

**FEDERAL COURT**  
**PROPOSED CLASS PROCEEDING**

B E T W E E N:

*(Court Seal)*

KATHRYN EATON

Plaintiff

and

TEVA CANADA LIMITED, TEVA PHARMACEUTICALS USA, INC., ACTAVIS  
HOLDCO U.S., INC., ACTAVIS ELIZABETH LLC, ACTAVIS PHARMA, INC.,  
ACTAVIS PHARMA COMPANY, BARR PHARMACEUTICALS, LLC, AKORN,  
INC., AKORN SALES, INC., HI-TECH PHARMACAL CO., INC., AMNEAL  
PHARMACEUTICALS, INC., IMPAX LABORATORIES, INC., APOTEX INC.,  
APOTEX CORP., AUROBINDO PHARMA USA, INC., AURO PHARMA INC.,  
AVET PHARMACEUTICALS INC., MARCAN PHARMACEUTICALS INC.,  
BRECKENRIDGE PHARMACEUTICAL, INC., DR. REDDY'S LABORATORIES,  
INC., DR. REDDY'S LABORATORIES CANADA INC., GLENMARK  
PHARMACEUTICALS INC., USA, GLENMARK PHARMACEUTICALS  
CANADA INC., LANNETT COMPANY, INC., LUPIN PHARMACEUTICALS,  
INC., LUPIN PHARMA CANADA LTD., MAYNE PHARMA INC., MYLAN N.V.,  
MYLAN PHARMACEUTICALS ULC, MYLAN INC., MYLAN  
PHARMACEUTICALS INC., MYLAN INSTITUTIONAL INC., DAVA  
PHARMACEUTICALS, LLC, GENERICS BIDCO I, LLC, PAR  
PHARMACEUTICAL COMPANIES, INC., PAR PHARMACEUTICAL, INC.,  
PERRIGO INTERNATIONAL INC., PERRIGO NEW YORK, INC., PFIZER INC.,  
PFIZER CANADA ULC/PFIZER CANADA SRI, GREENSTONE LLC, SANDOZ  
INC., SANDOZ CANADA INC., FOUGERA PHARMACEUTICALS INC., SUN  
PHARMACEUTICAL INDUSTRIES, INC., SUN PHARMA CANADA INC., TARO  
PHARMACEUTICALS INC., TARO PHARMACEUTICALS U.S.A., INC.,  
TELIGENT, INC., TELIGENT CANADA INC., UPSHER-SMITH  
LABORATORIES, LLC, WOCKHARDT USA LLC, MORTON GROVE  
PHARMACEUTICALS, INC., and ZYDUS PHARMACEUTICALS (USA), INC.

Defendants

**STATEMENT OF CLAIM**

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules*, serve it on the plaintiff's solicitor, or where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is 40 days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is 60 days.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court, and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238), or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date 3-JUNE-2020 Issued by "Veton Mamudov"  
(Registry Officer)  
Address of  
local office: 180 Queen Street West, Suite 200  
Toronto, Ontario M5V 3L6

TO: TEVA CANADA LIMITED  
30 Novopharm Court  
Toronto, Ontario M1B 2K9

AND TO: TEVA PHARMACEUTICALS USA, INC.  
400 Interpace Parkway, No. 3  
Parsippany, New Jersey 07054

AND TO: ACTAVIS HOLDCO U.S., INC.  
400 Interpace Parkway  
Parsippany, New Jersey 07054

AND TO: ACTAVIS ELIZABETH LLC  
200 Elmora Avenue  
Elizabeth, New Jersey 07202

AND TO: ACTAVIS PHARMA, INC.  
100 Campus Drive  
Florham Park, New Jersey 07932

AND TO: ACTAVIS PHARMA COMPANY  
1959 Upper Water Street, Suite 900  
Halifax, Nova Scotia B3J 2X2

AND TO: BARR PHARMACEUTICALS, LLC  
1090 Horsham Road  
North Wales, Pennsylvania 19454

AND TO: AKORN, INC.  
1925 West Field Court, Suite 300  
Lake Forest, Illinois 60045

AND TO: AKORN SALES, INC.  
1925 West Field Court, Suite 300  
Lake Forest, Illinois 60045

AND TO: HI-TECH PHARMACAL CO., INC.  
369 Bayview Avenue  
Amityville, New York 11701

AND TO: AMNEAL PHARMACEUTICALS, INC.  
400 Crossing Boulevard, 3rd Floor  
Bridgewater, New Jersey 08807

AND TO: IMPAX LABORATORIES, INC.  
400 Crossing Boulevard, 3rd Floor  
Bridgewater, New Jersey 08807

AND TO: APOTEX INC.  
150 Signet Drive  
Toronto, Ontario M9L 1T9

AND TO: APOTEX CORP.  
2400 North Commerce Parkway, Suite 400  
Weston, Florida 33326

AND TO: AUROBINDO PHARMA USA, INC.  
279 Princeton Hightstown Road  
East Windsor, New Jersey 08520

AND TO: AURO PHARMA INC.  
3700 Steeles Avenue West, Suite 402  
Woodbridge, Ontario L4L 8K8

AND TO: AVET PHARMACEUTICALS INC.  
1 Tower Center Boulevard, Suite 1700  
East Brunswick, New Jersey 08816

AND TO: MARCAN PHARMACEUTICALS INC.  
2 Gurdwara Road, Suite 112  
Ottawa, Ontario K2E 1A2

AND TO: BRECKENRIDGE PHARMACEUTICAL, INC.  
15 Massirio Drive, Suite 201  
Berlin, Connecticut 06037

AND TO: DR. REDDY'S LABORATORIES, INC.  
107 College Road East  
Princeton, New Jersey 08540

AND TO: DR. REDDY'S LABORATORIES CANADA INC.  
2425 Matheson Boulevard East, 7th Floor  
Mississauga, Ontario L4W 5K4

AND TO: GLENMARK PHARMACEUTICALS INC., USA  
750 Corporate Drive  
Mahwah, New Jersey 07430

AND TO: GLENMARK PHARMACEUTICALS CANADA INC.  
Futurity Place  
1600 Steeles Avenue West, Suite 407  
Concord, Ontario L4K 4M2

AND TO: LANNETT COMPANY, INC.  
9000 State Road  
Philadelphia, Pennsylvania 19136

AND TO: LUPIN PHARMACEUTICALS, INC.  
Harborplace Tower  
111 South Calvert Street, 21st Floor  
Baltimore, Maryland 21202

AND TO: LUPIN PHARMA CANADA LTD.  
15 Wertheim Court, Suite 707  
Richmond Hill, Ontario L4B 3H7



AND TO: MAYNE PHARMA INC.  
3301 Benson Drive, Suite 401  
Raleigh, North Carolina 27609

AND TO: MYLAN N.V.  
1000 Mylan Boulevard  
Canonsburg, Pennsylvania 15317

AND TO: MYLAN PHARMACEUTICALS ULC  
85 Advance Road  
Etobicoke, Ontario M8Z 2S6

AND TO: MYLAN INC.  
1000 Mylan Boulevard  
Canonsburg, Pennsylvania 15317

AND TO: MYLAN PHARMACEUTICALS INC.  
781 Chestnut Ridge Road  
Morgantown, West Virginia 26505

AND TO: MYLAN INSTITUTIONAL INC.  
1718 Northrock Court  
Rockford, Illinois 61103

AND TO: DAVA PHARMACEUTICALS, LLC  
400 Kelby Street, 10th Floor  
Fort Lee, New Jersey 07024

AND TO: GENERICS BIDCO I, LLC  
130 Vintage Drive Northeast  
Huntsville, Alabama 35811

AND TO: PAR PHARMACEUTICAL COMPANIES, INC.  
1 Ram Ridge Road  
Chestnut Ridge, New York 10977

AND TO: PAR PHARMACEUTICAL, INC.  
1 Ram Ridge Road  
Chestnut Ridge, New York 10977

AND TO: PERRIGO INTERNATIONAL INC.  
515 Eastern Avenue  
Allegan, Michigan 49010

AND TO: PERRIGO NEW YORK, INC.  
515 Eastern Avenue  
Allegan, Michigan 49010

AND TO: PFIZER INC.  
235 East 42nd Street  
New York, New York 10017

AND TO: PFIZER CANADA ULC/PFIZER CANADA SRI  
17300 Trans-Canada Highway  
Kirkland, Quebec H9J 2M5

AND TO: GREENSTONE LLC  
100 Route 206 North  
Peapack, New Jersey 07977

AND TO: SANDOZ INC.  
100 College Road West  
Princeton, New Jersey 08540

AND TO: SANDOZ CANADA INC.  
110 de Lauzon  
Boucherville, Quebec J4B 1E6

AND TO: FOUGERA PHARMACEUTICALS INC.  
60 Baylis Road  
Melville, New York 11747

AND TO: SUN PHARMACEUTICAL INDUSTRIES, INC.  
2 Independence Way  
Princeton, New Jersey 08540

AND TO: SUN PHARMA CANADA INC.  
126 East Drive  
Brampton, Ontario L6T 1C1

AND TO: TARO PHARMACEUTICALS INC.  
130 East Drive  
Brampton, Ontario L6T 1C1

AND TO: TARO PHARMACEUTICALS U.S.A., INC.  
3 Skyline Drive  
Hawthorne, New York 10532

AND TO: TELIGENT, INC.  
105 Lincoln Avenue  
Buena, New Jersey 08310

AND TO: TELIGENT CANADA INC.  
5995 Avebury Road, Suite 804  
Mississauga, Ontario L5R 3P9

AND TO: UPSHER-SMITH LABORATORIES, LLC  
6701 Evenstad Drive  
Maple Grove, Minnesota 55369

AND TO: WOCKHARDT USA LLC  
20 Waterview Boulevard, 3rd Floor  
Parsippany, New Jersey 07054

AND TO: MORTON GROVE PHARMACEUTICALS, INC.  
6451 West Main Street  
Morton Grove, Illinois 60053

AND TO: ZYDUS PHARMACEUTICALS (USA), INC.  
73 Route 31 North  
Pennington, New Jersey 08534

## **CLAIM**

1. The plaintiff claims on behalf of herself and the class:
  - (1) An order certifying this action as a class proceeding pursuant to the *Federal Courts Rules*, and appointing the plaintiff as the representative plaintiff for the class;
  - (2) Damages or compensation, calculated on an aggregate basis or otherwise, in the amount of \$2,750,000,000, or such additional or other sum as is determined at trial, for breach of part VI of the *Competition Act*;
  - (3) Pre- and post-judgment interest in accordance with sections 36 and 37 of the *Federal Courts Act*;
  - (4) Costs of both the investigation and prosecution of the action, including applicable taxes, on a full or complete indemnity basis pursuant to section 36 of the *Competition Act* and the *Federal Courts Rules*; and
  - (5) Such further and other relief as to this Honourable Court may seem just.

## **NATURE OF THE ACTION**

2. This is a class action against the world's leading generic drug makers for violating the *Competition Act* by conspiring to allocate the market, fix prices, and maintain the supply of generic drugs. According to a U.S. state attorney general who

is leading an investigation into the conspiracy, “the generic drug industry is the largest private sector corporate cartel in history.”

3. The defendants are the generic drug manufacturers responsible for most of the generic drug sales in Canada.

4. Generic drugs are the pharmaceutical equivalent of their brand-name drug counterpart. They were intended to play an important role in the Canadian healthcare system, by offering competition and lower-priced alternatives to brand-name drugs when the drugs lost their patent protection.

5. Unlike brand-name drugs, whose prices are regulated by the Patented Medicine Prices Review Board (“PMPRB”), the prices of generic drugs are not subject to government control or rate-setting. The Canadian generic drug market consists of purchases in the public sector and purchases in the private sector. Generic drug purchases in the public sector are reimbursed by public drug plans, typically those of the provinces and territories. Generic drug purchases in the private sector, which comprise approximately 55 percent of generic drug sales in Canada, are paid for out-of-pocket by individuals, or by businesses and individuals through private drug plans. This action is brought on behalf of class members who purchased generic drugs in the private sector.

6. The generic drug industry is the subject of investigations by U.S. state attorneys general and the U.S. Department of Justice. The U.S. state attorneys general investigation has consisted of thousands of documents, an industry-wide phone call database containing millions of call records, and information provided by cooperating

witnesses. This investigation has culminated in a May 10, 2019 civil complaint by the U.S. state attorneys general alleging an industry-wide conspiracy among generic drug manufacturers. The U.S. Department of Justice investigation has resulted in four manufacturers agreeing to pay criminal fines, including the defendants Apotex, Heritage (now Avet), and Sandoz. The investigations are still ongoing.

7. To date, the investigations have revealed an industry-wide conspiracy among the defendant generic drug manufacturers that covers the entire generic drug market. The conspiracy involves steak dinners, cocktails, rounds of golf, meetings the defendants termed “girls’ nights out” or “Women in the Industry,” and other meetings and communications among the defendants’ executives.

8. The defendants have names for the conspiracy, including “playing nice in the sandbox,” the “rules of engagement,” and “fair share” or “FS.” One of these terms, “sandbox,” is a shorthand way of describing the conspiracy. The defendants agree to “play nice” in the sandbox, which is the defendants’ code for participation in the ongoing conspiracy.

9. The overarching conspiracy consists of the defendants’ agreement to allocate what they termed a “fair share” of the market for generic drugs among the defendants. This means that the defendants agree among themselves on whether or not to sell certain drugs at all, and on their shares of sales for the drugs that they sell. The defendants also agree to fix and maintain generic drug prices, and to maintain the supply of generic drugs. The conspiracy ensures that the defendants do not compete

for market share or on price, thus protecting the defendants' profits and harming competition.

10. The conspiracy – by its aim and operation – necessarily reached and harmed Canadian consumers. The same generic drug manufacturers that are the subject of the U.S. investigations sell the majority of generic drugs in Canada and are the defendants here. The defendants' conspiracy to allocate each other their “fair share” of the generic drugs market does not stop at the border, nor does the defendants' maintenance of the supply and prices of generic drugs.

11. Economic analysis has begun to show the impact of the defendants' conspiracy in Canada. During the Class Period, the relationship between total Canadian generic drug prices including the private sector and public sector pricing for a common set of drugs experienced a break, indicating that the prices of generic drugs being paid by class members in the private sector became inflated at supracompetitive levels during the Class Period. Moreover, despite efforts by public drug plans to reduce their spending, Canadian generic drug prices still exceeded the median generic drug prices of seven comparator countries by 30 percent during the Class Period, further indicating supracompetitive prices being charged to class members.

12. The harm caused by the conspiracy to the class is estimated to exceed \$2.75 billion. With this action, the class seeks compensation for these losses and to restore lawful competition in this important industry for Canadian healthcare.

### **THE PLAINTIFF AND THE CLASS**

13. The plaintiff, Kathryn Eaton, is a resident of Toronto, Ontario. During the Class Period, Eaton purchased generic drugs in the private sector.

14. The plaintiff seeks to represent a class defined as:

All persons or entities in Canada who, from January 1, 2012 to the present (the “Class Period”), purchased generic drugs in the private sector. Excluded from the class are the defendants and their parent companies, subsidiaries, and affiliates.

15. Generic drug purchases in the private sector are purchases made by individuals out-of-pocket, and by individuals and businesses through private drug plans.

### **THE DEFENDANTS**

16. Whenever reference is made to any defendant entity, such reference includes that entity and its parent companies, subsidiaries, affiliates, predecessors, and successors. In addition, whenever reference is made to any act, deed, or transaction of any entity, the allegation means that the entity engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of the entity’s business or affairs.

