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8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 MSP RECOVERY CLAIMS, SERIES LLC,
12 a Delaware Limited Liability Company,
13 MAO-MSO RECOVERY II, LLC, a
14 Delaware entity; MSP RECOVERY, LLC,
15 a Florida entity; MSPA CLAIMS 1, LLC,
16 a Florida entity,

17 Plaintiffs,

18 vs.

19 MALLINCKRODT ARD INC., Formerly
20 known as QUESTCOR
21 PHARMACEUTICALS, INC., a
22 California corporation, MALLINCKRODT
23 PLC, an Irish Public Limited Company, and
24 UNITED BIOSOURCE CORPORATION, a
25 Delaware Corporation,

26 Defendants.

Case No.: 2:17-cv-07928-CBM-AFM

***CORRECTED CLASS ACTION
COMPLAINT***

DEMAND FOR JURY TRIAL

1 **COMPLAINT**

2 1. Plaintiffs MSP Recovery Claims, Series LLC, MSPA Claims 1, LLC,
3 MAO-MSO Recovery, LLC, and MAO-MSO Recovery II, LLC (collectively,
4 “Plaintiffs”) on behalf of themselves and all others similarly situated, bring this action
5 against Mallinckrodt ARD Inc., formerly known as Questcor Pharmaceuticals, Inc.
6 (hereinafter for clarity purposes, “Questcor”), Mallinckrodt PLC, and United
7 Biosource Corporation (“UBC”; collectively, “Defendants”).

8 2. The claims in this case arise from Defendants’ scheme to inflate prices
9 and reduce competition for a drug known as Acthar Gel (“Acthar”), a drug used to
10 treat a rare pediatric illness, causing payers like Plaintiffs to pay more for drugs than
11 they otherwise would have paid. Plaintiffs contend that Defendants are engaged in
12 monopolistic, anti-competitive behavior by purchasing and shelving the only potential
13 competitor to Acthar, enabling Defendants to exponentially raise the price for Acthar.

14 3. The Defendants have engaged in egregious price-gouging, taking
15 advantage of the fact that people will pay almost anything to save the life of a child.
16 For example, in 2001, the average price of Acthar was \$40 per vial. Today, Plaintiffs
17 pay over \$34,000 per vial. As discussed below, the Defendants were able to take
18 advantage of consumers, indirect, and direct payers by deliberately shelving a low cost
19 synthetic competing drug.

20 4. Plaintiffs bring this case as a national class action on behalf of themselves
21 and all other putative class members that suffered damages as a result of Defendants’
22 anti-competitive conduct. This lawsuit seeks reimbursement for those overpayments.

23 **JURISDICTION AND VENUE**

24 5. Plaintiffs bring this action to recover treble damages, attorneys’ fees,
25 litigation expenses, court costs, and secure injunctive relief for violations of Section 1
26 of the Sherman Act, 15 U.S.C. § 1, pursuant to Sections 4 and 16 of the Clayton Act of
27 1914 (“Clayton Act”), 15 U.S.C. §§ 15 and 26, and violations of Section 16720 of
28 California’s Cartwright Act.

1 2014. At that time, Questcor only sold Acthar. With Mallinckrodt PLC's acquisition,
2 Questcor became a wholly owned subsidiary of Mallinckrodt PLC and subsequently
3 changed its corporate name from Questcor Pharmaceuticals, Inc. to Mallinckrodt ARD
4 Inc. Mallinckrodt ARD, Inc. (referred to as Questcor in this Complaint) is an active,
5 California corporation registered with the California Secretary of State with its
6 headquarters in St. Louis, Missouri.

7 17. Defendant UBC is a Delaware corporation with its corporate headquarters
8 at 920 Harvest Drive, Blue Bell, Pennsylvania 19422. UBC is a wholly-owned
9 subsidiary of Express Scripts Holding Company ("Express Scripts"), a Delaware
10 Corporation, with its principle executive offices located at One Express Way, St.
11 Louis, Missouri 63121.

12 18. Whenever this Complaint references any act, deed, or transaction of any
13 corporation, the allegation means that the corporation engaged in the act, deed, or
14 transaction by or through its officers, directors, agents, employees, or representatives
15 while they were actively engaged in the management, direction, control, or transaction
16 of the corporation's business or affairs. Each Defendant acted as the principal of, or
17 agent for, all other Defendants with respect to the acts, violations, and common course
18 of conduct described in this Complaint.

19 STANDING

20 19. Plaintiffs represent MAOs, which are private insurance companies that,
21 for all practical and legal purposes, stand in the same shoes as the Centers for
22 Medicare and Medicaid Services ("CMS") in providing Medicare benefits.

23 20. Traditional Medicare, administered by CMS, consists of Parts A and B of
24 the Medicare Act. Part C is the Medicare Advantage program under which Medicare-
25 eligible persons may elect to have an MAO provide Medicare benefits instead of CMS.
26 Under the Medicare Advantage program, an MAO administers the provision of
27 Medicare benefits pursuant to a contract with CMS. *See* 42 U.S.C. § 1395w-27. CMS
28 pays the MAO a fixed fee per enrollee, and the MAO provides at least the same

1 benefits as an enrollee would receive under traditional Medicare. *See* 42 U.S.C. §
2 1395w-22(a), 1395w-23. The MAO must provide the services rendered under Parts A
3 and B. *See* 42 U.S.C. § 1395w-22. Therefore, all regulations corresponding to Parts A
4 and B are applicable to MAOs.

5 21. Medicare Part D (“Part D”), or the Medicare Prescription Drug Benefit, is
6 used to subsidize the costs of prescription drugs and prescription drug premiums for
7 those on Medicare. Part D is only offered through private companies and CMS does
8 not offer the benefits directly. Generally, MAOs offering Part C benefits include Part
9 D benefits for a fee and then receive reimbursement for the beneficiaries as well.

10 22. MAOs exercise control over Pharmacy Benefit Managers (“PBM”) and
11 any other first tier and downstream entities. Included in the Medicare Act and Code of
12 Federal Regulations (“CFRs”) are provisions that set forth the price that Medicare will
13 pay for pharmaceuticals and the requirements that plan sponsors, in this case the class
14 of MAOs, must utilize when contracting with the drug manufacturers. *See* 42 U.S.C. §
15 1395w-102(d); 42 C.F.R. § 423.104(g).

16 23. Medicare’s drug prices are set in conjunction with manufacturers. *See* 42
17 C.F.R. § 414.804. Accordingly, Medicare and MAOs have directly negotiated prices
18 for Acthar with the manufacturer and, due to Defendants’ monopolistic conduct, have
19 over-paid for Acthar as direct payers. Having been assigned the injuries caused by this
20 anti-competitive conduct, Plaintiffs thus have standing as direct payers via their MAO
21 Assignors.

22 **FACTUAL ALLEGATIONS**

23 24. At its core, this case concerns Defendants’ collective actions to carve out
24 and maintain a monopoly for a rare drug category and to extract exponentially
25 increasing, eye-gouging prices for a drug marketed for infants.

26 25. Questcor purchased Acthar in 2001. Through anticompetitive conduct,
27 Defendant Questcor extinguished threats to its monopoly relating to Acthar. As a
28 result, Acthar is the only therapeutic adrenocorticotrophic hormone (“ACTH”) product

1 sold in the United States.

2 26. ACTH is the standard of care treatment for children with infantile spasms.
3 These spasms involve dangerous seizures during the first two years of a child’s life.
4 ACTH is also used to treat nephrotic syndrome—a kidney disorder—as well as some
5 other disorders such as rheumatoid arthritis which occur in the elderly.

6 27. About a decade ago, Questcor vertically integrated its sales and
7 distribution through one exclusive distributor, Curascript. Vertical integration is
8 common in the business world. However, in the context of specialty pharmaceuticals,
9 this integration supercharged Defendants’ ability to extract exponentially increasing
10 prices for Acthar.

11 28. In 2001, the average price of Acthar was \$40 per vial. For the Assignor
12 MAOs, Questcor now charges over \$34,000 per vial—an 85,000% increase—from
13 when Questcor purchased Acthar.

14 29. Buying an Acthar vial is typically not a one-time expense for patients. A
15 course of Acthar treatment for infantile spasms typically requires multiple vials,
16 costing in excess of \$100,000 for one course of treatment.

17 30. The Assignor MAOs paid these inflated prices. Data going back to 2013
18 shows the average purchase price paid by the MAOs per vial for Acthar has been as
19 follows:

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Avg. Price Paid by MAOs



31. These skyrocketing prices reveal the economic impacts of Defendants anti-competitive conduct on Plaintiffs.

32. In stark contrast to the United States, elsewhere in the world, i.e., in Europe and Canada, doctors treat patients suffering from the same conditions that Acthar is used to treat with a different drug called Synacthen Depot (“Synacthen”). Synacthen is a synthetic ACTH drug, while Acthar is a natural ACTH drug.

33. Until June 2013, Novartis AG (“Novartis”) marketed and sold Synacthen abroad. In 2011, Novartis decided to sell the rights to market Synacthen in the United States.

34. For years, Questcor viewed Synacthen as a significant, potential competitive threat to Acthar.

35. Accordingly, Questcor outbid other companies to acquire the U.S. rights to Synacthen. Questcor paid nearly ten times more than what a competitor offered to purchase Synacthen. By acquiring Synacthen, Questcor created a market monopoly for ACTH in the United States.

36. These monopolistic actions have had an adverse effect on Plaintiffs who

1 have spent far more to purchase Acthar than it otherwise would had the Defendants
2 acted appropriately.

3 37. Indeed, the entire market has been altered. Defendants have ensured that
4 there would be no competition, harming the market as a whole by reducing innovation
5 and competition. Domestic release of Synacthen would have instantly created
6 competition for Acthar, resulting in a lower price for the drug. Defendants have no
7 valid business reason for Acthar's inflated price.

8 38. As it relates to Synacthen, each alternative bidder expected to profitably
9 sell Synacthen at a price well below Acthar's price. This demonstrates that Acthar is
10 currently priced at an anti-competitive level. The lower prices that would prevail in a
11 duopoly market containing Acthar and Synacthen show that Acthar is currently
12 positioning Acthar at an anticompetitive price.

13 39. On January 18, 2017, the Federal Trade Commission ("FTC") filed a
14 three-count complaint based on the above referenced facts against Defendants on
15 behalf of the FTC and various State Attorney Generals. These counts consisted of
16 Monopolization in Violation of the FTC Act; Monopolization in Violation of the
17 Sherman Act; and various state law claims.

18 40. Twelve days after the complaint was filed, Defendants settled with the
19 FTC for \$100 million.

20 **CLASS ALLEGATIONS**

21 41. Plaintiffs bring this action on behalf of themselves and the following
22 classes:

23 **Class 1:** All MAOs and related entities in the United States and its
24 territories who purchased, paid, provided reimbursement, and/or possess
25 the recovery rights to reimbursement, for some or all of the purchase
26 price of Defendants' pharmaceutical, Acthar, pursuant to Medicare Part C
27 contracts offering Medicare Part B services from January 1, 2011, to
28 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, or municipalities with
self-funded prescription drug plans; and (c) any judges or justices
involved in this action and any members of their immediate families.

