollars and was paid for exclusively with ad valorem taxes paid for by the property owners of the CHD.

28. The usurping defendants have publicly and openly threatened to convey the Millard Rd. property described in Exhibit B to the City of St. Helens for no consideration. If the conveyance occurs, persons who own property outside of the CHD and territories will receive a windfall benefit of several millions of dollars, which is a violation of Oregon Constitution Article I Section 32 and equal protection clause of the US Constitution; such a transfer and/or disproportionate transfer of the assets to those either not paying the tax or to taxpayers within districts that provide no benefit or grossly disproportionate benefit to a substantial class of taxpayers who paid the tax violates the equal protection clause of the Oregon Constitution and the US Constitution, in addition to Article I Section 32 of the Oregon Constitution.

First Claim For Relief – Civil Rico Violation --18 USC Sec 1962 (a) --Against all defendants

29.

Plaintiffs incorporate herein paragraphs 1 - 28. Defendants have received income derived from a pattern of racketeering activity to use and invest such income in acquisition of an interest in, and the establishment and operation of, an enterprise, to wit, defendant The Public Health Foundation of Columbia County, an Oregon corporation, the County of Columbia, and the City of St. Helens.

Second Claim for Relief – Civil Rico Violation -- 18 USC 1962 (b) – Against all defendants

30.

Plaintiffs incorporate herein paragraphs 1 - 29. Defendants, through a pattern of racketeering activity have acquired, maintained, directly and indirectly, an interest in and control of an enterprise which affects interstate commerce. To wit, The Public Health Foundation of Columbia County, an Oregon Corporation.

Third Claim For Relief – – Civil Rico – Violation of 18 USC 1962 (c) – Against all defendants

31.

Plaintiffs incorporate herein paragraphs 1 - 30. Defendants have been employed by and associated with an enterprise engaged in activities which affect interstate commerce and have conducted and participated, directly and indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity.

Fourth Claim For Relief – Civil Rico – Violation of 18 USC 1962 (d) – Against all defendants

32.

Plaintiffs incorporate herein paragraphs 1 - 31. Defendants have conspired to violate the provisions of subsection (a), (b), and (c) of 18 USC (a) (b) and (c) this section.

Fifth Claim For Relief –Fraud – Against all defendants

33.

Plaintiff incorporates herein paragraphs 1- 32 of the complaint. The conduct complained of includes the making of knowingly false representations of fact and law, and intentional concealment of material facts which were intended to remain concealed from the plaintiff CHD. Defendants had knowledge of the falsity of each and every one of the false representations, the defendants intended that the plaintiff would act on the false representations, the plaintiff was ignorant of the falsity, and the plaintiff reasonably relied on the false representations, and had the right to rely thereon, and the plaintiff have suffered \$5,000,000 in actual damages by reason of the fraudulent misrepresentations.

CHD is a corporate plaintiff and is not a sentient being and, therefore, cannot know, be aware of, or discover anything, except through the agency of its officers, directors, and

employees. In this instance, the defendants who were CHD officers, directors and employees were all acting in conflict with CHD, and under these circumstances, the notice of the fraudulent scheme to the defendants who were agents, employees and directors may not be imputed to the plaintiff as principal.

Sixth Claim For Relief –Conversion– Against All Defendants

34.

Plaintiff incorporates herein paragraphs 1- 33 of the complaint. Defendants’ conduct in taking plaintiffs’ property was the intentional exercise of dominion or control over plaintiffs’ chattels which so seriously interferes with the right of plaintiff to control the property that the Defendants should justly be required to pay the plaintiff the full value of the chattels in the sum of \$1,000,000, plus consequential damages for loss of use in the sum of \$10,000 per month from the time of taking until paid. In the alternative, the taking constitutes trespass to chattels and the damages suffered by the plaintiff are the sum of \$1,000,000 plus \$10,000 per month from the time of taking until paid.

Seventh Claim For Relief –Obstructing governmental administration – Against All Defendants

35.

Plaintiff incorporate paragraphs 1 - 34 herein. The conduct engaged in by the defendants constitutes an intentional interference with and obstruction of the due administration of the governmental function of the CHD with the express and fraudulent purpose of wrongfully depriving the CHD of all of its property and assets and to convert said assets. ORS 162.235(1), a person commits the offense of obstructing governmental or judicial administration if he or she

“intentionally obstructs, impairs or hinders the administration of law or other governmental or judicial function by means of intimidation, force, physical or economic interference or obstacle.”

Eighth Claim for Relief – Replevin

36.

Plaintiff incorporates paragraphs 1 to 35 herein. Plaintiffs are the owners of the legal and beneficial interests in personal property described as follows: Bank Accounts, accounting records, email records, cash and liquid assets, books records and all personal property described in Exhibit C, attached hereto and incorporated herein.

37.

