

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

**IN RE: GENERIC PHARMACEUTICALS PRICING
ANTITRUST LITIGATION
MDL NO. 2724**

**THIS DOCUMENT RELATES TO ALL END-PAYOR
ACTIONS**

**LOUISIANA HEALTH SERVICE INDEMNITY
COMPANY d/b/a BLUE CROSS AND BLUE
SHIELD OF LOUISIANA and
HMO LOUISIANA, INC.,**

Plaintiff

VERSUS

**AUROBINDO PHARMA USA, INC., CITRON PHARMA,
LLC, HERITAGE PHARMACEUTICALS, INC., TEVA
PHARMACEUTICALS USA, INC., JEFFREY A. GLAZER,
and JASON T. MALEK**

Defendants.

CASE NO. _____

CLASS ACTION COMPLAINT

**JURY TRIAL
DEMANDED**

I. NATURE OF THE ACTION

1. For more than two years, federal and state enforcement agencies have been investigating price-fixing and bid-rigging by companies in the generic drug industry, including the manufacturers of generic Glyburide. Those investigations followed a Congressional inquiry and hearing concerning a significant spike in generic pricing.

2. On January 9, 2017, two executives of a manufacturer of generic doxycycline pled guilty in federal court in the Eastern District of Pennsylvania to criminal price-fixing, thereby confirming the existence of conspiracies among generic drug manufacturers to fix prices. In addition, in December 2016, the Attorneys General of 20 states filed a civil complaint in the United States District Court for the District of Connecticut also alleging price fixing of generic doxycycline. Further seventy one (71) generic pricing actions (44 end payor actions, and 27 direct purchaser actions) have been filed in the Federal Courts including thirty-eight (38) in the Eastern District of Pennsylvania, twenty-six (26) in the Southern District of New York, five (5) in the District of New Jersey, and two (2) in the District of Puerto Rico.

3. This case is brought by Louisiana Health Service Indemnity Company D/B/A Blue Cross And Blue Shield Of Louisiana, and HMO Louisiana, Inc., on behalf of themselves and all other similarly situated indirect purchasers (“End-Payers” or “Plaintiffs”) of generic Glyburide, to recoup overcharges that resulted from Defendants’ price-fixing conspiracies. Plaintiffs bring this action both individually and on behalf of (a) a national injunctive class of persons or entities in the United States and its territories who indirectly purchased, paid and/or provided reimbursement for some or all of the purchase price of generic Glyburide, products manufactured by any Defendant from October 1, 2012 to the present, and (b) a damages class of or entities in the states identified herein, the District of Columbia and U.S. territories who indirectly purchased, paid and/or provided reimbursement for some or all of the purchase price of generic

Glyburide, products manufactured by any Defendant, other than for resale, from October 1, 2012 to the present.

4. Defendants engaged in conspiracies to allocate customers, rig bids and fix, maintain and/or stabilize the prices of generic Glyburide. As a result of Defendants' unlawful conduct, Plaintiffs and the other members of the proposed Classes paid artificially inflated prices. All allegations herein are based on information and belief, except for those relating to Plaintiffs.

II. ONGOING FEDERAL AND STATE INVESTIGATIONS

5. In 2014, the Antitrust Division of the United States Department of Justice ("DOJ") commenced a wide-ranging criminal investigation of broad conspiracies to fix the prices of generic drugs, including, but not limited to, generic Glyburide, and has caused grand jury subpoenas to be issued to various of the defendants named here and in other Complaints filed in this Court. According to one report, prosecutors see the case much like DOJ's antitrust probe of the auto parts industry, which has gone on for years and morphed into the DOJ's largest criminal antitrust probe ever. *See In re Automotive Parts Antitrust Litig.*, No. 2:12-md-02311 (E.D. Mich.). Like in that case, prosecutors expect "to move from one drug to another in a similar cascading fashion."¹ According to a recent Bloomberg report, "[t]he antitrust investigation by the Justice Department, begun about two years ago, now spans more than a dozen companies and about two dozen drugs, according to people familiar with the matter."²

6. On December 12 and 13, 2016, DOJ filed criminal Informations against Jeffrey Glazer ("Glazer") and Jason Malek ("Malek") (both named as Defendants in other

¹ <http://www.mergermarket.com/pdf/DoJ-Collusion-Generic-Drug-Prices-2015.pdf>.

² <http://www.bloomberg.com/news/articles/2016-11-03/u-s-charges-in-generic-drug-probe-said-to-be-filed-by-year-end>.

Complaints filed in this Court), the respective former Chief Executive Officer and President of Heritage Pharmaceuticals, Inc. (“Heritage”) (also named a Defendant in other Complaints filed in this Court). The criminal Informations accuse both men of conspiring with unidentified co-conspirators to “knowingly enter[] into and engag[e] in a combination and conspiracy with other persons and entities engaged in the production and sale of generic pharmaceutical products, the primary purpose of which was to allocate customers, rig bids, and fix and maintain prices of generic pharmaceutical products sold in the United States.” Information ¶ 6, *United States v. Glazer*, No. 2:16-cr-00506-RBS (E.D. Pa. Dec. 12, 2016) (ECF No. 1); Information ¶ 6, *United States v. Malek*, No. 2:16-cr-00508-RBS (E.D. Pa. Dec. 13, 2016) (ECF No. 1)

7. A press release issued by DOJ in conjunction with these filings stated:

Millions of Americans rely on prescription medications to treat acute and chronic health conditions. By entering into unlawful agreements to fix prices and allocate customers, these two executives sought to enrich themselves at the expense of sick and vulnerable individuals who rely upon access to generic pharmaceuticals as a more affordable alternative to brand-name medicines, said Deputy Assistant Attorney General Brent Snyder of the Justice Department’s Antitrust Division. “These charges are an important step in correcting that injustice and in ensuring that generic pharmaceutical companies compete vigorously to provide these essential products at a price set by the market, not by collusion.

Conspiring to fix prices on widely-used generic medications skews the market, flouts common decency – and very clearly breaks the law, said Special Agent in Charge Michael Harpster of the FBI’s Philadelphia Division. It’s a sad state of affairs when these pharmaceutical executives are determined to further pad their profits on the backs of people whose health depends on the company’s drugs. The FBI stands ready to investigate and hold accountable those who willfully violate federal antitrust law.³

³ <https://www.justice.gov/opa/pr/former-top-generic-pharmaceutical-executives-charged-price-fixing-bid-rigging-and-customer>.

8. On January 9, 2017, Glazer and Malek pled guilty to felony charges that they conspired with competitors to manipulate prices and allocate customers for doxycycline.

Defendant Glazer admitted that:

[he] participated in a conspiracy with other persons and entities engaged in the production and sale of generic pharmaceutical products including Doxycycline Hyclate, the primary purpose of which was to allocate customers, rig bids and fix and maintain prices of Doxycycline Hyclate sold in the United States in furtherance of the conspiracy.

Defendant and his co-conspirators, including individuals that the defendant supervised at his company and those he reported to at his company's parent, engaged in discussions and attended meetings with the co-conspirators involved in the production and sale of Doxycycline Hyclate. During such discussions and meetings, agreements were reached to allocate customers, rig bids and fix and maintain the prices of Doxycycline Hyclate sold in the United States.⁴

9. Malek admitted substantially the same facts.⁵

10. In addition, a federal grand jury empaneled in the Eastern District of Pennsylvania has issued subpoenas to other generic manufacturers, including Lannett Co., Inc. ("Lannett") and Lannett's Vice-President of Sales and Marketing (believed to be Kevin Smith ("Smith")); Impax Laboratories, Inc. ("Impax") and an unidentified sales representative of Impax; Allergan, Inc. ("Allergan"), the predecessor to Actavis Holdco U.S. Inc. ("Actavis"); Par Pharmaceutical, Inc. ("Par"); Defendant Sun Pharmaceutical Industries, Inc. ("Sun"); Mayne Pharma USA, Inc. ("Mayne"), and Mylan Pharmaceuticals, Inc. ("Mylan").

11. A report from the legal news service *mlex* indicated that DOJ had received

⁴ Tr. of Plea Hearing at 19:16-20:4, *United States v. Glazer*, No. 2:16-cr-00506-RBS (E.D. Pa. Jan. 9, 2017) (ECF No. 24); see also *id.* at 22:4-11 (admitting facts).

⁵ Tr. of Plea Hearing at 19:12-20:1, *United States v. Malek*, No. 2:16-cr-00508-RBS (E.D. Pa. Jan. 9, 2017) (ECF No. 24); see also *id.* at 21:23-22:6 (admitting facts).

assistance from a privately-held company that came forward as a leniency applicant in the summer of 2016: “While the Justice Department didn’t have a whistleblower at the beginning of the investigation, it is understood that this summer a company applied for leniency, which grants full immunity to the first company to come forward and admit to cartel violations.”

12. In addition to the federal criminal investigation, George Jepsen (“Jepsen”), the Connecticut Attorney General (“AG”), began an investigation in July of 2014 concerning the dramatic price increases in generic digoxin. That investigation expanded considerably over the next two years. On December 15, 2016, the AGs of 20 states, led by Connecticut, filed a Complaint against multiple corporate manufacturers and distributors of generic pharmaceuticals. *See State of Connecticut v. Aurobindo Pharma USA, Inc.*, No. 3:16-cv-2056 VLB (D. Conn.) (“AG Complaint”). In a press release, Jepsen said that:

My office has dedicated significant resources to this investigation for more than two years and has developed compelling evidence of collusion and anticompetitive conduct across many companies that manufacture and market generic drugs in the United States....

While the principal architect of the conspiracies addressed in this lawsuit was Heritage Pharmaceuticals, we have evidence of widespread participation in illegal conspiracies across the generic drug industry. Ultimately, it was consumers – and, indeed, our healthcare system as a whole – who paid for these actions through artificially high prices for generic drugs.

In July 2014, the state of Connecticut initiated an investigation of the reasons behind suspicious price increases of certain generic pharmaceuticals. The investigation, which is still ongoing as to a number of additional generic drugs, uncovered evidence of a well-coordinated and long-running conspiracy to fix prices and allocate markets for doxycycline hyclate delayed release and glyburide. In today's lawsuit, the states allege that the misconduct was conceived and carried out by senior drug company executives and their subordinate marketing and sales executives.

The complaint further alleges that the defendants routinely coordinated their schemes through direct interaction with their

competitors at industry trade shows, customer conferences and other events, as well as through direct email, phone and text message communications. The anticompetitive conduct – including efforts to fix and maintain prices, allocate markets and otherwise thwart competition – caused significant, harmful and continuing effects in the country’s healthcare system, the states allege.

The states further allege that the drug companies knew that their conduct was illegal and made efforts to avoid communicating with each other in writing or, in some instances, to delete written communications after becoming aware of the investigation. The states allege that the companies’ conduct violated the federal Sherman Act and are asking the court to enjoin the companies from engaging in illegal, anticompetitive behavior and for equitable relief, including substantial financial relief, to address the violations of law and restore competition.⁶

13. The publicly available version of the AG Complaint is heavily redacted. Among the obscured portions are the contents of conspiratorial communications among competitors, which Jepsen recently described as “mind-boggling.”⁷

14. These criminal Informations, guilty pleas, and the AG Complaint are merely the tip of the iceberg. Indeed, the AG Complaint specifically refers to a “wide-ranging series of conspiracies implicating numerous different drugs and competitors,” and a January 27, 2017 report stated that “new subpoenas are going out, and the [state AG] investigation is growing beyond the companies named in the suit.”⁸

III. JURISDICTION AND VENUE

15. Plaintiffs bring Count One of this action under Section 16 of the Clayton Act (15 U.S.C. § 26) for injunctive relief and costs of suit, including reasonable attorneys’ fees against Defendants for the injuries sustained by Plaintiffs and the members of the Classes described herein by reason of the violations of Sections 1 and 3 of the Sherman Act (15 U.S.C. § 1, 3).

⁶<http://www.ct.gov/ag/cwp/view.asp?Q=588538&A=2341>.

⁷ <http://ctmirror.org/2017/01/27/how-a-small-state-ags-office-plays-in-the-big-leagues/>.

