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12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

14 KIMBERLY CORCORAN, and TODD  
15 BEAULIEU, individually and on behalf of all other  
16 similarly situated,

17 Plaintiffs,

18 v.

19 MYLAN PHARMACEUTICALS INC., and  
20 MYLAN SPECIALTY L.P.,

21 Defendants.

No.

**CLASS ACTION COMPLAINT**

JURY TRIAL DEMANDED

Judge:

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1 Plaintiffs Kimberly Corcoran and Todd Beaulieu individually and on behalf of all others  
2 similarly situated, file this Class Action Complaint against Mylan Pharmaceuticals, Inc., and Mylan  
3 Specialty L.P. (“Defendants” or “Mylan”), and allege as follows based on personal knowledge, the  
4 investigation of their counsel, and information and belief.

## 5 I. INTRODUCTION

6  
7 1. At the heart of this proposed class action is a pharmaceutical corporation seeking to boost  
8 profits at the expense of families who need the lifesaving product it sells. The product at issue is the  
9 EpiPen®, a lifesaving emergency auto-injector treatment for millions of people who suffer from severe  
10 allergies and are at risk for anaphylaxis. Anaphylaxis is a potentially life-threatening allergic reaction  
11 that can occur quickly, sometimes within minutes, following exposure to an allergen including foods,  
12 medicines, latex, and insect bites or stings. EpiPen®s are sold in packs of two, expire, and must be  
13 replaced on an annual basis.  
14

15 2. The need for many families to have one or more EpiPen®s on hand is hard to overstate.  
16 According to Food Allergy Research & Education—an allergy advocacy and research group—  
17 approximately 15 million people have food allergies in the United States and allergic reactions account  
18 for about 200,000 emergency room visits per year.

19 3. When someone has a severe allergic reaction, he or she must promptly inject themselves  
20 or be injected with epinephrine to prevent anaphylactic shock. Anaphylactic shock can kill, so having  
21 handy, pre-measured, pre-loaded epinephrine in a portable EpiPen® can be lifesaving.  
22

23 4. Mylan is the only company selling EpiPen®s, and it has increased the price of its product  
24 more than 500% since 2007 when it began selling the device, which originally cost just \$94.00 for a  
25 two-pack. While the EpiPen® reportedly costs Mylan just \$34.50<sup>1</sup> to produce, today it sells the  
26 EpiPen® for a staggering amount: \$600 or more for a two-pack.  
27

28 <sup>1</sup> This figure is according to testimony provided by Mylan’s CEO. See Ben Popken, *Lawmakers Accuse Mylan CEO of ‘Rope-a-Doping’ on EpiPen Prices*, NBC News (Sept. 21, 2016),

1           5.       Plaintiffs Kimberly Corcoran and Todd Beaulieu must buy EpiPen®s to protect  
2 themselves and/or their children from anaphylactic shock and, because they expire, must be purchased  
3 every year.

4           6.       Plaintiffs bring this consumer class action individually and on behalf of a putative  
5 nationwide class, as defined below (hereinafter “the Class”). Plaintiffs seek declaratory and injunctive  
6 relief, and to recover drug payments and overpayments made from at least the year 2007 through the  
7 present (hereinafter the “relevant time period”), as a result of Defendants’ unlawful scheme involving  
8 unfair, exorbitant, and unconscionable price increases.  
9

10           7.       This case concerns all EpiPen® products manufactured and distributed by Defendants  
11 including the following:

- 12           A.       EpiPen®;
- 13           B.       EpiPen Jr.®;
- 14           C.       EpiPen 2-Pak®;
- 15           D.       EpiPen Jr. 2-Pak®;
- 16           E.       My EpiPen®;
- 17           F.       LIFE HAPPENS®;
- 18           G.       Be Prepared®;
- 19           H.       EpiPen4Schools®;
- 20           I.       Never-See-Needle®.
- 21
- 22
- 23
- 24

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25       [http://www.nbcnews.com/business/consumer/lawmakers-grill-mylan-ceo-fda-epipen-price-hike-](http://www.nbcnews.com/business/consumer/lawmakers-grill-mylan-ceo-fda-epipen-price-hike-n65120)  
26       n65120. But, other estimates are even lower. See Martha C. White, *Its Jaw-Dropping How Little it*  
27       *Costs to Make an Epipen*, Time (Sept. 7, 2016), [http://time.com/money/4481786/how-much-epipen-](http://time.com/money/4481786/how-much-epipen-costs-to-make/)  
28       costs-to-make/ (“Pharmaceutical industry experts estimate that the medicine and its auto-injector, for  
which Mylan charges roughly \$300 a pop, cost around \$30 to produce. According to one medical  
technology consultant cited by NBC News, Mylan might pay even less, maybe as little as \$20, for each  
EpiPen, which cost patients a retail price of more than \$600 for a two-pack.”).

