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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

YAKIMA PRODUCTS, INC., an

Delaware corporation,

Plaintiff,

v.

DOUGLAS T. FELLER, an individual;
DTF ENTERPRISES, INC., a Missouri
corporation; **CHRISTOPHER A.
LEVATO**, an individual; **QUALITY
LOGISTICS, INC.**, a South Carolina
corporation; **ARAM MESARDJIAN**, an
individual; and **MICHAEL TAIT**, an
individual,

Defendants.

Civil Case No. CV07-0290-MO

FIRST AMENDED COMPLAINT

(VIOLATION OF 18 U.S.C. § 1961,
et seq. (RICO); VIOLATION OF
O.R.S. 166.715, *et seq.* (ORICO);
BREACH OF CONTRACT; BREACH
OF FIDUCIARY DUTY; FRAUD;
AND CIVIL CONSPIRACY;
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION)

JURY TRIAL DEMANDED

As its First Amended Complaint in this action, Plaintiff Yakima Products, Inc. ("Yakima") alleges as follows:

PARTIES

1. Yakima is a Delaware corporation with its principal place of business in Beaverton, Oregon. Yakima manufactures ski, bicycle, and cargo racks for automobiles and home storage. Yakima did business as WaterMark Paddlesports, Inc. until 2005, when it changed its name to Yakima Products, Inc. Although some of the events in this Complaint took place before 2005, we will refer to Plaintiff herein as "Yakima" for the sake of clarity.

2. Defendant Douglas T. Feller ("Feller") is a resident of Springfield, Missouri.

3. Defendant DTF Enterprises, Inc. ("DTF") is a Missouri corporation with its principal place of business in Springfield, Missouri, which, on information and belief, is wholly owned by Feller.

4. Defendant Christopher A. Levato ("Levato") is a resident of Greenville, South Carolina. Levato is the President and owner of defendant Quality Logistics, Inc.

5. Defendant Quality Logistics, Inc. ("Quality") is a South Carolina corporation with its principal place of business in Greenville, South Carolina.

6. Defendant Aram Mesardjian ("Mesardjian") is a resident of Greenville, South Carolina.

7. Defendant Michael Tait ("Tait") is a resident of South Carolina.

JURISDICTION AND VENUE

8. Jurisdiction in this action is proper under 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000, exclusive of interest and costs, and the dispute is between citizens of different states.

9. Alternatively, jurisdiction is proper under 28 U.S.C. § 1331 because this action arises, in part, under 18 U.S.C. § 1961, *et seq.* ("RICO"), and jurisdiction over Yakima's state law claims is proper under 28 U.S.C. § 1367.

10. Personal jurisdiction over defendants lies in the District of Oregon. This Court has personal jurisdiction over Feller, DTF, Levato, and Qaulity because they purposefully availed themselves of Oregon by repeatedly making contact with Oregon in furtherance of defendants' RICO scheme; Yakima's claims arise out of or relate to Feller's, DTF's, Levato's, and Quality's fraudulent Oregon activities; and the Court's exercise of jurisdiction is reasonable. This Court has personal jurisdiction over all defendants under 18 U.S.C. § 1965(b) because all were participants in a multidistrict RICO scheme; this Court has personal jurisdiction over four participants in the scheme; no other district court has personal jurisdiction over all participants in the scheme; and the ends of justice would be served by adjudicating this multidistrict scheme in this Court.

11. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this division.

12. Venue is also proper in this district under 18 U.S.C. § 1965(a) because each defendant has transacted their affairs in this division.

FACTS COMMON TO ALL CLAIMS

13. Feller was a Yakima employee from October 2000 until about May 15, 2005. He was responsible for negotiating freight rates with third-party freight carriers; auditing and approving freight invoices for payment; and assisting in the budgeting and forecasting of future freight expenses. Because Yakima did not have its own fleet of trucks, Feller would negotiate with third-party freight haulers to transport Yakima's goods from its factory in Tijuana, Mexico to its warehouse in Memphis, Tennessee, and from there to various locations throughout the United States. He also would cause Yakima to contract with third-party haulers to transport goods between Yakima business locations in other parts of the United States. Yakima relied on

Feller's honesty and apparent skill.