1 **Class 2:** All MAO, MA-PD, or PDP sponsors and related entities in the
2 United States and its territories who purchased, paid, provided
3 reimbursement, and/or possess the recovery rights to reimbursement, for
4 some or all of the purchase price of Defendants' pharmaceutical, Acthar,
5 pursuant to Medicare Part D contracts providing services from January 1,
6 2011, to present. This class excludes: (a) Defendants, their officers,
7 directors, management, employees, subsidiaries, and affiliates; (b) all
8 federal and state governmental entities except for cities, towns, or
9 municipalities with self-funded prescription drug plans; and (c) any
10 judges or justices involved in this action and any members of their
11 immediate families.

12 42. Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure 23
13 both individually and on behalf of (a) a national injunctive class and/or (b) a national
14 damages classes and/or (c) various state-wide damages sub-classes, during the period
15 from January 1, 2011, to the present.

16 43. As discussed in this Class Action Complaint, Defendants have enjoyed ill-
17 gotten gains from the sales of Acthar at the expense of Class Members, who suffered
18 damages to their property and business. Such damages apply to all Class Members
19 (and Plaintiffs as the rightful assignees of those organizations). Class action law has
20 long recognized that, when a company engages in conduct that has uniformly harmed
21 many claimants such as Plaintiffs, other direct payers, and consumers, class resolution
22 is an effective tool to redress the harm.

23 44. Here, the Class Members have been deprived of property and money by
24 being forced to purchase prescriptions of Acthar at unlawfully elevated prices as a
25 direct result of Defendants engaging in anti-competitive conduct, as alleged throughout
26 this Complaint.

27 45. The Class is properly brought and should be maintained as a class action
28 under Rule 23(a), satisfying the class action prerequisites of numerosity, commonality,
typicality, and adequacy:

- a. Numerosity: There are hundreds of entities (including the organizations that assigned their rights to Plaintiffs) throughout the United States that were forced to pay artificially inflated, anti-competitive prices for Acthar. Thus, the numerosity element for class certification is met.

1 b. Commonality: Questions of law or fact are common to all members of the
2 Class. Specifically, Defendants' misconduct was directed at all members
3 of this Class. Defendants' illegal pattern of anticompetitive conduct had a
4 common, adverse effect on all purchasers of Acthar. All members of the
5 Class have common questions of fact or law. Each Class Member shares
6 the same needed remedy, i.e., reimbursement for the inflated prices and
7 lost money due to the Defendants' monopolistic actions, and imposition
8 of injunctive and equitable relief to stop Defendants from continuing in
9 their anti-competitive activities.

10 c. Typicality: Plaintiffs' claims are typical of the claims of the Class because
11 their claims arise from the same course of conduct by Defendants, i.e.,
12 anticompetitive prices. Plaintiffs paid or reimbursed for prescriptions of
13 Acthar at anti-competitive prices as a consequence of Defendants' actions.
14 Plaintiffs' claims are, therefore, typical of the Class.

15 d. Adequacy: Plaintiffs will fairly and adequately represent and protect the
16 interests of the Class. Its interests in vindicating these claims are shared
17 with all members of the Class. In addition, Plaintiffs are represented by
18 competent and experienced counsel in class action litigation.

19 46. The Class is properly brought and should be maintained as a class action
20 under Rule 23(b) because a class action in this context is superior. Pursuant to Rule
21 23(b)(3), common issues of law and fact predominate over any questions affecting
22 only individual members of the Class.

23 47. The Class is also properly brought and should be maintained as a class
24 action under Rule 23(b)(2) and (b)(3). Defendants have acted or refused to act on
25 grounds that apply generally to the Class, such that final injunctive relief or
26 corresponding declaratory relief is appropriate with respect to the class. Additionally,
27 Defendants acted in such a way that questions of law or fact predominate over any
28 questions affecting only individual members, and that a class action is superior to other

1 available methods for fairly and efficiently adjudicating the controversy.

2 48. Additionally, Plaintiffs and the putative Class contend that Defendants
3 violated the federal antitrust laws by vertical price fixing and suffered harm by paying
4 inflated anticompetitive prices for Acthar. This injury is of the type antitrust laws were
5 intended to prevent and flows from that which makes Defendants' acts unlawful. The
6 collusion and monopolistic activity between Defendants supplied an atmosphere which
7 drove up the costs of Acthar, resulting in Class damages.

8 **CAUSES OF ACTION**

9 **Count I: Sherman Act Violations Pursuant to 15 U.S.C. § 2**

10 49. Plaintiffs incorporate by reference paragraphs 1 through 48 as if fully set
11 forth herein.

12 50. Defendants monopolized the market for the pharmaceutical Acthar, and
13 thereby, violated the Sherman Act (15 U.S.C. § 2).

14 51. While actively engaged in the management of Defendants' affairs,
15 Defendants' officers, agents, employees, or representatives authorized Defendants'
16 acts in furtherance of a contract, combination, or conspiracy.

17 52. During the Class Period, Defendants bought the rights to bring Acthar's
18 AB rated bioequivalent, Synachthen, to the United States.

19 53. After purchasing these rights, Defendants have not brought to the market
20 the AB rated bioequivalent and have not allowed any other entity to bring the
21 pharmaceutical to market.

22 54. These acts have caused unreasonable restraints of trade in the market for
23 Acthar.

24 55. As a result of Defendants' unlawful conduct, Plaintiffs and all other
25 similarly situated Class Members that purchased Acthar have been harmed by paying
26 inflated, anti-competitive prices.

27 56. Defendants' actions had the following effects, among others: a) price
28 competition in the market for Acthar has been restrained, suppressed, and/or

1 eliminated in the United States; b) prices for Acthar provided by Defendants have been
2 fixed, raised, maintained, and stabilized at artificially high, non-competitive levels
3 throughout the United States; and c) Plaintiffs and Class Members who purchased
4 Acthar from Defendants and their co-conspirators have been deprived of the benefits
5 of free and open competition.

6 57. Plaintiffs and the Class members are entitled to and shall recover
7 threefold the damages sustained and the cost of suit, including a reasonable attorney's
8 fee.

9 58. Plaintiffs and the Class Members are also entitled to an injunction against
10 Defendants, which will prevent and restrain the violations alleged herein.

11 **Count II: Sherman Act Violations Pursuant to 15 U.S.C. §§ 1 and 3**

12 59. Plaintiffs incorporate by reference paragraphs 1 through 58 as if fully set
13 forth herein.

14 60. As set forth above, Questcor has entered into exclusive agreements with
15 its competitor in the European market, Novartis, its agent, UBC, and its exclusive
16 specialty pharmacy distributor, Curascript, to preserve and extend its monopoly power
17 and to allow it to maintain and extend its soaring prices for Acthar.

18 61. There is no legitimate business justification on the part of Questcor for
19 these exclusive and exclusionary agreements, and these agreements: (a) substantially
20 foreclosed and excluded competition from other potential ACTH manufacturers and
21 distributors, and (b) resulted in Questcor's willful maintenance and unlawful exercise
22 of monopoly power in the market for ACTH drugs.

23 62. At all relevant times, Questcor's exclusive and exclusionary agreements
24 with UBC and other agents assisted Questcor in: (a) effectively excluding less
25 expensive, potentially superior competitive products from the ACTH drug market; (b)
26 maintaining Questcor's dominant market share and monopoly power in the ACTH
27 drug market; (c) maintaining prices at artificially elevated levels for Acthar; and (d)
28 otherwise reaping the benefits of its illegal monopoly power. There is no

1 procompetitive justification for Questcor's conduct.

2 63. Plaintiffs' injuries consist of paying higher prices to purchase Acthar than
3 it would have paid absent Questcor's unlawful conduct. Plaintiffs' injuries are the type
4 the antitrust laws were designed to prevent and flow from that which makes Questcor's
5 conduct unlawful.

6 64. Defendants' acts and practices constitute anti-competitive agreements in
7 unreasonable restraint of trade in violation of Section 1 and Section 3 of the Sherman
8 Act, 15 U.S.C. §§ 1 and 3.

9 **Count III: Unjust Enrichment**

10 65. Plaintiffs repeat the allegations in paragraphs 1 through 64 as if fully set
11 forth herein.

12 66. As a result of the unlawful conduct described above, Defendants have
13 been unjustly enriched. At a minimum, Defendants were unjustly enriched by the
14 receipt of improper profits from the sale of Acthar at unlawfully inflated prices.

15 67. As Defendants benefited from their unlawful acts, it would be inequitable
16 for Defendants to be permitted to retain any of the ill-gotten gains.

17 68. Plaintiffs and the Class Members are entitled to: 1) the amount of
18 Defendants' ill-gotten gains resulting from Defendants' unlawful, unjust, and
19 inequitable conduct; and 2) the establishment of a constructive trust consisting of all
20 ill-gotten gains from which Plaintiffs and the Class Members may make claims on a
21 *pro rata* basis.

22 **Count IV: Violation of State Antitrust and Consumer Protection Statutes**

23 69. Plaintiffs repeat the allegations in paragraphs 1 through 68 as if fully set
24 forth herein.

25 70. During the Class Period, Defendants and their co-conspirators engaged in
26 a continuing contract, combination or conspiracy with respect to the sale of Acthar,
27 which resulted in unreasonable restraint of trade and commerce and in violation of
28 various state statutes, as set forth below.

1 71. The contract, combination, or conspiracy consisted of an agreement
2 among the Defendants and their co-conspirators to fix, raise, inflate, stabilize, and/or
3 maintain artificially anti-competitive prices for Acthar in the United States.

4 72. Defendants and their co-conspirators performed acts in furtherance of the
5 combination and conspiracy, including meetings and participating in conversations
6 among themselves, which took place in the United States, during which they agreed to
7 fix, increase, inflate, maintain, or stabilize prices that Plaintiffs and the Class Members
8 paid for Acthar.

9 73. Defendants and their co-conspirators engaged in the actions described
10 above for the purpose of carrying out their unlawful monopolization of Acthar.

11 74. Defendants' anticompetitive conduct described above was knowing,
12 willful and constituted violations or flagrant violations of several state antitrust statutes
13 as described below.

14 75. Plaintiffs and other similarly situated payers in the Class in each of the
15 below states have been injured in their business and property due to Defendants'
16 unlawful combination, contract, conspiracy and agreement. Plaintiffs and other
17 similarly situated payers in the Class have paid more for Acthar than they otherwise
18 would have paid in the absence of Defendants' unlawful conduct. This injury is of the
19 type the antitrust laws of the above states were designed to prevent and flows from that
20 which makes Defendants' conduct unlawful. In addition, Defendants have profited
21 significantly from the aforesaid conspiracy. Defendants' profits derived from their
22 anticompetitive conduct come at the expense and detriment of members of Plaintiffs
23 and other similarly situated payers in the Class.

24 76. Accordingly, Plaintiffs and other similarly situated payers in the Class in
25 each of the below jurisdictions seek damages (including statutory damages where
26 applicable), to be trebled or otherwise increased as permitted by a jurisdiction's
27 antitrust law, and costs of suit, including reasonable attorneys' fees, to the extent
28 permitted by the above state laws.

