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BEXAR COUNTY

Anthony Deane

IN THE DISTRICT COURT

**OF BEXAR COUNTY, TEXAS**

**V.**

225 JUDICIAL DISTRICT

**DEFENDANTS.**

Plaintiff Xenex Healthcare Services, LLC (“Xenex” or “Plaintiff”) files this Original Petition and Application for a Temporary Restraining Order, Temporary Injunction, and Permanent Injunction against Defendants John LaRochelle (“LaRochelle”); Solaris Disinfection, Inc. (“Solaris”); and Angelica Holdings, LLC (“Angelica”) (collectively “Defendants”).

This case stems from the Defendants' unlawful conspiracy to misappropriate and misuse Plaintiff Xenex's highly valuable confidential information and proprietary trade secrets to their own economic gain. Xenex is a San Antonio-based company that developed and sells life-saving hospital disinfection systems called "Germ-Zapping Robots™." These Robots use pulsing ultraviolet ("UV") light waves to kill the pathogens and bacteria that cause hospital-acquired infections, or "HAIs"—infections that kill tens of thousands of Americans each year and cost the

healthcare industry billions of dollars. Xenex's revolutionary patented technology has given hospitals and other healthcare facilities a highly effective and cost-efficient weapon for fighting back against HAIs.

The development of Xenex's technology has been neither easy nor cheap. Xenex has committed huge amounts of money and manpower, not only to designing and perfecting its systems, but also to creating the comprehensive business, sales, and marketing plans that have allowed it to succeed and survive. Most of this work is done here in San Antonio, where Xenex employs over 100 people.

Unfortunately for Xenex and its employees, Xenex recently learned that a company based in Canada, Defendant Solaris, is planning to launch a competing disinfection system—one that it appears to have developed using Xenex's stolen confidential information and trade secrets. Solaris and its affiliate, Defendant Angelica, obtained this information from Defendant LaRochelle, who works for a separate company that provides Xenex with certain marketing-related services. Xenex has shared substantial amounts of its confidential information with this other company, subject to carefully negotiated contracts with strict confidentiality obligations and restrictions. Despite these restrictions, LaRochelle—who has indicated an intent to leave his current job and go work for Solaris—has taken Xenex's confidential information and disclosed it to his prospective future employer, which has used the information to develop its technology and prepare its new product for commercial launch. LaRochelle also has been actively promoting Solaris's product in the marketplace and even encouraging potential Xenex customers to go with Solaris instead.

Xenex filed this lawsuit to prevent the Defendants from further exploiting Xenex and its employees' hard work, to preserve the value of its confidential information and trade secrets, and

ultimately to protect its business from an unlawfully unfair and unscrupulous competitor. Unless the Defendants' illicit conduct is not enjoined and restrained, Xenex will suffer immediate and irreparable harm.

### **DISCOVERY CONTROL PLAN**

1. Plaintiff intends that discovery be conducted under Level 3 and affirmatively pleads that this suit is not governed by the expedited-actions process provided in Texas Rule of Civil Procedure 169 because Plaintiff seeks injunctive relief.

### **CLAIM FOR RELIEF**

2. Plaintiff seeks injunctive relief, monetary relief over \$1,000,000, and all other relief to which Plaintiff is entitled. The damages sought are within this Court's jurisdictional limits.

### **PARTIES**

3. Plaintiff Xenex is a Texas limited liability company. Its principal place of business is located at 121 Interpark, Suite 104, San Antonio, Texas 78216.

4. Defendant LaRochelle is an individual who resides in New Hampshire. He can be served with process at his home address, 153 South Shore Road, New Durham, New Hampshire 03855.

5. Defendant Solaris is a Canadian corporation. Its principal place of business is located at 2450 Dunwin Drive, Unit 6, Ontario, Canada L5L 1J9. Solaris can be served with process through its registered agent, which shares the same address.

6. Defendant Angelica is a Delaware limited liability company. Its principal place of business is located at 8 The Green, Suite A, Dover, Delaware 19901. Angelica can be served with process through its registered agent, which shares the same address.

## **JURISDICTION**

7. This Court has subject matter jurisdiction over this action under the common law, Texas Government Code § 24.007, and Texas Civil Practice & Remedies Code § 65.021.

8. This Court has personal jurisdiction over the Defendants under the common law and Texas Civil Practice & Remedies Code § 17.042.

## **VENUE**

9. Venue is proper in this Court under Texas Civil Practice & Remedies Code §§ 15.002(a)(1) and 15.005 because a substantial part of the events giving rise to Plaintiff's claims—all of which concern the same series of occurrences and ultimately stem from a contract containing a Texas choice-of-law and Bexar County venue clause—took place in Bexar County.

## **FACTS**

### **A. Xenex and its Patented Hospital Disinfection System**

10. Xenex is a San Antonio-based company whose mission is to save lives and reduce suffering by destroying the microorganisms and bacteria that cause HAIs. Xenex has developed a revolutionary hospital disinfection technology that uses pulsed xenon UV light waves to kill pathogens in hospital rooms and surfaces.

11. The Xenex systems, which Xenex has trademarked as "Germ-Zapping Robots™," use xenon flash lamps to produce high-intensity ultraviolet light that passes through the cell walls of bacteria, viruses, and bacterial spores, thereby causing irreparable damage to the microorganisms' DNA, RNA, and life-sustaining proteins.