14. In 2001, Feller and Mesardjian conceived and put into operation a scheme to defraud Yakima. At that time, Feller began to "verify" as legitimate and submit for payment invoices from United Transportation Consultants ("United")—a supposed freight hauler. In fact, United was a fictitious entity, invented by Feller and Mesardjian, which performed no services whatsoever for Yakima.

15. Feller and Mesardjian took legitimate invoices from third-party haulers, rewrote them as United "invoices" (with significantly higher prices), verified the United "invoices," and submitted them to Yakima for payment. When Yakima paid on the fictitious United "invoices," Feller and Mesardjian would pay the legitimate third-party hauler on its invoice, and pocket the overcharge that they had added to the fictitious United "invoice." Beginning in 2001, Yakima paid more than \$200,000 on fictitious United "invoices."

16. Building on the success of his United scheme, Feller and his co-conspirator Levato simplified the fraudulent scheme. Feller and Levato created two new, fictional freight-hauling companies, Cooper Enterprises ("Cooper") and Southern Logistics ("Southern"). Like United, Cooper and Southern were fictitious entities that performed no services whatsoever for Yakima.

17. Using Quality's equipment and facilities, Feller and Levato created "invoices" for freight-hauling supposedly performed by Cooper and Southern and sent those "invoices" to Yakima for payment. The Cooper and Southern "invoices" were entirely false, and did not reflect any services provided to Yakima by any entity. Feller then verified the false "invoices," causing Yakima to pay them.

18. Between 2002 and 2006, at Feller's direction and in reliance on Feller's verification, Yakima paid approximately \$3,600,000 to Cooper, and more than \$200,000 to Southern. Yakima sent its payments to Cooper at the address listed on Cooper's fictitious "invoices." But that address was nothing more than a rented mailbox at a Mailboxes, Etc./The

UPS Store location. And the address on the fictitious Southern "invoices" was a Post Office Box belonging to defendant Quality.

19. In May 2005, Yakima sold its watercraft business. In June 2005 it changed its corporate name to Yakima Products, Inc. and began moving its headquarters from Arcata, California to Beaverton, Oregon.

20. Feller had been employed by WaterMark, although he had handled freight services for the entire company. After the sale, there were no remaining Yakima employees with significant experience in freight services because Feller had been solely responsible for those services. Yakima and Feller agreed that rather than going to work for the buyer of the watercraft business, Feller would continue to perform freight services for Yakima as a "consultant." To that end, Feller formed DTF, a Missouri corporation of which he was the sole or primary owner, officer, and employee.

21. On or about July 1, 2005, Yakima entered into a two-year consulting services agreement (the "Consulting Agreement") with Feller's company, DTF. A true and correct copy of the Consulting Agreement is attached to this First Amended Complaint as Exhibit 1.

22. Under the Consulting Agreement, DTF was to provide the same services to Yakima that Feller had previously provided as an employee. DTF was responsible for negotiating freight rates with third-party freight carriers; auditing and verifying freight invoices; sending those verified invoices to Yakima in Oregon for payment; and assisting in the budgeting and forecasting of future freight expenses. Yakima was to pay DTF \$90,000 for those services over two years.

23. Acting pursuant to the Consulting Agreement, Feller and DTF mailed legitimate invoices for freight services to Yakima for payment. But Feller and DTF also continued Feller's practice of submitting fictitious Cooper and Southern "invoices" to Yakima for payment. Cooper and Southern themselves remained a fiction, providing no freight or other

services to Yakima. Nevertheless, Feller and DTF repeatedly sent "invoices" bearing Cooper's and Southern's names to Yakima in Oregon for payment. Each invoice bore Feller's initials—falsely signifying that Feller had substantively reviewed the "invoices" to verify that Cooper or Southern had performed the freight services reflected therein at the agreed-upon rate, and that the "invoice" was a bona fide debt that Yakima was obligated to pay. Because Feller and DTF were solely responsible for reviewing and approving freight invoices for payment, Yakima paid the fictitious Cooper and Southern "invoices" in reliance on Feller's representation that these invoices were legitimate.