⁸ *Id.*

16. This action is also instituted under the antitrust, consumer protection, and common laws of various states for damages and equitable relief, as described in Counts Two through Four below.

17. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1331 and 1337 and by Section 16 of the Clayton Act (15 U.S.C. § 26). In addition, jurisdiction is also conferred upon this Court by 28 U.S.C. § 1367.

18. Venue is proper in this District pursuant to 15 U.S.C. § 15(a) and 22 and 28 U.S.C. § 1391(b), (c) and (d) because, during the Class Period, Defendants resided, transacted business, were found, or had agents in this District, and a substantial portion of the affected interstate trade and commerce described below has been carried out in this District. Venue is also proper in this District because the federal grand jury investigating the pricing of generic drugs is empaneled here and therefore it is likely that acts in furtherance of the alleged conspiracies took place here, where Lannett and Mylan are headquartered and where Impax's generics division, Global Pharmaceuticals ("Global"), is located.

19. This Court has personal jurisdiction over each Defendant because, *inter alia*, each Defendant:

- (a) transacted business throughout the United States, including in this District;
- (b) sold Glyburide, throughout the United States, including in this District;
- (c) had substantial contacts with the United States, including in this District; and/or
- (d) was engaged in an illegal scheme and price-fixing conspiracies that was directed at and had the intended effect of causing injury to persons residing in, located in, or doing business throughout the United States, including in this district.

IV. THE PARTIES

PLAINTIFFS

20. Plaintiff, Louisiana Health Service and Indemnity Company d/b/a Blue Cross and Blue Shield of Louisiana (“BCBSLA”) is a domestic health insurance corporation licensed to conduct business in the state of Louisiana and is involved in the business of providing health benefits to covered lives. BCBSLA provides insured benefits, third party administrative services and manages health care services for its insureds and members. Plaintiff BCBSLA has paid or incurred costs for prescriptions of generic Glyburide. These prescriptions would have been restricted or priced differently if the FDA, Plaintiff’s PBM and/or prescribers had truthful and complete information about the drug.

21. Plaintiff, HMO Louisiana, Inc. is a domestic health maintenance organization licensed to conduct business in the state of Louisiana and is involved in the business of providing health benefits to covered lives. HMO Louisiana Inc. provides insured benefits, third party administrative services and manages health care services for its insureds and members. Plaintiff HMO Louisiana Inc has paid or incurred costs for prescriptions of generic Glyburide, These prescriptions would have been restricted or priced differently if the FDA, Plaintiff’s PBM and/or prescribers had truthful and complete information about the drug.

DEFENDANTS

22. Defendant **AUROBINDO PHARMA USA, INC.** (“Aurobindo”) is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 6 Wheeling Road, Dayton, New Jersey. Aurobindo has an ongoing partnership with Citron Pharma LLC, whereby Aurobindo manufactures generic glyburide, which Citron Pharma LLC

then sells under its trade dress. During the Class Period, Aurobindo conspired with others to fix and raise the prices of glyburide sold in the United States.

23. Defendant **CITRON PHARMA, LLC** (“Citron”) is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business at 2 Tower Center Boulevard, Suite 1101, East Brunswick, New Jersey. In December 2016, ACETO Corporation acquired generic products and related assets of Citron for \$429 million. During the Class Period, Citron conspired with others to fix and raise the prices of glyburide sold in the United States.

24. Defendant **HERITAGE PHARMACEUTICALS INC.** (“Heritage”) is a Delaware corporation with its principal place of business in Eatontown, New Jersey. During the Class Period, Heritage sold Glyburide, Propranolol Tablets, and generic Doxycycline in this District and throughout the United States. Heritage is a subsidiary of Emcure Pharmaceuticals Ltd., based in Pune, India.

25. Defendant **TEVA PHARMACEUTICALS USA, INC.** (“Teva”) is a Pennsylvania-based corporation with its principal place of business at 1090 Horsham Road, North Wales, Pennsylvania 19454. Teva is a subsidiary of Teva Pharmaceutical Industries Limited, an Israeli company with principal place of business located at 5 Basel Street, Petach Tikva, Israel 49131. Teva manufactures, markets, and sells various generic pharmaceutical products including Glyburide, Propranolol Capsules and Tablets, Pravastatin, and Fluocinonide in the United States and this district during the Class Period. Teva conspired with others to fix and raise the prices generic drugs sold in the United States.

26. Defendant **JEFFREY A. GLAZER** (“Glazer”) is an individual residing in Marlboro, New Jersey, and is an attorney licensed by the New Jersey State Bar (Attorney ID 031701998). Glazer was the Chief Executive Officer and Chairman of Defendant Heritage. During the Class Period, Glazer, in his capacity as CEO of Heritage, conspired with others to fix

and raise the prices of glyburide sold in the United States

27. Defendant **JASON T. MALEK** (“Malek”) is an individual residing in Ocean, New Jersey. Malek was Senior Vice President, Commercial Operations, and later President, of Defendant Heritage. During the Class Period, Malek, in his capacity as CEO of Heritage, conspired with others to fix and raise the prices of glyburide sold in the United States.

V. UNIDENTIFIED CO-CONSPIRATORS

28. Various other persons, firms, corporations and entities have participated as unnamed co-conspirators with Defendants in the violations and conspiracies alleged herein. In order to engage in the violations alleged herein, these co-conspirators have performed acts and made statements in furtherance of the antitrust violations and conspiracies alleged herein.

VI. INTERSTATE AND INTRASTATE TRADE AND COMMERCE

29. The business activities of Defendants that are the subject of this action were within the flow of, and substantially affected, interstate trade and commerce.

30. During the Class Period, Defendants sold substantial quantities of Glyburide, in a continuous and uninterrupted flow of interstate commerce to customers throughout the United States.

31. Defendants’ anticompetitive conduct occurred in part in trade and commerce within the states set forth herein, and also had substantial intrastate effects in, *inter alia*, retailers within each state were foreclosed from offering less expensive generic Glyburide to Plaintiffs inside each respective state. The foreclosure of these less expensive generic products directly impacted and disrupted commerce for Plaintiffs within each state, who were forced to pay supracompetitive prices.

VII. FACTUAL ALLEGATIONS

32. Defendants manufacture and sell, *inter alia*, generic versions of a branded drug

once the patent on the branded drug expires.

33. According to the FDA's Glossary, a generic drug is "the same as a brand name drug in dosage, safety, strength, how it is taken, quality, performance, and intended use." Once the FDA approves a generic drug as "therapeutically equivalent" to a brand drug, the generic version "can be expected to have equal effect and no difference when substituted for the brand name product." *Id.*

34. Due to the price differentials between branded and generic drugs, as well as other institutional features of the pharmaceutical industry, pharmacists liberally and substantially substitute the generic drug when presented with a prescription for the branded drug. Since passage of the Hatch-Waxman Act (Pub. L. No. 98-417, 98 Stat. 1585 (codified at 15 U.S.C. §§ 68b-68c, 70b; 21 U.S.C. §§ 301 note, 355, 360cc; 28 U.S.C. § 2201; 35 U.S.C. §§ 156, 271, 282)), every state has adopted substitution laws requiring or permitting pharmacies to substitute generic drug equivalents for branded drug prescriptions (unless the prescribing physician specifically orders otherwise by writing "dispense as written" or similar language on the prescription).

35. Defendants are manufacturers and/or distributors of generic versions of Glyburide. These Defendants collectively sell hundreds of millions of dollars worth of this drug every year in the United States.

36. A drug company seeking approval to market a generic equivalent of a brand name drug must refer to the Reference Listed Drug ("RLD") in its Abbreviated New Drug Application ("ANDA"). Once the FDA determines that a drug company's application contains sufficient scientific evidence establishing the bioequivalence of the product to the RLD, an applicant may manufacture and market the generic drug product to provide a safe, effective, low cost

alternative to the American public.

37. Furthermore, the FDA will generally assign a Therapeutic Equivalence Code (“TE Code”) of AB to those products it finds to be bioequivalent. This coding system allows users to quickly determine important information about the drug product in question. For example, the Food & Drug Administration (“FDA”) states that “[p]roducts generally will be coded AB if a study is submitted demonstrating bioequivalence. Even though drug products of distributors and/or repackagers are not included in the list, they are considered therapeutically equivalent to the application holder’s drug product if the application holder’s drug product is rated AB.”

38. Each of the generic drugs is bioequivalent to an RLD.

39. The markets for generic versions of Glyburide, are controlled by the Defendants. In fact, the Federal Trade Commission (“FTC”) has specifically asserted in recent years that the market for generic drugs is highly concentrated and subject to anticompetitive conduct. The HHI—or Herfindahl-Hirschman Index—is “a commonly accepted measure of market concentration.” The FTC and the Department of Justice “generally consider markets in which the HHI is between 1,500 and 2,500 points to be moderately concentrated, and consider markets in which the HHI is in excess of 2,500 points to be highly concentrated.”

40. Defendants’ unexplained price hikes have engendered extensive scrutiny by the United States Congress and by federal and state antitrust regulators. In a January 8, 2014 letter to members of key committees of the United States House of Representatives and Senate, Douglas P. Hoey, Chief Executive Officer of the National Community Pharmacists’ Association (“NCPUA”), asked Congress to conduct an investigation of generic drug price increases. On October 2, 2014, Sanders and Cummings sent letters to several of the generic drug companies about specific price spikes.

Congressional And Regulators' Responses

41. On November 20, 2014, Sanders's committee held a hearing entitled "Why Are Some Generic Drugs Skyrocketing In Price?" ("Senate Hearing"). Various witnesses discussed the price hikes for generic drugs.

42. Industry analysts have questioned manufacturers' claims that price increases are due to supply disruptions. Indeed, Richard Evans at Sector & Sovereign Research recently wrote: "[a] plausible explanation [for price increases of generic drugs] is that generic manufacturers, having fallen to near historic low levels of financial performance are cooperating to raise the prices of products whose characteristics – low sales due to either very low prices or very low volumes – accommodate price inflation."

43. Sanders and Cummings followed up on the Senate Hearing by writing a letter on February 24, 2015 to the Office of the Inspector General ("OIG") of the Department of Health & Human Services, asking it to investigate the effect price increases of generic drugs have had on generic drug spending within the Medicare and Medicaid programs. The OIG responded in a letter dated April 13, 2015, saying it planned to engage in a review of quarterly average manufacturer prices for the 200 top generic drugs from 2005 through 2014.

44. Antitrust regulators have also been actively investigating the price hikes. By November 3, 2014, as noted above, the DOJ opened a criminal grand jury investigation into the pricing of various generic drugs. The DOJ is poised to issue criminal indictments against various companies. State Attorneys' General, led by the Connecticut Attorney General have also pursued their own investigations.

Factors Increasing The Market's Susceptibility To Collusion

45. Factors that make a market susceptible to collusion include: (1) a high degree of industry concentration; (2) significant barriers to entry; (3) inelastic demand; (4) a standardized product with a high degree of interchangeability between the goods of cartel participants; (5) absence of a competitive fringe of sellers; and (6) intercompetitor contacts and communication.

46. **Industry Concentration.** A high degree of concentration facilitates the operation of a cartel because it makes it easier to coordinate behavior among co-conspirators.

47. In the United States, generic versions of Glyburide have a high HHI, which makes the market for these products excellent candidates for collusion.

48. **Barriers To Entry.** Supracompetitive pricing in a market normally attracts additional competitors who want to avail themselves of the high levels of profitability that are available. However, the presence of significant barriers to entry makes this more difficult and helps to facilitate the operation of a cartel.

49. Here, there are significant capital, regulatory and intellectual property barriers to entry in the generic markets. Costs of manufacture, coupled with regulatory oversight, represent a substantial barrier to entry.

50. Intellectual property costs are substantial.

51. **Demand Inelasticity.** Price elasticity of demand is defined as the measure of responsiveness in the quantity demanded for a product as a result of change in price of the same product. It is a measure of how demand for a product reacts to a change in price. The basic necessities of life—food, water, and shelter—are examples of goods that experience nearly perfectly inelastic demand at or near the minimums necessary to sustain life. In order for a cartel to profit from raising prices above competitive levels, demand for the product must be

sufficiently inelastic such that any loss in sales will be more than offset by increases in revenue on those sales that are made. Otherwise, increased prices would result in declining revenues and profits.

