UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A.F. of L. – A.G.C. BUILDING TRADES WELFARE PLAN, individually and on behalf of itself and all others similarly situated, Plaintiff, v. FOREST LABORATORIES, LLC, Defendant.	**C.A. No. _____** **NOTICE OF REMOVAL** **JURY TRIAL DEMANDED**

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK:

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, Defendant Forest Laboratories, LLC ("Forest") hereby invokes this Court's jurisdiction and removes the action titled *A.F. of L. – A.G.C. Building Trades Welfare Plan v. Forest Laboratories, LLC*, currently pending in the Supreme Court of the State of New York, New York County: Commercial Division, Index No. 650896/2020 (the "State Action"), to the United States District Court of the Southern District of New York.

Removal is appropriate for the following reasons:

STATEMENT OF THE CASE

I. Procedural Background

1. On February 7, 2020, plaintiff A.F. of L. – A.G.C. Building Trades Welfare Plan ("Plaintiff") filed this State Action in the Supreme Court of the State of New York, New York County: Commercial Division.

2. On February 11, 2020, Plaintiff amended the State Action summons and served Forest with a copy of the complaint and summons via its registered agent in New York.

3. True and correct copies of all state court process, pleadings, and orders served on Forest in connection with the State Action are attached collectively hereto as **Exhibit 1**. *See* 28 U.S.C. § 1446(a). A true and correct copy of the docket in the State Action is attached hereto as **Exhibit 2**.

4. This Notice of Removal is timely because it is filed within thirty days of service of the summons and initial pleadings. *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999); 28 U.S.C. § 1446(b).

5. Pursuant to 28 U.S.C. § 1446(d), Forest will promptly notify Plaintiff in writing of the filing of this Notice of Removal.

6. Pursuant to 28 U.S.C. § 1446(d), Forest will also promptly file a copy of this Notice of Removal with the Clerk of the Supreme Court of the State of New York, New York County: Commercial Division.

II. Citizenship of the Parties

7. There is one plaintiff in this action: A.F. of L. – A.G.C. Building Trades Welfare Plan.

8. Plaintiff alleges that "Plaintiff A.F. of L.-A.G.C. Building Trades Welfare Plan . . . is a self-insured health and welfare benefit plan with its principal place of business in Mobile, Alabama." Ex. 1 at 7.

9. There is one defendant in this action: Forest Laboratories, LLC.

10. Forest Laboratories, LLC merged with and into Allergan Sales, LLC, whose address is 5 Giralda Farms, Madison, New Jersey 07940. Allergan Sales, LLC's members are citizens of California and Delaware.

III. Amount in Controversy

11. Plaintiff alleges that "Forest's unlawful tactics to prevent or delay a less expensive generic version of Namenda IR from timely entering the market resulted in damages of over $2 billion to consumers and third-party payors who purchased the drug." Ex. 1 at 3.

SUBJECT MATTER JURISDICTION AND BASIS FOR REMOVAL

I. Removal Jurisdiction and Venue

12. Removal of this action from the Supreme Court of the State of New York is proper under 28 U.S.C. § 1441(a) because this Court would have had original jurisdiction of the action on the basis of diversity of citizenship had the action originally been brought in this Court under the Class Action Fairness Act of 2005 ("CAFA"). 28 U.S.C. §§ 1332(d)(2), 1453(b).

13. CAFA extends federal jurisdiction to all putative class actions in which (a) there are one hundred or more members of the proposed class; (b) there is minimal diversity, meaning at least one member of the proposed class is a citizen of a state different from any defendant, and (c) the aggregated claims of the individual class members exceed the sum or value of $5,000,000. *See* 28 U.S.C. § 1332(d)(2), (5), and (6). This action satisfies all of these requirements.

14. Venue for this removal is appropriate pursuant to 28 U.S.C. § 1441(a) because this Court's jurisdiction embraces the place where the State Action is pending—the Supreme Court of the State of New York, New York County: Commercial Division.

II. CAFA Jurisdiction

A. Number of Putative Class Members

15. Plaintiff alleges that there are "hundreds of thousands, if not millions of consumers, and thousands of third-party payors" in the putative class. Ex. 1 at 30.

B. Minimal Diversity of Citizenship

16. Removal is proper under 28 U.S.C. § 1441(a) because the Court has original jurisdiction over this class action based on minimal diversity of citizenship under 28 U.S.C. § 1332(d)(2).

17. A corporation is "deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business." 28 U.S.C. § 1332(c)(1).

18. "[A] limited liability company . . . takes the citizenship of each of its members." *Bayerische Landesbank v. Aladdin Capital Mgmt. LLC*, 692 F.3d 42, 49 (2d Cir. 2012).

19. Plaintiff's principal place of business is Mobile, Alabama and thus Plaintiff is a citizen of Alabama. Whether Plaintiff is a citizen of any other State is unknown to Forest.

20. Forest is a citizen of California and Delaware.

21. There is diversity as required by 28 U.S.C. § 1332(d)(2) because Plaintiff is "a citizen of a State different" from Forest. Further, Plaintiff alleges that there are putative class members across the United States and its Territories "except Indiana and Ohio." Ex. 1 at 30.

C. Amount in Controversy

22. Because Plaintiff alleges more than $2 billion in damages, the amount in controversy alleged by Plaintiff satisfies the $5,000,000 amount in controversy requirement required under 28 U.S.C. § 1332(d)(2).

CONCLUSION

WHEREFORE, Forest removes the matter captioned *A.F. of L. – A.G.C. Building Trades Welfare Plan v. Forest Laboratories, LLC*, Index No. 650896/2020 from the Supreme Court of the State of New York, New York County: Commercial Division, to the United States District Court of the Southern District of New York.

Dated: February 28, 2020

Respectfully submitted,

/s/ Martin M. Toto

Martin M. Toto
Kristen O'Shaughnessy
WHITE & CASE LLP
1221 Avenue of the Americas
New York, New York 10020
Telephone: (212) 819-8200

Counsel for Defendant Forest Laboratories, LLC

CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2020, I caused true and correct copies of this Notice of Removal and all related documents to be served by U.S. Mail, postage prepaid, and Electronic Mail upon:

Michael M. Buchman
777 Third Avenue, 27th Floor
New York, NY 10017
mbuchman@motleyrice.com

Attorney for the Plaintiff

/s/ *Daniel J. Grossbaum*
Daniel J. Grossbaum

Exhibit 1

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: COMMERCIAL DIVISION

A.F. of L. – A.G.C. BUILDING TRADES WELFARE PLAN, individually and on behalf of itself and all others similarly situated, Plaintiff, v. FOREST LABORATORIES, LLC, Defendant.	Index No: **SUMMONS**

To the above named Defendant

Forest Laboratories, LLC
909 Third Avenue
New York, New York 10022

YOU ARE HEREBY SUMMONED and required to serve upon plaintiffs' attorney, at the address stated below, an answer to the attached complaint within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York; and in case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is Defendant's principal place of business at 909 Third Avenue, New York, New York.

Dated: New York, New York
February 7, 2020

MOTELY RICE LLC

By: */s/ Michael M. Buchman*

Michael M. Buchman
777 Third Avenue, 27th Floor
New York, NY 10017
Telephone: (212) 577-0040
Facsimile: (212) 577-0054
mbuchman@motleyrice.com

Attorneys for the Plaintiff

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: COMMERCIAL DIVISION

A.F. of L. – A.G.C. BUILDING TRADES WELFARE PLAN, individually and on behalf of itself and all others similarly situated, Plaintiff, v. FOREST LABORATORIES, LLC, Defendant.	Index No: **CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

Plaintiff A.F. of L. – A.G.C. Building Trades Welfare Plan ("Plaintiff"), on behalf itself and all others similarly situated, brings this antitrust, consumer protection and unjust enrichment class action seeking damages arising from Defendant Forest Laboratories, LLC's anticompetitive scheme to maintain its monopoly over the $1.5 billion per year market for its blockbuster Alzheimer's drug Namenda IR. Forest's unlawful tactics to prevent or delay a less expensive generic version of Namenda IR from timely entering the market resulted in damages of over $2 billion to consumers and third-party payors who purchased the drug. Forest Laboratories LLC is headquartered at 909 Third Avenue, New York New York.

PRELIMINARY STATEMENT

1. This class action is against Forest Laboratories LLC[1] ("Forest" or Defendant") concerning its anticompetitive scheme to prevent or delay a less expensive generic version of Namenda IR from entering its $1.5 billion dollar market. Namenda IR is a U.S. Food & Drug Administration ("FDA") approved oral medication prescribed by physicians to treat moderate to severe dementia in Alzheimer's patients. After approval from the FDA in October 2003, Forest

[1] Forest was acquired by, and became a wholly-owned subsidiary of, Actavis, plc on July 1, 2014; Actavis, plc began operating under the name Allergan, plc on or about June 15, 2015.

launched Namenda IR in the U.S. market in January 2004.

2. Several generic companies filed Abbreviated New Drug Applications ("ANDAs") with the FDA seeking permission to manufacture, market, and sell an AB-rated generic version of Namenda IR in the United States. The Hatch-Waxman Act, enacted in 1984, provides generic companies with an abbreviated process to quickly and cost effectively receive FDA approval to come to market. The ANDA is a "piggyback" application process allowing a generic manufacturer to rely on a branded company's initial drug application and therefore avoid lengthy and costly efficacy studies. An FDA-approved "bioequivalent" or "AB-rated" generic is every bit as safe and effective as the branded product because it contains the same active pharmaceutical ingredients and provides the same therapeutic benefits. For reasons described further below, however, generics typically cost 30-80% less than the branded equivalent.

3. Plaintiff alleges that Forest engaged in a two-part anticompetitive scheme to insulate Namenda IR from competition from these less-expensive generic versions and preserve its Namenda monopoly profits.

4. *First*, Forest commenced sham litigations against several generic pharmaceutical companies each of which filed ANDAs with the FDA to manufacture, market and sell an AB-rated generic version of Namenda IR.[2] Forest commenced the litigations to prevent or delay the generic companies from timely entering the market by exploiting a provision in the Hatch-Waxman Act under which the mere filing of these lawsuits automatically prevented the FDA from granting final approval to these generic manufacturers for 30 months.

[2] The generic manufacturers included Barr Pharmaceuticals, Inc. ("Barr"); Teva Pharmaceutical Industries, Ltd. and Teva Pharmaceuticals USA, Inc. (jointly, "Teva"); Cobalt Laboratories, Inc. ("Cobalt"); Upsher-Smith Laboratories, Inc. ("Upsher-Smith"); Wockhardt Limited and Wockhardt USA LLC (jointly, "Wockhardt"); Amneal Pharmaceuticals, LLC ("Amneal"); Sun India Pharmaceuticals Industries, Ltd. ("Sun"); and Dr. Reddy's Laboratories Ltd. and/or Dr. Reddy's Laboratories, Inc. (jointly, "Dr. Reddy's"); Mylan Pharmaceuticals, Inc. ("Mylan"); Orchid Chemicals & Pharmaceuticals Ltd. ("Orchid"); Lupin Pharmaceuticals, Inc. ("Lupin").

5. A year later, Forest ended the litigations against the generic manufacturers that posed a competitive threat by entering into anticompetitive settlement agreements that included payments to the generic manufacturers in exchange for promises to delay their market entry.[3]

6. As alleged herein, at least five generic companies agreed not to compete with Forest or each other until July 11, 2015. This allowed Forest to continue charging monopoly prices absent competition, deprived consumers and health insurers of a less expensive generic alternative while forcing them to purchase the higher priced branded product.

7. This anticompetitive conduct is antithetical to the goals of the Hatch-Waxman Act. Senator Orin Hatch has stated the Act "was not designed to allow deals between brand and generic companies to delay competition." 148 Cong Rec 14437 (2002). Similarly, Representative Henry Waxman pronounced the Act was designed "to deter companies from striking collusive agreements to trade multimillion dollar payoffs by the brand company for delays in the introduction of lower costs generic alternatives." 146 Cong Rec 18774 (2000).

8. *Second*, Forest engaged in what is known as a "product hop"—it launched a "new product" known as Namenda XR, which had the exact same active ingredient and therapeutic effect, and imposed a "hard switch" by removing Namenda IR from the market.

