



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

BAKO PATHOLOGY LP and BPA)	
HOLDING CORP.,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. _____
)	
BRADLEY BAKOTIC and JOSEPH)	
HACKEL,)	
)	
Defendants.)	

VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiff Bako Pathology LP and BPA Holding Corp., by and through the undersigned counsel, hereby bring this action, seeking injunctive relief from this Court as set forth herein:

INTRODUCTION

1. Defendants Bradley Bakotic and Joseph Hackel are two of the former founders of a national pathology reference laboratory named after Defendant Bakotic and known as “Bako Diagnostics.” Bako Diagnostics provides anatomic and molecular pathology services, microbiology services, and neuropathy-related testing to podiatrists and dermatologists (collectively “Laboratory Services”). Simply put, podiatrists and dermatologists send patient samples (nails, skin, etc.) to Bako Diagnostics for Laboratory Services. Just as a primary care physician sends a patient’s blood to a laboratory for a cholesterol

screening, a dermatologist sends a patient's skin sample to Bako Diagnostics to confirm whether the patient has a melanoma or other pathology. Bako Diagnostics provides these Laboratory Services to podiatrists and dermatologists in all 50 states.

2. After founding Bako Diagnostics, Defendants worked to brand it as a nationally recognized provider of Laboratory Services. To do this, Defendants implemented a multi-pronged marketing campaign focused on increasing brand awareness by: (1) providing financial sponsorships to podiatry and dermatology association events; (2) speaking at podiatry and dermatology association events; and (3) administering a fellowship program for podiatry students. The events and fellowship program provided Bako Diagnostics and Defendants with continued exposure to actual and potential clients that, over time, built Bako Diagnostics into a national brand. Based on the success of this marketing campaign, Defendants sold Bako Diagnostics to Plaintiffs in 2016 for \$242,500,000.00, of which Defendants personally received significant sums—Defendant Bakotic received \$30,400,768.51 in cash and stock and Defendant Hackel received \$14,357,043.92 in cash and stock.

3. To ensure Plaintiffs received the benefit of their bargain, Plaintiffs included certain restrictive covenants in the Merger Agreement entered into with Defendants, which prohibit Defendants from engaging in activities

competitive with Bako Diagnostics until January 5, 2021. Following the merger, Defendants became Limited Partners of Plaintiff Bako Pathology, LP and, in exchange for such status, agreed they would not have any business interests or engage in any business activities competitive with Bako Diagnostics. Because Defendants continued working for Bako Diagnostics following the merger, they also have similar covenants in their respective Employment Agreements.

4. In September 2017, Defendant Bakotic was terminated from Bako Diagnostics for misconduct and, shortly thereafter, Defendant Hackel announced his “retirement.” Since their respective separations, Defendants have informed Plaintiffs that they intend to perform Laboratory Services in direct competition with Bako Diagnostics and have acquired a lab, which they named Rhett Diagnostics, LLC after Defendant Bakotic’s dog. To promote Rhett Diagnostics and themselves, Defendants formed the similarly-named Rhett Foundation for Podiatric Medicine Education, Inc., a name that tracks the name of the foundation established by Defendants while working at Bako Diagnostics—Bako Medical Education Foundation, Inc.

5. Under the guise of “giving back” through their “non-profit foundation,” Defendants have begun running the exact same marketing playbook that was part of their job duties while at Bako Diagnostics in order to build “Rhett” into a national brand. That is, Defendants (through the Rhett Foundation) are

sponsoring and speaking at podiatry and dermatology association events and announced a fellowship program for podiatry students. Defendants maintain these are “altruistic educational endeavors” that do not compete with Bako Diagnostics, but in reality this marketing campaign (which Defendants perfected at Bako Diagnostics) is designed to do just that. Further revealing Defendants’ competitive motives, Defendants use these sponsorship and speaking opportunities to specifically displace Bako Diagnostics by, for example, requesting Bako Diagnostics’ specific booth space or traditional speaking slot or excluding Bako Diagnostics from events entirely. All of this behavior—intended to decrease Bako Diagnostics’ market share and build “Rhett” into a national brand—constitutes a breach of Defendants’ contractual obligations by which Plaintiffs have been and continue to be irreparably harmed. Thus, as set forth herein, Plaintiffs seek all relief available to them under the law and at equity, including emergency injunctive relief restraining Defendants from engaging in any competitive activities.