52. Glyburide is an important prescription drug. When a doctor prescribes it a consumer has little choice but to buy it at the price offered. Thus, Glyburide is an excellent candidate for cartelization because price increases will result in more revenue, rather than less.

53. ***Standardized Product with High Degree of Interchangeability.*** A commodity-like product is one that is standardized across suppliers and allows for a high degree of substitutability among different suppliers in the market. When products offered by different suppliers are viewed as interchangeable by purchasers, it is easier for the suppliers to agree on prices for the good in question and it is easier to monitor these prices effectively. Here, each of the versions Glyburide use identical active ingredients. And the generic substitution laws prevent a manufacturer from raising prices independently.

54. ***Absence of a Competitive Fringe of Sellers.*** Companies that are not part of the conspiracies can erode conspirators' market shares by offering products at a lower, more competitive price. This reduces revenue and makes sustaining conspiracies more difficult. In the market for generic Glyburide, there is no realistic threat that a fringe of competitive sellers will take market shares from Defendants. The Defendants in these markets have oligopolistic power, which facilitates their ability to raise prices without losing market share to non-conspirators.

55. ***Intercompetitor Contacts and Communications.*** In order to be successful, collusive agreements require a level of trust among the conspirators. Collaboration fostered through industry associations facilitate relationships between individuals who would otherwise be predisposed to compete vigorously with each other. Here, many of the Defendants remain

members of or participants in the GPhA, which describes itself on its website as “the nation’s leading trade association for manufacturers and distributors of generic prescription drugs, manufacturers of bulk active pharmaceutical chemicals, and suppliers of other goods and services to the generic industry.” Thus, representatives of the Defendants have opportunities to meet and conspire at functions of this group, as well as at industry healthcare meetings. The grand jury subpoenas discussed above lend further support to the conclusion that intercompetitor communications occurred with respect to the pricing of generic drugs. Indeed, according to the previously- identified PaRR Report, “prosecutors are taking a close look at trade associations as part of their investigation as having been one potential avenue for facilitating the collusion between salespeople at different generic producers.”

THE MARKET FOR GLYBURIDE

56. Glyburide is an anti-diabetic drug of the sulfonylurea class indicated to treat Type 2 diabetes. Sulfonylureas have been used to control hyperglycemia (high blood sugar levels) in Type 2 diabetes longer than any class of agents except insulins. Glyburide itself is a white crystalline compound, formulated into tablets.

57. Glyburide was developed in 1966 as part of a cooperative study between Boehringer Mannheim (now part of F. Hoffmann-LaRoche) and Hoechst (now part of Sanofi) and has been marketed since the 1980s. Current branded versions of glyburide include: DiaBeta®, which is sold by Sanofi; and Glynase® (micronized glyburide tablets), which is sold by Pharmacia and Upjohn (now part of Pfizer). Other previously-marketed, but now discontinued, versions of glyburide include Micronase®, which was sold by Pharmacia and Upjohn, and Glucovance® (glyburide-metformin hydrochloride), which was sold by Bristol-Myers Squibb.

58. Generic drug manufacturers that currently manufacture or sell generic versions

of non-micronized, non-metformin glyburide include Aurobindo, Citron, Heritage, Teva, CorePharma, LLC (now part of Impax Laboratories, Inc.), TruPharma LLC (in a partnership with PharmaDax Inc.), and Zydus Pharmaceuticals USA Inc.

59. CorePharma, TruPharma, and Zydus only entered the glyburide market recently: CorePharma received FDA approval for its glyburide product in September 2015; TruPharma's glyburide product received FDA approval in April 2016; and Zydus's glyburide product received FDA approval in May 2016.

60. Accordingly, during the Class Period, the primary competitors in the non-micronized, non-metformin glyburide market were Defendants Aurobindo, Citron, Heritage and Teva.

VIII. THE STATUTES OF LIMITATIONS DO NOT BAR PLAINTIFFS' CLAIMS

A) The Statutes of Limitations Did Not Begin to Run Because Plaintiffs Did Not and Could Not Discover Defendants' Unlawful Conspiracy

61. Plaintiffs had no knowledge of the combinations or conspiracies alleged herein, or of facts sufficient to place them on inquiry notice of the claims set forth herein, until (at the earliest) Defendants' disclosures of the existence of the government investigations and subpoenas. Prior to that time, no information in the public domain or available to Plaintiffs suggested that any Defendant was involved in a criminal conspiracy to fix prices for generic Glyburide.

62. Plaintiffs had no knowledge of the combinations or conspiracies alleged herein, or of facts sufficient to place them on inquiry notice of the claims set forth against Defendants, until (at the earliest) the filing of the AG's Complaint.

63. No information evidencing antitrust violations was available in the public domain prior to the public announcements of the government investigations that revealed sufficient information to suggest that any of the defendants was involved in a criminal conspiracy to fix prices for generic Glyburide.

64. Plaintiffs are purchasers who indirectly purchased generic Glyburide, manufactured by one or more Defendants. They had no direct contact or interaction with any of the Defendants in this case and had no means from which they could have discovered Defendants' conspiracies.

65. Defendants repeatedly and expressly stated throughout the Class Period, including on their public Internet websites, that they maintained antitrust/fair competition policies which prohibited the type of collusion alleged in this Complaint. For example:

Sun Pharmaceutical Industries, Ltd.'s Global Code of Conduct provides: "We seek to outperform our competition fairly and honestly. We seek competitive advantages through superior performance, never through unethical or illegal business practices." It goes on to state: "Sun Pharma shall compete only in an ethical and legitimate manner and prohibits all actions that are anti-competitive or otherwise contrary to applicable competition or anti-trust laws."

66. It was reasonable for members of the Class to believe that Defendants were complying with their own antitrust policies.

67. For these reasons, the statutes of limitations as to Plaintiffs' claims under the federal and state common laws identified herein did not begin to run, and have been tolled with respect to the claims that Plaintiffs have alleged in this Complaint.

Fraudulent Concealment Tolled the Statutes of Limitations

68. In the alternative, application of the doctrine of fraudulent concealment tolled the statutes of limitations on the claims asserted herein by Plaintiffs. Plaintiffs had no knowledge of the combinations or conspiracies alleged in this Complaint, or of facts sufficient to place them on inquiry notice of their claims, until Defendants disclosed the existence of government investigations and subpoenas. Prior to that time, no information in the public domain or available to Plaintiffs suggested that any Defendant was involved in a criminal conspiracy to fix prices for generic Glyburide.

69. No information evidencing antitrust violations was available in the public domain prior to the public announcements of the government investigations that revealed sufficient information to suggest that any of the defendants was involved in conspiracies to fix prices for generic Glyburide,

70. Defendants actively concealed, suppressed, and omitted to disclose material facts to Plaintiffs and members of the Classes concerning Defendants' unlawful activities to artificially inflate prices for generic Glyburide. The concealed, suppressed, and omitted facts would have been important to Plaintiffs and members of the Classes as they related to the cost of generic Glyburide, they purchased. Defendants misrepresented the real cause of price increases and/or the absence of price reductions in generic Glyburide. Defendants' false statements and conduct concerning the prices of generic Glyburide were deceptive as they had the tendency or capacity to mislead Plaintiffs and members of the Classes to believe that they were purchasing generic Glyburide at prices established by a free and fair market.

Active Concealment of the Conspiracies

71. Defendants engaged in an illegal scheme to fix prices, allocate customers and rig

bids. Criminal and civil penalties for engaging in such conduct are severe. Not surprisingly, Defendants took affirmative measures to conceal their conspiratorial conduct.

72. Through their misleading, deceptive, false and fraudulent statements, Defendants effectively concealed their conspiracies, thereby causing economic harm to Plaintiffs and the Classes. Defendants' misrepresentations regarding their price changes were intended to lull Plaintiffs and the Classes into accepting the price hikes as a normal result of competitive and economic market trends rather than the consequences of Defendants' collusive acts. The public statements made by Defendants were designed to mislead Plaintiffs and the Classes into paying unjustifiably higher prices for generic digoxin and doxycycline.

73. For example, Heritage executives took overt steps to conceal their illegal activity, and destroy evidence of any wrongdoing going back to at least 2012. This conduct included a concerted and conscious effort to destroy documents, instructions not to put incriminating evidence in writing, directives not to use email, and the deletion of incriminating text messages.

74. The AG Complaint provides specific examples of acts of fraudulent concealment with respect to generic drug companies.

75. As Jepsen said in the press release referenced above that was issued at the time that the AG Complaint was filed: "[t]he states further allege that the drug companies knew that their conduct was illegal and made efforts to avoid communicating with each other in writing or, in some instances, to delete written communications after becoming aware of the investigation."

Plaintiffs Exercised Reasonable Diligence

76. Defendants' anticompetitive conspiracies, by its very nature, was self-concealing. Generic drugs are not exempt from antitrust regulation, and thus, before the disclosure of the government investigations, Plaintiffs reasonably considered the markets Glyburide to be

competitive. Accordingly, a reasonable person under the circumstances would not have been alerted to investigate the legitimacy of Defendants' prices before these disclosures.

77. Therefore, the running of any statutes of limitations has been tolled for all claims alleged by Plaintiffs and the Classes as a result of Defendants' anticompetitive and unlawful conduct. Despite the exercise of reasonable diligence, Plaintiffs and Members of the Classes were unaware of Defendants' unlawful conduct, and did not know that they were paying supracompetitive prices for generic Glyburide throughout the United States during the Class Period.

78. For these reasons, Plaintiffs' claims are timely under both the federal, state and common laws identified herein.

79. Because of the deceptive practices and techniques of secrecy employed by Defendants and their co-conspirators to conceal their illicit conduct, Plaintiffs and the Classes could not have discovered the conspiracies at an earlier date by the exercise of reasonable diligence.

IX. CONTINUING VIOLATIONS

80. This Complaint alleges a continuing course of conduct (including conduct within the limitations periods), and defendants' unlawful conduct has inflicted continuing and accumulating harm within the applicable statutes of limitations. Thus, Plaintiffs and the members of the Damages Class can recover for damages that they suffered during any applicable limitations period.

X. DEFENDANTS' ANTITRUST VIOLATIONS

81. During the Class Period, set forth below, Defendants engaged in continuing agreements, understandings, and conspiracies in restraint of trade to allocate customers, rig bids,

and fix prices for generic Glyburide sold in the United States.

82. In formulating and effectuating the contracts, combinations or conspiracies, Defendants identified above and their co-conspirators engaged in anticompetitive activities, the purpose and effect of which were to allocate customers, rig bids and artificially fix, raise, maintain, and/or stabilize the price of generic Glyburide, sold in the United States. These activities included the following:

- (a) Defendants participated in meetings and/or conversations regarding the price of Glyburide, in the United States;
- (b) Defendants agreed during those meetings and conversations to charge prices at specified levels and otherwise to increase and/or maintain prices of generic Glyburide sold in the United States;
- (c) Defendants agreed during those meetings and conversations to allocate customers, rig bids, and fix the price of generic Glyburide, Clomipramine; and
- (d) Defendants issued price announcements and price quotations in accordance with their agreements.

83. Defendants and their co-conspirators engaged in the activities described above for the purpose of effectuating the unlawful agreements described in this Complaint.

84. During and throughout the period of the conspiracies alleged in this Complaint, Plaintiffs and members of the Classes indirectly purchased generic Glyburide at inflated and supracompetitive prices.

85. Defendants' contract, combinations and conspiracies constitutes an unreasonable restraint of interstate trade and commerce in violation of Sections 1 and 3 of the

Sherman Act (15 U.S.C. § 1, 3) and the laws of various Indirect Purchaser States enumerated below.

86. As a result of Defendants' unlawful conduct, Plaintiffs and the other members of the Classes have been injured in their business and property in that they have paid more for generic Glyburide than they would have paid in a competitive market.

