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IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF ARIZONA

LAURIE MILLER, BRIAN DIMAS, KIM MILLS, ANTHONY SOZA, BRUCE CAMPBELL, KELLIE BOWERS, TIM HUNTER, BRIAN SAYLOR, JOI KLAGES, AND MICHAEL SCHAMADAN, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF HIS WIFE, BRANDI SCHAMADAN;

Case No. 2:13-cv-01419-JWS

FOURTH AMENDED COMPLAINT AND JURY DEMAND

Plaintiffs,

v.

YORK RISK SERVICES GROUP; THE FRANK GATES SERVICE COMPANY D/B/A AVIZENT RISK;

Defendants.

PLAINTIFFS' FOURTH AMENDED ORIGINAL COMPLAINT AND JURY DEMAND

Plaintiffs by and through their attorney undersigned, and for their complaint against the Defendants, does hereby state, aver, and allege as follows:

I. FACTUAL OVERVIEW OF THE CASE

1. Firefighters and Police officers, along with other first responders, put their lives on the line to protect the citizens of their community every workday. Timely and responsibly meeting the medical and basic living expenses of first responders injured

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1 while serving in the line of duty is not just a legal obligation, but also a moral one. An
2 on the job injury to a Phoenix firefighter or Police Officer should not result in medical
3 conditions worsened by delay and denial of necessary care, nor should it leave the first
4 responder, or her family, financially battered and emotionally drained.

5 2. Those entrusted with caring for the needs of injured first responders bear a
6 clear responsibility to do so in a supportive manner, and not to create obstacles bound to
7 worsen the physical and financial conditions of these valiant men and women. This case
8 is based upon a long term and ongoing scheme to delay and deny timely payment of
9 critically needed workers' compensation medical and other payments owed to
10 legitimately injured first responders of the City of Phoenix ("Phoenix"). York Risk
11 Services Group ("York"), which markets itself as a "premier provider" of "claims
12 management solutions", and The Frank Gates Service Company d/b/a Avizent Risk
13 ("Avizent") are well aware of these critical needs. Instead of carrying out the duties
14 consistent with these legal and moral obligations, York and/or Avizent routinely and
15 improperly chooses to hurl frivolous and legally unsound roadblock after roadblock to
16 wrongfully deny care to Phoenix's first responders, with the assistance of some Phoenix
17 administrators. As a result, injured first responders, and their families, endure
18 significant delays in medical care, often severe financial distress, and deleterious impacts
19 on their ultimate physical and financial condition. After being hurt on the job, these
20 Plaintiffs, and others, have been met with abuse and worry, rather than the basic
21 medical care and living expenses so necessary after an on the job injury.

22 3. Avizent initially undertook the obligation in 2009 to ensure Phoenix first
23 responders' medical and other needs were met when injured on the job. On information
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1 and belief, York assumed Avizent's ongoing obligations (including past liabilities) to the
2 Phoenix first responders, and continued the same course of misconduct toward the
3 Phoenix first responders. Both Avizent and York are therefore liable for the misconduct
4 alleged herein.

5 **What York and/or Avizent Did to Firefighters Brandi and Michael Schamadan**
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7 4. Brandi Schamadan served as a firefighter from 1993 to 2003. Her surviving
8 husband, Michael Schamadan, is also a long-serving firefighter. During her years of
9 work as a firefighter. Ms. Schamadan was exposed to Polycyclic Aromatic
10 Hydrocarbons ("PAH") during the course of fighting fires for Phoenix.
11

12 5. In July 2009, Ms. Schamadan was diagnosed with Stage 3 Colon Cancer.
13 Ms. Schamadan underwent extensive treatment with costly medical bills, including
14 chemotherapy and radiation. By October 2011 she was no longer in remission.
15

16 6. In 2011, Deputy Fire Chief Mike Smith approached Ms. Schamadan about
17 her cancer. Deputy Fire Chief Mike Smith informed her that her exposure to PAH while
18 working as a Phoenix firefighter was a potential cause for her cancer and she should file
19 a workers' compensation claim.

20 7. Ms. Schamadan promptly filed the claim for her work-caused cancer. York
21 and/or Avizent denied the claim, alleging that it was untimely filed. In fact, Ms.
22 Schamadan did not even know until that month that she had been exposed to PAH
23 while working for the Phoenix Fire Department, and even a basic investigation would
24 have confirmed that this alleged legal defense was not properly asserted to block Ms.
25 Schamadan's claim under these circumstances.
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28 8. On April 20, 2011, Brian Heaton, an adjuster for York and/or Avizent, sent

1 Ms. Schamadan a notice of claim status through the United States Mail denying medical
2 treatment for her on the job injury. This denial was a fraudulent communication
3 because York and/or Avizent knew that the injury was timely filed and must be paid.
4 This claim is and was always clearly compensable under Arizona law.

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6 9. The Industrial Commission of Arizona completely rejected York and/or
7 Avizent's claim that the application was not timely filed under the clear facts. But York
8 and/or Avizent still refused to pay benefits and filed a request for rehearing.

9
10 10. Finally after the report of Dr. Sullivan, a medical toxicologist, conclusively
11 confirmed that the cancer developed from Ms. Schamadan's exposure to PAH while
12 fighting fires for the City of Phoenix, York and/or Avizent finally formally abandoned
13 its improper denial of Ms. Schamadan's claim. Unfortunately, for over another year,
14 even after admitting responsibility to the State of Arizona and Ms. Schamadan, and as
15 Ms. Schamadan's medical condition and her family's financial condition continued to
16 deteriorate, York and/or Avizent refused to provide written confirmation of financial
17 responsibility to a single health care provider. York and/or Avizent also delayed and
18 refused to reimburse the massive co-pays previously incurred by Ms. Schamadan and
19 her husband for her care before York and/or Avizent admitted liability for the full
20 amounts incurred (including the co-pays). These continued refusals to pay imposed
21 severe financial strain on Ms. Schamadan, Mr. Schamadan, and their family. As
22 expected, the consequences of these refusals was even more distress and worry for Ms.
23 Schamadan, Mr. Schamadan, and their family in her last days as bills piled up, unpaid.
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27 11. Ms. Schamadan relied on the fraudulent communication because she
28 suffered financial loss, including attorney's fees, medical care (including unreimbursed

1 deductibles, and medical mileage.) Defendant's fraud directly caused injury to Ms.
2 Schamadan and Mr. Schamdan because it deprived her of benefits and caused her to pay
3 attorney's fees, medical care, suffer emotional pain and damages. As a result of the
4 delays in payments for the medical care for Ms. Schamadan, as well as delays in
5 reimbursement of deductibles totaling many thousands of dollars, the Schamadan
6 family lost their home during Ms. Schamadan's final illness. The increased mental
7 distress, financial damage, and increased physical pain caused by York and/or Avizent,
8 had an adverse impact on Mr. Schamadan's relationship with his wife during her final
9 days.
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11
12 **12.** Ms. Schamadan's cancer progressed and ultimately resulted in her death
13 on March 22, 2013. Ms. Schamadan is survived by her husband Michael and their two
14 children, a 12 year old daughter and 9 year old son. Mr. Schamadan brings this suit both
15 individually and as the surviving spouse and legal heir of Brandi Schamadan. Due to
16 the wrongful denial, delay, and scheme, Ms. Schamadan, Mr. Schamadan, and their
17 family suffered significant economic damage, humiliation, worry, distress, and continuing
18 economic and physical damage. In addition, York and/or Avizent's wrongful denial and
19 delay of Ms. Schamadan's workers compensation benefits also deprived Mr. Schamadan
20 of the love, affection, consortium, companionship, protection, discipline, comfort and
21 guidance of his wife.
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23

24 **What York and/or Avizent Did to Firefighter Tim Hunter**

25
26 **13.** Tim Hunter worked as a firefighter for the City of Phoenix for over eight
27 years, and until his on-the-job injury in 2010 was in outstanding physical condition.
28 While entering a building engulfed in flames on September 17, 2010, the building's roof

1 collapsed and buried Mr. Hunter. Although injured, Mr. Hunter freed himself from the
2 rubble and continued fighting the fire. As a result of his on the job injury, Mr. Hunter
3 could not move his neck and experienced persistent numbness in his extremities. Mr.
4 Hunter filed a workplace injury report and sought treatment at the Fire Department's
5 Health Center from Dr. Flemming.