1 **A. Arizona**

2 77. Defendants have entered into an unlawful agreement in restraint of trade
3 in violation of Arizona Revised Statutes, §§ 44-1401, *et seq.* Defendants' combinations
4 or conspiracies had the following effects: (1) price competition for Acthar was
5 restrained, suppressed, and eliminated throughout Arizona; (2) Acthar prices were
6 raised, fixed, maintained and stabilized at artificially high levels throughout Arizona;
7 (3) Plaintiffs and other similarly situated payers in the Class were deprived of free and
8 open competition; and (4) Plaintiffs and other similarly situated payers in the Class
9 paid anti-competitive, artificially inflated prices for Acthar. During the Class Period,
10 Defendants' illegal conduct substantially affected Arizona commerce. As a direct and
11 proximate result of Defendants' unlawful conduct, Plaintiffs and other similarly
12 situated payers in the Class have been injured in their business and property and are
13 threatened with further injury. Due to the foregoing, Defendants entered into
14 agreements in restraint of trade in violation of Ariz. Rev. Stat. §§ 44-1401, *et seq.*

15 78. Accordingly, Plaintiffs and other similarly situated payers in the Class
16 seek all forms of relief available under Ariz. Rev. Stat. §§ 44-1401, *et seq.*

17 **B. Arkansas**

18 79. Defendants have knowingly entered into an unlawful agreement in
19 restraint of trade in violation of the Arkansas Code Annotated, § 4-88-101, *et seq.*
20 Defendants knowingly agreed to, and did in fact, act in restraint of trade or commerce
21 by affecting, fixing, controlling, and/or maintaining at non-competitive and artificially
22 inflated levels, the prices at which Acthar was sold, distributed, or obtained in
23 Arkansas and took efforts to conceal their agreements from Plaintiffs and members of
24 the Class. The aforementioned conduct on the part of the Defendants constituted
25 "unconscionable" and "deceptive" acts or practices in violation of Arkansas Code
26 Annotated, § 4-88-107(a)(10). Defendants' unlawful conduct had the following
27 effects: (1) Acthar price competition was restrained, suppressed, and eliminated
28 throughout Arkansas; (2) Acthar prices were raised, fixed, maintained, and stabilized

1 at artificially elevated levels throughout Arkansas; (3) Plaintiffs and the members of
2 the Class were deprived of free and open competition; and (4) Plaintiffs and the
3 members of the Class paid anti-competitive, artificially inflated prices for Acthar.
4 During the Class Period, Defendants' illegal conduct substantially affected Arkansas
5 commerce and consumers. As a direct and proximate result of the unlawful conduct of
6 the Defendants, Plaintiffs and the members of the Class have been injured in their
7 business and property and are threatened with further injury. Defendants have engaged
8 in unfair competition or unfair or deceptive acts or practices in violation of Arkansas
9 Code Annotated, § 4-88-107(a)(10) and, accordingly, Plaintiffs and the members of the
10 Class seek all relief available under that statute.

11 **C. California I**

12 80. Defendants have entered into an unlawful agreement in restraint of trade
13 in violation of California Business and Professions Code §§ 16700 *et seq.* During the
14 Class Period, Defendants and their co-conspirators entered into and engaged in a
15 continuing unlawful trust in restraint of trade and commerce described above in
16 violation of California Business and Professions Code Section § 16720. Defendants,
17 and each of them, have acted in violation of Section 16720 to fix, raise, stabilize, and
18 maintain prices of Acthar at anti-competitive levels. The aforesaid violations of
19 Section 16720 consisted, without limitation, of a continuing unlawful trust and concert
20 of action among the Defendants and their co-conspirators, the substantial terms of
21 which were to fix, raise, maintain, and stabilize the prices of Acthar. For the purpose
22 of forming and effectuating the unlawful trust, the Defendants and their co-
23 conspirators have done those things which they combined and conspired to do,
24 including but not limited to the acts, practices and course of conduct set forth above
25 and creating a price floor, fixing, raising, and stabilizing the prices of Acthar. The
26 combination and conspiracy alleged herein has had, *inter alia*, the following effects:
27 (1) price competition for Acthar has been restrained, suppressed, and/or eliminated in
28 the State of California; (2) prices for Acthar provided by Defendants and their co-

1 conspirators have been fixed, raised, stabilized, and pegged at artificially high, non-
2 competitive levels in the State of California and throughout the United States; and (3)
3 those who purchased Acthar directly or indirectly from Defendants and their co-
4 conspirators have been deprived of the benefit of free and open competition. As a
5 direct and proximate result of Defendants' unlawful conduct, Plaintiffs and other
6 similarly situated payers in the Class have been injured in their business and property
7 in that they paid more for Acthar than they otherwise would have paid in the absence
8 of Defendants' unlawful conduct. Due to Defendants' violation of Section 16720,
9 Plaintiffs and other similarly situated payers in the Class seek treble damages and their
10 cost of suit, including a reasonable attorney's fee, pursuant to California Business and
11 Professions Code § 16750(a).

12 **D. California II**

13 81. Defendants have engaged in unfair competition or unfair, unconscionable,
14 deceptive or fraudulent acts or practices in violation of California Business and
15 Professions Code § 17200, *et seq.*

16 82. During the Class Period, Defendants manufactured, marketed, sold, or
17 distributed Acthar in California, and committed and continue to commit acts of unfair
18 competition, as defined by Sections 17200, *et seq.* of the California Business and
19 Professions Code, by engaging in the acts and practices specified above. This claim is
20 instituted pursuant to Sections 17203 and 17204 of the California Business and
21 Professions Code, to obtain restitution from these Defendants for acts, as alleged
22 herein, that violated Section 17200 of the California Business and Professions Code,
23 commonly known as the Unfair Competition Law. The Defendants' conduct as alleged
24 herein violated Section 17200.

25 83. The acts, omissions, misrepresentations, practices and non-disclosures of
26 Defendants, as alleged herein, constituted a common, continuous, and continuing
27 course of conduct of unfair competition by means of unfair, unlawful, and/or
28 fraudulent business acts or practices within the meaning of California Business and

1 Professions Code § 17200, *et seq.*, including, but not limited to, the following: (1) the
2 violations of Section 1 of the Sherman Act, as set forth above; (2) the violations of
3 Section 16720, *et seq.* of the California Business and Professions Code, set forth
4 above.

5 84. Defendants' acts, omissions, misrepresentations, practices, and non-
6 disclosures, as described above, whether or not in violation of Section 16720, *et seq.* of
7 the California Business and Professions Code, and whether or not concerted or
8 independent acts, are otherwise unfair, unconscionable, unlawful or fraudulent; (3)
9 Defendants' acts or practices are unfair to purchasers of Acthar in the State of
10 California within the meaning of Section 17200, California Business and Professions
11 Code; and (4) Defendants' acts and practices are fraudulent or deceptive within the
12 meaning of Section 17200 of the California Business and Professions Code.

13 85. Plaintiffs and members of the Class are entitled to full restitution and/or
14 disgorgement of all revenues, earnings, profits, compensation, and benefits that may
15 have been obtained by Defendants as a result of such business acts or practices. The
16 illegal conduct alleged herein is continuing and there is no indication that Defendants
17 will cease such activity into the future. The unlawful and unfair business practices of
18 Defendants, and each of them, as described above, have caused and continue to cause
19 Plaintiffs and the members of the Class to pay anti-competitive and artificially-inflated
20 prices for Acthar.

21 86. Plaintiffs and the members of the Class suffered injury in fact and lost
22 money or property as a result of such unfair competition. The conduct of Defendants
23 as alleged in this Complaint violates Section 17200 of the California Business and
24 Professions Code.

25 87. As alleged in this Complaint, Defendants and their co-conspirators have
26 been unjustly enriched as a result of their wrongful conduct and by Defendants' unfair
27 competition.

28 88. Plaintiffs and the members of the Class are accordingly entitled to

1 equitable relief including restitution and/or disgorgement of all revenues, earnings,
2 profits, compensation, and benefits that may have been obtained by Defendants as a
3 result of such business practices, pursuant to the California Business and Professions
4 Code, §§ 17203 and 17204.

5 **E. District of Columbia I**

6 89. Defendants have entered into an unlawful agreement in restraint of trade
7 in violation of District of Columbia Code Annotated §§ 28-4501, *et seq.*

8 90. Defendants' combinations or conspiracies had the following effects: (1)
9 Acthar price competition was restrained, suppressed, and eliminated throughout the
10 District of Columbia; (2) Acthar prices were raised, fixed, maintained and stabilized at
11 artificially high levels throughout the District of Columbia; (3) Plaintiffs and other
12 similarly situated payers in the Class including those who resided in the District of
13 Columbia and/or purchased Acthar that was shipped by Defendants or their co-
14 conspirators, were deprived of free and open competition, including in the District of
15 Columbia; and (4) Plaintiffs and other similarly situated payers in the Class, including
16 those who resided in the District of Columbia and/or purchased Acthar in the District
17 of Columbia that was shipped by Defendants or their co-conspirators, paid anti-
18 competitive, artificially inflated prices for Acthar, including in the District of
19 Columbia.

20 91. During the Class Period, Defendants' illegal conduct substantially
21 affected District of Columbia commerce.

22 92. As a direct and proximate result of Defendants' unlawful conduct,
23 Plaintiffs and other similarly situated Class members, have been injured in their
24 business and property and are threatened with further injury. Due to the foregoing,
25 Defendants have entered into agreements in restraint of trade in violation of District of
26 Columbia Code Ann. §§ 28-4501, *et seq.*

27 93. Accordingly, Plaintiffs and other similarly situated payers seek all forms
28 of relief available under District of Columbia Code Ann. §§ 28-4501, *et seq.*

1 **F. District of Columbia II**

2 94. Defendants have engaged in unfair competition or unfair, unconscionable,
3 or deceptive acts or practices in violation of District of Columbia Code § 28-3901, *et*
4 *seq.*

5 95. Defendants agreed to, and did in fact, act in restraint of trade or commerce
6 by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive
7 levels, the prices at which Acthar was sold, distributed or obtained in the District of
8 Columbia.

9 96. The foregoing conduct constitutes “unlawful trade practices,” within the
10 meaning of D.C. Code § 28-3904. Plaintiffs were not aware of Defendants’ price-
11 fixing conspiracy and were therefore unaware that they was being unfairly and
12 illegally overcharged.

13 97. There was a gross disparity of bargaining power between the parties with
14 respect to the price charged by Defendants for Acthar. Defendants had the sole power
15 to set that price and Plaintiffs had no power to negotiate a lower price. Moreover,
16 Plaintiffs lacked any meaningful choice in purchasing Acthar because it was unaware
17 of the unlawful overcharges and there was no alternative source of supply through
18 which Plaintiffs could avoid the overcharges.