**II. PARTIES**

8. Plaintiff Kimberly Corcoran is a citizen and resident of the State of California.

9. Plaintiff Todd Beaulieu is a citizen and resident of the State of Massachusetts.

10. Plaintiffs have each purchased multiple EpiPen® products manufactured and distributed by Defendants Mylan Pharmaceuticals Inc. and Mylan Specialty L.P.

11. The retail price of EpiPen®s is approximately \$600. Some insurance plans cover EpiPen®s and some do not, but even when insurance covers the EpiPen®, patients are often required to pay a substantial portion of the \$600 price tag.

12. Defendants are subsidiaries and/or divisions of Mylan N.V. a global generic and specialty pharmaceutical company, and the second-largest generic and specialty pharmaceutical company in the world.

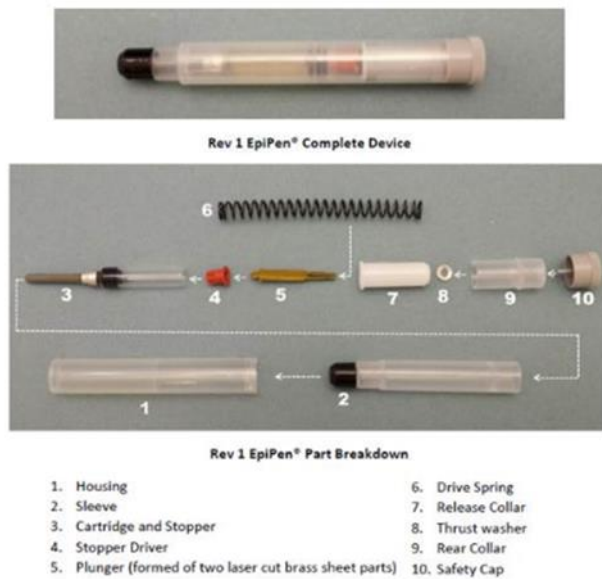
13. Mylan Pharmaceuticals Inc. is headquartered in Canonsburg, Pennsylvania and conducts extensive business nationwide, including in the State of California.

14. Mylan Specialty L.P. is headquartered in Basking Ridge, New Jersey and has operations in Napa, California and Allen, Texas. Mylan Specialty also conducts extensive business in the State of California.

**III. JURISDICTION AND VENUE**

15. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332 because Plaintiff Corcoran resides in California, and Defendants maintain headquarters in Pennsylvania and/or New Jersey. This Court also has original jurisdiction over this action under the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2) (“CAFA”), as to the named Plaintiffs and every Class Member, because the proposed Class contains more than 100 members, the aggregate amount in controversy exceeds \$5 million, and Class Members reside across the United States and are therefore diverse from Defendants.





<http://www.nbcnews.com/business/consumer/mylan-says-it-upgraded-epipen-2009-so-experts-looked-inside-n652651>

21. Anaphylactic shock can manifest in a variety of symptoms, from “vomiting to severe swelling, but by far the most dangerous is difficulty breathing, in which case emergency epinephrine is essential.”<sup>4</sup>

22. The onset of anaphylactic shock is unpredictable and “can be triggered by many allergens, including food, medicine, bee stings, and in lesser cases, foreign substances like latex.”<sup>5</sup>

23. Around 200,000 Americans experience anaphylactic shock annually. Nearly 200 of them die as a result.<sup>6</sup>

**B. In 2007, Mylan Acquired the Exclusive Right to Distribute the EpiPen®**

24. The auto-injector device was first developed for the United States military. In 1973, in response to the threat of chemical weapons, the Pentagon requested that Survival Technology, Inc. develop an auto-injector to administer a nerve agent antidote, which was originally called the