6
7 14. As his condition worsened, Mr. Hunter filed a claim for workers'
8 compensation for his injury on June 21, 2011. Chris Garland, an adjuster working for
9 York and/or Avizent, denied Mr. Hunter's claim because the Health Center had lost the
10 records documenting Mr. Hunter's visit to Dr. Flemming, and Dr. Flemming had passed
11 away. York and/or Avizent did so even though the Health Center's physician's
12 assistant, Patrick Kelley, confirmed Mr. Hunter's visit for treatment. Mr. Hunter's
13 fellow firefighters, Raymond Gaspar and Michael Callahan, confirmed that the roof had
14 collapsed and had fallen on Mr. Hunter. Captain Gaspar, Mr. Hunter's commanding
15 officer, also confirmed that Mr. Hunter had filed the proper paperwork and received
16 treatment from Dr. Flemming for the injury.

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19 15. On July 18, 2011, Chris Garland then sent Mr. Hunter a notice of claim
20 status through the United States Mail denying medical treatment for his on the job
21 injury. This denial was a fraudulent communication because York and/or Avizent
22 knew that the roof had collapsed on Mr. Hunter and injured him while he was fighting a
23 fire. This claim is and was always clearly compensable under Arizona law.

24
25 16. York and/or Avizent then sent Mr. Hunter to an Independent Medical
26 Examination ("IME") with Dr. Beghin. An IME is supposed to be unbiased and
27 undirected by a claims company such as York and/or Avizent, but York and/or Avizent
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1 know full well which "IME" doctors will and which will not provide objective
2 evaluations. York and/or Avizent chose to have Mr. Hunter evaluated by Dr. Beghin.
3 Dr. Beghin diagnosed Mr. Hunter with a chronic left sided radicular syndrome probably
4 secondary to left C6 or C7 radiculopathy. But Dr. Beghin claimed he could not
5 determine if the injury occurred from the incident on September 17, 2010 because the
6 Health Center had lost the records of Mr. Hunter's treatment with Dr. Flemming.
7 Essentially Dr. Beghin concluded the injury did not occur because of a clerical error,
8 while simultaneously ignoring Mr. Hunter's condition and detailed history of his injury,
9 the bedrock of any legitimate medical examination.
10

11
12 17. York and/or Avizent expressly or implied communicated to Dr. Beghin
13 that he should write a report stating Mr. Hunter's injury did not occur during the
14 collapse of the building. This allegation is based in part on information and belief, and is
15 likely to have evidentiary support after a reasonable opportunity for investigation and
16 discovery.
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18 18. After his initial on the job injury, Mr. Hunter also suffered two other on the
19 job injuries. On March 31, 2011, Mr. Hunter also injured his back while lifting a large
20 patient on to a gurney. Later on October 19, 2011, Mr. Hunter reinjured his neck when
21 an object fell on his head while fighting a fire inside a burning trailer. For both of these
22 injuries Mr. Hunter sought treatment and filed for workers' compensation benefits.
23

24 19. Not surprisingly, after the long delay caused by York and/or Avizent's
25 improper denial, the Industrial Commission of Arizona fully vindicated Mr. Hunter and
26 his need for care for his on the job injury. The Judge rejected York and/or Avizent and
27 its IME doctor's unsupported allegations, instead fully accepting the overwhelming
28

1 testimony of Mr. Hunter's treating doctors, physician assistant, and co-workers. What
2 this delay meant, however, was that York and/or Avizent had fraudulently delayed and
3 denied coverage to Mr. Hunter for over two years for an injury that was obviously work
4 related.

5
6 20. Mr. Hunter relied on the fraudulent communication because he suffered
7 financial loss including attorney's fees, medical care, and medical mileage. Defendants'
8 fraud directly caused injury to Mr. Hunter because it deprived him of benefits and
9 caused him to pay attorney's fees, medical care, suffer emotional pain and damages.

10
11 21. Due to wrongful denial, delay, and scheme Mr. Hunter suffered significant
12 economic damage, humiliation, worry, distress, and continuing economic and physical
13 damage. Mr. Hunter struggled to sleep at night for months and experienced
14 unnecessary worry, stress, and concern that impacted his daily activities. Additionally,
15 Mr. Hunter has suffered financial harm and damage to his credit.

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17 **What York and/or Avizent Did to Firefighter Kelli Bowers**

18 22. Kellie Bowers worked as a firefighter for the City of Phoenix. During a
19 required training exercise on August 31, 2011, Ms. Bowers' hamstring abruptly
20 constricted, and she experienced significant pain in her legs and back. Ms. Bowers duly
21 reported her injury and sought treatment at the Fire Department Health Center. Ralph
22 Houk, Physician's Assistant, treated Ms. Bowers for the injury at the Health Center.

23
24 23. Ms. Bowers subsequently completed the filing for a claim for workers'
25 compensation. But on October 24, 2011, Brian Heaton, an adjuster working for York
26 and/or Avizent, sent a notice of claim status through the United States Mail denying all
27 medical treatment for her on the job injury. Mr. Heaton alleged, falsely, that the injury
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1 spontaneously occurred and the training exercise injury was merely coincidental. This
2 denial was a fraudulent communication because York and/or Avizent knew that Ms.
3 Bowers was injured while at work, sought treatment for this injury, and had no valid
4 basis for denying the claim. This claim is clearly compensable under Arizona law.

5
6 24. Defendants sent Ms. Bowers to an Independent Medical Examination
7 "IME." Rather than complete a valid examination, Dr. Rowley simply endorsed the
8 "coincidental" theorizing of York and/or Avizent's adjuster. Dr. Rowley suggested that
9 despite the clear evidence of the work related injury, Ms. Bowers back injury actually
10 occurred spontaneously and the exercise injury was likely coincidental.

11
12 25. Defendants expressly or implied communicated to Dr. Rowley that he
13 should write a report stating Plaintiff was not disabled from the work related injury
14 regardless of the clear circumstances. This allegation is based in part on information and
15 belief, and is likely to have evidentiary support after a reasonable opportunity for
16 investigation and discovery.

17
18 26. During the workers' compensation hearing, the Commission awarded
19 benefits to Ms. Bowers for her injury. The Commission's Judge rejected the evidence of
20 Dr. Rowley as unreliable, and instead accepted Physician Assistant Ralph Houk's
21 documented evidence. The Commission's Judge clearly acknowledged that "the conflict
22 in the medical evidence is resolved in favor of the opinions of Ralph Houk, P.A., as
23 being more probably correct and well founded." Ms. Bowers' initial injury took place in
24 2011. York and/or Avizent fraudulently delayed and denied coverage to Ms. Bowers
25 until well into 2012.

