

1 GIRARDI | KEESE
THOMAS V. GIRARDI, SBN 36603
2 tgirardi@girardikeese.com
3 STEPHEN G. LARSON, SBN 145225
slarson@girardikeese.com
4 GRAHAM B. LIPPSMITH, SBN 221984
5 glippsmith@girardikeese.com
1126 Wilshire Blvd.
6 Los Angeles, CA 90017
7 Telephone: (213) 977-0211
Facsimile: (213) 481-1554
8

9 WILKES & McHUGH
CASEY A. HATTON, SBN 246081
10 3780 Kilroy Airport Way, Suite 220
11 Long Beach, CA 90806
Telephone: (562) 424-3003
12

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION
16

17 BARTON SPINDLER, DEBORAH)
UNDERWOOD and VALERIE BURKS,)

18 Plaintiffs,)
19)

20 vs.)

21 JOHNSON & JOHNSON CORP.,)
22 OMNICARE, INC., and DOES 1-10.,)
Inclusive,)
23)

24 Defendants.)
25)
26)
27)
28)

CIVIL ACTION NO.

C V 10 1414

COMPLAINT

DEMAND FOR JURY TRIAL

EDL

ORIGINAL
FILED
APR - 2 2010
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

M
10
IS

E-filing

ORIGINAL
BY FACSIMILE

1 **COMPLAINT**

2 On information and belief, Plaintiffs Barton Spindler, Deborah Underwood and Valerie Burks
3 allege as follows:
4

5 **Introduction**

6 1. This is a case involving the exploitation of the approximately more than a million
7 residents of nursing homes in the United States. The residents are the frail and elderly portions of
8 our society who are among our most vulnerable. These residents are unique in our population when
9 it comes to the use of pharmaceutical drugs. The residents are administered the greatest number of
10 drugs, have the least ability to protest if the drugs are administered inappropriately and have the
11 most consistent of payment sources, state and federal governments. This "perfect storm" of need,
12 vulnerability and guaranteed payment are the environment in which the defendants created a
13 scheme of kickbacks, illicit sales promotion, price fixing and avoidance of federal regulation.
14 Defendant Johnson & Johnson Corp. ("Johnson & Johnson") is a pharmaceutical manufacturer.
15 Omnicare, Inc. ("Omnicare") occupies a "dual" role of a dispensing pharmacy and consulting
16 pharmacy for approximately 1,400,000 nursing home residents, representing approximately 90% of
17 the Medicare certified nursing home beds in the United States.

18 2. The Defendants conspired to create "programs" that violated Medicaid's best price
19 law. This law was intended to ensure that Medicaid paid the lowest price available for drugs. The
20 Defendants violated this law and then covered up the violations by a program of rebates, kickbacks,
21 and illusory service agreements in order to increase market share, revenue and profitability for the
22 defendants. The Defendants also created programs to increase the use of drugs in the elderly in
23 such a brazen manner that they named one of the programs "one extra script per patient."
24 Defendant Johnson & Johnson paid Defendant Omnicare to run the program designed to increase
25 drug use for residents even though all defendants knew that one of Omnicare's duties as a
26 consulting pharmacy was to advise and determine methods to reduce drug use for residents. Further
27 Defendants agreed and in fact their agreement required that Omnicare use its position of power and
28 influence over the residents as a consulting pharmacist to market and recommend certain of

1 Johnson & Johnson drugs by giving the Johnson & Johnson drugs elevated status as the default
2 drug of choice without regard to best interests of the residents. The Defendants made this
3 agreement even though all the Defendants knew that one of Omnicare's duties as a consulting
4 pharmacy was to ensure the best medication for a resident. Defendant Omnicare had a conflict: it
5 could push Johnson & Johnson drugs and receive kickbacks in the form of yearly discounts and
6 marketing fees or do what was best for the residents. Defendant Omnicare in concert with
7 Defendant Johnson & Johnson resolved the conflict illegally in favor of revenue. As a result,
8 residents were overcharged for their medications, had additional medications administered and
9 were unlawfully switched to Johnson & Johnson drugs all as part and parcel of the Defendants'
10 conspiracy to increase revenue. Omnicare engaged in self-dealing and agreed to become a
11 marketing arm for Johnson & Johnson in violation of Omnicare's duties as a dispensing and
12 consulting pharmacy for the benefit of the elderly and infirm.