24. In furtherance of this scheme, Feller and DTF, with full knowledge of their co-conspirators Levato and Quality, repeatedly mailed, faxed, and sent via United Parcel Service or Federal Express fraudulent "invoices" to Yakima's headquarters in Beaverton. Those invoices were processed and paid by Yakima employees in Oregon. To facilitate processing of those fraudulent "invoices," Feller repeatedly sent faxes and e-mails, and made telephone calls to Yakima employees in Beaverton, requesting payment and falsely representing that the "invoices" were legitimate.

25. Yakima terminated the Consulting Agreement on May 26, 2006, when it chose to hire an employee to perform the freight services that Feller, and then Feller and DTF, had performed since 2000. During the period that the Consulting Agreement was in effect, Feller and DTF fraudulently caused Yakima to pay \$1,149,432 on fictitious Cooper "invoices," and another \$124,700 on fictitious Southern "invoices," for freight services that were never performed.

26. Defendant Tait was an employee at Yakima's shipping center in San Diego, California. Later, he transferred to Yakima's facility in South Carolina. He also worked as a consultant for Yakima in January 2006.

27. In or about 2002, Tait became aware of the conspiracy between Feller, Mesardjian, Levato, and Quality to defraud Yakima. Rather than report the conspiracy to his

employer, Tait confronted Feller and demanded a share of the conspirators' profits. The conspirators agreed, and Tait received a share of their ill-gotten gains in exchange for his silence. Tait worked for Yakima as an employee until May 2005, but never took any steps to stop the conspiracy or to disassociate himself from it.

28. From 2001 until May 2006, Feller, and then Feller and DTF, fraudulently caused Yakima to pay approximately \$4,000,000 on account of fictitious "invoices" from United, Cooper, and Southern. Feller, and then Feller and DTF, repeatedly sent such "invoices" to Yakima with the false representation that Feller and DTF had substantively reviewed the false "invoices," that United, Cooper, or Southern had actually performed the freight services at the agreed upon rate, and that the "invoices" were bona fide debts that Yakima was obligated to pay.

29. The money Yakima paid to United, Cooper, and Southern ultimately was transferred to the defendants or, as alleged below, to businesses and entities that Feller wholly or partially owns and controls.

30. Feller invested his fraudulently procured money in a series of businesses. On information and belief, Feller funded the following enterprise entities, in whole or in part, with money he received from Yakima in the manner alleged above: Midwest Auto Group, LLC; Paradise Sun Tanning Salon, LLC; Platinum Rentals, Inc.; Priority Towing Service, LLC; Rapid Recovery, LLC; RJP & Associates, LLC; Secure Financial Group, LLC; Sunrise Lawn Care, LLC; Transolutions, LLC; Feller Equine Enterprises; and Uptown Shoes, LLC.

31. Midwest Auto Group, LLC ("Midwest Auto") is a Missouri limited liability company, with its principal place of business in Springfield, Missouri. Feller is a principal of the company.

32. Paradise Sun Tanning Salon, LLC ("Paradise Sun Tanning") is a Missouri limited liability company, with its principal place of business in Springfield, Missouri. Paradise Sun Tanning owns and operates at least two tanning salons in the Springfield area. Feller is a principal of the company.

33. Platinum Rentals, Inc. ("Platinum") is an Indiana corporation, with its principal place of business in Kouts, Indiana. Feller is a principal of the company.

34. Priority Towing Service, LLC ("Priority Towing") is a Missouri limited liability company, with its principal place of business in Springfield, Missouri. Feller is a principal of the company.

35. Rapid Recovery, LLC ("Rapid Recovery") is a Missouri limited liability company, with its principal place of business in Springfield, Missouri. Feller is a principal of the company.

36. RJP & Associates, LLC ("RJP") is a Missouri limited liability company, with its principal place of business in Springfield, Missouri. Feller is a principal of the company.

37. Secure Financial Group, LLC ("Secure Financial") is a Missouri limited liability company, with its principal place of business in Springfield, Missouri. Feller is a principal of the company.