NATURE OF THE ACTION

6. This action arises out of the unlawful activities of Defendants Bradley Bakotic and Joseph Hackel, who have established non-parties Rhett Foundation for Podiatric Medical Education, Inc. and Rhett Diagnostics LLC to

unlawfully compete with Plaintiffs and divert Plaintiffs' customers and business opportunities in breach of their restrictive covenants.

7. Absent the issuance of a temporary restraining order, and preliminary and permanent injunctive relief, to prevent Defendants' unlawful activities, Plaintiffs will suffer immediate and irreparable harm to their vital business interests.

THE PARTIES

8. Plaintiff Bako Pathology LP is a Delaware limited partnership.

9. Plaintiff BPA Holding Corp. is a Delaware corporation.

10. Defendant Bradley Bakotic is an individual who resides in the State of Georgia.

11. Defendant Joseph Hackel is an individual who resides in the State of Georgia.

12. This Court has subject matter jurisdiction over this matter under 10 *Del. C.* § 341 because Plaintiffs seek injunctive relief.

13. Defendants have contractually consented to the personal jurisdiction of this Court.

14. Venue for this action is proper in this Court.

FACTS

I. Defendants Start Bako Diagnostics

15. Plaintiff Bako Pathology LP owns Plaintiff BPA Holding Corp.

16. Plaintiff BPA Holding Corp. is the sole member of Bakotic Pathology Associates, L.L.C., which operates a national pathology reference laboratory (hereinafter “Bako Diagnostics”).

17. Bako Diagnostics provides anatomic and molecular pathology services, microbiology services, and neuropathy-related testing (hereinafter “Laboratory Services”) to podiatrists and dermatologists in all 50 states. For example, a podiatrist or dermatologist sends a patient’s skin, nail or wound sample to Bako Diagnostics for a pathologist to evaluate and, when possible, provide a clinical diagnosis, such as melanoma.

18. Defendants are two of the former founders of Bako Diagnostics, which is named after Defendant Bakotic.

II. Defendants Grow Bako Diagnostics into a Nationally Recognized Provider of Laboratory Services

19. After founding Bako Diagnostics, Defendants grew it into a nationally recognized provider of Laboratory Services.

20. Specifically, Defendants grew Bako Diagnostics by increasing the number of podiatrists and dermatologists that would send samples to its central reference laboratory. To capture the attention of and gain credibility with the podiatry and dermatology community, Defendants, among other things, orchestrated and implemented a multi-pronged marketing campaign focused on increasing brand awareness by: (1) providing financial sponsorships to podiatry

and dermatology association events; (2) speaking at podiatry and dermatology association events; and (3) administering a fellowship program for podiatry students.

21. This was often done via a non-profit foundation started, in part, by Defendants as part of this marketing strategy, known as the Bako Medical Education Foundation, Inc. By similarly naming the non-profit foundation, Defendants were able to use the foundation to build brand recognition for the laboratory—Bako Diagnostics.

22. Providing financial sponsorships to podiatry and dermatology association events allowed Defendants to advertise and promote the Bako Diagnostics brand and its Laboratory Services to potential and actual clients (*i.e.*, the podiatrists and dermatologists who attended the events).

23. In exchange for such financial sponsorships, Bako Diagnostics received, among other things, access to these potential and actual clients through exhibition space (booths or tables which Bako Diagnostics staffed with employees who promoted the Bako Diagnostics brand) and the opportunity to lecture or sponsor lectures to podiatrists and dermatologists attending the event for continuing medical education (“CME”) credit.

24. Between 2010 and 2015, Bako Diagnostics sponsored and/or provided speakers at approximately 150 podiatry and dermatology conferences per

year. Attendance at each of these events ranged from 30 to 3,500 actual and prospective clients. As part of their job duties, Defendants frequently spoke at such podiatry and dermatology association events as the “face” of Bako Diagnostics.

