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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

THE PEOPLE OF THE STATE OF CALIFORNIA, acting by and through Orange County District Attorney Tony Rackauckas,

Plaintiff,

vs.

BOEHRINGER INGELHEIM PHARMACEUTICALS, INC.; BOEHRINGER INGELHEIM PHARMA Gmbh & CO. KG; BOEHRINGER INGELHEIM INTERNATIONAL Gmbh; TEVA PHARMACEUTICALS USA, INC.; BARR PHARMACEUTICALS INC.; BARR LABORATORIES, INC.; DURAMED PHARMACEUTICALS, INC; DURAMED PHARMACEUTICALS SALES CORP.; and DOES 1 THROUGH 100, INCLUSIVE,

Defendants.

Case No. 30-2017-00914577-CU-BT-CXC

COMPLAINT FOR VIOLATIONS OF CALIFORNIA UNFAIR COMPETITION LAW, SEEKING RESTITUTION, CIVIL PENALTIES AND INJUNCTIVE RELIEF

Judge: Judge Thierry Patrick Colaw
Dept.: CX-105

COMPLAINT

Plaintiff, the People of the State of California ("Plaintiff" or "the People"), by and through Tony Rackauckas, District Attorney for the County of Orange ("District Attorney"), alleges the following, on information and belief:

I. INTRODUCTION

1. This is an action brought by Tony Rackauckas, District Attorney of the County of Orange for violations of California Business and Professions Code sections 17200 et seq., the Unfair Competition Law ("UCL"), involving the purchases of, and reimbursements for, the prescription drug Aggrenox occurring in California, including California Aggrenox users, their insurers, public healthcare providers and other government payors. The defendants are Ingelheim Pharma GmbH & Co. KG, Boehringer Ingelheim International GmbH, Boehringer Ingelheim Pharmaceuticals, Inc. ("Boehringer"), Teva Pharmaceuticals USA, Inc. ("Teva"), Barr Pharmaceuticals Inc., Barr Laboratories, Inc. ("Barr"), Duramed Pharmaceuticals Inc., and Duramed Pharmaceuticals Sales Corp. ("Duramed"), (together, the "Defendants"). This action arises out of Defendants' unlawful agreements to allocate the market for 25 mg aspirin/200 mg extended-release dipyridamole capsules, which is sold by Boehringer under the brand name Aggrenox. Aggrenox is a combination antiplatelet agent used to reduce the risk of stroke in patients who have already suffered a "mini-stroke" (or transient ischemic attack) or a completed ischemic stroke due to thrombosis (*i.e.*, blood clot). Boehringer received approval to manufacture, market and sell Aggrenox in the United States from the United States Food and Drug Administration ("FDA") in 1999.

2. This is a law enforcement action which primarily seeks to protect the public safety and welfare, brought by a governmental unit in the exercise of and to enforce its police power. *City & Cnty. of San Francisco v. PG & E Corp.*, 433 F.3d 1115, 1124-25 (9th Cir. 2006); *California v. Purdue Pharma L.P.* (C.D. Cal., Nov. 12, 2014, No. SACV 14-1080-JLS DFM) 2014 WL 6065907, *4; *In re General Motors LLC Ignition Switch Litigation* (S.D.N.Y. 2014) 69 F. Supp. 3d 404, 416.

3. This case is based on several simple and provable facts: Defendants entered into an unlawful "reverse payment agreement" through which Boehringer paid Barr more than $120 million

in cash and other valuable consideration in exchange for Barr's agreement not to launch a less expensive, bio-equivalent generic version of Aggrenox for up to seven years. No bio-equivalent generic version of Aggrenox entered the market until July 2015 as a direct and proximate result of Defendants unlawful market allocation agreement. This agreement not to compete prevented less expensive generic versions of Aggrenox from entering the market earlier, causing Plaintiff to pay a substantially higher price for Aggrenox than it otherwise would. From 1999 to 2015, Boehringer charged supracompetitive prices and reaped a steady source of profits from Aggrenox, with annual sales reaching approximately $400 million.

4. On February 1, 2007, Barr sought regulatory approval to manufacture, market and sell a generic version of Aggrenox before the expiration of any patents associated with Aggrenox by filing an Abbreviated New Drug Application ("ANDA") with the FDA. As the first filer of a substantially complete generic Aggrenox ANDA, Barr was entitled to 180 days of market exclusivity during which it was free from competition from other Aggrenox generics – with the exception of an authorized generic marketed by the brand company, Boehringer.

5. Boehringer sued Barr, alleging that Barr's generic Aggrenox product would infringe Boehringer's U.S. Patent No. 6,015,577 (the "'577 Patent")—even though the '577 Patent was invalid and/or unenforceable and thus unlikely to prevent any generic Aggrenox product from coming to market in advance of patent expiration in January 2017. Boehringer sued Barr solely to obtain an automatic stay under the Drug Price Competition and Patent Term Restoration Act of 1984, Pub. L. No. 98-417, 98 Stat. 1585 (1984) ("Hatch-Waxman Act") which prevented the FDA from approving Barr's generic Aggrenox product for up to thirty months.

6. Though temporarily stalled on account of the 30-month stay, Boehringer faced imminent competition from Barr and other generic manufacturers due to the weakness of its '577 Patent, beginning either upon a ruling of patent invalidity or unenforceability, or at the latest upon the end of the FDA issued stay.

7. As a sophisticated pharmaceutical manufacturer, Boehringer was well aware that generic versions of brand drugs are typically priced significantly below brand versions. Because of

the price differentials, and other institutional features of the pharmaceutical industry, generic versions are liberally and substantially substituted for their brand counterparts. As a result, Boehringer knew that the entry of one or more generic versions of Aggrenox would cause a drastic loss of its Aggrenox monopoly profits.

8. To eliminate the risk that generic entry would devastate Aggrenox profits and to ensure its monopoly, Boehringer elected to share its monopoly profits with Barr in exchange for Barr's promise to drop its challenge to the '577 Patent and stay out of the market with a less expensive, bioequivalent generic version of Aggrenox for approximately seven years. More specifically, on or about August 11, 2008, Boehringer and Barr entered a non-competition agreement (the "Exclusion Payment Agreement" or "Agreement").

9. Under this Agreement, Boehringer agreed to pay Barr in exchange for Barr's commitment to delay marketing generic Aggrenox until as late as July 1, 2015. Boehringer's payment took two forms: (a) cash payments provided under the guise of a co-promotion agreement – an estimated $120 million in one-time and yearly royalty payments – that far exceed the fair value of the services provided by Barr; and (b) an agreement not to compete against Barr's generic Aggrenox product with Boehringer's own generic Aggrenox product once generic entry belatedly occurs.

10. As a result of the Agreement, including the large unjustified payments from Boehringer to Barr provided for therein, Barr (and its successor Teva) did in fact delay marketing less expensive generic Aggrenox, despite having final FDA approval to market generic Aggrenox since August 2009. And once generic entry finally occurred in 2015, Plaintiff still paid artificially inflated prices because the Agreement eliminated inter-generic competition between Boehringer and Barr. The purpose and effect of Boehringer's payments to Barr was to restrain competition in the market for Aggrenox and its AB-rated generic equivalents from the time of possible generic entry through the expiration of the '577 Patent.