12. The Xenex systems are not only highly effective, but they also are highly efficient and transportable. Hospitals can use the machines throughout their entire facilities with ease.

13. The Xenex Robots are the creation of epidemiologists Mark Stibich and Julie Stachowiak. With the help of Rackspace Hosting co-founder Morris Miller—who joined Xenex in 2008 and serves as its Chief Executive Officer—Xenex commercially launched its first Pulsed Xenon Full Spectrum™ UV Robot in 2010.

14. Xenex's technology has been a great success. The company has experienced significant growth over the past seven years and currently employs over 100 people in the San Antonio metropolitan area.

15. Xenex's Robots are designed to operate in unoccupied rooms, hallways, and other closed spaces. Disinfection times vary based on each hospital's specific requirements. But as an example, Xenex's protocol for eliminating the deadly bacterium *C. diff* requires the Robots to run for only about five minutes.

16. Xenex aims for its UV light-based technology to become the new standard method for disinfection in healthcare facilities worldwide. Nearly 400 hospitals throughout the United States already use Xenex's machines. And Xenex has begun expanding its operations into Europe and Asia, where it has offered healthcare practitioners successful demonstrations.

17. Xenex's technology has revolutionized the hospital disinfection field. While Xenex is not the only company that offers a light-emitting disinfection solution, its competitors target HAIs using machines that cause only a single type of cellular damage. Xenex's systems, by using the full UV light spectrum to attack HAIs, cause four different types of cellular damage and are much more effective. Xenex is the only disinfection provider with multiple hospital customers reporting fewer infections in peer-reviewed published studies.

18. To date, Xenex's devices have reduced infection rates at its customers' facilities by 70% for *C. diff* infections in intensive care units; 57% for Methicillin-resistant

Staphylococcus aureus, or “MRSA,” infections; and 100% for Vancomycin-Resistant Enterococci, or “VRE,” infections in isolation rooms.

19. HAIs, which can be extremely difficult to treat and often are deadly, are unfortunately very common. Each day, one in every twenty-five hospital patients contracts an HAI, such as pneumonia, a urinary tract infection, or a gastrointestinal illness. Nearly 75,000 of these patients die each year.

20. The estimated annual financial impact of HAIs to America’s healthcare system is over \$30 billion. Xenex’s technology—which Xenex’s scientists, engineers, and other innovators are constantly working to improve—are helping solve these devastating problems.

**B. The Mutual Nondisclosure Agreement**

21. On November 17, 2009, Xenex entered into a Mutual Nondisclosure Agreement (the “NDA”) with a company called Sodexo Operations, LLC (“Sodexo”), which provides cleaning and maintenance services to healthcare facilities across the country. Sodexo is the wholly owned subsidiary of a French health services corporation called, Sodexo, Inc., which operates in 80 countries and is one of the world’s biggest healthcare services conglomerates.

22. Xenex and Sodexo executed the NDA because they “wish[ed] to explore a business opportunity of mutual interest.” Specifically, Sodexo was interested in obtaining rights to license and/or purchase Xenex’s disinfection systems for use in its healthcare customers’ facilities. And Xenex was interested in gaining marketing support and direct access to Sodexo’s customers—which represent roughly 40% of Xenex’s potential customer base.

23. To facilitate the parties’ discussions, the NDA allowed the parties to exchange confidential and proprietary information about their respective businesses without fear of misuse or unauthorized disclosure. The NDA defines “Confidential Information” broadly to include:

any information disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, including without limitation, business plans, customer data, customer lists, customer names, suppliers, purchasing, cost, pricing and sales information, designs, design methods, documents, drawings, engineering information, financial analysis and information, information regarding the party's finances, hardware configuration information, inventions, market information, marketing plans, business information, processes, products and services and markets therefor, product plans, research, product, component and supply specifications, developments, formulas, technology, software, source code, trade secrets, systems, procedures, manuals, reports, ideas, concepts, know-how, technical and statistical data, manufacturing techniques, strategies, forecasts, improvements and any other information which is designated as "confidential," "proprietary" or some similar designation.

24. The NDA obligates the parties "to hold [each other]'s Confidential Information in strict confidence [and] not to disclose [it] to any third party." These obligations extend to any "employees, consultants and professional advisors who are provided access to the Disclosing Party's Confidential Information."

25. The NDA further provides that the parties "will not use such Confidential Information for any purpose other than to evaluate the Opportunity, and [] that neither the Receiving Party nor any of its employees, consultants and professional advisors will reverse engineer, disassemble or decompile any prototypes, devices, equipment, software or other tangible objects that embody the Disclosing Party's Confidential Information."

26. The NDA entitles the parties "to obtain immediate injunctive relief against any breach or threatened breach of this Agreement, without the necessity of providing actual damages or posting a bond (or if a bond is required, the amount of such bond shall not exceed \$100), as well as the right to pursue any and all other rights and remedies available at law, in equity or otherwise for such a breach or threatened breach." The parties also expressly agreed in the NDA "that the unauthorized use or disclosure of the Disclosing Party's Confidential Information would cause irreparable harm to the Disclosing Party," and that "monetary damages

would be inadequate to compensate the Disclosing Party for any such unauthorized use or disclosure.”