26
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28 27. As with the other firefighters subjected to unjustified and unnecessary

1 delays by York and/or Avizent, Ms. Bowers relied on the fraudulent communication
2 because she suffered financial loss including attorney's fees, medical care, and medical
3 mileage. Defendant's fraud directly caused injury to Ms. Bowers because it deprived her
4 of benefits and caused her to pay attorney's fees, medical care, suffer emotional pain and
5 damages. Due to wrongful denial, delay, and scheme Ms. Bowers suffered significant
6 economic damage, humiliation, worry, distress, and continuing economic and physical
7 damage. Additionally, Ms. Bowers has suffered financial harm and damage to her
8 credit.
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10 **What York and/or Avizent Did to Firefighter Laurie Miller**

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12 28. Laurie Miller has worked for the City of Phoenix for 20 years as a
13 firefighter. While on a training trip on November 14, 2011, Laurie Miller stepped on a
14 rock and twisted her knee. Ms. Miller received surgery on December 20, 2011. Ms.
15 Miller properly filed a claim for her work related injury.
16

17 29. York and/or Avizent's Chris Garland then sent Ms. Miller a notice of claim
18 status through the United States Mail denying medical treatment for her on the job
19 injury. This denial was a fraudulent communications because York and/or Avizent
20 knew that Ms. Miller had suffered a knee injury during a training exercise, and this is
21 and was always a clearly compensable on the job injury claim.
22

23 30. As with other injured firefighters, Defendants sent Ms. Miller to an "IME"
24 with York and/or Avizent's hand-picked Dr. Carter. Dr. Carter opined that Ms. Miller's
25 injury in 2011 did not relate to her need for surgery. Defendants expressly or implied
26 communicated to Dr. Carter that he should write a report stating Ms. Miller was not
27 disabled from the work related injury regardless of the clear circumstances. This
28

1 allegation is based in part on information and belief, and is likely to have evidentiary
2 support after a reasonable opportunity for investigation and discovery.

3 31. As with the other firefighters mistreated by York and/or Avizent's
4 wrongful and unjustified denials, he the Industrial Commission of Arizona Judge
5 confirmed Ms. Miller's right to necessary workers' compensation benefits for the 2011
6 injury. The Commission's Judge completely rejected Dr. Carter's unjustified theory that
7 the surgery was unrelated to the workplace injury, overturning York and/or Avizent's
8 wrongful denials over a year after her initial injury.
9

10 32. As with the other firefighters subjected to unjustified and unnecessary
11 delays by York and/or Avizent, Ms. Miller relied on the fraudulent communication
12 because she suffered financial loss including attorney's fees, medical care, and medical
13 mileage. Defendant's fraud directly caused injury to Ms. Miller because it deprived her
14 of benefits and caused her to pay attorney's fees, medical care, suffer emotional pain and
15 damages. Due to wrongful denial, delay, and scheme Ms. Miller suffered significant
16 economic damage, humiliation, worry, distress, and continuing economic and physical
17 damage. Additionally, Ms. Miller's pay was garnished as a result of the delay in
18 payment of benefits, she lost her home, and her credit was damaged.
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22 **What York and/or Avizent Did to Firefighter Brian Dimas**

23 33. Brian Dimas worked as a fire truck engineer for the City of Phoenix for a
24 number of years. On October 8, 2011, Mr. Dimas injured his knee while coming off a fire
25 truck during his work. Throughout the day the pain in his knee increased dramatically.
26 Mr. Dimas properly reported his workplace injury and promptly sought medical
27 treatment.
28

1 34. On November 15, 2011, Brian Heaton, a York and/or Avizent adjuster,
2 sent Mr. Dimas a notice of claim status through the United States Mail denying medical
3 treatment for his on the job injury. This denial was a fraudulent communication because
4 York and/or Avizent knew that Mr. Dimas was injured on the job and had reported the
5 injury to them. This claim is and was always clearly compensable under Arizona law.

6 35. Defendants sent Mr. Dimas to an "IME" with its hand-picked Dr. Carter.
7 As with so many others, Dr. Carter simply alleged that the injury did not occur based on
8 the incident in 2011. Rather, he opined that Mr. Dimas had an unspecified pre-existing
9 condition that caused Mr. Dimas' injury, while simultaneously suggesting that surgical
10 care was unnecessary. This allegation was in contradiction not only of the treating
11 health care providers findings, but also of basic Arizona law confirming that an on the
12 job aggravation of a pre-existing condition, if one even existed, was required to be
13 acknowledged the same as a new injury.

14 36. Defendant expressly or implied communicated to Dr. Carter that he should
15 write a report stating Plaintiff was not disabled from the work related injury regardless
16 of the clear circumstances. This allegation is based in part on information and belief,
17 and is likely to have evidentiary support after a reasonable opportunity for investigation
18 and discovery.

19 37. Mr. Dimas was also examined by Dr. Lee. Dr. Lee believed that the Mr.
20 Dimas' injury was caused by the 2011 incident and that Mr. Dimas needed surgery to
21 address the problem.

22 38. As with the other firefighters mistreated by York and/or Avizent's
23 wrongful and unjustified denials, the Industrial Commission of Arizona rejected the
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1 opinion of York and/or Avizent's hand-picked examiner, Dr. Carter, and fully accepted
2 the confirmation of his treating health care providers. Over a year after the initial denial
3 and rejection of benefits, the Commission overturned York and/or Avizent's wrongful
4 denial to finally secure Mr. Dimas the surgery and medical treatment he needed.

5
6 39. As with the other firefighters subjected to unjustified and unnecessary
7 delays by York and/or Avizent, Mr. Dimas relied on the fraudulent communication
8 because he suffered financial loss including attorney's fees, medical care, and medical
9 mileage. Defendant's fraud directly caused injury to Mr. Dimas because it deprived him
10 of benefits and caused him to pay attorney's fees, medical care, suffer emotional pain
11 and damages. Due to wrongful denial, delay, and scheme Mr. Dimas suffered significant
12 economic damage, humiliation, worry, distress, and continuing economic and physical
13 damage, humiliation, worry, distress, and continuing economic and physical
14 damage.

15 **What York Did to Firefighter Kim Mills**

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17 40. Kim Mills has worked as a firefighter for the City of Phoenix for over 20
18 years. In 2007, Ms. Mills underwent right shoulder surgery based on a workplace injury.
19 She later had two additional surgeries by Dr. Peairs on February 29, 2008 and January
20 15, 2009. In November 2009, her claim was closed with permanent impairment. Ms.
21 Mills was recovering but still suffered from chronic problems affecting her sleep, pain,
22 and instability. She continued working in a modified position, but wanted to return to
23 work full duty as a firefighter. In 2011, Mills filed a petition to reopen her claim because
24 her injury prevented her from sleeping and caused severe pain during activities.
25 Reopening should have just been a formality given the clear facts of Ms. Mill's injury
26 and resulting impacts, including the need for further supportive medical care to bring
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1 Ms. Mills' shoulder back to as good a condition as possible.