11. But for the exclusion payments, less expensive, generic versions of Aggrenox would have been available to Plaintiff as early as August 2008. Had Boehringer not paid Barr to drop its challenge to the '577 Patent and stay out of the market, Barr would have launched its less expensive

generic Aggrenox: (a) "at-risk" (*i.e.*, while the patent litigation was pending); (b) upon winning the patent litigation; or (c) pursuant to a lawful settlement agreement without a large unjustified payment from Boehringer to Barr. Absent the Agreement, immediately upon Barr's launch, Boehringer, as a rational economic actor seeking to recoup lost branded sales, would have launched an authorized generic Aggrenox in competition with Barr, driving down prices even further.

12. The Agreement caused Plaintiff to pay substantially more for 25 mg aspirin/200mg extended-release dipyridamole capsules than they would have absent Defendants' anti-competitive conduct. Defendants have shared in the illicit profits that have resulted from the artificially-inflated prices Plaintiff paid for Aggrenox.

13. Defendants' Exclusion Payment Agreement was designed to and did in fact: (a) delay the entry of less expensive generic versions of Aggrenox; (b) fix, raise, maintain or stabilize the price of 25 mg aspirin/200 mg extended-release dipyridamole capsules; and (c) allocate 100% of the market for 25 mg aspirin/200 mg extended-release dipyridamole capsules to Boehringer for up to seven years. Moreover, once generic Aggrenox entry finally occurred, the Agreement was designed to and did allocate 100% of the generic segment to Barr during the 180-day exclusivity period (July 2015 to January 2016) and reduced inter-generic competition for the remainder of the 577 Patent's term.

14. Plaintiff brings this action with respect to its indirect purchases, payments and/or reimbursements for Aggrenox, other than for resale, since August 14, 2008. As a direct and proximate result of their unlawful scheme to keep generic versions of Aggrenox off the market, and in violation of California's consumer protection laws, Defendants: (a) illegally maintained monopoly power in the market for Aggrenox in the United States since August 14, 2008, and sold Aggrenox at supra-competitive prices; (b) illegally maintained the price of Aggrenox and generic Aggrenox at supra-competitive levels; and (c) caused California users, their insurers, public healthcare providers and other government payors to overpay millions of dollars by depriving them of the benefits of access to less expensive generic versions of Aggrenox.

II. PLAINTIFF'S AUTHORITY

15. Tony Rackauckas, District Attorney of the County of Orange, acting to protect the public as consumers from unlawful and unfair business practices, brings this action in the public interest in the name of the People of the State of California pursuant to section 17200 of the California Business and Professions Code. Plaintiff, by this action, seeks to enjoin Defendants from engaging in the unlawful and unfair business practices alleged herein, and seeks civil penalties and restitution for the Defendants' violations of the above statute.

III. DEFENDANTS

16. Defendant Teva USA, Inc. is a Delaware corporation with its principal place of business at 1090 Horsham Road, P.O. Box 1090, North Wales, Pennsylvania 19454. Teva USA is a subsidiary of Teva Pharmaceutical Industries, Ltd., a corporation organized and existing under the laws of Israel ("Teva Israel"). Teva USA is the largest generic drug company by sales volume in the United States.

17. Defendant Barr Pharmaceuticals Inc. (n/k/a Barr Pharmaceuticals, LLC) is a limited liability company organized under the laws of the state of Delaware, with its principal place of business at 400 Chestnut Ridge Road, Woodcliff Lake, New Jersey. Teva purchased Barr Pharmaceuticals Inc. on December 23, 2008.

18. Defendant Barr Laboratories, Inc. is a corporation organized under the laws of the state of Delaware, with its principal place of business at 400 Chestnut Ridge Road, Woodcliff Lake, New Jersey.

19. On December 23, 2008, Barr became a wholly-owned subsidiary of Teva.

20. Defendant Duramed Pharmaceuticals Inc. is a corporation organized under the laws of the state of Delaware, with its principal place of business at 400 Chestnut Ridge Road, Woodcliff Lake, New Jersey. Until 2008, Duramed was a subsidiary of Barr. In December 2008, when Teva purchased Barr, Duramed became a subsidiary of Teva and is now known as Teva Women's Health Inc.

21. Defendant Duramed Pharmaceuticals Sales Corp. is a corporation organized under the laws of the state of Delaware, with a principal place of business at 400 Chestnut Ridge Road, Woodcliff Lake, New Jersey. It was a subsidiary of Barr until December 2008, when it became a subsidiary of Teva.

22. Defendant Boehringer Ingelheim Pharma GmbH & Co. KG is a limited partnership organized and existing under the laws of Germany, with its principal place of business at Binger Strasse 173, 55216 Ingelheim, Germany.

23. Defendant Boehringer Ingelheim International GmbH is a limited liability company organized and existing under the laws of Germany, having a principal place of business at Binger Strasse 173, 55216 Ingelheim, Germany.

24. Defendant Boehringer Ingelheim Pharmaceuticals, Inc. is a Delaware corporation with its principal place of business at 900 Ridgebury Road, Ridgefield, Connecticut.

25. Plaintiff is ignorant of the true names or capacities, whether individual, corporate or otherwise, of the defendants sued herein under the fictitious names DOES 1 through 100 inclusive, and they are therefore sued herein pursuant to CCP § 474. Plaintiff will amend this Complaint to show their true names and capacities if and when they are ascertained. Plaintiff is informed and believes, and on such information and belief alleges, that each of the Defendants named as a DOE is responsible in some manner for the events and occurrences alleged in this Complaint and is liable for the relief sought herein.

26. All of the Defendants' actions described in this complaint are part of, and were in furtherance of, the illegal restraint of trade alleged herein, and were authorized, ordered, and performed by the Defendants' various officers, agents, employees, or other representatives while actively engaged in the management of the Defendants' affairs, within the course and scope of their duties and employment, and with the actual, apparent or ostensible authority of the Defendants.

27. Although not named as Defendants, various other individuals and entities may have participated as co-conspirators with Defendants, and may have engaged in conduct and made statements in furtherance of the conspiracy.

IV. JURISDICTION AND VENUE

28. This Court has jurisdiction over this matter pursuant to the California Constitution, Article XI, Section 10 and California Code of Civil Procedure ("CCP") section 410.10 because the Defendants transact and have transacted business in California, and the violations of California law complained of herein resulted in damages to consumers of Aggrenox in California, including in the County of Orange.

29. Venue is proper in the County of Orange, California, pursuant to CCP section 395, because the Defendants transact and have transacted business in this County, and some of the acts complained of have occurred in this venue.

V. REGULATORY BACKGROUND

A. Generic Drugs Benefit Purchasers

30. Generic competition allows purchasers at all levels of the pharmaceutical supply chain to purchase both the brand name drug and its generic equivalents at a reduced price. Generic competition to a single branded drug can provide billions of dollars in savings to consumers, insurers, pharmacies, and other drug purchasers.

31. Generics that meet all of the requirements for approval are assigned an "AB" rating by the FDA. The AB rating permits the generic drug to be substituted for the brand name drug at the pharmacy counter. All states permit, and some states require, pharmacists to automatically substitute an AB-rated generic drug for the corresponding brand name drug unless the doctor has said that the prescription for the brand name product must be dispensed as written.