Defendants are in possession of the property described in the above paragraph. Defendants have refused plaintiffs demand for return of possession thereof. Plaintiffs are entitled to immediate possession of the property. The value of the property is not fully known to the plaintiffs at this time and the plaintiffs reserve the right to amend the complaint to specify the value of the property when the value is disclosed in discovery.

38.

Plaintiffs are entitled for a judgment of replevin against the defendants awarding the plaintiff the right to immediate possession of all property and failing that, for a judgment against defendants for the value thereof.

Ninth Claim for Relief – Ejectment– Against The Public Health Foundation of Columbia County

39.

Defendant The Public Health Foundation of Columbia County is in wrongful possession of the Gable Road real property beginning June 2011. The court should render judgment in favor

of plaintiffs for an award possession of the Gable Road property and for judgment for rent for the use and possession of the property in the sum of \$5,000 per month from June 2011 until possession is restored to the plaintiffs render a judgment.

Tenth Claim for Relief – Breach of Fiduciary Duty – Against Defendants Sponslor and Blitz

40.

Plaintiffs incorporate herein paragraphs 1 to 39. Defendants Sponslor, Blitz, and Eakins were attorneys for the CHD at all times relevant herein. Defendants owed plaintiff a duty of loyalty and fair dealing. Defendants conduct described herein constitute a breach of loyalty. The breach of loyalty and their betrayal of the plaintiff caused damage to the plaintiff in an amount up to \$4,300,000.

Eleventh Claim for Relief – Breach of Fiduciary Duty – Against Defendant Eakins

41.

Plaintiffs incorporate herein paragraphs 1 to 39. Defendant Eakins was attorney for the CHD at all times relevant herein. Defendants owed plaintiff a duty of loyalty and fair dealing. Defendant's conduct described herein constitutes a breach of loyalty. The breach of loyalty and the betrayal of the plaintiff caused damage to the plaintiff in an amount up to \$4,300,000.

Twelfth Claim for Relief – Attorney Negligence – Against Defendant Eakins

42.

Plaintiffs incorporate herein paragraphs 1 to 40. Defendant Eakins was an attorney for the CHD. Defendant owed plaintiff a duty of due care in rendering legal advice to the plaintiff CHD to protect its assets; Defendant's conduct breached that duty; the breach of duty was the direct and proximate cause of harm to the plaintiff in the sum of \$4,300,000 in damages to the

property of the plaintiff CHD.

The defendant was negligent in the following particulars;

1. In failing to advise the plaintiff and its agents and directors of the manner to thwart the fraudulent transfer of all of the plaintiff's assets.

2. In failing to inform the plaintiff that its new board of directors had the right to make the appointment of the trustees.

3. In failing to inform the plaintiff that it had the right to cancel the election.

4. In failing to inform the plaintiff that it had the right to modify the dissolution plan.

5. In failing to inform the board that it should sell or otherwise convey all real property in its name prior to adoption a resolution to approve the dissolution of the CHD.

6. In submitting to the CHD board of directors the resolution (that has since been rescinded) which is now being relied upon by its opponents.

7. In failing to inform the plaintiff and its directors that it had the right to obtain possession of all of its assets from fraudulent trustees.

8. In failing to disclose a conflicts of interest between SDAO, attorney Eakins and the CHD

9. In telling the CHD directors that they would suffer personal financial losses if they did not sign the resolution she prepared.

The aforesaid negligence was the direct and proximate cause of all the damages complained of in this suit.

Thirteenth Claim for Relief – Attorney Negligence – Against Defendants Sponslor and Blitz

Plaintiffs incorporate herein paragraphs 1 to 42. Defendants Sponslor and Blitz, were attorneys for the CHD at all times relevant herein. Defendants owed plaintiff a duty of due care in rendering legal advice to the plaintiff CHD to protect its assets; Defendants' conduct breached that duty; the breach of duty was the direct and proximate cause of harm to the plaintiff in the sum of \$4,300,000 in damages to the property of the plaintiff CHD.

The defendants were negligent in the following particulars;

1. In failing to advise the co-defendants that their conduct was unlawful.
2. In failing to inform the co-defendants that the Millard Road Property must be conveyed to the trustees prior to any dissolution resolution being adopted.
3. In failing to prepare a resolution for the board which disclosed the disposition of the Millard Rd. Property.
4. In failing to notify the plaintiff that its directors and agents were engaged in actions that were adverse to the plaintiff.
5. In failing to resign and failure to take or recommend to the client any remedial measures when informed of the betrayal of the plaintiff by its directors and employees.
6. In failing to obey the rules of ethics applicable to attorneys when representing a corporate client.
7. In approving and authorizing the proceedings with a fraudulent legal opinion that the adverse members of the governing body were legally authorized to proceed with the fraudulent dissolution plan and scheme to defraud the CHD..