<sup>4</sup> Matt Reimann, Timeline, *The Story of the EpiPen: From Military Technology to Drug-Industry Cash Cow*, (Aug. 20, 2016), <https://timeline.com/epipen-technology-drug-industry-b28d19036dee#.seg6n7dls>.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*



1 ComboPen, and was later modified to deliver epinephrine, thus creating the EpiPen®.<sup>7</sup>

2 25. The device was developed relatively inexpensively because the epinephrine drug itself  
3 cost only about a dollar to produce.<sup>8</sup>

4 26. Today, however, a set of two EpiPen® auto-injectors costs more than \$600.

5 27. In 1996, Survival Technology, Inc. merged with Meridian Medical Technologies<sup>9</sup> which,  
6 only one year later, sold the exclusive right to market and distribute Survival Technologies' EpiPen® to  
7 Dey LP, a subsidiary of a German multinational pharmaceutical company: Merck KGaA.<sup>10</sup>

8 28. Mylan acquired the right to market and distribute the EpiPen® line of epinephrine auto-  
9 injector devices from Merck as part of broader 2007 acquisition deal.<sup>11</sup>

10 29. At the time that Mylan acquired the right to distribute the EpiPen®, the device only  
11 produced around \$200 million in revenue,<sup>12</sup> but, on information and belief, Mylan saw the acquisition as  
12 an opportunity to increase profits through marketing, price increases, and lobbying.  
13

14  
15 **C. Mylan Used Unfair Marketing and Lobbying to Gain a Dominant Position in the Auto-  
16 Injector Market**

17 30. Heather Bresch, Mylan's chief executive officer, sought, through advertising and  
18 lobbying, to make the brand "EpiPen® as identified with Auto-Injectors as Kleenex® is with facial  
19 tissue."<sup>13</sup>

20  
21  
22 <sup>7</sup> Matt Reimann, *The Story of the EpiPen: From Military Technology to Drug-Industry Cash Cow*,  
23 *Timeline*, (Aug. 20, 2016), [https://timeline.com/epipen-technology-drug-industry-  
b28d19036dee#.seg6n7dls](https://timeline.com/epipen-technology-drug-industry-b28d19036dee#.seg6n7dls).

24 <sup>8</sup> *Id.*

25 <sup>9</sup> Meridian Medical Technologies 10-K Filing (Jul. 31, 1997).

26 <sup>10</sup> Marilyn Case, *EpiPen Recall Points to Broader Concerns*, *Wall Street Journal* (May, 10, 1998).

27 <sup>11</sup> Tara Parker-Pope & Rachel Rabkin Peachman, *EpiPen Price Rise Sparks Concern for Allergy  
28 Sufferers*, *N.Y. Times* (Aug. 22, 2016).

<sup>12</sup> Cynthia Koons & Robert Langreth, *How Marketing Turned the EpiPen Into a Billion-Dollar Business*,  
*Bloomberg Businessweek* (Sept. 23, 2015), [http://www.bloomberg.com/news/articles/2015-09-  
23/how-marketing-turned-the-epipen-into-a-billion-dollar-business](http://www.bloomberg.com/news/articles/2015-09-23/how-marketing-turned-the-epipen-into-a-billion-dollar-business).

<sup>13</sup> *Id.*

1           31. Mylan began by lobbying the Food and Drug Administration to expand its consumer  
2 market. Prior to 2007, physicians prescribed the device only to severe allergy sufferers who had an  
3 incident of anaphylactic shock in the past. But Mylan successfully lobbied the Food and Drug  
4 Administration to expand the permitted uses of the EpiPen®, allowing the device to be prescribed to any  
5 patient that had any risk of anaphylaxis.<sup>14</sup>  
6

7           32. Mylan went on to successfully lobby for the passage of legislation requiring that  
8 epinephrine be made available in schools and in public places, like defibrillators;<sup>15</sup> and, according to a  
9 statement by Bresch at the Morgan Stanley Healthcare Brokers conference on September 17, 2016,  
10 Mylan is now pursuing: “new markets with public entity legislation that would allow restaurants and  
11 hotels and really anywhere you are congregating . . . to [store] an EpiPen®.”<sup>16</sup>  
12