13 14 **Jurisdiction and Venue**

15 3. Jurisdiction in the Northern District of California is proper under 28 U.S.C. § 1332
16 based on the parties' diversity of citizenship. The amount in controversy exceeds \$75,000.00 and is
17 in excess of the jurisdictional limit for the United States District Court.

18 4. Venue is proper in this Court under 28 U.S.C. § 1391 because at least one of
19 Defendants operates facilities and conducts a substantial amount of business in the Northern
20 District of California and a substantial part of the events or omissions giving rise to the claim
21 occurred in the Northern District of California.

22 **The Parties**

23 5. Plaintiff Barton Spindler brings this claim individually and on behalf of all those
24 similarly situated. Barton Spindler is the successor in interest to Seymour Spindler, who is
25 deceased.

26 6. Seymour Spindler was a resident of Manor Care Nursing Center of Hemet in Hemet,
27 Riverside County, California from November 9, 2005 to November 21, 2005. During Mr.
28 Spindler's residency, Mr. Spindler was given Levaquin.

1 7. At material times during Mr. Spindler's residency, Omnicare, Inc., by and through its
2 agents or subsidiaries, provided goods and services directly and/or indirectly to him as both the
3 dispensing pharmacy and the consulting pharmacy.

4 8. Plaintiff Deborah Underwood brings these claims individually and on behalf of all
5 those similarly situated. She is the personal representative of the Estate of Geraldine Strawderman.

6 9. Geraldine Strawderman was a resident of Evergreen Valley Health and Rehabilitation
7 Center in Mesa, Arizona from February 25, 2005 through September 28, 2006. During Ms.
8 Strawderman's residency, Ms. Strawderman was given Levaquin.

9 10. At material times during Ms. Strawderman's residency, Omnicare, Inc., by and
10 through its agents or subsidiaries, provided goods and services directly and/or indirectly to her as
11 both the dispensing pharmacy and the consulting pharmacy.

12 11. Plaintiff Valerie Burks n/k/a Valerie Blueford brings these claims individually and on
13 behalf of all those similarly situated. She is the personal representative of the Estate of Dora
14 Backus.

15 12. Dora Backus was a resident of Quapaw Quarter Nursing Center and Rehabilitation in
16 Little Rock, Arkansas from April 11, 2003 through April 24, 2005. During Ms. Backus's
17 residency, Ms. Backus was given Risperdal.

18 13. At material times during Ms. Backus's residency, Omnicare, Inc., by and through its
19 agents or subsidiaries, provided goods and services directly and/or indirectly to her as both the
20 dispensing pharmacy and the consulting pharmacy.

21 14. Omnicare provides goods and services to nursing home residents directly and
22 indirectly through agents and subsidiaries, including, but not limited to the following:
23 NeighborCare of Northern California, Inc; Alacritas Biopharma, Inc.; Clinimetrics Research
24 Associates, Inc.; Evergreen Pharmaceutical of California, Inc. f/k/a/ PIP Acquisition, West Val
25 Premiere; In-House Pharmacies, Inc.; NeighborCare of California, Inc.; NeighborCare – TCI2,
26 LLC; NeighborCare-Medisco, Inc.; Premier Institutional Pharmacy, Inc.; PIP Acquisition, Corp.;
27 Bay Pharmacy; Home Care Pharmacy; United Pharmacy Associates; Neighborcare Pharmacy
28 Services, Inc.; Badger Acquisition of Tampa, LLC; Omnicare Senior Health Outcomes; and

1 American Pharmaceutical Services. Fifteen (15) of Omnicare's subsidiaries are located in
2 California. There is no state in which Omnicare has more locations than it does in California.

3 15. Omnicare is the nation's largest provider of pharmacy dispensing services and
4 pharmacy consulting services to long-term care facilities in the country. Over the last several years,
5 Omnicare provided goods and services to millions of residents in 47 states, including California.