32. Until a generic manufacturer enters the market, the brand name manufacturer maintains a pure monopoly, and can charge monopoly prices without a material loss in sales volume because the drug faces no competition. It is widely acknowledged that a monopolist's profit maximizing price exceeds the price that would prevail in a competitive market. With respect to the market for branded pharmaceutical drugs and their AB-rated generic equivalents, the monopoly price is typically far in excess of the competitive price. Brand name drug manufacturers therefore have a strong interest in seeking to restrain generic competition.

33. Many third-party payors (such as health insurance plans and Medicaid programs) have adopted policies to encourage the substitution of AB-rated generic drugs for their branded counterparts. And many consumers routinely switch from a branded drug to an AB-rated generic drug once the generic becomes available. AB-rated generic drugs therefore capture a significant share of their branded counterparts' sales, causing a significant reduction in the branded drug's unit and dollar sales.

34. The first AB-rated generic drug is typically priced significantly below its branded counterpart. As more AB-rated generics enter the market, the brand and generic drug prices usually continue to decline as the generics compete with one another and the brand name drug.

35. The first generic equivalent to reach the market often captures 80% or more of the market within the first six months. Within one year of market entry, the generic often accounts for 90% of the branded drug's unit sales and sells for 15% of the price of the brand name drug.

B. The FDA Approval Process

36. Under the Federal Food, Drug, and Cosmetic Act (the "FDCA"), manufacturers who seek to market a new drug must apply for FDA approval to sell the drug by filing a New Drug Application, or NDA. 21 U.S.C. §§ 301-392. NDAs must include specific data concerning the safety and effectiveness of the drug and identify applicable patents. *Id.* at §§ 355(a) & (b).

37. When the FDA approves a brand manufacturer's NDA, the brand name manufacturer lists any patents it contends apply to the approved drug in a publication called the "Approved Drug Products with Therapeutic Equivalence Evaluations," commonly known as the "Orange Book." 21 U.S.C. §355(j)(7)(A)(iii). The FDA performs a ministerial duty in listing these patents, and does not confirm the accuracy of the information supplied by the brand manufacturer. After the NDA is approved, the brand manufacturer may list additional patents relating to the drug in the Orange Book.

C. The Government Encourages and Facilitates the Approval of Generic Drugs Through the Hatch-Waxman Amendments

38. In 1984, Congress amended the FDCA with the enactment of the Drug Price Competition and Patent Term Restoration Act of 1984, Pub. L. No. 98-417, 98 Stat. 1585 (1984), known as the Hatch-Waxman Amendments.

39. The Hatch-Waxman Amendments simplify the regulatory hurdles that generic manufacturers have to clear to enter the market. Instead of filing a lengthy and costly NDA, the Hatch-Waxman Amendments allow generic manufacturers to seek FDA approval on an expedited basis by filing an Abbreviated New Drug Application, or ANDA.

40. If an ANDA applicant shows that the generic drug is "bioequivalent" to the brand name drug—that it contains the same active ingredient(s), dosage form, route of administration, and strength as the brand name drug—then the ANDA may rely on the scientific safety and effectiveness findings included in the brand name drug manufacturer's original NDA. 21 U.S.C. § 355(j)(2)(A). The FDA must approve an ANDA unless the information submitted in the ANDA is insufficient to meet the Act's requirements. 21 U.S.C. § 355((j)(4). The streamlined approval process under the Hatch-Waxman Amendments makes it easier for manufacturers to bring competing generic products to the market.

41. While Hatch-Waxman seeks to facilitate generic competition, the brand name manufacturer retains the right to enforce any patents associated with the drug. To gain regulatory approval, an ANDA application must also certify that the generic drug will not infringe the brand name drug's patents listed in the Orange Book, because either: (i) no patents exist on the brand name product; (ii) the patents have expired; (iii) the patents will expire by the time the generic product comes to market; or (iv) the patents are invalid or will not be infringed by the sale of the generic product. See 21 U.S.C. § 355(j)(2)(A)(vii)(I-IV). The last certification, that the patents are invalid or not infringed, is known as a "Paragraph IV certification."

42. When a generic manufacturer files a Paragraph IV certification asserting that a patent listed in the Orange Book is invalid or will not be infringed, it must promptly give notice of its certification to both the brand manufacturer and the owner of the patent. If the brand manufacturer files a patent infringement lawsuit against the ANDA filer within 45 days of receiving the Paragraph

IV certification, the FDA may not grant final approval to the ANDA until the earlier of (a) 30 months or (b) a court ruling that the patent is invalid or not infringed by the generic manufacturer's ANDA. 21 U.S.C. §355(j)(5)(B)(iii). During the 30-month stay, the FDA may grant "tentative approval" to an ANDA applicant if the FDA determines that the ANDA would otherwise qualify for final approval, but cannot authorize the generic manufacturer to market its drug before the 30-month stay expires or a court rules on invalidity and infringement.

43. Congress also created incentives for drug manufacturers to seek approval of generic alternatives to branded drugs and challenge weak patents. The Hatch-Waxman Amendments grant a 180-day period of market exclusivity to the first ANDA applicant to file a substantially complete ANDA containing a Paragraph IV certification. During the 180-day exclusivity period the first filer enjoys temporary freedom from competition from other generic versions of the drug, and is able to sell the generic for a higher price than when multiple generics enter the market. The brand name manufacturer may, however, market its own generic equivalent of the brand name drug (known as an "authorized generic") during the 180-day period.

44. The first-filed generic manufacturer can forfeit its right to the 180-day period of exclusivity. This can occur, for example, if the first-filer fails market its product under certain circumstances or fails to receive tentative approval of its ANDA from the FDA within 30 months of filing the ANDA, unless the failure is caused by a change in or review of the requirements for approval of the ANDA.

D. Pharmaceutical Manufacturers Game the Regulatory Structure

45. Because the Hatch-Waxman regulatory scheme automatically delays approval of an ANDA whenever a brand name manufacturer sues the potential generic competitor for patent infringement, brand name manufacturers frequently take aggressive positions in listing patents in the Orange Book, and then bring patent lawsuits against any generic competitor that files an ANDA with a Paragraph IV certification. Brand name manufacturers often sue generics simply to delay generic competition, rather than to enforce valid patents against infringing products.

46. In connection with the resolution of patent litigation arising out of Paragraph IV Certifications, brand name manufacturers have also developed a practice of entering into "settlements" in which brand name manufacturer pays off its generic competitors in exchange for a delay in generic competition. These exclusion payment agreements among horizontal competitors not to compete are commonly known as "pay-for-delay" or "reverse payment agreements." Brand and generic manufacturers execute exclusion payment agreements as purported settlements of patent infringement lawsuits that brand manufacturers file against generic manufacturers. The brand name manufacturer preserves increased profits by keeping its monopoly intact via a payment of some of the monopoly profits to the generic manufacturer, which in turn agrees to delay marketing its product. Initially these agreements took the form of a straight cash payment from the brand name manufacturer to the generic competitor. As a result of regulatory scrutiny, congressional investigations, and class action lawsuits, brand name manufacturers and generic competitors have entered into increasingly elaborate agreements in an attempt to mask the fundamentally anticompetitive character of their agreements. Because the profits to be gained by delaying generic competition are so great, however, drug manufacturers retain the incentive to enter into such agreements.