2 41. Pat Sampson, a York and/or Avizent adjuster, denied Mills' petition to
3 reopen. On October 22, 2012, Sampson sent Ms. Mills a notice of claim status through
4 the United States Mail denying medical treatment for Mills' on the job injury. This
5 denial was a fraudulent communication because York and/or Avizent knew that Ms.
6 Mills was injured, sought treatment, and had no valid basis for denying the claim. This
7 claim is and was always clearly compensable under Arizona law.

9 42. York and/or Avizent sent Ms. Mills to an "IME" with another hand-picked
10 physician, Dr. Rockowitz. Dr. Rockowitz opined that nothing additional or previously
11 undiscovered existed in Mills' shoulder, and claimed that her treating physicians'
12 evaluations should be ignored and all additional medical care stopped. After a second
13 examination, Dr. Rockowitz largely repeated the claims he offered after his previous
14 exam.

16 43. Defendants expressly or implied communicated to Dr. Rockowitz that he
17 should write a report stating Ms. Mills was not disabled from the work related injury
18 regardless of the clear circumstances. This allegation is based in part on information and
19 belief, and is likely to have evidentiary support after a reasonable opportunity for
20 investigation and discovery.

22 44. As with the other firefighters wrongfully denied and delayed workers'
23 compensation benefits by York and/or Avizent, the Industrial Commission of Arizona
24 rejected York and/or Avizent's denials and confirmed Ms. Mills' need for supportive
25 care for the on the job injury. The Commission's Judge also rejected the repeated claims
26 of York and/or Avizent's chosen IME physician, Dr. Rockowitz.
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1 45. After the hearing, Ms. Mills suffered another workplace injury. On August
2 7, 2012, while lifting ladders at work, Ms. Mills suffered a rotator cuff tear and Biceps
3 tendon tear. Eileen Saige, a York and/or Avizent Adjuster, sent Ms. Mills a notice of
4 claim status through the United States Mail denying medical treatment for Mills' on the
5 job injury. This denial was a fraudulent communication because York and/or Avizent
6 knew that Ms. Mills was injured, sought treatment, and had no valid basis for denying
7 the claim. This claim is and was always clearly compensable under Arizona law.
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9 46. Ms. Mills was once again forced to hire an attorney to receive the benefits
10 she was owed. Rather than wait for York and/or Avizent's delay and denial, on
11 September 13, 2012, Ms. Mills received shoulder surgery through her own private
12 insurance. Finally six months after her surgery, York and/or Avizent withdrew their
13 denial because of the clear evidence that Ms. Mills was injured on the job.
14

15 47. As with the other firefighters subjected to unjustified and unnecessary
16 delays by York and/or Avizent, Ms. Mills relied on the fraudulent communications
17 because she suffered financial loss including attorney's fees, medical care, and medical
18 mileage. Defendant's fraud directly caused injury to Ms. Mills because it deprived her
19 of benefits and caused her to pay attorney's fees, medical care, suffer emotional pain and
20 damages. Due to wrongful denial, delay, and scheme Ms. Mills suffered significant
21 economic damage, humiliation, worry, distress, and continuing economic and physical
22 damage. Additionally, Ms. Mills has suffered financial harm, damage to her credit, and
23 lost her family's home.
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26 **What York and/or Avizent Did to Firefighter Anthony Soza**
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28 48. Anthony Soza has served as a firefighter for the City of Phoenix since

1 1993. In September 2010, while Mr. Soza was working a mountainside rescue, he
2 experienced pain and swelling in his knee. After icing the knee, he continued working
3 his next shift. Within days of this on the job episode, on October 1, 2010, Mr. Soza was
4 engaged in fighting an apartment complex fire. While fighting the fire, which included
5 pulling a hose over uneven ground, knocking down a door, and rolling up a heavy fire
6 hose at the scene, Mr. Soza's knee again swelled up to the point that he could barely
7 walk. Mr. Soza then filed a claim for workers' compensation benefits for his knee injury.
8 On October 12, 2010, Soza also filed a claim for an injury to his left knee from the
9 October 1, 2010, episode.
10

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12 49. On November 3, 2010, Kelly McLeod, a York and/or Avizent adjuster, sent
13 Mr. Soza a notice of claim status through the United States Mail denying all medical
14 treatment for his on the job injuries. Mr. Soza had received previous injuries to his knees
15 on the job and treatment that allowed him to return to full duty. York and/or Avizent's
16 unjustified denial for the new injuries was in contradiction not only of the treating
17 health care providers findings, but also of basic Arizona law confirming that an on the
18 job aggravation of a pre-existing condition, if one even existed, was required to be
19 acknowledged the same as a new injury This denial was a fraudulent communication
20 because York and/or Avizent knew that Mr. Soza was injured while fighting a fire,
21 sought treatment, and had no valid basis for denying the claim. This claim is and was
22 always clearly compensable under Arizona law. On April 2, 2011, Chris Garland also
23 sent Mr. Soza a notice of claim status through the United States Mail denying medical
24 treatment for his on the job injuries.
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28 50. As with many other injured firefighters, York and/or Avizent sent Mr.

1 Soza to an "IME", with its hand-picked Dr. Rockowitz. Again ignoring the basic
2 requirements of how aggravation injuries are to be evaluated, as well as treating
3 physician findings, Dr. Rockowitz attributed Mr. Soza's injury to his prior knee injuries.
4 Dr. Rockowitz even suggested that the new on-the-job aggravation injuries experienced
5 by Mr. Soza were to be ignored, and that any "marginal" need for surgery must be
6 related only to an injury over a decade earlier.
7

8 51. York and/or Avizent expressly or implied communicated to Dr.
9 Rockowitz that he should write a report stating Mr. Soza was not disabled from the
10 work related injury regardless of the clear circumstances. This allegation is based in part
11 on information and belief, and is likely to have evidentiary support after a reasonable
12 opportunity for investigation and discovery.
13

14 52. As with the other firefighters wrongfully and unjustifiably delayed
15 necessary benefits by York and/or Avizent, the Industrial Commission of Arizona
16 rejected York and/or Avizent and its hand-picked Dr. Rockowitz's theories, fully and
17 finally confirming that the October 1, 2010 injury claim was valid and recoverable.
18

19 53. As with the other firefighters subjected to unjustified and unnecessary
20 delays by York and/or Avizent, Mr. Soza relied on the fraudulent communication
21 because he suffered financial loss including attorney's fees, medical care, and medical
22 mileage. Defendant's fraud directly caused injury to Mr. Soza because it deprived him
23 of benefits and caused him to pay attorney's fees, medical care, suffer emotional pain
24 and damages. Due to wrongful denial, delay, and scheme Mr. Soza suffered significant
25 economic damage, humiliation, worry, distress, and continuing economic and physical
26 damage.
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What York and/or Avizent Did to Firefighter Bruce Campbell

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2 54. Bruce Campbell, a longtime firefighter for the City of Phoenix was injured
3 on March 13, 2011, while performing two mountain rescues. As with Mr. Soza, Mr.
4 Campbell had been previously injured, treated, and released to full duty long before the
5 new 2011 aggravation injury. As a result of his new re-injury on the job, his treating
6 surgeon, Dr. Lucero, confirmed the necessity of a timely complete knee replacement.
7

8 55. Unfortunately, on September 1, 2011, York and/or Avizent adjuster Eileen
9 Price sent a notice of claim that terminated all temporary compensation benefits and
10 medical benefits with a permanent disability effective August 1, 2011. This denial was a
11 fraudulent communication because York and/or Avizent knew that Mr. Campbell was
12 injured in the scope of his employment, reported the injury, and York and/or Avizent
13 had no valid basis for denying the claim. This claim is and was always clearly
14 compensable under Arizona law.
15