25. Administering a fellowship program for students of podiatry allowed Bako Diagnostics to create relationships with young podiatrists, all of whom are potential clients for Bako Diagnostics. The promotion of this fellowship program also helped establish Bako Diagnostics as a leader in cutting edge Laboratory Services, much like a university. Between 2010 and 2015, over 200 podiatry students participated in this fellowship program.

26. Following Defendants’ success in creating the Bako Diagnostics national brand, Defendants sought opportunities to sell Bako Diagnostics by hiring an investment bank to identify potential buyers and market Defendants’ success. In the ensuing negotiations and Offering Memorandum prepared by Defendants, Defendants highlighted their marketing strategy as part of Bako Diagnostics’ value proposition, which sets it apart from other laboratories in the marketplace; specifically, its relationship with podiatrists and dermatologists as cultivated by years of sponsorship/CME and fellowship programs. These marketing efforts were touted as “uniquely” positioning Bako Diagnostics “atop the growing and profitable podiatric pathology market[.]” Not surprisingly then, in

this Offering Memorandum, Defendant Bakotic's biography and job description highlight his speaking engagements. (A true and correct copy of Defendants' materials prepared to highlight Bako Diagnostics' value proposition during these negotiations is attached hereto as **Exhibit 1.**)

III. Defendants Sell Bako Diagnostics for Substantial Sums

27. On or about January 5, 2016 (the "Closing Date"), Defendants sold Bako Diagnostics. Specifically, Plaintiffs and various non-parties entered into an Agreement and Plan of Merger (the "Merger Agreement"), to which Defendants are parties for purposes of Section 5.11, Section 9.3, and Article 11. (A true and correct copy of the Merger Agreement is attached hereto as **Exhibit 2.**)

28. As a direct result of the strength of the Bako Diagnostics' brand, which Defendants created, the various parties to the Merger Agreement agreed upon a \$242,500,000.00 purchase price. In consideration for their obligations under the Merger Agreement, Defendants were personally paid considerable sums; specifically, Defendant Bakotic received \$30,400,768.51 in cash and stock and Defendant Hackel received \$14,357,043.92 in cash and stock.

29. To ensure that Plaintiffs received the benefit of their bargain, the Merger Agreement contains certain restrictive covenants designed to protect the Bako Diagnostics brand; that is, Bako Diagnostics' reputation as a leading

provider of Laboratory Services and the strength of its relationships with podiatrists and dermatologists.

30. Specifically and in relevant part, until January 5, 2021, Defendants agreed they would not: (a) engage in a “Competing Business” or (b) have any interest in any person or entity that directly or indirectly engages in a “Competing Business.” (*See* Exhibit 2 § 5.11(a)(ii).)

31. A “Competing Business” means “any business in which [Bako Diagnostics] or any of its Subsidiaries is engaged, or has specific plans (as evidenced by documentation of [Bako Diagnostics]) to become engaged, in each case, as of the Closing Date.” (*See* Exhibit 2 § 5.11(a).)

IV. Defendants Receive Partnership Interests in Plaintiff Bako Pathology, LP

32. After the Closing Date, on January 7, 2016, Plaintiff Bako Pathology, LP and, among others, Defendants entered into an Amended and Restated Limited Partnership Agreement (the “Partnership Agreement”). A copy of this Partnership Agreement is attached hereto as **Exhibit 3**.

33. Pursuant to the Partnership Agreement, Defendants are Limited Partners of Plaintiff Bako Pathology, LP and, as Limited Partners, Defendants agreed that they shall not “have any business interests or engage in business activities in addition to those relating to the Partnership, including, without

limitation, business interests and activities in direct competition with the Partnership or any of its Subsidiaries” (See Exhibit 3 ¶ 6.5.1.)

34. Defendants also agreed that the prevailing party in any litigation between the parties to the Partnership Agreement is entitled to all reasonable fees, costs, and expenses, including attorneys’ fees. (See Exhibit 3 ¶ 12.12.)

V. Following the Merger, Defendants Remain Employed at Bako Diagnostics Until 2017

35. Following the merger, Defendant Bakotic remained employed as the CEO of Bako Diagnostics and Defendant Hackel remained employed in various capacities, including Medical Director.