38. Sunrise Lawn Care, LLC ("Sunrise Lawn") is a Missouri limited liability company, with its principal place of business in Springfield, Missouri. Feller is a principal of the company.

39. Transolutions, LLC ("Transolutions") is a Missouri limited liability company, with its principal place of business in Springfield, Missouri. Feller is a principal of the company.

40. Feller Equine Enterprises ("Feller Equine") is an entity owned by Feller, which is in the business of buying and selling thoroughbred racehorses.

41. Uptown Shoes, LLC ("Uptown Shoes") is a Missouri limited liability company, with its principal place of business in Springfield, Missouri. Feller is a principal of the company.

42. In furtherance of their scheme to defraud Yakima, defendants used Federal Express, United Parcel Service, and the United States Postal Service by false pretenses to obtain

payment for the fictitious invoices by, for example, sending the purported invoices from Missouri to Oregon and between South Carolina, Missouri, and California. They also furthered their fraudulent scheme by the use of e-mail and faxes sent from Missouri to Oregon and between South Carolina, Missouri, and California. Levato and Quality furthered the scheme by use of faxes generated at the Quality facility on Quality's fax machines.

43. Likewise, defendants used telephone services in furtherance of their scheme to defraud Yakima. Feller and DTF communicated with Yakima via telephone regarding the shipment of Yakima's goods from Mexico to Memphis, for other services, and the payment of freight invoices, fictitious Cooper invoices. Feller and DTF made these telephone communications under false pretenses for the purpose of obtaining fraudulent payments from Yakima.

44. Until December 1, 2006, defendants successfully concealed their fraudulent conduct from Yakima. Yakima's first suspicion arose when the employee who replaced Feller and DTF began preparing Yakima's 2007 freight budget, and found that his projected 2007 freight budget was far less than what Yakima had spent on freight services in previous years. He also found bills of lading appended to Cooper "invoices" which appeared to have been altered.

45. After learning of this discrepancy, Yakima immediately began a detailed review of the freight invoices that Feller and DTF had verified and approved for payment during a "test period" in January and February 2006. From that investigation, Yakima learned that all of its goods during the test period had been transported from Mexico to Memphis by legitimate, third-party haulers other than Cooper and Southern, and that Yakima had paid its bills for those services. But Yakima also learned that it had paid literally hundreds of Cooper and Southern "invoices," supposedly for shipments from Mexico to Memphis, or between various Yakima business locations in the United States, even though neither Cooper nor Southern had actually transported or caused to be transported a single item for Yakima. And those fictitious Cooper

and Southern "invoices" for non-existent shipments had been personally approved and initialed by Feller. Additional investigation revealed that the United "invoices" were also fictitious.

FIRST CLAIM FOR RELIEF

Violation of Civil RICO, 18 U.S.C. § 1962(c)

(Against all Defendants)

46. Yakima realleges paragraphs 1 through 45 as if fully set forth herein.

47. Defendants Feller, DTF, Levato, Quality, Mesardjian, and Tait are each a "person" within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c).

48. Defendants Feller, DTF, Levato, Quality, Mesardjian, and Tait; and Cooper, Southern, United, Midwest Auto, Paradise Sun Tanning, Platinum, Priority Towing, Rapid Recovery, RJP, Secure Financial, Sunrise Lawn, Transolutions, Feller Equine, and Uptown Shoes constitute an "enterprise" within the meaning of 18 U.S.C. §§ 1961(4) and 1962(c). The enterprise was engaged in on-going activities that affected interstate commerce at all material times. The enterprise has an ascertainable structure that is separate and distinct from Feller, DTF, Levato, Quality, Mesardjian, and Tait's pattern of racketeering activities.