27. Any dispute regarding the NDA “shall be governed by the laws of the State of Texas, without reference to conflict of laws principles.” The NDA further provides that “[t]he federal and state courts having jurisdiction in Bexar County, Texas shall have exclusive jurisdiction to adjudicate any [such] dispute.”

**C. The Strategic Marketing Agreement and Xenex’s Disclosure of its Confidential Information and Trade Secrets to LaRochelle**

28. With the NDA in place, Xenex and Sodexo engaged in discussions that culminated in the negotiation and execution of a Strategic Marketing Agreement in 2012 (the “SMA”). The SMA gives Xenex certain rights to license or sell its disinfection systems for use at Sodexo’s customers’ facilities, as well as assistance from Sodexo in marketing Xenex’s machines and promoting them directly to hospitals. The SMA prohibits Sodexo from entering into any “similar formal strategic relationship” with any of Xenex’s direct competitors.

29. In exchange, the SMA entitles Sodexo (and its customers) to license and/or purchase Xenex’s systems on certain pre-negotiated pricing and service terms. Xenex—which is prohibited from entering into any “similar formal strategic relationship” with any of Sodexo’s direct competitors—also pays Sodexo a monthly “marketing fee.”

30. The SMA has proved highly beneficial for both parties. Sodexo and its customers have licensed or purchased forty of Xenex’s Robots for use in over 100 hospitals. For Xenex, the SMA accounts for roughly one-third of its new system installation base and one-fourth of its new customer pipeline.

31. During this time, and due to the nature of the parties’ arrangement under the SMA, Xenex has shared substantial amounts of its proprietary information and trade secrets with



Sodexo. Xenex is required to license its patented technology and method of use to Sodexo, and to provide Sodexo with training on how to implement, operate, and maintain the Robots. As such, Sodexo has gained a thorough understanding of Xenex's systems and how they work, as well as how to design room protocols to maximize the Robots' effectiveness.

32. As Sodexo's Head of Innovation for North America and lead liaison for the Xenex relationship, Defendant LaRochelle has been Xenex's primary point of contact at Sodexo. Indeed, much of the confidential information that Xenex has shared with Sodexo came over time via countless phone calls with and emails from Xenex employees in Texas to LaRochelle, who lives and works in New Hampshire.

33. LaRochelle thus has extensive knowledge of Xenex's business model, contract negotiation and marketing practices, and sales and pricing strategies. LaRochelle knows who Xenex's customers are, where they are located, and the prices they pay for Xenex's systems. LaRochelle also has learned about Xenex's supply and distribution chains, international operations, and ongoing research and development activities. On information and belief, LaRochelle possesses a trove of documents, emails, computer files, and other records reflecting and/or containing this confidential information.

34. Like the NDA, the SMA expressly prohibits LaRochelle or any other Sodexo employee or representative from misusing or disclosing any of Xenex's confidential information without Xenex's express authorization. Specifically, the SMA provides that "[n]either party shall disclose proprietary information with respect to the other party's business ('Confidential Information') . . . [or] use any Confidential Information of the other party for any purpose whatsoever other than for the purpose of performing its obligations under this Agreement." The SMA further provides that "Sodexo shall not disclose the Sodexo Pricing to any third parties

other than Sodexo Customers, without the express written consent of Xenex.” The SMA also expressly incorporates the NDA, which “shall remain in full force and effect.”

35. Sodexo and Xenex additionally agreed in the SMA “that if either party becomes aware of one of their hospitals evaluating a competitor of the other party, to the extent they can legally do so without violating any confidentiality obligation owing to any third party, they will inform the other party and make all reasonable efforts to facilitate a presentation by the other party to the executive team of the hospital.”

**D. LaRochelle’s Breaches of the NDA and SMA and Undisclosed Relationship with Solaris and Angelica**

36. As required by the SMA, LaRochelle informed Xenex in October 2016 that Sodexo had become aware of a company in Canada that was planning to enter the hospital disinfection market and compete with Xenex. The Canadian company LaRochelle was referring to is Defendant Solaris.

37. Based in Ontario, Solaris has been marketing a machine it calls the “Lytbot.” According to Solaris’s website, the Lytbot emits pulsed ultraviolet light waves to kill pathogens in hospital rooms and surfaces—just like Xenex’s technology. Solaris registered its “Solaris” trademark in January 2016 and is actively preparing for commercial launch. On information and belief, Solaris plans to build its machines in Canada and then ship them for sale in the U.S.

38. The “Lytbot” trademark also was registered in January 2016, but by a different company: Defendant Angelica. Angelica is a New York-based holding company that, on information and belief, is Solaris’s primary investor.

39. Angelica also owns the pending application for Solaris’s “Targeted Surface Disinfection System with Pulsed UV Light” patent. Solaris’s CEO assigned the patent application to Angelica in April 2016.

40. On information and belief, Angelica learned of Solaris and LaRochelle through its preexisting relationship with Sodexo. Indeed, Xenex introduced Sodexo to Angelica representatives in 2012.

41. Unbeknownst to Xenex, LaRochelle knew much more about Solaris and Angelica than he let on. Xenex has learned that in December 2016, LaRochelle stopped a Colorado hospital's anticipated multisystem purchase from Xenex by telling the hospital that he could get it a similar but much cheaper product from a new manufacturer.