9. Namenda XR and Namenda IR were virtually the same product with one exception: the dosage form of Namenda XR was different. No studies were conducted to show that Namenda XR was more effective than Namenda IR. Indeed, the Second Circuit recently observed in a related injunctive relief action that "Namenda IR and Namenda XR have the same active ingredient and the same therapeutic effect." *State of New York v. Actavis*, No. 14-4624, slip

[3] *See* FTC, *Pay-For-Delay: How Drug Company Pay-Offs Cost Consumers Billions* (Jan. 2010) ("FTC Pay-for-Delay Study), *available at* https://www.ftc.gov/sites/default/files/documents/reports/pay-delay-how-drug-company-payoffs-cost-consumers-billions-federal-trade-commission-staff-study/100112payfordelayrpt.pdf

op at 16 (2d Cir. May 28, 2015). The difference was enough, however, that generic companies with AB-rated generic equivalents to Namenda IR could not have their products substituted at the pharmacy counter for Namenda XR. Put differently, Namenda XR was protected from generic competition while Namenda IR was not. Forest intended to shift all Namenda IR purchasers over to Namenda XR so that there could be *no* generic competition.

10. As two prominent antitrust scholars have noted: "[P]roduct-hopping seems clearly to be an effort to *game the rather intricate FDA rules* . . . . The [brand company] is making *a product change with no technological benefit solely in order to delay competition*. . . . [S]uch a change could qualify as a predatory product change if it lacks substantial medical benefits." Hovenkamp & Lemley, IP and Antitrust, 2006 Supplement, § 12.5 at 12-45 – 12-46 (emphasis added).

11. This anticompetitive conduct, designed to protect Forest's monopoly profits, caused the New York State Attorney General's Office to commence an injunctive relief antitrust action to compel Forest to make Namenda IR available. The Second Circuit granted a preliminary injunction requiring Forest to make Namenda IR available. With regard to the allegations in this action, the Second Circuit found the "hard switch" employed by Forest did not make economic sense "in the absence of the benefit derived from eliminating generic competition." *New York v. Actavis Plc*, 787 F. 3d. 638 (2d Cir. 2015).

12. In sum, Forest gamed the system by preventing a less expensive generic version of Namenda IR from timely entering the market.

13. Forest's anticompetitive conduct: (i) delayed entry of a less expensive, AB-rated generic versions of Namenda IR; (ii) deprived consumers of the choice of purchasing a less expensive generic alternative; (iii) fixed, raised, maintained or stabilized the price of memantine hydrochloride in the United States; (iv) allocated 100% of the United States market for memantine hydrochloride to Forest; and (v) substantially foreclosed the most effective means of

generic competition in order to preserve a greater share of that market after the belated launch of generic Namenda in July 2015.

14. As a direct and proximate result, Forest's scheme ultimately forced consumers, including highly vulnerable elderly Alzheimer's patients, and health insurers to be significantly overcharged, thereby causing them injury of the type the New York General Business Law §340 and§ 349 seek to prevent.

I. PARTIES

15. Plaintiff A.F.L.-A.G.C. Building Trades Welfare Plan (the "A.F.L. Plan") is a self-insured health and welfare benefit plan with its principal place of business in Mobile, Alabama. During the Class Period, as defined below, the A.F.L. Plan purchased, paid and/or provided reimbursement for some or all of the purchase price for Namenda IR, and/or its generic equivalent. The A.F.L. Plan paid more than it should have absent Defendant's unlawful scheme to prevent or delay generic entry and was injured as a result of the illegal and wrongful conduct alleged herein.

16. Defendant Forest Laboratories, LLC is a Delaware corporation, with its principal place of business at 909 Third Avenue, New York, New York 10022. Forest is a company engaged in the development, marketing, and distribution of branded pharmaceutical products. On July 1, 2014, Forest was acquired by, and became a wholly-owned subsidiary of, Actavis, plc. Actavis, plc began operating under the name Allergan, plc on or about June 15, 2015.

II. JURISDICTION & VENUE

17. Defendant Forest is headquartered at 909 Third Avenue, New York, New York. This court has jurisdiction pursuant to CPLR §§ 301/302. Venue is proper in this court pursuant to CPLR § 503. This Court also has nationwide jurisdiction under *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985).

III. REGULATORY FRAMEWORK

A. NDA Approval and the Hatch-Waxman Act

18. Under the federal Food, Drug, and Cosmetics Act ("FDC Act"), 21 U.S.C. §§ 301-392, a manufacturer who creates a new, pioneer drug must obtain the approval of the U.S. Food and Drug Administration ("FDA") to sell the new drug by filing a New Drug Application ("NDA"). An NDA must include submission of specific data concerning the safety and efficacy of the drug, as well as any information on applicable patents.

19. Upon FDA approval of a brand-name manufacturer's NDA, it is published in the "Approved Drug Products with Therapeutic Equivalence Evaluations" (commonly referred to as the "Orange Book"). The Orange Book lists any patents: (i) that the brand-name manufacturer claims the approved drug or its approved uses; and (ii) for which "a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug." 21 U.S.C. § 355(b)(1); 21 U.S.C. § 355(j)(7)(A)(iii).

20. In 1984, Congress amended the FDC Act with the enactment of the Drug Price Competition and Patent Term Restoration Act, Pub. L. No. 98-417, 98 Stat. 1585 (1984), commonly referred to as the "Hatch-Waxman Act."

21. The Hatch-Waxman Act simplified the regulatory hurdles for prospective generic manufacturers by eliminating the need for them to file a lengthy and costly NDA in order to obtain FDA approval. The Act provides an expedited review process by which generic manufacturers may file an Abbreviated New Drug Application ("ANDA").

22. The ANDA relies on the scientific findings of safety and efficacy included by the brand-name drug manufacturer in the original NDA. The ANDA filer, however, must scientifically demonstrate to the FDA that the generic drug, which is going to market, is just as safe and effective as the corresponding brand-name drug through demonstrations of

bioequivalence. A demonstration of bioequivalence means that, within certain set parameters of variability, the generic product delivers the same amount of active ingredient into the patient's blood stream for the same amount of time as the corresponding brand drug. The range of acceptable variability afforded to generic drugs for demonstrating bioequivalence is the same lot-to-lot (i.e., batch-to-batch) range of variability afforded to brand companies when manufacturing their own brand drug.

23. ANDA filers that demonstrate bioequivalence seek to have their generic products deemed to be "AB-rated" to the corresponding brand-name drug, sometimes referred to as the "reference listed drug." AB-rated generics are those that have been determined by the FDA to be therapeutically equivalent (*i.e.*, bioequivalent) and pharmaceutically equivalent to their brand-name counterparts. Pharmaceutical equivalence means the generic drug and branded reference listed drug have, among other things, the same active ingredient, same strength, same route of administration, and same dosage form. Generic drugs that do not fulfill all of these requirements cannot be deemed to be AB-rated to the targeted reference listed drug.

24. The only relevant difference between brand name drugs and their corresponding generic versions is the price. When there is a single generic competitor, generics are typically at least 25% less expensive than the brand name version. This discount reaches 50% to 80% when multiple generic competitors enter the market. Within the first six months after a generic version of a brand name drug hits the market, it frequently captures 80% or more of the market. This results in dramatic savings for consumers. A Federal Trade Commission ("FTC") study found that within a year of generic entry, on average, generics captured 90% of brand drug sales and multiple generics entering the market resulted in an 85% drop in prices.[4]

[4] *See* FTC, *Pay-For-Delay: How Drug Company Pay-Offs Cost Consumers Billions* (Jan. 2010) ("FTC Pay- for-Delay Study), *available at* https://www.ftc.gov/sites/default/files/documents/

25. To encourage generic manufacturers to seek timely generic market entry, the Hatch-Waxman Act generally grants the first ANDA filer(s) a 180-day exclusivity period to market the generic version of the drug, during which the FDA may not grant final approval to any other generic manufacturer's ANDA for the same brand-name drug. 21 U.S.C. § 355(j)(5)(B)(iv) and 21 U.S.C. § 355(j)(5)(D).

26. An AB rating is particularly significant to a generic manufacturer because, under the statutory regime enacted by Congress (*i.e.*, the Hatch-Waxman Act) and most state legislatures (i.e., Drug Product Selection laws, or "DPS laws"), pharmacists may (and, in most states, must) substitute an AB-rated generic version of a drug for the brand-name drug without seeking or obtaining permission from the prescribing doctor. Indeed, both Congress and state legislatures have actively encouraged generic substitution because of their recognition that the economics of the pharmaceutical industry prevent generic manufacturers from simultaneously: (i) engaging in the type of heavy promotion or "detailing" typically done by brand-name manufacturers; and (ii) providing the enormous cost savings to purchasers and consumers generated by generic drugs.

27. Generic competition enables end-payors to: (i) purchase generic versions of brand-name drugs at substantially lower prices; and/or (ii) purchase the brand-name drug at reduced prices. However, until generic manufacturers enter the market with an AB-rated generic, there is no bioequivalent generic drug that competes with the brand-name drug and, therefore, the brand-name manufacturer can continue to charge supracompetitive prices profitably. Consequently, brand-name drug manufacturers have a strong incentive to use various anticompetitive schemes, including the tactics alleged herein, to delay the introduction of AB-

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rated generic competition into the market.

B. AB-Rated Generic Versions of Brand-Name Drugs Are Significantly Less Expensive and Viewed By Pharmaceutical Companies As A Competitive Threat

28. A 1998 Congressional Budget Office Report estimated that in 1994 alone, American consumers saved $8 billion to $10 billion due to competition from lower-priced AB-rated generic drugs. As set forth *infra*, however, these consumer savings mean lower profits for brand name drug companies. It is well-established that when AB-rated generic entry occurs, the brand name drug company suffers a rapid and steep decline in sales and profits on its reference listed drug.

29. Since passage of the Hatch-Waxman Act, every state has adopted substitution laws that either require or permit pharmacies to substitute AB-rated generic equivalents for branded prescriptions (unless the prescribing physician has specifically ordered otherwise).

30. The threat of AB-rated generic competition thus creates a powerful incentive for brand companies to protect their revenue streams. This incentive can prompt brand companies to create innovative new products or new versions of old products that offer no real medical benefits to patients. It may also drive brand companies to seek to obstruct generic drug competition by engineering unlawful, anticompetitive schemes to delay or prevent less expensive generic equivalents from entering the market, including by entering into unlawful agreements, intended to interfere with the normal brand-to-generic competition contemplated and encouraged by the Hatch-Waxman Act and various state laws.

31. Such tactics can be an effective, *albeit* anticompetitive, way to "game the regulatory structure" that governs the approval and sale of generic drugs, thereby frustrating the intention of federal and state law designed to promote and facilitate price competition in pharmaceutical markets.

C. The Hatch-Waxman Amendments

32. The Hatch-Waxman Amendments simplified the regulatory hurdles for prospective generic manufacturers by eliminating the need for them to file lengthy and costly NDAs. *See* Drug Price Competition and Patent Term Restoration Act, Pub. L. No. 98-417, 98 Stat. 1585 (1984). A manufacturer seeking approval to sell a generic version of a brand drug may instead file an ANDA. An ANDA relies on the scientific findings of safety and effectiveness included in the brand manufacturer's original NDA, must further show that the generic drug contains the same active ingredient(s), dosage form, route of administration, and strength as the brand drug, and is absorbed at the same rate and to the same extent as the brand drug. This establishes that the generic drug is pharmaceutically equivalent and bioequivalent (together, "therapeutically equivalent") to the brand drug. The FDA assigns generic drugs that are therapeutically equivalent to and are of the same dosage strength and form as their brand counterpart an "AB" rating.

33. The Food Drug and Cosmetic Act and Hatch-Waxman Amendments operate on the proven scientific principle that bioequivalent drug products containing identical amounts of the same active ingredients, having the same route of administration and dosage form, and meeting applicable standards of strength, quality, purity and identity, are therapeutically equivalent and may be substituted for one another. Bioequivalence demonstrates that the active ingredient of the proposed generic drug would be present in the blood of a patient to the same relative extent and for the same amount of time as the brand counterpart. 21 U.S.C. § 355G)(8)(B).