13           33. Mylan also spent over \$35 million in one year on “aggressive marketing tactics that . . .  
14 led to the overall perception that the Mylan EpiPen® is an essential first aid device that no one should be  
15 without”<sup>17</sup> including television advertisements warning that: “Every six minutes, food allergies send  
16 someone to the hospital. Always avoid your allergens, and talk to your doctor about a prescription  
17 treatment you should carry for reactions.”<sup>18</sup>  
18

19 **D. Mylan Used its Dominant Position to Raise Prices of the EpiPen® to over \$600**

20           34. As a result of Mylan’s extensive marketing, lobbying and branding efforts, between  
21 2007 and 2015 Mylan gained a commanding 85% share of the auto-injector market and, taking  
22  
23

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24 <sup>14</sup> *Id.*

25 <sup>15</sup> *Id.*

26 <sup>16</sup> Mylan NV transcript from presentation at Morgan Stanley Healthcare Brokers Conference, (Sept. 17,  
2015), <http://seekingalpha.com/article/3518926-mylan-nv-presents-morgan-stanley-healthcare-brokers-conference-transcript>.

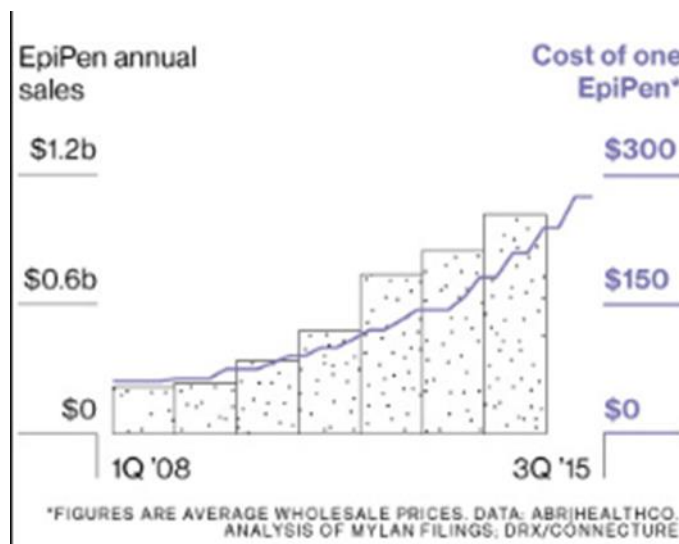
27 <sup>17</sup> Lucy Bayly & Emma Margolin, *How Mylan's Multimillion-Dollar Marketing Convinced Us We Need the EpiPen*, NBC News (Aug. 25, 2016), <http://www.nbcnews.com/business/business-news/how-mylan-s-multimillion-dollar-marketing-convinced-us-we-need-n637781>.

28 <sup>18</sup> *Id.*

1 advantage of its dominant market position, began to raise prices.<sup>19</sup>

2 35. In 2007, the price of two EpiPen®s was approximately \$100. The price was about the  
3 same in 2009, but by July 2013 Mylan raised the price to \$265. In May 2015 it raised it again to \$461.  
4 Most recently, in May 2016, Mylan raised the price to \$609.<sup>20</sup>

5 36. As the below chart, reproduced from a *Bloomberg* report on the company, indicates, this  
6 increase in price was precipitous, and boosted annual sales accordingly.<sup>21</sup>



17 <http://www.bloomberg.com/news/articles/2015-09-23/how-marketing-turned-the-epipen-into-a-billion-dollar-business>

## 18 E. Mylan's Prices Prevent Consumers From Purchasing Life-Saving Medication

19 37. In 2015, as a result of Mylan's above-described practices, sales of the EpiPen® reached  
20 around \$1.5 billion and accounted for 40% of Mylan's profits.<sup>22</sup>

23 <sup>19</sup> Emily Willingham, *Why Did Mylan Hike EpiPen Prices 400%? Because They Could*, Forbes (Aug.  
24 21, 2016).

25 <sup>20</sup> Tara Parker-Pope & Rachel Rabkin Peachman, *EpiPen Price Rise Sparks Concern for Allergy*  
*Sufferers*, New York Times (Aug. 22, 2016).