6 16. In 1999, Omnicare provided goods and services to more than 715,000 residents. By
7 2009, the number of residents to and for whom Omnicare provided goods and services annually
8 exceeded 1.37 million.

9 17. Johnson & Johnson is headquartered in New Brunswick, New Jersey and engages in
10 business throughout the country.

11 18. Johnson & Johnson is a manufacturer and seller of pharmaceutical products and
12 medical devices by and through various direct and indirect subsidiaries including, but not limited
13 to: Ortho-McNeil-Janssen Pharmaceuticals, Inc and Johnson & Johnson Health Care Systems, Inc.
14

15 **Factual Allegations**

16 19. As part of their combination and conspiracy, Johnson & Johnson and Omnicare used
17 Omnicare's direct contact with nursing homes and their residents as an opportunity for Johnson &
18 Johnson and Omnicare to increase revenues at the residents' and the health care system's expense.

19 20. In 1987, Congress amended the Social Security Act to make clear that nursing home
20 residents had the right to be free from chemical restraint imposed for convenience or as a form of
21 discipline. *See* 42 U.S.C. § 1396r(c)(1)(A)(ii).

22 21. Thereafter, the Department of Health and Human Services created implementing
23 regulations requiring that nursing homes conduct monthly drug regimen reviews of each resident.
24 *See* 42 C.F.R. § 483.60(c). This requirement helped grow Omnicare's consulting business in the
25 long-term care industry by providing consultant pharmacists to meet the monthly drug review
26 requirements.

27 22. In 1989, Omnicare developed a program to acquire companies that provide
28 pharmaceutical goods and services to Omnicare's target market, the long-term care sector. At that

1 time, Omnicare provided goods and services to less than ten (10) percent of the long-term care
2 market.

3 23. In the late 1990's while Omnicare was a force in the long term care pharmaceutical
4 goods and services market, it only served approximately thirty (30) percent of the market.

5 24. Omnicare recognized strength in the long-term care pharmaceutical market as an
6 opportunity to earn extra revenue and additional market share by partnering with drug
7 manufacturers like Johnson & Johnson.

8 25. In as early as 1997, Omnicare and Johnson & Johnson reduced their combination and
9 conspiracy to writing.

10 26. Effective April 1, 1997, Omnicare entered a "Supply Agreement" with Johnson &
11 Johnson. The Supply Agreement governed the supply and distribution of certain listed Johnson &
12 Johnson pharmaceuticals deemed "Strategic Products" as well as the exchange of certain marketing
13 information between Omnicare and Johnson & Johnson.

14 27. Under the Supply Agreement effective April 1, 1997, Johnson & Johnson agreed to
15 pay Omnicare "performance rebates" for the sale and distribution of the Strategic Products
16 manufactured by Johnson & Johnson.

17 28. The rebates were paid "in amounts based on the utilization of the [Strategic] Products
18 by the patients covered under Benefits managed by [Omnicare]."

19 29. The "patients covered" included approximately 90% of all nursing home residents in
20 the United States.

21 30. Pursuant to this Supply Agreement, Omnicare agreed to encourage the physicians and
22 nursing homes to use Johnson & Johnson products for residents using "mechanisms like Active
23 Intervention Programs."

24 31. In the Supply Agreement, an "Active Intervention Program" was a program "applied"
25 by Omnicare and accepted in writing by Johnson & Johnson which was designed to "shift market
26 share" to Johnson & Johnson from other pharmaceutical manufacturers.

27
28

1 32. The "Strategic Products" targeted in the Supply Agreement that generated payments
2 from Johnson & Johnson to Omnicare were Floxin, Levaquin, Risperdal, Ultram, Duragesic and
3 Procrit. Omnicare's distribution of Propulsid was also listed as a bonus-generator.

4 33. Omnicare and Johnson & Johnson treated the rebates as a "year-end bonus"
5 according to the Supply Agreement.

6 34. Additionally, the Supply Agreement required that Omnicare and Johnson & Johnson
7 meet quarterly to review their joint "business plan" and "performance goals."