19 98. Defendants’ conduct regarding sales of Acthar, including their illegal
20 conspiracy to secretly fix the price of Acthar at anti-competitive levels and overcharge
21 consumers, was substantively unconscionable because it was one-sided and unfairly
22 benefited Defendants at the expense of Plaintiffs and the public.

23 99. Defendants took grossly unfair advantage of Plaintiffs. The suppression
24 of competition that has resulted from Defendants’ conspiracy has ultimately resulted in
25 unconscionably higher prices for purchasers so that there was a gross disparity
26 between the price paid and the value received for Acthar.

27 100. Defendants’ unlawful conduct had the following effects: (1) Acthar price
28 competition was restrained, suppressed, and eliminated throughout the District of

1 Columbia; (2) Acthar prices were raised, fixed, maintained, and stabilized at
2 artificially elevated levels throughout the District of Columbia; (3) Plaintiffs and the
3 Class were deprived of free and open competition; and (4) Plaintiffs and the Class paid
4 anti-competitive, artificially inflated prices for Acthar.

5 101. As a direct and proximate result of the Defendants' conduct, Plaintiffs and
6 members of the Class have been injured and are threatened with further injury.

7 102. Defendants have engaged in unfair competition or unfair or deceptive acts
8 or practices in violation of District of Columbia Code § 28-3901, *et seq.*, and,
9 accordingly, Plaintiffs and members of the Class seek all relief available under that
10 statute.

11 **G. Florida**

12 103. Defendants have engaged in unfair competition or unfair, unconscionable,
13 or deceptive acts or practices in violation of the Florida Deceptive and Unfair Trade
14 Practices Act, Fla. Stat. §§ 501.201, *et seq.*

15 104. Defendants' unlawful conduct had the following effects: (1) Acthar price
16 competition was restrained, suppressed, and eliminated throughout Florida; (2) Acthar
17 prices were raised, fixed, maintained, and stabilized at artificially elevated levels
18 throughout Florida; (3) Plaintiffs and members of the Class were deprived of free and
19 open competition; and (4) Plaintiffs and members of the Class paid anti-competitive,
20 artificially inflated prices for Acthar.

21 105. During the Class Period, Defendants' illegal conduct substantially
22 affected Florida commerce and consumers.

23 106. As a direct and proximate result of Defendants' unlawful conduct,
24 Plaintiffs and members of the Class have been injured and are threatened with further
25 injury.

26 107. Defendants have engaged in unfair competition or unfair or deceptive acts
27 or practices in violation of Florida Stat. § 501.201, *et seq.*, and, accordingly, Plaintiffs
28 and members of the Class seek all relief available under that statute.

1 **H. Hawaii I**

2 108. Defendants have engaged in unfair competition or unfair, unconscionable,
3 or deceptive acts or practices in violation of the Hawaii Revised Statutes Annotated §§
4 480-1, *et seq.*

5 109. Defendants' unlawful conduct had the following effects: (1) Acthar price
6 competition was restrained, suppressed, and eliminated throughout Hawaii; (2) Acthar
7 prices were raised, fixed, maintained, and stabilized at artificially elevated levels
8 throughout Hawaii; (3) Plaintiffs and members of the Class were deprived of free and
9 open competition; and (4) Plaintiffs and members of the Class paid anti-competitive,
10 artificially inflated prices for Acthar.

11 110. During the Class Period, Defendants' illegal conduct substantially
12 affected Hawaii commerce and consumers.

13 111. As a direct and proximate result of Defendants' unlawful conduct,
14 Plaintiffs and members of the Class have been injured and are threatened with further
15 injury.

16 112. Defendants have engaged in unfair competition or unfair or deceptive acts
17 or practices in violation of Hawaii Rev. Stat. § 480, *et seq.*, and, accordingly, Plaintiffs
18 and members of the Class seek all relief available under that statute.

19 **I. Hawaii II**

20 113. Defendants have entered into an unlawful agreement in restraint of trade
21 in violation of Hawaii Revised Statutes Annotated §§ 480-1, *et seq.*

22 114. Defendants' unlawful conduct had the following effects: (1) Acthar price
23 competition was restrained, suppressed, and eliminated throughout Hawaii; (2) Acthar
24 prices were raised, fixed, maintained, and stabilized at artificially high levels
25 throughout Hawaii; (3) Plaintiffs and other similarly situated payers in the Class were
26 deprived of free and open competition; and (4) Plaintiffs and other similarly situated
27 payers in the Class paid anti-competitive, artificially inflated prices for Acthar.

28 115. During the Class Period, Defendants' illegal conduct substantially

1 affected Hawaii commerce.

2 116. As a direct and proximate result of Defendants' unlawful conduct,
3 Plaintiffs and other similarly situated payers in the Class have been injured in their
4 business and property and are threatened with further injury.

5 117. Due to the foregoing, Defendants have entered into agreements in
6 restraint of trade in violation of Hawaii Revised Statutes Annotated §§ 480-4, *et seq.*

7 118. Accordingly, Plaintiffs and other similarly situated payers in the Class
8 seek all forms of relief available under Hawaii Revised Statutes Annotated §§ 480-4, *et*
9 *seq.*

10 **J. Illinois**

11 119. Defendants have entered into an unlawful agreement in restraint of trade
12 in violation of the Illinois Antitrust Act (740 Illinois Compiled Statutes 10/1, *et seq.*).

13 120. Defendants' combinations or conspiracies had the following effects: (1)
14 Acthar price competition was restrained, suppressed, and eliminated throughout
15 Illinois; (2) Acthar prices were raised, fixed, maintained, and stabilized at artificially
16 high levels throughout Illinois; (3) Plaintiffs and other similarly situated payers in the
17 Class were deprived of free and open competition; and (4) Plaintiffs and other
18 similarly situated payers in the Class paid anti-competitive, artificially inflated prices
19 for Acthar.

20 121. During the Class Period, Defendants' illegal conduct substantially
21 affected Illinois commerce.

22 122. As a direct and proximate result of Defendants' unlawful conduct,
23 Plaintiffs and other similarly situated payers in the Class have been injured in their
24 business and property and are threatened with further injury.

25 **K. Iowa**

26 123. Defendants have entered into an unlawful agreement in restraint of trade
27 in violation of Iowa Code §§ 553.1, *et seq.*

28 124. Defendants' combinations or conspiracies had the following effects: (1)

1 Acthar price competition was restrained, suppressed, and eliminated throughout Iowa;
2 (2) Acthar prices were raised, fixed, maintained and stabilized at artificially high levels
3 throughout Iowa; (3) Plaintiffs and other similarly situated payers in the Class were
4 deprived of free and open competition; and (4) Plaintiffs and other similarly situated
5 payers in the Class paid anti-competitive, artificially inflated prices for Acthar.

6 125. During the Class Period, Defendants' illegal conduct substantially
7 affected Iowa commerce. As a direct and proximate result of Defendants' unlawful
8 conduct, Plaintiffs and other similarly situated payers in the Class have been injured in
9 their business and property and are threatened with further injury.

10 126. Due to the foregoing, Defendants have entered into agreements in
11 restraint of trade in violation of Iowa Code §§ 553.1, *et seq.*

12 127. Accordingly, Plaintiffs and other similarly situated payers in the Class
13 seek all forms of relief available under Iowa Code §§ 553, *et seq.*

14 **L. Kansas**

15 128. Defendants have entered into an unlawful agreement in restraint of trade
16 in violation of Kansas Statutes Annotated, §§ 50-101, *et seq.*

17 129. Defendants' combinations or conspiracies had the following effects: (1)
18 Acthar competition was restrained, suppressed, and eliminated throughout Kansas; (2)
19 Acthar prices were raised, fixed, maintained and stabilized at artificially high levels
20 throughout Kansas; (3) Plaintiffs and other similarly situated payers in the Class were
21 deprived of free and open competition; and (4) Plaintiffs and other similarly situated
22 payers in the Class paid anti-competitive, artificially inflated prices for Acthar.

23 130. During the Class Period, Defendants' illegal conduct substantially
24 affected Kansas commerce.

25 131. As a direct and proximate result of Defendants' unlawful conduct,
26 Plaintiffs and other similarly situated payers in the Class have been injured in their
27 business and property and are threatened with further injury.

28 132. Due to the foregoing, Defendants have entered into agreements in

1 restraint of trade in violation of Kansas Stat. Ann. §§ 50-101, *et seq.*

2 133. Accordingly, Plaintiffs and other similarly situated payers in the Class
3 seek all forms of relief available under Kansas Stat. Ann. §§ 50-101, *et seq.*

4 **M. Maine**

5 134. Defendants have entered into an unlawful agreement in restraint of trade
6 in violation of Maine Revised Statutes (Maine Rev. Stat. Ann. 10, §§ 1101, *et seq.*).

7 135. Defendants' combinations or conspiracies had the following effects: (1)
8 Acthar price competition was restrained, suppressed, and eliminated throughout
9 Maine; (2) Acthar prices were raised, fixed, maintained and stabilized at artificially
10 high levels throughout Maine; (3) Plaintiffs and other similarly situated payers in the
11 Class were deprived of free and open competition; and (4) Plaintiffs and other
12 similarly situated payers in the Class paid anti-competitive, artificially inflated prices
13 for Acthar.

14 136. During the Class Period, Defendants' illegal conduct substantially
15 affected Maine commerce.

16 137. As a direct and proximate result of Defendants' unlawful conduct,
17 Plaintiffs and other similarly situated payers in the Class have been injured in their
18 business and property and are threatened with further injury.

19 138. Due to the foregoing, Defendants have entered into agreements in
20 restraint of trade in violation of Maine Rev. Stat. Ann. 10, §§ 1101, *et seq.*

21 Accordingly, Plaintiffs and other similarly situated payers in the Class seek all relief
22 available under Maine Rev. Stat. Ann. 10, §§ 1101, *et seq.*

23 **N. Massachusetts**

24 139. Defendants have engaged in unfair competition or unlawful, unfair,
25 unconscionable, or deceptive acts or practices in violation of the Massachusetts Gen.
26 Laws, Ch 93A, § 1, *et seq.*

27 140. Defendants were engaged in trade or commerce as defined by G.L. 93A.
28 Defendants, in a market that includes Massachusetts, agreed to, and did in fact, act in

1 restraint of trade or commerce by affecting, fixing, controlling, and/or maintaining at
2 non-competitive and artificially inflated levels, the prices at which Acthar was sold,
3 distributed, or obtained in Massachusetts and took efforts to conceal their agreements
4 from Plaintiffs and members of the Class.

5 141. The aforementioned conduct on the part of the Defendants constituted
6 “unfair methods of competition and unfair or deceptive acts or practices in the conduct
7 of any trade or commerce,” in violation of Massachusetts Gen. Laws, Ch 93A, § 2, 11.
8 Defendants’ unlawful conduct had the following effects: (1) Acthar price competition
9 was restrained, suppressed, and eliminated throughout Massachusetts; (2) Acthar
10 prices were raised, fixed, maintained, and stabilized at artificially high levels
11 throughout Massachusetts; (3) Plaintiffs and the members of the Class were deprived
12 of free and open competition; and (4) Plaintiffs and the members of the Class paid anti-
13 competitive, artificially inflated prices for Acthar.