16
17 56. As with many other injured firefighters, York and/or Avizent sent Mr.
18 Campbell to an "IME", again with its hand-picked Dr. Rockowitz. Again ignoring the
19 basic requirements of how aggravation injuries are to be evaluated, as well as treating
20 physician findings, Dr. Rockowitz attributed Mr. Campbell's injury to his prior knee
21 injuries.
22

23 57. Defendant expressly or implied communicated to Dr. Rockowitz that he
24 should write a report stating Mr. Campbell was not disabled from the work related
25 injury regardless of the clear circumstances. This allegation is based in part on
26 information and belief, and is likely to have evidentiary support after a reasonable
27 opportunity for investigation and discovery.
28

1 58. As with the other firefighters wrongfully and unjustifiably delayed
2 necessary benefits by York and/or Avizent, the Industrial Commission of Arizona
3 rejected York and/or Avizent and its hand-picked Dr. Rockowitz's theories, fully and
4 finally confirming the treating physician's findings. The Commission Judge event noted
5 that the "the conflict is resolved by accepting the opinions of Michael Lucero, that the
6 applicant's need for a right total knee replacement is causally related to the industrial
7 injury."

8
9 59. As with the other firefighters subjected to unjustified and unnecessary
10 delays by York and/or Avizent, Mr. Campbell relied on the fraudulent communication
11 because he suffered financial loss including attorney's fees, medical care, and medical
12 mileage. Defendant's fraud directly caused injury to Mr. Campbell because it deprived
13 him of benefits and caused him to pay attorney's fees, medical care, suffer emotional
14 pain and damages. Due to wrongful denial, delay, and scheme Mr. Campbell suffered
15 significant economic damage, humiliation, worry, distress, and continuing economic and
16 physical damage.
17
18

19 **What York and/or Avizent Did To Brian Saylor**

20 60. Brian Saylor worked as a firefighter for the City of Phoenix for over 8
21 years. During a required training exercise on February 18, 2012, Mr. Saylor received an
22 emergency call to a fire. While responding to the emergency, Mr. Saylor tripped and fell
23 down a flight of stairs and landed directly on his knees. Mr. Saylor immediately felt
24 pain in his knees and back. Yet Mr. Saylor continued to the emergency in order to fight
25 the fire. Mr. Saylor timely reported his injury on April 2, 2012, and sought treatment for
26 his injuries.
27
28

1 61. On May 1, 2012, Brian Heaton, a York and/or Avizent adjuster, sent a
2 notice of claim status through the United States Mail denying all medical treatment for
3 Mr. Saylor's on the job injury. York and/or Avizent alleged, falsely, that the fall down
4 the stairs and landing on his knees did not injure or aggravate the condition of his knees.
5 This denial was a fraudulent communication because York and/or Avizent knew that
6 Mr. Saylor fell down a flight of stairs while at work, tore his meniscus in both knees,
7 sought treatment for this injury, and had no valid basis for denying the claim. This
8 claim is and was clearly compensable under Arizona law.

9
10 62. As with so many other improperly denied injury claims, Defendants sent
11 Mr. Saylor to an "IME" with its hand-picked Dr. Rockowitz. Rather than complete a
12 valid examination, Dr. Rockowitz simply endorsed York and/or Avizent's theory that
13 the fall did not impact Mr. Saylor's torn meniscus. Again ignoring the basic
14 requirements of how aggravation injuries are to be evaluated, as well as treating
15 physician findings, Dr. Rockowitz attributed Mr. Campbell's documented physical
16 injury solely to Mr. Saylor's prior, pre-existing condition.

17
18 63. Defendant expressly or implied communicated to Dr. Rockowitz that he
19 should write a report stating Plaintiff was not disabled from the work related injury
20 regardless of the clear circumstances. This allegation is based in part on information and
21 belief, and is likely to have evidentiary support after a reasonable opportunity for
22 investigation and discovery.

23
24 64. Exactly like the other firefighters wrongfully and unjustifiably delayed
25 necessary benefits by York and/or Avizent, the Industrial Commission of Arizona
26 rejected York and/or Avizent and its hand-picked Dr. Rockowitz's theories, fully and
27
28

1 finally confirming the treating physician's findings. The Commission's Judge stated
2 "that the applicant's fall exacerbated his pre-existing knee problems and contributed to
3 the need for surgery."

4 65. As with the other firefighters subjected to unjustified and unnecessary
5 delays by York and/or Avizent, Mr. Saylor relied on the fraudulent communication
6 because he suffered financial loss including attorney's fees, medical care, and medical
7 mileage. Defendant's fraud directly caused injury to Mr. Saylor because it deprived him
8 of benefits and caused him to pay attorney's fees, medical care, suffer emotional pain
9 and damages. Due to wrongful denial, delay, and scheme Mr. Saylor suffered
10 significant economic damage, humiliation, worry, distress, and continuing economic
11 and physical damage. Additionally, Mr. Saylor has suffered financial harm and damage
12 to his credit.
13
14

15 **What York and/or Avizent Did To Police Detective Joi Klages**

16 66. Joi Klages worked as a detective for the Police Department for the City of
17 Phoenix. Ms. Klages was transporting evidence in her vehicle, when she was struck by
18 another motor vehicle. Ms. Klages immediately felt pain in her lower back. But because
19 she was concerned about the chain of custody of the evidence, Ms. Klages bypassed the
20 emergency room to ensure the safe passage of the evidence. Ms. Klages timely reported
21 her injury and initially received a fusion surgery of her L5-S1 in June 2010.
22

23 67. After her surgery, Ms. Klages' treating physician placed her on a no-work
24 restriction and concluded that Ms. Klages needed an additional back fusion surgery. But
25 on August 30, 2011, Lesia Fejarang, a York and/or Avizent adjuster sent a notice of claim
26 status through the United States Mail closing Ms. Klages' claim for benefits for her on-
27
28

1 the-job injury. York and/or Avizent alleged, falsely, that Ms. Klages was released to
2 work. This denial was a fraudulent communication because York and/or Avizent knew
3 that Ms. Klages was not capable of working, suffered a severe back in jury, needed
4 additional surgery, and had no valid basis for denying the claim. This claim is and was
5 clearly compensable under Arizona law.

6
7 68. York sent Ms. Klages to an IME. But in this case, the IME confirmed the
8 need for her surgery. In fact the Industrial Commission Award confirmed that the
9 treating physician and the IME doctor both “recommend surgery related to the
10 industrial accident.” In addition, the Commission found “the applicant credible and
11 resolve any conflicts in the evidence in her favor.”

12
13 69. Unfortunately even after the award, York still refused to pay benefits for
14 Ms. Klages’ claim. York falsely determined that despite the prior ICA award for
15 surgery, Ms. Klages was not entitled to benefits for that period. This denial was a
16 fraudulent communication because York and/or Avizent knew that Ms. Klages was not
17 capable of working, that the ICA had already granted her surgery, and had no valid
18 basis for denying the claim. This claim is and was clearly compensable under Arizona
19 law.
20

21
22 70. Once again, the Industrial Commission of Arizona rejected York and/or
23 Avizent theories, fully and finally confirming the treating physician’s findings. Finally,
24 Ms. Klages was awarded her owed benefits.

