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BEXAR COUNTY

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XENEX HEALTHCARE SERVICES, LLC

PLAINTIFF,

v.

JOHN LAROCHELLE; SOLARIS DISINFECTION, INC.; AND ANGELICA HOLDINGS, LLC

DEFENDANTS.

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IN THE DISTRICT COURT

OF BEXAR COUNTY, TEXAS

225 JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL VERIFIED PETITION AND APPLICATION FOR A TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION**

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").

***Preliminary Statement***

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