42. Xenex, which had given a presentation about its technology to staff members at the hospital on December 23, also has learned that on March 15, 2017, LaRochelle and Solaris's Chief Operating Officer, Adam Steinhoff, met with the hospital's staff to introduce the Lytbot and give an in-room demonstration.

43. LaRochelle's acts in promoting the Lytbot and encouraging the Colorado hospital to go with Solaris rather than Xenex is a clear breach of the SMA. Solaris helped facilitate that breach by directly participating in LaRochelle's conduct.

44. However, LaRochelle has not simply assisted with Solaris's sales and marketing efforts. Xenex has obtained information indicating that LaRochelle—who has extensive knowledge of Xenex's confidential and trade secret information and has received numerous emails and documents from Xenex reflecting those trade secrets (which Xenex believes he still possesses)—has shared them with Solaris. On information and belief, Solaris has in turn used that information in developing the Lytbot (which largely mimics Xenex's technology), and in preparing its marketing materials and website (which contain largely similar messaging as Xenex's).

45. LaRochelle's conduct in disclosing Xenex's trade secrets and other confidential information to Solaris is a clear violation of the NDA and the confidentiality provisions of the SMA. Solaris and its affiliate Angelica have been direct participants in that violation.

46. Xenex also has learned that LaRochelle recently informed at least one potential Xenex customer that he will soon leave his position at Sodexo to join Solaris. On information and belief, Solaris and Angelica enticed LaRochelle into making this move so that they could get unfettered access to his knowledge of Xenex's systems and the confidential Xenex information within his possession.

47. Defendants' collective conduct has caused Xenex significant damages and, if not stopped, will expose Xenex to immediate and irreparable harm. Specifically, if LaRochelle follows through with his plan to enter employment with Solaris, he inevitably will disclose to Solaris all of Xenex's confidential information and trade secrets in his possession that he has not already unlawfully disclosed.

48. With the benefit of Xenex's confidential information and trade secrets, Solaris will be able to finalize the development and commercial launch of the Lytbot product, and in turn, compete directly with Xenex. Xenex has developed and refined the confidential information and trade secrets that underpin its patented technology and entire business model through massive expenditures of money, time, and effort. Solaris will be able to exploit these expenditures and enter the UV disinfection market without having to commit the significant resources that otherwise would be required.

49. LaRochelle and Solaris already have told potential Xenex customers that the Solaris product will be much cheaper than Xenex's. On information and belief, Solaris will be able to charge lower prices because of the free ride it has gotten off Xenex's huge research and

development investments and business planning, which Solaris has enjoyed through its unauthorized access to Xenex's confidential information and trade secrets.

50. By unfairly undercutting Xenex's prices, Solaris could cause Xenex to lose customers, or to lower its own prices, possibly to unsustainable levels. Xenex's reputation and goodwill also will suffer, as consumer pricing expectations will change irreversibly by the artificially low prices that will result from Defendants' unlawful activity and entry into the market through unfair competition. This impending damage to Xenex's reputation cannot be redressed solely through damages and thus necessitates injunctive relief.

51. Defendants' unlawful actions have caused and will cause Xenex irreparable harm. If Defendants are not stopped, they will use Xenex's confidential information and trade secrets in an effort to unfairly compete with Xenex and thereby jeopardize Xenex's business.

52. And Defendants must be stopped immediately. Otherwise, there is a risk that LaRochelle will transmit to Solaris whatever confidential Xenex information and trade secrets he has in his possession that he has not already disclosed. LaRochelle and Solaris then could destroy the evidence of the transmission, making it more difficult for Xenex to determine the full scope of their wrongdoing.

53. Defendants' unlawful actions carry the further risk of irreparably damaging the relationship between Xenex (a growing local company that fosters innovation and employs over 100 workers in and around San Antonio) and Sodexo (the subsidiary of a French corporation that is one of the largest healthcare services providers in the world). Although the Xenex-Sodexo partnership has been highly beneficial for both parties, Defendants' conduct has threatened its continued existence. Defendants have sowed seeds of division and distrust between Xenex and

Sodexo through their illicit activities. Without injunctive relief, Defendants will continue to cause harm to the relationship.

54. Defendants' unlawful attacks on the Xenex-Sodexo relationship, if allowed to continue, will damage the goodwill between Xenex and Sodexo and create an irreparable injury. The loss of the exclusive relationship with Sodexo will cause incalculable damage to Xenex in terms of lost sales. Furthermore, Xenex has foregone opportunities to develop relationships with other major health services providers because of the exclusivity provisions of the SMA with Sodexo.

**COUNT I**  
**MISAPPROPRIATION OF TRADE SECRETS**  
**UNDER THE TEXAS UNIFORM TRADE SECRETS ACT**

55. The above paragraphs are incorporated by reference as if fully restated herein.

56. The confidential information that LaRoche has disclosed and/or likely will disclose to Solaris and Angelica for use in Solaris's competing hospital disinfection system constitutes Xenex's proprietary trade secrets within the meaning of the Texas Uniform Trade Secrets Act, Tex. Civ. Prac. & Rem. Code § 134A.001 *et seq.* (the "TUTSA"). These trade secrets include, without limitation, Xenex's product and service offerings and marketing strategies; business plans and investment models and forecasts; contracting practices and pricing strategies; implementation, use, and maintenance protocols; supply and distribution chains; customer and vendor lists; and leads for potential new customers.

