

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

<b>IN RE:</b>	§	
<b>EL PASO CHILDREN’S HOSPITAL</b>	§	
<b>CORPORATION</b>	§	<b>CASE NO. 15-30784</b>
<b>DEBTOR.</b>	§	<b>CHAPTER 11</b>
	§	
<b>EIN: 26-3075429</b>	§	
	§	
<b>4845 ALAMEDA AVENUE</b>	§	
<b>EL PASO, TEXAS 79905</b>	§	
	§	
<hr style="border: 1px solid black;"/>	§	
<b>EL PASO CHILDREN’S HOSPITAL</b>	§	
<b>CORPORATION</b>	§	
<b>PLAINTIFF,</b>	§	
	§	<b>ADV. PRO. NO. 15-_____</b>
<b>V.</b>	§	
	§	
<b>NAVIGANT HEALTHCARE</b>	§	
<b>CYMETRIX CORPORATION FKA</b>	§	
<b>CYMETRIX CORPORATION,</b>	§	
<b>DEFENDANT.</b>	§	

**COMPLAINT**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, El Paso Children’s Hospital Corporation (“Debtor” and/or “Plaintiff”), and files its Complaint against Navigant Healthcare Cymetrix Corporation f/k/a Cymetrix Corporation, and would show the Court as follows:

**I. JURISDICTION AND VENUE**

1. This is an adversary proceeding brought by the Debtor as Plaintiff, pursuant to Bankruptcy Rule 7001(1) and 11 U.S.C. §§ 547 and 548. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 157 and § 1334 in that this is a core proceeding arising under title 11 of the United States Code (the “Bankruptcy Code”), or arising in or related to a case under the Bankruptcy Code.

## **II. THE PARTIES**

2. The Plaintiff may be served in this adversary proceeding through the undersigned counsel.

3. Defendant Navigant Healthcare Cymetrix Corporation f/k/a Cymetrix Corporation (“Defendant”) is a Delaware corporation whose principal place of business is Irvine, California. Defendant may be served by delivering a copy of the summons and the complaint to its agent for service, Corporation Service Company, 2711 Centerville Rd., Suite 400, Wilmington, DE 19808, or pursuant to Federal Rule of Civil Procedure 4(h) by serving any director, officer, or agent authorized by law to accept service.

## **III. FACTUAL BACKGROUND**

4. On May 19, 2015 (“Petition Date”), the Plaintiff filed its petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor is a debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in this bankruptcy case, and no committee has been appointed or designated.

5. The Plaintiff is an independent non-profit 501(c)(3) corporation that is governed by a board of directors (“EPCH Board”), the sole mission of which has been to provide pediatric care to the children of El Paso, Texas, and surrounding communities. The Plaintiff’s primary operations have consisted of owning and operating a 122-bed children’s hospital. When the Plaintiff opened its doors in 2012, it accomplished the largest expansion of pediatric medical care in recent West Texas history. The Plaintiff is the only separately licensed, non-taxing, independent, not-for-profit children’s hospital in the El Paso region. The Plaintiff is the only dedicated pediatric hospital within a 200-mile radius of El Paso, and prior to the Plaintiff’s opening, El Paso was the largest city in the United States without a separately licensed

children's hospital. Indeed, in addition to providing desperately needed pediatric care to the region's children, the Plaintiff's opening also attracted high-caliber specialists and subspecialists to El Paso, along with experienced registered nurses and highly trained clinical staff that provide excellent care to the community's children on a daily basis.

6. Prior to the Petition Date, the Plaintiff hired the Defendant to perform crucial cash flow-related services, including processing reimbursement from insurers, so that it could focus on building its clinical pediatric services. Under the contemplated arrangement, the Defendant was to operate the Plaintiff's Financial Services Department and handle the back-office functions through which claims are submitted, thus freeing up the Plaintiff to concentrate on its mission of providing quality pediatric care. Indeed, through the agreements, the Defendant would become a critical link in the chain between Plaintiff's actual provision of medical care to patients and the payment the Plaintiff later receives for that care. Incorrectly coded claims results in a refusal of insurance companies to pay, which in turn forces the Plaintiff to forfeit payment for patient services it already rendered.