47. The first generic filer's agreement to delay marketing its drug may also prevent other manufacturers of generics from bringing their own products to market. If the first-filed generic manufacturer is eligible for 180-days of marketing exclusivity, no other generic manufacturer can enter the market until the end of the exclusivity period. This "bottlenecking" tactic is known as exclusivity "parking."

E. Agreements Not to Compete Between the Brand's Authorized Generic and the First-Filing Generic's Product

48. The 180-day marketing exclusivity to which first-filer generics may be entitled does not prevent a brand manufacturer from marketing its own generic alternative to the brand drug during that 180-day period. Such an authorized generic is chemically identical to the brand drug, but is sold as a generic product through either the brand manufacturer's subsidiary (if it has one) or through a

third-party generic manufacturer. Boehringer has traditionally marketed its authorized generic products in-house, through its wholly-owned subsidiary Roxane Laboratories, Inc. Competition from an authorized generic during the 180-day exclusivity period substantially reduces the first-filer's revenue, and substantially reduces drug prices for consumers.

49. In its recent study, Authorized Generic Drugs: Short-Term Effects and Long-Term Impact (August 2011) (the "FTC Study"), the Federal Trade Commission ("FTC") found that authorized generics capture a significant portion of sales, reducing the first-filer generic's revenues by approximately 50% on average during the 180-day exclusivity period. The first-filing generic makes significantly less money when it faces competition from an authorized generic because: (a) the authorized generic takes a large share of unit sales away from the first filer; and (b) the presence of an additional generic in the market causes prices to decrease.

50. Although first-filing generic manufacturers make significantly less money when they must compete with an authorized generic during the first 180 days, consumers and other drug purchasers such as Plaintiff benefit from the lower prices caused by competition between the authorized generic and the first-filing generic.

51. Given the significant negative effect of an authorized generic on the first-filing generic's revenues, a brand manufacturer's agreement not to launch an authorized generic has tremendous value to the generic manufacturer. Brand manufacturers have used such agreements as a way to pay the first-filer to delay entering the market. Such non-competition agreements deprive consumers and other drug purchasers such as Plaintiff of the lower prices resulting from two forms of competition: (a) among the branded and the generic products; and (b) between the generic products.

52. Agreements not to compete with an authorized generic can take many forms. According to the FTC Study, one such form includes agreements like the Agreement here whereby the brand manufacturer agrees to exclusively supply the first-filing generic with the authorized generic product. As confirmed by the FTC, the result is the same as if the brand agreed not to launch any authorized generic: no competition between an authorized generic and the first-filing generic's product for a period of time.

VI. FACTS

A. Boehringer Starts Marketing Aggrenox in December 1999

53. Boehringer developed Aggrenox as a treatment to lower the risk of stroke in people who have had a transient ischemic attack (also known as a 'mini stroke') or stroke due to a blood clot. A transient ischemic attack is similar to a stroke, except it usually lasts only a few minutes and does not result in permanent damage. Aggrenox is a single gelatin capsule containing 200mg of extended-release dipyridamole and 25mg of immediate-release acetylsalicylic acid (aspirin). Boehringer has previously marketed dipyridamole as a stand-alone drug under the brand name Persantine to prevent clots from forming after heart valve replacements and aspirin has previously been prescribed for the prevention of strokes. Other drugs prescribed for the prevention of strokes are not AB-rated to Aggrenox, cannot be automatically substituted for Aggrenox by pharmacists, do not exhibit substantial cross-price elasticity of demand with respect to Aggrenox at competitive prices, and thus are not economic substitutes for, nor reasonably interchangeable with, Aggrenox.

54. On December 15, 1998, Boehringer filed NDA 20-884 seeking FDA approval to market Aggrenox to help reduce the risk of repeated strokes. The FDA approved the NDA on November 22, 1999.

55. In connection with its Aggrenox NDA, Boehringer submitted Patent No. 6,015,577 (the '577 Patent) to the FDA for listing in the Orange Book. The purported invention described in the '577 Patent is a composition of dipyridamole and acetylsalicylic acid for oral administration. The '577 Patent is scheduled to expire on January 18, 2017.

56. Boehringer began marketing Aggrenox in December 1999. Aggrenox was the only prescription drug for reducing the risk of subsequent stroke through a single aspirin and extended-release dipyridamole capsule. Boehringer represented that studies submitted to the FDA by Boehringer showed that Aggrenox's combined dipyridamole-aspirin formulation is more effective at reducing the risk of future stroke than administration of either ingredient on its own.

57. However, as described in Aggrenox's FDA-approved labeling, because Aggrenox contains aspirin, Aggrenox can cause fetal harm when administered to a pregnant or nursing woman.

Boehringer states on its Aggrenox website that "Aggrenox should be avoided during pregnancy, especially in the third trimester."

58. Aggrenox quickly became a steady source of profits for Boehringer. By 2008 Aggrenox sales in the United States had reached $366 million.

B. Barr Seeks FDA Approval to Market a Generic Equivalent to Aggrenox

59. On February 1, 2007, Barr submitted ANDA 78-804 to the FDA, seeking approval to manufacture, market and sell a generic, bioequivalent version of Aggrenox. Barr was the first manufacturer to submit a substantially complete ANDA for generic Aggrenox with a Paragraph IV certification for the '577 Patent. As the first-filing generic, Barr was entitled to 180-days of marketing exclusivity, free from other ANDA-based generic Aggrenox competition.

60. On May 31, 2007, Barr notified Boehringer that it had submitted ANDA 78-804 with a Paragraph IV certification regarding the '577 Patent, asserting that its generic would not infringe the patent and/or that the patents was invalid or unenforceable.

61. On July 11, 2007, Boehringer sued Barr for patent infringement in the United States District Court for the District of Delaware, alleging that Barr's filing of its ANDA infringed the '577 patent. Boehringer's lawsuit triggered an automatic 30-month stay that prohibited the FDA from granting final approval of Barr's ANDA until the stay expired in November 2009.

62. Barr denied the allegations in Boehringer's complaint, and counterclaimed for declaratory relief of non-infringement, invalidity, and unenforceability of the '577 Patent. Barr argued that Boehringer had misrepresented to the United States Patent and Trademark Office the nature and materiality of a prior patent, Patent No. 5,694,024, and its related reference DE-A1-3,515,874. According to Barr, the properly disclosed patent and reference would have made the claims of the '577 Patent obvious. In light of these allegations, Barr asked the District Court to find the '577 Patent unenforceable.

63. The patent lawsuit continued until August 2008 without any substantive rulings. Barr's defenses and counterclaims, however, were strong. Absent a settlement, the '577 Patent was likely to have been adjudicated invalid, unenforceable, and/or not infringed.

C. Boehringer and Barr Enter Into the Exclusion Payment Agreement

64. On August 11, 2008, Boehringer and Barr announced that they had settled the patent litigation and on or about that same time, Boehringer and Barr entered the Exclusion Payment Agreement.