8 35. The Supply Agreement specifically required that Omnicare's consultant pharmacists
9 attend a training session for the sale of Propulsid and a training session for the sale of Risperdal.

10 36. Thereafter, as part of their Risperdal Initiative, Omnicare sent a "Patient Specific
11 Therapeutic Interchange Protocol for Risperdal" to all of its pharmacists.

12 37. The document is a marketing pamphlet for the use of Risperdal in geriatric dementia
13 residents.

14 38. Additional documents were provided to Omnicare's dispensing and consulting
15 pharmacists that include scripted communications with the prescribing physicians under various
16 scenarios to encourage the physicians to change the prescribed typical or atypical antipsychotic to
17 Risperdal regardless of whether the residents' current medication(s) was or were effective.

18 39. In 1999, Omnicare and Johnson & Johnson signed another "Supply Agreement"
19 which added Aciphex as a "Strategic Product" warranting bonus payments from Johnson &
20 Johnson to Omnicare.

21 40. The Supply Agreement between the two companies effective April 1, 1999 contained
22 a number of additional components including the tracking of annual purchases per nursing home
23 bed.

24 41. Another element of the 1999 Supply Agreement was the creation of a maximum
25 discount for each of Johnson & Johnson's drugs to avoid Medicaid's "Best Price" threshold which
26 would have required passing the discounts and rebates along to Medicaid.

27
28

1 42. When the "Best Price" threshold was breached, the Supply Agreement required a
2 retroactive price adjustment to bring the price of the Johnson & Johnson drug above the Medicaid
3 published list price for the particular drug.

4 43. To avoid the Medicaid "Best Price" threshold, Omnicare and Johnson & Johnson
5 created other mechanisms for the transfer of money from Johnson & Johnson to Omnicare in
6 furtherance of the scheme generated by these two companies.

7 44. In June 1999, Johnson & Johnson recognized challenges to making required rebate
8 payments to Omnicare without violating Medicaid's requirements. Johnson & Johnson developed
9 two solutions. "OPTION I - Legal Payment of the Rebate" and "OPTION II - \$300K Fee for
10 Service." The "details of OPTION II were "The Account Team needs to develop creative ways that
11 Omnicare can perform services for \$300K."

12 45. According to Johnson & Johnson, "to avoid Best Price, the Strategic Overlay for
13 Risperdal (2% of sales) had to be eliminated. In order to balance this, an agreement was
14 established with Omnicare to purchase data, roughly at the cost of the Strategic Overlay for
15 Risperdal."

16 46. The "Strategic Overlay" was the bonus paid to Omnicare for the sale of Johnson &
17 Johnson products.

18 47. In October 1999, Omnicare and Johnson & Johnson signed an "Initiative Partnership
19 Agreement" that provided separate payments from Johnson & Johnson to Omnicare for many of the
20 services Omnicare agreed to perform under the original "Supply Agreement." The "funding for the
21 program came from Johnson & Johnson in the form of a \$300,000 check.

22 48. In October of 2000, Omnicare and Johnson & Johnson signed a "Consulting &
23 Services Agreement" with an effective date of July 1, 2000. Johnson & Johnson's payment to
24 Omnicare for these services was intended to replace the value of the bonuses and rebates Johnson
25 & Johnson owed Omnicare for the sale of Risperdal while avoiding Medicaid's "Best Price"
26 threshold.

1 49. Effective October 1, 2000, there was also an amendment to Johnson & Johnson and
2 Omnicare's Supply Agreement adding Sporanox and Nizoral to the list of drugs eligible for a rebate
3 or bonus.

4 50. Johnson & Johnson made additional \$300,000 "marketing fee" payments to Omnicare
5 on at least the following dates: May 21, 2001; November 19, 2001; and August 15, 2003.

6 51. The 1999 Supply Agreement required that Risperdal and Levaquin have a "Selected
7 formulary position" at Omnicare meaning each would be a "first line therapy and would be
8 dispensed and recommended as the antipsychotic and quinolone antibiotic of choice.