87. General economic principles recognize that any overcharge at a higher level of distribution generally results in higher prices at every level below. Moreover, the institutional structure of pricing and regulation in the pharmaceutical drug industry assures that overcharges at the higher level of distribution are passed on to end-payers such as Plaintiffs. Wholesalers and retailers passed on the inflated prices of Glyburide to Plaintiffs and members of the Class. The impairment of generic competition at the direct purchaser level similarly injured Plaintiffs who were equally denied the opportunity to purchase less expensive generic versions of Glyburide.

88. The unlawful contracts, combinations and conspiracies have had the following effects, among others:

- (a) price competition in the market for generic Glyburide has been artificially restrained;
- (b) prices for generic Glyburide sold by Defendants have been raised, fixed, maintained, or stabilized at artificially high and non-competitive levels; and
- (c) end-payer purchasers of generic Glyburide sold by Defendants have been deprived of the benefit of free and open competition in the market for generic Glyburide.

XI. CLASS ACTION ALLEGATIONS

89. Plaintiffs brings this action on behalf of themselves and as a class action under Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, seeking equitable and injunctive relief on behalf of the following class (the “Nationwide Class”):

All persons and entities in the United States and its territories who indirectly purchased, paid and/or provided reimbursement for some or all of the purchase price for Defendants’ generic Glyburide products, other than for resale, from October 1, 2012 through the present. This class excludes:

(a) Defendants, their officers, directors, management, employees, subsidiaries, and affiliates; (b) all federal and state governmental entities except for cities, towns, municipalities, or counties with self-funded prescription drug plans; (c) all persons or entities who purchased Defendants’ generic Glyburide products for purposes of resale or directly from Defendants; (d) fully insured health plans (*i.e.*, health plans that purchased insurance covering 100% of their reimbursement obligation to members); (e) any “flat co-pay” consumers whose purchases of Defendants’ generic Glyburide products were paid in part by a third party payer and whose co-payment was the same regardless of the retail purchase price; (f) pharmacy benefit managers; and (g) any judges or justices involved in this action and any members of their immediate families.

90. Plaintiffs also bring this action on behalf of themselves and as a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure seeking damages pursuant to the common law of unjust enrichment and the state antitrust, unfair competition, and consumer protection laws of the states listed below (the “Indirect Purchaser States”) on behalf of the following class (the “Damages Class”):

All persons and entities in the Indirect Purchaser States who indirectly purchased, paid and/or provided reimbursement for some or all of the purchase price for Defendants’ generic Glyburide products, other than for resale, from October 1, 2012 through the present. This class excludes:

- (a) Defendants, their officers, directors, management, employees, subsidiaries, and affiliates; (b) all federal and state governmental entities except for cities, towns, municipalities, or counties with self-funded prescription drug plans; (c) all persons or entities who purchased Defendants' generic Glyburide products for purposes of resale or directly from Defendants; (d) fully insured health plans (i.e., health plans that purchased insurance covering 100% of their reimbursement obligation to members); (e) any "flat co-pay" consumers whose purchases of Defendants' generic Glyburide products were paid in part by a third party payer and whose co-payment was the same regardless of the retail purchase price; (f) pharmacy benefit managers; and (g) any judges or justices involved in this action and any members of their immediate families.

91. The Nationwide Class and the Damages Class are referred to herein as the "Classes."

92. While Plaintiffs do not know the exact number of the members of the Classes, Plaintiffs believe there are millions of members in each Class.

93. Common questions of law and fact exist as to all members of the Classes. This is particularly true given the nature of Defendants' conspiracies, which was generally applicable to all the members of both Classes, thereby making appropriate relief with respect to the Classes as a whole. Such questions of law and fact common to the Classes include, but are not limited to:

- (a) Whether Defendants and their co-conspirators engaged in combinations and conspiracies among themselves to fix, raise, maintain and/or stabilize prices of generic Glyburide and/or engaged in market allocation for Glyburide sold by prescription in the United States;
- (b) The identity of the participants of the alleged conspiracies;
- (c) The duration of the alleged conspiracies and the acts carried out by

Defendants and their co-conspirators in furtherance of the conspiracies;

- (d) Whether the alleged conspiracies violated the Sherman Act, as alleged in the First Count;
- (e) Whether the alleged conspiracies violated state antitrust and unfair competition laws, and/or state consumer protection laws, as alleged in the Second and Third Counts;
- (f) Whether Defendants unjustly enriched themselves to the detriment of the Plaintiffs and the members of the Classes, thereby entitling Plaintiffs and the members of the Classes to disgorgement of all benefits derived by Defendants, as alleged in the Fourth Count;
- (g) Whether the conduct of Defendants and their co-conspirators, as alleged in this Complaint, caused injury to the business or property of Plaintiffs and the members of the Classes;
- (h) The effect of the alleged conspiracies on the prices of generic Glyburide, sold in the United States during the Class Period;
- (i) Whether the Defendants and their co-conspirators actively concealed, suppressed, and omitted to disclose material facts to Plaintiffs and members of the Classes concerning Defendants' unlawful activities to artificially inflate prices for generic Glyburide and/or fraudulently concealed the unlawful conspiracies' existence from Plaintiffs and the other members of the Classes;
- (j) The appropriate injunctive and related equitable relief for the Nationwide

Class; and

(k) The appropriate class-wide measure of damages for the Damages Class.

94. Plaintiffs' claims are typical of the claims of the members of the Classes, and Plaintiffs will fairly and adequately protect the interests of the Classes. Plaintiffs and all members of the Classes are similarly affected by Defendants' wrongful conduct in that they paid artificially inflated prices for generic Glyburide, purchased indirectly from Defendants and/or their co-conspirators.

95. Plaintiffs' claims arise out of the same common course of conduct giving rise to the claims of the other members of the Classes. Plaintiffs' interests are coincident with, and not antagonistic to, those of the other members of the Classes. Plaintiffs are represented by counsel who are competent and experienced in the prosecution of antitrust and class action litigation.

96. The questions of law and fact common to the members of the Classes predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

97. Class action treatment is a superior method for the fair and efficient adjudication of the controversy, in that, among other things, such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of evidence, effort and expense that numerous individual actions would engender. The benefits of proceeding through the class mechanism, including providing injured persons or entities with a method for obtaining redress for claims that might not be practicable to pursue individually, substantially outweigh any difficulties that may arise in management of this class action.

98. The prosecution of separate actions by individual members of the Classes would

create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendants.

XII. CAUSES OF ACTION

FIRST COUNT

Violation of Sections 1 and 3 of the Sherman Act (on behalf of Plaintiffs and the Nationwide Class)

99. Plaintiffs incorporate by reference the allegations set forth above as if fully set forth herein.

100. Defendants and their unnamed co-conspirators entered into and engaged in a contract, combination, or conspiracies in unreasonable restraint of trade in violation of Sections 1 and 3 of the Sherman Act (15 U.S.C. § 1, 3).

101. During the Class Period, Defendants and their co-conspirators entered into a continuing agreement, understanding and conspiracies in restraint of trade to artificially allocate customers, rig bids and raise, maintain and fix prices for generic Glyburide thereby creating anticompetitive effects.

102. The conspiratorial acts and combinations have caused unreasonable restraints in the market for generic Glyburide.

103. As a result of Defendants' unlawful conduct, Plaintiffs and other similarly situated indirect purchasers in the Nationwide Class who purchased generic Glyburide, have been harmed by being forced to pay inflated, supracompetitive prices for generic Glyburide.

104. In formulating and carrying out the alleged agreement, understanding and conspiracies, Defendants and their co-conspirators did those things that they combined and

conspired to do, including, but not limited to, the acts, practices and course of conduct set forth herein.

105. Defendants' conspiracies had the following effects, among others:

- (a) Price competition in the market for generic Glyburide has been restrained, suppressed, and/or eliminated in the United States
- (b) Prices for generic Glyburide provided by Defendants and their co-conspirators have been fixed, raised, maintained, and stabilized at artificially high, non-competitive levels throughout the United States; and
- (c) Plaintiffs and members of the Nationwide Class who purchased generic Glyburide indirectly from Defendants and their co-conspirators have been deprived of the benefits of free and open competition.

106. Plaintiffs and members of the Nationwide Class have been injured and will continue to be injured in their business and property by paying more for generic Glyburide purchased indirectly from Defendants and the co-conspirators than they would have paid and will pay in the absence of the conspiracies.

107. Defendants' contracts, combinations, or conspiracies is a *per se* violation of the federal antitrust laws.

108. Plaintiffs and members of the Nationwide Class are entitled to an injunction against Defendants, preventing and restraining the continuing violations alleged herein.

SECOND COUNT

**Violation of State Antitrust Statutes
(on behalf of Plaintiffs and the Damages Class)**

109. Plaintiffs incorporate by reference the allegations set forth above as if fully set forth herein.

110. During the Class Period, Defendants and their co-conspirators engaged in a continuing contracts, combinations or conspiracies with respect to the sale of generic Glyburide in unreasonable restraint of trade and commerce and in violation of the various state antitrust and other statutes set forth below.

111. The contracts, combinations, or conspiracies consisted of an agreement among Defendants and their co-conspirators to fix, raise, inflate, stabilize, and/or maintain the prices of Glyburide and to allocate customers for generic Glyburide in the United States.

112. In formulating and effectuating these conspiracies, Defendants and their co-conspirators performed acts in furtherance of the combinations and conspiracies, including:

(a) participating in meetings and conversations among themselves in the United States and elsewhere during which they agreed to price generic Glyburide at certain levels, and otherwise to fix, increase, inflate, maintain, or stabilize effective prices paid by Plaintiffs and members of the Damages Class with respect to generic Glyburide, provided in the United States; and

(b) participating in meetings and trade association conversations among themselves in the United States and elsewhere to implement, adhere to, and police the unlawful agreements they reached.

113. Defendants and their co-conspirators engaged in the actions described above for

the purpose of carrying out their unlawful agreement to allocate customers, rig bids, and fix prices for generic Glyburide.

114. Defendants' anticompetitive acts described above were knowing, willful and constitute violations or flagrant violations of the following state antitrust statutes.

115. Defendants have entered into an unlawful agreement in restraint of trade in violation of Alabama Code § 6-5-60, *et seq.* Defendants' combinations and conspiracies had the following effects: (1) price competition for generic Glyburide, was restrained, suppressed, and eliminated throughout Alabama; (2) generic Glyburide prices were raised, fixed, maintained and stabilized at artificially high levels throughout Alabama; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. During the Class Period, Defendants' illegal conduct substantially affected Alabama commerce. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury. By reason of the foregoing, Defendants entered into an agreement in restraint of trade in violation of Alabama Code § 6-5-60, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under Alabama Code § 6-5-60, *et seq.*

116. Defendants have entered into an unlawful agreement in restraint of trade in violation of Arizona Revised Statutes, § 44-1401, *et seq.* Defendants' combinations and conspiracies had the following effects: (1) price competition for generic Glyburide were restrained, suppressed, and eliminated throughout Arizona; (2) generic Glyburide, prices were raised, fixed, maintained and stabilized at artificially high levels throughout Arizona; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and

(4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide,. During the Class Period, Defendants' illegal conduct substantially affected Arizona commerce. Defendants' violations of Arizona law were flagrant. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury. By reason of the foregoing, Defendants entered into an agreement in restraint of trade in violation of Ariz. Rev. Stat. § 44- 1401, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under Ariz. Rev. Stat. § 44-1401, *et seq.*

117. Defendants have entered into an unlawful agreement in restraint of trade in violation of California Business and Professions Code § 16700 *et seq.* During the Class Period, Defendants and their co-conspirators entered into and engaged in a continuing unlawful trust in restraint of the trade and commerce described above in violation of California Business and Professions Code §16720. Defendants, and each of them, have acted in violation of § 16720 to fix, raise, stabilize, and maintain prices of generic Glyburide at supracompetitive levels. The aforesaid violations of § 16720 consisted, without limitation, of a continuing unlawful trust and concert of action among Defendants and their co-conspirators, the substantial terms of which were to fix, raise, maintain, and stabilize the prices of generic Glyburide, For the purpose of forming and effectuating the unlawful trust, Defendants and their co-conspirators have done those things which they combined and conspired to do, including, but not limited to, the acts, practices and course of conduct set forth above and creating a price floor, fixing, raising, and stabilizing the price of generic Glyburide. The combinations and conspiracies alleged herein has had, *inter alia*, the following effects: (1) price competition for generic Glyburide has been restrained, suppressed, and/or eliminated in the State of California; (2) prices for generic Glyburide,

provided by Defendants and their co-conspirators have been fixed, raised, stabilized, and pegged at artificially high, non-competitive levels in the State of California; and those who purchased generic Glyburide indirectly from Defendants and their co-conspirators have been deprived of the benefit of free and open competition. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property in that they paid more for generic Glyburide than they otherwise would have paid in the absence of Defendants' unlawful conduct. During the Class Period, Defendants' illegal conduct substantially affected California commerce. As a result of Defendants' violation of § 16720, Plaintiffs and members of the Damages Class seek treble damages and their cost of suit, including a reasonable attorney's fee, pursuant to California Business and Professions Code § 16750(a).