49. Defendants Feller, DTF, Levato, Quality, Mesardjian, and Tait were employed by and/or associated with the enterprise. Feller, DTF, Levato, Quality, Mesardjian, and Tait conducted or participated, directly or indirectly, in the conduct of the enterprise's affairs through a pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961(1)(B), 1961(1)(E), 1961(5), and 1962(c), to wit, multiple instances of mail and wire fraud.

a. Feller, DTF, Levato, Quality, Mesardjian, and Tait committed multiple acts of mail fraud in violation of 18 U.S.C. § 1341 by forming a scheme to defraud Yakima by charging Yakima for freight services that Cooper, Southern, and United never performed; using the mails to further their fraudulent scheme by mailing fraudulent "invoices" from Missouri to Oregon and between South Carolina, Missouri, and California; and doing so with the specific intent of defrauding Yakima out of millions of dollars.

b. Feller, DTF, Levato, Quality, Mesardjian, and Tait committed multiple acts of wire fraud in violation of 18 U.S.C. § 1343 by forming a scheme to defraud Yakima by charging Yakima for freight services that Cooper, Southern, and United never performed; using the wires to further their fraudulent scheme by sending fraudulent "invoices" from Missouri to Oregon and between South Carolina, Missouri, and California; compelling Yakima to pay those "invoices;" and doing so with the specific intent of defrauding Yakima out of millions of dollars.

50. As a direct and proximate result of Feller, DTF, Levato, Quality, Mesardjian, and Tait's violation of 18 U.S.C. § 1962(c), Yakima paid Cooper, Southern, and United approximately \$4,000,000 for freight services that Cooper, Southern, and United never rendered, the precise amount to be determined at trial.

51. Yakima is entitled to recover from Feller, DTF, Levato, Quality, Mesardjian, and Tait three times Yakima's actual damages plus costs and attorney's fees under 18 U.S.C. § 1964(c).

SECOND CLAIM FOR RELIEF

Violation of Civil RICO, 18 U.S.C. § 1962(d)

Conspiracy to violate 18 U.S.C. § 1962(c)

(Against all Defendants)

52. Yakima realleges paragraphs 1 through 51 as if fully set forth herein.

53. Feller, DTF, Levato, Quality, Mesardjian, and Tait intentionally and knowingly agreed and conspired to violate 18 U.S.C. § 1962(c) in the manner set forth above in the First Claim for Relief—incorporated by reference herein—in violation of 18 U.S.C. § 1962(d).

54. As a direct and proximate result of Feller, DTF, Levato, Quality, Mesardjian, and Tait's violation of 18 U.S.C. § 1962(d), Yakima paid Cooper, Southern, and United nearly \$4,000,000 for freight services that Cooper, Southern, and United never rendered,

the precise amount to be proven at trial.

55. Yakima is entitled to recover from Feller, DTF, Levato, Quality, Mesardjian, and Tait three times Yakima's actual damages plus costs and attorney's fees under 18 U.S.C. § 1964(c).

THIRD CLAIM FOR RELIEF

Violation of ORICO, O.R.S. 166.720(3)

(Against all Defendants)

56. Yakima realleges paragraphs 1 through 55 as if fully set forth herein.

57. Defendants Feller, DTF, Levato, Quality, Mesardjian, and Tait are each a "person" within the meaning of O.R.S. 166.715(5).

58. Defendants Feller, DTF, Levato, Quality, Mesardjian, and Tait; and Cooper, Quality, Southern, United, Midwest Auto, Paradise Sun Tanning, Platinum, Priority Towing, Rapid Recovery, RJP, Secure Financial, Sunrise Lawn, Transolutions, Feller Equine, and Uptown Shoes constitute an "enterprise" within the meaning of O.R.S. 166.715(2) and 166.720(3). The enterprise has an ascertainable structure that is separate and distinct from Feller, DTF, Levato, Quality, Mesardjian, and Tait's pattern of racketeering activities.