9 52. Omnicare's 2000 Business Plan reported that one accomplishment in 1999 was the
10 completion of the "Risperdal Re-Ignition Program" generating over 50% market share for Johnson
11 & Johnson. The same business plan listed among Omnicare's 2000 "Strategies/Tactics" to "assist
12 brand management in decisions made regarding Omnicare;" to "move Risperdal market share over
13 60%;" to "have Risperdal in Preferred Status for Dementia and Schizophrenia;" and to "move
14 Levaquin market share over 70%."

15 53. Since 1994, Omnicare has created "Pharmaceutical Care Guidelines." Omnicare
16 represented that its Guide ranked pharmaceuticals for their clinical effectiveness in the geriatric
17 community. Omnicare represented that "Preferred" status within its formulary clinical ranking
18 meant that the particular drug had "documented distinguishing positive effects or outcomes
19 compared with other drugs in the therapeutic class, lower potential prevalence of adverse drug
20 reactions, or some unique characteristic that provides a clear clinical advantage in the nursing
21 facility resident population." Rather than meeting Omnicare's criteria for preferred status for
22 Johnson & Johnson pharmaceuticals, Johnson & Johnson contracted and paid for application of the
23 "Preferred" label to certain of its products, including Risperdal.

24 54. For nursing home accreditation purposes, one of the standards imposed was the
25 residents should be on no more than nine medications because the more medications a resident
26 takes, the more likely interactions between the medications become. This problem is exacerbated
27 by the fact that most nursing home residents have multiple physicians who each prescribe different
28 meds for different reasons. Consultant pharmacists do monthly audits to review all of the

1 medications prescribed and recommend changes to limit the likelihood of interactions. For
2 example, regulations limit drugs that can be used in geriatric patients and nursing home residents
3 taking psychotropic medications must have attempts made to reduce the dose annually.

4 55. In the face of these requirements, in at least January 2000, Omnicare created the "one
5 extra script per patient" "Re-View Program." The Re-View program was funded by "grants" paid
6 by Johnson & Johnson totaling \$251,000 in the year 2000 alone.

7 56. Omnicare and Johnson & Johnson's Risperdal Initiative continued into 2003 not only
8 through consultant pharmacist and drug regimen review recommendations to change residents to
9 Risperdal, but also by having dispensing pharmacists contact prescribing physicians to make
10 wholesale changes from drugs created by manufacturers other than Johnson & Johnson to the drugs
11 carrying the "Preferred" status for which Johnson & Johnson paid handsomely.

12 57. Certain of the contacts by Omnicare pharmacists were made through letters to
13 physicians asking for the authority to change prescriptions for other antipsychotic medications to
14 Risperdal. If the physician signed the authorization, any existing prescription for any resident on
15 one of the identified antipsychotic medications would automatically be changed at the pharmacy to
16 cause Risperdal to be dispensed instead.

17 58. Omnicare reported the following to its pharmacists and operations managers:

18 **It is imperative that each and every resident on a conventional antipsychotic be**
19 **re-evaluated for appropriate conversion to an atypical antipsychotic with**
20 **Risperdal being the more cost effective GPCG 'preferred' alternative. In**
21 **addition, residents excluded from the formal fax initiative should not be excluded**
22 **from ongoing formal consultant pharmacist evaluation for potential conversion to**
23 **Risperdal where clinically appropriate.**

24 59. Pursuant to Omnicare's and Johnson and Johnson's agreements, "Product Specific
25 Active Interventions" akin to the Risperdal Initiative were instituted for Levaquin, Procrit and
26 Ultram and "General Active Intervention Programs" were instituted for Duragesic and Aciphex.

27 60. These "Initiatives" proved effective. For example, Omnicare grew Levaquin's
28 market share from 19.2% before the Initiative to 66.4% by the middle of 2001. During that same

1 time frame, Cipro, a Levaquin competitor's market share in Omnicare shrank from over 80% to
2 approximately 28%.

3 61. Communications between Johnson & Johnson and Omnicare indicated that
4 Levaquin's market share increased 19% in five months "due to Omnicare pharmacist's physician
5 calling."