34. Congress enacted the Hatch-Waxman Amendments to expedite the entry of less-expensive generic competitors to brand drugs, thereby reducing healthcare expenses nationwide. Congress also sought to protect pharmaceutical manufacturers' incentives to create new and

innovative products.

35. The Hatch-Waxman Amendments achieved both goals, advancing substantially the rate of generic product launches, and ushering in an era of historic high profit margins for brand manufacturers. In 1983, before the Hatch-Waxman Amendments, only 35% of the top-selling drugs with expired patents had generic alternatives; by 1998, nearly all did. In 1984, prescription drug revenue for brand and generic drugs totaled $21.6 billion; by 2013, total prescription drug revenue had climbed to more than $329.2 billion, with generic drugs accounting for 86% of prescriptions.[5] Generics are now dispensed 95% of the time when a generic form is available.[6]

D. ANDA Paragraph IV Certification

36. If a generic manufacturer files a Paragraph IV ANDA, it must notify the brand manufacturer, and the brand manufacturer can delay FDA approval of the ANDA simply by suing the ANDA applicant for patent infringement. If the brand manufacturer initiates a lawsuit against the generic filer within forty-five days of receiving notification of the ANDA filing, the FDA will not grant final approval to the ANDA until the earlier of: (i) the passage of 30 months; or (ii) the issuance of a decision by a court that the generic can lawfully enter the market. 21 U.S.C. § 355(j)(5)(B)(iii). Until one of those conditions occurs, the FDA may grant "tentative approval" but cannot authorize the generic manufacturer to market its product (i.e., grant final approval). The FDA may grant an ANDA tentative approval when it determines that the ANDA would otherwise be ready for final approval but for the 30 month stay.

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[5] See IMS Institute for Healthcare Informatics, *Medicine Use and Shifting Costs of Healthcare*, at 30, 51 (Apr. 2014), *available at* https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/IMSMedicine%20use%20and%20shifting%20cost%20of%20healthcare.pdf

[6] *Id.* at 51.

a. First-filer's 180-day exclusivity period

37. Generics may be classified as: (i) first-filer generics; (ii) later generic filers; and (iii) the brand's own authorized generic.

38. To encourage manufacturers to seek approval of generic versions of brand drugs, the Hatch-Waxman Amendments grant the first generic manufacturer who files an ANDA with a Paragraph IV certification (the "first-filer") a 180-day period to exclusively market the generic version of the drug, during which the FDA may not grant final approval to any other generic manufacturer's ANDA for the same brand drug. 21 U.S.C. § 355(j)(5)(B)(iv) and 21 U.S.C. § 355(j)(5)(D). Two or more companies can be first-filers if they file first on the same day.

39. The Supreme Court has recognized that "this 180-day period of exclusivity can prove valuable, possibly worth several hundred million dollars" to the first filer.[7]

E. Brand and Generic Companies Have Strong Financial Incentives to Agree to Anticompetitive Terms

40. An anticompetitive agreement entered into between the brand and first-filer generic(s) often subjects later ANDA filers to the delayed entry date agreed to between the brand manufacturer and its conspiring first-filer generic(s).

41. In the absence of an anticompetitive agreement between the brand company and the first-filers, the later ANDA filers have procompetitive incentives. They are motivated to expend resources to challenge the brand company's patent (knowing that the first-filer generic is also fighting a patent infringement suit) and to enter the market as early as possible.

42. Thus, some later generics decide to simply give in to, or even join, the conspiracy between the brand company and the first-filer generics and drop their challenges to the brand's patents and stay off the market until after entry by the first-filers.

[7] *FTC v. Actavis, Inc.*, 570 U.S., 133 S. Ct. 2223, 2229 (2013).

43. Such agreements are fundamentally anticompetitive and are contrary to the goals of the Hatch-Waxman statutory scheme. In particular, they extend the brand manufacturer's monopoly profits by blocking access to more affordable generic drugs, forcing purchasers to buy the expensive brand instead.

44. The unlawful agreements brokered by Forest have resulted in many years of unlawful monopolization in the market for Namenda IR and its AB-rated generic equivalents.

IV. STATEMENT OF FACTS

A. Forest Brings Namenda to Market

45. On or about June 2000, Merz, a German company, and Forest entered into a license and cooperation agreement for the development of memantine hydrochloride to be used for the treatment of Alzheimers. Memantine hydrochloride had been marketed in Germany since the 1990s for the treatment of dementia. Pursuant to this license and cooperation agreement, Forest obtained exclusive rights to market a memantine product in the United States.

46. In December 2002, Forest submitted an NDA to the FDA seeking approval to manufacture, market and sell memantine hydrochloride tablets (5mg and 10mg) for the treatment of Alzheimers in the United States.

47. Forest's NDA No. 21-487 was approved in October 2003 for Namenda immediate release (IR) tablets.

48. Forest brought Namenda to the United States market in January, 2004. In March of 2009, Forest obtained a five year extension to exclusively sell Namenda in the United States until April 11, 2015. It received an additional six months of exclusivity for Namenda IR tablets based upon memantine hydrochloride pediatric studies in patients with autism. 21 U.S.C. § 355a. The FDA granted Forest's request on June 18, 2014 to extend Namenda IR exclusivity to October, 2015.

B. The Anticompetitive Reverse Payments

1. Forest Brings Lawsuits Against Paragraph IV ANDA Filers Triggering the Hatch-Waxman Thirty Month Stay

49. In or around October 16, 2007, at least fourteen generic manufacturers filed ANDAs with FDA seeking to manufacture, market and sell AB-rated generic versions of Namenda IR.

50. Forest filed lawsuits in accordance with the Hatch-Waxman Act in the United States District Court for the District of Delaware against Barr, Cobalt, Lupin, Orchid, Teva, Orgenus, Upsher-Smith and Wockhardt. The lawsuits triggered a Hatch-Waxman 30-month stay preventing the FDA from approving any of the aforementioned generics' ANDAs for AB-rated equivalents to Namenda tablets. These lawsuits were consolidated in June, 2008 under lead case No. 08-cv-00021 (D. Del).

51. Also in January 2008, Forest filed lawsuits in accordance with the Hatch-Waxman Act in the United States District Court for the District of Delaware against Dr. Reddy's, Genpharm, Interpharm (for whom Amneal was later substituted), Mylan, Ranbaxy, and Sun., Forest similarly triggered automatic 30 month Hatch-Waxman stays, continuing through mid-2010, during which time the FDA could not approve any of the aforementioned generics' ANDAs for AB-rated equivalents to Namenda tablets. These lawsuits were later consolidated under lead case no. 08- cv-00052 (D. Del.).

2. Forest Enters Into Anticompetitive Agreements Prior to the Expiration of the Thirty-Month Stays.

52. On information and belief, the 30-month stays, barring the FDA from granting the first-to-file generic ANDA's final approval, would begin to expire on or about April 2010.

53. Forest knew the litigations it commenced against the generic companies were weak and it would be subject to defenses in those cases that would pose serious risk to Forest.

54. Forest settled approximately a dozen patent infringement lawsuits with generic challengers in the one-year period leading up to the anticipated expiration of the 30-month stays in mid-2010.[8] By that time, all challenges brought by potential first-filing generic manufacturers seeking to market generic versions of immediate release Namenda tablets were settled and dismissed.

55. Forest settled with the following generic companies on or about the following approximate dates:

- Cobalt and Teva (July, 2009);
- Upsher-Smith, Wockhardt, Amneal and Apotex (September, 2009);
- Sun Pharmaceuticals (October, 2009);
- Lupin and Dr. Reddy's (December, 2009);
- Orchid (April, 2010); and
- Mylan (July, 2010).

56. Forest entered into licensing agreements with Teva (including Barr, which had become a subsidiary of Teva), Amneal, Dr. Reddy's, Sun, Upsher-Smith, Watson, and Wockhardt whereby they agreed to delay competing against Forest and one another until July 11, 2015.

57. There were a number of "first filer" generic companies that filed ANDAs on the very same day. These generic companies were highly motivated to enter the market as quickly as possible. It makes little economic sense that so many percipient competitors who were on the brink of a 2010 trial would forgo early market entry unless they received some financial benefit from Forest.

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[8] *See* Forest's September 2009 Form 10Q filed with the United States Securities and Exchange Commission, pp. 15-16, *available at* http://www.sec.gov/Archives/edgar/data/38074/ 000003807409000048/forest10qsep09.htm; Forest press release dated July 22, 2010, available at http://investor.frx.com/pressrelease/corporate-news/forest-laboratories-inc-and-merz-pharma-gmbh-co-kgaa-settle-namendapat.

58. As rational economic actors who filed early ANDAs seeking aggressive market entry, they must have been provided some form of payment or *quid pro quo* from Forest to induce these competitors to refrain from timely entering the market.

59. On information and belief, these settlements were negotiated in coordination with one another to ensure that no potential generic competitor obtained an advantage over another.

60. "Acceleration clauses" (if one generic came to market early, all could come to market at the same time) were likely the mechanism by which individual market delay concessions were knit together in a network of related, horizontal agreements among direct competitors.

61. On information and belief, the "acceleration clauses" contained an identical, or nearly identical, contingent launch provision. That is, each agreement provided that the given generic manufacturer may enter the market on the earlier of: (a) the expiration of the agreed delay period, or (b) the date on which any other generic manufacturer launches a generic product. Such agreements were anticompetitive because each generic company would not have agreed to a July 11, 2015 entry date without the assurance that a generic competitor could not come to market earlier. It is, therefore, patently clear, the contingent launch provisions were the mechanism to facilitate a coordinated or collusive agreement – the means by which individual market delay concessions were knit together in a network of related, horizontal agreements among direct competitors.

62. On information and belief, Forest additionally provided undisclosed amounts of cash to each settling generic. In exchange, the foregoing generic defendants agreed to refrain from launching their generic products until the exact same day approximately five years later.

63. Upon information and belief based on documents from an earlier action, the aggregate anticompetitive payments Forest made to generic competitors constituted tens of

millions of dollars. For example, evidence that a $32.5 million payment from Forest to Mylan bought Mylan's promise to delay generic entry was enough to overcome a summary judgment in a related litigation. *See In re Namenda Direct Purchaser Antitrust Litigion*, 331 F. Supp. 3.d 152, 199 (2018).

64. Forest settled approximately a dozen patent infringement lawsuits with generic challengers in the year leading up to the anticipated expiration of the 30-month stays in mid-2010. No generic version of immediate release Namenda tablets reached the market until July 11, 2015.

65. But for these agreements, Forest and each generic company would have entered into settlements that were less restrictive of competition i.e. resulting in much less delay of generic entry. Generic competitors would have aggressively negotiated to come to market sooner because one or more: (i) would have prevailed in their respective litigations; (ii) would have launched "at risk" prior to the resolution of their respective litigation; or (iii) Forest would have settled a litigation legally with an earlier generic entry date.

66. In approximately January of 2010, the FDA tentatively approved several generic ANDAs including those of Orchid, Lupin, Wockhardt, and Amneal (formerly Interpharm), meaning that these ANDAs were otherwise ready for final approval. They could not, however, receive final approval until the expiration of the 30 month stay.

67. For example, Teva received tentative approval in March 2010, followed by Mylan, Sun and Upsher-Smith in April 2010.

68. On or about April 14, 2010, Dr. Reddy's received final FDA approval of its ANDA for 5 and 10 mg strength generic Namenda IR tablets.

69. On or about May 5, 2010, Sun received final FDA approval of its ANDA for 5 and 10 mg strength generic Namenda IR tablets.

70. On or about October 25, 2011, Teva received final FDA approval of its ANDA for 5 and 10mg strength generic Namenda tablets.

71. On or about March 12, 2012, Orchid received final FDA approval of its ANDA for 5 and 10 mg strength generic Namenda tablets.

72. Early ANDA filers received final FDA approval on the following dates: Dr. Reddy's on April 14, 2010; Sun on May 5, 2010; Teva on October 25, 2011; Orchid on March 12, 2012; Amneal on April 10, 2015; and Lupin on April 10, 2015. Mylan received tentative approval of its ANDA on April 2, 2010, with final approval following on January 30, 2015. Upsher-Smith received tentative approval of its ANDA on April 15, 2010, with final approval following on July 31, 2015..