59. Defendants Feller, DTF, Levato, Quality, Mesardjian, and Tait were employed by and/or associated with the enterprise. Feller, DTF, Levato, Quality, Mesardjian, and Tait conducted or participated, directly or indirectly, in the conduct of the enterprise's affairs through a pattern of racketeering activity within the meaning of O.R.S. 166.715(4), O.R.S. 166.716(a)(K), 166.716(a)(P), and 166.720(3), to wit, multiple instances of mail fraud, wire fraud, theft by deception, theft by receiving, and the fraudulent obtaining of a signature.

a. Feller, DTF, Levato, Quality, Mesardjian, and Tait committed multiple acts of mail fraud in violation of 18 U.S.C. § 1341 by forming a scheme to defraud Yakima by charging Yakima for freight services that Cooper, Southern, and United never performed; using the mails to further their fraudulent scheme by mailing fraudulent "invoices"

from Missouri to Oregon and between South Carolina, Missouri, and California; and doing so with the specific intent of defrauding Yakima out of millions of dollars.

b. Feller, DTF, Levato, Quality, Mesardjian, and Tait committed multiple acts of wire fraud in violation of 18 U.S.C. § 1343 by forming a scheme to defraud Yakima by charging Yakima for freight services that Cooper, Southern, and United never performed; using the wires to further their fraudulent scheme by sending fraudulent "invoices" from Missouri to Oregon and between South Carolina, Missouri, and California; compelling Yakima to pay those "invoices;" and doing so with the specific intent of defrauding Yakima out of millions of dollars.

c. Feller, DTF, Levato, Quality, Mesardjian, and Tait committed multiple acts of theft by deception in violation of O.R.S. 164.085 by obtaining Yakima's money by creating and confirming Yakima's false impression that Cooper, Southern, and United had performed shipping services for which payment was due when Feller, DTF, Levato, Quality, and Mesardjian, Tait did not believe this to be true; failing to correct Yakima's false impression that Feller, DTF, Levato, Quality, Mesardjian, and Tait had previously created and confirmed; preventing Yakima from acquiring information pertinent to the disposition of its funds paid to Cooper, Southern, and United; and promising that Cooper, Southern, and United would perform freight services for Yakima when Feller, DTF, Levato, Quality, Mesardjian, and Tait knew that Cooper, Southern, and United would not perform. Feller, DTF, Levato, Quality, Mesardjian, and Tait acted with intent to defraud Yakima out of millions of dollars.

d. Feller, DTF, Levato, Quality, Mesardjian, and Tait committed multiple acts of theft by receiving in violation of O.R.S. 164.095 by receiving, retaining, concealing, and disposing of Yakima's funds knowing that those funds were the subject of theft by deception.

e. Feller, DTF, Levato, Quality, Mesardjian, and Tait committed multiple acts of fraudulently obtaining a signature in violation of O.R.S. 165.042 by obtaining

Yakima's signature on checks and other documents by knowingly misrepresenting that Cooper, Southern, and United had performed shipping services for which Yakima was obligated to pay, with the intent to defraud Yakima out of millions of dollars.

60. As a direct and proximate result of Feller, DTF, Levato, Quality, Mesardjian, and Tait's violation of O.R.S. 166.720(3), Yakima paid Cooper, Southern, and United approximately \$4,000,000 for freight services that Cooper, Southern, and United never rendered, the precise amount to be determined at trial.

61. Yakima is entitled to recover from Feller, DTF, Levato, Quality, Mesardjian, and Tait three times Yakima's actual damages, plus costs and attorney's fees under O.R.S. 166.725(7)(a)(B) and (14).

62. Yakima is entitled to a temporary restraining order and a preliminary injunction under O.R.S. 166.725(1)(b) and (6)(b) to prohibit Feller, DTF, Levato, Quality, Mesardjian, and Tait, his and its agents, servants, employees, attorneys, and those persons or entities in active concert or participation with him or it from encumbering, selling, removing, transferring, or otherwise disposing of any property, cash, or assets in which Feller, DTF, Levato, Quality, Mesardjian, and/or Tait has an interest either directly, indirectly, or in common or jointly with others, or from engaging in the type of racketeering activity that gave rise to this action.

FOURTH CLAIM FOR RELIEF

Violation of ORICO, O.R.S. 166.720(4)

Conspiracy to violate O.R.S. 166.720(3)

(Against all Defendants)

63. Yakima realleges paragraphs 1 through 62 as if fully set forth herein.

64. Feller, DTF, Levato, Quality, Mesardjian, and Tait intentionally and knowingly agreed and conspired to violate O.R.S. 166.720(3) in the manner set forth in the Third Claim for Relief—incorporated by reference herein—in violation of O.R.S. 166.720(4).