17. Various other entities, persons, firms, and corporations, that are unknown and/or not named as defendants, have participated as co-conspirators with the defendants and have performed acts or made statements in furtherance of the



conspiracy. The defendants are jointly and severally liable for the acts of their co-conspirators whether named or not named as defendants in this claim.

### **TEVA**

18. The defendant **Teva Canada Limited** is a Canadian corporation with a principal place of business located in Toronto, Ontario. Teva Canada Limited is a subsidiary of Teva Pharmaceutical Industries Ltd.

19. The defendant **Teva Pharmaceuticals USA, Inc.** is a Delaware corporation with a principal place of business located in Parsippany, New Jersey. Teva Pharmaceuticals USA, Inc. is a wholly owned subsidiary of Teva Pharmaceuticals Industries Ltd.

20. The defendant **Actavis Holdco U.S., Inc.** is a Delaware corporation with a principal place of business located in Parsippany, New Jersey. In March 2015, Actavis plc., the parent company of the Actavis defendants, merged with Allergan plc. and adopted Allergan's name. In August 2016, the defendant Teva Pharmaceuticals USA, Inc. purchased Actavis's generics business, which included Actavis Inc., Actavis Elizabeth Inc., and Actavis Pharma, Inc., from Allergan plc. All the assets of the entities were transferred to the newly formed Actavis Holdco U.S., Inc. Actavis Holdco U.S., Inc. is a wholly owned subsidiary of Teva Pharmaceutical Industries Ltd.

21. The defendant **Actavis Elizabeth LLC** is a Delaware company with a principal place of business located in Elizabeth, New Jersey. It is a wholly owned

subsidiary of Actavis Holdco U.S., Inc., and is a research, development, and manufacturing entity for Actavis's generic operations.

22. The defendant **Actavis Pharma, Inc.** is a Delaware corporation with a principal place of business located in Florham Park, New Jersey. It is a wholly owned subsidiary of Actavis Holdco U.S., Inc. and is now a principal operating company in the United States for Teva's generic products acquired from Allergan plc.

23. The defendant **Actavis Pharma Company** is a Nova Scotia corporation with a principal place of business located in Halifax, Nova Scotia. Actavis Pharma Company is a wholly owned subsidiary of Teva Pharmaceuticals Industries Ltd.

24. The defendant **Barr Pharmaceuticals, LLC** is a Delaware corporation with a principal place of business located in North Wales, Pennsylvania. Barr Pharmaceuticals, LLC is a wholly owned subsidiary of Teva Pharmaceuticals USA, Inc., which acquired Barr (then called Barr Pharmaceuticals Inc.) in 2008.

25. During the Class Period, Teva Canada Limited, Teva Pharmaceuticals USA, Inc., Actavis Holdco U.S., Inc., Actavis Elizabeth LLC, Actavis Pharma, Inc., Actavis Pharma Company, and Barr Pharmaceuticals, LLC participated in the conspiracy.

26. During the Class Period, Teva Canada Limited, under the direction of Teva Pharmaceuticals USA, Inc., directly participated in the conspiracy. Teva Pharmaceuticals USA, Inc.'s management expressly directed Teva Canada Limited to participate in the conspiracy. Teva Pharmaceuticals USA, Inc. completely dominated

and controlled Teva Canada Limited, and used it as a shield for Teva Pharmaceuticals USA, Inc.'s illegal conduct.

27. During the Class Period, Actavis Pharma Company, under the direction of Actavis Pharma, Inc. and Teva Pharmaceuticals USA, Inc., directly participated in the conspiracy. Actavis Pharma, Inc. and Teva Pharmaceuticals USA, Inc.'s management expressly directed Actavis Pharma Company to participate in the conspiracy. Actavis Pharma, Inc. and Teva Pharmaceuticals USA, Inc. completely dominated and controlled Actavis Pharma Company, and used it as a shield for their illegal conduct.

28. As used herein, the term "Teva" refers to the defendants Teva Canada Limited, Teva Pharmaceuticals USA, Inc., Actavis Holdco U.S., Inc., Actavis Elizabeth LLC, Actavis Pharma, Inc., Actavis Pharma Company, and Barr Pharmaceuticals, LLC.

#### **AKORN**

29. The defendant **Akorn, Inc.** is a Louisiana corporation with a principal place of business located in Lake Forest, Illinois.

30. The defendant **Akorn Sales, Inc.** is a Delaware corporation with a principal place of business located in Lake Forest, Illinois. Akorn Sales, Inc. is a wholly owned subsidiary of Akorn, Inc.

31. The defendant **Hi-Tech Pharmacal Co., Inc.** is a Delaware corporation with a principal place of business located in Amityville, New York. Hi-Tech Pharmacal Co., Inc. is a wholly owned subsidiary of Akorn, Inc.

32. During the Class Period, Akorn, Inc., Akorn Sales, Inc., and Hi-Tech Pharmacal Co., Inc. participated in the conspiracy.

33. During the Class Period, Akorn Sales, Inc. and Hi-Tech Pharmacal Co., Inc., under the direction of Akorn Inc., directly participated in the conspiracy. Akorn Inc.'s management expressly directed Akorn Sales, Inc. and Hi-Tech Pharmacal Co., Inc. to participate in the conspiracy. Akorn Inc. completely dominated and controlled Akorn Sales, Inc. and Hi-Tech Pharmacal Co., Inc., and used them as a shield for its illegal conduct.

34. As used herein, the term "Akorn" refers to the defendants Akorn, Inc., Akorn Sales, Inc., and Hi-Tech Pharmacal Co., Inc.

#### **AMNEAL**

35. The defendant **Amneal Pharmaceuticals, Inc.** is a Delaware corporation with a principal place of business located in Bridgewater, New Jersey. In October 2018, Amneal Pharmaceuticals, Inc. merged with Impax Laboratories, Inc. in an all-stock transaction.

36. The defendant **Impax Laboratories, Inc.** is a Delaware corporation with a principal place of business located in Bridgewater, New Jersey.

37. During the Class Period, Amneal Pharmaceuticals, Inc. and Impax Laboratories, Inc. participated in the conspiracy.

38. During the Class Period, Impax Laboratories, Inc., under the direction of Amneal Pharmaceuticals, Inc., directly participated in the conspiracy. Amneal Pharmaceuticals, Inc.'s management expressly directed Impax Laboratories, Inc. to participate in the conspiracy. Amneal Pharmaceuticals, Inc. completely dominated and controlled Impax Laboratories, Inc., and used it as a shield for Amneal Pharmaceuticals, Inc.'s illegal conduct.

39. As used herein, the term "Amneal" refers to the defendants Amneal Pharmaceuticals, Inc. and Impax Laboratories, Inc.

#### **APOTEX**

40. The defendant **Apotex Inc.** is an Ontario corporation with a principal place of business located in Toronto, Ontario.

41. The defendant **Apotex Corp.** is a Florida corporation with a principal place of business located in Weston, Florida. Apotex Corp. is a subsidiary of Apotex Inc.

42. During the Class Period, Apotex Inc. and Apotex Corp. participated in the conspiracy.

43. During the Class Period, Apotex Corp., under the direction of Apotex Inc., directly participated in the conspiracy. Apotex Inc.'s management expressly directed Apotex Corp. to participate in the conspiracy. Apotex Inc. completely dominated and controlled Apotex Corp., and used it as a shield for Apotex Inc.'s illegal conduct.

44. As used herein, the term “Apotex” refers to the defendants Apotex Inc. and Apotex Corp.

### **AUROBINDO**

45. The defendant **Aurobindo Pharma USA, Inc.** is a Delaware corporation with a principal place of business located in East Windsor, New Jersey. Aurobindo Pharma USA, Inc. is a subsidiary of Aurobindo Pharma Ltd.

46. The defendant **Auro Pharma Inc.** is a Canadian corporation with a principal place of business located in Woodbridge, Ontario. Auro Pharma Inc. is a subsidiary of Aurobindo Pharma Ltd.

47. During the Class Period, Aurobindo Pharma USA, Inc. and Auro Pharma Inc. participated in the conspiracy.

48. During the Class Period, Auro Pharma Inc., under the direction of Aurobindo Pharma USA, Inc., directly participated in the conspiracy. Aurobindo Pharma USA, Inc.’s management expressly directed Auro Pharma Inc. to participate in the conspiracy. Aurobindo Pharma USA, Inc. completely dominated and controlled Auro Pharma Inc., and used it as a shield for Aurobindo Pharma USA, Inc.’s illegal conduct.

49. As used herein, the term “Aurobindo” refers to the defendants Aurobindo Pharma USA, Inc. and Auro Pharma Inc.

#### **AVET/HERITAGE**

50. The defendant **Avet Pharmaceuticals Inc.** is a Delaware corporation with a principal place of business located in East Brunswick, New Jersey. Avet Pharmaceuticals Inc. was formerly known as Heritage Pharmaceuticals Inc. In April 2011, Emcure Pharmaceuticals Ltd. acquired Heritage Pharmaceuticals Inc. Avet Pharmaceuticals Inc. is a subsidiary of Emcure Pharmaceuticals Ltd.

51. The defendant **Marcan Pharmaceuticals Inc.** is an Ontario corporation with a principal place of business located in Ottawa, Ontario. In 2016, Emcure Pharmaceuticals Ltd. acquired Canada's International Pharmaceutical Generics Ltd. and its Canadian marketing arm Marcan Pharmaceuticals Inc. Emcure's entry to Canada is modeled on the strategy it had adopted for the U.S. market with the acquisition of Heritage Pharmaceuticals in 2011. Marcan Pharmaceuticals Inc. is a Canadian affiliate of Avet Pharmaceuticals Inc. and a subsidiary of Emcure Pharmaceuticals Ltd.

52. During the Class Period, Avet Pharmaceuticals Inc. and Marcan Pharmaceuticals Inc. participated in the conspiracy.

53. During the Class Period, Marcan Pharmaceuticals Inc., under the direction of Avet Pharmaceuticals Inc., directly participated in the conspiracy. Avet Pharmaceuticals Inc.'s management expressly directed Marcan Pharmaceuticals Inc. to participate in the conspiracy. Avet Pharmaceuticals Inc. completely dominated and controlled Marcan Pharmaceuticals Inc., and used it as a shield for Avet Pharmaceuticals Inc.'s illegal conduct.

54. As used herein, the terms “Avet” and “Heritage” refer to the defendants Avet Pharmaceuticals Inc. and Marcan Pharmaceuticals Inc.

#### **BRECKENRIDGE**

55. The defendant **Breckenridge Pharmaceutical, Inc.** is a Delaware corporation with a principal place of business located in Berlin, Connecticut. Breckenridge Pharmaceutical, Inc. is wholly owned by Pensa Pharma S.A.

56. During the Class Period, Breckenridge Pharmaceutical, Inc. participated in the conspiracy.

57. As used herein, the term “Breckenridge” refers to the defendant Breckenridge Pharmaceutical, Inc.

#### **DR. REDDY’S**

58. The defendant **Dr. Reddy’s Laboratories, Inc.** is a New Jersey corporation with a principal place of business located in Princeton, New Jersey. Dr. Reddy’s Laboratories, Inc. is a wholly owned subsidiary of Dr. Reddy’s Laboratories Ltd.

59. The defendant **Dr. Reddy’s Laboratories Canada Inc.** is a British Columbia corporation with a principal place of business located in Mississauga, Ontario. Dr. Reddy’s Laboratories Canada Inc. is a wholly owned subsidiary of Dr. Reddy’s Laboratories Ltd.

60. During the Class Period, Dr. Reddy’s Laboratories, Inc. and Dr. Reddy’s Laboratories Canada Inc. participated in the conspiracy.



61. During the Class Period, Dr. Reddy's Laboratories Canada Inc., under the direction of Dr. Reddy's Laboratories, Inc., directly participated in the conspiracy. Dr. Reddy's Laboratories, Inc.'s management expressly directed Dr. Reddy's Laboratories Canada Inc. to participate in the conspiracy. Dr. Reddy's Laboratories, Inc. completely dominated and controlled Dr. Reddy's Laboratories Canada Inc., and used it as a shield for Dr. Reddy's Laboratories, Inc.'s illegal conduct.

62. As used herein, the term "Dr. Reddy's" refers to the defendants Dr. Reddy's Laboratories, Inc. and Dr. Reddy's Laboratories Canada Inc.

#### **GLENMARK**

63. The defendant **Glenmark Pharmaceuticals Inc., USA** is a Delaware corporation with a principal place of business located in Mahwah, New Jersey.

64. The defendant **Glenmark Pharmaceuticals Canada Inc.** is a New Brunswick corporation with a principal place of business located in Concord, Ontario. Glenmark Pharmaceuticals Canada Inc. is a subsidiary of Glenmark Pharmaceuticals Inc., USA.

65. During the Class Period, Glenmark Pharmaceuticals Inc., USA and Glenmark Pharmaceuticals Canada Inc. participated in the conspiracy.

66. During the Class Period, Glenmark Pharmaceuticals Canada Inc., under the direction of Glenmark Pharmaceuticals Inc., USA, directly participated in the conspiracy. Glenmark Pharmaceuticals Inc., USA's management expressly directed Glenmark Pharmaceuticals Canada Inc. to participate in the conspiracy. Glenmark Pharmaceuticals Inc., USA completely dominated and controlled Glenmark

Pharmaceuticals Canada Inc. and used it as a shield for Glenmark Pharmaceuticals Inc., USA's illegal conduct.

67. As used herein, the term "Glenmark" refers to the defendants Glenmark Pharmaceuticals Inc., USA and Glenmark Pharmaceuticals Canada Inc.

#### **LANNETT**

68. The defendant **Lannett Company, Inc.** is a Delaware corporation with a principal place of business located in Philadelphia, Pennsylvania.

69. During the Class Period, Lannett Company, Inc. participated in the conspiracy.

70. As used herein, the term "Lannett" refers to the defendant Lannett Company, Inc.

#### **LUPIN**

71. The defendant **Lupin Pharmaceuticals, Inc.** is a Delaware corporation with a principal place of business located in Baltimore, Maryland. Lupin Pharmaceuticals, Inc. is a wholly owned subsidiary of Lupin Limited.

72. The defendant **Lupin Pharma Canada Ltd.** is an Ontario corporation with a principal place of business located in Richmond Hill, Ontario. Lupin Pharma Canada Ltd. is a wholly owned subsidiary of Lupin Limited.

73. During the Class Period, Lupin Pharmaceuticals, Inc. and Lupin Pharma Canada Ltd. participated in the conspiracy.

74. During the Class Period, Lupin Pharma Canada Ltd., under the direction of Lupin Pharmaceuticals, Inc., directly participated in the conspiracy. Lupin Pharmaceuticals, Inc.'s management expressly directed Lupin Pharma Canada Ltd. to participate in the conspiracy. Lupin Pharmaceuticals, Inc. completely dominated and controlled Lupin Pharma Canada Ltd., and used it as a shield for Lupin Pharmaceuticals, Inc.'s illegal conduct.

75. As used herein, the term "Lupin" refers to the defendants Lupin Pharmaceuticals, Inc. and Lupin Pharma Canada Ltd.

#### **MAYNE**

76. The defendant **Mayne Pharma Inc.** is a Delaware corporation with a principal place of business located in Raleigh, North Carolina. In 2012, Mayne Pharma Inc. acquired Metrics Inc. and its division Midlothian Laboratories, and has also operated under the name Midlothian since that time. In 2013, Mayne Pharma Inc. also acquired Libertas Pharma. Mayne Pharma Inc. is a wholly owned subsidiary of Mayne Pharma Group Ltd.