65. Under the terms of the Agreement, Boehringer and Barr agreed that Barr would drop its challenges to the '577 Patent, delay launching a generic equivalent of Aggrenox until as late as July 1, 2015, and act to preserve its 180-day exclusivity, in order to block other generic manufacturers from entering the market before Barr's delayed entry. A generic launch date as late as July 2015 effectively preserved 82% of the patent's remaining life – for which Boehringer was prepared to, and did, pay Barr handsomely.

66. As the *quid pro quo* for Barr's agreement to drop its challenge to the '577 Patent and stay out of the market for almost seven years, Boehringer agreed to make cash payments to Barr estimated at $120 million dollars and to pay other valuable consideration that was as good as cash to Barr. Boehringer's payments to Barr under the Agreement took at least two forms.

67. *First*, Boehringer agreed to pay Barr (through its subsidiary Duramed, now known as Teva Women's Health) under the guise of co-promotion services related to Aggrenox. For ostensibly promoting anti-stroke drug Aggrenox to obstetricians, gynecologists, and women's health care professionals from April 2009 and continuing until generic entry in 2015, Boehringer agreed to pay Barr millions in cash upfront plus substantial additional consideration, including annual, increasing royalties on the total U.S. Aggrenox sales. The total value of these payments is an estimated $120 million. The co-promotion agreement was part and parcel of Boehringer and Barr's settlement, and Boehringer would not have agreed to enter into the co-promotion agreement absent Barr's agreement to delay entry into the market with generic Aggrenox.

68. Boeheringer's continuing payments to Barr under the Co-Promotion Agreement vastly exceeded the fair value of the services provided by Barr and its subsidiaries. Boehringer had no expectation of receiving significant financial benefit during the seven-year delay period from Barr's promotion of a drug for patients who have suffered strokes to a target group consisting primarily of

gynecologists and obstetricians. Indeed, Boehringer compensated Barr for ostensibly promoting Aggrenox to obstetricians even though Boehringer warns pregnant and nursing women and the doctors treating them not to take or prescribe Aggrenox because it poses a serious risk to fetal health.

69. Moreover, Boehringer's payments to Barr under the Agreement are based on a percentage of total U.S. sales, not just on the far smaller percentage of sales resulting from Barr's promotion of anti-stroke drug Aggrenox to obstetricians, gynecologists, and women's health care professionals, as one would expect with a fair value for services promotion agreement. Thus, the vast majority of Boehringer's multi-million dollar payments to Barr could have nothing whatsoever to do with any services purportedly performed by Barr. Boehringer's payments to Barr were purely for delay.

70. *Second*, the Agreement provides that Boehringer and Barr would not compete with respect to generic Aggrenox once a generic Aggrenox product finally entered the market. Under the Agreement, Boehringer agreed to exclusively supply Barr with Boehringer's own authorized generic Aggrenox product at below-market rates, and not to supply any third-party with Boehringer's authorized generic product, until the expiration of the '577 Patent. In return, Barr agreed not to launch its own ANDA generic product (for which it received final FDA approval in August 2009) until the expiration of the '577 Patent.

71. The purpose and effect of these covenants is (a) no competition between a Boehringer authorized generic product and Barr's ANDA generic product for approximately one and a half years (from generic entry on July 1, 2015 to the end of the patent term on January 18, 2017) and (b) no competition between a Barr generic Aggrenox product and *any other* generic Aggrenox product (including those sold by Boehringer and/or third parties) during Barr's 180-exclusivity period (from generic entry until January 2016). This aspect of the Agreement provides substantial compensation—many millions of dollars—to Barr, which could expect to make approximately double the unit sales, at a much higher price, absent competition between Barr's ANDA generic and Boehringer's authorized generic in the market, particularly during the 180-day exclusivity period. These higher prices come at the expense of Plaintiff and others.

72. Boehringer's large payment to Barr via the exclusive supply and non-competition arrangement is unjustified and far exceeds the fair value of services (if any) provided by Barr. Boehringer had no need to market its authorized generic Aggrenox product through Barr. Boehringer has its own wholly-owned subsidiary, Roxane Laboratories, Inc., through which it has launched at least seven authorized generic versions of its brand name products, including before the Agreement with Barr. Absent Barr's agreement to delay generic entry, Boehringer would not have agreed to exclusively supply its authorized generic Aggrenox to its competitor Barr. Instead, Boehringer would have launched its authorized generic in competition with Barr. And absent payment from Boehringer, Barr would not have agreed to refrain from launching its ANDA product to market in competition with Boehringer's product. As Boehringer itself has said: "parties engaged in contentious litigation would not otherwise be willing to do business with each other. . . ."

73. Nor was the supply agreement an independent business transaction. The face of the Agreement makes plain that the supply agreement, like the co-promotion agreement, was an integral part of the overall Agreement and consideration for Barr's agreement to drop its challenge to the '577 Patent and delay generic entry.

74. Taken together, Boehringer's payments to Barr under the Agreement guaranteed two distinct periods of non-competition: (a) the period before generic competition, whereby Boehringer and Barr agreed to allocate 100% of the market to Boehringer; and (b) the period after generic competition, whereby Boehringer and Barr agreed not to sell competing generic versions of Aggrenox, with the intent to allocate 100% of the generic segment to Barr during the 180-day exclusivity period and reduce inter-generic competition for the duration of the patent term. Under the Agreement, there was no period of unrestrained competition between possible generic entry and the end of the patent term.

75. Defendants have no procompetitive explanation or justification for the payments. The total payments flowing from Boehringer to Barr had a cash value far above $120 million dollars and had no explanation or justification other than to induce Barr to stay out of the Aggrenox market. These large, unjustified payments had no rational connection to, and far exceeds, any approximation

of the costs of continuing the patent litigation. The payment was not consideration for the fair value of services provided from Barr to Boehringer.

D. Teva Acquired Barr and Continued the Unlawful Agreement to Suppress Generic Competition

76. The Agreement contemplated that Barr might be acquired by Teva and bound Teva to its terms in the event of such an acquisition.

77. On December 23, 2008, Teva acquired Barr by merging the two corporations, Teva, as the surviving entity, assumed liability for the illegal conduct Barr engaged in before the merger and stepped into Barr's shoes with respect to the Exclusion Payment Agreement. Teva had continued to refrain from entering the market with a generic equivalent of Aggrenox. Teva thus joined the ongoing unlawful course of conduct—and joined the unlawful agreements, collusion and conspiracy—to suppress generic competition of Aggrenox. Teva did not withdraw from the conspiracy, and instead continued to participate in it.

78. As a result of its merger with Barr, Teva would own (either directly or indirectly) ANDA 78-804 and the 180-day exclusivity period that Barr was entitled to as the first filer.

79. Post-acquisition, Teva/Barr continued to pursue approval of ANDA 78-804. On August 14, 2009 the FDA granted final approval of ANDA 78-804 for a generic equivalent of Aggrenox. Because of the Exclusion Payment Agreement, no generic equivalent of Aggrenox was on the market until July 1, 2015.