7. To this end, prior to opening its doors to patients, on September 1, 2011, the Plaintiff and the Defendant executed a Master Services Agreement (the "MSA"), which set forth the general terms of the parties' relationship. The parties also executed two separate Statements of Work that identified specific services that the Defendant agreed to perform for the Plaintiff. Under Statement of Work No. 1, the Defendant assumed responsibility for providing revenue cycle services and solutions to the Plaintiff. Under Statement of Work No. 3, the Defendant agreed to be responsible for the Plaintiff's clinical coding system—the process by which components of the provision of patient care are translated into medical billing codes used by Medicare, Medicaid, and private health insurers to process hospital bills for payment.

8. Around the time that the Plaintiff opened its doors to patients, in February 2012, the Plaintiff and the Defendant executed Statement of Work No. 2 (collectively with the MSA, the Statement of Work No. 1 and Statement of Work No. 3, the “Contract Documents”). Pursuant to Statement of Work No. 2, the Defendant agreed to perform all patient billing and account servicing functions, which included scanning patient charts, pulling relevant treatment and billing data from a patient’s records, billing the appropriate payer for the patient, receiving the claim response and any remittance, logging those items in the Plaintiff’s billing system, identifying any denied claims, and timely appealing and working to overturn denied claims. The contractual formula for the Defendant’s required performance under Statement of Work No. 2 obligated collection of at least 96% of the two prior months’ averaged net revenue for the Plaintiff. Such contractual formula was intentionally designed to ensure that the Defendant’s claims processing and collection work would yield sufficient cash flow to fund the Plaintiff’s operations.

9. The Defendant failed to perform as it promised under the Contract Documents. As early as July 2012, the Plaintiff expressed to the Defendant its serious concerns that the Defendant was not performing as agreed and particularly, was not processing bills for payment in a timely manner, thus creating a ballooning backlog of unprocessed claims that would become uncollectible due to the passing of time. Despite the Defendant’s failures, which directly impaired the Plaintiff’s cash flow, the Defendant vigorously pursued collection of amounts owed to it by the Plaintiff.

10. After a series of attempts to cajole at least adequate performance by the Defendant under the Contract Documents, and following the Defendant’s persistent failures, the Plaintiff terminated the Contract Documents effective July 31, 2014.

11. Prior to the Petition Date, on February 26, 2015, the Defendant filed its Plaintiff's Original Petition in the District Court for the 362nd Judicial District, Denton County, Texas ("Denton Court"). The lawsuit was brought by the Defendant's new corporate owner in the face of the history of the Defendant's failures to recover damages against the Plaintiff.

12. With no notice to Plaintiff and providing Plaintiff no opportunity to object, on the same day it filed its Original Petition, the Defendant requested that the Denton Court issue a prejudgment writ of garnishment against the Plaintiff. Relying upon its false assertion that the debt owed to it from the Plaintiff was not disputed and citing to its concerns about the Plaintiff's insolvency, the Defendant obtained an ex-parte prejudgment garnishment against a Wells Fargo Bank, N.A., bank account owned by the Plaintiff via the Order on Plaintiff's Pre-Judgment Writ of Garnishment ("Garnishment"). A copy of the Garnishment entered by the Denton Court is attached hereto as Exhibit A.

13. The Garnishment was served on Wells Fargo. In the Garnishment, Wells Fargo was ordered to:

NOT to pay to [the Plaintiff] any debt or to deliver any effects, pending further order of this Court, without retaining property of [the Plaintiff] in an amount sufficient to satisfy and equal the maximum value of property or indebtedness that may be garnished.

*See* Garnishment, p. 2. As a result of the Garnishment, funds totaling nearly \$2 million<sup>1</sup> in the Plaintiff's Wells Fargo bank account were garnished in favor of the Defendant. In so doing, the Defendant— on the basis of false assertions and hearsay evidence—locked up for its sole benefit

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<sup>1</sup> The Garnishment set forth that the "maximum value of property or indebtedness that may be garnished is \$988,687.00." *See* Ex. A, p. 3. Nonetheless, and for reasons unknown to the Plaintiff, nearly \$2 million was initially garnished; the Defendant later reduced this amount by half upon Plaintiff's demand.

a substantial amount of the Plaintiff's operating funds at a time to the detriment of Plaintiff's other creditors.