6 62. Johnson & Johnson and Omnicare found other avenues for Johnson & Johnson to pay
7 Omnicare outside of the restrictions on "Best Price" for the drugs themselves, including annual
8 meetings and golf tournaments.

9 63. The Agreements between Omnicare and Johnson & Johnson specifically required that
10 the deals between Omnicare and Johnson & Johnson not be made public.

11 64. The Agreements were concealed from discovery thus tolling the statute of
12 limitations, or in the alternative, delaying the accrual of any and all available claims.

13 65. As Johnson & Johnson was well aware, Omnicare targeted and purchased dispensing
14 pharmacies throughout the country to facilitate and expand Omnicare's market of nursing home
15 residents available. Expanding the number of nursing home residents subjected to the various
16 marketing tools and "Initiatives" intended to increase Johnson & Johnson's market share within
17 Omnicare benefited both Johnson & Johnson and Omnicare at the expense of the nursing home
18 residents themselves.

19 66. Omnicare and Johnson & Johnson engaged in a combination and conspiracy, pattern
20 of conduct and in business practices that affected an entire class of the elderly and infirm.

21 67. Their combination and conspiracy began in at least 1997 and continues to date.

22 68. The effect of the combination and conspiracy between Omnicare and Johnson &
23 Johnson is as follows:

- 24 a.) Omnicare's market share increased from less than 10% of the long-term care market
25 in the early 1990's to approximately 90% of the market by the end of 2009;
26 b.) Johnson & Johnson's market share of the pharmaceutical goods sold to the long-term
27 care market increased substantially;

28

- 1 c.) Omnicare's revenues continue to grow to date through the discounts and rebates it
2 receives from manufacturers and suppliers including Johnson & Johnson;
3 d.) Johnson & Johnson enjoyed over \$100 million in revenues annually as a direct result
4 of the agreements with Omnicare; and
5 e.) To date, the more higher acuity drugs dispensed by Omnicare, the higher Omnicare's
6 revenues.

7 **The Class**

8
9 69. The Class is defined as follows: All nursing home residents and/or the estates of all
10 nursing home residents who received drugs and/or services from Omnicare, Inc. and/or any of its
11 direct or indirect subsidiaries, who were dispensed Risperdal, Ultram, Levaquin, Duragesic or
12 Procrit and who paid money, who incurred a obligation for charges or whose benefits providers
13 paid money on their behalf for those drugs from April 1, 1997 to the present.

14 70. The alternative Class is defined as follows: All California nursing home residents
15 and/or the estates of all California nursing home residents who received drugs and/or services from
16 Omnicare, Inc. and/or any of its direct or indirect subsidiaries, who were dispensed Risperdal,
17 Ultram, Levaquin, Duragesic or Procrit and who paid money, who incurred a obligation for charges
18 or whose benefits providers paid money on their behalf for those drugs from April 1, 1997 to the
19 present.

20 71. The Class is so numerous that it would be impracticable to bring all members of the
21 Class before the Court.

22 72. The members of the Class are believed to number in at least the tens of thousands and
23 are geographically dispersed among at least forty-seven states, including California.

24 73. Although Plaintiff is not in possession of the identities of the members of the Class,
25 the Class members can be identified from records within the Defendants' possession, custody or
26 control.

27 74. Because the Defendants engaged in a pattern and practice of activity, there are
28 numerous questions of law and fact common to the Class.

75. Plaintiffs' claims are typical of the claims available to the members of the Class.

- 1 b.) direct discussion of present and future plans concerning using Omnicare's direct and
2 indirect relationship with nursing home residents to increase revenues to Omnicare
3 and increase Johnson & Johnson's market share of the pharmaceuticals Omnicare
4 dispensed to the residents;
- 5 c.) the regular exchange of information regarding the use of Omnicare's direct and
6 indirect relationship with nursing home residents to increase revenues to Omnicare
7 and to increase Johnson & Johnson's market share of pharmaceuticals dispensed to
8 the residents; and
- 9 d.) an agreement or agreements to use Omnicare's direct and indirect relationship with
10 nursing home residents to increase revenues to Omnicare and to Johnson & Johnson.