E. The Unlawful Agreement to Suppress Generic Competition Caused Plaintiff Substantial Harm

80. Since the execution of the Agreement and continuing until July 1, 2015, Barr/Teva continuously refused to enter the market with generic Aggrenox despite having FDA approval to do so, and Boehringer continued to pay Barr/Teva for this delayed competition.

81. The former lack of generic competition is the direct result of the ongoing unlawful Agreement that began in 2008, and continued through July 1, 2015. Until July 1, 2015, Boehringer continued to sell brand name Aggrenox at artificially inflated prices, and Plaintiff was denied the

lower prices that generic competition would have brought to the market. Moreover, even once a generic, bioequivalent version of Aggrenox entered the market, the Agreement continued to harm Plaintiff by depriving it of the benefits of inter-generic competition.

82. But for the anticompetitive and illegal conduct alleged in this complaint, Plaintiff would have had access to less expensive versions of Aggrenox, and would have substituted its purchases of branded Aggrenox with generic Aggrenox, much sooner than it did. The Defendants have injured Plaintiff by causing it to pay substantial overcharges – potentially hundreds of millions of dollars—each time it purchased Aggrenox at artificially inflated prices.

F. Generic Equivalents to Aggrenox Make Delayed Entry into the Market

83. On July 1, 2015, Barr launched its generic equivalent to Aggrenox.

84. Upon information and belief, Amneal Pharmaceuticals LLC received final approval for and launched its generic equivalent of Aggrenox on or about March 18, 2016.

85. Upon further information and belief, Impax Laboratories Inc. received final approval for and launched its generic equivalent of Aggrenox on or about January 18, 2017.

86. Upon further information and belief, Sandoz, Inc. received final approval for and launched its generic equivalent of Aggrenox on or about January 18, 2017.

G. The California Medicaid Program

87. The California Medicaid program is a state-administered program with federal matching funds that pays for medical care, including prescription drug benefits, for California's low-income and disabled citizens.

88. California Medicaid spending in FY 2014 alone was $492.3 billion.

89. California Medicaid currently covers approximately 11,887,524 individuals.

90. Prescription drug benefits represent approximately 16% of California Medicaid's annual budget, or approximately $78.8 billion.

91. California Medicaid reimburses medical providers, including physicians and pharmacists, for drugs prescribed for, and dispensed to, California Medicaid recipients pursuant to statutory and administrative formulas.

92. Reimbursement for pharmacy-dispensed prescription drugs under the California Medicaid program is based on information supplied by Defendants. At all times relevant to this action, Defendants were aware of the State of California's Medicaid drug reimbursement formulas and procedures for pharmacy-dispensed drugs, yet they continued their unlawful conduct in violation of California's antitrust and consumer protection laws.

93. Since August of 2009, Defendants have caused California's medical assistance programs to pay more for Aggrenox/generic Aggrenox products than they would otherwise have paid. Defendants' unlawful conduct deprived California's medical assistance programs of the benefits of competition that California's antitrust and consumer protection laws are intended to preserve.

VII. MARKET POWER AND MARKET DEFINITION

94. At all relevant times, Boehringer had the power to maintain the price of Aggrenox at supracompetitive levels without losing substantial sales to other products.

95. At all relevant times, Boehringer had the power to maintain the price of Aggrenox at supracompetitive levels without losing substantial sales to other products.

96. Aggrenox does not exhibit significant, positive cross-elasticity of demand with respect to price with any product other than an AB-rated generic equivalent of Aggrenox.

97. Because of its unique profile as a combined aspirin and extended-release dipyridamole treatment for subsequent strokes, Aggrenox is differentiated from all products other than AB-rated generic equivalents of Aggrenox. Aggrenox's specific ratio of dipyridamole to aspirin and the release formulations of those components also differentiate it from products aside from AB-rated generic equivalents.

98. At all relevant times, Boehringer had the power to maintain the price of Aggrenox at supracompetitive levels without losing substantial sales to other products.

99. Aggrenox does not exhibit significant, positive cross-elasticity of demand with respect to price with any product other than an AB-rated generic equivalent of Aggrenox.

100. Because of its unique profile as a combined aspirin and extended-release dipyridamole treatment for subsequent strokes, Aggrenox is differentiated from all products other

than AB-rated generic equivalents of Aggrenox. Aggrenox's specific ratio of dipyridamole to aspirin and the release formulations of those components also differentiate it from products aside from AB-rated generic equivalents.

101. Boehringer needed to control only Aggrenox (and any AB-rated generic equivalents to Aggrenox), and no other products, to maintain the price of Aggrenox profitably at monopolistic prices. Only the market entry of a competing AB-rated generic equivalent to Aggrenox rendered Boehringer unable to profitably maintain monopoly prices of Aggrenox.

102. Boehringer also sold branded Aggrenox at prices well in excess of marginal costs and the competitive price, and enjoyed high profit margins.

103. The Defendants had to exercise the power to exclude generic competition to branded Aggrenox.

104. At all relevant times, the Defendants enjoyed high barriers to entry with respect to the market for Aggrenox products.

105. To the extent that Plaintiff is legally required to define a relevant product market, Plaintiff alleges that the relevant market is all Aggrenox products (i.e., 25 mg aspirin/200 mg extended-release dipyridamole capsules), which includes Aggrenox and AB-rated bioequivalent products.

106. Aggrenox is available only by doctor's prescription. The doctor's prescription defines the relevant product market, since a prescription for a prescription drug may be filled only with the brand name drug named in the prescription or its AB-rated, FDA-approved generic equivalent. So if a doctor prescribes "Aggrenox," the prescription could only be filled with brand Aggrenox until an AB-rated bioequivalent became available.

107. During the relevant time period, the Defendants were able to profitably maintain the price of Aggrenox well above competitive levels.

108. Without the power to exclude and restrict competition to 200 mg extended release dipyridamole I 25 mg acetylsalicylic acid capsules (Aggrenox and AB-rated bioequivalent generics), and ability to sell its own branded version of that drug, Aggrenox, at prices well over marginal costs,

it would not have been economically rational for Boehringer to pay Barr up to $120 million to delay Barr's launch of its AB-rated generic Aggrenox.

109. The relevant geographic market is the United States and its territories.

110. Since 1999, Boehringer had a 100% market share in the relevant market, and continued to have that market share until July 2015.

VIII. MARKET EFFECTS

111. Boehringer began marketing Aggrenox in December 1999. But, as a result of the Agreement, no generic equivalent of Aggrenox was available for purchase in the United States until July 2015.

112. Defendants' unlawful Exclusion Payment Agreement was designed to and did in fact: (a) preclude the entry of less expensive generic versions of Aggrenox products in the United States and its territories; (b) fix, raise, maintain or stabilize the price of 25 mg aspirin/200 mg extended-release dipyridamole capsules; and (c) allocate 100% of the United States and its territories 25 mg aspirin/200 mg extended-release dipyridamole capsules market to Boehringer. Moreover, once generic Aggrenox entry finally occurred in July 2015, Defendants' Agreement was designed to and did allocate 100% of the generic segment to Barr during the 180-day exclusivity period and reduced inter-generic competition for the remainder of the 577 Patent's term.