65. As a direct and proximate result of Feller, DTF, Levato, Quality, Mesardjian, and Tait's violation of O.R.S. 166.720(4), Yakima paid nearly \$4,000,000 for freight services that Cooper, Southern, and United never rendered, the precise amount to be proven at trial.

66. Yakima is entitled to recover from Feller, DTF, Levato, Quality, Mesardjian, and Tait three times Yakima's actual damages, plus costs and attorney's fees under O.R.S. 166.725(7)(a)(B) and (14).

67. Yakima is entitled to a temporary restraining order and a preliminary injunction under O.R.S. 166.725(1)(b) and (6)(b) to prohibit Feller, DTF, Levato, Quality, Mesardjian, and Tait, his and its agents, servants, employees, attorneys, and those persons or entities in active concert or participation with him or it from encumbering, selling, removing, transferring, or otherwise disposing of any property, cash, or assets in which Feller, DTF, Levato, Quality, Mesardjian, and/or Tait has an interest either directly, indirectly, or in common or jointly with others, or from engaging in the type of racketeering activity that gave rise to this action.

FIFTH CLAIM FOR RELIEF

Breach of Contract

(Against Defendant DTF)

68. Yakima realleges paragraphs 1 through 67 as if fully set forth herein.

69. The Consulting Agreement is an enforceable contract between Yakima and DTF.

70. Mutual obligations arose under the terms of the Consulting Agreement. Yakima had a duty to pay DTF; DTF had a duty to perform freight consulting services honestly and in good faith.

71. Yakima performed all its duties under the Consulting Agreement and fulfilled all conditions precedent to DTF's performance.

72. DTF breached its duties under the Consulting Agreement by, among other things:

- a. Causing Yakima to pay fictitious Cooper, Southern, and United invoices;
- b. Causing Yakima to be overcharged for freight services; and
- c. Breaching its implied duty of good faith and fair dealing under the Consulting Agreement.

73. DTF's breach damaged Yakima in the amount of at least \$1,149,432, the precise amount to be proven at trial.

SIXTH CLAIM FOR RELIEF

Breach of Fiduciary Duty

(Against Defendants Feller and Tait)

74. Yakima realleges paragraphs 1 through 73 as if fully set forth herein.

75. The responsibilities and obligations undertaken by Feller and Tait as Yakima employees, and later as consultants for Yakima, imposed fiduciary duties on Feller and Tait to act for Yakima's benefit with the utmost care, loyalty, and complete disclosure.

76. Feller and Tait breached their fiduciary duties to Yakima by:

- a. Committing repeated acts of fraud against Yakima;
- b. Acting against Yakima's interests;
- c. Breaching their duty of loyalty to Yakima; and
- d. Engaging in self-dealing.

77. Feller's and Tait's breach damaged Yakima in the amount of at least \$4,000,000, the precise amount to be proven at trial.

SEVENTH CLAIM FOR RELIEF

Fraud

(Against all Defendants)

78. Yakima realleges paragraphs 1 through 77 as if fully set forth herein.

79. Feller, DTF, Levato, Quality, Mesardjian, and Tait repeatedly made false representations to Yakima that Cooper, Southern, and United had performed freight services; that Cooper, Southern, and United's "invoices" reflected actual services performed at agreed-upon rates; and that Cooper, Southern, and United's invoices were valid debts that Yakima was obligated to pay.

80. Feller, DTF, Levato, Quality, Mesardjian, and Tait engaged in fraud by omission by failing to tell Yakima that Cooper, Southern, and United were wholly or partially fictitious entities; that Cooper, Southern, and United performed little or no freight services; that Cooper, Southern, and United's "invoices" were fictitious; that Yakima did not owe Cooper, Southern, and United any money; and that the money Yakima paid Cooper, Southern, and United would in fact go to Feller, DTF, Levato, Mesardjian, and Tait.