73. No generic launched, however, until July 11, 2015.

C. The Unlawful Product Hop from Namenda IR Tablets to Namenda XR

1. The Switch Strategy

74. Branded companies will sometimes create new products, with little or no consequential value, in order to protect their monopoly by switching patients over to a more protected product. This is sometimes referred to as a "product hop" as patients hop from one older product where generic entry is imminent to one where there can be no generic competition. Once a brand manufacturer has successfully achieved a switch from an older product to a new product, it can expect that most "switched" patients will not make a second switch back.

75. To facilitate a "switch" there are various tactics that a branded manufacturer may use to try to encourage physicians and patients to switch to its new follow-on drug prior to generic entry. A brand company may *aggressively promote* the follow-on drug and stop marketing the original drug. The company will typically advocate to physicians that the new product is superior and should be prescribed instead of the original.

76. Alternatively, it may also *force* physicians and patients to make the switch to the new drug by announcing that the original product will be discontinued on a specified future date, thereby restricting the distribution and availability of the original drug, or completely removing the original product from the market leaving patients with no other option but to switch. This is known as a "hard switch."

77. To facilitate a successful "hard switch" strategy it is important that the branded drug manufacturer take action before a generic enters the old market. Since the branded manufacturer controls all drug sales for the original drug prior to generic entry, it can use the tactics described above effectively to move patients from one of its own drugs to its other new drug. But, again, the branded company must effectively shift the market over to the new product before generic entry. Such a shift requires time.

78. With this in mind, Forest developed a reformulated Namenda IR as an extended release capsule (Namenda XR) to be taken once a day instead of twice daily.

79. Forest, thereafter, implemented a "product hop" scheme designed to force physicians and patients to switch from the original version of Namenda IR to Namenda XR. Forest chose to implement a "hard switch" to force patients to switch to Namenda XR, by widely publicizing that the original version of Namenda IR would soon be discontinued. In addition, Forest also sought to have the Centers for Medicare and Medicaid Services remove Namenda IR from the reference list that health plans serving Medicare patients use to determine which drugs to approve for payment. This made Namenda IR significantly more difficult to obtain.

80. Upon information and belief, Forest also entered exclusive distribution contracts to impede access to Namenda IR which required Namenda IR to be removed from pharmacy shelves. Forest further required them to obtain physician certification that it was medically necessary for a patient to take Namenda IR specifically, instead of XR, if the product was

dispensed. Forest projected that the transaction costs of obtaining Namenda IR through this method would ensure that less than 3% of current IR users obtained IR from one or more retailers.

81. Forest's forced switch was an effort to game the regulatory system and manipulate patients and physicians through business practices that had no real business purpose other than to impede competition from less expensive generic drugs and perpetuate Forest's monopoly profits. A physician recently, aptly described Forest's conduct in a complaint to the company as immoral and unethical.[9] It also constitutes unlawful monopolization and an unreasonable restraint of trade in violation of New York General Business Law 340.

2. Forest Launches Namenda XR in June 2013 and Convert Patients

82. On August 21, 2009, Forest submitted an NDA seeking to market Namenda XR, a once-daily, extended-release reformulation of Namenda IR. This was approximately one month after resolving litigations with generic competitors. Notably, the NDA did not include any comparison studies concerning the efficacy of Namenda XR to Namenda IR.

83. The FDA approved Forest's NDA for Namenda XR on June 21, 2010. But Forest chose not to immediately launch its purportedly superior new product. The reason was simple: Forest needed time to convert the market to Namenda XR. Forest had the time necessary to convert the market because it settled the litigations with generic competitors preventing them from entering the market.

84. Although Namenda sales were lagging in the fall of 2012, Forest *did not* launch the allegedly superior Namenda XR Forest and its pharmaceutical representatives were still

[9] In addition, the media recently quoted an Alzheimer's patient describing Forest's tactic in this way: "they are yanking the rug right out from under me . . . And that is not fair play." *See* Jonathan Lapook, *Forced Switch? Drug Cos. Develop maneuvers to hinder generic competition*, CBS News, (Aug. 28, 2014), http://www.cbsnews.com/news/drug-companies-develop-maneuvers-to-hinder-generic-competition/.

engaged in the process of "educating" health plans and physicians concerning Namenda XR to ensure the success of its "hard switch" prior to generic entry.

85. But Forest needed to motivate its pharmaceutical representatives to rapidly convert the market to Namenda XR. Forest emphasized the importance of switching patients from Namenda IR to Namenda XR in internal documents, sales training, and public statements. For example, an executive made a speech at a Namenda XR launch event:

> Our mission is to convert to Namenda XR and lift the franchise as a result of increased sales calls and combination therapy usage..Make no mistake about it, this is a sprint. We need to convert as much IR business to Namenda XR as quickly as possible.

86. Another executive wrote in a draft speech:

> [T]he core of our brand strategy with XR is to convert our existing IR business to Namenda XR as fast as we can and also gain new starts for Namenda XR. We need to transition volume to XR to protect our Namenda revenue from generic penetration in 2015 when we lose IR patent exclusivity.[10]

87. To ensure conversion success, Forest also agreed to pay rebates to health plans to make sure they put Namenda XR on the same tier as Namenda IR so that members would not have an incentive to choose Namenda IR and patients did not have to pay higher co-payments for Namenda XR. Forest did not attempt to capture any added value through increased pricing of the new XR formulation, but instead raised the price of the old IR formulation in relation to the new version and provided rebates on Namenda XR solely to convert the memantine hydrochloride market from Namenda IR to Namenda XR.

3. Forest Deliberately Employed A "Hard Switch" To Forced Conversion From Namenda IR to Namenda XR

88. Forest executives had concerns that efforts to influence patients' drug choices would be insufficient prior to generic entry. Forest's internal projections estimated that only

[10] *See* Redacted Opinion Grating Preliminary Injunction at 48, *State of New York v. Actavis, et al.*, No. 14-cv-07473 (S.D.N.Y. Dec. 11, 2014) (ECF No. 80) ("*NYAG* Opinion").

30% of Namenda IR users would voluntarily switch prior to July 2015.[11] This is likely because: (i) the benefits of Namenda XR were illusory as pill reduction was inconsequential in this market;[12] (ii) Namenda XR has the exact same half-life (60 hours or more) as Namenda IR;[13] and (iii) physicians would not likely be inclined to shift vulnerable, elderly patients with Alzheimers to a new medication absent studies showing that a new medication has meaningful effects over a patient's current medication. Thus, Forest perceived that a large number of patients would stay on the original formulation unless they were forced to switch.

89. Forest began to consider whether it should force physicians and patients to switch to Namenda XR.

90. During Forest's January 21, 2014 earnings call, Mr. Saunders unabashedly explained the motivation behind the "forced switch" strategy: "[I]f we do the hard switch and we've converted patients and caregivers to once-a-day therapy versus twice a day, it's very difficult for the generics then to reverse-commute back, at least with the existing Rxs. They don't have the sales force, they don't have the capabilities to go do that. It doesn't mean that it can't happen, it just becomes very difficult. It is an obstacle that will allow us to, I think, again, go into a slow decline versus a complete cliff."[14] During these calls, Mr. Saunders never suggested that the "hard switch" would result in any cost savings or other efficiencies. Savings nor efficiencies were of no concern to Forest. Forest's desire was to convert patients to Namenda XR hoping

[11] *State of New York v. Actavis*, No. 14-4624, slip op. at 19 (2d Cir. May 28, 2015).
[12] Most Alzheimer's patients are in long-term care facilities, where the average patient takes nine pills per day. Long term care facilities generally dispense pills three times a day. *NYAG* Opinion at pp. 53-54.
[13] A medication's "half-life" is how long it takes for half of it to be eliminated from the bloodstream. In medical terms, the half-life of a drug is the time it takes for the plasma concentration of a drug to reach half of its original concentration.
[14] Forest CEO Brenton Saunders himself used the term "forced switch" in Forest's Q3 2014 Earnings Call (Jan. 21, 2014) ("We believe that by potentially doing a forced switch, we will hold on to a large share of our base users…").

that "anyone converted [to Namenda XR] is likely to stay converted."[15]

91. Forest knew that timely discontinuing or severely restricting the availability of Namenda IR was its only option as Namenda XR would become the only readily available FDA-approved NMDA antagonist (aside from the rarely prescribed Namenda oral solution). By removing Namenda IR from the market prior to generic IR entry, Forest sought to deprive consumers of choice of a lower-cost generic.[16]

4. Forest Begins to Implement the "Forced Switch" Scheme

92. On or about February 14, 2014, Forest issued a press release titled "Forest Laboratories to Discontinue Namenda tablets. Focus on once daily Namenda XR." In so doing, Forest announced its "hard switch" and that it planned to discontinue the sale of Namenda IR tablets effective August 15, 2014. The press release further indicated that the Namenda XR formulation would still be available to consumers. On the same day, Forest notified the FDA that it would "be discontinuing the sale of Namenda [IR] Tablets effective August 15, 2014." This announcement was effectively a withdrawal from the market.[17]

93. Forest also published open letters to physicians and caregivers on its website announcing its plans to discontinue Namenda IR tablets as of August 15, 2014, and urging caregivers to speak with their loved ones' "healthcare provider[s] as soon as possible to discuss switching to NAMENDA XR." Physicians interpreted the announcement as a warning to switch

[15] See Amended Complaint dated December 10, 2014, *State of New York v. Actavis*, et al., No. 1:14-07473 (S.D.N.Y.), ECF No. 70, at p.28.
[16] *See State of New York v. Actavis*, No. 14-4624, slip op. at 38 (2d Cir. May 28, 2015).
[17] *Id.* at 21. "Here, Defendant's hard switch – the combination of introducing Namenda XR into the market and effectively withdrawing Namenda IR – forced Alzheimer's patients who depend on memantine therapy to switch to XR (to which generic IR is not therapeutically equivalent) and would likely impede generic competition by precluding generic substitution through state drug substitution laws." *Id.* at 36.

their patients from Namenda IR to Namenda XR.[18]

94. Forest also took steps to make it more difficult for Namenda IR tablets, or generic memantine, to be sold to Medicare patients. This was the largest customer base for the drug. A large portion of Namenda patients have their prescriptions paid for by Medicare, the government sponsored health insurance program that provides health insurance to most Americans over 65 years of age.

95. In a letter dated February 18, 2014, Forest informed the Center for Medicare and Medicaid Services ("CMS"), that Forest was planning to discontinue Namenda IR tablets on August 15, 2014 and that CMS should remove Namenda IR tablets from the 2015 Formulary Reference File ("FRF"), which Forest knew would have the additional effect of discouraging health plans from including Namenda IR in their own formularies. As a result, health plans were more likely to discontinue covering Namenda IR tablets starting in January 2015, making it more difficult for physicians to prescribe Namenda IR.

5. Forest "Head Fakes" Discontinuation of Namenda IR To Pressure Physicians and Patients to Switch to Namenda XR

96. In mid-2014, Forest exaggerated its intent to discontinue Namenda IR.

97. In its Form 10-K filing with the Securities and Exchange Commission for fiscal year 2013 (ending March 31, 2014), Forest made multiple representations that it would discontinue Namenda IR on August 15, 2014. ("In February 2014, the Company announced that it would discontinue the sale of Namenda tablets effective August 15, 2014.").

98. There were, however, memantine supply and manufacturing problems, which posed a substantial risk that Forest would be unable to discontinue Namenda IR by August 15, 2014. At that time, Forest lacked the ability to supply the market with sufficient amounts of

[18] *NYAG* Opinion at 51.

Namenda XR to support the anticipated demand.

99. Fully committed to its anticompetitive product hop strategy, Forest decided to announce a slight delay but still maintain publicly that the discontinuation of Namenda IR was inevitable by the fall of 2014.

100. Forest regained the ability to fully supply the market with Namenda XR and announced this publicly on or about November 5, 2014.