113. Barr's generic Aggrenox ANDA received final FDA approval on August 14, 2009. But for the unlawful Exclusion Payment Agreement, Barr would have entered the market as early as August 11, 2008, or at the latest by November 30, 2009 through: (a) an "at risk" launch upon receiving final FDA approval following the expiration of the 30-month stay; (b) earlier licensed entry via a lawful agreement with Boehringer that did not include unlawful payments to Barr; or (c) by winning the '577 Patent litigation.

114. It is well-known in the industry that due to its substantial resources Teva has a long history of "at risk" launches, including thirteen such launches between 2004 and 2008 alone. Many of Teva's "at risk" launches involved products with annual sales less than $500 million. It is also

well-known in the industry that "at risk" launches are particularly likely when, like here, a company with a history of "at risk" launches is the first-filing generic.

115. Absent an "at risk" launch, but for the large unjustified payments Boehringer made to Barr in exchange for Barr's agreement to delay launching generic Aggrenox, Defendants would have agreed to an unrestrained licensed entry date significantly earlier than July 1, 2015. Without the payments, which were the *quid pro quo* for the delay (and absent an at risk launch or litigation victory), Barr would have insisted on and received earlier, unrestrained licensed entry.

116. In addition, but for the Agreement, Boehringer, as a rational economic actor seeking to recoup lost branded sales, would have launched an authorized, bioequivalent generic version of Aggrenox simultaneously with the launch of Barr's bioequivalent generic version of Aggrenox, as it has done numerous times, pushing generic prices lower. Indeed, Boehringer, through its wholly-owned subsidiary Roxane Laboratories, Inc., has launched authorized generic versions of at least seven of its brand drug products, including before the Agreement. Boehringer's launch of authorized generic products through Roxane include, but are not limited to: Atrovent, Metaprel, Micardis, Micardis HCT, Mobic, Persantine, and Viramune.

117. But for the Defendants' illegal conduct, generic competition would have forced a decrease in the price of branded Aggrenox, and price competition among the suppliers of branded and generic Aggrenox would have been intense.

118. But for the Defendants' illegal conduct, Plaintiff would have paid less for Aggrenox or a generic equivalent. The Defendants' conduct directly injured Plaintiff because it forced Plaintiff to pay millions of dollars in overcharges on its Aggrenox purchases and has forced Plaintiff to pay artificially inflated prices for generic Aggrenox as a result of the non-competition agreement between Boehringer and Barr.

119. As a result of the delay in generic competition brought about by the Defendants' anticompetitive scheme, Plaintiff paid more for Aggrenox products than they would have paid absent the Defendants' illegal conduct.

120. Barr had, and Teva has, extensive experience in the pharmaceutical industry, including experience obtaining approval of ANDAs, manufacturing commercial launch quantities adequate to meet market demand, and marketing generic pharmaceutical products.

121. Upon entering the market, generic equivalents of brand name drugs are priced significantly below the branded drug to which they are AB-rated. When multiple generic products are on the market, prices for the brand drug and its generic equivalents fall even further because of the increased competition.

122. If generic competition for Aggrenox had not been unlawfully delayed, Plaintiff would have paid less for Aggrenox by substituting purchases of less-expensive AB-rated generic equivalents of Aggrenox for its purchases of more-expensive brand Aggrenox.

123. Thus, the Defendants' unlawful conduct deprived Plaintiff of the benefits of competition that the antitrust laws were designed to ensure. The unlawful agreement also discouraged other generic companies from seeking to come to market. As the "first filer" of an ANDA, Barr was eligible to obtain 180 days of market exclusivity which only began to run once it came to market in July 2015. Only after the 180 day market exclusivity expired (July 2015 to January 2016) could other generic companies obtain FDA final approval to manufacture, market and sell a bioequivalent version of Aggrenox in order to come to market.

IX. ANTITRUST IMPACT AND INJURY

124. During the Relevant Period, Plaintiff indirectly purchased, paid for, and/or provided reimbursements for Aggrenox from Boehringer. As a result of the Defendants' illegal conduct, purchasers in California were compelled to pay artificially inflated prices for Aggrenox. Those prices were substantially higher than the prices that purchasers in California would have paid absent the illegal conduct alleged in this complaint.

125. As a consequence, purchasers in California have sustained substantial losses and damage to their business and property in the form of overcharges. The full amount, forms, and components of such damages will be calculated after discovery and upon proof at trial.

126. Defendants' efforts to restrain competition in the market for Aggrenox have substantially affected interstate and foreign commerce.

127. At all material times, Boehringer manufactured, promoted, distributed, and sold substantial amounts of Aggrenox in a continuous and uninterrupted flow of commerce within California.

128. Defendants' anticompetitive conduct had substantial effects within California. Among other things, retailers within each state were foreclosed from offering less expensive generic, bioequivalent versions of Aggrenox to purchasers. This directly impacted commerce for consumers and third-party payors, such as California purchasers.

129. At all material times, Defendants transmitted funds and contracts, invoices, and other forms of business communications and transactions in a continuous and uninterrupted flow of commerce across and within California in connection with the sale of Aggrenox.

130. General economic theory recognizes that any overcharge at a higher level of distribution generally results in higher prices at every level below. *See* Hovenkamp, Federal Antitrust Policy: The Law of Competition and Its Practice (1994) at 624. Professor Hovenkamp explains that "[e]very person at every stage in the chain will be poorer" as a result of the anticompetitive price at the top. He also says that "[t]heoretically, one can calculate the percentage of any overcharge that a firm at one distribution level will pass on to those at the next level."

131. The institutional structure of pricing and regulation in the pharmaceutical drug industry ensures that overcharges at the higher level of distribution are passed on to end-payors. Wholesalers and retailers passed on the inflated prices of Aggrenox to consumers and third-party payors.

132. Defendants' anticompetitive conduct enabled Defendants to indirectly charge consumers and third-party payors prices in excess of what they otherwise would have been able to charge absent the Defendants' unlawful actions.

133. The prices were inflated as a direct and foreseeable result of Defendants' anticompetitive conduct.

134. The inflated prices that Plaintiff has paid are traceable to, and the foreseeable result of, the overcharges by Defendants.

X. DELAYED DISCOVERY

135. There are thousands of different FDA-approved pharmaceutical drugs that are consumed every day in the United States, including in California. Purchasers, reimbursers, and consumers must and do rely on the federal regulatory system and market conditions to set the appropriate price for all such drugs. These entities simply do not have the capacity, specialized knowledge, or sufficient modes of detection to investigate the myriad factors affecting the market price of each and every drug. This is especially true where, as here, the branded manufacturer's power over price stems from a pharmaceutical patent. The primary entities with such means to detect an improper, supra-competitive pricing regime are the would-be manufacturers of generic equivalents to the branded drugs.

136. The Hatch-Waxman Act specifically recognizes the unique position that these would-be generics are in, and incentivizes them to investigate and challenge patents that do not in actuality confer the government-approved market power claimed by the branded manufacturer (through listing in the FDA "Orange Book"). When these would-be generics instead subvert this regulatory structure by accepting compensation from the branded manufacturer in exchange for (among other things) stipulating both to the validity of the patent(s) and the infringement of any generic equivalents, such agreements deliberately prevent purchasers, reimbursers, and consumers from gaining access to the information necessary to conclude that the underlying patents were not in fact valid and/or that the would-be generics would not infringe.