14 142. During the Class Period, Defendants’ illegal conduct substantially
15 affected Massachusetts commerce and consumers.

16 143. As a direct and proximate result of the unlawful conduct of the
17 Defendants, Plaintiffs and the members of the Class have been injured in their business
18 and property and are threatened with further injury.

19 144. Defendants have engaged in unfair competition or unfair or deceptive acts
20 or practices in violation of Massachusetts Gen. Laws, Ch 93A, §§ 2, 11, that were
21 knowing or willful, and, accordingly, Plaintiffs and the members of the Class seek all
22 relief available under that statute, including multiple damages.

23 **O. Michigan**

24 145. Defendants have entered into an unlawful agreement in restraint of trade
25 in violation of Michigan Compiled Laws Annotated §§ 445.771, *et seq.*

26 146. Defendants’ combinations or conspiracies had the following effects: (1)
27 Acthar competition was restrained, suppressed, and eliminated throughout Michigan;
28 (2) Acthar prices were raised, fixed, maintained and stabilized at artificially high levels

1 throughout Michigan; (3) Plaintiffs and other similarly situated payers in the Class
2 were deprived of free and open competition; and (4) Plaintiffs and other similarly
3 situated payers in the Class paid anti-competitive, artificially inflated prices for Acthar.

4 147. During the Class Period, Defendants' illegal conduct substantially
5 affected Michigan commerce.

6 148. As a direct and proximate result of Defendants' unlawful conduct,
7 Plaintiffs and other similarly situated payers in the Class have been injured in their
8 business and property and are threatened with further injury.

9 149. Due to the foregoing, Defendants have entered into agreements in
10 restraint of trade in violation of Michigan Comp. Laws Ann. §§ 445.771, *et seq.*

11 150. Accordingly, Plaintiffs and other similarly situated payers in the Class
12 seek all relief available under Michigan Comp. Laws Ann. §§ 445.771, *et seq.*

13 **P. Minnesota**

14 151. Defendants have entered into an unlawful agreement in restraint of trade
15 in violation of Minnesota Annotated Statutes §§ 325D.49, *et seq.*

16 152. Defendants' combinations or conspiracies had the following effects: (1)
17 Acthar competition was restrained, suppressed, and eliminated throughout Minnesota;
18 (2) Acthar prices were raised, fixed, maintained and stabilized at artificially high levels
19 throughout Minnesota; (3) Plaintiffs and other similarly situated payers in the Class
20 were deprived of free and open competition; and (4) Plaintiffs and other similarly
21 situated payers in the Class paid anti-competitive, artificially inflated prices for Acthar.

22 153. During the Class Period, Defendants' illegal conduct substantially
23 affected Minnesota commerce.

24 154. As a direct and proximate result of Defendants' unlawful conduct,
25 Plaintiffs and other similarly situated payers in the Class have been injured in their
26 business and property and are threatened with further injury.

27 155. Due to the foregoing, Defendants have entered into agreements in
28 restraint of trade in violation of Minnesota Stat. §§ 325D.49, *et seq.*

1 156. Accordingly, Plaintiffs and other similarly situated payers in the Class
2 seek all relief available under Minnesota Stat. §§ 325D.49, *et seq.*

3 **Q. Mississippi**

4 157. Defendants have entered into an unlawful agreement in restraint of trade
5 in violation of Mississippi Code Annotated §§ 75-21-1, *et seq.*

6 158. Defendants' combinations or conspiracies had the following effects: (1)
7 Acthar price competition was restrained, suppressed, and eliminated throughout
8 Mississippi; (2) Acthar prices were raised, fixed, maintained, and stabilized at
9 artificially high levels throughout Mississippi; (3) Plaintiffs and other similarly
10 situated payers in the Class were deprived of free and open competition; and (4)
11 Plaintiffs and other similarly situated payers in the Class paid anti-competitive,
12 artificially inflated prices for Acthar.

13 159. During the Class Period, Defendants' illegal conduct substantially
14 affected Mississippi commerce.

15 160. As a direct and proximate result of Defendants' unlawful conduct,
16 Plaintiffs and other similarly situated payers in the Class have been injured in their
17 business and property and are threatened with further injury.

18 161. Due to the foregoing, Defendants have entered into agreements in
19 restraint of trade in violation of Mississippi Code Ann. § 75-21-1, *et seq.*

20 162. Accordingly, Plaintiffs and other similarly situated payers in the Class
21 seek all relief available under Mississippi Code Ann. § 75-21-1, *et seq.*

22 **R. Missouri**

23 163. Defendants have engaged in unfair competition or unfair, unconscionable,
24 or deceptive acts or practices in violation of the Missouri Merchandising Practices Act,
25 Mo. Rev. Stat. § 407.010, *et seq.*

26 164. Plaintiffs and members of the Class purchased Acthar for personal or
27 family purposes.

28 165. Defendants engaged in the conduct described herein regarding the sale of

1 Acthar in trade or commerce in a market that includes Missouri.

2 166. Defendants agreed to, and did in fact affect, fix, control, and/or maintain,
3 at artificial and non-competitive levels, the prices at which Acthar was sold,
4 distributed, or obtained in Missouri, which conduct constituted unfair practices in that
5 it was unlawful under federal and state law, violated public policy, was unethical,
6 oppressive and unscrupulous, and caused substantial injury to Plaintiffs and members
7 of the Class.

8 167. Defendants concealed, suppressed, and omitted to disclose material facts
9 to Plaintiffs and members of the Class concerning Defendants' unlawful activities and
10 artificially inflated prices for Acthar.

11 168. The concealed, suppressed, and omitted facts would have been important
12 to Plaintiffs and members of the Class as they related to the cost of Acthar they
13 purchased.

14 169. Defendants misrepresented the real cause of price increases and/or the
15 absence of price reductions in Acthar by making public statements that were not in
16 accord with the facts.

17 170. Defendants' statements and conduct concerning the price of Acthar were
18 deceptive as they had the tendency or capacity to mislead Plaintiffs and members of
19 the Class to believe that they were purchasing Acthar at prices established by a free
20 and fair market. Defendants' unlawful conduct had the following effects: (1) Acthar
21 price competition was restrained, suppressed, and eliminated throughout Missouri; (2)
22 Acthar prices were raised, fixed, maintained, and stabilized at artificially elevated
23 levels throughout Missouri; (3) Plaintiffs and members of the Class were deprived of
24 free and open competition; and (4) Plaintiffs and members of the Class paid anti-
25 competitive, artificially inflated prices for Acthar.

26 171. The foregoing acts and practices constituted unlawful practices in
27 violation of the Missouri Merchandising Practices Act.

28 172. As a direct and proximate result of the above-described unlawful

1 practices, Plaintiffs and members of the Class suffered ascertainable loss of money or
2 property.

3 173. Accordingly, Plaintiffs and members of the Class seek all relief available
4 under Missouri's Merchandising Practices Act, specifically Mo. Rev. Stat. § 407.020,
5 which prohibits "the act, use or employment by any person of any deception, fraud,
6 false pretense, false promise, misrepresentation, unfair practice or the concealment,
7 suppression, or omission of any material fact in connection with the sale or
8 advertisement of any merchandise in trade or commerce..." as further interpreted by
9 the Missouri Code of State Regulations, 15 CSR 60-7.010, *et seq.*, 15 CSR 60-8.010, *et*
10 *seq.*, and 15 CSR 60-9.010, *et seq.*, and Mo. Rev. Stat. § 407.025, which provides for
11 the relief sought in this count.

12 **S. Montana**

13 174. Defendants have engaged in unfair competition or unfair, unconscionable,
14 or deceptive acts or practices in violation of the Montana Unfair Trade Practices and
15 Consumer Protection Act of 1970, Mont. Code, §§ 30-14-103, *et seq.*, and §§ 30-14-
16 201, *et seq.*

17 175. Defendants' unlawful conduct had the following effects: (1) Acthar price
18 competition was restrained, suppressed, and eliminated throughout Montana; (2)
19 Acthar prices were raised, fixed, maintained, and stabilized at artificially elevated
20 levels throughout Montana; (3) Plaintiffs and members of the Class were deprived of
21 free and open competition; and (4) Plaintiffs and members of the Class paid anti-
22 competitive, artificially inflated prices for Acthar.

23 176. During the Class Period, Defendants marketed, sold, or distributed Acthar
24 in Montana, and Defendants' illegal conduct substantially affected Montana commerce
25 and consumers.

26 177. As a direct and proximate result of Defendants' unlawful conduct,
27 Plaintiffs and members of the Class have been injured and are threatened with further
28 injury.

1 178. Defendants have engaged in unfair competition or unfair or deceptive acts
2 or practices in violation of Mont. Code, §§ 30-14-103, *et seq.*, and §§ 30-14-201, *et*
3 *seq.*, and, accordingly, Plaintiffs and members of the Class seek all relief available
4 under that statute.

5 **T. Nebraska**

6 179. Defendants have entered into an unlawful agreement in restraint of trade
7 in violation of Nebraska Revised Statutes §§ 59-801, *et seq.*

8 180. Defendants' combinations or conspiracies had the following effects: (1)
9 Acthar price competition was restrained, suppressed, and eliminated throughout
10 Nebraska; (2) Acthar prices were raised, fixed, maintained, and stabilized at artificially
11 high levels throughout Nebraska; (3) Plaintiffs and other similarly situated payers in
12 the Class were deprived of free and open competition; and (4) Plaintiffs and other
13 similarly situated payers in the Class paid anti-competitive, artificially inflated prices
14 for Acthar.

15 181. During the Class Period, Defendants' illegal conduct substantially
16 affected Nebraska commerce.

17 182. As a direct and proximate result of Defendants' unlawful conduct,
18 Plaintiffs and other similarly situated payers in the Class have been injured in their
19 business and property and are threatened with further injury.

20 183. Due to the foregoing, Defendants have entered into agreements in
21 restraint of trade in violation of Nebraska Revised Statutes §§ 59-801, *et seq.*

22 184. Accordingly, Plaintiffs and other similarly situated payers in the Class
23 seek all relief available under Nebraska Revised Statutes §§ 59-801, *et seq.*

24 **U. Nevada**

25 185. Defendants have entered into an unlawful agreement in restraint of trade
26 in violation of Nevada Revised Statutes Annotated §§ 598A.010, *et seq.*

27 186. Defendants' combinations or conspiracies had the following effects: (1)
28 Acthar price competition was restrained, suppressed, and eliminated throughout

1 Nevada; (2) Acthar prices were raised, fixed, maintained, and stabilized at artificially
2 high levels throughout Nevada; (3) Plaintiffs and other similarly situated payers in the
3 Class were deprived of free and open competition; and (4) Plaintiffs and other
4 similarly situated payers in the Class paid anti-competitive, artificially inflated prices
5 for Acthar.

6 187. During the Class Period, Defendants' illegal conduct substantially
7 affected Nevada commerce. As a direct and proximate result of Defendants' unlawful
8 conduct, Plaintiffs and other similarly situated payers in the Class have been injured in
9 their business and property and are threatened with further injury.