36. As a result, Defendants’ substantively identical Employee Confidentiality, Non-Solicitation and Non-Competition Agreements (the “Employment Agreement”) with Plaintiff BPA Holding Corp. remain operative. (True and correct copies of the Plaintiffs’ Employment Agreements are attached hereto as **Exhibit 4.**)

37. Pursuant to Paragraph 1 of the Employment Agreement, Defendants agreed that, during their employment with Bako Diagnostics and for a period of twenty-four (24) months thereafter, they would not “perform the same or similar duties” that they performed for Bako Diagnostics on behalf of or for the benefit of “(i) any laboratory and/or health care provider which competes with

[Bako Diagnostics], or (ii) any customer or client of [Bako Diagnostics] with whom [Bako Diagnostics] provided services within two years prior to [their] termination” from Bako Diagnostics, in any “territory where [Bako Diagnostics] was doing business at the time of termination.” (*See* Exhibit 4 ¶ 1.)

38. Defendants also agreed that any breach by them of this covenant would result in “irreparable injury” to Plaintiff BPA Holding Corp. and its subsidiary Bako Diagnostics and, therefore, in addition to all remedies available at law or equity, Defendants agreed to the propriety of preliminary and permanent injunctive relief to “prevent a breach or contemplated breach” of this covenant. (*See* Exhibit 4 ¶ 7.)

39. Defendants also agreed that Plaintiff BPA Holding Corp. is entitled to its reasonable costs, expenses, and attorneys’ fees in any proceeding to enforce or defend its rights in the Employment Agreement in which it is the prevailing party. (*See* Exhibit 4 ¶ 8.)

40. As CEO, Defendant Bakotic remained at the helm of Bako Diagnostics’ multi-pronged marketing campaign and, in such capacity, he identified various podiatry and dermatology association conferences for sponsorship by Bako Diagnostics, lectured at such conferences as the face of Bako Diagnostics, and administered Bako Diagnostics’ fellowship program.

41. As Medical Director, and later as a part-time pathologist, Defendant Hackel remained involved in Bako Diagnostics' multi-pronged marketing campaign and, in such capacity, would speak on Bako Diagnostics' behalf and work with the fellowship program.

42. During the 20 months between the Closing Date and Defendants' respective separations from Bako Diagnostics, Bako Diagnostics paid almost \$2 million in corporate, trade show, and promotional sponsorships as part of this multi-pronged marketing strategy carried out by Defendants. During this same timeframe, Defendant Bakotic incurred approximately \$80,000.00 in travel expenses related to his speaking engagements on behalf of Bako Diagnostics, while Defendant Hackel incurred approximately \$8,500.00 in travel expenses.

43. Bako Diagnostics employed Defendant Bakotic as its CEO until on or about September 8, 2017, when Bako Diagnostics terminated Defendant Bakotic for misconduct.

44. Bako Diagnostics employed Defendant Hackel until on or about September 30, 2017, when Defendant Hackel purportedly "retired."

VI. Defendants Announce Their Intention to Perform Laboratory Services, Which Will Breach Their Agreements

45. On December 27, 2017, Defendants filed a Complaint for Declaratory Judgment against Plaintiffs in the Superior Court of Delaware (the

“Declaratory Judgment Action”), seeking a declaration from that Court that the covenants in the Employment Agreement are unenforceable.

46. On December 28, 2017, after filing the Declaratory Judgment Action, Defendant Bakotic formed Rhett Diagnostics, LLC, a Georgia limited liability company.

47. According to the Georgia Secretary of State’s website, Rhett Diagnostics, LLC is a “medical laboratory.”

48. Since filing the Declaratory Judgment Action, Defendants have secured a physical laboratory from which to operate Rhett Diagnostics, located at 5955 Shiloh Road East, Alpharetta, Georgia 30005. As Defendants are aware, Bako Diagnostics is also located on Shiloh Road, approximately 1 mile away.