101. Forest's discontinuation pronouncements of Namenda IR had the intended effect of forcing conversion from Namenda IR to Namenda XR.[19] The conversion rate since January 2014 increased from 15% or less[20] to about 50% in anticipation of the lack of availability of Namenda IR.[21]

102. With the time right and the generic litigations settled, Forest launched Namenda XR in June of 2013—three years after obtaining FDA approval for the drug. This extended Forest's monopoly because generic memantine tablets (generic Namenda IR tablets) *would not be AB-rated to Namenda XR*. In other words, a pharmacist *would not* be able to substitute lower-priced generic memantine (generic Namenda IR) for Namenda XR under the state substitution laws. Rather, the pharmacist would be forced to dispense Namenda XR unless the patient obtained physician consent for the substitution, which is time consuming and costly.

6. The New York State Attorney General Action

103. The New York State Attorney General's Office took interest in the "hard switch" strategy employed by Forest – a company headquartered in Manhattan.

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[19] There is no difference in coercive effect between complete discontinuation and the alternative limited distribution strategies that Forest has considered. The sole purpose of any such strategy would be to reduce antitrust scrutiny while accomplishing the exact same anticompetitive effects

[20] Forest Laboratories 3Q14 Earnings Call Transcript at 14, January 21, 2014.

[21] *See NYAG* Opinion at 85-86; *see also* Actavis plc 1Q2015 Earnings Call Transcript at 3, May 11, 2015.

104. On September 15, 2014, the New York State Attorney General's Office filed an injunctive relief action against Forest seeking to compel it to manufacture, market and sell Namenda IR in contravention of its "hard switch" plan. The complaint was filed to prevent Forest from illegally maintaining its monopoly position and inflating their profits at the expense of vulnerable, elderly patients. The New York State Attorney General's Office sought among other things, an injunction that would restrain Defendant from continuing its unlawful scheme, require them to take appropriate steps to keep Namenda IR available in the market without disruption, and let patients — and their doctors — decide which drug is right for them.

105. On December 15, 2014, Judge Sweet of the United States District Court for the Southern District of New York, finding a likelihood of success on similar antitrust product-hopping claims brought by the New York Attorney General, granted an injunction requiring Forest (and its parent company, Actavis) to continue to make Namenda IR tablets available until thirty days after July 11, 2015. The injunction was affirmed by the Second Circuit on May 22, 2015.[22] While the injunction may have blunted the future effects of Forest's product hop strategy to some extent, the anticompetitive effects of the scheme have been substantially and irreversibly accomplished because, as Forest itself acknowledged above, "anyone converted [to Namenda XR] is likely to stay converted."

7. Effects of the Product Hop Scheme

106. Namenda XR contained a different dosage form than Namenda IR. Forest exploited this difference so that generic versions of Namenda IR *would not* and *could not* be considered "AB-rated" to branded Namenda XR. Pharmacists would, therefore, be unable to legally substitute the less-expensive generic Namenda IR when presented with a prescription for

[22] *State of New York v. Actavis*, No. 14-4624 (2d Cir. May 28, 2015).

Namenda XR. The introduction of Namenda XR disrupted normal generic substitution, thereby forcing consumers and health insurers to purchase the more expensive branded product.

107. Defendant's exclusionary conduct has delayed, prevented, and impeded the sale of generic memantine hydrochloride in the United States, and unlawfully enabled Forest to sell significantly more branded memantine hydrochloride at artificially inflated prices.

108. Forest had no legitimate business purpose for implementing the "hard switch" strategy. To the extent that Forest had a valid business purpose for the switch to Namenda XR, that purpose is outweighed by the anticompetitive effects of the conduct.

109. Forest's conduct had the intended effect of allowing it to maintain and extend its monopoly and exclude competition in the relevant memantine hydrochloride market, to the detriment of all memantine hydrochloride purchasers, including Plaintiff, members of the Class.

110. There was no consumer benefit in connection with the "hard switch" strategy. The strategy eliminated consumer choice by depriving consumers of the option of purchasing a less expensive generic alternative. Forest's sole motive was to maintain its monopoly at the expense of vulnerable, elderly consumers. Forest sacrificed profits as part of the product hop strategy: Forest's decision to incur the extra costs necessary to change formulations was economically rational only if the change had the effect of excluding generic competition for Namenda IR. Forest invested the resources necessary to bring Namenda XR to the market solely to exclude generic competition. The conversion from the original Namenda formulation to the new Namenda XR formulation reduced Forest's short-term profits and made economic sense only because of the long term anticompetitive effects of obstructing generic challengers' most efficient means of competing.

V. CLASS ACTION ALLEGATIONS

111. Plaintiff brings this class action under Article 9 of the Civil Practice Law & Rules,

for itself and the following class (collectively, the "End-Payor Class" or "Class"):

> All persons or entities in the United States and its territories, except Indiana and Ohio, who indirectly purchased, paid and/or provided reimbursement for some or all of the purchase price for branded Namenda IR 5 or 10 mg tablets, or Namenda XR capsules, for consumption by themselves, their families, or their members, employees, insureds, participants, or beneficiaries, other than for resale, at any time during the period from April 14, 2010 and continuing until the anticompetitive effects of Defendant's unlawful conduct ceases (the "Class Period").
>
> The following persons or entities are excluded from the proposed class:
>
> a. Defendants and its respective subsidiaries and affiliates;
>
> b. Fully insured health care plans (i.e., health care plans that purchased insurance from a third-party payer covering 100% of a plan's reimbursement obligations to its members);
>
> c. All persons or entities that purchased branded Namenda IR 5 or 10 mg tablets, or Namenda XR capsules for purposes of resale or directly from a Defendant;
>
> d. Insured individuals covered by plans imposing a flat dollar co-pay that was the same dollar amount for generic as for brand drug purchases;
>
> e. Pharmacy benefit managers without capitation contracts; and
>
> f. All judges presiding in this case and all counsel of record.

112. Members of the End-Payor Class are so numerous that joinder is impracticable. On information and belief, the Class includes hundreds of thousands, if not millions, of consumers, and thousands of third-party payors.

113. Plaintiff's claims are typical of the claims of the members of the End-Payor Class. Plaintiff and all members of the End-Payor Class were damaged by the same wrongful conduct by Defendant, *i.e.*, as a direct and proximate result of Defendant's wrongful conduct. They paid artificially inflated prices for branded Namenda IR 5 and 10 mg tablets and Namenda XR capsules and were deprived of the benefits of earlier and robust competition from less expensive generic versions of those products.

114. Plaintiff will fairly and adequately protect and represent the interests of the Class.

Plaintiff's interests are coincident with, and not antagonistic to, the interests of the Class members.

115. Plaintiff is represented by counsel with over twenty years of antitrust pharmaceutical class action experience that have been consistently devoted to the prosecution of multi-state indirect purchaser generic drug issues.

116. Questions of law and fact common to the Class members predominate over questions that may affect only individual Class members because Defendant has acted on grounds applicable to the entire Class, making overcharge damages regarding the Class as a whole appropriate.

117. As to the Class, questions of law and fact common to the Class include, but are not limited to:

a. whether defendant conspired to restrain competition in the memantine hydrochloride market;

b. whether Forest coerced a product hop from Namenda IR to Namenda XR that was anticompetitive;

c. whether defendant's challenged conduct harmed competition in the memantine hydrochloride market;

d. whether Forest possessed market power in the memantine hydrochloride market;

e. whether the law requires definition of a relevant market when direct proof of market power or monopoly power is available and, if so, the definition of the relevant market is the memantine hydrochloride market;

f. whether, and to what extent, Defendant's conduct caused antitrust injury (i.e., overcharges) to Plaintiff and the Class members; and

g. the *quantum* of aggregate overcharge damages to Plaintiff and the Class members.

118. Class action treatment is the superior method for the fair and efficient adjudication of the controversy. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the

unnecessary duplication of evidence, effort, or expense that numerous individual actions would engender. The benefits of proceeding through the class mechanism, including providing injured persons or entities with a method for obtaining redress for claims that could not practicably be pursued individually, substantially outweigh potential difficulties in management of this class action.

119. Plaintiff knows of no special difficulty that could be encountered that would preclude its maintenance as a class action.

120. Certification of the Class is appropriate under Article 9 because the above common questions of law or fact predominate over any questions affecting individual Class members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

121. Defendant's wrongful actions apply to the Class members as a whole, for which Plaintiff seeks, *inter alia*, damages.

122. Absent a class action, Defendant would retain the benefits of its wrongdoing despite the serious violations of the law and infliction of harm on Plaintiff and Class members.

VI. MARKET POWER AND MARKET DEFINITION

123. At all relevant times, Forest had the power to maintain the price of memantine hydrochloride at supracompetitive levels without losing substantial sales to other products.

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

125. There are presently five drugs approved by the FDA for the treatment of Alzheimer's Disease: Aricept, Cognex, Exelon, Razadyne. They are not substitutes for Namenda IR.

126. As an NMDA receptor antagonist, memantine hydrochloride functions differently

than Aricept, Cognex, Exelon, and Razadyne which are acetylcholinesterase inhibitors ("AChEIs"). Memantine hydrochloride works to prevent the overstimulation of glutamate, an amino acid that excites nerves, and in excess, is a powerful nerve-cell killer. In contrast, AChEIs reduce the breakdown in the brain of a chemical called acetylcholine, a chemical messenger that transmits information between nerve cells. However, Alzheimer's destroys the cells that make acetylcholine, in turn making AChEIs less effective as the disease progresses.

127. Because of its unique profile, Namenda IR, and its AB-rated generic equivalent, is differentiated from all other products.

128. Forest needed to control only the memantine hydrochloride market to maintain monopolistic prices. Only the market entry of a competing AB-rated generic equivalent to Namenda IR would render Forest unable to profitably maintain monopolistic prices of its branded memantine hydrochloride product without losing substantial sales.

129. Forest sold branded memantine hydrochloride at prices well in excess of marginal costs and the competitive price, and enjoyed high profit margins.

130. At all relevant times, the Defendant enjoyed high barriers to entry with respect to the market for memantine hydrochloride products.

131. To the extent that Plaintiff is legally required to define a relevant product market, the relevant product market at issue in this case is the memantine hydrochloride market, which consists of Namenda IR, Namenda IR's generic equivalents and Namenda XR.

132. During the relevant time period, the Defendant was able to profitably maintain the price of its branded memantine hydrochloride products well above competitive levels.

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

134. At all relevant times, Forest has had a 100% market share in the relevant market.

VII. MARKET EFFECTS

135. Generic competitors would have entered the market with their generic versions of Namenda IR much earlier but for the unlawful anticompetitive conduct alleged above.

136. Defendant's conduct directly injured Plaintiff and End-Payor Class members because it forced them to pay over $2 billion in overcharges on their memantine hydrochloride purchases.

137. If generic competition for Namenda IR had not been unlawfully delayed, Plaintiff and the End-Payor Class would have paid less for Namenda IR by substituting purchases of less-expensive AB-rated generic equivalents of Namenda IR for their purchases of more-expensive brand Namenda XR.

138. But for the anticompetitive conduct alleged herein, Forest's efforts to switch the market from Namenda IR to Namenda XR would not have significantly affected generics' ability to make sales of generic versions of Namenda IR. Approximately ninety percent of the sales of Namenda IR would have switched to the generic version before the introduction of Namenda XR—if Namenda XR would have launched at all—at prices below any branded memantine hydrochloride product.

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

140. But for the Defendant's unlawful anticompetitive conduct, generic competition would have forced a decrease in the price of branded memantine hydrochloride, and price competition among the suppliers of branded and generic memantine hydrochloride would have been intense.

141. As a result, branded manufacturers have a significant financial interest in delaying and impairing generic competition—causing purchasers substantial economic harm.

142. Moreover, due to defendant's anticompetitive conduct, other generic manufacturers were discouraged from and/or delayed in launching generic versions of Namenda IR.

143. Thus, the Defendant's unlawful conduct deprived Plaintiff and the End-Payor Class of the benefits of competition that the antitrust laws were designed to ensure.

VIII. ANTITRUST IMPACT

144. During the relevant period, Plaintiff and members of the Class indirectly purchased, paid and/or provided reimbursement for substantial amounts of memantine hydrocholoride from Forest. As a result of Defendant's unlawful conduct, members of the Class were compelled to pay, and did pay, artificially inflated prices for memantine hydrocholoride. Those prices were substantially greater than those that members of the Class would have paid absent the illegal conduct alleged herein.