26 <sup>21</sup> Cynthia Koons & Robert Langreth, *How Marketing Turned the EpiPen Into a Billion Dollar Business*,  
27 Bloomberg Businessweek (Sept. 23, 2015), <http://www.bloomberg.com/news/articles/2015-09-23/how-marketing-turned-the-epipen-into-a-billion-dollar-business>.

28 <sup>22</sup> Emily Willingham, *Why Did Mylan Hike EpiPen Prices 400%? Because They Could*, Forbes (Aug.  
22, 2016), <http://www.forbes.com/sites/emilywillingham/2016/08/21/why-did-mylan-hike-epipen-prices-400-because-they-could/#32036983477a>.

1           38. But Mylan’s profits came at the expense of allergy sufferers. According to one analysis  
2 published in *Forbes* magazine: “Even after insurance pays, the customer can be out \$400 or more for a  
3 pack of two pens, a dollar value that can vary depending on how high the deductible is. And most  
4 customers need EpiPen®s for home and at school for their child . . .”<sup>23</sup> Moreover, because EpiPen®  
5 products have one of the shortest expiration periods of any drug product on the market, these costs must  
6 be incurred annually.<sup>24</sup>  
7

8           39. As a result of this drastic price increase, according to several reports, many patients have  
9 been unable to afford their EpiPen®s and have simply stopped buying them, despite their continued  
10 need to have a prescription treatment available in an emergency.<sup>25</sup>  
11

12           40. Some doctors and engineers have developed home-made alternatives to the EpiPen®  
13 which reportedly cost less than \$50 to make.<sup>26</sup>  
14

15           41. Even cities and towns have resorted to creating their own work-arounds. For example, in  
16 King County, Washington, the Emergency Medical Services staff has put together affordable kits to use  
17 for emergency purposes dubbed “Epi Kits” instead of purchasing EpiPen®s which many agencies no  
18 longer have the budget for.<sup>27</sup>  
19

20           42. But, non-experts are forced to either go without life-saving medication or inject the  
21 epinephrine themselves using a syringe that “carries the risk of injection into a vein, instead of muscle,  
22  
23

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23 <sup>23</sup> *Id.*

24 <sup>24</sup> Alice Park, *Expired EpiPens: What You Need to Know*, Time (Aug. 30, 2016),  
25 <http://time.com/4471773/expired-epipens-what-you-need-to-know/>.

26 <sup>25</sup> Emily Willingham, *Why Did Mylan Hike EpiPen Prices 400%? Because They Could*, Forbes (Aug.  
27 22, 2016), <http://www.forbes.com/sites/emilywillingham/2016/08/21/why-did-mylan-hike-epipen-prices-400-because-they-could/#32036983477a>.

28 <sup>26</sup> Fortune, *A Minnesota Doctor is Trying to get a \$50 EpiPen Alternative to the Market* (Sept. 15, 2016),  
<http://fortune.com/2016/09/15/epipen-alternative-cheap/>.

<sup>27</sup> The Seattle Times, *King County Drops EpiPen for Cheaper Kit With Same Drug*, (Jan. 15, 2015),  
<http://www.seattletimes.com/seattle-news/king-county-drops-epipen-for-cheaper-kit-with-same-drug/>.

1 which can be fatal.”<sup>28</sup>

2 **F. Mylan Begins to Sell EpiPen®s Only in “2-Paks”, Further Increasing the Cost to**  
 3 **Consumers**

4 43. In 2010, the National Institute of Allergy and Infectious Diseases (“NAID”) issued a  
 5 report indicating that doctors should be permitted to prescribe two doses of epinephrine in order to cover  
 6 a minority of patients (around 20%), who may not respond effectively to only one dose.<sup>29</sup>

7 44. At the time, Mylan CEO Bresch referred to the NAID report, among others, as a “big  
 8 event that we’ve started to capitalize on”<sup>30</sup> and sought to “encourage physicians”<sup>31</sup> to follow the report  
 9 regarding dosage. Mylan also stopped selling single EpiPen®s, instead providing only “2-Pak”  
 10 products, pictured below.  
 11



12 <http://www.savelives.com/product/epipen-2-pack-8530.cfm>

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 14  
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 21  
 22 <sup>28</sup> Emily Willingham, *Why Did Mylan Hike EpiPen Prices 400%? Because They Could*, Forbes (Aug.  
 23 22, 2016), <http://www.forbes.com/sites/emilywillingham/2016/08/21/why-did-mylan-hike-epipen-prices-400-because-they-could/#32036983477a>.