77. Before its amalgamation with Pfizer Canada ULC/Pfizer Canada SRI, as further described below, Mayne Pharma (Canada) Inc. was a Canadian corporation with a principal place of business located in Kirkland, Quebec. Mayne Pharma (Canada) Inc. was amalgamated with Hospira Healthcare Corporation/Corporation de Soins de la Santé in 2007, which in turn amalgamated with Pfizer Canada ULC/Pfizer Canada SRI in 2018.

78. During the Class Period, Mayne Pharma Inc. and Mayne Pharma (Canada) Inc., now operating as Pfizer Canada ULC/Pfizer Canada SRI, participated in the conspiracy.

79. During the Class Period, Mayne Pharma (Canada) Inc., now operating as Pfizer Canada ULC/Pfizer Canada SRI, under the direction of Mayne Pharma Inc., directly participated in the conspiracy. Mayne Pharma Inc.'s management expressly directed Mayne Pharma (Canada) Inc. to participate in the conspiracy. Mayne Pharma Inc. completely dominated and controlled Mayne Pharma (Canada) Inc., and used it as a shield for Mayne Pharma Inc.'s illegal conduct.

80. As used herein, the term "Mayne" refers to the defendant Mayne Pharma Inc. and Mayne Pharma (Canada) Inc., now operating as Pfizer Canada ULC/Pfizer Canada SRI.

#### **MYLAN**

81. The defendant **Mylan N.V.** is a Dutch corporation with a principal place of business and global headquarters located in Canonsburg, Pennsylvania. Mylan N.V. is the direct parent corporation of the defendant Mylan Inc. and the ultimate parent and owner of Mylan Pharmaceuticals ULC, Mylan Pharmaceuticals Inc., and Mylan Institutional Inc.

82. The defendant **Mylan Pharmaceuticals ULC** is an Alberta corporation with a principal place of business located in Etobicoke, Ontario. Mylan Pharmaceuticals ULC is a subsidiary of Mylan N.V.

83. The defendant **Mylan Inc.** is a Pennsylvania corporation with a principal place of business located in Canonsburg, Pennsylvania. Mylan Inc. is the parent company of Mylan Institutional Inc. and Mylan Pharmaceuticals Inc.

84. The defendant **Mylan Pharmaceuticals Inc.** is a West Virginia corporation with a principal place of business located in Morgantown, West Virginia. Mylan Pharmaceuticals Inc. is a subsidiary of Mylan Inc.

85. The defendant **Mylan Institutional Inc.**, formerly known as UDL Laboratories, Inc., is an Illinois corporation with a principal place of business located in Rockford, Illinois. Mylan Institutional Inc. is a subsidiary of Mylan Inc.

86. During the Class Period, Mylan N.V., Mylan Pharmaceuticals ULC, Mylan Inc., Mylan Pharmaceuticals Inc., and Mylan Institutional Inc. participated in the conspiracy.

87. During the Class Period, Mylan Pharmaceuticals ULC, Mylan Inc., Mylan Pharmaceuticals Inc., and Mylan Institutional Inc., under the direction of Mylan N.V., directly participated in the conspiracy. Mylan N.V.'s management expressly directed Mylan Pharmaceuticals ULC, Mylan Inc., Mylan Pharmaceuticals Inc., and Mylan Institutional Inc. to participate in the conspiracy. Mylan N.V. completely dominated and controlled Mylan Pharmaceuticals ULC, Mylan Inc., Mylan Pharmaceuticals Inc., and Mylan Institutional Inc., and used them as a shield for its illegal conduct.

88. As used herein, the term “Mylan” refers to the defendants Mylan N.V., Mylan Pharmaceuticals ULC, Mylan Inc., Mylan Pharmaceuticals Inc., and Mylan Institutional Inc.

**PAR**

89. The defendant **Dava Pharmaceuticals, LLC** is a Delaware corporation with a principal place of business located in Fort Lee, New Jersey. Dava Pharmaceuticals, LLC is a subsidiary of Endo International plc.

90. The defendant **Generics Bidco I, LLC** is a Delaware company with a principal place of business located in Huntsville, Alabama. Generics Bidco I, LLC formerly conducted business as Qualitest Pharmaceuticals. Generics Bidco I, LLC is a wholly owned subsidiary of Endo International plc.

91. The defendant **Par Pharmaceutical Companies, Inc.** is a Delaware corporation with a principal place of business located in Chestnut Ridge, New York. Par Pharmaceutical Companies, Inc. is a subsidiary of Endo International plc.

92. The defendant **Par Pharmaceutical, Inc.** is a New York corporation with a principal place of business located in Chestnut Ridge, New York. Par Pharmaceutical, Inc. is a subsidiary of Endo International plc.

93. The defendants Par Pharmaceutical Companies, Inc., Par Pharmaceutical, Inc., Generics Bidco I, LLC, and Dava Pharmaceuticals, LLC collectively do business as Par Pharmaceutical.

94. During the Class Period, Dava Pharmaceuticals, LLC, Generics Bidco I, LLC, Par Pharmaceutical Companies, Inc., and Par Pharmaceutical, Inc. participated in the conspiracy.

95. As used herein, the term “Par” refers to the defendants Dava Pharmaceuticals, LLC, Generics Bidco I, LLC, Par Pharmaceutical Companies, Inc., and Par Pharmaceutical, Inc.

### **PERRIGO**

96. The defendant **Perrigo International Inc.** is a Michigan corporation with a North American base of operations located in Allegan, Michigan. Perrigo International Inc. is a subsidiary of Perrigo Company plc.

97. The defendant **Perrigo New York, Inc.** is a Delaware corporation with a principal place of business located in Allegan, Michigan. Perrigo New York, Inc. is a subsidiary of Perrigo Company plc.

98. During the Class Period, Perrigo International Inc. and Perrigo New York, Inc. participated in the conspiracy.

99. As herein, the term “Perrigo” refers to the defendants Perrigo International Inc. and Perrigo New York, Inc.

### **PFIZER**

100. The defendant **Pfizer Inc.** is a Delaware corporation with a principal place of business located in New York, New York.

101. The defendant **Pfizer Canada ULC/Pfizer Canada SRI** is a British Columbia corporation with a principal place of business located in Kirkland, Quebec. Pfizer Canada ULC/Pfizer Canada SRI is a subsidiary of Pfizer Inc. Pfizer Canada ULC/Pfizer Canada SRI amalgamated with Hospira Healthcare Corporation/Corporation de Soins de la Santé (then operating as Hospira Healthcare ULC/Hospira Soins de Santé SRI) in 2018, which in turn had merged with Mayne Pharma (Canada) Inc. in 2007.

102. The defendant **Greenstone LLC** is a Delaware corporation with a principal place of business located in Peaback, New Jersey. Greenstone LLC is a wholly owned subsidiary of Pfizer Inc.

103. During the Class Period, Pfizer Inc., Pfizer Canada ULC/Pfizer Canada SRI, and Greenstone LLC participated in the conspiracy.

104. During the Class Period, Pfizer Canada Inc. and Greenstone LLC, under the direction of Pfizer Inc., directly participated in the conspiracy. Pfizer Inc.'s management expressly directed Pfizer Canada ULC/Pfizer Canada SRI and Greenstone LLC to participate in the conspiracy. Pfizer Inc. completely dominated and controlled Pfizer Canada ULC/Pfizer Canada SRI and Greenstone LLC, and used them as a shield for its illegal conduct.

105. As used herein, the term "Pfizer" refers to the defendants Pfizer Inc., Pfizer Canada ULC/Pfizer Canada SRI, and Greenstone LLC.



**SANDOZ**

106. The defendant **Sandoz Inc.** is a Colorado corporation with a principal place of business located in Princeton, New Jersey. Sandoz Inc. is a subsidiary of Novartis International AG.

107. The defendant **Sandoz Canada Inc.** is a Canadian corporation with a principal place of business located in Boucherville, Quebec. Sandoz Canada Inc. is a subsidiary of Novartis International AG.

108. The defendant **Fougera Pharmaceuticals Inc.** is a New York corporation with a principal place of business located in Melville, New York. Fougera Pharmaceuticals Inc. was acquired by Sandoz Inc. in 2012 and is a subsidiary of Novartis International AG.

109. During the Class Period, Sandoz Inc., Sandoz Canada Inc., and Fougera Pharmaceuticals Inc. participated in the conspiracy.

110. During the Class Period, Sandoz Canada Inc., under the direction of Sandoz Inc., directly participated in the conspiracy. Sandoz Inc.'s management expressly directed Sandoz Canada Inc. to participate in the conspiracy. Sandoz Inc. completely dominated and controlled Sandoz Canada Inc., and used it as a shield for Sandoz Inc.'s illegal conduct.

111. As used herein, the term "Sandoz" refers to the defendants Sandoz Inc., Sandoz Canada Inc., and Fougera Pharmaceuticals Inc.

**SUN**

112. The defendant **Sun Pharmaceutical Industries, Inc.** is a Michigan corporation with a principal place of business located in Princeton, New Jersey. Sun Pharmaceutical Industries, Inc. merged with Caraco Pharmaceutical Laboratories, Ltd. in February 2011.

113. The defendant **Sun Pharma Canada Inc.** is an Ontario corporation with a principal place of business located in Brampton, Ontario. Sun Pharma Canada Inc. is a subsidiary of Sun Pharmaceutical Industries, Inc.

114. During the Class Period, Sun Pharmaceutical Industries, Inc. and Sun Pharma Canada Inc. participated in the conspiracy.

115. During the Class Period, Sun Pharma Canada Inc., under the direction of Sun Pharmaceutical Industries, Inc., directly participated in the conspiracy. Sun Pharmaceutical Industries, Inc.'s management expressly directed Sun Pharma Canada Inc. to participate in the conspiracy. Sun Pharmaceutical Industries, Inc. completely dominated and controlled Sun Pharma Canada Inc., and used it as a shield for Sun Pharmaceutical Industries, Inc.'s illegal conduct.

116. As used herein, the term "Sun" refers to the defendants Sun Pharmaceutical Industries, Inc. and Sun Pharma Canada Inc.

## **TARO**

117. The defendant **Taro Pharmaceuticals Inc.** is an Ontario corporation with a principal place of business located in Brampton, Ontario. Taro Pharmaceuticals Inc. is a subsidiary of Taro Pharmaceutical Industries Ltd.

118. The defendant **Taro Pharmaceuticals U.S.A., Inc.** is a New York corporation with a principal place of business located in Hawthorne, New York. Taro Pharmaceuticals U.S.A., Inc. is a subsidiary of Taro Pharmaceutical Industries Ltd.

119. During the Class Period, Taro Pharmaceuticals Inc. and Taro Pharmaceuticals U.S.A., Inc. participated in the conspiracy.

120. During the Class Period, Taro Pharmaceuticals Inc., under the direction of Taro Pharmaceuticals U.S.A., Inc., directly participated in the conspiracy. Taro Pharmaceuticals U.S.A., Inc.'s management expressly directed Taro Pharmaceuticals Inc. to participate in the conspiracy. Taro Pharmaceuticals U.S.A., Inc. completely dominated and controlled Taro Pharmaceuticals Inc., and used it as a shield for Taro Pharmaceuticals U.S.A., Inc.'s illegal conduct.

121. As used herein, the term "Taro" refers to the defendants Taro Pharmaceuticals Inc. and Taro Pharmaceuticals U.S.A., Inc.

## **TELIGENT**

122. The defendant **Teligent, Inc.** is a Delaware corporation with a principal place of business located in Buena, New Jersey. Teligent, Inc. was formerly known as IGI Laboratories, Inc.

123. The defendant **Teligent Canada Inc.** is a British Columbia corporation with a principal place of business located in Mississauga, Ontario. Teligent Canada Inc. is a subsidiary of Teligent Luxembourg S.à.r.l., which is an affiliate of Teligent, Inc.

124. During the Class Period, Teligent, Inc. and Teligent Canada Inc. participated in the conspiracy.

125. During the Class Period, Teligent Canada Inc., under the direction of Teligent, Inc., directly participated in the conspiracy. Teligent, Inc.'s management expressly directed Teligent Canada Inc. to participate in the conspiracy. Teligent, Inc. completely dominated and controlled Teligent Canada Inc., and used it as a shield for Teligent, Inc.'s illegal conduct.

126. As used herein, the term "Teligent" refers to the defendants Teligent, Inc. and Teligent Canada Inc.

## **UPSHER-SMITH**

127. The defendant **Upsher-Smith Laboratories, LLC** is a Minnesota company with a principal place of business located in Maple Grove, Minnesota. It was formerly known as Upsher-Smith Laboratories, Inc.

128. During the Class Period, Upsher-Smith Laboratories, LLC participated in the conspiracy.

129. As used herein, the term “Upsher-Smith” refers to the defendant Upsher-Smith Laboratories, LLC.

#### **WOCKHARDT**

130. The defendant **Wockhardt USA LLC** is a Delaware corporation with a principal place of business located in Parsippany, New Jersey. Wockhardt USA LLC is a wholly owned subsidiary of Morton Grove Pharmaceuticals, Inc.

131. The defendant **Morton Grove Pharmaceuticals, Inc.** is a Delaware corporation with a principal place of business located in Morton Grove, Illinois. Morton Grove Pharmaceuticals, Inc. is a subsidiary of Wockhardt Ltd.

132. During the Class Period, Wockhardt USA LLC and Morton Grove Pharmaceuticals, Inc. participated in the conspiracy.

133. As used herein, the term “Wockhardt” refers to the defendants Wockhardt USA LLC and Morton Grove Pharmaceuticals, Inc.

#### **ZYDUS**

134. The defendant **Zydus Pharmaceuticals (USA) Inc.** is New Jersey Corporation with a principal place of business located in Pennington, New Jersey. Zydus Pharmaceuticals (USA) Inc. is a wholly owned subsidiary of Zydus Cadila.

135. During the Class Period, Zydus Pharmaceuticals (USA) Inc. participated in the conspiracy.

136. As used herein, the term “Zydus” refers to the defendant Zydus Pharmaceuticals (USA) Inc.

### **GENERIC DRUGS**

137. Prescription drugs are medications that a doctor or other healthcare professional prescribes to a patient to help manage health conditions.

138. Prescription drugs in Canada are divided into brand-name drugs and generic drugs.

139. Prescription drugs begin as brand-name drugs. A brand-name drug is a prescription drug that is initially developed and marketed under patent protection. The patent provides the manufacturer with the exclusive right to sell the drug for 20 years.

140. A generic drug is a copy of the brand name drug. The generic drug is pharmaceutically the same as the brand-name drug. It contains the identical medicinal ingredients, in the same amounts, and in a similar dosage form.

141. Generic drugs were intended to provide competition for brand-name drugs when their patent protection ends. Generic drugs, therefore, were intended to play an important role in the Canadian healthcare system of offering more affordable alternatives to brand-name drugs and to reduce healthcare costs overall.

## **THE GENERIC DRUG MARKET**

142. Canada has a publicly funded healthcare system that is comprised of 13 provincial and territorial healthcare insurance plans. But Canada's healthcare system is unique among developed countries in that it does not also cover the costs of prescription drugs.

143. The prices of prescription drugs are set differently depending on whether they are brand-name drugs or generic drugs.

144. The prices of brand-name drugs are subject to the oversight of the PMPRB. The PMPRB is a federal government agency responsible for ensuring that the prices of patented medicines sold in Canada are not excessive. The PMPRB regulates the price at which manufacturers or their licensees sell patented medicines.