57. Xenex's trade secrets are not generally known by or available to others. Xenex derives significant economic value from the trade secrets because they are not known or readily ascertainable by proper means by others who can obtain economic benefit from their use.

58. Xenex has undertaken efforts to ensure that its trade secrets remain confidential. Xenex requires employees, contractors, and other collaborators to sign non-disclosure

agreements that expressly forbid disclosure or unauthorized use of Xenex's confidential information and trade secrets.

59. Xenex disclosed its trade secrets to LaRochelle only after execution of the NDA. The NDA expressly obligates Sodexo and its employees, consultants, and professional advisors to hold Xenex's confidential information and trade secrets in strict confidence, and to refrain from disclosing them to any third party. The NDA further requires Sodexo to advise its employees, consultants, and advisors of the confidential nature of the trade secrets, as well as the terms of the NDA, and to ensure that they agree to the terms of the NDA before receiving any of Xenex's confidential information.

60. The NDA also expressly requires that Sodexo's employees hold Xenex's confidential information and trade secrets in strict confidence; not disclose them to any third party; and not reverse-engineer, disassemble, or decompile any prototypes, devices, equipment, software, or other tangible objects that embody Xenex's confidential information and/or trade secrets. The SMA contains similar confidentiality obligations and also expressly incorporates the NDA.

61. On information and belief, LaRochelle violated the confidentiality provisions of the NDA and SMA by wrongfully disclosing Xenex's confidential information and trade secrets to Solaris and Angelica without Xenex's consent.

62. LaRochelle has a duty to maintain the secrecy of Xenex's confidential information and trade secrets and not to disclose them to third parties without Xenex's consent. LaRochelle's disclosure of Xenex's confidential information and trade secrets in breach of this duty, the NDA, and the SMA constitutes trade secret misappropriation in violation of the TUTSA.

63. Solaris and Angelica also have misappropriated Xenex's trade secrets in violation of the TUTSA through their acquisition of Xenex's confidential information and trade secrets from LaRochelle. Solaris and Angelica know or reasonably should know that Xenex's trade secrets were acquired by improper means; that LaRochelle has a duty to maintain the confidentiality of the trade secrets; and that Xenex has not consented to LaRochelle sharing its trade secrets with Solaris or Angelica.

64. Defendants' wrongful conduct warrants an injunction preventing them from further misusing or disclosing any of Xenex's confidential information or trade secrets. To the extent Defendants have not already misappropriated Xenex's trade secrets, there is an actionable threat that they will do so in the near future. Unless restrained and enjoined, Defendants' conduct will cause Xenex immediate and irreparable harm as detailed above.

65. LaRochelle's pattern of dishonest behavior, coupled with his imminent employment at Solaris, further warrant an injunction preventing him from working for Solaris. LaRochelle has extensive knowledge of Xenex's confidential information and trade secrets, and if he goes to work for Solaris, he inevitably will disclose that knowledge to Solaris for use in direct competition with Xenex, which would cause Xenex additional immediate and irreparable harm.

66. The NDA specifically provides that unauthorized use or disclosure of Xenex's confidential information or trade secrets would cause Xenex irreparable harm, and that monetary damages would be inadequate to compensate Xenex for any such unauthorized use or disclosure. The NDA expressly entitles Xenex to obtain immediate injunctive relief against any breach or threatened breach of the NDA without the necessity of proving actual damages or posting a bond.



67. Upon information and belief, Defendants misappropriated Xenex's trade secrets knowingly, willfully, and in bad faith. Xenex is entitled to monetary damages from Defendants, jointly and severally, in an amount to be determined at trial, including actual damages, exemplary damages, and attorney fees.

68. Xenex's damages cannot be adequately compensated through remedies at law alone, thereby requiring equitable relief in addition to compensatory relief. Xenex is further entitled to an accounting and return of its trade secrets.

## **COUNT II VIOLATION OF THE TEXAS THEFT LIABILITY ACT**

69. The above paragraphs are incorporated by reference as if fully restated herein.

70. Defendants' taking of Xenex's confidential information and trade secrets constitutes an unlawful theft of property in violation of the Texas Theft Liability Act, Tex. Civ. Prac. & Rem. Code Ann. §§ 134.001-134.005 ("TTLA").

71. Defendants have appropriated and unlawfully obtained Xenex's trade secrets without Xenex's consent, and with an intent to deprive Xenex of its proprietary information, both tangible and intangible.

72. Defendants' conduct has caused Xenex damages in an amount to be determined at trial.

73. On information and belief, Defendants misappropriated Xenex's trade secrets knowingly, willfully, and in bad faith. Xenex is entitled to monetary damages from Defendants, jointly and severally, including actual damages, exemplary damages, and attorney fees.

## **COUNT III CONVERSION**

74. The above paragraphs are incorporated by reference as if fully restated herein.

75. Defendants' taking of Xenex's confidential information and trade secrets constitutes an unlawful exercise of dominion and control over Xenex's property and thus constitutes conversion under the Texas common law.

76. Defendants have appropriated and unlawfully exercised control over Xenex's property without Xenex's consent, specifically including written protocols and other documents containing Xenex's confidential information and trade secrets as described above.