81. Feller, DTF, Levato, Quality, Mesardjian, and Tait's representations were material; each knew that their respective representations were likely to induce Yakima to make payments to Cooper, Southern, and United under false pretenses.

82. Feller, DTF, Levato, Quality, Mesardjian, and Tait knew that their respective representations to Yakima were false, and they intended for Yakima to act upon their respective misrepresentations by making payments for services that Cooper, Southern, and United never rendered.

83. Yakima was unaware that Feller, DTF, Levato, Quality, Mesardjian, and Tait's respective representations were false. Yakima relied upon their representations as being true. Yakima's reliance was reasonable and rightful given that Feller and Tait were Yakima's trusted employees and then, Feller and DTF, Yakima's trusted consultant.

84. In reliance on Feller, DTF, Levato, Quality, Mesardjian, and Tait's misrepresentations, Yakima paid Cooper, Southern, and United at least \$4,000,000 for fictitious services.

85. Feller, DTF, Levato, Quality, Mesardjian, and Tait's fraud consequently and proximately caused damages to Yakima in the amount of at least \$4,000,000, the precise amount to be proven at trial.

EIGHTH CLAIM FOR RELIEF

Civil Conspiracy

(Against all Defendants)

86. Yakima realleges paragraphs 1 through 85 as if fully set forth herein.

87. Feller, DTF, Levato, Quality, Mesardjian, and Tait mutually agreed to defraud Yakima. Feller, DTF, Levato, and Mesardjian issued invoices to Yakima, which paid for services that Cooper, Southern, and United never performed. Feller, DTF, Levato, Quality, Mesardjian, and Tait knew of and took affirmative steps to cover up the fraud.

88. As a direct and proximate result, Yakima was damaged in the amount of at least \$4,000,000, the precise amount to be proven at trial.

WHEREFORE, Yakima prays for relief as follows:

1. On its First Claim for Relief, damages in the amount of at least \$12,000,000, the precise amount to be proven at trial, plus costs and attorney's fees under 18 U.S.C. § 1964(c);

2. On its Second Claim for Relief, damages in the amount of at least \$12,000,000, the precise amount to be proven at trial, plus costs and attorney's fees under 18 U.S.C. § 1964(c);

3. On its Third Claim for Relief, damages in the amount of at least \$12,000,000, the precise amount to be proven at trial, a temporary restraining order and a preliminary injunction under O.R.S. 166.725(6)(b); and costs and attorney's fees under

O.R.S. 166.725(14);

4. On its Fourth Claim for Relief, damages in the amount of at least \$12,000,000, the precise amount to be proven at trial, a temporary restraining order and a preliminary injunction under O.R.S. 166.725(6)(b); and costs and attorney's fees under O.R.S. 166.725(14);

5. On its Fifth Claim for Relief, damages in the amount of at least \$1,149,432, the precise amount to be proven at trial;

6. On its Sixth Claim for Relief, damages in the amount of at least \$4,000,000, the precise amount to be proven at trial;

7. On its Seventh Claim for Relief, damages in the amount of at least \$4,000,000, the precise amount to be proven at trial;

8. On its Eighth Claim for Relief, damages in the amount of at least \$4,000,000, the precise amount to be proven at trial;

9. A Temporary Restraining Order and Preliminary Injunction;

10. Yakima's reasonable costs incurred herein; and

11. Such other and further relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38, Yakima demands a jury trial on all issues raised in this Complaint.

Dated this 26th day of April, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **FIRST AMENDED COMPLAINT**
on:

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Attorneys for Defendants

by electronic means through the Court's Case Management/Electronic Case File system on the date set forth below;

by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to each party's last-known address and depositing in the U.S. mail at Portland, Oregon on the date set forth below;

by causing a copy thereof to be hand-delivered to each attorney at each attorney's last-known office address on the date set forth below;

by sending a copy thereof via overnight courier in a sealed, prepaid envelope, addressed to each party's last-known address on the date set forth below; or

by faxing a copy thereof to each party at such party's last-known facsimile number on the date set forth below.

DATED this 26th day of April, 2007.

TONKON TORP LLP

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