145. Patentees submit pricing information of patented drugs to the PMPRB at introduction and on a semi-annual basis. The PMPRB reviews the pricing information to establish whether the price is excessive. If the PMPRB determines that the price is excessive, the PMPRB and the manufacturer may reach an agreement to lower the price. If there is no agreement, the PMPRB can hold a public hearing. The PMPRB hearing can result in an order to reduce the price, which is subject to judicial review in the Federal Court.

146. Unlike the PMPRB process for the pricing of brand-name drugs, the prices of generic drugs are not subject to government rate setting or mandated by the government.

147. Generic drug manufacturers – including the defendants – set the prices of generic drugs. These prices are known as the invoice price.

148. Generic drug consumers – individual patients – are prescribed drugs by their doctor or other healthcare professional.

149. Patients purchase generic drugs at pharmacies. Pharmacies acquire the drugs for distribution to patients from the manufacturer. Pharmacies can acquire the generic drugs either directly from the manufacturer, or through wholesalers or distributors.

150. Pharmacies generally acquire generic drugs based on a price that is a percentage reduction or rebate off the invoice price. The invoice price is then passed on to the consumers who purchase the drugs.

151. Competition to offer lower prices to pharmacies through percentage reductions or rebates historically has not been reflected in the prices paid by Canadian consumers for generic drugs.

152. Consumers purchase generic drugs through either the public sector or the private sector.

153. In the public sector, payment for generic drugs happens by consumers who are covered and reimbursed by a government plan. These government plans include provincial and territorial drug plans, federal drug subsidy programs, and social security funds.



154. Consumers who are covered by provincial and territorial drug plans include specific population groups such as seniors, lower income earners, and consumers with high drug costs in relation to their income.

155. Unlike the PMPRB process for brand-name drugs, public drug programs do not mandate the price at which generic drugs must be sold. Rather, they determine the amount that the public drug programs will reimburse for purchases of generic drugs covered by the public drug programs.

156. The provincial and territorial drug plans formed the pan-Canadian Pharmaceutical Alliance (“pCPA”) to increase the bargaining power of public plans for the amount at which they will reimburse for purchases of prescription drugs.

157. The provincial and territorial drug plans typically reimburse for generic drugs at an amount based on a percentage of the brand-name drug price. The amount the public drug plans will reimburse further depends on the number of suppliers of the drug. Public drug plans have a tiered reimbursement model, in which they will typically reimburse at 85 percent of the brand-name drug price if there is only one generic supplier, 50 percent if there are two suppliers, and 25 percent if there are three or more suppliers. Certain commonly used generic drugs are reimbursed at 18 percent of the brand-name drug price by the public drug plans.

158. Payments made from government sources comprise approximately 45 percent of generic drug purchases in Canada. Payments made through private drug plans and by individuals out of pocket comprise the other 55 percent of generic drug purchases.

159. During the Class Period, the size of the Canadian generic drug market was approximately \$45 billion. Purchases made through private drug plans or out of pocket amounted to approximately \$25 billion.

#### **GENERIC DRUG PURCHASES IN THE PRIVATE SECTOR**

160. In the private sector, payment for generic drugs happens by consumers who pay out of pocket, or by plan holders of private insurance plans.

161. When consumers pay for generic drugs out of pocket, they do so when they are not covered by a drug plan, or when they are covered by a private drug plan, but the plan does not reimburse for the full amount of the drug cost.

162. The plan holders of private drug plans are often businesses that provide the plan for their employees and the employees' dependents. Private plan holders can also include individuals who are not employers.

163. Private drug plans can take one of three different structures:

- (1) Fully insured: the plan holder pays the premium that covers the generic drug costs.
- (2) Administrative services only: the plan holder pays the generic drug costs.
- (3) Hybrid plans: the plan holder pays a mix of the premium that covers generic drug costs and the generic drug costs.

164. Regardless of the structure, the plan holder assumes the cost of generic drugs, whether by paying the premium, or by paying the drug costs.

165. Generic drug purchases through private plans have little role in controlling generic drug prices or overall expenditures in Canada. For example, between 2003 and 2012, private expenditures for prescription drugs rose faster than public expenditures in 8 of the 10 years.

166. A main reason that private insurers pay little attention to generic drug costs is because the majority of private drug plans are administered for plan holders by outside firms – mainly insurance companies – that are often paid a percentage of plan costs. This leaves insurance companies little incentive to rein in generic drug prices paid by plan holders.

167. In addition, private sector prices are higher because private insurers are much more likely to list new generic drugs accepted for reimbursement as compared to public plans. For example, between 2004 and 2011, 81 percent of new drugs were insured by at least one private plan, compared to 47 percent by at least one public plan.

#### **U.S. DEPARTMENT OF JUSTICE AND STATE ATTORNEYS GENERAL INVESTIGATIONS**

168. On May 10, 2019, 44 state attorneys general in the United States filed an action for civil law enforcement against generic drug manufacturers, including most of the defendants named in this claim. The detailed complaint alleges that the defendants and other unnamed co-conspirators have been part of a widespread conspiracy to allocate markets and maintain and fix the prices of generic drugs for many years.

169. The allegations in the state attorneys general complaint are based on a comprehensive and ongoing investigation. This investigation has consisted of a review of thousands of documents, an industry-wide phone call database containing millions of call records, and information provided by cooperating witnesses who were directly involved in the alleged conduct.

170. As of the May 10, 2019 complaint, the state attorneys general had uncovered evidence of a broad overarching agreement that permeates the entire generic drug industry, as further described in this claim.

171. Further, the pricing of generic drugs has also caught the attention of other government regulators. The U.S. Congress has opened an inquiry into the prices of generic drugs, and the U.S. Department of Justice has convened a criminal grand jury investigation into generic drug pricing. The Department of Justice investigation is being supported by the Federal Bureau of Investigation and the U.S. Postal Service Office of Inspector General.

172. As part of the Department of Justice investigation, four companies have been charged for antitrust violations in the generic drug industry. All four have entered deferred prosecution agreements with the Department of Justice in exchange for cooperation and payment of criminal penalties.

173. In May 2019, the defendant Heritage Pharmaceuticals Inc. (now operating as Avet) agreed to pay a USD \$7.1 million penalty to resolve the allegations against it. In December 2019, Rising Pharmaceuticals Inc. (an unnamed co-conspirator) agreed to pay a USD \$3 million penalty to resolve the allegations against it. In March 2020, the

defendant Sandoz Inc., a unit of Novartis AG, agreed to pay a USD \$195 million penalty to resolve the allegations against it. Finally, in May 2020, the defendant Apotex Corp. agreed to pay a USD \$24.1 million penalty to resolve the allegations against it.

174. As of the filing of this claim, both the state attorneys general and the Department of Justice are continuing their investigation of the generic drug industry. Further information regarding illegal conduct by the defendants or unnamed co-conspirators may emerge from those investigations or otherwise in the future.

#### **THE COZY NATURE OF THE GENERIC DRUG INDUSTRY**

175. The defendants have routine, direct interaction through their senior leadership and other executives that should not be happening between competitors.

176. The defendants are all part of many of the same industry associations. They take advantage of frequent meetings at industry trade shows, customer conferences, and other events to develop relationships and commit to the conspiracy.

177. This conspiracy is coordinated and refined through regular industry dinners, what the defendants termed “girls’ nights out,” lunches, parties, golf outings, frequent calls, emails, and text messages.

178. Further, many of the defendants’ customers, including large wholesalers or distributors, group purchasing organizations, and pharmacy and grocery store retail chains, hold multi-day conferences throughout the year in various locations. These conferences are well-attended by the defendants.

179. The defendants also attend other trade shows. Such trade shows are regularly hosted by the Neighbourhood Pharmacy Association of Canada, the Canadian Association for Pharmacy Distribution Management, the Healthcare Distribution Management Association (now the Healthcare Distribution Alliance), the Canadian Generic Pharmaceutical Association, the Generic Pharmaceutical Association, the Canadian Society for Pharmaceutical Sciences, Efficient Collaborative Retail Marketing, and the National Association of Chain Drug Stores.

180. Many of these conferences and trade shows include organized recreational social events, including golf outings, lunches, cocktail parties, and dinners.

181. At such conferences and trade shows, the defendants' personnel interact with each other directly. They discuss their respective businesses and customers. They use the social events to discuss and share competitively sensitive information about upcoming bids, the generic drug market, pricing strategies, and pricing terms in their contracts with customers.

182. Further, high-level executives meet periodically for what the defendants refer to as "industry dinners."

183. For example, in January 2014, at least 13 high-ranking executives, including CEOs, presidents, and senior vice presidents of the defendants met at a steakhouse in Bridgewater, New Jersey. This particular dinner included executives from Actavis (before its acquisition by Teva), Aurobindo, Breckenridge, Dr. Reddy's, and Lannett, among others.

184. Groups of executives of the defendant competitors gather routinely for golf outings, where they can spend several days at a time together without interruption.

185. For example, one such event was a golf outing organized by a packaging contractor on September 17-19, 2014. High-level executives from Teva, Camber (an unnamed co-conspirator), Lannett, Amneal, Apotex, Wockhardt, and others attended. The gathering took place at a country club in Kentucky, where executives from Teva and Camber negotiated Camber's entry for two different drugs that Teva was already selling. The negotiation led to Teva giving up some of its customers to permit Camber to begin selling the drugs without the two having to compete on price.

186. Further, the defendants' sales representatives also get together regularly for what they refer to as "girls' nights out" or "Women in the Industry" meetings or dinners. During such events, the defendants' personnel discuss competitively sensitive information with their competitors. Though many participants in such events reside close together, such events are sometimes planned around visits from out-of-town competitors. Out-of-town competitors also sometimes plan trips around such events so that they can attend. Further, such events may be planned to coincide with other industry events such as trade shows or conferences.

187. For example, "girls nights out" and "Women in the Industry" events were planned during: the Efficient Collaborative Retail Marketing conference in February 2015, including representatives from Dr. Reddy's, Greenstone, Lannett, Teva, Upsher-Smith, and Zydus; a conference held by the National Association of Chain Drug Stores in August 2015, including representatives from Dr. Reddy's and other

defendants; and May 2015 in Baltimore, including representatives from Dr. Reddy's, Lupin, and Teva.

188. The frequent meetings are made possible by the close proximity in which many of the defendants are headquartered, particularly in the states of New York, New Jersey, and Pennsylvania.

189. The defendants are also constantly in communication by phone.

190. For example, the state attorneys general estimate that during 2013 alone, Teva employees and executives communicated by phone or text message with competitors on at least 1,389 occasions, based on the records that the state attorneys general have been able to obtain to date. These communications included multiple communications with every one of Teva's significant competitors. In 2014, the state attorneys general estimate 941 instances of communication by phone or text message between Teva employees and executives and their competitors. In the period between July 1, 2013 and July 30, 2014, the state attorneys general estimate 513 instances of communication by phone or text message between Heritage employees and executives and their competitors. These numbers are conservative estimates, as the state attorneys general investigation is ongoing.

191. The relationships and communications between the defendants do not change at the border. The defendants' meetings and communications with each other happen in Canada as well as the United States, and they are directed to Canada as well as the United States.



192. The business and social events between the defendants happen with such great frequency that there is an almost constant ability for the defendants to meet in person to discuss their plans for the industry. In-person meetings give the defendants an opportunity to have conversations and conspire without fear of detection.

### **THE CONSPIRACY**

193. The defendants' near constant meetings and communications with each other created and continue to perpetuate a conspiracy to allocate the market, fix prices, and maintain supply for the entire generic drug market.

194. As a result of the communications between the defendants, the defendants are well aware of each other's current and future business plans. The defendants routinely share information with each other about bids and pricing strategy. This includes forwarding bid packages received from customers to competitors, and sharing information about the terms of their contracts including pricing terms, price protection, and rebates.

195. Over time, the reciprocal sharing of information between the defendants has facilitated an unlawful agreement between the defendants that they will not compete with each other, and instead will settle for their "fair share" of the market.

196. This operates as an overarching code across the entire generic drug market that ties together any agreements that the defendants may reach concerning individual drugs. The purpose of this "fair share" agreement is to avoid competition among the defendants that would normally result in decreases in prices of generic drugs, and

ultimately, savings for consumers. This agreement has been in operation for many years.

197. The defendants have names for their conspiracy. The conspiracy is sometimes referred to as “fair share” or “FS,” the “rules of engagement,” or as “playing nice in the sandbox.”

198. When considering the sale of generic drugs, the defendants communicate with one another and allocate customers to create an equilibrium among current and would-be competitors for generic drugs. This allows the defendants to avoid competition and maintain artificially inflated prices across the generic drug industry.

199. The “fair share” is generally understood as an approximation of how much of the generic drug market the defendants are “entitled to.” The defendants execute the overarching conspiracy to allocate a “fair share” of the entire generic drug market in two basic ways. The defendants agree on whether or not to enter or sell certain drugs at all, based on maintaining an anticompetitive allocation across the entire generic drug market. The defendants also agree on their shares of sales for the drugs that they do sell, again based on maintaining an anticompetitive allocation across the entire generic drug market.

200. The defendants’ conspiracy covers the entire generic drug market, not just any particular drug or set of drugs. The defendants make decisions based not only on what impact their actions will have on a drug, but also on how those actions will impact other drugs where the competitors overlap and any future drugs they eventually sell. The overarching “fair share” agreement permits the defendants to trade sales in one

drug for sales in another. It also permits the defendants to retaliate for one drug if they think that their “fair share” has been infringed by a competitor for another drug.

201. For example, in November 2013, a senior account executive at Dr. Reddy’s wrote in an internal email, “My concern here is that [Mylan] will retaliate somewhere else. I’m unsure of the \$ volume, but this would pull somewhere around 4% share from Mylan, and I don’t think they would take that lying down.”

202. In October 2013, one Sandoz national account executive wrote in an email, “We have been running up against Mylan a lot lately (Nadolol, [sic] Benaz/Hctz), and fear blowback if we take on any more products at this moment. Trying to be responsible in the sandbox. I recommend you blame supply.”

203. In August 2015, a Taro analyst reasoned in an internal email that a competitor “could hit us on Warfarin. Not worth a fight in the sandbox over 300 annual units for Etodolac.”

204. For another drug, in June 2014, a Sandoz internal email stated, “I do not want to pursue this. I believe this is due to a Mylan increase. We have a lot of products crossing with Mylan right now, I do not want to ruffle any feathers.” Sandoz chose not to bid for this customer’s business.

205. This agreement is not the result of independent decisions by individual defendants to avoid competition or act in their own interest. It is instead a direct result of collusion among the defendants over the course of several years. The goal is to

keep prices high, avoid price erosion, and serve as the basis for further anticompetitive price increases without triggering a “race to the bottom” among competitors.

206. For example, Taro’s Vice President of Sales and Marketing advised Taro’s Pricing Department in training documents from September and November 2013 that giving up share to a new entrant “shows responsibility” and “will save us in the long run.” Taro’s Pricing Department was advised, “[d]on’t rock the boat – [g]reedy hogs go to slaughter.” Taro went so far as to create the following table depicting the industry-wide agreement:

Market Share - Fair Unit Share assumptions  
Order of Entry Grid  
Number of Competitors

Number of Competitors		1	2	3	4	5	6	7
Order of Entry	1	100%	60%	45%	35%	30%	30%	30%
	2		40%	35%	30%	25%	25%	25%
	3			20%	20%	20%	20%	20%
	4				15%	15%	15%	15%
	5					10%	10%	10%
	6						10%	10%
	7							10%
Total		100%	100%	100%	100%	100%	100%	100%

207. Other defendants are in agreement. For example, in March 2014, one internal email from Teva’s Vice President, Sales US Generics stated, “We should concede Optum then defend everything else. This should be it for Lupin. I believe this should be the 40% we were okay with conceding.”