10 188. Due to the foregoing, Defendants have entered into agreements in
11 restraint of trade in violation of Nevada Rev. Stat. Ann. §§ 598A, *et seq.*

12 189. Accordingly, Plaintiffs and other similarly situated payers in the Class
13 seek all relief available under Nevada Rev. Stat. Ann. §§ 598A, *et seq.*

14 **V. New Hampshire**

15 190. Defendants have entered into an unlawful agreement in restraint of trade
16 in violation of New Hampshire Revised Statutes §§ 356:1, *et seq.*

17 191. Defendants' combinations or conspiracies had the following effects: (1)
18 Acthar competition was restrained, suppressed, and eliminated throughout New
19 Hampshire; (2) Acthar prices were raised, fixed, maintained, and stabilized at
20 artificially high levels throughout New Hampshire; (3) Plaintiffs and other similarly
21 situated payers in the Class were deprived of free and open competition; and (4)
22 Plaintiffs and other similarly situated payers in the Class paid anti-competitive,
23 artificially inflated prices for Acthar.

24 192. During the Class Period, Defendants' illegal conduct substantially
25 affected New Hampshire commerce.

26 193. As a direct and proximate result of Defendants' unlawful conduct,
27 Plaintiffs and other similarly situated payers in the Class have been injured in their
28 business and property and are threatened with further injury.

1 194. Due to the foregoing, Defendants have entered into agreements in
2 restraint of trade in violation of New Hampshire Revised Statutes §§ 356:1, *et seq.*

3 195. Accordingly, Plaintiffs and other similarly situated payers in the Class
4 seek all relief available under New Hampshire Revised Statutes §§ 356:1, *et seq.*

5 **W. New Mexico I**

6 196. Defendants have entered into an unlawful agreement in restraint of trade
7 in violation of New Mexico Statutes Annotated §§ 57-1-1, *et seq.*

8 197. Defendants' combinations or conspiracies had the following effects: (1)
9 Acthar price competition was restrained, suppressed, and eliminated throughout New
10 Mexico; (2) Acthar prices were raised, fixed, maintained, and stabilized at artificially
11 high levels throughout New Mexico; (3) Plaintiffs and other similarly situated payers
12 in the Class were deprived of free and open competition; and (4) Plaintiffs and other
13 similarly situated payers in the Class paid anti-competitive, artificially inflated prices
14 for Acthar.

15 198. During the Class Period, Defendants' illegal conduct substantially
16 affected New Mexico commerce.

17 199. As a direct and proximate result of Defendants' unlawful conduct,
18 Plaintiffs and other similarly situated payers in the Class have been injured in their
19 business and property and are threatened with further injury.

20 200. Due to the foregoing, Defendants have entered into agreements in
21 restraint of trade in violation of New Mexico Stat. Ann. §§ 57-1-1, *et seq.*

22 201. Accordingly, Plaintiffs and other similarly situated payers in the Class
23 seek all relief available under New Mexico Stat. Ann. §§ 57-1-1, *et seq.*

24 **X. New Mexico II**

25 202. Defendants have engaged in unfair competition or unfair, unconscionable,
26 or deceptive acts or practices in violation of the New Mexico Stat. § 57-12-1, *et seq.*

27 203. Defendants agreed to, and did in fact, act in restraint of trade or commerce
28 by affecting, fixing, controlling and/or maintaining at non-competitive and artificially

1 inflated levels, the prices at which Acthar was sold, distributed or obtained in New
2 Mexico and took efforts to conceal their agreements from Plaintiffs and members of
3 the Class.

4 204. The conduct on the part of the Defendants constituted “unconscionable
5 trade practices,” in violation of N.M.S.A. Stat. § 57-12-3, in that such conduct, inter
6 alia, resulted in a gross disparity between the value received by Plaintiffs and the
7 members of the Class and the prices paid by them for Acthar as set forth in N.M.S.A.,
8 § 57-12-2E.

9 205. Plaintiffs were not aware of Defendants’ price-fixing conspiracy and were
10 therefore unaware that they was being unfairly and illegally overcharged. There was a
11 gross disparity of bargaining power between the parties with respect to the price
12 charged by Defendants for Acthar. Defendants had the sole power to set that price and
13 Plaintiffs had no power to negotiate a lower price.

14 206. Moreover, Plaintiffs lacked any meaningful choice in purchasing Acthar
15 because it was unaware of the unlawful overcharge and there was no alternative source
16 of supply through which Plaintiffs could avoid the overcharges.

17 207. Defendants’ conduct regarding sales of Acthar, including their illegal
18 conspiracy to secretly fix the price of Acthar at anti-competitive levels and overcharge
19 consumers, was substantively unconscionable because it was one-sided and unfairly
20 benefited Defendants at the expense of Plaintiffs and the public.

21 208. Defendants took grossly unfair advantage of Plaintiffs. The suppression
22 of competition that has resulted from Defendants’ conspiracy has ultimately resulted in
23 unconscionably higher prices for consumers so that there was a gross disparity
24 between the price paid and the value received for Acthar.

25 209. Defendants’ unlawful conduct had the following effects: (1) Acthar price
26 competition was restrained, suppressed, and eliminated throughout New Mexico; (2)
27 Acthar prices were raised, fixed, maintained, and stabilized at artificially elevated
28 levels throughout New Mexico; (3) Plaintiffs and the members of the Class were

1 deprived of free and open competition; and (4) Plaintiffs and the members of the Class
2 paid anti-competitive, artificially inflated prices for Acthar.

3 210. During the Class Period, Defendants' illegal conduct substantially
4 affected New Mexico commerce and consumers.

5 211. As a direct and proximate result of the unlawful conduct of the
6 Defendants, Plaintiffs and the members of the Class have been injured and are
7 threatened with further injury.

8 212. Defendants have engaged in unfair competition or unfair or deceptive acts
9 or practices in violation of New Mexico Stat. § 57-12-1, *et seq.*, and, accordingly,
10 Plaintiffs and the members of the Class seek all relief available under that statute.

11 **Y. New York I**

12 213. Defendants have entered into an unlawful agreement in restraint of trade
13 in violation of New York General Business Laws §§ 340, *et seq.*

14 214. Defendants' combinations or conspiracies had the following effects: (1)
15 Acthar price competition was restrained, suppressed, and eliminated throughout New
16 York; (2) Acthar prices were raised, fixed, maintained and stabilized at artificially high
17 levels throughout New York; (3) Plaintiffs and other similarly situated payers in the
18 Class were deprived of free and open competition; and (4) Plaintiffs and other
19 similarly situated payers in the Class paid anti-competitive, artificially inflated prices
20 for Acthar that were higher than they would have been absent the Defendants' illegal
21 acts.

22 215. During the Class Period, Defendants' illegal conduct substantially
23 affected New York commerce.

24 216. As a direct and proximate result of Defendants' unlawful conduct,
25 Plaintiffs and other similarly situated payers in the Class have been injured in their
26 business and property and are threatened with further injury.

27 217. Due to the foregoing, Defendants have entered into agreements in
28 restraint of trade in violation of the New York Donnelly Act, §§ 340, *et seq.* The

1 conduct set forth above is a *per se* violation of the Act.

2 218. Accordingly, Plaintiffs and other similarly situated payers in the Class
3 seek all relief available under New York Gen. Bus. Law §§ 340, *et seq.*

4 **Z. New York II**

5 219. Defendants have engaged in unfair competition or unfair, unconscionable,
6 or deceptive acts or practices in violation of N.Y. Gen. Bus. Law § 349, *et seq.*

7 220. Defendants agreed to, and did in fact, act in restraint of trade or commerce
8 by affecting, fixing, controlling and/or maintaining, at artificial and non-competitive
9 levels, the prices at which Acthar was sold, distributed or obtained in New York and
10 took efforts to conceal their agreements from Plaintiffs and members of the Class.

11 221. Defendants and their co-conspirators made public statements about the
12 prices of Acthar that either omitted material information that rendered the statements
13 that they made materially misleading or affirmatively misrepresented the real cause of
14 price increases for Acthar; and Defendants alone possessed material information that
15 was relevant to consumers, but failed to provide the information.

16 222. Because of Defendants' unlawful trade practices in the State of New
17 York, New York class members who indirectly purchased Acthar were misled to
18 believe that they were paying a fair price for Acthar or the price increases for Acthar
19 were for valid business reasons; and similarly situated consumers were potentially
20 affected by Defendants' conspiracy.

21 223. Defendants knew that their unlawful trade practices with respect to
22 pricing Acthar would have an impact on New York consumers and not just the
23 Defendants' direct customers.

24 224. Defendants knew that their unlawful trade practices with respect to
25 pricing Acthar would have a broad impact, causing consumer class members who
26 indirectly purchased Acthar to be injured by paying more for Acthar than they would
27 have paid in the absence of Defendants' unlawful trade acts and practices.

28 225. The conduct of the Defendants described herein constitutes consumer-

1 oriented deceptive acts or practices within the meaning of N.Y. Gen. Bus. Law § 349,
2 which resulted in consumer injury and broad adverse impact on the public at large, and
3 harmed the public interest of the state of New York in an honest marketplace in which
4 economic activity is conducted in a competitive manner.

5 226. Defendants' unlawful conduct had the following effects: (1) Acthar price
6 competition was restrained, suppressed, and eliminated throughout New York; (2)
7 Acthar prices were raised, fixed, maintained, and stabilized at artificially elevated
8 levels throughout New York; (3) Plaintiffs and members of the Class were deprived of
9 free and open competition; and (4) Plaintiffs and members of the Class paid anti-
10 competitive, artificially inflated prices for Acthar.

11 227. During the Class Period, Defendants marketed, sold, or distributed Acthar
12 in New York, and Defendants' illegal conduct substantially affected New York
13 commerce and consumers.

14 228. During the Class Period, each of the Defendants named herein, directly, or
15 indirectly and through affiliates, dominated and controlled, manufactured, sold and/or
16 distributed Acthar in New York.

17 229. Plaintiffs and members of the Class seek all relief available pursuant to
18 N.Y. Gen. Bus. Law § 349 (h).

19 **AA. North Carolina I**

20 230. Defendants have entered into an unlawful agreement in restraint of trade
21 in violation of the North Carolina General Statutes §§ 75-1, *et seq.*

22 231. Defendants' combinations or conspiracies had the following effects: (1)
23 Acthar price competition was restrained, suppressed, and eliminated throughout North
24 Carolina; (2) Acthar prices were raised, fixed, maintained, and stabilized at artificially
25 high levels throughout North Carolina; (3) Plaintiffs and other similarly situated payers
26 in the Class were deprived of free and open competition; and (4) Plaintiffs and other
27 similarly situated payers in the Class paid anti-competitive, artificially inflated prices
28 for Acthar.

1 232. During the Class Period, Defendants’ illegal conduct substantially
2 affected North Carolina commerce.

3 233. As a direct and proximate result of Defendants’ unlawful conduct,
4 Plaintiffs and other similarly situated payers in the Class have been injured in their
5 business and property and are threatened with further injury.