77. Defendants' conduct has caused Xenex damages in an amount to be determined at trial.

78. On information and belief, Defendants exercised control over Xenex's confidential information and trade secrets knowingly, willfully, and in bad faith. Xenex is entitled to monetary damages from Defendants, jointly and severally, including actual damages, exemplary damages, and attorney fees.

#### **COUNT IV TORTIOUS INTERFERENCE WITH CONTRACT**

79. The above paragraphs are incorporated by reference as if fully restated herein.

80. The NDA and SMA constitutes valid and binding contracts between Xenex and Sodexo.

81. By engaging in the conduct described above, Defendants have willfully and intentionally interfered with Xenex's contracts with Sodexo.

82. Defendant LaRochelle, in his capacity as Sodexo's Head of Innovation and the direct liaison for the relationship with Xenex, is aware of the NDA and SMA. On information and belief, Defendants Solaris and Angelica, through their relationship and conspiracy with LaRochelle, also are aware of the NDA and SMA.

83. Despite knowing of the NDA and SMA, Defendants have engaged in conduct that has jeopardized those contracts and Xenex's entire relationship with its longtime business partner Sodexo.

84. Defendants' actions have proximately caused Xenex damages in an amount to be determined at trial.

85. On information and belief, Defendants' actions in interfering with the NDA and SMA were committed knowingly, willfully, and in bad faith. Xenex is entitled to monetary damages from Defendants, jointly and severally, including actual damages, exemplary damages, and attorney fees.

**COUNT V  
TORTIOUS INTERFERENCE WITH A BUSINESS RELATIONSHIP**

86. The above paragraphs are incorporated by reference as if fully restated herein.

87. In performing the NDA and SMA, Xenex and Sodexo have been engaged in a productive, mutually beneficial business relationship for five years.

88. By engaging in the conduct described above, Defendants have willfully and intentionally interfered with Xenex's relationship with Sodexo.

89. Defendant LaRochelle, in his capacity as Sodexo's Head of Innovation and the direct liaison for the relationship with Xenex, is aware of Xenex and Sodexo's relationship. On information and belief, Defendants Solaris and Angelica, through their relationship and conspiracy with LaRochelle, also are aware of Xenex and Sodexo's relationship.

90. By wrongfully disclosing and using Xenex's confidential information and trade secrets—which they were able to obtain only because of the NDA and SMA—Defendants have engaged in unlawful and unjustified actions aimed at harming Xenex's relationship with Sodexo.

91. Defendants' actions have proximately caused Xenex damages in an amount to be determined at trial.

92. On information and belief, Defendants' actions in interfering with the NDA and SMA and the Xenex-Sodexo relationship were committed knowingly, willfully, and in bad faith. Xenex is entitled to monetary damages from Defendants, jointly and severally, including actual damages, exemplary damages, and attorney fees.

**COUNT VI**  
**TORTIOUS INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONS**

93. The above paragraphs are incorporated by reference as if fully restated herein.

94. As set forth above, Defendants wrongfully interfered with Xenex's prospective contractual relations with a potential hospital customer in Colorado, to whom Xenex gave a presentation of its disinfection technology in December 2016. The hospital showed a serious interest in purchasing Xenex's systems, and there was more than a reasonable probability that Xenex and hospital would have entered into a contractual relationship.

95. LaRochelle's efforts to encourage the Colorado hospital not to purchase Xenex's systems, but instead to wait and purchase the Solaris Lytbot, evinces a conscious desire to prevent Xenex from cementing a relationship with the hospital. LaRochelle further knew that encouraging the hospital to reject Xenex's machines in favor of Solaris, a potential direct competitor to Xenex, was certain or substantially certain to cause an interference with the prospective contract and relationship.

96. LaRochelle's unlawful and tortious conduct proximately caused damages to Xenex in an amount to be determined at trial.

97. Defendant Solaris was aware of, encouraged, and actively participated in LaRochelle's interference with Xenex's prospective relationship with the Colorado hospital.

With LaRochelle's assistance, a representative from Solaris presented a live demonstration of the Solaris Lytbot to the hospital's CEO in March 2017. LaRochelle and Solaris's intent was to persuade the hospital not to enter into a contract with Xenex, but instead to enter into a contract with Solaris.

98. On information and belief, Defendant Angelica, through its relationship and conspiracy with LaRochelle and Solaris, also was aware of, encouraged, and actively participated in LaRochelle and Solaris's interference with Xenex's prospective contractual relationship.

99. On information and belief, Defendants' actions in interfering with Xenex's relationship with the Colorado hospital were committed knowingly, willfully, and in bad faith. Xenex is entitled to monetary damages from Defendants, jointly and severally, including actual damages, exemplary damages, and attorney fees.

#### **COUNT VII CIVIL CONSPIRACY**

100. The above paragraphs are incorporated by reference as if fully restated herein.

101. On information and belief, Defendants entered into an implicit agreement whereby they conspired to deprive Xenex of the rights and benefits it is entitled to under the NDA and SMA, and to interfere with Xenex's contracts and prospective contractual relationships.

102. On information and belief, Defendants specifically conspired to steal Xenex's confidential information and trade secrets for use in Solaris's potentially competitive hospital disinfection technology.