49. At an April 30, 2018 hearing in the Declaratory Judgment Action, counsel for Defendants represented to the Court that he expected his clients would “wind up with a lab that does **veterinarian pathology and other things that Bako does not do.**” (A true and correct copy of this and other cited excerpts from the transcript of the April 30, 2018 hearing is attached hereto as **Exhibit 5.**)

50. Based on this representation from Defendants’ counsel, the Court in the Declaratory Judgment Action ordered the parties to work together and determine whether Defendants could practice medicine without breaching their respective non-competition covenants. (*See* Exhibit 5 at 49:23-50:7) (“You’ve

represented to me what they'd like to do [*i.e.*, veterinary pathology]. It seems that's a reasonable course of action if that's truly what they want to do. . . . And if that's truly what they want to do, it seems to me that [Plaintiffs] would say I don't think it competes with us, and as long as it doesn't compete with us, we're okay.")

51. On May 24, 2018, however, Defendants made their intentions to compete with Plaintiffs and Bako Diagnostics clear. Specifically, Defendants abandoned any pretense of practicing veterinary pathology when their counsel wrote: "If we do not reach resolution of the non-compete issue, I expect Drs. Bakotic and Hackel to begin competing at some point so we can bring the issue to a head and get some direction from the Court." (A true and correct copy of the relevant portions of Defendants' counsel's statement is attached hereto as **Exhibit 6.**)

52. On June 28, 2018, Defendants' counsel again wrote that Plaintiffs intend to begin competing "because it appears that forcing Bako [Diagnostics] to seek an injunction is the only way to fast-track a disposition of this issue." (A true and correct copy of the relevant portions of Defendants' counsel's June 28, 2018 statement is attached hereto as **Exhibit 7.**)

53. Even more concerning, since the April 30, 2018 hearing, Plaintiffs have learned that Defendants' representation to the Court in the Declaratory Judgment Action regarding their intention to practice veterinary

pathology was nothing but a ruse to disguise their true intention—circumventing their non-competition covenants and competing with Bako Diagnostics by performing Laboratory Services.

54. Performing Laboratory Services constitutes engaging in a Competing Business in breach of the Merger Agreement.

55. Performing Laboratory Services constitutes having business interests and performing activities in direct competition with Plaintiff Bako Pathology LP and Bako Diagnostics in breach of the Partnership Agreement.

56. Performing Laboratory Services constitutes performing the same or similar duties that Defendants performed for Bako Diagnostics in breach of the Employment Agreement.

57. Defendants' performance of Laboratory Services will irreparably harm Bako Diagnostics through the loss of business and customer goodwill.

VII. Defendants Have Already Breached Their Agreements by Engaging in Competitive Marketing Activities

58. Prior to filing the Declaratory Judgment Action, Defendants had incorporated the Rhett Foundation for Podiatric Medical Education, Inc. (the "Rhett Foundation") with the State of Georgia.

59. At the time Defendants filed the Declaratory Judgment Action, the website for the Rhett Foundation revealed nothing of the Rhett Foundation's

purpose or activities, except that it was named for Defendant Bakotic's dog and was intended as a vehicle through which Defendants could "give back" to the podiatry community.

60. Since filing the Declaratory Judgment Action, however, Defendants have started using the Rhett Foundation to promote themselves and the "Rhett" brand by deploying the exact same multi-pronged marketing strategy they conceived of and implemented at Bako Diagnostics, and which was part of their job duties at Bako Diagnostics.

61. Defendants have hired former Bako Diagnostics' employees to work at the Rhett Foundation, including at least one former Bako Diagnostics' pathologist.

62. Since filing the Declaratory Judgment Action, Defendants have announced, on the Rhett Foundation's website, 20 different podiatry and dermatology events that they intend to sponsor through the Rhett Foundation and/or at which they intend to speak through the end of the year. Similarly, Defendants have also engaged in such marketing efforts on behalf of Rhett Diagnostics.

63. Since filing the Declaratory Judgment Action, Defendants have announced they intend to start a fellowship program, which will compete directly with Bako Diagnostics' fellowship program.

64. According to the Rhett Foundation's website, Defendants simply want to "give back to the underserved world of lower extremity dermatology education." In reality, Defendants are using the Rhett Foundation to build the "Rhett" brand and compete with Bako Diagnostics.

65. For example, Defendants have knowingly sought sponsorship opportunities and spoken at many of the same podiatry and dermatology associations and conferences as Bako Diagnostics, including, but not limited to, the Ohio Foot & Ankle Scientific Seminar, Western Foot and Ankle Conference, Florida Podiatric Medical Association conference, California Podiatric Medical Association, and Georgia Podiatric Medical Association.