118. Defendants have entered into an unlawful agreement in restraint of trade in violation of District of Columbia Code Annotated § 28-4501, *et seq.* Defendants' combinations and conspiracies had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout the District of Columbia; (2) generic Glyburide prices were raised, fixed, maintained and stabilized at artificially high levels throughout the District of Columbia; (3) Plaintiffs and members of the Damages Class, including those who resided in the District of Columbia and/or purchased generic Glyburide, in the District of Columbia that were shipped by Defendants or their co-conspirators into the District of Columbia, were deprived of free and open competition, including in the District of Columbia; and (4) Plaintiffs and members of the Damages Class, including those who resided in the District of Columbia and/or purchased generic Glyburide, in the District of Columbia that were shipped by Defendants or their co-conspirators, paid supracompetitive, artificially inflated prices for

generic Glyburide, including in the District of Columbia. During the Class Period, Defendants' illegal conduct substantially affected District of Columbia commerce. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury. By reason of the foregoing, Defendants have entered into an agreement in restraint of trade in violation of District of Columbia Code Ann. § 28-4501, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under District of Columbia Code Ann. § 28-4501, *et seq.*

119. Defendants have entered into an unlawful agreement in restraint of trade in violation of Hawaii Revised Statutes Annotated § 480-1, *et seq.* Defendants' unlawful conduct had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout Hawaii; (2) generic Glyburide prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Hawaii; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. During the Class Period, Defendants' illegal conduct substantially affected Hawaii commerce. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury. By reason of the foregoing, Defendants have entered into an agreement in restraint of trade in violation of Hawaii Revised Statutes Annotated § 480-4, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under Hawaii Revised Statutes Annotated § 480-4, *et seq.*

120. Defendants have entered into an unlawful agreement in restraint of trade in

violation of the Illinois Antitrust Act (740 Illinois Compiled Statutes 10/1, *et seq.*) Defendants' combinations or conspiracies had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout Illinois; (2) generic Glyburide prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Illinois; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. During the Class Period, Defendants' illegal conduct substantially affected Illinois commerce. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury. Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under the Illinois Antitrust Act.

121. Defendants have entered into an unlawful agreement in restraint of trade in violation of Iowa Code § 553.1, *et seq.* Defendants' combinations or conspiracies had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout Iowa; (2) generic Glyburide prices were raised, fixed, maintained and stabilized at artificially high levels throughout Iowa; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. During the Class Period, Defendants' illegal conduct substantially affected Iowa commerce. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury. By reason of the foregoing, Defendants have entered into an agreement in restraint of trade in violation of Iowa Code § 553.1, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all

forms of relief available under Iowa Code § 553, *et seq.*

122. Defendants have entered into an unlawful agreement in restraint of trade in violation of Kansas Statutes Annotated, § 50-101, *et seq.* Defendants' combined capital, skills or acts for the purposes of creating restrictions in trade or commerce of generic Glyburide, increasing the prices of generic Glyburide, preventing competition in the sale of generic Glyburide, or binding themselves not to sell generic Glyburide in a manner that established the price of generic Glyburide and precluded free and unrestricted competition among themselves in the sale of generic Glyburide in violation of Kan. Stat. Ann. § 50-101, *et seq.* Defendants' combinations or conspiracies had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout Kansas; (2) generic Glyburide prices were raised, fixed, maintained and stabilized at artificially high levels throughout Kansas; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. During the Class Period, Defendants' illegal conduct substantially affected Kansas commerce. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury. By reason of the foregoing, Defendants have entered into an agreement in restraint of trade in violation of Kansas Stat. Ann. § 50-101, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under Kansas Stat. Ann. § 50-101, *et seq.*

123. Defendants have entered into an unlawful agreement in restraint of trade in violation of Louisiana Statutes Annotated, § 51-122, *et seq.* Defendants' combined capital, skills or acts for the purposes of creating restrictions in trade or commerce of generic Glyburide increasing the

prices of generic Glyburide preventing competition in the sale of generic Glyburide, or binding themselves not to sell generic Glyburide in a manner that established the price of generic Glyburide and precluded free and unrestricted competition among themselves in the sale of generic Glyburide, in violation of Louisiana Statutes Annotated, § 51-122, *et seq.* Defendants' combinations or conspiracies had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout Louisiana; (2) generic Glyburide, Clomipramine, prices were raised, fixed, maintained and stabilized at artificially high levels throughout Louisiana; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. During the Class Period, Defendants' illegal conduct substantially affected Louisiana commerce. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury. By reason of the foregoing, Defendants have entered into an agreement in restraint of trade in violation of Louisiana Statutes Annotated, § 51-122, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under Louisiana Statutes Annotated, § 51-122, *et seq.*

124. Defendants have entered into an unlawful agreement in restraint of trade in violation of Maine Revised Statutes (Maine Rev. Stat. Ann. 10, § 1101, *et seq.*) Defendants' combinations or conspiracies had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout Maine; (2) generic Glyburide, prices were raised, fixed, maintained and stabilized at artificially high levels throughout Maine; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices

for generic Glyburide. During the Class Period, Defendants' illegal conduct substantially affected Maine commerce. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury. By reason of the foregoing, Defendants have entered into an agreement in restraint of trade in violation of Maine Rev. Stat. Ann. 10, § 1101, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Maine Rev. Stat. Ann. 10, § 1101, *et seq.*

125. Defendants have entered into an unlawful agreement in restraint of trade in violation of Michigan Compiled Laws Annotated § 445.771, *et seq.* Defendants' combinations or conspiracies had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout Michigan; (2) generic Glyburide prices were raised, fixed, maintained and stabilized at artificially high levels throughout Michigan; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. During the Class Period, Defendants' illegal conduct substantially affected Michigan commerce. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury. By reason of the foregoing, Defendants have entered into an agreement in restraint of trade in violation of Michigan Comp. Laws Ann. § 445.771, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Michigan Comp. Laws Ann. § 445.771, *et seq.*

126. Defendants have entered into an unlawful agreement in restraint of trade in violation of Minnesota Annotated Statutes § 325D.49, *et seq.* Defendants' combinations or

conspiracies had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout Minnesota; (2) generic Glyburide prices were raised, fixed, maintained and stabilized at artificially high levels throughout Minnesota; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. During the Class Period, Defendants' illegal conduct substantially affected Minnesota commerce. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury. By reason of the foregoing, Defendants have entered into an agreement in restraint of trade in violation of Minnesota Stat. § 325D.49, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Minnesota Stat. § 325D.49, *et seq.*

127. Defendants have entered into an unlawful agreement in restraint of trade in violation of Mississippi Code Annotated § 75-21-1, *et seq.* Trusts are combinations, contracts, understandings or agreements, express or implied when inimical to the public welfare and with the effect of, *inter alia*, restraining trade, increasing the price or output of a commodity, or hindering competition in the production and sale of a commodity. Miss. Code Ann. § 75-21-1. Defendants' combinations or conspiracies was in a manner inimical to public welfare and had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout Mississippi; (2) generic Glyburide prices were raised, fixed, maintained and stabilized at artificially high levels throughout Mississippi; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide,

During the Class Period, Defendants' illegal conduct substantially affected Mississippi commerce. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury. By reason of the foregoing, Defendants have entered into an agreement in restraint of trade in violation of Mississippi Code Ann. § 75-21-1, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Mississippi Code Ann. § 75-21-1, *et seq.*

128. Defendants have entered into an unlawful agreement in restraint of trade in violation of Nebraska Revised Statutes § 59-801, *et seq.* Defendants' combinations or conspiracies had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout Nebraska; (2) generic Glyburide prices were raised, fixed, maintained and stabilized at artificially high levels throughout Nebraska; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for Glyburide. During the Class Period, Defendants' illegal conduct substantially affected Nebraska commerce. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury. By reason of the foregoing, Defendants have entered into an agreement in restraint of trade in violation of Nebraska Revised Statutes § 59-801, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Nebraska Revised Statutes § 59- 801, *et seq.*

129. Defendants have entered into an unlawful agreement in restraint of trade in violation of Nevada Revised Statutes Annotated § 598A.010, *et seq.* Defendants' combinations or conspiracies had the following effects: (1) generic Glyburide, price competition was restrained,

suppressed, and eliminated throughout Nevada; (2) generic Glyburide, prices were raised, fixed, maintained and stabilized at artificially high levels throughout Nevada; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. In accordance with the requirements of § 598A.210(3), simultaneous notice of this action was mailed to the Nevada Attorney General by Plaintiffs. During the Class Period, Defendants' illegal conduct substantially affected Nevada commerce. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury. By reason of the foregoing, Defendants have entered into an agreement in restraint of trade in violation of Nevada Rev. Stat. Ann. § 598A.010, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Nevada Rev. Stat. Ann. § 598A.010, *et seq.*

130. Defendants have entered into an unlawful agreement in restraint of trade in violation of New Hampshire Revised Statutes § 356:1, *et seq.* Defendants' combinations or conspiracies had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout New Hampshire; (2) generic Glyburide prices were raised, fixed, maintained and stabilized at artificially high levels throughout New Hampshire; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. During the Class Period, Defendants' illegal conduct substantially affected New Hampshire commerce. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury. By reason of the foregoing, Defendants have

entered into an agreement in restraint of trade in violation of New Hampshire Revised Statutes § 356:1, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under New Hampshire Revised Statutes § 356:1, *et seq.*

131. Defendants have entered into an unlawful agreement in restraint of trade in violation of New Mexico Statutes Annotated § 57-1-1, *et seq.* Defendants' combinations or conspiracies had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout New Mexico; (2) generic Glyburide prices were raised, fixed, maintained and stabilized at artificially high levels throughout New Mexico; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. During the Class Period, Defendants' illegal conduct substantially affected New Mexico commerce. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury. By reason of the foregoing, Defendants have entered into an agreement in restraint of trade in violation of New Mexico Stat. Ann. § 57-1-1, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under New Mexico Stat. Ann. § 57-1-1, *et seq.*

132. Defendants have entered into an unlawful agreement in restraint of trade in violation of New York's Donnelly Act, New York General Business Laws § 340, *et seq.* Defendants' combinations or conspiracies had the following effects: (1) generic Glyburide, price competition was restrained, suppressed, and eliminated throughout New York; (2) generic Glyburide prices were raised, fixed, maintained and stabilized at artificially high levels throughout New York; (3) Plaintiffs and members of the Damages Class were deprived of free

and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide that were higher than they would have been absent Defendants' illegal acts. During the Class Period, Defendants' illegal conduct substantially affected New York commerce. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury. By reason of the foregoing, Defendants have entered into an agreement in restraint of trade in violation of the New York's Donnelly Act, New York General Business Laws § 340, *et seq.* The conduct set forth above is a *per se* violation of the Act. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under New York Gen. Bus. Law § 340, *et seq.*

133. Defendants have entered into an unlawful agreement in restraint of trade in violation of the North Carolina General Statutes § 75-1, *et seq.* Defendants' combinations or conspiracies had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout North Carolina; (2) generic Glyburide prices were raised, fixed, maintained and stabilized at artificially high levels throughout North Carolina; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. During the Class Period, Defendants' illegal conduct substantially affected North Carolina commerce. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury. By reason of the foregoing, Defendants have entered into an agreement in restraint of trade in violation of North Carolina Gen. Stat. § 75-1, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under North