208. The Senior Vice President and Commercial Officer, North America, for Teva, during the Class Period until April 2018, knew that her subordinates were communicating with competitors about pricing and customer allocation. In a

particular 2013 meeting of Teva's sales and pricing personnel, she heard a colleague discuss direct communications with competitors about price increases, and instead of telling her colleague to stop, she smiled, put her hands over her ears, and pretended that she could not hear what was being said. She further maintained her own relationships with certain competitors and coordinated with them directly when necessary. She communicated hundreds of times over the years with her contacts at competitors, including but not limited to Actavis, Amneal, Zydus, and Sandoz.

209. Glenmark's Executive Vice President, North America, Commercial Operations, maintained even more frequent contact with competitors throughout the Class Period. Before he held a position with Glenmark, he was Senior Vice President of Commercial Operations at Aurobindo, where he exchanged more than 1,700 calls and text messages with competitors between December 2011 and January 2014. Between February 2014 and October 2018, after his move to Glenmark, he exchanged more than 2,000 calls and text messages with competitors, including Lupin, Aurobindo, Zydus, Teva, Taro, Wockhardt, Sandoz, Greenstone, Dr. Reddy's, and others.

210. In September 2012, after Sandoz and Mylan had successfully allocated sales among themselves for a particular drug, a senior sales and marketing executive at Sandoz wrote in an internal email, "[a]s a cross functional team, we have optimized this launch successfully securing ~52% market share vs. a formidable competitor like Mylan.... you should be very proud!" That same day, in another internal email, a senior executive of Sandoz for Germany wrote, "sometimes a little help from our

competition is welcome as well.” A senior executive of Sandoz for North America responded, “I guess this is what they call ‘co-opetition.’”

211. Sandoz then refused to fight on price to obtain any more of Mylan’s customers for that drug. In response to some colleagues asking about whether there were opportunities to gain further customers, one Sandoz executive wrote, “I’m concerned we are going to disrupt the market. I understand the need for additional sales but we need to be thoughtful here.”

212. On the basis of their overarching conspiracy, the defendants’ behaviour can be categorized into two types. First, the defendants allocate customers and the market to artificially maintain market share and generic drug prices. Second, the defendants fix prices of generic drugs through direct communication with each other.

213. For the first, to avoid competing for market share on price, the defendants, either on their entry for a drug or on the entry of a new competitor for a drug, communicate with one another to agree on whether to sell the drug at all, and how much market share and which customers each competitor is entitled to. Whatever agreement is reached is then implemented by either refusing to bid for particular customers, or by providing cover bids that they know will not be successful. The generic drug market thereby remains “stable.”

214. As for the second, to fix the prices of particular drugs, the defendants communicate with each other in person, by phone, and by text message, and illegally agree to fix, raise, or maintain prices.

215. When a generic manufacturer participates in the scheme and prices stay high, this is viewed as “playing nice in the sandbox,” or following the “rules of engagement.” On the other hand, competing on price or taking advantage of a competitor’s price increase by bidding a lower price to take that business is viewed as “punishing” the competitor for raising prices, which is viewed among the defendants as against the “rules.”

216. For example, in May 2013, Teva was approached by a customer to provide a bid for a drug on which Teva’s competitor had recently increased the price. Teva’s Director of National Accounts at the time (who has since moved on to work at Zydus) wrote in an email, “We are in a great inventory position, but not sure I want to steal it on an increase.” Eventually, Teva was able to confirm that the request was due to a price increase by Glenmark, and it declined to provide the customer a competing bid.

217. Competitors who “play nice in the sandbox” are sometimes also labeled “responsible” or “rational” competitors. For example, in an internal May 2013 email, one senior sales and marketing executive at Sandoz wrote, “My sense is that Sandoz is viewed by customers and competition as a respectful/responsible player in the market, which we should be proud of and has taken years to develop. I would be very careful to destroy this through behaviour that is too aggressive or desperation.” In internal company presentations throughout 2014, Sandoz consistently identified Actavis as a “responsible competitor” and Taro as a “very responsible price competitor.”

218. If a competitor acts “irresponsibly,” it is spoken to by other competitors. By way of example, in March 2015, one Upsher-Smith internal email read, “I can’t

believe they have chosen to compete against us since we had this business. How does this help us? We play fair and they don't?"

219. Such terms, including "fair share," "playing nice in the sandbox," and "acting rationally/responsibly," have become routine in the industry. Generic drug manufacturers actively monitor their share and their competitors' share to ensure that it is "fair" in accordance with the overarching conspiracy. In July 2013, in discussing products for which Sandoz did not believe it had its "fair share," one internal email stated, "Fair Share for all!!!"

220. Such "rules of engagement" are so well-ingrained in the industry that even customers are aware of the collusion among the defendants. In fact, the acquirers of generic drugs from the defendants are often first wholesalers, distributors, or pharmacies, who benefit from higher prices, because those higher prices are then passed on to consumers. This decreases the incentive for the defendants to compete on price. For example, in June 2013, an internal Dr. Reddy's email reported that "[a purchaser] has indicated that Par will walk away, so we have to put together a proposal based on that information."

221. In an email from a Teva customer in December 2014, the customer requested that Teva give up a large customer to Greenstone because Greenstone was about to begin selling a particular drug. The customer indicated that "Greenstone has promised to play nice in the sandbox." After internal discussions at Teva, a Teva representative responded to the customer, "[t]ell Greenstone we are playing nice in the sandbox and we will let them have [the targeted customer.]"



222. Further, in January 2015, one of Teva's customers wrote to Teva that they should discuss a potential ongoing relationship for a specific drug because the customer believed that Teva was "way under [its] 'fair share' on this one."

223. Some customers go so far as to facilitate the collusion. In September 2014, a large wholesaler reached out to several large generic manufacturers and asked them to submit a "Priority Wishlist of items to gain increased volume in the market." The wholesaler reported that "7 of the global suppliers have created and submitted wish lists and that [the customer] will be reviewing next week and taking a look at how they can move things around. He said they are hoping to be able to horse trade without having to do ROFR." "ROFR" refers to right of first refusal, which many manufacturers have in place with their customers to allow them to provide a bid to maintain the business in the event a competing bid is received.

224. In another instance, an internal email at Sandoz in November 2013 stated that "[a large wholesale customer] is indicating that Glenmark and Caraco had taken a price increase on [a drug] in June. [The customer] is asking if Sandoz will be rationalizing the market... Please advise on next steps. Our [lower] pricing is disrupting the market."

225. In their investigation, the state attorneys general identified over 300 specific instances of collusion where Teva spoke to competitors shortly before or at the time that it made what it referred to as a "strategic" market decision. The term "strategic" is used by Teva to refer to decisions that are made through collusion with other defendants. Before making such decisions, Teva often creates reports relating to

profitability and volume of business regarding specific drugs so that it can make such “strategic” decisions armed with accurate information. Such reports are also common at other manufacturers to help negotiate market allocations or price increases, including but not limited to Taro.

226. The overarching “fair share” agreement and the defendants’ collusive price increases go hand-in-hand. The agreement between the defendants to follow each other’s price increases are predicated on the agreement that the follower will not poach the price leader’s customers after the increase. For example, one Taro executive often communicated with Sandoz to coordinate price increases, and almost invariably concluded conversations with phrases like “don’t take my business,” “don’t take my fucking customers,” or “don’t be stupid.”

227. Further, the overarching agreement to maintain a “fair share” in the market makes it easier for competitors to coordinate price increases because it means that explicit communication in advance of each price increase is not required. As long as a competitor is aware that its business is being solicited because of a price increase by an incumbent supplier, the competitor knows not to compete for business and knows that it has an opportunity to follow with its own price increase. The defendants often capitalize on such opportunities.

228. The overarching conspiracy of maintaining a “fair share” of the market and “playing nice in the sandbox” is widespread across the entire generic drug market and is broader than any specific defendants or drugs named in this claim. The

investigations into the generic drug industry are ongoing and may reveal additional wrongdoing in the future.

229. The defendants' illegal conduct does not stop at the border. Such conduct is common and expected across the defendants. The same defendants as in the United States action also control the generic drug market in Canada. Their conspiracy to allocate the market, fix prices, and maintain supply necessarily impacts the Canadian generic drug market.

#### **THE DEFENDANTS ALLOCATE CUSTOMERS AND THE MARKET**

230. Pursuant to the conspiracy, the defendants agree to allocate the entire market for generic drugs. This agreement consists of the defendants agreeing on whether or not to sell certain drugs at all, and on maintaining their "fair share" of sales for the drugs that they do sell, all with the aim of allocating the entire generic drug market.

231. The defendants communicate with each other about drugs that they do not sell. This permits them to make collusive decisions about whether they will sell certain drugs at all.

232. For example, in or around September 2014, Camber's President sent an email to his colleagues stating, "We do not offer anything to any Teva customers... Not even a 'bad price'! Please acknowledge... We do not want to upset them more!" A senior sales executive at Camber replied, "... Both Sales and Contracts are aware, & requesting incumbent detail for all offers, if Teva, no offer..." As this email related to

more than one drug and more than one competitor, Camber's President responded, "Thank you. We don't want to antagonize either of them and start a war..."

233. In another example, the defendants Teva, Wockhardt, and Mylan fixed pricing on enalapril in or around July 2013. After a lengthy conversation with Teva, Taro (not selling enalapril at that time) sent an internal e-mail stating that "[t]here has been some significant changes in the market landscape with this product and I'd like to get product back in Taro label (and fast)." And Taro did move fast. By December 2013, Taro spoke again with Teva, Mylan, and Wockhardt. Taro then began selling enalapril and matched competitor pricing.

234. The defendants also agree that if there are two generic manufacturers that sell a particular drug at one time, they are each entitled to approximately 50 percent of sales. If a third competitor sells the drug, each competitor expects approximately 33 percent of sales. If a fourth competitor sells the drug, each competitor expects approximately 25 percent of sales, and so on.

235. The defendants agree pursuant to the conspiracy not to compete on price for a disproportionate share of the generic drug market.

236. To concede business, the defendants often submit artificially inflated pricing proposals to customers whose business they have decided to cede. For example, in May 2012, when a Teva employee was preparing a pricing proposal for a major customer, she asked, "Can we send something that at least looks like we are trying?" The response she received was, "We really need to concede this business with the accounts we have kept."

237. If a defendant is the first to sell a drug, it is commonly agreed that the manufacturer is “entitled to” more sales than it would be “entitled to” otherwise.

238. Conversely, if a defendant starts to sell the drug later, it is typically “entitled to” lower sales than it would be otherwise.

239. There is no precise method for apportioning a defendant’s “fair share,” because the share is ultimately determined by winning or maintaining the business of various customers, which varies over time. However, the objective is to attain and maintain a state of equilibrium, where the defendants do not compete on price for market share.

240. The conspiracy is comprehensive and includes an agreement on how to address competitors that have supply issues. If a competitor is facing supply issues and the disruption is temporary, its competitors will not take action to upset the market balance. However, if the disruption is longer term, the remaining competitors divide up customers to achieve a new equilibrium. For example, in or around December 2014, one Camber employee wrote in an internal email, “Fair share only applies when there is not supply constraints [*sic*].” Camber’s President urged the employee to “go fishing and gather information before we commit.”

241. Similarly, when asked for a bid on some business because Mylan was on back order, one Taro internal email stated, “Not inclined to take on new business . . . . Wholesalers have product, let them pull from there temporarily and we can certainly review if shortage persists. Don’t want to overreact to this product. Not sure how long Mylan is out.”

242. Once a defendant has achieved its “fair share,” the conspiracy dictates that the defendant will no longer compete for additional business.

243. The pervasive nature of the overarching “fair share agreement” has led to a situation in which competitors question information that suggests that companies are not “playing nice in the sandbox.” For example, if informed by a customer that the customer received an unsolicited bid from a competitor at a lower price, the defendants will use their own communication channels to confirm whether the competitor in fact made an offer. On at least one occasion, in or around October 2014, Teva did just that. After confirming internally that it had an agreement with Camber for a particular drug, Teva indicated to the customer that “the market should be stable at this point” and Teva would be surprised if Camber had intended to make an offer. After further discussion with the customer, Teva staff confirmed that Camber had complied with its agreement with Teva and had not made the offer.

244. Whether or not the discussions between defendants relate to specific drugs, they all follow the conspiratorial “fair share” code of conduct across the board. The collusive discussions are not one-off discussions related to specific drugs alone, but are rather in furtherance of the overarching conspiracy that remains constant throughout the entire generic drug industry.

245. Without limiting the scope of the conspiracy to cover the entire generic drug market, on at least the following instances uncovered to date, the defendants wrongfully allocated the generic drug market with respect to certain specific drugs:

- (1) **amphetamine/dextroamphetamine extended release (aka mixed amphetamine salts):** Teva and Actavis agreed to allocate sales and customers for amphetamine/dextroamphetamine extended release in or around April 2012 to May 2013;
- (2) **amphetamine/dextroamphetamine immediate release:** Teva and Actavis agreed to allocate sales and customers for amphetamine/dextroamphetamine immediate release in or around March 2014 to April 2014;
- (3) **baclofen tablets:** Lannett and Teva agreed to allocate sales and customers for baclofen in or around June 2014 to July 2014;
- (4) **benazepril HCTZ:** Sandoz and Rising (an unnamed co-conspirator) agreed to allocate sales and customers for benazepril HCTZ in or around February 2014 to April 2014;
- (5) **budesonide DR capsules:** Par and Teva agreed to allocate sales and customers for budesonide DR in or around March 2014 to April 2014;
- (6) **budesonide inhalation:** Actavis and Teva agreed to allocate sales and customers for budesonide inhalation in or around February 2015;
- (7) **cabergoline:** Teva and Greenstone agreed to allocate sales and customers for cabergoline in or around December 2014;

- (8) **capecitabine:** Teva and Mylan agreed to allocate sales and customers for capecitabine in or around January 2014 to August 2014;
- (9) **celecoxib:** Teva and Actavis agreed to allocate sales and customers for celecoxib in or around November 2014 to December 2014;
- (10) **clonidine TTS patch:** Mylan and Teva agreed to allocate sales and customers for clonidine TTS in or around May 2012 to April 2013; and Teva and Actavis agreed to allocate sales and customers for clonidine TTS in or around May 2014;
- (11) **desogestrel/ethinyl estradiol tablets:** Teva and Glenmark agreed to allocate sales and customers for desogestrel/ethinyl estradiol (commonly known by its brand name Kariva) in or around May 2014;
- (12) **dexmethylphenidate HCL extended release capsules:** Teva and Sandoz agreed to allocate sales and customers for dexmethylphenidate HCL extended release in or around February 2014 to June 2015;
- (13) **dextroamphetamine sulfate extended release:** Teva and Actavis agreed to allocate sales and customers for dextroamphetamine sulfate extended release in or around June 2014;
- (14) **diflunisal tablets:** Rising and Teva agreed to allocate sales and customers for diflunisal in or around July 2014 to December 2014;