103. The object of Defendants' conspiracy was to deprive Xenex of leases, sales, and commercial opportunities, and to divert those leases, sales, and opportunities to Solaris, which is

preparing to launch its potentially competing Lytbot system. Defendants' cooperation in connection with the wrongful interference of Xenex's prospective relations with the Colorado hospital evince a collaboration and meeting of the minds, as Defendants have acted in concert to harm Xenex.

104. Defendants' conduct in misappropriating Xenex's trade secrets and interfering with Xenex's contracts and prospective business relationships were independently unlawful and, collectively, comprise a civil conspiracy to harm Xenex.

105. Defendants' tortious conspiracy has proximately caused Xenex damages in an amount to be determined at trial.

106. On information and belief, Defendants' actions in conspiring to steal from and harm Xenex were committed knowingly, willfully, and in bad faith. Xenex is entitled to monetary damages from Defendants, jointly and severally, including actual damages, exemplary damages, and attorney fees.

#### **COUNT VIII TEXAS COMMON LAW UNFAIR COMPETITION**

107. The above paragraphs are incorporated by reference as if fully restated herein.

108. Defendants' unlawful use and disclosure of Xenex's confidential information and trade secrets constitutes unfair competition under Texas common law.

109. Because of Defendants' actions, Xenex has sustained, and will continue to sustain, irreparable harm, as described above. Xenex also has suffered from Defendants' unfair competition due to the disclosure and use of its confidential information and trade secrets.

110. Defendants have benefited from the aforementioned wrongful acts and have proximately caused Xenex damages in an amount to be determined at trial.

111. On information and belief, Defendants' actions in unlawfully competing with Xenex—by misappropriating its confidential information and trade secrets and interfering with Xenex's contracts and prospective business relations—were committed knowingly, willfully, and in bad faith. Xenex is entitled to monetary damages from Defendants, jointly and severally, including actual damages, exemplary damages, and attorney fees.

**COUNT IX  
UNJUST ENRICHMENT**

112. The above paragraphs are incorporated by reference as if fully restated herein.

113. Defendants' unauthorized use and disclosure of Xenex's confidential information and trade secrets has resulted in unjust enrichment to Defendants in violation of Texas common law.

114. Defendants have benefited from the improper disclosure and use of Xenex's confidential information and trade secrets because, on information and belief, they have used the information to develop the Lytbot technology, which potentially will compete directly with Xenex's, and prepare it for commercial launch.

115. Defendants also have engaged in conduct aimed at diverting sales from Xenex and encouraging potential customers to purchase Solaris systems instead.

116. Defendants have benefited from the aforementioned wrongful acts and have proximately caused Xenex damages in an amount to be determined at trial.

117. On information and belief, Defendants' actions in unlawfully competing with Xenex—by misappropriating its confidential information and trade secrets and interfering with Xenex's contracts and prospective business relations—were committed knowingly, willfully, and in bad faith. Xenex is entitled to monetary damages from Defendants, jointly and severally, including actual damages, exemplary damages, and attorney fees.

## **APPLICATION FOR INJUNCTIVE RELIEF**

118. The above paragraphs are incorporated by reference as if fully restated herein.

119. Xenex's application for a temporary restraining order is authorized by Tex. Civ. Prac. & Rem. Code § 65.011, the TUTSA, the DTSA, and the Court's inherent authority.

120. Xenex's request for injunctive relief is supported by the attached declaration of Paul Froutan. Xenex incorporates that declaration by reference as if fully stated herein.

121. Unless Defendants are restrained and enjoined as set forth below, they will continue to breach the common law duties they owe Xenex and already are breaching, including by, among other things, conspiring to improperly disclose and use Xenex's confidential information and trade secrets; intentionally interfering with Xenex's contracts and prospective relations; and unfairly competing with Xenex in connection with Solaris's imminent launch of a potentially competitive hospital disinfection system. Defendants' misuse and misappropriation of Xenex's confidential information and trade secrets and interference with Xenex's contractual relations are unlawful and include multiple direct breaches of duties owed to Xenex. Based on the foregoing, Xenex has shown a probable right to recovery.

122. Xenex also has no adequate remedy at law, and it has suffered, and will continue suffering, irreparable harm from Defendants' conduct. More specifically, Xenex, as a direct and proximate cause of Defendants' conduct, will suffer immediate and irreparable harm because Solaris is attempting to enter the market as a direct competitor to Xenex and is attempting to directly benefit from LaRochelle's wanton and willful violations of his duties of confidentiality to Xenex. The disclosure and use of Xenex's confidential information and trade secrets provides an incalculable unfair advantage to Solaris and frustrates Xenex's sales, marketing, and growth strategies. Xenex already has lost profits. And if Defendants are allowed to continue their



course of unlawful activity, Xenex may lose market share to a competitor that intends to compete unfairly rather than innovate and develop its own sales, marketing, and growth strategies.

Defendants should not be allowed to benefit from this unlawful behavior.

123. Injunctive relief therefore is warranted. As the NDA expressly states, any wrongful disclosure and/or use of Xenex's confidential information and trade secrets will subject Xenex to immediate and irreparable harm, for which monetary damages would be inadequate to compensate. The NDA further provides that Xenex has the right to obtain immediate injunctive relief against any wrongful disclosure or use, or threatened disclosure or use, of Xenex's confidential information or trade secrets.