Carolina Gen. Stat. § 75-1, *et. seq.*

134. Defendants have entered into an unlawful agreement in restraint of trade in violation of North Dakota Century Code § 51-08.1-01, *et seq.* Defendants' combinations or conspiracies had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout North Dakota; (2) generic Glyburide prices were raised, fixed, maintained and stabilized at artificially high levels throughout North Dakota; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. During the Class Period, Defendants' illegal conduct had a substantial effect on North Dakota commerce. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury. By reason of the foregoing, Defendants have entered into an agreement in restraint of trade in violation of North Dakota Cent. Code § 51-08.1-01, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under North Dakota Cent. Code § 51-08.1-01, *et seq.*

135. Defendants have entered into an unlawful agreement in restraint of trade in violation of Oregon Revised Statutes § 646.705, *et seq.* Defendants' combinations or conspiracies had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout Oregon; (2) generic Glyburide prices were raised, fixed, maintained and stabilized at artificially high levels throughout Oregon; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. During the Class Period, Defendants' illegal conduct had a substantial effect on Oregon

commerce. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury. By reason of the foregoing, Defendants have entered into an agreement in restraint of trade in violation of Oregon Revised Statutes § 646.705, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Oregon Revised Statutes § 646.705, *et seq.*

136. Defendants have entered into an unlawful agreement in restraint of trade in violation of South Dakota Codified Laws § 37-1-3.1, *et seq.* Defendants' combinations or conspiracies had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout South Dakota; (2) generic Glyburide prices were raised, fixed, maintained and stabilized at artificially high levels throughout South Dakota; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. During the Class Period, Defendants' illegal conduct had a substantial effect on South Dakota commerce. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury. By reason of the foregoing, Defendants have entered into an agreement in restraint of trade in violation of South Dakota Codified Laws Ann. § 37-1-3.1, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under South Dakota Codified Laws Ann. § 37-1-3.1, *et seq.*

137. Defendants have entered into an unlawful agreement in restraint of trade in violation of Tennessee Code Annotated § 47-25-101, *et seq.* Defendants' combinations or conspiracies had the following effects: (1) generic Glyburide price competition was restrained,

suppressed, and eliminated throughout Tennessee; (2) generic Glyburide prices were raised, fixed, maintained and stabilized at artificially high levels throughout Tennessee; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. During the Class Period, Defendants' illegal conduct had a substantial effect on Tennessee commerce. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury. By reason of the foregoing, Defendants have entered into an agreement in restraint of trade in violation of Tennessee Code Ann. § 47-25-101, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Tennessee Code Ann. § 47-25-101, *et seq.*

138. Defendants have entered into an unlawful agreement in restraint of trade in violation of Utah Code Annotated § 76-10-3101, *et seq.* Defendants' combinations or conspiracies had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout Utah; (2) generic Glyburide prices were raised, fixed, maintained and stabilized at artificially high levels throughout Utah; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. During the Class Period, Defendants' illegal conduct had a substantial effect on Utah commerce. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury. By reason of the foregoing, Defendants have entered into an agreement in restraint of trade in violation of Utah Code Annotated § 76-10-3101, *et seq.* Accordingly, Plaintiffs and members

of the Damages Class seek all relief available under Utah Code Annotated § 76-10-3101, *et seq.*

139. Defendants have entered into an unlawful agreement in restraint of trade in violation of Vermont Stat. Ann. 9 § 2453, *et seq.* Defendants' combinations or conspiracies had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout Vermont; (2) generic Glyburide prices were raised, fixed, maintained and stabilized at artificially high levels throughout Vermont; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. During the Class Period, Defendants' illegal conduct had a substantial effect on Vermont commerce. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury. By reason of the foregoing, Defendants have entered into an agreement in restraint of trade in violation of Vermont Stat. Ann. 9 § 2453, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Vermont Stat. Ann. 9 § 2453, *et seq.*

140. Defendants have entered into an unlawful agreement in restraint of trade in violation of West Virginia Code § 47-18-1, *et seq.* Defendants' anticompetitive acts described above were knowing, willful, and constitute violations or flagrant violations of West Virginia Antitrust Act. Defendants' combinations or conspiracies had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout West Virginia; (2) generic Glyburide prices were raised, fixed, maintained and stabilized at artificially high levels throughout West Virginia; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. During the Class Period,

Defendants' illegal conduct had a substantial effect on West Virginia commerce. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury. By reason of the foregoing, Defendants have entered into an agreement in restraint of trade in violation of West Virginia Code § 47-18-1, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under West Virginia Code § 47-18-1, *et seq.*

141. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Wisconsin Statutes § 133.01, *et seq.* Defendants' and their co-conspirators' anticompetitive activities have directly, foreseeably and proximately caused injury to Plaintiffs and members of the Classes in the United States. Specifically, Defendants' combinations or conspiracies had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout Wisconsin; (2) generic Glyburide were raised, fixed, maintained and stabilized at artificially high levels throughout Wisconsin; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. During the Class Period, Defendants' illegal conduct had a substantial effect on the people of Wisconsin and Wisconsin commerce. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury. By reason of the foregoing, Defendants have entered into an agreement in restraint of trade in violation of Wisconsin Stat. § 133.01, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Wisconsin Stat. § 133.01, *et seq.*

142. Plaintiffs and members of the Damages Class in each of the above states have

been injured in their business and property by reason of Defendants' unlawful combinations, contracts, conspiracies and agreements. Plaintiffs and members of the Damages Class have paid more for generic Glyburide than they otherwise would have paid in the absence of Defendants' unlawful conduct. This injury is of the type the antitrust laws of the above states were designed to prevent and flows from that which makes Defendants' conduct unlawful.

143. In addition, Defendants have profited significantly from the aforesaid conspiracies. Defendants' profits derived from their anticompetitive conduct come at the expense and detriment of Plaintiffs and members of the Damages Class.

144. Accordingly, Plaintiffs and members of the Damages Class in each of the above jurisdictions seek damages (including statutory damages where applicable), to be trebled or otherwise increased as permitted by a particular jurisdiction's antitrust law, and costs of suit, including reasonable attorneys' fees, to the extent permitted by the above state laws.

THIRD COUNT

Violation of State Consumer Protection Statutes (on behalf of Plaintiffs and the Damages Class)

145. Plaintiffs incorporate by reference the allegations set forth above as if fully set forth herein.

146. Defendants engaged in unfair competition or unfair, unconscionable, deceptive or fraudulent acts or practices in violation of the state consumer protection and unfair competition statutes listed below.

147. Defendants have knowingly entered into an unlawful agreement in restraint of trade in violation of the Arkansas Code Annotated, § 4-88-101, *et seq.* Defendants knowingly agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling, and/or maintaining at non-competitive and artificially inflated levels, the prices at which generic

Glyburide were sold, distributed, or obtained in Arkansas and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class. The aforementioned conduct on the part of Defendants constituted “unconscionable” and “deceptive” acts or practices in violation of Arkansas Code Annotated, § 4-88-107(a)(10). Defendants’ unlawful conduct had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout Arkansas; (2) generic Glyburide prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Arkansas; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. During the Class Period, Defendants’ illegal conduct substantially affected Arkansas commerce and consumers. As a direct and proximate result of the unlawful conduct of Defendants, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Arkansas Code Annotated, § 4-88-107(a)(10) and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

148. Defendants have engaged in unfair competition or unfair, unconscionable, deceptive or fraudulent acts or practices in violation of California Business and Professions Code § 17200, *et seq.* During the Class Period, Defendants manufactured, marketed, sold, or distributed generic Glyburide in California, and committed and continue to commit acts of unfair competition, as defined by § 17200, *et seq.* of the California Business and Professions Code, by engaging in the acts and practices specified above. This claim is instituted pursuant to §§ 17203 and 17204 of the California Business and Professions Code, to obtain restitution from

these Defendants for acts, as alleged herein, that violated § 17200 of the California Business and Professions Code, commonly known as the Unfair Competition Law. Defendants' conduct as alleged herein violated § 17200. The acts, omissions, misrepresentations, practices and non-disclosures of Defendants, as alleged herein, constituted a common, continuous, and continuing course of conduct of unfair competition by means of unfair, unlawful, and/or fraudulent business acts or practices within the meaning of California Business and Professions Code §17200, *et seq.*, including, but not limited to, the following: (1) the violations of Section 1 of the Sherman Act, as set forth above; (2) the violations of § 16720, *et seq.* of the California Business and Professions Code, set forth above. Defendants' acts, omissions, misrepresentations, practices, and non-disclosures, as described above, whether or not in violation of § 16720, *et seq.* of the California Business and Professions Code, and whether or not concerted or independent acts, are otherwise unfair, unconscionable, unlawful or fraudulent;

(3) Defendants' acts or practices are unfair to purchasers of generic Glyburide in the State of California within the meaning of § 17200, California Business and Professions Code; and (4) Defendants' acts and practices are fraudulent or deceptive within the meaning of Section 17200 of the California Business and Professions Code. Plaintiffs and members of the Damages Class are entitled to full restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits that have been obtained by Defendants as a result of such business acts or practices. During the Class Period, Defendants' illegal conduct substantially affected California commerce and consumers. The illegal conduct alleged herein is continuing and there is no indication that Defendants will not continue such activity into the future. The unlawful and unfair business practices of Defendants, and each of them, as described above, have caused and continue to cause Plaintiffs and members of the Damages Class to pay supracompetitive and artificially-inflated

prices for generic Glyburide. Plaintiffs and members of the Damages Class suffered injury in fact and lost money or property as a result of such unfair competition. The conduct of Defendants as alleged in this Complaint violates § 17200 of the California Business and Professions Code. As alleged in this Complaint, Defendants and their co-conspirators have been unjustly enriched as a result of their wrongful conduct and by Defendants' unfair competition. Plaintiffs and members of the Damages Class are accordingly entitled to equitable relief including restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits that may have been obtained by Defendants as a result of such business practices, pursuant to the California Business and Professions Code, §§17203 and 17204.

149. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of District of Columbia Code § 28-3901, *et seq.* Defendants agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the prices at which generic Glyburide were sold, distributed or obtained in the District of Columbia. During the Class Period, Defendants' illegal conduct substantially affected District of Columbia commerce and consumers. The foregoing conduct constitutes "unlawful trade practices," within the meaning of D.C. Code § 28-3904. Plaintiffs and members of the Damages Class were not aware of Defendants' price-fixing conspiracies and were therefore unaware that they were being unfairly and illegally overcharged. Defendants had the sole power to set that price and Plaintiffs and members of the Damages Class had no power to negotiate a lower price. Moreover, Plaintiffs and members of the Damages Class lacked any meaningful choice in purchasing generic Glyburide because they were unaware of the unlawful overcharge, and there was no alternative source of supply through which Plaintiffs and members of the Damages Class could avoid the overcharges.