- (15) **digoxin:** Impax, Lannett, Mylan, Par, Sun, and West-Ward (an unnamed co-conspirator) agreed to allocate sales and customers for digoxin in or around early 2014 to present day;
- (16) **doxycycline hyclate delayed release:** Heritage and Mylan agreed to allocate sales and customers for doxycycline hyclate delayed release in or around April 2013 to August 2014; and Heritage and Mayne agreed to allocate sales and customers for doxycycline hyclate delayed release in or around January 2014 to December 2015;
- (17) **drospirenone and ethinyl estradiol:** Teva, Lupin, and Actavis agreed to allocate sales and customers for drospirenone and ethinyl estradiol (commonly known by their brand names, including Ocella, Yaz, Yasmin, and Gianvi) in or around April 2013 to October 2013;
- (18) **econazole:** Fougera, Perrigo, Taro, and Teligent agreed to allocate sales and customers for econazole in or around September 2013 to present day;
- (19) **enalapril maleate tablets:** Mylan, Taro, Teva, and Wockhardt agreed to allocate sales and customers for enalapril maleate in or around July 2013 to June 2014;
- (20) **entecavir:** Par and Teva agreed to allocate sales and customers for entecavir in or around August 2014 to October 2014;

- (21) **ethinyl estradiol and levonorgestrel:** Teva and Sandoz agreed to allocate sales and customers for ethinyl estradiol and levonorgestrel (commonly known by brand names including Portia and Jolessa) in or around May 2012 to July 2013;
- (22) **etodolac extended release tablets:** Teva, Taro, and Zydus agreed to allocate sales and customers for etodolac extended release in or around May 2014 to July 2014;
- (23) **fenofibrate:** Teva, Mylan, and Lupin agreed to allocate sales and customers for fenofibrate in or around February 2013 to May 2013; and Mylan, Lupin, Teva, and Zydus agreed to allocate sales and customers for fenofibrate in or around February 2014 to June 2014;
- (24) **fluocinonide cream:** Actavis, Taro, and Teva agreed to allocate sales and customers for fluocinonide cream in or around June 2014 to December 2014;
- (25) **fosinopril-HCTZ:** Heritage, Aurobindo, Glenmark, and Sandoz agreed to allocate sales and customers for fosinopril-HCTZ in or around early 2012;
- (26) **gabapentin tablets:** Glenmark and Teva agreed to allocate sales and customers for gabapentin in or around October 2014 to November 2014;

- (27) **glyburide:** Aurobindo, Citron (an unnamed co-conspirator), Heritage, and Teva agreed to allocate sales and customers for glyburide in or around April 2014 to December 2015;
- (28) **glyburide-metformin:** Aurobindo, Actavis, Citron, Heritage, and Teva agreed to allocate sales and customers for glyburide-metformin in or around June 2014 to September 2014;
- (29) **hydroxyzine pamoate capsules:** Rising and Teva agreed to allocate sales and customers for hydroxyzine pamoate in or around October 2013;
- (30) **irbesartan:** Teva and Lupin agreed to allocate sales and customers for irbesartan in or around March 2012;
- (31) **labetalol HCL tablets:** Par and Teva agreed to allocate sales and customers for labetalol HCL in or around February 2014;
- (32) **lamivudine/zidovudine:** Teva, Lupin, and Aurobindo agreed to allocate sales and customers for lamivudine/zidovudine (commonly known by the brand name Combivir) in or around April 2012 to May 2012;
- (33) **meprobamate:** Heritage and Dr. Reddy's agreed to allocate sales and customers for meprobamate in or around March 2013 to May 2013;

- (34) **moexipril HCL tablets:** Teva and Glenmark agreed to allocate sales and customers for moexipril HCL in or around August 2013;
- (35) **niacin extended release tablets:** Lupin, Teva, and Zydus agreed to allocate sales and customers for niacin extended release in or around February 2014 to June 2014;
- (36) **nimodipine:** Heritage and Sun/Caraco agreed to allocate sales and customers for nimodipine in or around June 2012 to May 2013; and Ascend and Heritage agreed to allocate sales and customers for nimodipine in or around April 2014 to May 1, 2015;
- (37) **norethindrone/ethinyl estradiol:** Teva and Lupin agreed to allocate sales and customers for norethindrone/ethinyl estradiol (known commonly by its brand name Balziva) in or around January 2014 to February 2014;
- (38) **norethindrone acetate:** Amneal and Teva agreed to allocate sales and customers for norethindrone acetate in or around September 2014 to May 2015;
- (39) **nortriptyline hydrochloride capsules:** Actavis, Taro, and Teva agreed to allocate sales and customers for nortriptyline hydrochloride in or around November 2013 to March 2014;

- (40) **nystatin cream:** Actavis, Par, Perrigo, Sandoz, and Taro agreed to allocate sales and customers for nystatin cream in or around the fall of 2013;
- (41) **nystatin ointment:** Actavis, Perrigo, and Sandoz agreed to allocate sales and customers for nystatin ointment in or around the summer of 2012;
- (42) **nystatin tablets:** Heritage, Sun, and Teva agreed to allocate sales and customers in or around the summer of 2012; Heritage and Teva agreed to allocate sales and customers for nystatin tablets in or around July 2014;
- (43) **omega-3-acid ethyl esters:** Apotex, Par, and Teva agreed to allocate sales and customers for omega-3-acid ethyl esters in or around June 2014 to April 2015;
- (44) **oxaprozin tablets:** Teva and Greenstone agreed to allocate sales and customers for oxaprozin in or around March 2013; and Dr. Reddy's and Teva agreed to allocate sales and customers for oxaprozin in or around March 2013 to September 2013;
- (45) **paricalcitol:** Teva and Zydus agreed to allocate sales and customers for paricalcitol in or around March 2014 to April 2014; and Teva and Dr. Reddy's agreed to allocate sales and customers for paricalcitol in or around May 2014 to August 2014;

- (46) **piroxicam:** Teva and Greenstone agreed to allocate sales and customers for piroxicam in or around March 2014;
- (47) **raloxifene hydrochloride tablets:** Actavis, Camber, and Teva agreed to allocate sales and customers for raloxifene hydrochloride in or around September 2014 to December 2014;
- (48) **temozolomide:** Teva and Sandoz agreed to allocate sales and customers for temozolomide in or around July 2013 to August 2013;
- (49) **tobramycin:** Teva and Sandoz agreed to allocate sales and customers for tobramycin in or around July 2014;
- (50) **tolterodine extended release:** Teva and Sandoz agreed to allocate sales and customers for tolterodine extended release in or around October 2013 to January 2014;
- (51) **tolterodine tartrate:** Teva and Greenstone agreed to allocate sales and customers for tolterodine tartrate in or around January 2014;
- (52) **valsartan HCTZ:** Mylan and Sandoz agreed to allocate sales and customers for valsartan HCTZ in or around September 2012;
- (53) **verapamil:** Actavis, Heritage, and Mylan agreed to allocate sales and customers for verapamil in or around October 2012 to January 2013;  
and

- (54) **zoledronic acid:** Heritage and Dr. Reddy's agreed to allocate sales and customers for zoledronic acid in or around January 2013 to November 2013.

#### **THE DEFENDANTS FIX GENERIC DRUG PRICES**

246. By 2012, the overarching "fair share" conspiracy was well established in the generic drug industry. The defendants also agreed to leverage the overarching conspiracy in order to fix the prices of generic drugs.

247. The defendants communicate with each other when planning price increases to secure agreements to raise prices, and to confirm with each other that they will not punish competitors for leading price increases, for example by stealing market share, unless they have less than their "fair share" of the market.

248. For example, in or around November 2013, Teva decided to hold off on providing a bid to a potential customer until it was "in a position to do so (post increase)," referring to Teva's planned increase in price that was to follow a price increase by a competitor, namely, Breckenridge. On the other hand, for a different drug for which Teva had only 19 percent of sales where there were two manufacturers selling the drug, it sought to pick up some additional customers to level the playing field before raising its own prices to follow Breckenridge.

249. Further, in January 2013, a Sandoz executive reported in an internal email that he had "[j]ust heard from a customer" that Teva and Mylan had increased their prices of a particular drug to Sandoz's levels. However, the state attorneys general

investigation shows that the Sandoz executive did not speak to any customers the morning that email was sent. The email also described another price increase that Mylan took, and stated, “Let’s please be cautious on both of these products.” By “cautious,” he meant that Sandoz should be careful not to punish Teva or Mylan by offering a lower price and taking additional sales of those drugs.

250. The overarching “fair share” conspiracy also operates as a safety net for situations where the defendants cannot follow each others’ price increases quickly. For example, even if a defendant cannot follow a price increase because of a contractual price protection term with certain customers that would result in penalties if prices were increased, the underlying agreement ensures that competitors can proceed with a price increase without the threat of losing their share of sales.

251. To accomplish its goal of raising the prices of generic drugs, Teva in particular has categorized a core group of its competitors with whom it had a profitable collusive relationship as “high quality” competitors. The “highest quality” competitors are companies with whom Teva’s employees and executives had or have significant relationships. Those relationships are exploited to agree to lead and follow each other’s prices. Teva then targets the drugs that both it and its high quality competitors manufacture for price increases. Competitors’ “quality” ranking is increased if Teva is able to successfully collude with the competitor.

252. This expression is used frequently in internal communications at Teva. For example, one internal email to one of Teva’s senior marketing executives in June 2014 stated, “[w]e should probably discuss how we want to handle all Taro increase items.



Taro is a high quality competitor – I think we need to be responsible where we have adequate market share.”

253. Different defendants were responsible for leading collusive price increases on different drugs. For example, in or around July 2013, in response to a price increase led by Sandoz, internal Taro emails cited “recent market changes” as the reason that Taro was currently “not taking on additional share.” That is, Taro was going to play nice in the sandbox and not undercut Sandoz’s price increase. Taro eventually matched Sandoz’s price increase.

254. Heritage has been successful in raising prices on numerous drugs by coordinating with competitors. In particular, in the spring and summer of 2014, Heritage targeted 18 drugs for price increases. Of those, Heritage was able to increase the price on at least nine drugs. For some of the 18 drugs, other competitors had also targeted the drugs for collusive price increases and were able to take the lead on increasing those prices.

255. Teva in fact has a formula to determine which drugs to target for collusive price increases. The formula considers the number of competitors in the market for that drug, whether the competitors are “high” or “low quality,” whether Teva will be leading or following the price increase, and other factors. The best candidates for collusive price increases are drugs where there is only one other competitor selling the drug, which will be leading the increase, and where the competitor is “high quality.”

256. If a defendant stops selling a drug for a short period of time due to supply issues, competitors sometimes use that as a catalyst to increase prices. When the

supply issues are resolved and the defendant can resume selling the drug, it can often re-enter at a higher price point than when it left because competitors will permit it to re-gain its “fair share.” To facilitate such price increases, competitors will sometimes let each other know if they plan to exit selling a particular drug. That provides an opportunity to the remaining competitors to raise prices, especially if the first competitor ultimately wants to resume selling the drug and take advantage of the price increase.

257. Further, if a defendant has exclusive sales for a drug, it will sometimes implement a price increase before any other manufacturers begin selling the drug. This is effective in increasing prices even after another competitor begins selling the drug, because the new entrant does not seek to compete on price. Instead, the new entrant coordinates with its competition to allocate sales and customers.

258. During a September 2013 earnings call, Lannett’s CEO was asked for his reaction to a price increase that Mylan took. Lannett’s CEO responded, “You mean after I sent them a thank you note? I’m just kidding.... I’m always grateful to see responsible generic drug companies realize that our cost of doing business is going up as well.... So whenever people start acting responsibly and raise prices as opposed to the typical spiral down of generic drug prices, I’m grateful.”

259. The defendants’ conduct is part of an overarching conspiracy, the effect of which is to minimize – if not thwart completely – competition across the generic drug industry. The conspiracy is implemented through a series of conspiratorial agreements that affected and continue to affect the entire market for generic drugs in

Canada. The prices of generic drugs are artificially inflated through collusive market allocation, bid-rigging, supply maintenance, and agreements to fix prices.

260. Without limiting the scope of the conspiracy to cover the entire generic drug market, on at least the following instances uncovered to date, the defendants wrongfully fixed the prices of certain specific drugs:

- (1) **acetazolamide extended release:** Heritage, Zydus, and Teva agreed to fix the price of acetazolamide extended release in or around April 2014 to July 2014;
- (2) **acetazolamide tablets:** Lannett and Taro agreed to fix the price of acetazolamide tablets in or around April 2012 to present day;
- (3) **adapalene gel:** Glenmark, Taro, and Teva agreed to fix the price of adapalene in or around May 2013 to July 2013;
- (4) **albuterol:** Mylan and Sun agreed to fix the price of albuterol in or around March 2013 to present day;
- (5) **amiloride HCL/HCTZ tablets:** Mylan and Teva agreed to fix the price of amiloride HCL/HCTZ in or around May 2013 to August 2013; and Mylan and Teva agreed to fix the price of amiloride HCL/HCTZ in or around April 2014 to August 2014;
- (6) **amitriptyline:** Mylan, Par, and Sandoz agreed to fix the price of amitriptyline in or around May 2014 to present day;

- (7) **amoxicillin/clavulanate chewable tablets:** Sandoz and Teva agreed to fix the price of amoxicillin/clavulanate in or around August 2014 to October 2014;
- (8) **azithromycin oral suspension:** Greenstone and Teva agreed to fix the price of azithromycin oral suspension in or around November 2013 to April 2014;
- (9) **azithromycin suspension:** Greenstone and Teva agreed to fix the price of azithromycin suspension in or around November 2013 to April 2014;
- (10) **baclofen:** Upsher-Smith, Qualitest, Par, Lannett, and Teva agreed to fix the price of baclofen in or around February 2014 to April 2014;
- (11) **benazepril HCTZ:** Mylan and Sandoz agreed to fix the price of benazepril HCTZ in or around July 2013 to August 2013;
- (12) **bethanechol chloride tablets:** Amneal and Teva agreed to fix the price of bethanechol chloride in or around January 2015;
- (13) **budesonide inhalation:** Actavis and Teva agreed to fix the price of budesonide inhalation in or around February 2013 to April 2013;
- (14) **bumetanide tablets:** Sandoz and Teva agreed to fix the price of bumetanide in or around January 2014 to April 2014;

- (15) **buspirone hydrochloride tablets:** Mylan, Teva, and Watson (an unnamed co-conspirator) agreed to fix the price of buspirone hydrochloride tablets in or around July 2012;
- (16) **carbamazepine chewable tablets:** Taro and Teva agreed fix the price of carbamazepine chewable tablets in or around May 2014 to August 2014;
- (17) **carbamazepine tablets:** Taro and Teva agreed fix the price of carbamazepine tablets in or around May 2014 to July 2014; and Apotex, Taro, and Teva agreed fix the price of carbamazepine tablets in or around May 2014 to August 2014;
- (18) **cefdinir capsules:** Lupin, Northstar (an unnamed co-conspirator), Sandoz, and Teva agreed to fix the price of cefdinir capsules in or around May 2013 to July 2013;
- (19) **cefdinir oral suspension:** Lupin, Northstar, Sandoz, and Teva agreed to fix the price of cefdinir oral suspension in or around May 2013 to July 2013;
- (20) **cefprozil tablets:** Lupin, Northstar, Sandoz, and Teva agreed to fix the price of cefprozil in or around May 2013 to July 2013;
- (21) **cephalexin suspension:** Lupin and Teva agreed to fix the price of cephalexin suspension in or around October 2013 to April 2014;