66. Whenever possible, Defendants have not just offered sponsorship, but tried to replace and/or exclude Bako Diagnostics from such events.

67. For example, Defendants recently announced that DERMfoot, the "nation's leading dermatology seminar," is "now a part of the Rhett Foundation" and will hold its annual conference in 2019 in Tysons Corner, Virginia, where the following "core" members of the Rhett Foundation are advertised as speakers: Plaintiff Bakotic, G. Dock Dockery, Bryan Markinson, Annette Joyce, and Joel Morse. Specifically, the Rhett Foundation bought DERMfoot and, as a result, now controls its annual podiatry conference.

68. Since purchasing DERMfoot, Defendants (directly and through the Rhett Foundation) have excluded Bako Diagnostics from sponsoring the 2019 DERMfoot conference and/or providing any speakers, which Bako Diagnostics has done for the past 9 years.

69. By way of further example, Defendants tried to secure booths 1001, 1003, and 1005 at the January 2019 annual New York State Podiatric Medical Association conference on behalf of Rhett Diagnostics. Rhett Diagnostics sought this booth space for its “huge unveiling” and the “best conference of the year.” As Defendants are well aware, Bako Diagnostics has reserved and exhibited in these **exact booths** for the past 9 years. Participants of this and other conferences associate the booth with the historic sponsor of the booth—Bako Diagnostics.

70. By way of further example, at the annual California Podiatric Medical Association conference, Defendants specifically sought the exclusive opportunity to brand the tote bags provided to all attendees with the Rhett Foundation logo. Defendants are aware that Bako Diagnostics has traditionally sponsored and provided the tote bags for attendees at this event.

71. By way of further example, for the past 9 years, Bako Diagnostics has provided a speaker to the annual conference of the American Academy of Podiatric Practice Management and, more recently, sponsored the

“Cigar With The Stars” event. This year, for the first time in 9 years, Bako Diagnostics was not invited to speak at the event and the Cigar With The Stars event was sponsored by the Rhett Foundation.

72. These are not coincidences. Rather, Defendants are engaged in a concerted campaign to bolster the “Rhett” brand, while diluting the Bako Diagnostics brand.

73. While Defendants maintain these activities are “educational” and not “business activities,” Defendants are aware that such speaking engagements and sponsorship activities are competitive activities and a central piece of Bako Diagnostics’ marketing strategy and business plan. Indeed, Defendants performed such duties for Bako Diagnostics during their employment and, based on the success of this marketing strategy, were paid tens of millions of dollars for the Bako Diagnostics’ brand. Defendants are now mimicking this exact same competitive strategy on behalf of Rhett Diagnostics and the Rhett Foundation.

74. As a result of Defendants’ sponsorship and speaking activities, Bako Diagnostics has been irreparably harmed by the loss of customer goodwill it has experienced as a result of lost sponsorship and speaking opportunities. Not only has Bako Diagnostics lost the opportunity to speak directly with its customers in attendance at these events, after hearing Defendant Bakotic speak, at least one

customer has informed Bako Diagnostics that it will no longer use Bako Diagnostics for Laboratory Services.

75. Defendants' sponsorship and speaking activities and fellowship program constitute business activities in direct competition with Plaintiff Bako Pathology LP and its subsidiary Bako Diagnostics and, therefore, constitute a breach of the Partnership Agreement.

76. Defendants' sponsorship and speaking activities and fellowship program constitute engaging in a Competing Business and, therefore, constitute a breach of the Merger Agreement.

77. Defendants' sponsorship and speaking activities and the announcement of its fellowship program constitute a breach of Defendants' respective Employment Agreements as Defendants are engaging in the same or similar duties that they engaged in while employed by Bako Diagnostics, including, but not limited to, identifying sponsorship opportunities, speaking at podiatry and dermatology association events, and administering a fellowship program.

78. The Merger Agreement, Partnership Agreement, and Employment Agreement are all governed by Delaware law. (*See* Exhibit 2 § 11.7; Exhibit 3 § 12.7; Exhibit 4 ¶ 11.)

79. Pursuant to the Merger Agreement and Employment

Agreement, Defendants have consented to the personal jurisdiction of this Court.