**IV. COUNT I: AVOIDANCE OF PREFERENTIAL TRANSFER—11 U.S.C. § 547**

14. The Plaintiff hereby incorporates all preceding paragraphs as if fully re-alleged herein.

15. On or within ninety (90) days prior to the Petition Date, the Defendant obtained the Garnishment.

16. The Garnishment was a transfer of an interest of the Plaintiff in property to or for the benefit of the Defendant.

17. The Garnishment was made for or on account of antecedent debt owed by the Plaintiff to the Defendant before the Garnishment was made.

18. The Defendant was a creditor of the Debtor at the time of the Garnishment within the meaning of 11 U.S.C. § 101(10)(A). At the time of the Garnishment, the Defendant asserted a right to payment on account of an obligation owed to the Defendant by the Plaintiff.

19. The Garnishment was a transfer that occurred while the Plaintiff was insolvent.

20. As a result of the Garnishment, the Defendant received more than it would have received if the Plaintiff's bankruptcy case were a case under Chapter 7 of the Bankruptcy Code, the Garnishment had not been made, and the Defendant received payment to the extent provided by the provisions of the Bankruptcy Code.

**V. COUNT 2: RECOVERY OF AVOIDED TRANSFERS-11 U.S.C. § 550**

21. The Plaintiff hereby incorporates all preceding paragraphs as if fully re-alleged herein.

22. The Plaintiff is entitled to avoid the Garnishment pursuant to § 547(b).

23. Section 550 of the Bankruptcy Code allows the Plaintiff, as debtor-in-possession to recover, for the benefit of the estate, the property transferred and avoided under §§ 547 and 548 from the initial transferee of such transfer or the entity for whose benefit such transfer was made. *See* 11 U.S.C. § 550(a).

24. Pursuant to § 550(a), the Plaintiff is entitled to recover from the Defendant the value of any and all funds garnished pursuant to the Garnishment, plus interest thereon to the date of payment and the costs of this action.

**VI. COUNT 3: PRESERVATION OF THE GARNISHMENT PURSUANT TO § 551**

25. The Plaintiff hereby incorporates all preceding paragraphs as if fully re-alleged herein.

26. Section 551 of the Bankruptcy Code provides as follows:

Any transfer avoided under section 522, 544, 547, 548, 549, or 724(a) of this title, or any lien void under section 506(d) of this title, is preserved for the benefit of the estate but only with respect to property of the estate.

27. The funds subject to the Garnishment are property of the Plaintiff's bankruptcy estate.

28. Upon avoidance of the Garnishment under § 547(b), the Garnishment should be preserved for the benefit of the Plaintiff's bankruptcy estate pursuant to § 551.

**VII. COUNT 4: DISALLOWANCE OF CLAIM PURSUANT TO 502(d)**

29. The Plaintiff hereby incorporates all preceding paragraphs as if fully re-alleged herein.

30. The Defendant is a transferee of transfers avoidable pursuant to § 547 of the Bankruptcy Code and a person from whom property is recoverable under § 550 of the Bankruptcy Code.

31. The Defendant has not paid the amount of the Garnishment for which the Defendant is liable pursuant to § 550 of the Bankruptcy Code.

32. Pursuant to § 502(d), any and all claims of the Defendant against the Plaintiff in its bankruptcy case must be disallowed until such time as the Defendant pays to the Plaintiff an amount equal to the Garnishment, plus interest thereon, and costs.

WHEREFORE, PREMISES CONSIDERED the Plaintiff requests that judgment be tendered against the Defendant Navigant Healthcare Cymetrix Corporation f/k/a Cymetrix Corporation, and that the Court declare that the Garnishment is avoided pursuant to § 547 of the Bankruptcy Code; that the Plaintiff recover the value of any funds subject to the Garnishment pursuant to § 550; that any lien created by the Garnishment is preserved for the benefit of the Plaintiff's estate pursuant to § 551; that any claim held by the Defendant is disallowed pursuant to § 502(d); and the Plaintiff be awarded prejudgment interest that has accrued since the Plaintiff's first demand for return of the funds subject to the Garnishment and its reasonable fees' and costs in bringing this action; and such additional relief as the Court deems just and appropriate.

Dated: May19, 2015.

Respectfully submitted,

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