6 234. Due to the foregoing, Defendants have entered into agreements in
7 restraint of trade in violation of North Carolina Gen. Stat. §§ 75-1, *et seq.*

8 235. Accordingly, Plaintiffs and other similarly situated payers in the Class
9 seek all relief available under North Carolina Gen. Stat. §§ 75-1, *et. seq.*

10 **BB. North Carolina II**

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

13 237. Defendants agreed to, and did in fact, act in restraint of trade or commerce
14 by affecting, fixing, controlling and/or maintaining, at artificial and non-competitive
15 levels, the prices at which Acthar was sold, distributed or obtained in North Carolina
16 and took efforts to conceal their agreements from Plaintiffs and members of the Class.

17 238. Defendants’ price- fixing conspiracy could not have succeeded absent
18 deceptive conduct by Defendants to cover up their illegal acts.

19 239. Secrecy was integral to the formation, implementation and maintenance of
20 Defendants’ price-fixing conspiracy. Defendants committed inherently deceptive and
21 self-concealing actions, of which Plaintiffs could not possibly have been aware.
22 Defendants and their co-conspirators publicly provided pretextual and false
23 justifications regarding their price increases.

24 240. Defendants’ public statements concerning the price of Acthar created the
25 illusion of competitive pricing controlled by market forces rather than anti-competitive
26 pricing driven by Defendants’ illegal conspiracy.

27 241. Moreover, Defendants deceptively concealed their unlawful activities by
28 mutually agreeing not to divulge the existence of the conspiracy to outsiders.

1 242. The conduct of the Defendants described herein constitutes consumer-
2 oriented deceptive acts or practices within the meaning of North Carolina law, which
3 resulted in consumer injury and broad adverse impact on the public at large, and
4 harmed the public interest of North Carolina consumers in an honest marketplace in
5 which economic activity is conducted in a competitive manner. Defendants' unlawful
6 conduct had the following effects: (1) Acthar price competition was restrained,
7 suppressed, and eliminated throughout North Carolina; (2) Acthar prices were raised,
8 fixed, maintained, and stabilized at artificially elevated levels throughout North
9 Carolina; (3) Plaintiffs and members of the Class were deprived of free and open
10 competition; and (4) Plaintiffs and members of the Class paid anti-competitive,
11 artificially inflated prices for Acthar.

12 243. During the Class Period, Defendants marketed, sold, or distributed Acthar
13 in North Carolina, and Defendants' illegal conduct substantially affected North
14 Carolina commerce and consumers.

15 244. During the Class Period, each of the Defendants named herein, directly, or
16 indirectly and through affiliates they dominated and controlled, manufactured, sold
17 and/or distributed Acthar in North Carolina.

18 245. Plaintiffs and members of the Class seek actual damages for their injuries
19 caused by these violations in an amount to be determined at trial and are threatened
20 with further injury.

21 246. Defendants have engaged in unfair competition or unfair or deceptive acts
22 or practices in violation of North Carolina Gen. Stat. § 75-1.1, *et seq.*, and,
23 accordingly, Plaintiffs and members of the Class seek all relief available under that
24 statute.

25 **CC. North Dakota**

26 247. Defendants have entered into an unlawful agreement in restraint of trade
27 in violation of North Dakota Century Code §§ 51-08.1-01, *et seq.*

28 248. Defendants' combinations or conspiracies had the following effects: (1)

1 Acthar price competition was restrained, suppressed, and eliminated throughout North
2 Dakota; (2) Acthar prices were raised, fixed, maintained and stabilized at artificially
3 high levels throughout North Dakota; (3) Plaintiffs and other similarly situated payers
4 in the Class were deprived of free and open competition; and (4) Plaintiffs and other
5 similarly situated payers in the Class paid anti-competitive, artificially inflated prices
6 for Acthar.

7 249. During the Class Period, Defendants' illegal conduct had a substantial
8 effect on North Dakota commerce.

9 250. As a direct and proximate result of Defendants' unlawful conduct,
10 Plaintiffs and other similarly situated payers in the Class have been injured in their
11 business and property and are threatened with further injury.

12 251. Due to the foregoing, Defendants have entered into agreements in
13 restraint of trade in violation of North Dakota Cent. Code §§ 51-08.1-01, *et seq.*

14 252. Accordingly, Plaintiffs and other similarly situated payers in the Class
15 seek all relief available under North Dakota Cent. Code §§ 51-08.1-01, *et seq.*

16 **DD. Oregon**

17 253. Defendants have entered into an unlawful agreement in restraint of trade
18 in violation of Oregon Revised Statutes §§ 646.705, *et seq.*

19 254. Defendants' combinations or conspiracies had the following effects: (1)
20 Acthar price competition was restrained, suppressed, and eliminated throughout
21 Oregon; (2) Acthar prices were raised, fixed, maintained and stabilized at artificially
22 high levels throughout Oregon; (3) Plaintiffs and other similarly situated payers in the
23 Class were deprived of free and open competition; and (4) Plaintiffs and other
24 similarly situated payers in the Class paid anti-competitive, artificially inflated prices
25 for Acthar.

26 255. During the Class Period, Defendants' illegal conduct had a substantial
27 effect on Oregon commerce.

28 256. As a direct and proximate result of Defendants' unlawful conduct,

1 Plaintiffs and other similarly situated payers in the Class have been injured in their
2 business and property and are threatened with further injury.

3 257. Due to the foregoing, Defendants have entered into agreements in
4 restraint of trade in violation of Oregon Revised Statutes §§ 646.705, *et seq.*

5 258. Accordingly, Plaintiffs and other similarly situated payers in the Class
6 seek all relief available under Oregon Revised Statutes §§ 646.705, *et seq.*

7 **EE. Rhode Island**

8 259. Defendants have engaged in unfair competition or unfair, unconscionable,
9 or deceptive acts or practices in violation of the Rhode Island Unfair Trade Practice
10 and Consumer Protection Act (R.I. Gen. Laws §§ 6-13.1-1, *et seq.*).

11 260. Members of this Class purchased Acthar for personal, family, or
12 household purposes.

13 261. Defendants agreed to, and did in fact, act in restraint of trade or commerce
14 in a market that includes Rhode Island, by affecting, fixing, controlling, and/or
15 maintaining, at artificial and non-competitive levels, the prices at which Acthar was
16 sold, distributed, or obtained in Rhode Island. Defendants deliberately failed to
17 disclose material facts to Plaintiffs and members of the Class concerning Defendants'
18 unlawful activities and artificially inflated prices for Acthar.

19 262. Defendants owed a duty to disclose such facts, and considering the
20 relative lack of sophistication of the average, non-business purchaser, Defendants
21 breached that duty by their silence.

22 263. Defendants misrepresented to all purchasers during the Class Period that
23 Defendants' Acthar prices were competitive and fair.

24 264. Defendants' unlawful conduct had the following effects: (1) Acthar price
25 competition was restrained, suppressed, and eliminated throughout Rhode Island; (2)
26 Acthar prices were raised, fixed, maintained, and stabilized at artificially elevated
27 levels throughout Rhode Island; (3) Plaintiffs and members of the Class were deprived
28 of free and open competition; and (4) Plaintiffs and members of the Class paid anti-

1 competitive, artificially inflated prices for Acthar.

2 265. As a direct and proximate result of the Defendants' violations of law,
3 Plaintiffs and members of the Class suffered an ascertainable loss of money or
4 property as a result of Defendants' use or employment of unconscionable and
5 deceptive commercial practices as set forth above.

6 266. That loss was caused by Defendants' willful and deceptive conduct, as
7 described herein. Defendants' deception, including their affirmative
8 misrepresentations and omissions concerning the price of Acthar, likely misled all
9 purchasers acting reasonably under the circumstances to believe that they were
10 purchasing Acthar at prices set by a free and fair market.

11 267. Defendants' affirmative misrepresentations and omissions constitute
12 information important to Plaintiffs and members of the Class as they relate to the cost
13 of Acthar they purchased.

14 268. Defendants have engaged in unfair competition or unfair or deceptive acts
15 or practices in violation of Rhode Island Gen. Laws. § 6-13.1-1, *et seq.*, and,
16 accordingly, Plaintiffs and members of the Class seek all relief available under that
17 statute.

18 **FF. South Carolina**

19 269. Defendants have engaged in unfair competition or unfair, unconscionable,
20 or deceptive acts or practices in violation of South Carolina Unfair Trade Practices Act
21 (S.C. Code Ann. §§ 39-5-10, *et seq.*).

22 270. Defendants' combinations or conspiracies had the following effects: (1)
23 Acthar price competition was restrained, suppressed, and eliminated throughout South
24 Carolina; (2) Acthar prices were raised, fixed, maintained, and stabilized at artificially
25 elevated levels throughout South Carolina; (3) Plaintiffs and members of the Class
26 were deprived of free and open competition; and (4) Plaintiffs and members of the
27 Class paid anti-competitive, artificially inflated prices for Acthar.

28 271. During the Class Period, Defendants' illegal conduct had a substantial

1 effect on South Carolina commerce.

2 272. As a direct and proximate result of Defendants' unlawful conduct,
3 Plaintiffs and members of the Class have been injured in their business and property
4 and are threatened with further injury.

5 273. Defendants have engaged in unfair competition or unfair or deceptive acts
6 or practices in violation of S.C. Code Ann. §§ 39-5-10, *et seq.*, and, accordingly,
7 Plaintiffs and the members of the Class seek all relief available under that statute.

8 **GG. South Dakota**

9 274. Defendants have entered into an unlawful agreement in restraint of trade
10 in violation of South Dakota Codified Laws §§ 37-1-3.1, *et seq.*

11 275. Defendants' combinations or conspiracies had the following effects: (1)
12 Acthar price competition was restrained, suppressed, and eliminated throughout South
13 Dakota; (2) Acthar prices were raised, fixed, maintained, and stabilized at artificially
14 high levels throughout South Dakota; (3) Plaintiffs and other similarly situated payers
15 in the Class were deprived of free and open competition; and (4) Plaintiffs and other
16 similarly situated payers in the Class paid anti-competitive, artificially inflated prices
17 for Acthar.

18 276. During the Class Period, Defendants' illegal conduct had a substantial
19 effect on South Dakota commerce.

20 277. As a direct and proximate result of Defendants' unlawful conduct,
21 Plaintiffs and other similarly situated payers in the Class have been injured in their
22 business and property and are threatened with further injury.

23 278. Due to the foregoing, Defendants have entered into agreements in
24 restraint of trade in violation of South Dakota Codified Laws Ann. §§ 37-1, *et seq.*

25 279. Accordingly, Plaintiffs and other similarly situated payers in the Class
26 seek all relief available under South Dakota Codified Laws Ann. §§ 37-1, *et seq.*

27 **HH. Tennessee**

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

1 in violation of Tennessee Code Annotated §§ 47-25-101, *et seq.*

2 281. Defendants' combinations or conspiracies had the following effects: (1)
3 Acthar price competition was restrained, suppressed, and eliminated throughout
4 Tennessee; (2) Acthar prices were raised, fixed, maintained, and stabilized at
5 artificially high levels throughout Tennessee; (3) Plaintiffs and other similarly situated
6 payers in the Class were deprived of free and open competition; and (4) Plaintiffs and
7 other similarly situated payers in the Class paid anti-competitive, artificially inflated
8 prices for Acthar.