- (22) **cimetidine tablets:** Mylan and Teva agreed to fix the price of cimetidine in or around May 2013 to August 2013; and Apotex, Mylan, and Teva agreed to fix the price of cimetidine in or around April 2014 to August 2014;
- (23) **ciprofloxacin HCL tablets:** Actavis, Dr. Reddy's, and Teva agreed to fix the price of ciprofloxacin HCL in or around July 2014 to January 2015;
- (24) **clarithromycin extended release tablets:** Actavis, Teva, and Zydus agreed to fix the price of clarithromycin extended release in or around December 2013 to April 2014;
- (25) **clemastine fumarate tablets:** Sandoz and Teva agreed to fix the price of clemastine fumarate in or around July 2013 to August 2013; and Sandoz and Teva agreed to fix the price of clemastine fumarate in or around August 2014;
- (26) **clobetasol:** Actavis, Akorn, Hi-Tech, Sandoz, Fougera, Perrigo, Taro, Wockhardt, and Morton Grove agreed to fix the price of clobetasol in or around June 2014 to present;
- (27) **clomipramine HCL:** Mylan, Sandoz, and Taro agreed to fix the price of clomipramine HCL in or around April 2013 to October 2013;
- (28) **clotrimazole topical solution:** Taro and Teva agreed to fix the price of clotrimazole in or around May 2014 to July 2014; and Taro and Teva

agreed to fix the price of clotrimazole in or around May 2014 to August 2014;

(29) **cyproheptadine HCL tablets:** Breckenridge and Teva agreed to fix the price of cyproheptadine HCL in or around January 2014 to April 2014;

(30) **desmopressin acetate tablets:** Actavis and Teva agreed to fix the price of desmopressin acetate in or around August 2014 to December 2014;

(31) **desonide:** Actavis, Perrigo, Sandoz, Fougera, and Taro agreed to fix the price of desonide in or around May 2013 to present day;

(32) **diclofenac potassium tablets:** Apotex, Mylan, Sandoz, and Teva agreed to fix the price of diclofenac potassium in or around July 2013 to August 2013; and Mylan, Sandoz, and Teva agreed to fix the price of diclofenac potassium in or around May 2014 to March 2015;

(33) **dicloxacillin sodium capsules:** Sandoz and Teva agreed to fix the price of dicloxacillin sodium in or around January 2014 to April 2014;

(34) **diflunisal tablets:** Rising and Teva agreed to fix the price of diflunisal in or around December 2013 to December 2014;

(35) **digoxin:** Impax, Lannett, Mylan, Par, Sun, and West-Ward agreed to fix the price of digoxin in or around October 2013 to present day;

- (36) **diltiazem HCL tablets:** Mylan and Teva agreed to fix the price of diltiazem HCL in or around May 2013 to August 2013; and Mylan and Teva agreed to fix the price of diltiazem HCL in or around January 2015;
- (37) **disopyramide phosphate capsules:** Actavis and Teva agreed to fix the price of disopyramide phosphate in or around June 2013 to July 2013; and Actavis and Teva agreed to fix the price of disopyramide phosphate in or around August 2014;
- (38) **divalproex extended release:** Dr. Reddy's, Mylan, Par, and Zydus agreed to fix the price of divalproex extended release in or around June 2013 to present day;
- (39) **doxazosin mesylate tablets:** Mylan and Teva agreed to fix the price of doxazosin mesylate in or around May 2013 to August 2013;
- (40) **doxycycline hyclate:** Actavis, Mylan, Qualitest, Sun, Teva, and West-Ward agreed to fix the price of doxycycline hyclate in or around October 2012 to present day;
- (41) **doxycycline monohydrate:** Heritage, Lannett, Mylan, and Par agreed to fix the price of doxycycline monohydrate in or around February 2013 to June 2014;
- (42) **econazole:** Fougera, Perrigo, Taro, and Teligent agreed to fix the price of econazole in or around July 2014 to present day;



- (43) **enalapril maleate tablets:** Mylan, Teva, and Wockhardt agreed to fix the price of enalapril maleate in or around July 2013 to August 2013; and Mylan, Taro, Teva, and Wockhardt agreed to fix the price of enalapril maleate in or around April 2014 to August 2014;
- (44) **epitol tablets:** Apotex, Taro, and Teva agreed to fix the price of epitol in or around August 2014;
- (45) **estazolam tablets:** Actavis and Teva agreed to fix the price of estazolam in or around January 2014 to May 2014;
- (46) **estradiol/norethindrone acetate tablets:** Breckenride and Teva agreed to fix the price of estradiol/norethindrone acetate (commonly known by its brand name Mimvey) in or around July 2012; Breckenridge and Teva agreed to fix the price of estradiol/norethindrone acetate in or around October 2013 to November 2013; and Breckenride and Teva agreed to fix the price of estradiol/norethindrone acetate in or around January 2014 to April 2014;
- (47) **estradiol tablets:** Mylan, Teva, and Watson agreed to fix the price of estradiol tablets in or around July 2012; Mylan, Teva, and Watson agreed to fix the price of estradiol tablets in or around May 2013; and Actavis, Mylan, and Teva agreed to fix the price of estradiol tablets in or around January 2015;

- (48) **ethosuximide capsules:** Teva and Versapharm (an unnamed co-conspirator) agreed to fix the price of ethosuximide capsules in or around January 2014 to April 2014;
- (49) **ethosuximide oral solution:** Teva and Versapharm agreed to fix the price of ethosuximide oral solution in or around January 2014 to April 2014;
- (50) **etodolac extended release tablets:** Taro and Teva agreed to fix the price of etodolac extended release in or around July 2013 to August 2013;
- (51) **etodolac tablets:** Actavis, Apotex, Sandoz, Taro, and Teva agreed to fix the price of etodolac in or around July 2013 to August 2013;
- (52) **fluconazole tablets:** Glenmark, Greenstone, and Teva agreed to fix the price of fluconazole in or around June 2013 to July 2013;
- (53) **fluocinonide cream:** Sandoz, Taro, and Teva agreed to fix the price of fluocinonide cream in or around May 2013 to July 2013; and Taro and Teva agreed to fix the price of fluocinonide cream in or around May 2014 to July 2014;
- (54) **fluocinonide emollient cream:** Sandoz, Taro, and Teva agreed to fix the price of fluocinonide emollient cream in or around May 2013 to July 2013; and Taro and Teva agreed to fix the price of fluocinonide emollient cream in or around May 2014 to July 2014;

- (55) **fluocinonide gel:** Sandoz, Taro, and Teva agreed to fix the price of fluocinonide gel in or around May 2013 to July 2013; and Taro and Teva agreed to fix the price of fluocinonide gel in or around May 2014 to October 2014;
- (56) **fluocinonide ointment:** Sandoz, Taro, and Teva agreed to fix the price of fluocinonide ointment in or around May 2013 to July 2013; and Sandoz, Taro, and Teva agreed to fix the price of fluocinonide ointment in or around May 2014 to July 2014;
- (57) **fluoxetine HCL tablets:** Par, Mylan, and Teva agreed to fix the price of fluoxetine HCL in or around January 2015;
- (58) **flurbiprofen tablets:** Mylan and Teva agreed to fix the price of flurbiprofen in or around May 2013 to July 2013; and Mylan and Teva agreed to fix the price of flurbiprofen in or around May 2014 to August 2014;
- (59) **flutamide capsules:** Actavis, Par, and Teva agreed to fix the price of flutamide in or around August 2014;
- (60) **fluvastatin sodium capsules:** Mylan and Teva agreed to fix the price of fluvastatin sodium in or around April 2014 to August 2014;
- (61) **fosinopril-HCTZ:** Aurobindo, Citron, Sandoz, Glenmark, and Heritage agreed to fix the price of fosinopril-HCTZ in or around April 2014 to January 2015;

- (62) **glimepiride tablets:** Dr. Reddy's and Teva agreed to fix the price of glimepiride in or around July 2014 to January 2015;
- (63) **glipizide-metformin:** Mylan, Heritage, and Teva agreed to fix the price of glipizide-metformin in or around April 2014 to November 2014;
- (64) **glyburide:** Aurobindo, Citron, Heritage, and Teva agreed to fix the price of glyburide in or around April 2014 to July 2014;
- (65) **glyburide-metformin:** Aurobindo, Actavis, Citron, Sun, Heritage, and Teva agreed to fix the price of glyburide-metformin in or around April 2014 to August 2014;
- (66) **griseofulvin suspension:** Actavis and Teva agreed to fix the price of griseofulvin in or around September 2014 to January 2015;
- (67) **haloperidol:** Mylan and Sandoz agreed to fix the price of haloperidol in or around August 2013 to October 2013;
- (68) **hydroxyurea capsules:** Par and Teva agreed to fix the price of hydroxyurea in or around August 2014;
- (69) **hydroxyzine pamoate capsules:** Actavis, Sandoz, and Teva agreed to fix the price of hydroxyzine pamoate in or around June 2013 to July 2013; and Actavis, Rising, Sandoz, and Teva agreed to fix the price of hydroxyzine pamoate in or around January 2014 to April 2014;

- (70) **isoniazid:** Sandoz and Teva agreed to fix the price of isoniazid in or around January 2015;
- (71) **ketoconazole cream:** Sandoz, Taro, and Teva agreed to fix the price of ketoconazole cream in or around January 2014 to October 2014;
- (72) **ketoconazole tablets:** Apotex, Mylan, Taro, and Teva agreed to fix the price of ketoconazole tablets in or around January 2014 to April 2014;
- (73) **ketoprofen capsules:** Mylan and Teva agreed to fix the price of ketoprofen in or around June 2013 to August 2013; and Mylan and Teva agreed to fix the price of ketoprofen in or around January 2015;
- (74) **ketorolac tromethamine tablets:** Mylan and Teva agreed to fix the price of ketorolac tromethamine in or around June 2013 to August 2013; and Mylan and Teva agreed to fix the price of ketorolac tromethamine in or around January 2015;
- (75) **labetalol HCL tablets:** Sandoz, Teva, and Watson agreed to fix the price of labetalol HCL in or around July 2012 to October 2012;
- (76) **leflunomide:** Apotex, Heritage, and Teva agreed to fix the price of leflunomide in or around April 2014 to July 2014;
- (77) **levothyroxine:** Lannett, Mylan, and Sandoz agreed to fix the price of levothyroxine in or around January 2013; Lannett, Mylan, and Sandoz agreed to fix the price of levothyroxine in or around July 2013 to

September 2013; and Lannett, Mylan, and Sandoz agreed to fix the price of levothyroxine in or around April 2014 to May 2014;

(78) **lidocaine-prilocaine:** Akorn, Hi-Tech, Impax, Sandoz, and Fougera agreed to fix the price of lidocaine-prilocaine in or around March 2014 to present day;

(79) **loperamide HCL capsules:** Mylan and Teva agreed to fix the price of loperamide HCL in or around July 2012; Mylan and Teva agreed to fix the price of loperamide HCL in or around July 2013 to August 2013; and Mylan and Teva agreed to fix the price of loperamide HCL in or around April 2014 to August 2014;

(80) **medroxyprogesterone tablets:** Greenstone and Teva agreed to fix the price of medroxyprogesterone in or around November 2013 to April 2014;

(81) **meprobamate:** Heritage and Dr. Reddy's agreed to fix the price of meprobamate in or around March 2013 to May 2013; and Heritage and Dr. Reddy's agreed to fix the price of meprobamate in or around April 2014 and May 2014;

(82) **methotrexate tablets:** Mylan and Teva agreed to fix the price of methotrexate in or around May 2013 to July 2013;

- (83) **moexipril HCL/HCTZ tablets:** Glenmark, Paddock (an unnamed co-conspirator), and Teva agreed to fix the price of moexipril HCL/HCTZ in or around May 2013 to July 2013;
- (84) **moexipril HCL tablets:** Glenmark, Paddock, and Teva agreed to fix the price of moexipril HCL in or around May 2013 to July 2013;
- (85) **nabumetone tablets:** Glenmark, Sandoz, Teva, and Watson agreed to fix the price of nabumetone in or around May 2013 to July 2013;
- (86) **nadolol tablets:** Mylan, Sandoz, and Teva agreed to fix the price of nadolol in or around July 2012 to January 2013; and Mylan, Sandoz, and Teva agreed to fix the price of nadolol in or around May 2013 to August 2013;
- (87) **nimodipine:** Heritage and Sun/Caraco agreed to fix the price of nimodipine in or around June 2012 to May 2013; and Ascend and Heritage agreed to fix the price of nimodipine in or around April 2014 to May 2015;
- (88) **nitrofurantoin MAC capsules:** Alvogen (an unnamed co-conspirator), Mylan, and Teva agreed to fix the price of nitrofurantoin MAC in or around July 2012 to October 2012;
- (89) **nortriptyline hydrochloride capsules:** Actavis, Taro, and Teva agreed to fix the price of nortriptyline hydrochloride in or around January 2015;

- (90) **nystatin ointment:** Actavis, Perrigo, and Sandoz agreed to fix the price of nystatin ointment in or around the summer of 2012;
- (91) **nystatin tablets:** Heritage, Sun through its Mutual division, and Teva agreed to fix the price of nystatin tablets in or around April 2013 to August 2013; and Heritage, Sun/Mutual, and Teva agreed to fix the price of nystatin tablets in or around January 2014 to August 2014;
- (92) **oxybutynin chloride tablets:** Teva and Upsher-Smith agreed to fix the price of oxybutynin chloride in or around June 2013 to July 2013;
- (93) **paromomycin:** Heritage and Sun agreed to fix the price of paromomycin in or around June 2012 to October 2012; and Heritage and Sun/Caraco agreed to fix the price of paromomycin in or around April 2014 to July 2014;
- (94) **penicillin V potassium tablets:** Aurobindo, Greenstone, Sandoz, and Teva agreed to fix the price of penicillin V potassium in or around July 2014 to October 2014;
- (95) **pentoxifylline tablets:** Apotex, Mylan, and Teva agreed to fix the price of pentoxifylline in or around January 2014 to April 2014;
- (96) **pravastatin sodium tablets:** Actavis, Apotex, Glenmark, Dr. Reddy's, Lupin, Mylan, Sandoz, Zydus, and Teva agreed to fix the price of pravastatin sodium in or around May 2013 to early 2014;



- (97) **prazosin HCL capsules:** Mylan and Teva agreed to fix the price of prazosin in or around May 2013 to August 2013; and Mylan and Teva agreed to fix the price of prazosin in or around April 2014 to August 2014;
- (98) **prochlorperazine tablets:** Mylan, Sandoz, Teva, and Cadista (an unnamed co-conspirator) agreed to fix the price of prochlorperazine in or around May 2014 to August 2014;
- (99) **propranolol HCL capsules:** Actavis, Breckenridge, and Upsher-Smith agreed to fix the price of propranolol HCL capsules in or around November 2013 to February 2014;
- (100) **propranolol HCL tablets:** Actavis, Heritage, Mylan, PLIVA (an unnamed co-conspirator), Par, UDL, and Teva agreed to fix the price of propranolol HCL tablets in or around January 2015 to January 2016;
- (101) **ranitidine HCL tablets:** Amneal, Glenmark, Sandoz, Teva, and Wockhardt agreed to fix the price of ranitidine HCL in or around May 2013 to July 2013;
- (102) **sotalol hydrochloride tablets:** Mylan and Teva agreed to fix the price of sotalol hydrochloride in or around April 2014 to August 2014;
- (103) **tamoxifen citrate tablets:** Mylan, Teva, and Watson agreed to fix the price of tamoxifen citrate in or around July 2012; and Actavis and Teva

agreed to fix the price of tamoxifen citrate in or around January 2014 to May 2014;

(104) **theophylline extended release tablets:** Heritage and Teva agreed to fix the price of theophylline extended release in or around January 2014 to July 2014;

(105) **tizanidine:** Dr. Reddy's, Mylan, and Sandoz agreed to fix the price of tizanidine in or around May 2013 to July 2013;

(106) **tolmetin sodium capsules:** Mylan and Teva agreed to fix the price of tolmetin sodium in or around May 2013 to August 2013;

(107) **topiramate sprinkle capsules:** Actavis, Teva, and Zydus agreed to fix the price of topiramate sprinkle capsules in or around April 2014 to August 2014;

(108) **trifluoperazine HCL:** Mylan and Sandoz agreed to fix the price of trifluoperazine HCL in or around August 2013 to January 2014;

(109) **ursodiol:** Actavis, Lannett, and Epic (an unnamed co-conspirator) agreed to fix the price of ursodiol in or around May 2014 to present day;

(110) **verapamil:** Actavis, Mylan, and Heritage agreed to fix the price of verapamil in or around April 2014 to August 2014; and

- (111) **warfarin sodium tablets:** Amneal, Taro, Teva, and Zydus agreed to fix the price of warfarin sodium in or around May 2014 to August 2014.