25
26 71. As with the firefighters subjected to unjustified and unnecessary delays by
27 York and/or Avizent, Ms. Klages relied on the fraudulent communication because she
28 suffered financial loss including attorney’s fees, medical care, and medical mileage.

1 Defendants' fraud directly caused injury to Ms. Klages because it deprived her of
2 benefits and caused her to pay attorney's fees, medical care, suffer emotional pain and
3 damages. Due to wrongful denial, delay, and scheme, Ms. Klages suffered significant
4 economic damage, humiliation, worry, distress, and continuing economic and physical
5 damage. In addition due to the delay in surgery, Ms. Klages suffered physical harm
6 including a cyst. Eventually because of her injury and delay of treatment, Ms. Klages
7 was forced to take an early retirement. Additionally, Ms. Klages has suffered financial
8 harm and damage to her credit.
9

10 **II. PARTIES**

11
12 72. Plaintiffs, Laurie Miller, Brian Dimas, Kim Mills, Anthony Soza, Bruce
13 Campbell, Michael Schamadan, Kellie Bowers, Tim Hunter, Joi Klages, and Brian Saylor,
14 reside in Arizona. All plaintiffs are employees of the City of Phoenix and work in the
15 Fire Department or the Police Department.
16

17 73. Defendant YORK RISK SERVICES GROUP, ("York"), formerly operating as
18 The Frank Gates Service Company d/b/a Avizent Risk ("Avizent") is a foreign
19 corporation adjusting insurance claims made by Arizona employees on behalf of THE
20 CITY OF PHOENIX ("Phoenix") for coverage under the Arizona Workers' Compensation
21 Act, A.R.S. § 23-901, *et seq.* York conducts business in Maricopa County, Arizona. With
22 information and belief, York has assumed all assets and liabilities of its predecessor the
23 Frank Gates Service Company when it purchased the Frank Gates Service Company on
24 December 20, 2011.
25

26
27 a. Service of process may be effected on York by certified mail, return receipt
28 requested, to its registered agent, CORPORATION SERVICE COMPANY, 2338 W.

1 Royal Palm Rd., Ste. J, Phoenix, Arizona 85021.

2 b. All acts complained of York herein were committed by York directly, or
3 under its supervision and direction.

4 c. All acts complained of York herein that were committed by and through its
5 authorized servants, employees, and agents, were committed while acting within
6 the scope of their employment, service agreement, and agency, in concert with
7 Defendant York.

8 d. All acts complained of York herein that were committed through any of its
9 servants, employees, or agents, were also ratified by York.

10 e. York is vicariously liable for all acts complained of herein that were
11 committed by or through any authorized servants, employees, or agents of York.

12 74. Defendant the Frank Gates Service Company d/b/a Avizent Risk,
13 ("Avizent") with information and belief was purchased by York Risk Services on
14 December 10, 2011, and is a foreign corporation adjusting insurance claims made by
15 Arizona employees on behalf of THE CITY OF PHOENIX ("Phoenix") for coverage under
16 the Arizona Workers' Compensation Act, A.R.S. § 23-901, *et seq.* Avizent conducts business
17 in Maricopa County, Arizona.

18 a. Service of process may be effected on Avizent by certified mail, return receipt
19 requested, to its registered agent, CORPORATION SERVICE COMPANY, 2338

20 W. Royal Palm Rd., Ste. J, Phoenix, Arizona 85021.

21 b. All acts complained of Avizent herein were committed by Avizent directly, or
22 under its supervision and direction.

23 c. All acts complained of Avizent herein that were committed by and through its
24

1 authorized servants, employees, and agents, were committed while acting
2 within the scope of their employment, service agreement, and agency, in concert
3 with Defendant Avizent.

4 d. All acts complained of Avizent herein that were committed through any of its
5 servants, employees, or agents, were also ratified by Avizent.

6
7 e. Avizent is vicariously liable for all acts complained of herein that were
8 committed by or through any authorized servants, employees, or agents of
9 Avizent .At all times and in all actions plead in this complaint; York and/or
10 Avizent were acting as agent for, or in concert with certain Phoenix
11 administrators. York and/or Avizent were third party administrators (TPA)
12 required to adjust and administer its workers' compensation claims and were
13 supposed to exercise independent and unbiased investigation and handling of
14 injury claims.
15

16
17 **VENUE & JURISDICTION**

18 75. Federal question jurisdiction is conferred by Plaintiffs' claims under the
19 Federal Racketeer Influence and Corrupt Organizations Act, 18 USC §1961 et seq
20 (RICO). Diversity of citizenship jurisdiction is conferred by 28 USC §1332 (Plaintiffs are
21 citizens of Arizona, defendants are citizen of different states than Arizona (principal
22 place of business and incorporation) and the amounts in controversy exceed \$75,000).

23
24 76. Venue is properly laid in the Federal District Court for the District of
25 Arizona because plaintiffs reside in that district and defendants do business in person
26 and through their agents and representatives in that district, in Maricopa County.
27

28 **III. ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

1 77. This case is based upon a long term and ongoing scheme to delay and
2 deny Arizona workers' compensation benefits to plaintiffs when York, Avizent, and
3 Phoenix knew that they did not have a sound basis under the law and facts of each case
4 for doing so.

5 78. The activities affected interstate commerce in several ways including that:

- 6 a. York and/or Avizent operate in interstate commerce;
7
8 b. The mails, telephones, fax and internet communications are all utilized
9 in the course of the activities complained of;
10
11 c. Denial of benefits caused economic effects on medical service providers
12 and other medical insurance companies many of whom operate in
13 interstate commerce.

14 79. Phoenix employed each of the plaintiffs.

15 80. Phoenix complied with its obligations under Arizona law to provide
16 firefighters and police employed by the City workers' disability compensation insurance
17 by self-insuring.

18 81. York and/or Avizent are TPAs (third party administrators) that adjusted
19 workers' compensation claims made by Phoenix first responders.
20

21 82. York and/or Avizent acted as agent for Phoenix with regard to the
22 handling of workers' compensation claims.
23

24 83. Decisions regarding paying claims or terminating payment were made
25 jointly by York, Avizent, and Phoenix, or were made by York and/or Avizent after
26 consulting with Phoenix or were ratified by Phoenix after being made by York and/or
27 Avizent.
28

1 84. In every instance complained of herein York, Avizent, and Phoenix, as part
2 of an ongoing enterprise and scheme more particularly described in the remaining
3 paragraphs refused to pay workers' compensation benefits to workers in bad faith. They
4 denied benefits without reasonable investigation and without forming a good faith belief
5 that the standards for compensable disability had not been met when evidence of
6 entitlement to benefits had been provided by the workers. Instead defendants:

8 a. acted with knowledge that the methods they were using to investigate
9 claims, to have workers examined by physicians of their choice, to decide whether a
10 disability was compensable and to report the results of the investigation to workers,
11 employers, the Industrial Commission of Arizona, medical providers and others
12 ignored evidence of compensability and produced false evidence that the workers
13 were not entitled to compensation.
14

15 b. Defendants also acted in bad faith by ignoring information that the
16 methods they used to investigate claims, have workers examined pursuant to
17 statute, and to decide compensability did not accurately reflect the standards for
18 compensability under the Workers' Disability Compensation Act.
19

20 85. The actions of York and/or Avizent as described generally above and with
21 greater particularity below violated RICO, 18 U.S.C. 1962 (c) and (d) in the following ways:

22 a. York and/or Avizent fraudulently denied benefits to workers who York
23 and/or Avizent knew were entitled to workers' compensation benefits
24 under existing law, in ways more particularly described in the remaining
25 paragraphs of this complaint;
26

27 b. This fraud was accomplished in part by use of the United States mail
28

1 and by electronic communications in violation of 18 USC 1341 and
2 1343;

3 c. Some of these electronic and mail communications contained fraudulent
4 misrepresentations, in that they communicated alleged facts and opinions
5 about the medical condition of the workers and/or about the causes of
6 those conditions and their relationship to employment that York and/or
7 Avizent knew were false or as to which the York and/or Avizent knew
8 there was no genuine basis for the opinions expressed.