9 282. During the Class Period, Defendants' illegal conduct had a substantial
10 effect on Tennessee commerce.

11 283. As a direct and proximate result of Defendants' unlawful conduct,
12 Plaintiffs and other similarly situated payers in the Class have been injured in their
13 business and property and are threatened with further injury.

14 284. Due to the foregoing, Defendants have entered into agreements in
15 restraint of trade in violation of Tennessee Code Ann. §§ 47-25-101, *et seq.*

16 285. Accordingly, Plaintiffs and other similarly situated payers in the Class
17 seek all relief available under Tennessee Code Ann. §§ 47-25-101, *et seq.*

18 **II. Utah**

19 286. Defendants have entered into an unlawful agreement in restraint of trade
20 in violation of Utah Code Annotated §§ 76-10-911, *et seq.*

21 287. Defendants' combinations or conspiracies had the following effects: (1)
22 Acthar price competition was restrained, suppressed, and eliminated throughout Utah;
23 (2) Acthar prices were raised, fixed, maintained, and stabilized at artificially high
24 levels throughout Utah; (3) Plaintiffs and other similarly situated payers in the Class
25 were deprived of free and open competition; and (4) Plaintiffs and other similarly
26 situated payers in the Class paid anti-competitive, artificially inflated prices for Acthar.

27 288. During the Class Period, Defendants' illegal conduct had a substantial
28 effect on Utah commerce.

1 289. As a direct and proximate result of Defendants' unlawful conduct,
2 Plaintiffs and other similarly situated payers in the Class have been injured in their
3 business and property and are threatened with further injury.

4 290. Due to the foregoing, Defendants have entered into agreements in
5 restraint of trade in violation of Utah Code Annotated §§ 76-10-911, *et seq.*

6 291. Accordingly, Plaintiffs and other similarly situated payers in the Class
7 seek all relief available under Utah Code Annotated §§ 76-10-911, *et seq.*

8 **JJ. Vermont I**

9 292. Defendants have entered into an unlawful agreement in restraint of trade
10 in violation of the Vermont Stat. Ann. 9 §§ 2453, *et seq.*

11 293. Defendants' combinations or conspiracies had the following effects: (1)
12 Acthar price competition was restrained, suppressed, and eliminated throughout
13 Vermont; (2) Acthar prices were raised, fixed, maintained, and stabilized at artificially
14 high levels throughout Vermont; (3) Plaintiffs and other similarly situated payers in the
15 Class were deprived of free and open competition; and (4) Plaintiffs and other
16 similarly situated payers in the Class paid anti-competitive, artificially inflated prices
17 for Acthar.

18 294. During the Class Period, Defendants' illegal conduct had a substantial
19 effect on Vermont commerce.

20 295. As a direct and proximate result of Defendants' unlawful conduct,
21 Plaintiffs and other similarly situated payers in the Class have been injured in their
22 business and property and are threatened with further injury.

23 296. Due to the foregoing, Defendants have entered into agreements in
24 restraint of trade in violation of Vermont Stat. Ann. 9 §§ 2453, *et seq.*

25 297. Accordingly, Plaintiffs and other similarly situated payers in the Class
26 seek all relief available under Vermont Stat. Ann. 9 §§ 2453, *et seq.*

27 **KK. Vermont II**

28 298. Defendants have engaged in unfair competition or unfair, unconscionable,

1 or deceptive acts or practices in violation of 9 Vermont § 2451, *et seq.*

2 299. Defendants agreed to, and did in fact, act in restraint of trade or commerce
3 in a market that includes Vermont, by affecting, fixing, controlling, and/or
4 maintaining, at artificial and non-competitive levels, the prices at which Acthar was
5 sold, distributed, or obtained in Vermont.

6 300. Defendants deliberately failed to disclose material facts to Plaintiffs and
7 members of the Class concerning Defendants' unlawful activities and artificially
8 inflated prices for Acthar.

9 301. Defendants owed a duty to disclose such facts, and considering the
10 relative lack of sophistication of the average, non-business purchaser, Defendants
11 breached that duty by their silence.

12 302. Defendants misrepresented to all purchasers during the Class Period that
13 Defendants' Acthar prices were competitive and fair. Defendants' unlawful conduct
14 had the following effects: (1) Acthar price competition was restrained, suppressed, and
15 eliminated throughout Vermont; (2) Acthar prices were raised, fixed, maintained, and
16 stabilized at artificially elevated levels throughout Vermont; (3) Plaintiffs and
17 members of the Class were deprived of free and open competition; and (4) Plaintiffs
18 and members of the Class paid anti-competitive, artificially inflated prices for Acthar.

19 303. As a direct and proximate result of the Defendants' violations of law,
20 Plaintiffs and members of the Class suffered an ascertainable loss of money or
21 property as a result of Defendants' use or employment of unconscionable and
22 deceptive commercial practices as set forth above.

23 304. That loss was caused by Defendants' willful and deceptive conduct, as
24 described herein.

25 305. Defendants' deception, including their affirmative misrepresentations and
26 omissions concerning the price of Acthar, likely misled all purchasers acting
27 reasonably under the circumstances to believe that they were purchasing Acthar at
28 prices set by a free and fair market.

1 306. Defendants' misleading conduct and unconscionable activities constitutes
2 unfair competition or unfair or deceptive acts or practices in violation of 9 Vermont §
3 2451, et seq., and, accordingly, Plaintiffs and members of the Class seek all relief
4 available under that statute.

5 **LL. West Virginia**

6 307. Defendants have entered into an unlawful agreement in restraint of trade
7 in violation of West Virginia Code §§ 47-18-1, *et seq.*

8 308. Defendants' combinations or conspiracies had the following effects: (1)
9 Acthar price competition was restrained, suppressed, and eliminated throughout West
10 Virginia; (2) Acthar prices were raised, fixed, maintained, and stabilized at artificially
11 high levels throughout West Virginia; (3) Plaintiffs and other similarly situated payers
12 in the Class were deprived of free and open competition; and (4) Plaintiffs and other
13 similarly situated payers in the Class paid anti-competitive, artificially inflated prices
14 for Acthar.

15 309. During the Class Period, Defendants' illegal conduct had a substantial
16 effect on West Virginia commerce.

17 310. As a direct and proximate result of Defendants' unlawful conduct,
18 Plaintiffs and other similarly situated payers in the Class have been injured in their
19 business and property and are threatened with further injury.

20 311. Due to the foregoing, Defendants have entered into agreements in
21 restraint of trade in violation of West Virginia Code §§ 47-18-1, *et seq.*

22 312. Accordingly, Plaintiffs and other similarly situated payers in the Class
23 seek all relief available under West Virginia Code §§ 47-18-1, *et seq.*

24 **MM. Wisconsin**

25 313. Defendants have entered into an unlawful agreement in restraint of trade
26 in violation of the Wisconsin Statutes §§ 133.01, *et seq.*

27 314. Defendants' combinations or conspiracies had the following effects: (1)
28 Acthar price competition was restrained, suppressed, and eliminated throughout

1 Wisconsin; (2) Acthar prices were raised, fixed, maintained and stabilized at
2 artificially high levels throughout Wisconsin; (3) Plaintiffs and other similarly situated
3 payers in the Class were deprived of free and open competition; and (4) Plaintiffs and
4 other similarly situated payers in the Class paid anti-competitive, artificially inflated
5 prices for Acthar.

6 315. During the Class Period, Defendants' illegal conduct had a substantial
7 effect on Wisconsin commerce.

8 316. As a direct and proximate result of Defendants' unlawful conduct,
9 Plaintiffs and other similarly situated payers in the Class have been injured in their
10 business and property and are threatened with further injury.

11 317. Due to the foregoing, Defendants have entered into agreements in
12 restraint of trade in violation of Wisconsin Stat. §§ 133.01, *et seq.* Accordingly,
13 Plaintiffs and other similarly situated payers in the Class seek all relief available under
14 Wisconsin Stat. §§ 133.01, *et seq.*

15 318. Plaintiffs and other similarly situated payers in the Class in each of the
16 above states have been injured in their business and property due to Defendants'
17 unlawful combination, contract, conspiracy and agreement. Plaintiffs and other
18 similarly situated payers in the Class have paid more for Acthar than they otherwise
19 would have paid in the absence of Defendants' unlawful conduct. This injury is of the
20 type the antitrust laws of the above states were designed to prevent and flows from that
21 which makes Defendants' conduct unlawful. In addition, Defendants have profited
22 significantly from the aforesaid conspiracy. Defendants' profits derived from their
23 anticompetitive conduct come at the expense and detriment of members of Plaintiffs
24 and other similarly situated payers in the Class. Accordingly, Plaintiffs and other
25 similarly situated payers in the Class in each of the above jurisdictions seek damages
26 (including statutory damages where applicable), to be trebled or otherwise increased as
27 permitted by a jurisdiction's antitrust law, and costs of suit, including reasonable
28 attorneys' fees, to the extent permitted by the above state laws.

1 **JURY TRIAL DEMAND**

2 319. Plaintiffs demand a trial by jury on all triable issues within this pleading
3 pursuant to Rule 38(b) of the Federal Rules of Civil Procedure.

4 **PRAYER FOR RELIEF**

5 320. **WHEREFORE**, Plaintiffs, individually and on behalf of the Class
6 described herein, pray for the following relief:

- 7 a. Find that this action satisfies the prerequisites for maintenance of a class
8 action pursuant to Federal Rules of Civil Procedure 23(a), (b)(2), and
9 (b)(3), and certify the respective Class;
- 10 b. Designate Plaintiffs as representatives for the respective class and
11 Plaintiffs' undersigned counsel as Class Counsel for the respective class;
- 12 c. Issue a judgment against Defendants that:
- 13 i. Adjudges and decrees that Defendants violated Sections 1, 2, and 3
14 of the Sherman Act, 15 U.S.C. §§1, 2, and 3;
- 15 ii. Enjoins and restrains Defendants, their affiliates, assignees,
16 subsidiaries, successors, and transferees, and their officers,
17 directors, partners, agents and employees, and all other persons
18 acting or claiming to act on their behalf or in concert with them,
19 from continuing to engage in any anticompetitive conduct and from
20 adopting in the future any practice, plan, program, or device having
21 a similar purpose or effect to the anticompetitive practices set forth
22 above;
- 23 iii. Awards to Plaintiffs and the Class disgorgement of the Defendants'
24 ill-gotten gains and any other equitable relief as the Court finds
25 appropriate to redress Defendants' violations of federal law or
26 restore competition;
- 27 iv. Awards to Plaintiffs and the Class treble damages, their costs, and
28 reasonable attorney's fees, plus interest; and

1 v. Grants Plaintiffs and the Class alleged herein such other and further
2 relief as the Court deems just and proper under the circumstances.
3

4 Dated: October 31, 2017

**BAUM HEDLUND ARISTEI & GOLDMAN,
P.C.**

5
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