8. In failing to resign from employment as attorney for the CHD without first assuring that the resignation would not cause harm to the client, and in fact, by doing so in such a manner that the timing of the resignation was sure to do such harm.

9 In engaging in dishonesty and fraud against the client, the CHD.

The aforesaid negligence was the direct and proximate cause of the damage complained of in this suit.

Fourteenth Claim for Relief – Breach of Fiduciary Duty – Breach of Trust – Against Defendants Hyde, Fisher and Heimuller – In the alternative

44.

Plaintiff alleges this claim in the alternative. Plaintiff incorporates paragraphs 1 through 43 herein. Plaintiffs allege that if the defendants Hyde, Fisher and Heimuller are indeed CHD trustees, that they have breached their trust and their fiduciary duty to the beneficiaries of the trust. The said trustees owed a duty of loyalty and fair dealing and owed a duty to refrain from self dealing and had a duty to refrain from obtaining or receiving or dealing in the beneficiary's property. As a direct result of the breach of duty, the plaintiffs have been damaged in the sum of \$4,300,000.

Fifteenth Claim for Relief – Fraudulent Conveyance– Against Defendants Tappan, Heide, Ladd, Hutson, Galovich, Hyde, Fisher, and Heimuller by Trustees and taxpayers

45.

Plaintiffs incorporate herein paragraphs 1 to 44. Defendants made a transfer of real and personal the transfer; that CHD and the trustees had a claim to the Gable Road real property and all the personal property described in the fraudulent resolution approved and endorsed by defendants Tappan, Heide, Galovich, and Hutson. That the said defendants thereafter made a transfer with actual intent to hinder, delay, or defraud the trustees and the taxpayers of all of the value of said property. The CHD and trustees and taxpayers had a legal

right to be paid, and the fraudulent conveyance and transfer hindered and interfered with the right to payment. The court should declare the transfer void under the Uniform Fraudulent Conveyance Act contained in ORS Chapter 95. The court should declare that the real and personal property that was fraudulently conveyed is vested in the plaintiff CHD.

Wherefore, Plaintiff prays for a general judgment of this court against the defendants as follows:

1. Against all defendants on claims 1-4 in the sum of actual damages in the sum of \$4,300,000, and for treble said amount in the sum of \$12,900,000, pursuant to the provisions of Racketeer Influenced and Corrupt Organizations Act, Title 18 U.S.C. §§ 1961-1968 (“RICO”), plus reasonable attorney fees under the said Act and costs and disbursements.

2. Against all defendants in the sum of \$5,300,000 for fraud, together with interest from the date of each fraudulent taking of plaintiffs assets and income.

3. Against all defendants for damages in the sum of \$4,300,000 for interference with the CHD governmental administration.

4. Against defendant The Public Health Foundation of Columbia County for ejectment and damages for the use and possession of plaintiffs’ Gable Road personal and real property as alleged, in the sum of more than \$1,000,000, plus rent in the sum of \$10,000 per month from June 2011.

5. Against defendants Tappan, Heide, Galovich, and Hutson in the sum of \$4,300,000 for breach of fiduciary duty, plus interest thereon at the legal rate from June 2011.

6. Against defendants Sponslor and Blitz in the sum of \$4,300,000 for breach of fiduciary duty plus interest thereon at the legal rate from the date of breach.

7. Against defendant Eakins in the sum of \$4,300,000 for attorney negligence.

8. Against defendants Sponslor and Blitz in the sum of \$4,300,000 for attorney negligence.

9. Against defendants Karen Ladd, Tappan, Heide, Galovich, and Hutson, for damages for fraud and adverse domination of the CHD and resulting damage in the sum of \$1,000,000 plus interest from the date of fraudulent taking of the first tax levy following the sale of the former CHD hospital property.

10. For judgment for conversion and/or trespass to chattels against defendants in the sum of \$1,000,000 plus loss of use in the sum of \$10,000 per month from June 2011.

11. For a declaratory judgment declaring that Plaintiffs incorporate paragraphs 1 to 12 herein. Plaintiffs allege that the court should declare the following:

A. Defendants are not legally entitled to act as trustees of the CHD dissolution.

B. Plaintiffs Brady Preheim and Joe Cason are the validly appointed and acting trustees of the CHD dissolution, and are taxpayers of the CHD with standing to bring this action.

C. Article I Section 32 of the Oregon Constitution prohibits the transfer of assets of CHD to the City of St. Helens under the circumstances alleged above.

D. The September 2011 resolution is rescinded and that the subsequent resolutions of the CHD are the valid resolution of the CHD for the plan of dissolution as required by ORS chapter 198.

12. For plaintiffs costs, disbursements and attorney fees under the RICO statutes.

Dated this 17 day of October, 2012.

/s/ James D. Huffman

By: _____

James D. Huffman, OSB #75185
Of Attorneys for Plaintiffs CHD
and trustees Preheim and Cason