145. As a direct and proximate result, Plaintiff and members of the Class have sustained substantial losses and damage to their business and property in the form of overcharges. The full amount and forms and components of such damages will be calculated after discovery and upon proof at trial.

146. General economic theory recognizes that any overcharge at a higher level of distribution in the chain of distribution for memantine hydrocholoride results in higher prices at every level below, and that overcharges at each level are calculable.[23]

[23] *See* Herbert Hovenkamp, FEDERAL ANTITRUST POLICY, THE LAW OF COMPETITION AND ITS PRACTICE p. 624 (1994) ("[e]very person at every stage in the chain will be poorer as a result of the monopoly price at the top. . . . Theoretically, one can calculate the percentage of any overcharge that a firm at one distribution level will pass on to those at the next level.").

147. Defendant's anticompetitive conduct enabled it to charge consumers and third-party payors prices in excess of what they otherwise would have been able to charge. The inflated prices the members of the Class paid are traceable to, and the foreseeable result of, the Defendant's overcharges.

IX. EFFECTS ON INTERSTATE AND INTRASTATE COMMERCE

148. At all material times, Forest manufactured, marketed, distributed, and sold substantial amounts of Namenda IR and Namenda XR in a continuous and uninterrupted flow of commerce across state lines throughout the United States.

149. At all material times, Defendant transmitted funds, and contracts, invoices, and other forms of business communications and transactions, in a continuous and uninterrupted flow of commerce across state and national lines in connection with the sale of Namenda IR and Namenda XR.

150. In furtherance of their efforts to monopolize and restrain competition, Defendant employed the United States mail and interstate and international telephone lines, and means of interstate and international travel. Defendant's activities were within the flow of, and have substantially affected (and continue to substantially affect) interstate commerce.

151. Defendant's anticompetitive conduct had substantial intrastate effects in that retailers in New York and other states were foreclosed from offering generic Namenda IR to End-Payors inside each respective state. The complete foreclosure of generic Namenda IR directly impacted and disrupted commerce for End-Payors within each state by forcing them to buy Namenda XR for a substantially higher price.

X. CLAIMS FOR RELIEF

COUNT ONE

MONOPOLIZATION

New York General Business Law § 340

152. Plaintiff repeats and re-alleges all preceding paragraphs in this Complaint as if fully set forth herein. The claims in this Count are brought under GBL § 340 on behalf of consumers and third-party payors who indirectly purchased, paid or provided reimbursement for memantine hydrochloride (Namenda IR and its generic equivalents and Namenda XR), other than for resale, from Forest during the Class Period in the following states and territories: Alabama, Arizona, Arkansas, California, Connecticut, D.C., Hawaii, Idaho, Illinois, Iowa, Kansas, Maine, Maryland, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Dakota, Tennessee, Utah, Virginia, Vermont, West Virginia and Wisconsin.

153. At all relevant times, Forest possessed monopoly power in the relevant market. Forest possessed the power to control prices in, prevent prices from falling in, and exclude competitors from the relevant market.

154. As described herein, Forest knowingly and willfully engaged in anticompetitive conduct designed to unlawfully extend and maintain its monopoly power. Forest has violated General Business Law § 340 by conspiring and combining in an anticompetitive manner with the generic competitors named herein in order to protect Forest's market for memantine hydrochloride.

155. Through the anticompetitive conduct alleged extensively herein, Forest willfully maintained its monopoly power through restrictive or exclusionary conduct, rather than by

means of greater business acumen. Forest engaged in this conduct in order to exclude competition for Namenda which caused injury to Plaintiff and the Class.

156. As stated more fully above, Defendant knowingly, willfully, and unlawfully maintained its monopoly power and harmed competition by:

a. asserting sham lawsuits against generic Namenda IR manufacturers to delay generic competition;

b. paying potential first generic filers to delay marketing generic Namenda IR;

c. deterring other generic manufacturers from marketing generic Namenda IR through the use of an anticompetitive acceleration clause;

d. switching the market from Namenda IR to Namenda XR – a nearly identical product with no benefits or improvements-during the purchase delay; and

e. withdrawing Namenda IR from the market in order to coerce doctors and patients to switch to Namenda XR.

157. The goal, purpose, and effect of Forest's anticompetitive conduct was to delay and impair the sale of generic Namenda products in the United States.

158. By engaging in the foregoing conduct, Forest has intentionally and unlawfully maintained monopoly power in the relevant market in violation of New York General Business Law § 340.

159. There is and was no cognizable, non-pretextual procompetitive justification for Forest's actions comprising the anticompetitive scheme that outweigh the harmful effects. Even if there were some conceivable justification, the scheme is and was broader than necessary to achieve such a purpose.

160. Forest entered into unlawful agreements with the generic companies to settle lawsuits as part of an overall anticompetitive scheme to unlawfully maintain its monopoly power

in the market for memantine hydrochloride as described herein.

161. Had manufacturers of generic Namenda IR 5 or 10 mg tablets entered the market and lawfully competed in a timely fashion, Plaintiff and members of the End-Payor Class would have substituted lower-priced generic Namenda IR 5 or 10 mg tablets for some or all of their memantine hydrochloride needs, and/or would have paid lower net prices earlier/or in far greater quantities on their remaining branded Namenda purchases.

162. In addition, as explained in detail above, as part of an overall scheme to maintain its monopoly power in the market for memantine hydrochloride, Forest unlawfully switched the conversion of the memantine hydrochloride market from Namenda IR to Namenda XR (a "product hop") by, *inter alia*: (i) publicizing to doctors, caregivers and the general public that the discontinuation of Namenda IR was imminent; (ii) significantly limiting or attempting to limit the distribution of Namenda IR; and (iii) requesting that CMS remove Namenda IR tablets from the 2015 Formulary Reference File ("FRF"). Namenda XR is not safer or more effective than Namenda IR.

163. In addition to the anticompetitive conduct alleged above in support of the monopolization claim, Forest also entered into anticompetitive agreements with generic competitors to prevent or delay timely generic entry.

164. The goal, purpose and effect of Forest's unlawful conduct was to maintain and extend its monopoly power in the memantine hydrochloride market. Forest's unlawful anticompetitive scheme to prevent, delay, and/or minimize the success of the introduction into the United States marketplace of any generic versions of Namenda IR enabled Forest to continue charging supracompetitive prices for memantine hydrochloride without a substantial loss of sales.

165. If manufacturers of generic versions of Namenda IR had been able to enter the

market and fairly compete with Forest in a full and timely fashion, Plaintiff and members of the Class would have substituted lower-priced generic versions of Namenda IR for some or all of their memantine hydrochloride requirements, and/or would have received lower prices on some or all of their remaining branded memantine hydrochloride tablet purchases, at earlier periods of time and in far greater quantities.

166. Plaintiff and members of the End-Payor Class indirectly purchased substantial amounts of Namenda IR 5 or 10 mg tablets, or Namenda XR capsules from Forest during the relevant time period.

167. Plaintiff and End-Payor Class members have been injured in their business or property as a direct and proximate result by Defendant's anticompetitive conduct. Their injuries consist of: (i) being denied the opportunity to purchase lower-priced generic Namenda IR 5 or 10 mg tablets; and (ii) being forced to purchase a more expensive branded Namenda XR capsules product. These injuries are of the type the above antitrust laws were designed to prevent, and flow from that which makes Defendant's conduct unlawful.

168. Plaintiff and End-Payor Class members seek damages as permitted by law for the injuries they suffered as a result of the Defendant's anticompetitive conduct.

COUNT TWO

RESTRAINT OF TRADE

New York General Business Law § 340

169. Plaintiff repeats and re-alleges all preceding paragraphs in this Complaint as if fully set forth herein. The claims in this Count are brought under GBL §340 on behalf of consumers and third-party payors who indirectly purchased, paid or provided reimbursement for memantine hydrochloride (Namenda IR and its generic equivalents and Namenda XR), other than for resale, from Forest during the Class Period in the following states: Alabama, Arizona,

Arkansas, California, Connecticut, D.C., Hawaii, Idaho, Illinois, Iowa, Kansas, Maine, Maryland, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Dakota, Tennessee, Utah, Virginia, Vermont, West Virginia and Wisconsin.

170. Defendant entered into contracts, agreements or combinations in restraint of trade with generic companies to prevent or delay generic entry in the memantine hydrochloride market. The goal, purpose, and effect of Forest's anticompetitive conduct was to delay and impair the sale of generic Namenda products in the United States.

171. There is and was no cognizable, non-pretextual procompetitive justification for Forest's actions comprising the anticompetitive scheme that outweigh the harmful effects. Even if there were some conceivable justification, the scheme is and was broader than necessary to achieve such a purpose.

172. Forest entered into unlawful agreements with the generic companiess to settle lawsuits as part of an overall anticompetitive scheme to unlawfully maintain its monopoly power in the market for memantine hydrochloride as described herein.

173. Had manufacturers of generic Namenda IR 5 or 10 mg tablets entered the market and lawfully competed in a timely fashion, Plaintiff and members of the End-Payor Class would have substituted lower-priced generic Namenda IR 5 or 10 mg tablets for some or all of their memantine hydrochloride needs, and/or would have paid lower net prices earlier/or in far greater quantities on their remaining branded Namenda purchases.

174. Plaintiff and members of the End-Payor Class indirectly purchased substantial amounts of Namenda IR 5 or 10 mg tablets, or Namenda XR capsules from Forest during the relevant time period.

175. Plaintiff and End-Payor Class members have been injured in their business or

property as a direct and proximate result by Defendant's anticompetitive conduct. Their injuries consist of: (i) being denied the opportunity to purchase lower-priced generic Namenda IR 5 or 10 mg tablets; and (ii) being forced to purchase a more expensive branded Namenda XR capsules product. These injuries are of the type the above antitrust laws were designed to prevent, and flow from that which makes Defendant's conduct unlawful.

176. Plaintiff and End-Payor Class members seek damages as permitted by law for the injuries they suffered as a result of the Defendant's anticompetitive conduct.

COUNT THREE

CONSPIRACY TO MONOPOLIZE

New York General Business Law § 340

177. Plaintiff repeats and re-alleges all preceding paragraphs in this Complaint as if fully set forth herein. The claims in this Count are brought under GBL § 340 on behalf of consumers and third-party payors who indirectly purchased, paid or provided reimbursement for memantine hydrochloride (Namenda IR and its generic equivalents and Namenda XR), other than for resale, from Forest during the Class Period in the following states: Alabama, Arizona, Arkansas, California, Connecticut, D.C., Hawaii, Idaho, Illinois, Iowa, Kansas, Maine, Maryland, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Dakota, Tennessee, Utah, Virginia, Vermont, West Virginia and Wisconsin.

178. At all relevant times, Forest possessed monopoly power in the relevant market.

179. Forest, *inter alia*, marketed and sold the various versions of Namenda in the United States. During the relevant period, Forest willfully and unlawfully maintained its monopoly power by conspiring or attempting to conspire to prevent or delay generic competition. As explained in detail above, Forest engaged in an exclusionary scheme that included, *inter alia*, the

following independently-actionable, anticompetitive elements:

(i) Creating a network of horizontal market-delay agreements among Forest and the first generic companies to file ANDA applications to manufacture, market and sell generic Namenda IR in the United States. The agreements contained anticompetitive terms which ensured that the generic would not timely launch and that other generic companies would not timely launch a generic version of Namenda IR. The agreements also included providing such companies with large and unexplained amounts of cash or other consideration in exchange for their agreement to delay generic market entry;

(ii) Entering into non-compete agreements with the first generic companies to file ANDA applications to manufacture, market and sell generic Namenda IR in the United States; and

(iii) Using the market delay created by the reverse payments and/or contingent entry agreements described above to implement a product hop scheme whereby Forest used various coercive tactics to deprive Alzheimer's patients and physicians of choice in the memantine hydrochloride market and force the conversion of Namenda IR sales to the patent-protected Namenda XR prior to the launch of generic versions of Namenda IR.

180. The goal, purpose, and/or effect of Forest's scheme was to conspire or attempt to conspire to maintain and extend Forest's monopoly power in the memantine hydrochloride market. Forest's illegal scheme to conspire or attempt to conspire to prevent, delay, and/or minimize the success of the introduction into the United States marketplace of any generic versions of Namenda IR enabled Forest to continue charging supracompetitive prices for memantine hydrochloride without a substantial loss of sales.