9
10 d. Some of the electronic and mail communications were not in themselves
11 false or fraudulent but were employed in the scheme to defraud, such as
12 letters and notices scheduling appointments with physicians for so-called
13 “independent medical examinations,” when the defendants, their agents
14 and attorneys knew from ample past experience that the examinations
15 would not be conducted properly and/or in good faith but would instead
16 be designed to form a basis for denying benefits irrespective of the
17 worker’s medical condition and its compensability;

18
19 e. York and/or Avizent knew the doctor examiners were not
20 “independent” because they knew the doctors were financially
21 dependent to a significant degree on companies defending insurance
22 claims (including employers, insurers and TPAs);

23
24 f. York, Avizent, and their agents and attorneys, deliberately selected
25 doctors to obtain a medical opinion which defendants either directed to
26 be negative as to critical elements of a workers’ compensation claim
27
28

1 relating to disability or relationship to employment or knew from ample
2 experience with such doctors would state negative opinions on these
3 elements irrespective of the true facts. These allegations are based in part
4 on information and belief, and is likely to have evidentiary support
5 after a reasonable opportunity for investigation and discovery.

6
7 g. Phoenix, York, and Avizent systematically as part of their scheme to
8 defraud denied benefits by failing to honestly assess evidence that a
9 claimant had a work related disability, and or by failing to honestly
10 investigate and obtain evidence relevant to whether a claimant had a
11 work related disability.
12

13 86. In each of the cases in which they terminated or denied benefits, York and/or
14 Avizent, by themselves and through and their agents and attorneys, acted fraudulently, in
15 a scheme to defraud which used the mails and wires in violation of 18 U.S.C. 1961, et seq,
16
17 by:

- 18 a. failing to investigate honestly whether a claimant was entitled to benefits
19 under Arizona law before they denied or terminated benefits;
20
21 b. deliberately seeking opinions from doctors York and/or Avizent knew
22 would deny compensability or otherwise support a decision to pay less
23 than what was actually owed;
24
25 c. deliberately failing to obtain and to give honest consideration to reports
26 and records of a claimant's treating doctors, and any other relevant
27 information.

28 87. York and/or Avizent's intentional failures to investigate honestly whether a

1 claimant's disability was work-related under any of the relevant provisions of Arizona law,
2 and their deliberate failure to give honest consideration to the records and reports of a
3 claimant's treating doctors and any other relevant medical records or information, and to
4 honestly weigh those records and reports against the report of a doctor chosen by
5 defendants to examine a claimant was mail and wire fraud in violation of 18 U.S.C. 1341,
6 1343 because the mails and wires were used in furtherance of the scheme to defraud.
7

8 88. The predicate acts and violations of RICO alleged herein were committed by
9 one or more of the following enterprises:

10 a. The workers' compensation personnel at the workers' compensation
11 claims departments at York and/or Avizent who handled Arizona
12 workers' compensation claims and personnel at the City of Phoenix
13 associated in fact formed an "enterprise" for purposes of the Racketeer
14 Influenced and Corrupt Organizations Act (RICO) claims in this case.
15 Because they worked together regularly in adjusting and handling
16 workers' compensation claims for Arizona workers, they formed an
17 enterprise.
18

19 b. Additionally or alternatively, the following persons or entities are an
20 "enterprise" which acted to defraud Plaintiffs of their workers'
21 compensation benefits:
22

23 i. the workers' compensation claims personnel at York and/or Avizent
24 who handled Arizona claims;
25

26 ii. the workers' compensation claims personnel at York and/or
27 Avizent who handled Phoenix claims and the personnel at the City of
28

1 Phoenix responsible for approving or ratifying decisions made by
2 York and/or Avizent personnel;

3 iii. the workers' compensation claims personnel at York and/or
4 Avizent plus the doctors employed by York and/or Avizent to
5 examine the plaintiffs, associating in fact in the handling of workers'
6 compensation claims.
7

8 89. Each enterprise was an organization which existed not only for the purpose
9 of defrauding Plaintiffs of their workers' compensation benefits; the enterprise engaged in
10 other activities, such as the administration of workers' compensation claims and the
11 examination of individuals claiming workers' compensation and other benefits. Each
12 enterprise has existed for many years, and in each enterprise different persons had
13 different roles concerning the conduct of the enterprise, not limited to the commission of
14 the fraudulent acts complained of herein.
15

16 90. Two or more enterprises may have acted together to defraud one or more
17 Plaintiffs of their workers' compensation benefits.
18

19 91. By means of the actions described in the complaint, York and/or Avizent
20 conspired to violate 18 U.S.C. 1962, and conspired with one or more other parties or the
21 employees of the City of Phoenix to violate 18 U.S.C. 1962. York, Avizent, and Phoenix
22 through the actions of their employees involved in the handling of Arizona workers'
23 compensation claims, and physicians chosen by Phoenix, York, and Avizent to examine
24 claimants, agreed to participate in the commission of the predicate acts which are alleged
25 in this complaint. Such actions of conspiracy proximately caused or contributed to
26 Plaintiffs' damages, as a result of which defendants are liable to Plaintiffs under section
27
28

1 1962(d). The allegations in this paragraph are based on information and belief, and are
2 likely to have evidentiary support after a reasonable opportunity for investigation and
3 discovery.

4 92. With regard to the claims of the individual plaintiffs and all other victims of
5 the scheme, Defendants used the mail and wires for interstate communications in
6 effectuation of their scheme, demonstrating and involving a threat of continuing
7 racketeering activity against employees of Phoenix who are entitled to Arizona workers'
8 compensation benefits. Defendant's actions violated 18 U.S.C. 1341, 1343. The claims of
9 each plaintiff arise under 18 U.S.C. §§1961, 1962, 1964 and 1965. The allegations made in
10 the following individual claims are based on the facts alleged herein, and in part on
11 information and belief and are likely to have evidentiary support after a reasonable
12 opportunity for further investigation and discovery.

13 93. Each and every one of the forgoing common allegations is intended to apply
14 to all the counts of this complaint as though fully restated in each.

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16
17
18 **IV. FIRST CAUSE OF ACTION--**
19 **FRAUD IN VIOLATION OF 18 U.S.C. §§1961, 1962, 1964 and 1965**

20 94. Plaintiffs re-allege and incorporate by reference the allegations of ¶¶ 1-87 of
21 this Petition as if fully set forth herein.

22 95. As set forth in detail above, each of the Plaintiffs suffered a work related
23 injury.