124. Xenex therefore respectfully asks the Court to enter a temporary restraining order, temporary injunction, and permanent injunction requiring that LaRochelle:

- a. Cease and desist from using and/or disclosing any of Xenex's confidential information and trade secrets (as those terms are defined by the NDA, the SMA, and the TUTSA) to Solaris, Angelica, or any other third party, unless Xenex expressly consents to such use or disclosure in writing;
- b. Cease and desist from erasing, deleting, or otherwise destroying any of Xenex's confidential information and trade secrets (as those terms are defined by the NDA, the SMA, and the TUTSA) within his possession, custody, or control;
- c. Cease and desist from discouraging any of Sodexo's current or prospective new customers from purchasing, leasing, licensing, or otherwise implementing Xenex systems;

- d. Cease and desist from promoting any non-Xenex UV disinfection system to any of Sodexo's current or prospective new customers;
- e. Cease and desist from entering into any employment arrangement with Solaris until it can be ensured that he will not disclose or use Xenex's confidential information or trade secrets to benefit Solaris or otherwise harm Xenex, and in no event before the hearing on Xenex's request for a temporary injunction; and
- f. Cease and desist from entering into any employment arrangement with any other direct or potential competitor of Xenex until it can be ensured that he will not disclose or use Xenex confidential information or trade secrets to benefit any other party or otherwise harm Xenex, and in no event before the hearing on Xenex's request for a temporary injunction.

125. Xenex further respectfully asks the Court to enter a temporary restraining order, temporary injunction, and permanent injunction requiring that Solaris and Angelica:

- g. Cease and desist from accessing, using, or disclosing any of Xenex's confidential information and trade secrets (as those terms are defined by the NDA, SMA, and TUTSA);
- h. Cease and desist from employing LaRochelle until it can be ensured that he will not disclose or use Xenex's confidential information or trade secrets to benefit Solaris or otherwise harm Xenex, and in no event before the hearing on Xenex's request for a temporary injunction; and
- i. Cease and desist from any efforts at further developing, marketing, promoting, licensing, and/or selling any products or systems that incorporate or in any

way incorporate or are based on Xenex's confidential information or trade secrets.

126. Although the NDA provides that no bond is required to obtain an injunction against the unauthorized use or disclosure of Xenex's confidential information and trade secrets, Xenex is willing to post a bond.

127. Xenex therefore respectfully requests that the Court issue a temporary restraining order against Defendants as outlined above; issue a temporary injunction along the same lines, after a hearing; and issue a permanent injunction along the same lines, after trial on the merits.

128. Xenex further requests that the Court issue the temporary restraining order on an *ex parte* basis as sufficient time does not exist to conduct a hearing on Xenex's request in Defendants' presence, and Xenex would suffer further immediate, irreparable harm if it is forced to wait for service on and appearance by Defendants.

#### **CONDITIONS PRECEDENT**

129. All conditions precedent to Xenex's claims for relief have been performed or have occurred.

#### **DEMAND FOR JURY**

130. Xenex respectfully demands a jury trial and tenders the appropriate fee with its petition.

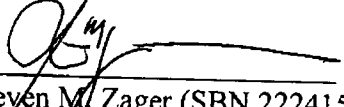
#### **PRAYER FOR RELIEF**

WHEREFORE, PLAINTIFF prays that the Court award it judgement against DEFENDANTS as follows:

1. Issue a temporary restraining order against Defendants, and all in active concert with them, requiring them to cease and desist from all activities as described in paragraphs 124 and 125 above;
2. Hold a hearing for, and then issue, a temporary injunction against Defendants, and all in active concert with them, requiring them to cease and desist from all activities as described in paragraphs 124 and 125 above;
3. After a trial on the merits, issue a permanent injunction against Defendants, and all in active concert with them, as described in paragraphs 124 and 125 above;
4. Actual damages in an amount to be determined at trial;
5. Exemplary damages;
6. Prejudgment and post-judgment interest as provided by law;
7. Attorney fees and costs;
8. Any and other relief at law or in equity to which Plaintiff may show itself justly entitled.

Date: April 5, 2017

**AKIN GUMP STRAUSS HAUER & FELD LLP**

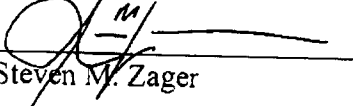
  
Steven M. Zager (SBN 22241500)  
AKIN GUMP STRAUSS HAUER & FELD LLP  
One Bryant Park  
New York, New York 10036  
Tel.: (212) 872-1037  
Fax: (212) 872-1002  
szager@akingump.com

Clayton N. Matheson (SBN 24074664)  
AKIN GUMP STRAUSS HAUER & FELD LLP  
300 Convent Street, Suite 1600  
San Antonio, Texas 78205-3732  
Telephone: (210) 281-7000  
Fax: (210) 224-2035

**ATTORNEYS FOR PLAINTIFF  
XENEX HEALTHCARE SERVICES, LLC**

**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 6(C)**

Pursuant to Bexar County Local Civil Rule 6(C), the undersigned certifies that to the best of his knowledge, notifying the respondents to this application for temporary restraining order would cause irreparable harm to the movant. The undersigned further certifies that he is unaware as to whether the respondents are in fact represented by counsel.

  
Steven M. Zager