137. It was not until November of 2013 that any information came into the public domain regarding the anticompetitive nature and effects of the Defendants' conduct when lawsuits started being filed in federal district courts alleging the illegal nature of the Defendants' agreement. On April 3, 2014, the United States Panel on Multidistrict Litigation agreed to centralize various actions in the District of Connecticut before the Honorable Stefan R. Underhill, MDL No. 2516.

138. California Aggrenox users, their insurers, public healthcare providers and other government payors could not, by the exercise of reasonable diligence, have discovered the wrongful cause of the injuries at an earlier time because the injuries were caused without perceptible harm. Without actual knowledge of the content and persistent effect of the anticompetitive agreements, there was simply no way to discern that the price of Aggrenox was higher than it otherwise would or should have been. Furthermore, even were the harm perceptible, its cause remained unknowable in the absence of such actual knowledge. In addition, where Aggrenox consumers relied on other healthcare providers, these providers had similarly relied upon both the proper functioning of the pharmaceutical market and the defendants' misrepresentations regarding the patents.

139. California Aggrenox users, their insurers, public healthcare providers and other government payors, as represented here by Tony Rackauckas, District Attorney of the County of Orange, were not aware of the Defendants' wrongful conduct, the tortious and unlawful nature of the conduct, and the harm to California consumers and others caused by Defendants' conduct, until January 31, 2017 when the unlawful agreements and the facts which form the basis for Plaintiffs' Complaint were first brought to the attention of the Office of the District Attorney's Consumer Protection Unit.

XI. CONTINUING VIOLATIONS

140. This Complaint alleges a continuing course of conduct (including conduct within the limitations periods), and Defendants' unlawful conduct has included continuing and accumulating harm within the applicable statutes of limitations. Thus, Plaintiff can recover damages they suffered during the applicable limitations periods.

141. The most obvious continuing violation is Defendants' charging of supracompetitive prices to Plaintiff within the limitations periods. Every time Plaintiff was overcharged for branded Aggrenox, Plaintiff suffered a cognizable injury. In addition to inflicting overcharges, Defendants committed additional overt acts constituting continuing violations, including without limitation:

a. Teva/Barr's continuous refusal to enter the market until July 2015. Teva/Barr continually adhered to the Exclusion Payment Agreement by refusing to launch generic

Aggrenox before July 1, 2015. This continuous refusal to enter the market constitutes an ongoing series of overt acts that continually re-set the statute of limitations.

b. Boehringer's refraining from launching a competing generic. Similar to Teva/Barr's refusal to enter the market is Boehringer's refraining from launching a competing generic. This refusal to enter with a competing generic results in Plaintiff incurring additional overcharges.

c. Boehringer's continuing payments under the Co-Promotion Agreement. Each payment to Teva/Barr pursuant to the Co-Promotion Agreement constitutes an overt act justifying the application of the continuing violation doctrine. These payments, which occur quarterly, are based on annual increasing royalties on the total U.S. Aggrenox sales through July 1, 2015.

142. As co-conspirators, Defendants share responsibility for each of these continuing violations.

XII. CAUSES OF ACTION

FIRST CAUSE OF ACTION

UNFAIR COMPETITION

Violation of Business and Professions Code Section 17200, et seq.

(Against all Defendants)

143. The People reallege and incorporate by reference each of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged in this Cause of Action.

144. Business and Professions Code Section 17200 (Section 17200) prohibits any "unlawful, unfair or fraudulent business act or practice[]." Defendants have engaged in unlawful and unfair business practices in violation of Section 17200 as set forth above.

145. Defendants' business practices as described in this Complaint constitute unlawful business acts and practices within the meaning of California Business and Professions Code section 17200. Defendants' unlawful business acts and practices as alleged herein have violated federal, state, statutory and/or common laws - and said predicate acts are therefore per se violations of section

17200. These predicate unlawful business acts and practices include, but are not limited to, the following antitrust laws: California Business and Professions Code section 16700 et seq. ("the Cartwright Act"), The Sherman Antitrust Act, 15 U.S.C. §§ 1–7, The Clayton Antitrust Act, 15 U.S.C. §§ 12-27, and the Federal Trade Commission Act, 15 U.S.C. § 45.

146. Defendants' business practices as described in this Complaint are unfair and violate Section 17200 because they offend established public policy, are substantially injurious to consumers, and because the harm they cause to consumers and purchasers in California greatly outweighs any benefits associated with those practices and the Defendants' reasons, justifications, and motives for the practices. The business acts and practices described above are also unfair in that they violate and threaten incipient violations of the aforementioned antitrust laws and violate the policy or spirit of these laws because their effects are comparable to or the same as a violation of these laws, and significantly threaten and harm competition.

147. As a direct and proximate result of the foregoing acts and practices, Defendants have received income, profits, and other benefits, which they would not have received if they had not engaged in the violations of Section 17200 described in this Complaint. The People therefore seek restitution from Defendants pursuant to Business & Professions Code Section 17203.

148. As a direct and proximate result of the foregoing acts and practices, Defendants have obtained an unfair advantage over similar businesses that have not engaged in such practices.

149. Each sale of Aggrenox in violation of Section 17200 constitutes a separate violation. Business & Professions Code § 17206(b). The People therefore seek civil penalties up to $2,500 per violation pursuant to Section 17206 for each violation of Section 17200. The People also seek civil penalties up to $2,500 per violation under Section 17206.1.

150. Each sale of Aggrenox in violation of Section 17200 constitutes a separate violation. Business & Professions Code § 17206(b). The People therefore seek civil penalties up to $2,500 per violation pursuant to Section 17206 for each violation of Section 17200. The People also seek civil penalties up to $2,500 per violation under Section 17206.1.

151. The Defendants knew or should have known that senior citizens and disabled persons would be prescribed and would purchase Aggrenox, and that they would be substantially more vulnerable than other members of the public to the effects of the Defendants' conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability. As a result of the Defendants' conduct, senior citizens and disabled persons paid supra-competitive prices for Aggrenox, and suffered substantial economic damage resulting from Defendants' conduct, as well as substantial loss of property set aside for retirement, personal and family care and maintenance, and assets essential to their health and welfare.

XIII. PRAYER FOR RELIEF

THE PEOPLE pray that the Court:

A. Declare that Defendants have engaged in unlawful and unfair business acts and practices in violation of the Unfair Competition Law.

B. Enjoin Defendants from performing or proposing to perform any acts in violation of the Unfair Competition Law.

C. Order Defendants to pay restitution of any money acquired by Defendants' unlawful and unfair business practices, pursuant to Business and Professions Code Section 17203.

D. Order Defendants to pay civil penalties for each act of unfair and unlawful competition, pursuant to Business and Professions Code Section 17206.

E. Order Defendants to pay civil penalties for each act of unfair and unlawful competition perpetrated against senior citizens or disabled persons, pursuant to Business and Professions Code Section 17206.1, trebled according to California Civil Code Section 3345.

F. Order Defendants to pay the cost of the suit, including attorneys' fees.

G. Provide such further and additional relief as the Court deems proper.

Dated: April 10, 2017

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