24 96. For each Plaintiff, York and/or Avizent acting in concert with one or more
25 of the enterprises discussed above refused to pay benefits due to the Plaintiffs under
26 Arizona law.
27
28

1 97. These refusals were supported by fraudulent communications in violation
2 of 18 USC sections 1341 and 1343 that claimed that the injury was not work-related or
3 otherwise not compensable.

4 98. For each Plaintiff, with the exception of Michael Schamadan and Joi
5 Klages, York and/or Avizent sent Plaintiffs to doctors whom York and/or Avizent
6 knew would support a denial of payment. These doctors have a long-standing business
7 relationship with York and/or Avizent. These doctors, who operated as part of one or
8 more of the enterprises discussed above, ignored the evidence of compensability and did
9 in fact provide York and/or Avizent with opinions supporting York and/or Avizent's
10 refusal to pay. This allegation is based in part on information and belief, and is likely to
11 have evidentiary support after a reasonable opportunity for investigation and discovery.
12

13 99. York and/or Avizent knew or must have known that the opinions of these
14 doctors were an unreliable and unreasonable basis for a refusal to pay benefits because
15 these doctors were biased due to the amount of money they had and were going to
16 receive in the future for medical examinations and testimony in workers' compensation
17 cases. This allegation is based in part on information and belief, and is likely to have
18 evidentiary support after a reasonable opportunity for investigation and discovery.
19

20 100. York and/or Avizent likewise knew or must have known that the opinions
21 of these doctors were an unreliable and unreasonable basis for a refusal to pay benefits
22 because of the opinions of Plaintiffs' treating physician that supported compensability.
23

24 101. York and/or Avizent's fraud directly caused injury to Plaintiffs because it
25 deprived them of workers' compensation benefits and because it caused them the
26 expense of paying attorney fees and medical care. York and/or Avizent's fraud further
27
28

1 caused plaintiff to lose wages and other benefits from the City of Phoenix, caused injury
2 to credit and caused significant emotional distress damages a described above.

3 **V. SECOND CAUSE OF ACTION--**
4 **AIDING AND ABETTING BREACH OF THE DUTY OF GOOD FAITH**
5 **AND FAIR DEALING**

6 102. Phoenix breached the duty of good faith and fair dealing it owed to
7 Plaintiffs as described above.

8 103. York and/or Avizent knew that, after an adequate investigation, Plaintiffs'
9 claims were not fairly debatable, that Phoenix denied or delayed paying benefits owed
10 to Plaintiffs and that Phoenix knew or recklessly disregarded the lack of a reasonable
11 basis for refusing to pay benefits owed to Plaintiffs.

12 104. York and/or Avizent, through its adjustment of the claim, substantially
13 assisted Phoenix in denying the claim without a reasonable basis.

14 105. York and/or Avizent therefore aided and abetted Phoenix's breach of the
15 duty of good faith and fair dealing it owed to Plaintiffs.

16 106. Plaintiffs were damaged as a result of York and/or Avizent's aiding and
17 abetting Phoenix's breach of the duty of good faith and fair dealing it owed to Plaintiffs.

18 **VI. THIRD CAUSE OF ACTION---**
19 **MICHAEL SCHAMADAN'S CLAIM FOR LOSS OF CONSORTIUM**

20 107. York and/or Avizent aided and abetted Phoenix's breach of the duty of good
21 faith and fair dealing owed to Plaintiff Brandi Schamadan and Intentionally Inflicted
22 Emotional Distress upon Brandi Schamadan, which caused physical and emotional
23 injuries to Ms. Schamadan and her estate.

24 108. At all relevant times, Michael Schamadan was married to Brandi
25
26
27
28

1 Schamadan.

2 109. As a result of the physical and emotional injuries suffered by his wife,
3 Michael Schamadan also suffered adverse effects on the emotional, physical, and financial
4 relationship with his wife. This impact included deprivation of love, affection,
5 consortium, companionship, protection, discipline, comfort and guidance.
6

7 110. Michael Schamadan is therefore entitled to recover from York and/or
8 Avizent the damages from his loss of consortium

9 **VII. FOURTH CAUSE OF ACTION---**
10 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
11 **AS TO MICHAEL SCHAMADAN ONLY**

12 111. York and/or Avizent intentionally and/or recklessly caused Michael
13 Schamadan severe emotional distress through its conduct.

14 112. Defendants knew or recklessly disregarded that its conduct was substantially
15 certain to cause Michael Schamadan to suffer extreme and emotional distress.
16

17 113. Defendants' conduct caused Michael Schamadan to suffer severe emotional
18 distress.

19 114. Defendants' conduct was so outrageous and so extreme in danger that the
20 conduct went beyond the possible bounds of decency, and was atrocious and utterly
21 intolerable in a civilized community.
22

23 115. Defendants knew that Michael Schamadan's spouse Brandi Schamadan
24 suffered significant pain and needed therapy, medication, and other treatment.
25 Defendants also knew that both Michael and Brandi Schmadan were emotionally
26 vulnerable during this very difficult period in their lives. Yet Defendants repeatedly
27 denied and delayed Brandi Schamadan's owed benefits.
28

1 116. Defendants also knew that Brandi Schamadan was exposed to significant
2 workplace injury risks. Yet, Defendants engaged in a pattern of criminal racketeering to
3 fraudulently deny the Brandi Schamadan benefits. York and/or Avizent then forced the
4 Brandi Schamadan to file hearings and litigate before the Industrial Commission in order
5 to obtain their owed benefits.

6
7 117. Indeed as the administrators of the Brandi Schamadan's workers
8 compensation benefits, a special relationship existed between York, Avizent, and Brandi
9 Schamadan. Defendants abused that position of power by intentionally denying medical
10 treatment, and benefits to Brandi Schamadan, in order to benefit Defendants financially
11 while knowingly injuring Michael Schamadan.

12
13 VIII. PRAYER FOR RELIEF

14 Plaintiffs respectfully pray that Plaintiff have judgment entered against
15 Defendants and for an award of damages as follows:

16
17 a. For compensatory damages for physical pain and suffering, mental and
18 emotional distress, anxiety, and all other general damages alleged and proved at the
19 time of trial all tripled in accordance with RICO;

20 b. Recovery of expert witness fees;

21 c. Recovery of attorney fees;

22 d. Taxable costs incurred herein;

23 e. Pre- and post-judgment interest;

24 f. punitive damages; and

25 g. For all such other and further relief, at law or in equity, to which Plaintiffs
26 may be entitled.
27
28

1 Dated this 26th day of June, 2014.

2 Respectfully submitted,

3 DOYLE RAIZNER LLP

4 

5

MICHAEL PATRICK DOYLE

6 State Bar No. 029400

7 KEVIN WEIN

8 State Bar No. 022752

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10 Phoenix, Arizona 85016

11 Phone: (480) 447-2494

12 Fax: (480) 685-5005

13 mdoyle@doyleiraizner.com

14 kwein@doyleiraizner.com

15 ATTORNEYS FOR PLAINTIFFS

16 CERTIFICATE OF SERVICE

17 I hereby certify that on this 26th day of June, 2014, I electronically transmitted the
18 attached document to the Clerk's Office using the CM/ECF System for filing thereby serving all
19 parties of record.

20 

21

MICHAEL PATRICK DOYLE

JURY DEMAND

1
2 *Plaintiffs hereby demand a trial by jury, a right enshrined in the Constitution of the*
3 *United States of America and of the State of Arizona and preserved by the sacrifices of many.*

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Michael Patrick Doyle