181. If manufacturers of generic versions of Namenda IR had been able to enter the market and fairly compete with Forest in a full and timely fashion, Plaintiff and members of the Class would have substituted lower-priced generic versions of Namenda IR for some or all of their memantine hydrochloride requirements, and/or would have received lower prices on some or all of their remaining branded memantine hydrochloride tablet purchases, at earlier periods of time and in far greater quantities.

182. As a result of the illegal scheme of Forest, Plaintiff and the Class paid more than

they would have paid for memantine hydrochloride, absent Forest's illegal conduct. But for Forest's illegal conduct, competitors would have begun marketing generic versions of Namenda IR well before they actually did, and/or would have marketed such versions more successfully.

183. During the relevant period, Plaintiff and members of the Class purchased substantial amounts of Namenda IR (and Namenda XR) indirectly from Forest. As a result of Forest's illegal conduct, alleged herein, Plaintiff and the members of the Class were compelled to pay, and did pay, artificially inflated prices for their memantine hydrochloride requirements.

184. Plaintiff and all other Class members paid prices for memantine hydrochloride that were substantially greater than the prices that they would have paid absent the illegal conduct alleged herein, because: (a) class members were deprived of the opportunity to purchase lower-priced generic versions of Namenda IR instead of expensive brand-name Namenda IR (and Namenda XR); and/or (b) the price of branded Namenda was artificially inflated by Forest's illegal conduct.

185. Forest's scheme was in the aggregate an act of monopolization undertaken with the specific intent to monopolize the Memantine Hydrochloride Market in violation of various state laws.

186. As described herein, Forest entered into unlawful agreements with the Generic Manufacturer Defendant to settle patent infringement suits as part of an overall anticompetitive scheme to conspire or attempt to conspire to unlawfully maintain its monopoly power in the market for memantine hydrochloride as described herein.

187. Forest entered into agreements with the Generic Manufacturer Defendant conspire or attempt to conspire to delay generic entry.

188. By engaging in the anticompetitive conduct alleged herein, Defendant has intentionally and unlawfully conspired in order to allow Forest monopolize the market for

memantine hydrochloride.

COUNT FOUR

CONSUMER PROTECTION

New York General Business Law § 349

189. Plaintiff repeats and re-alleges all preceding paragraphs contained in this Complaint as if fully set forth herein. The claims in this Count are brought under GBL § 349 on behalf of consumers and third-party payors who indirectly purchased, paid or provided reimbursement for memantine hydrochloride (Namenda IR and its generic equivalents and Namenda XR), other than for resale, from Forest during the Class Period in the following states: Alabama, Arizona, Arkansas, California, Connecticut, D.C., Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Dakota, Tennessee, Utah, Virginia, Vermont, West Virginia and Wisconsin.

190. Defendant engaged in deceptive acts or practices in violation of New York General Business Law § 349.

191. There was a gross disparity between the price that Plaintiff and the End-Payor Class members paid for the brand product and the value received, given that a less expensive substitute generic product should have been available.

192. As a direct and proximate result of Defendant's unfair competition, unfair or unconscionable acts or practices in violation of the state consumer protection statutes listed below, Plaintiff and End-Payor Class members were deprived of the opportunity to purchase a generic version of Namenda IR 5 or 10 mg tablets and forced to pay higher prices for Namenda XR.

COUNT FIVE

UNJUST ENRICHMENT

193. Plaintiff repeats and re-alleges all preceding paragraphs contained in this Complaint as if fully set forth herein.

194. To the extent required, this claim is pled in the alternative to the other claims in this Complaint.

195. Defendant has benefited from the overcharges on sales of Namenda IR 5 or 10 mg tablets and Namenda XR made possible by the unlawful and inequitable acts alleged in this Complaint.

196. Defendant's financial benefits are traceable to Plaintiff and End-Payor Class members' overpayments for Namenda IR 5 or 10 mg tablets, or Namenda XR.

197. Plaintiff and End-Payor Class members have conferred an economic benefit upon the Defendant in the nature of profits resulting from unlawful overcharges, to the economic detriment of Plaintiff and the End-Payor Class members.

198. It would be futile for Plaintiff and End-Payor Class members to seek a remedy from any party with whom they had or have privity of contract. Defendant have paid no consideration to anyone for any of the benefits they received indirectly from Plaintiff and End-Payor Class members.

199. It would be futile for Plaintiff and End-Payor Class members to seek to exhaust any remedy against the immediate intermediary in the chain of distribution from which they indirectly purchased Namenda IR 5 or 10 mg tablets, or Namenda XR capsules, as those intermediaries are not liable and would not compensate Plaintiff and the End-Payor Class members for Defendant's unlawful conduct.

200. The economic benefit Defendant derived from charging monopolistic and

artificially inflated prices for Namenda IR 5 or 10 mg tablets, or Namenda XR is a direct and proximate result of Defendant's unlawful practices.

201. The financial benefits Defendant derived rightfully belong to Plaintiff and End-Payor Class members, who paid anticompetitive prices that inured to Defendant's benefit.

202. It would be inequitable under unjust enrichment law of New York for Defendant to retain any of the overcharges Plaintiff and End-Payor Class members paid for Namenda IR 5 or 10 mg tablets, or Namenda XR capsules that were derived from Defendant's unfair and unconscionable methods, acts, and trade practices.

203. Defendant is aware of and appreciates the benefits bestowed upon it by Plaintiff and the End-Payor Class.

204. Defendant should be compelled to disgorge all unlawful or inequitable proceeds they received in a common fund for the benefit of Plaintiff and End-Payor Class members.

205. A constructive trust should be imposed upon all unlawful or inequitable sums the Defendant received that are traceable to Plaintiff and End-Payor Class members.

206. Plaintiff and End-Payor Class members have no adequate remedy at law.

XI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of itself and the End-Payor Class, respectfully requests that this Court:

A. Determine that this action may be maintained as a class action pursuant to Article 9 of the CPLR, and direct that reasonable notice of this action, be given to the Class and declare the Plaintiff the representative of the End-Payor Class;

B. Enter judgment against Defendant in favor of Plaintiff and the End-Payor Class;

C. Declare the Defendant's conduct to be in violation of the New York state antitrust and/or deceptive practice statutes;

D. Grant Plaintiff and the Class equitable relief in the nature of the creation of a constructive trust to remedy Defendant's unjust enrichment;

E. Grant Plaintiff and the Class single damages as permitted by law;

F. Award the End-Payor Class damages in an amount to be determined at trial;

G. Award Plaintiff and the End-Payor Class their costs of suit, including reasonable attorneys' fees as provided by law; and

H. Grant such other further relief as is necessary to correct for the anticompetitive market effects, caused by Defendant's unlawful conduct, as the Court deems just.

XII. JURY DEMAND

207. Plaintiff, on behalf of itself and the proposed End-Payor Class, demands a trial by jury on all issues so triable.

Dated: February 7, 2020

Respectfully submitted,

MOTELY RICE LLC

By: */s/ Michael M. Buchman*

Michael M. Buchman
Jacob Onile-Ere
777 Third Avenue, 27th Floor
New York, NY 10017
Telephone: (212) 577-0040
Facsimile: (212) 577-0054
mbuchman@motleyrice.com
jonileere@motleyrice.com

REQUEST FOR JUDICIAL INTERVENTION

UCS-840
(rev. 07/29/2019)

New York Supreme COURT, COUNTY OF New York

Index No: _____ Date Index Issued: _____

For Court Use Only:
IAS Entry Date
Judge Assigned
RJI Filed Date

CAPTION Enter the complete case caption. Do not use et al or et ano. If more space is needed, attach a caption rider sheet.

A.F. of L. - A.G.C. Building Trades Welfare Plan

Plaintiff(s)/Petitioner(s)

-against-

Forest Laboratories, LLC

Defendant(s)/Respondent(s)

NATURE OF ACTION OR PROCEEDING: Check only one box and specify where indicated.

COMMERCIAL

- [x] Business Entity (includes corporations, partnerships, LLCs, LLPs, etc.)
- [ ] Contract
- [ ] Insurance (where insurance company is a party, except arbitration)
- [ ] UCC (includes sales and negotiable instruments)
- [ ] Other Commercial (specify): _____

NOTE: *For Commercial Division assignment requests pursuant to 22 NYCRR 202.70(d), complete and attach the* ***COMMERCIAL DIVISION RJI ADDENDUM (UCS-840C).***

REAL PROPERTY: Specify how many properties the application includes: _____

- [ ] Condemnation
- [ ] Mortgage Foreclosure (specify): [ ] Residential [ ] Commercial

Property Address: _____

NOTE: *For Mortgage Foreclosure actions involving a one to four-family, owner-occupied residential property or owner-occupied condominium, complete and attach the* ***FORECLOSURE RJI ADDENDUM (UCS-840F).***

- [ ] Tax Certiorari - Section: Block: Lot:
- [ ] Tax Foreclosure
- [ ] Other Real Property (specify): _____

OTHER MATTERS

- [ ] Certificate of Incorporation/Dissolution [see ***NOTE*** in **COMMERCIAL** section]
- [ ] Emergency Medical Treatment
- [ ] Habeas Corpus
- [ ] Local Court Appeal
- [ ] Mechanic's Lien
- [ ] Name Change
- [ ] Pistol Permit Revocation Hearing
- [ ] Sale or Finance of Religious/Not-for-Profit Property
- [ ] Other (specify): _____

MATRIMONIAL

- [ ] Contested

NOTE: *If there are children under the age of 18, complete and attach the* ***MATRIMONIAL RJI Addendum (UCS-840M).***

For Uncontested Matrimonial actions, use the Uncontested Divorce RJI ***(UD-13).***

TORTS

- [ ] Asbestos
- [ ] Child Victims Act
- [ ] Environmental (specify): _____
- [ ] Medical, Dental, or Podiatric Malpractice
- [ ] Motor Vehicle
- [ ] Products Liability (specify): _____
- [ ] Other Negligence (specify): _____
- [ ] Other Professional Malpractice (specify): _____
- [ ] Other Tort (specify): _____

SPECIAL PROCEEDINGS

- [ ] CPLR Article 75 (Arbitration) [see ***NOTE*** in **COMMERCIAL** section]
- [ ] CPLR Article 78 (Body or Officer)
- [ ] Election Law
- [ ] Extreme Risk Protection Order
- [ ] MHL Article 9.60 (Kendra's Law)
- [ ] MHL Article 10 (Sex Offender Confinement-Initial)
- [ ] MHL Article 10 (Sex Offender Confinement-Review)
- [ ] MHL Article 81 (Guardianship)
- [ ] Other Mental Hygiene (specify): _____
- [ ] Other Special Proceeding (specify): _____

STATUS OF ACTION OR PROCEEDING: Answer YES or NO for every question and enter additional information where indicated.

	YES	NO		
Has a summons and complaint or summons with notice been filed?	[x]	[ ]	If yes, date filed:	02/07/2020
Has a summons and complaint or summons with notice been served?	[ ]	[x]	If yes, date served:	
Is this action/proceeding being filed post-judgment?	[ ]	[x]	If yes, judgment date:	

NATURE OF JUDICIAL INTERVENTION: Check one box only and enter additional information where indicated.

- [ ] Infant's Compromise
- [ ] Extreme Risk Protection Order Application
- [ ] Note of Issue/Certificate of Readiness
- [ ] Notice of Medical, Dental, or Podiatric Malpractice — Date Issue Joined: _____
- [ ] Notice of Motion — Relief Requested: _____ Return Date: _____
- [ ] Notice of Petition — Relief Requested: _____ Return Date: _____
- [ ] Order to Show Cause — Relief Requested: _____ Return Date: _____
- [ ] Other Ex Parte Application — Relief Requested: _____
- [ ] Poor Person Application
- [ ] Request for Preliminary Conference
- [ ] Residential Mortgage Foreclosure Settlement Conference
- [ ] Writ of Habeas Corpus
- [x] Other (specify): Assignment to Commercial Division

RELATED CASES: List any related actions. For Matrimonial cases, list any related criminal or Family Court cases. If none, leave blank. If additional space is required, complete and attach the **RJI Addendum (UCS-840A)**.