(See Exhibit 2 § 11.11; Exhibit 4 ¶ 11.)

COUNT I
BREACH OF CONTRACT

80. Plaintiffs incorporate by reference the preceding paragraphs as if set forth fully herein.

81. The performance of Laboratory Services by Defendants constitutes engaging in a Competing Business in breach of the Merger Agreement.

82. The performance of Laboratory Services by Defendants constitutes having business interests and performing activities in direct competition with Plaintiff Bako Pathology LP and Bako Diagnostics in breach of the Partnership Agreement.

83. The performance of Laboratory Services by Defendants constitutes performing the same or similar duties that Defendants performed for Bako Diagnostics in breach of the Employment Agreement.

84. Defendants' sponsorship and speaking activities and fellowship program constitute business activities in direct competition with Plaintiff Bako Pathology LP and its subsidiary Bako Diagnostics and, therefore, constitute a breach of the Partnership Agreement.

85. Defendants' sponsorship and speaking activities and fellowship program constitute engaging in a Competing Business and, therefore, constitute a breach of the Merger Agreement.

86. Defendants' sponsorship and speaking activities and the announcement of its fellowship program constitute a breach of Defendants' respective Employment Agreements as Defendants are engaging in the same or similar duties that they engaged in while employed by Bako Diagnostics, including, but not limited to, identifying sponsorship opportunities, speaking at podiatry and dermatology association events, and administering a fellowship program.

87. As a direct and proximate result of Defendants' conduct as described herein, Plaintiffs have suffered and will continue to suffer damages, including, but not limited to, irreparable harm by way of the loss of customer goodwill.

88. Unless and until enjoined by this Court, and as a direct and proximate result of Defendants' conduct as described herein, Plaintiffs have suffered and will continue to suffer irreparable harm.

89. Plaintiffs have no adequate remedy at law.

COUNT II
TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIPS

90. Plaintiffs incorporate by reference the preceding paragraphs as if set forth fully herein.

91. Plaintiffs have existing relationships with various podiatry and dermatology associations, and have a reasonable probability of continuing business relationships with such associations.

92. As set forth herein, Defendants have intentionally and without justification interfered with these relationships and opportunities.

93. Defendants are without privilege to interfere with Plaintiffs' existing and prospective relationships with such conferences and associations under the circumstances.

94. As a direct and proximate result of Defendants' interference with Plaintiffs' relationships and opportunities, Plaintiffs have suffered and will continue to suffer loss of goodwill, damages, and financial injury.

95. Unless and until enjoined by this Court, and as a direct and proximate result of Defendants' actions, Plaintiffs have suffered and will continue to suffer irreparable harm.

96. Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order as follows:

1. Preliminarily and permanently enjoining Defendants from directly or indirectly sponsoring any podiatry or dermatology conferences or educational institutions, or speaking at such conferences or educational institutes, until the expiration of the various covenants set forth herein;

2. Preliminarily and permanently enjoining Defendants from interfering with Plaintiffs' relationships with any podiatry and dermatology associations;

3. Preliminarily and permanently enjoining Defendants from directly or indirectly performing Laboratory Services until the expiration of the various covenants set forth herein;

4. Awarding Plaintiffs damages, attorneys' fees, costs, and expenses incurred in the prosecution of this action; and

5. Awarding Plaintiffs such other and further relief as this Court deems just and equitable under the circumstances.

[Signatures Follow on Next Page]

YOUNG CONAWAY STARGATT &
TAYLOR, LLP

/s/ Lauren E.M. Russell

Lauren E.M. Russell, Esq. (No. 5366)
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 576-3255
Facsimile: (302) 576-3750
Email: lrussell@ycst.com

-and-

JACKSON LEWIS P.C.

Robert W. Capobianco (*pro hac vice* pending)
Adriana R. Midence (*pro hac vice* pending)
1155 Peachtree Street, N.E. Suite 1000
Atlanta, Georgia 30309
Telephone: (404) 525-8200
Facsimile: (404) 525-1173
Email: capobiar@jacksonlewis.com
adriana.midence@jacksonlewis.com

Attorneys for Plaintiffs

Dated: July 18, 2018