#### **THE DEFENDANTS TAKE STEPS TO CONCEAL THE CONSPIRACY**

261. Knowing their conduct is illegal, the defendants attempt to avoid creating a written record of their conduct and often choose to communicate with each other in person or by cell phone. It is common for the defendants' employees to discuss competitive information over the phone or in person, and to send their competitors a text message saying simply "call me." Given the cozy nature of the industry, the defendants have numerous opportunities to communicate with each other at trade shows, customer events, and more intimate dinners and meetings.

262. Senior executives and personnel at the defendants often admonish colleagues for putting agreements in writing too obviously. They are aware that their conduct is illegal and take steps to cover it up. The defendants' personnel attempt to hide their sources of information when communicating in writing, claiming they learned the information from a customer instead of a competitor.

263. For example, in May 2014, a Taro executive wrote in an internal email, "FS ok, will not protect." Another executive responded, "explain FS, (Fair Share)?" The reply was, "No emails please. Phone call... let's discuss."

264. In situations where communications are reduced to writing or text messages, the defendants take overt steps to destroy the evidence of those communications. For

example, in response to a subpoena to provide text messages to the state attorneys general to assist in their investigation, one Teva employee produced text messages going as far back as 2014. However, by that time, she had already deleted all of her text messages with competitors after a conversation with a senior executive at Teva, who had warned her that a government investigation had begun.

265. Even before any investigation began, the defendants were careful about what they put in writing. For example, in August 2013, Teva's Director of Strategic Customer Marketing created a list of drugs that were candidates for price increases. In that list, under reason for increase, she had specified which competitors were leading the price increase and which were following, with a high degree of specificity, including when future price increases were anticipated. Her supervisor asked that she change the language to simply state who Teva was following and whether any further increases were "anticipated." Any indication of the exact timing of the price increases was removed. The supervisor knew that the original list's high level of specificity could be problematic. Instead of advising her subordinate to cease communications with competitors, the supervisor simply asked the subordinate to remove the offending language from written records.

266. The defendants are also careful in communications with competitors. In July 2013, Sandoz wanted to obtain a comprehensive list of drugs on which Teva had recently increased prices. Teva's Vice President of Sales first sent the list from his work email account to his personal email account, and then forwarded it to a Sandoz employee's personal email account.

267. The investigation into the defendants' conduct also appears to have motivated the defendants to attempt to hide their conduct. For example, handwritten notes on a May 2017 Sandoz presentation stated, "Avoid Fair Share terminology – underdeveloped or overdeveloped is better."

**THE DEFENDANTS' CONSPIRACY HAS BEEN EFFECTIVE AND WILL HAVE A LASTING IMPACT ON THE INDUSTRY**

268. As a result of the conspiracy, the defendants maintain supracompetitive prices for generic drugs purchased in the private sector in Canada.

269. Since 2007, public drug plans have taken steps to reduce their spending on generic drugs covered by the public plans. These steps have included setting public plan reimbursement rates as a percentage of the brand-name drug price. In 2012, Canadian provinces and territories formed the pCPA to increase the bargaining power of public plans. In 2013, the pCPA set the reimbursement level of six generic drugs representing 20 percent of public spending on generic drugs at 18 percent of the brand-name price. And in 2014, the pCPA introduced a tiered reimbursement model.

270. Despite these efforts by public plans to reduce the amount the public plans reimbursed for generic drugs, the defendants' conspiracy successfully imposed supracompetitive prices on the class members' purchases in the private sector.

271. The prices paid for generic drugs in the private sector during the Class Period have been higher than the prices paid by the public plans. During the Class Period, the average drug cost per unit in private plans was significantly higher than the acquisition cost reimbursed by public drug plans.

272. In the years from 2007 leading up to the Class Period, total Canadian generic drug prices including private sector purchases, and purchases of 18 of the most common drugs under public plans only, tracked each other relatively closely. The total prices including private sector purchases were on average 4 percent higher than the public reimbursement prices for the 18 common drugs. Beginning in 2012 and during the Class Period, however, there was a break in this relationship. During the Class Period, the total prices including the private sector were on average 15 percent higher than the public reimbursement prices for the 18 common drugs, indicating a break and inflation of prices in the private sector of over 11 percentage points.

273. In addition, during the Class Period, the prices paid for generic drugs in Canada were significantly higher than the prices paid for generic drugs in foreign countries. This was despite the efforts by public drug plans to reduce their spending for generic drugs, which further indicates supracompetitive pricing for class members' purchases of generic drugs in the private sector.

274. The PMPRB uses seven foreign countries that, like Canada, have high research and development costs as comparative benchmarks for Canadian prescription drug pricing. These countries, called the "PMPRB7," are Italy, France, Germany, Sweden, Switzerland, the United Kingdom, and the United States.

275. During the Class Period, generic drug prices in Canada were 11 percent higher than the average generic drug prices for the PMPRB7 countries.

276. When the median price is used, generic drug prices in Canada were 30 percent higher than the median generic drug prices for the PMPRB7 countries. Canada's 30

percent price inflation when measured against the median price is especially significant, because the use of the median price reduces the effect of outliers, most predominantly the United States. Because the conspiracy is known to have impacted prices in the United States as well, by reducing the effect of U.S. prices when measuring the impact on Canadian prices, the result strongly suggests that the price inflation caused by the conspiracy in Canada far exceeded 11 percent.

277. The supracompetitive prices paid for generic drugs in Canada are even more pronounced when compared to the generic drug spending per capita of 28 member countries of the Organisation for Economic Co-operation and Development (“OECD”) that were chosen for a study. During the Class Period, the spending per capita for generic drugs in Canada was 45 percent higher than the average spending per capita by the 28 OECD countries, and 55 percent higher than the median spending per capita.

278. Public drug plans in Canada were not able to act as a sufficient price constraint to avoid the injury caused by the conspiracy on prices paid by class members in the private sector. Public plan policies designed to lower generic drug costs have not generated strong competition among generic drug manufacturers, because maximum cost reimbursement policies by public drug plans provide limited incentives for generic drug manufacturers to compete on price by offering lower prices, or to do so for prices paid in the private sector. In addition, the tiered reimbursement framework by public drug plans can result in higher reimbursement amounts in the public sector when there are fewer generic drug manufacturers.

279. The conspiracy remains in either force or effect, or both, as of the date of this statement of claim. Prices paid by class members for generic drugs in the private sector continue to remain at supracompetitive levels.

#### **THE GENERIC DRUG INDUSTRY IS CONDUCTIVE TO COLLUSION**

280. The Canadian market for generic drugs has been characterized by several factors that facilitated the defendants' conspiracy. These factors include (1) high industry concentration; (2) sufficient numbers to drive competition absent conspiracy; (3) significant barriers to entry; (4) demand inelasticity, lack of substitutes, and interchangeability; and (5) many opportunities to collude.

281. **High market concentration.** The market for generic drugs is highly concentrated. Conspiracies can be easier to implement and sustain when the conspiring parties control more of the market. The defendants are estimated to control over 80 percent of the Canadian generic drug market. In 2007, the two leading suppliers for a typical generic drug accounted for 84 percent of sales. The top four suppliers accounted for 96 percent.

282. **Sufficient numbers for competition absent conspiracy.** The numbers of defendant generic drug manufacturers are small enough to foster collusion. But the numbers of manufacturers are sufficient to suggest that, absent the conspiracy, prices for generic drugs would have been much lower.

283. **Significant barriers to entry.** The generic drug industry has substantial barriers to entry. Barriers to entry prevent new competitors from entering the market,



which restricts competition in the market and makes it easier for the existing firms to conspire. Costs of manufacturing, intellectual property, and regulatory oversight create substantial barriers to entry in the generic drug industry.

284. **Inelastic demand.** Generic drugs are a commodity product marked by inelastic demand, lack of substitutes, and interchangeability. Markets for commodity products are conducive to collusion, because the competition is based mainly on price, rather than other attributes such as quality or service, which makes a conspiracy easier to monitor and enforce. Generic drugs are medically appropriate to the health of the patients for whom they are prescribed. Generic drugs must be the therapeutic equivalent of their brand-name counterparts, making each generic drug interchangeable with every other generic drug of the same dosage strength.

285. **Many opportunities to collude.** As alleged in further detail above, there is a high level of communications among generic drug manufacturers, and there are numerous opportunities for such communications through various trade association and other meetings.

#### **DISCOVERY WILL ESTABLISH THE FULL SCOPE OF THE CONSPIRACY**

286. Discovery will determine the full scope of the conspiracy.

287. Discovery will be available from the defendants and other sources. Data about the generic drug industry is maintained by the defendants, class members, IMS Health, the National Prescription Drug Utilization Information System (“NPDUIS”) Database at the Canadian Institute for Health Information, and other sources.

288. The conspiracy described in this claim remains the subject of ongoing investigations by the U.S. state attorneys general and Department of Justice. The plaintiff reserves the right to amend or supplement the allegations in this claim as further information becomes available.

### **INJURY AND DAMAGES**

289. As a result of the defendants' conspiracy, the prices for generic drugs were fixed, maintained, increased, or controlled.

290. During the Class Period, the plaintiff and class members purchased generic drugs for prices higher than they would have paid in the absence of the conspiracy. As a result, the plaintiff and class members suffered damages.

291. The overcharge to the plaintiff and class members is the difference between the price actually paid as a result of the conspiracy and the price that would have been paid in the absence of the conspiracy.

292. The overcharge is capable of being quantified on an aggregate basis, and the amounts payable to the class in respect to damages may be calculated on an aggregate basis pursuant to section 334.28 of the *Federal Courts Rules*.

### **DISCOVERABILITY AND FRAUDULENT CONCEALMENT**

293. The plaintiff and class members reasonably considered generic drug pricing to be in accordance with the law. A reasonable person in the circumstances of the plaintiff or class members would not have been alerted to investigate the lawfulness of generic drug pricing.

294. The plaintiff and other class members did not discover, and they could not have discovered through the exercise of reasonable diligence, the existence of the illegality of generic drug pricing before filing this claim.

295. The defendants actively, intentionally, and fraudulently concealed the existence of their illegal conduct from the public, including the plaintiff and class members. The defendants represented to consumers that their generic drug pricing was in accordance with the law, thereby misleading the plaintiff and the class.

296. The defendants' acts alleged herein, including all acts in furtherance of their conspiracy, were carried out in a manner intended to preclude detection of the conspiracy. The illegality of generic drug pricing was self-concealing.

297. The plaintiff and class members were unaware of the unlawful nature of generic drug pricing until filing this claim.

**BREACH OF THE *COMPETITION ACT***

298. The defendants conspired, agreed, or arranged:

- (1) to fix, maintain, increase, or control generic drug prices;
- (2) to allocate sales, territories, customers, or markets for generic drugs;  
and
- (3) to fix, maintain, control, prevent, lessen, or eliminate the production or supply of generic drugs.

299. The defendants implemented a foreign directive, instruction, intimation of policy, or other communication, which communication was for the purpose of giving effect to a conspiracy, combination, agreement, or arrangement entered outside Canada that, if entered in Canada, would have been in contravention of section 45 of the *Competition Act*.

300. The acts of the defendants described herein are in breach of sections 45 and 46 of part VI of the *Competition Act*.

301. The defendants' conduct caused loss and damage to the plaintiff and the class. The defendants are jointly and severally liable to pay damages to the plaintiff and the class, as well as the full cost of the investigation, pursuant to section 36 of the *Competition Act*.

#### PLACE OF TRIAL

302. The plaintiff proposes that this action be tried in Toronto, Ontario.

Date: June 3, 2020

  
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Lawyers for the Plaintiff

**FEDERAL COURT**  
**PROPOSED CLASS PROCEEDING**  
Proceeding commenced at TORONTO

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B E T W E E N :

KATHRYN EATON

Plaintiff

and

TEVA CANADA LIMITED, TEVA PHARMACEUTICALS USA, INC.,  
ACTAVIS HOLDCO U.S., INC., ACTAVIS ELIZABETH LLC, ACTAVIS  
PHARMA, INC., ACTAVIS PHARMA COMPANY, BARR  
PHARMACEUTICALS, LLC, AKORN, INC., AKORN SALES, INC.,  
HI-TECH PHARMACAL CO., INC., AMNEAL PHARMACEUTICALS,  
INC., IMPAX LABORATORIES, INC., APOTEX INC., APOTEX CORP.,  
AUROBINDO PHARMA USA, INC., AURO PHARMA INC., AVET  
PHARMACEUTICALS INC., MARCAN PHARMACEUTICALS INC.,  
BRECKENRIDGE PHARMACEUTICAL, INC., DR. REDDY'S  
LABORATORIES, INC., DR. REDDY'S LABORATORIES CANADA  
INC., GLENMARK PHARMACEUTICALS INC., USA, GLENMARK  
PHARMACEUTICALS CANADA INC., LANNETT COMPANY, INC.,  
LUPIN PHARMACEUTICALS, INC., LUPIN PHARMA CANADA LTD.,  
MAYNE PHARMA INC., MYLAN N.V., MYLAN PHARMACEUTICALS  
ULC, MYLAN INC., MYLAN PHARMACEUTICALS INC., MYLAN  
INSTITUTIONAL INC., DAVA PHARMACEUTICALS, LLC, GENERICS  
BIDCO I, LLC, PAR PHARMACEUTICAL COMPANIES, INC., PAR  
PHARMACEUTICAL, INC., PERRIGO INTERNATIONAL INC.,  
PERRIGO NEW YORK, INC., PFIZER INC., PFIZER CANADA  
ULC/PFIZER CANADA SRI, GREENSTONE LLC, SANDOZ INC.,  
SANDOZ CANADA INC., FOUGERA PHARMACEUTICALS INC., SUN  
PHARMACEUTICAL INDUSTRIES, INC., SUN PHARMA CANADA  
INC., TARO PHARMACEUTICALS INC., TARO PHARMACEUTICALS  
U.S.A., INC., TELIGENT, INC., TELIGENT CANADA INC.,  
UPSHER-SMITH LABORATORIES, LLC, WOCKHARDT USA LLC,  
MORTON GROVE PHARMACEUTICALS, INC., and ZYDUS  
PHARMACEUTICALS (USA), INC.

Defendants

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**STATEMENT OF CLAIM**

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