Case Title	Index/Case Number	Court	Judge (if assigned)	Relationship to instant case

PARTIES: For parties without an attorney, check the "Un-Rep" box and enter the party's address, phone number and email in the space provided. If additional space is required, complete and attach the **RJI Addendum (UCS-840A)**.

Un-Rep	Parties List parties in same order as listed in the caption and indicate roles (e.g., plaintiff, defendant; 3rd party plaintiff, etc.)	Attorneys and/or Unrepresented Litigants For represented parties, provide attorney's name, firm name, address, phone and email. For unrepresented parties, provide party's address, phone and email.	Issue Joined For each defendant, indicate if issue has been joined.	Insurance For each defendant, indicate insurance carrier, if applicable.
☐	Name: A.F. of L. - A.G.C. Building Trades Welfare Plan Role(s): Plaintiff/Petitioner	Michael Buchman, Motley Rice LLC, 600 Third Avenue 21st Floor, New York, NY 10001, (212) 577-0040, mbuchman@motleyrice.com	☐ YES ☒ NO	
☒	Name: Forest Laboratories, LLC Role(s): Defendant/Respondent	909 Third Avenue, New York, NY 10022	☐ YES ☒ NO	
☐	Name: Role(s):		☐ YES ☐ NO	
☐	Name: Role(s):		☐ YES ☐ NO	
☐	Name: Role(s):		☐ YES ☐ NO	
☐	Name: Role(s):		☐ YES ☐ NO	
☐	Name: Role(s):		☐ YES ☐ NO	
☐	Name: Role(s):		☐ YES ☐ NO	
☐	Name: Role(s):		☐ YES ☐ NO	

I AFFIRM UNDER THE PENALTY OF PERJURY THAT, UPON INFORMATION AND BELIEF, THERE ARE NO OTHER RELATED ACTIONS OR PROCEEDINGS, EXCEPT AS NOTED ABOVE, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION BEEN PREVIOUSLY FILED IN THIS ACTION OR PROCEEDING.

Dated: 02/07/2020

Michael M. Buchman
Signature

2540219
Attorney Registration Number

Michael M. Buchman
Print Name

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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF New York

UCS-840C
3/2011

A.F. of L. - A.G.C. Building Trades Welfare Plan

Plaintiff(s)/Petitioner(s)

-against-

Forest Laboratories, LLC

Defendant(s)/Respondent(s)

Index No:

RJI No. (if any):

COMMERCIAL DIVISION

Request for Judicial Intervention Addendum

COMPLETE WHERE APPLICABLE [add additional pages if needed]:

Plaintiff/Petitioner's cause(s) of action [check all that apply]:

- ☐ Breach of contract or fiduciary duty, fraud, misrepresentation, business tort (e.g. unfair competition), or statutory and/or common law violation where the breach or violation is alleged to arise out of business dealings (e.g. sales of assets or securities; corporate restructuring; partnership, shareholder, joint venture, and other business agreements; trade secrets; restrictive covenants; and employment agreements not including claims that principally involve alleged discriminatory practices)
- ☐ Transactions governed by the Uniform Commercial Code (exclusive of those concerning individual cooperative or condominium units)
- ☐ Transactions involving commercial real property, including Yellowstone injunctions and excluding actions for the payment of rent only
- ☐ Shareholder derivative actions — without consideration of the monetary threshold
- ☒ Commercial class actions — without consideration of the monetary threshold
- ☐ Business transactions involving or arising out of dealings with commercial banks and other financial institutions
- ☐ Internal affairs of business organizations
- ☐ Malpractice by accountants or actuaries, and legal malpractice arising out of representation in commercial matters
- ☐ Environmental insurance coverage
- ☐ Commercial insurance coverage (e.g. directors and officers, errors and omissions, and business interruption coverage)
- ☐ Dissolution of corporations, partnerships, limited liability companies, limited liability partnerships and joint ventures — without consideration of the monetary threshold
- ☐ Applications to stay or compel arbitration and affirm or disaffirm arbitration awards and related injunctive relief pursuant to CPLR Article 75 involving any of the foregoing enumerated commercial issues — without consideration of the monetary threshold

Plaintiff/Petitioner's claim for compensatory damages [exclusive of punitive damages, interest, costs and counsel fees claimed]:

Plaintiff/Petitioner's claim for equitable or declaratory relief [brief description]:

Defendant/Respondent's counterclaim(s) [brief description, including claim for monetary relief]:

I REQUEST THAT THIS CASE BE ASSIGNED TO THE COMMERCIAL DIVISION. I CERTIFY THAT THE CASE MEETS THE JURISDICTIONAL REQUIREMENTS OF THE COMMERCIAL DIVISION SET FORTH IN 22 NYCRR § 202.70(a), (b) and (c).

Dated: 02/07/2020

Michael M. Buchman
SIGNATURE

Michael M. Buchman
PRINT OR TYPE NAME

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: COMMERCIAL DIVISION

A.F. of L. – A.G.C. BUILDING TRADES WELFARE PLAN, individually and on behalf of itself and all others similarly situated, Plaintiff, v. FOREST LABORATORIES, LLC, Defendant.	Index No. 650896/2020 **AMENDED SUMMONS**

To the above named Defendant

Forest Laboratories, LLC
909 Third Avenue
New York, New York 10022

YOU ARE HEREBY SUMMONED and required to serve upon plaintiffs' attorney, at the address stated below, an answer to the attached complaint within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York; and in case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is Defendant's principal place of business at 909 Third Avenue, New York, New York.

Dated: New York, New York
February 11, 2020

MOTLEY RICE LLC

By: */s/ Michael M. Buchman*

Michael M. Buchman
777 Third Avenue, 27th Floor
New York, NY 10017
Telephone: (212) 577-0040
Facsimile: (212) 577-0054
mbuchman@motleyrice.com

Attorneys for the Plaintiff

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

----------X

A.F. OF L. -- A.G.C. BUILDING TRADES WELFARE PLAN,

Plaintiff,

-against-

FOREST LABORATORIES, LLC,

Defendant.

----------X

Index No. 650896/2020

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that Martin M. Toto of White & Case LLP hereby enters his appearance as counsel for Defendant Forest Laboratories, LLC in the above-captioned action and demands that Plaintiff serve the undersigned, at the office address listed below, with all papers in this action. Defendant does not waive, and expressly preserves, any and all defenses.

Dated: February 27, 2020
New York, New York

WHITE & CASE LLP

By: */s/ Martin M. Toto*

Martin M. Toto
1221 Avenue of the Americas
New York, New York 10020
P: (212) 819-8200
F: (212) 354-8113
E: mtoto@whitecase.com

Counsel for Defendant
Forest Laboratories, LLC

WHITE & CASE

February 27, 2020

VIA NYSCEF AND HAND DELIVERY

White & Case LLP
1221 Avenue of the Americas
New York, NY 10020-1095
T +1 212 819 8200

whitecase.com

The Honorable Barry R. Ostrager
New York County Supreme Court
Part 61 – Room 232
60 Centre Street
New York, NY 10007

***A.F. of L. -- A.G.C. Building Trades Welfare Plan v. Forest Laboratories, LLC*, Index No. 650896/2020**

Dear Justice Ostrager:

We represent the Defendant, Forest Laboratories, LLC ("Forest"), in the above-captioned matter. The first appearance in this case is scheduled for May 19, 2020. We respectfully request that Forest be granted an extension of time, up to and including May 1, 2020, to file its answer, move to dismiss, or otherwise respond to Plaintiff A.F. of L. – A.G.C. Building Trades Welfare Plan's ("AGC") Complaint and to respond to AGC's Request for Production of Documents. AGC has consented to this request. Pursuant to Rule 9 of the Court's Practice Rules for Part 61, a proposed order granting this extension is attached.

Respectfully submitted,

Martin M. Toto

T +1 212 819 8852
E mtoto@whitecase.com

Enclosure: [Proposed] Order

cc: All Counsel of Record (via NYSCEF)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

A.F. OF L. -- A.G.C. BUILDING TRADES WELFARE PLAN,	:	
Plaintiff,	:	Index No. 650896/2020
	:	
-against-	:	**[PROPOSED] ORDER**
FOREST LABORATORIES, LLC,	:	
Defendant.	:	

WHEREAS Plaintiff consents to Defendant's request for an extension of time to answer or otherwise respond to its Complaint and its Request for Production of Documents up to and including May 1, 2020;

Now therefore, it is hereby ORDERED:

Defendant's deadline to answer or otherwise respond to the Complaint and to respond to Plaintiff's Request for Production of Documents is extended up to and including May 1, 2020.

SO ORDERED**:**

Dated: _____, 2020
New York, New York

_____
Barry R. Ostrager
Justice of the Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

----------X

A.F. OF L. -- A.G.C. BUILDING TRADES WELFARE PLAN,

Plaintiff,

-against-

FOREST LABORATORIES, LLC,

Defendant.

----------X

Index No. 650896/2020

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that Kristen O'Shaughnessy of White & Case LLP hereby enters her appearance as counsel for Defendant Forest Laboratories, LLC in the above-captioned action and demands that Plaintiff serve the undersigned, at the office address listed below, with all papers in this action. Defendant does not waive, and expressly preserves, any and all defenses.

Dated: February 27, 2020
New York, New York

WHITE & CASE LLP

By: */s/ Kristen O'Shaughnessy*
Kristen O'Shaughnessy
1221 Avenue of the Americas
New York, New York 10020
T: (212) 819-8200
F: (212) 354-8113
E: kristen.oshaughnessy@whitecase.com

Counsel for Defendant
Forest Laboratories, LLC

COURTESY COPY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

----------X

A.F. OF L. -- A.G.C. BUILDING TRADES WELFARE PLAN,

Plaintiff,

-against-

FOREST LABORATORIES, LLC,

Defendant.

----------X

Index No. 650896/2020

~~[PROPOSED]~~ ORDER

WHEREAS Plaintiff consents to Defendant's request for an extension of time to answer or otherwise respond to its Complaint and its Request for Production of Documents up to and including May 1, 2020;

Now therefore, it is hereby ORDERED:

Defendant's deadline to answer or otherwise respond to the Complaint and to respond to Plaintiff's Request for Production of Documents is extended up to and including May 1, 2020.

The May 19 appearance may not be adjourned

SO ORDERED:

Dated: February 27, 2020
New York, New York

Barry R. Ostrager
Justice of the Supreme Court

BARRY R. OSTRAGER
JSC

Exhibit 2

New York State Unified Court System

UCS COURTS

WebCivil Supreme - eFiled Documents Detail

Court: **New York Supreme Court**
Index Number: **0650896/2020**
Case Name: **A.F. OF L. - A.G.C. BUILDING vs. FOREST LABORATORIES, LLC**
Case Type: **CD-ECORPORATE**
Track: **Complex**

Document List - Click on the document name to view the document

Document #	Date Received/Filed	Document	Description	Motion #	Filing User
1	02/07/2020	SUMMONS + COMPLAINT	--none--		Michael M. Buchman
2	02/07/2020	RJI -RE: OTHER	Assignment to Commercial Division		Michael M. Buchman
3	02/07/2020	ADDENDUM - COMMERCIAL DIVISION (840C)	--none--		Michael M. Buchman
4	02/11/2020	SUMMONS (POST RJI) (AMENDED)	--none--		Michael M. Buchman
5 PENDING	02/27/2020	NOTICE OF APPEARANCE (POST RJI)	Notice of Appearance of Martin M. Toto		MARTIN MICHAEL TOTO
6	02/27/2020	LETTER / CORRESPONDENCE TO JUDGE	Letter to Justice Ostrager from Martin M. Toto enclosing Proposed Order for an extension of time to respond to the Complaint		MARTIN MICHAEL TOTO
7	02/27/2020	ORDER (PROPOSED)	Proposed Order for an extension of time to respond to the Complaint		MARTIN MICHAEL TOTO
8 PENDING	02/27/2020	NOTICE OF APPEARANCE (POST RJI)	Notice of Appearance of Kristen O'Shaughnessy		KRISTEN LEIGH O'SHAUGHNESSY
9	02/28/2020	ORDER - OTHER	--none--		Lisa Morisi court user

Close