11 84. The effect of the contracts, combination and conspiracy were both price advantages
12 and non-price trade advantages that would not be available in the absence of the concerted activity
13 and results in supra-competitive profits to Omnicare and Johnson & Johnson.

14 85. Defendants' conduct increased pharmaceutical costs to nursing home residents and
15 their families by increasing the amount of money spent on pharmaceuticals for nursing home
16 residents by increasing the number of pharmaceuticals prescribed; by causing Johnson & Johnson's
17 share of the pharmaceutical market to be increased over other less expensive alternatives; and by
18 charging more for the Johnson & Johnson products than was allowed by law.

19 86. In addition to greater revenues, Defendants' combination and conspiracy allowed
20 Omnicare and Johnson & Johnson to each substantially increased their share of their respective
21 markets.

22 87. Defendants' conduct constitutes a per se violation of § 1 of the Sherman Act.

23 88. Alternatively, Defendants' conduct constitutes an unreasonable restraint of trade
24 when judged against the rule of reason.

25 89. As a result of the Defendants' and co-conspirators' ongoing conduct, Plaintiffs have
26 suffered and will continue to suffer loss or damage, and threatened loss or damage to their property
27 or otherwise.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Count II

Violation of California Business & Professions Code § 17200, et seq

90. Plaintiffs re-allege and incorporate paragraphs 1 through 89 above as if restated here.

91. Defendants' actions constituted unlawful, unfair and fraudulent business acts or practices within the meaning of California Business and Professions Code § 17200 *et seq.*

92. As a direct and proximate result of Defendants' unlawful, unfair and fraudulent business practices, Defendants injured Plaintiffs because they paid money, incurred obligations for charges and/or their benefits providers paid money on their behalf for Risperdal, Ultram, Levaquin, Duragesic or Procrit.

93. Accordingly, Plaintiffs may obtain all remedies and penalties authorized by the statute, including without limitation restitution, disgorgement, and other penalties for each illegal or fraudulent business act or practice, and attorneys' fees pursuant to statute and the Court's equitable powers, in an amount subject to proof.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request:

- A. That Defendants' actions alleged herein be adjudged and decreed to be in violation of the Sherman Act, 15 U.S.C. § 1 *et seq.*;
- B. That Defendants' actions alleged herein be adjudged and decreed to be in violation of the Clayton Act, 15 U.S.C. § 12 *et seq.*;
- C. That Defendants' actions alleged herein be adjudged and decreed to be in violation of California Business & Professions Code § 17200, *et seq.*;
- D. That injunctive relief is granted, including, a divestiture decree and an order enjoining Defendants from continuing the illegal course of conduct alleged herein pursuant;
- E. Defendants be found liable for the damages caused by their conduct in violation of antitrust laws;
- F. That restitution be awarded;
- G. That disgorgement be awarded;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

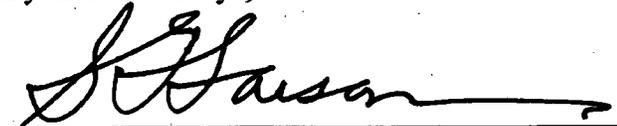
- H. That a constructive trust be imposed;
- I. That Plaintiffs and the Class recover their costs of this suit, including reasonable attorneys' fees, as provided by law;
- J. That Plaintiffs and the Class be granted such other relief that is necessary to prevent a recurrence of the conspiracy;
- K. That Plaintiffs and the Class be awarded punitive damages in an amount to be determined by the trier of fact; and
- L. That all matters triable by a jury be so tried.

Dated: April 2, 2010

PLAINTIFFS REQUEST A TRIAL BY JURY ON ALL COUNTS.

Plaintiffs, BARTON SPINDLER, DEBORAH
UNDERWOOD and VALERIE BURKS

By their Attorneys,



Thomas V. Girardi
Stephen G. Larson
Graham B. LippSmith
1126 Wilshire Boulevard
Los Angeles, CA 90017