Defendants' conduct with regard to sales of generic Glyburide including their illegal conspiracies to secretly fix the price of generic Glyburide at supracompetitive levels and overcharge consumers, was substantively unconscionable because it was one-sided and unfairly benefited Defendants at the expense of Plaintiffs and the public. Defendants took grossly unfair advantage of Plaintiffs and members of the Damages Class. The suppression of competition that has resulted from Defendants' conspiracies has ultimately resulted in unconscionably higher prices for purchasers so that there was a gross disparity between the price paid and the value received for generic Glyburide, Defendants' unlawful conduct had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout the District of Columbia; (2) generic Glyburide prices were raised, fixed, maintained, and stabilized at artificially high levels throughout the District of Columbia; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. As a direct and proximate result of Defendants' conduct, Plaintiffs and members of the Damages Class have been injured and are threatened with further injury. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of District of Columbia Code § 28-3901, *et seq.*, and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

150. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, *et seq.* Defendants' unlawful conduct had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout Florida; (2) generic Glyburide prices were raised, fixed, maintained, and stabilized at artificially high

levels throughout Florida; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. During the Class Period, Defendants' illegal conduct substantially affected Florida commerce and consumers. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured and are threatened with further injury. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Florida Stat. § 501.201, *et seq.*, and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

151. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of the Hawaii Revised Statutes Annotated § 480-1, *et seq.* Defendants' unlawful conduct had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout Hawaii; (2) generic Glyburide prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Hawaii; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. During the Class Period, Defendants' illegal conduct substantially affected Hawaii commerce and consumers. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured and are threatened with further injury. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Hawaii Rev. Stat. § 480-1 *et seq.*, and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

152. Defendants have engaged in unfair competition or unfair, unconscionable, or

deceptive acts or practices in violation of the Louisiana Unfair Trade Practices Act, La. Rev. Stat. Ann. § 51:1401 *et seq.*, Defendants' unlawful conduct had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout Louisiana; (2) generic Glyburide prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Louisiana; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. During the Class Period, Defendants' illegal conduct substantially affected Louisiana commerce and consumers. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured and are threatened with further injury. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Louisiana Unfair Trade Practices Act, La. Rev. Stat. Ann. § 51:1401 *et seq.*, and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

153. Defendants have engaged in unfair competition or unlawful, unfair, unconscionable, or deceptive acts or practices in violation of the Massachusetts Gen. Laws, Ch 93A, § 1, *et seq.* Defendants were engaged in trade or commerce as defined by G.L. 93A. Defendants, in a market that includes Massachusetts, agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling, and/or maintaining at non-competitive and artificially inflated levels, the prices at which generic Glyburide was sold, distributed, or obtained in Massachusetts and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class. The aforementioned conduct on the part of Defendants constituted "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any

trade or commerce,” in violation of Massachusetts Gen. Laws, Ch 93A, § 2, 11. Defendants’ unlawful conduct had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout Massachusetts; (2) generic Glyburide prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Massachusetts; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and the members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. During the Class Period, Defendants’ illegal conduct substantially affected Massachusetts commerce and consumers. As a direct and proximate result of the unlawful conduct of Defendants, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Massachusetts Gen. Laws, Ch 93A, § 2, 11, that were knowing or willful, and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute, including multiple damages.

154. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of the Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.* Plaintiffs and members of the Damages Class purchased generic Glyburide for personal or family purposes. Defendants engaged in the conduct described herein in connection with the sale of generic Glyburide in trade or commerce in a market that includes Missouri. Defendants agreed to, and did in fact affect, fix, control, and/or maintain, at artificial and non-competitive levels, the prices at which generic Glyburide was sold, distributed, or obtained in Missouri, which conduct constituted unfair practices in that it was unlawful under federal and state law, violated public policy, was unethical, oppressive and unscrupulous, and

caused substantial injury to Plaintiffs and members of the Damages Class. Defendants concealed, suppressed, and omitted to disclose material facts to Plaintiffs and members of the Damages Class concerning Defendants' unlawful activities and artificially inflated prices for generic Glyburide. The concealed, suppressed, and omitted facts would have been important to Plaintiffs and members of the Damages Class as they related to the cost of generic Glyburide they purchased. Defendants misrepresented the real cause of price increases and/or the absence of price reductions in generic Glyburide by making public statements that were not in accord with the facts. Defendants' statements and conduct concerning the price of generic Glyburide were deceptive as they had the tendency or capacity to mislead Plaintiffs and members of the Damages Class to believe that they were purchasing generic Glyburide at prices established by a free and fair market. Defendants' unlawful conduct had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout Missouri; (2) generic Glyburide prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Missouri; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. The foregoing acts and practices substantially affected Missouri commerce and consumers and constituted unlawful practices in violation of the Missouri Merchandising Practices Act. As a direct and proximate result of the above-described unlawful practices, Plaintiffs and members of the Damages Class suffered ascertainable loss of money or property. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Missouri's Merchandising Practices Act, specifically Mo. Rev. Stat. § 407.020, which prohibits "[t]he act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice

or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce...”, as further interpreted by the Missouri Code of State Regulations, 15 CSR 60- 7.010, *et seq.*, 15 CSR 60-8.010, *et seq.*, and 15 CSR 60-9.010, *et seq.*, and Mo. Rev. Stat. § 407.025.

155. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of the Montana Unfair Trade Practices and Consumer Protection Act of 1970, Mont. Code, § 30-14-103, *et seq.*, and § 30-14-201, *et seq.* Defendants’ unlawful conduct had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout Montana; (2) generic Glyburide prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Montana; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. During the Class Period, Defendants marketed, sold, or distributed generic digoxin and generic doxycycline in Montana, and Defendants’ illegal conduct substantially affected Montana commerce and consumers. As a direct and proximate result of Defendants’ unlawful conduct, Plaintiffs and members of the Damages Class have been injured and are threatened with further injury. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Mont. Code, § 30-14-103, *et seq.*, and § 30-14-201, *et seq.*, and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

156. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of the New Mexico Stat. § 57-12-1, *et seq.* Defendants agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling

and/or maintaining at non-competitive and artificially inflated levels, the prices at which generic Glyburide was sold, distributed or obtained in New Mexico and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class. The aforementioned conduct on the part of Defendants constituted “unconscionable trade practices,” in violation of N.M.S.A. Stat. § 57-12-3, in that such conduct, *inter alia*, resulted in a gross disparity between the value received by Plaintiffs and members of the Damages Class and the prices paid by them for generic Glyburide as set forth in N.M.S.A., § 57- 12-2E. Plaintiffs and members of the Damages Class were not aware of Defendants’ price-fixing conspiracies and were therefore unaware that they were being unfairly and illegally overcharged. Defendants had the sole power to set that price, and Plaintiffs and members of the Damages Class had no power to negotiate a lower price. Moreover, Plaintiffs and members of the Damages Class lacked any meaningful choice in purchasing generic Glyburide because they were unaware of the unlawful overcharge, and there was no alternative source of supply through which Plaintiffs and members of the Damages Class could avoid the overcharges. Defendants’ conduct with regard to sales of generic Glyburide, including their illegal conspiracies to secretly fix the price of generic at supracompetitive levels and overcharge consumers, was substantively unconscionable because it was one-sided and unfairly benefited Defendants at the expense of Plaintiffs and the public. Defendants took grossly unfair advantage of Plaintiffs and members of the Damages Class. The suppression of competition that has resulted from Defendants’ conspiracies have ultimately resulted in unconscionably higher prices for consumers so that there was a gross disparity between the price paid and the value received for generic Glyburide. Defendants’ unlawful conduct had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout New Mexico; (2) generic Glyburide prices were raised, fixed, maintained,

and stabilized at artificially high levels throughout New Mexico; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. During the Class Period, Defendants' illegal conduct substantially affected New Mexico commerce and consumers. As a direct and proximate result of the unlawful conduct of Defendants, Plaintiffs and members of the Damages Class have been injured and are threatened with further injury. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of New Mexico Stat. § 57-12-1, *et seq.*, and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

157. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of N.Y. Gen. Bus. Law § 349, *et seq.* Defendants agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling and/or maintaining, at artificial and non-competitive levels, the prices at which generic Glyburide was sold, distributed or obtained in New York and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class. Defendants and their co-conspirators made public statements about the prices of generic Glyburide that either omitted material information that rendered the statements that they made materially misleading or affirmatively misrepresented the real cause of price increases for generic Glyburide; and Defendants alone possessed material information that was relevant to consumers, but failed to provide the information. Because of Defendants' unlawful trade practices in the State of New York, New York class members who indirectly purchased generic Glyburide were misled to believe that they were paying a fair price for Glyburide or the price increases for generic Glyburide were for valid business reasons; and similarly situated consumers were affected by Defendants'

conspiracies. Defendants knew that their unlawful trade practices with respect to pricing generic Glyburide would have an impact on New York consumers and not just Defendants' direct customers. Defendants knew that their unlawful trade practices with respect to pricing generic Glyburide would have a broad impact, causing consumer class members who indirectly purchased generic Glyburide to be injured by paying more for generic Glyburide than they would have paid in the absence of Defendants' unlawful trade acts and practices. The conduct of Defendants described herein constitutes consumer-oriented deceptive acts or practices within the meaning of N.Y. Gen. Bus. Law § 349, which resulted in consumer injury and broad adverse impact on the public at large, and harmed the public interest of consumers in New York State in an honest marketplace in which economic activity is conducted in a competitive manner. Defendants' unlawful conduct had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout New York; (2) generic Glyburide prices were raised, fixed, maintained, and stabilized at artificially high levels throughout New York; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. During the Class Period, Defendants marketed, sold, or distributed generic Glyburide in New York, and Defendants' illegal conduct substantially affected New York commerce and consumers. During the Class Period, each of Defendants named herein, directly, or indirectly and through affiliates they dominated and controlled, manufactured, sold and/or distributed generic Glyburide in New York. Plaintiffs and members of the Damages Class seek all relief available pursuant to N.Y. Gen. Bus. Law § 349(h).

158. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of North Carolina Gen. Stat. § 75-1.1, *et seq.* Defendants

agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling and/or maintaining, at artificial and non-competitive levels, the prices at which generic Glyburide were sold, distributed or obtained in North Carolina and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class. Defendants' price-fixing conspiracies could not have succeeded absent deceptive conduct by Defendants to cover up their illegal acts. Secrecy was integral to the formation, implementation and maintenance of Defendants' price-fixing conspiracies. Defendants committed inherently deceptive and self-concealing actions, of which Plaintiffs and members of the Damages Class could not possibly have been aware. Defendants and their co-conspirators publicly provided pretextual and false justifications regarding their price increases. Defendants' public statements concerning the price of generic Glyburide created the illusion of competitive pricing controlled by market forces rather than supracompetitive pricing driven by Defendants' illegal conspiracies. Moreover, Defendants deceptively concealed their unlawful activities by mutually agreeing not to divulge the existence of the conspiracies to outsiders. The conduct of Defendants described herein constitutes consumer-oriented deceptive acts or practices within the meaning of North Carolina law, which resulted in consumer injury and broad adverse impact on the public at large, and harmed the public interest of North Carolina consumers in an honest marketplace in which economic activity is conducted in a competitive manner. Defendants' unlawful conduct had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout North Carolina; (2) generic Glyburide prices were raised, fixed, maintained, and stabilized at artificially high levels throughout North Carolina; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. During the Class

Period, Defendants marketed, sold, or distributed generic Glyburide, in North Carolina, and Defendants' illegal conduct substantially affected North Carolina commerce and consumers. During the Class Period, each of Defendants named herein, directly, or indirectly and through affiliates they dominated and controlled, manufactured, sold and/or distributed generic Glyburide in North Carolina. Plaintiffs and members of the Damages Class seek actual damages for their injuries caused by these violations in an amount to be determined at trial and are threatened with further injury. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of North Carolina Gen. Stat. § 75-1.1, *et seq.*, and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

159. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of the Rhode Island Unfair Trade Practice and Consumer Protection Act (R.I. Gen. Laws § 6-13.1-1, *et seq.*) Members of the Damages Class purchased generic Glyburide for personal, family, or household purposes. Defendants agreed to, and did in fact, act in restraint of trade or commerce in a market that includes Rhode Island, by affecting, fixing, controlling, and/or maintaining, at artificial and non-competitive levels, the prices at which generic Glyburide was sold, distributed, or obtained in Rhode Island. Defendants deliberately failed to disclose material facts to Plaintiffs and members of the Damages Class concerning Defendants' unlawful activities and artificially inflated prices for generic Glyburide. Defendants owed a duty to disclose such facts, and considering the relative lack of sophistication of the average, non-business purchaser, Defendants breached that duty by their silence. Defendants misrepresented to all purchasers during the Class Period that Defendants' generic Glyburide prices were competitive and fair. Defendants' unlawful conduct had the

following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout Rhode Island; (2) generic Glyburide prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Rhode Island; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. Defendants' illegal conduct substantially affected Rhode Island commerce and consumers. As a direct and proximate result of Defendants' violations of law, Plaintiffs and members of the Damages Class suffered an ascertainable loss of money or property as a result of Defendants' use or employment of unconscionable and deceptive commercial practices as set forth above. That loss was caused by Defendants' willful and deceptive conduct, as described herein. Defendants' deception, including their affirmative misrepresentations and omissions concerning the price of generic Glyburide, likely misled all purchasers acting reasonably under the circumstances to believe that they were purchasing generic Glyburide at prices set by a free and fair market. Defendants' affirmative misrepresentations and omissions constitute information important to Plaintiffs and members of the Damages Class as they related to the cost of generic Glyburide they purchased. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Rhode Island Gen. Laws. § 6-13.1-1, *et seq.*, and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

160. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of South Carolina Unfair Trade Practices Act (S.C. Code Ann. § 39-5-10, *et seq.*) Defendants' combinations or conspiracies had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout

South Carolina; (2) generic Glyburide prices were raised, fixed, maintained, and stabilized at artificially high levels throughout South Carolina; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. During the Class Period, Defendants' illegal conduct had a substantial effect on South Carolina commerce and consumers. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of S.C. Code Ann. § 39-5-10, *et seq.*, and, accordingly, Plaintiffs and the members of the Damages Class seek all relief available under that statute.

161. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of 9 Vermont § 2451, *et seq.* Defendants agreed to, and did in fact, act in restraint of trade or commerce in a market that includes Vermont, by affecting, fixing, controlling, and/or maintaining, at artificial and non-competitive levels, the prices at which generic Glyburide was sold, distributed, or obtained in Vermont. Defendants deliberately failed to disclose material facts to Plaintiffs and members of the Damages Class concerning Defendants' unlawful activities and artificially inflated prices for generic Glyburide. Defendants owed a duty to disclose such facts, and considering the relative lack of sophistication of the average, non-business purchaser, Defendants breached that duty by their silence. Defendants misrepresented to all purchasers during the Class Period that Defendants' generic Glyburide prices were competitive and fair. Defendants' unlawful conduct had the following effects: (1) generic Glyburide price competition was restrained, suppressed, and eliminated throughout Vermont; (2) generic Glyburide prices were raised, fixed, maintained,

and stabilized at artificially high levels throughout Vermont; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for generic Glyburide. During the Class Period, Defendants' illegal conduct had a substantial effect on Vermont commerce and consumers. As a direct and proximate result of Defendants' violations of law, Plaintiffs and members of the Damages Class suffered an ascertainable loss of money or property as a result of Defendants' use or employment of unconscionable and deceptive commercial practices as set forth above. That loss was caused by Defendants' willful and deceptive conduct, as described herein. Defendants' deception, including their affirmative misrepresentations and omissions concerning the price of generic Glyburide likely misled all purchasers acting reasonably under the circumstances to believe that they were purchasing generic Glyburide at prices set by a free and fair market. Defendants' misleading conduct and unconscionable activities constitutes unfair competition or unfair or deceptive acts or practices in violation of 9 Vermont § 2451, *et seq.*, and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

FOURTH COUNT

Unjust Enrichment **(on behalf of Plaintiffs and the Damages Class)**

(All States, District of Columbia and U.S. Territories, Except Ohio and Indiana)

162. Plaintiffs incorporate by reference the allegations set forth above as if fully set forth herein.

163. To the extent required, this claim is pleaded in the alternative to the other claims in this Complaint.

164. Defendants have unlawfully benefited from their sales of Glyburide, because of the unlawful and inequitable acts alleged in this Complaint. Defendants unlawfully overcharged End-payers, who made purchases of or reimbursements for Glyburide at prices that were more than they would have been but for Defendants' unlawful actions.

165. Defendants' financial benefits resulting from their unlawful and inequitable acts are traceable to overpayments by Plaintiffs and members of the Damages Class.

166. Plaintiffs and the Damages Class have conferred upon Defendants an economic benefit, in the nature of profits resulting from unlawful overcharges, to the economic detriment of Plaintiffs and the Damages Class.

167. Defendants have been enriched by revenue resulting from unlawful overcharges for Glyburide while Plaintiffs have been impoverished by the overcharges they paid for Glyburide imposed through Defendants' unlawful conduct. Defendants' enrichment and Plaintiffs' impoverishment are connected.

168. There is no justification for Defendants' retention of, and enrichment from, the benefits they received, which caused impoverishment to Plaintiffs and the Damages Class, because Plaintiffs and the Damages Class paid supracompetitive prices that inured to Defendants' benefit, and it would be inequitable for Defendants to retain any revenue gained from their unlawful overcharges.

169. Plaintiffs did not interfere with Defendants' affairs in any manner that conferred these benefits upon Defendants.

170. The benefits conferred upon Defendants were not gratuitous, in that they

constituted revenue created by unlawful overcharges arising from Defendants' illegal and unfair actions to inflate the prices of Glyburide.

171. The benefits conferred upon Defendants are measurable, in that the revenue Defendants have earned due to their unlawful overcharges of Glyburide are ascertainable by review of sales records.

172. It would be futile for Plaintiffs and the Damages Class to seek a remedy from any party with whom they have privity of contract. Defendants have paid no consideration to any other person for any of the unlawful benefits they received indirectly from Plaintiffs and the Damages Class with respect to Defendants' sales of Glyburide.

173. It would be futile for Plaintiffs and the Damages Class to seek to exhaust any remedy against the immediate intermediary in the chain of distribution from which they indirectly purchased Glyburide, as the intermediaries are not liable and cannot reasonably be expected to compensate Plaintiffs and the Damages Class for Defendants' unlawful conduct.

174. The economic benefit of overcharges and monopoly profits derived by Defendants through charging supracompetitive and artificially inflated prices for Glyburide, is a direct and proximate result of Defendants' unlawful practices.

175. The financial benefits derived by Defendants rightfully belong to Plaintiffs and the Damages Class, because Plaintiffs and the Damages Class paid supracompetitive prices during the Class Period, inuring to the benefit of Defendants.

176. It would be inequitable under unjust enrichment principles under the law of the District of Columbia and the laws of all states and territories of the United States, except Ohio

and Indiana, for Defendants to be permitted to retain any of the overcharges for Glyburide derived from Defendants' unlawful, unfair and unconscionable methods, acts, and trade practices alleged in this Complaint.

177. Defendants are aware of and appreciate the benefits bestowed upon them by Plaintiffs and the Damages Class. Defendants consciously accepted the benefits and continue to do so as of the date of this filing.

178. Defendants should be compelled to disgorge in a common fund for the benefit of Plaintiffs and the Damages Class all unlawful or inequitable proceeds they received from their sales of Glyburide.

179. A constructive trust should be imposed upon all unlawful or inequitable sums received by Defendants traceable to indirect purchases of Glyburide by Plaintiffs and the Damages Class. Plaintiffs and the Damages Class have no adequate remedy at law.

XV. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment for the following relief:

1. The Court determine that this action may be maintained as a class action under Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure, and direct that reasonable Notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to each and every member of the Class;

2. That the unlawful conduct, contracts, conspiracies, or combinations alleged herein be adjudged and decreed: (a) an unreasonable restraint of trade or commerce in violation of Section 1 of the Sherman Act; (b) a *per se* violation of Section 1 of the Sherman Act; (c) an unlawful

combination, trust, agreement, understanding and/or concert of action in violation of the state antitrust and unfair competition and consumer protection laws as set forth herein; and (d) acts of unjust enrichment by Defendants as set forth herein.

3. Plaintiffs and members of the Damages Class recover damages, to the maximum extent allowed under such state laws, and that a judgment in favor of Plaintiffs and members of the Damages Class be entered against Defendants jointly and severally in an amount to be trebled to the extent such laws permit;

4. Plaintiffs and members of the Damages Class recover damages, to the maximum extent allowed by such laws, in the form of restitution and/or disgorgement of profits unlawfully obtained;

5. Plaintiffs and members of the Damages Class be awarded restitution, including disgorgement of profits Defendants obtained as a result of their acts of unfair competition and acts of unjust enrichment, and the Court establish of a constructive trust consisting of all ill-gotten gains from which Plaintiffs and members of the Damages Class may make claims on a *pro rata* basis;

6. Defendants, their affiliates, successors, transferees, assignees and other officers, directors, partners, agents and employees thereof, and all other persons acting or claiming to act on their behalf or in concert with them, be permanently enjoined and restrained from in any manner continuing, maintaining or renewing the conduct, contracts, conspiracies, or combinations alleged herein, or from entering into any other contracts, conspiracies, or combinations having a similar purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect;

7. Plaintiffs and members of the Classes be awarded pre-judgment and post-judgment

interest as provided by law, and that such interest be awarded at the highest legal rate;

8. Plaintiffs and members of the Classes recover their costs of suit, including reasonable attorneys' fees, as provided by law; and

9. Plaintiffs and members of the Classes have such other and further relief as the case may require and the Court may deem just and proper.

XVI. JURY DEMAND

Plaintiffs demand a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of all issues so triable.

DATED: April 24, 2017

Respectfully Submitted:

THE DUGAN LAW FIRM, APLC



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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Louisiana Health Service Indemnity Company, d/b/a Blue Cross and Blue Shield of Louisiana and HMO Louisiana

(b) County of Residence of First Listed Plaintiff E Baton Rouge Parish, LA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) James R. Dugan, II, The Dugan Law Firm, APLC, 365 Canal Street, Suite 1000, New Orleans, LA 70130; Telephone: (504) 648-0180

DEFENDANTS

Aurobindo Pharma USA, Inc., et al.

County of Residence of First Listed Defendant Middlesex County, NJ (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and incorporation status. Includes categories like Citizen of This State, Citizen of Another State, and Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains numerous checkboxes for specific legal categories.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Sherman Act 15 U.S.C. 1 & 3

Brief description of cause: Generic Pharmaceuticals Pricing Antitrust Litigation - Glyburide

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Cynthia Rufe DOCKET NUMBER MDL 2724

DATE 04/24/2017 SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY RECEIPT # AMOUNT APPLYING IFF JUDGE MAG. JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Louisiana Health Service Indemnity Company :
d/b/a Blue Cross and Blue Shield of Louisiana, :
et al. :

CIVIL ACTION

Aurobindo Pharma USA, Inc., et al. :


NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS.

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) (X)
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

4/24/2017


James R. Dugan, II

Louisiana Health Service Indemnity Company d/b/a Blue Cross and Blue Shield of Louisiana, et al.

Date

Attorney-at-law

Attorney for

(504) 648-0180

(504) 648-0181

jdugan@dugan-lawfirm.com

Telephone

FAX Number

E-Mail Address

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: LA Health Service & Indemnity Company - 5525 Reitz Ave., Baton Rouge, LA 70809

Address of Defendant: Aurobindo Pharma USA, Inc. - 6 Wheeling Road, Dayton, New Jersey

Place of Accident, Incident or Transaction: United States
 (Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
 (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes No

Does this case involve multidistrict litigation possibilities? Yes No

RELATED CASE, IF ANY:

Case Number: MDL #2724 Judge Rufe Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
 Yes No
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
 Yes No
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
 Yes No
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
 Yes No

CIVIL: (Place in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. Indemnity Contract, Marine Contract, and All Other Contracts
2. FELA
3. Jones Act-Personal Injury
4. Antitrust
5. Patent
6. Labor-Management Relations
7. Civil Rights
8. Habeas Corpus
9. Securities Act(s) Cases
10. Social Security Review Cases
11. All other Federal Question Cases
 (Please specify) _____

B. Diversity Jurisdiction Cases:

1. Insurance Contract and Other Contracts
2. Airplane Personal Injury
3. Assault, Defamation
4. Marine Personal Injury
5. Motor Vehicle Personal Injury
6. Other Personal Injury (Please specify)
7. Products Liability
8. Products Liability — Asbestos
9. All other Diversity Cases
 (Please specify) _____

ARBITRATION CERTIFICATION

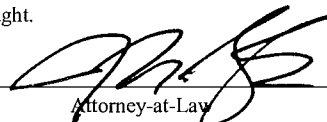
(Check Appropriate Category)

I, James R. Dugan, II, counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: 4/24/2017



 Attorney-at-Law

LA Bar No. 24785
 Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 4/24/2017


 Attorney-at-Law

LA Bar No. 24785
 Attorney I.D.#