24 <sup>29</sup> Medical News Net, *Mylan Subsidiary to exclusively offer EpiPen and EpiPen Jr 2-Pak Auto-Injector*,  
 25 (Aug. 24, 2011), <http://www.news-medical.net/news/20110824/Mylan-subsidiary-to-exclusively-offer-EpiPen-2-Pak-and-EpiPen-Jr-2-Pak-Auto-Injector.aspx>.

26 <sup>30</sup> Cynthia Koons & Robert Langreth, *How Marketing Turned the EpiPen Into a Billion Dollar Business*,  
 27 Bloomberg Businessweek (Sept. 23, 2015), <http://www.bloomberg.com/news/articles/2015-09-23/how-marketing-turned-the-epipen-into-a-billion-dollar-business>.

28 <sup>31</sup> Medical News Net, *Mylan Subsidiary to exclusively offer EpiPen and EpiPen Jr 2-Pak Auto-Injector*  
 (Aug. 24, 2011), <http://www.news-medical.net/news/20110824/Mylan-subsidiary-to-exclusively-offer-EpiPen-2-Pak-and-EpiPen-Jr-2-Pak-Auto-Injector.aspx>.

1           45. As a result of Mylan’s decision, existing EpiPen® users who purchased single pens only,  
2 were forced to pay more for the two pack product, regardless of whether two pens were needed or not.

3  
4           46. Despite the fact that “there is no safety issue with the EpiPen® and EpiPen Jr.® [being  
5 sold in a] single package[,]”<sup>32</sup> Bresch, in one statement, described the move as critical to patient safety  
6 for all patients, not only a small minority who do not respond to a single dose. She explained:

7           Many people may not be aware that recent food allergy guidelines state that patients at  
8 risk for, or who have experienced anaphylaxis should have immediate access to two  
9 doses of epinephrine. The decision to exclusively offer the EpiPen 2-Pak®, which  
10 contains two single EpiPen® Auto-Injectors, aligns with these guidelines, as well as with  
11 the 2011 World Allergy Organization (WAO) anaphylaxis guidelines which recommend  
12 that physicians consider prescribing more than one epinephrine auto-injector. Mylan and  
13 Dey are committed to increasing the overall awareness of being prepared for a potentially  
14 life-threatening allergic reaction.<sup>33</sup>

15           47. Indeed, even before the National Institute of Allergy and Infectious Diseases issued its  
16 report, “[o]ne element of Mylan’s outreach efforts [wa]s to advise patients to double up on EpiPen®s . .  
17 . [out of] fear that ‘something could go wrong with your first attempt at giving the shot.’”<sup>34</sup> But,  
18 according to a study conducted by the American Academy of Allergy, Asthma & Immunology only a  
19 “small number of patients . . . require a second dose” and “the device is mainly sold in packs of two due  
20 to imperfect product design” causing “14 percent of parents [to] . . . accidentally stick the needle in their  
21 own thumb instead of in their child’s leg, as compared to zero percent of parents using” a competitor’s  
22 product.<sup>35</sup>

23  
24  
25 <sup>32</sup> *Id.*

26 <sup>33</sup> *Id.*

27 <sup>34</sup> Lucy Bayly & Emma Margolin, *How Mylan's Multimillion-Dollar Marketing Convinced Us We Need*  
28 *the EpiPen*, NBC News (Aug. 25, 2016), <http://www.nbcnews.com/business/business-news/how-mylan-s-multimillion-dollar-marketing-convinced-us-we-need-n637781>.

<sup>35</sup> Lucy Bayly & Emma Margolin, *How Mylan's Multimillion-Dollar Marketing Convinced Us We Need*  
*the EpiPen*, NBC News (Aug. 25, 2016), <http://www.nbcnews.com/business/business-news/how-mylan-s-multimillion-dollar-marketing-convinced-us-we-need-n637781>.

1 **G. In 2016, Federal and State Governments Begin to Investigate Mylan’s Deceptive Business**  
 2 **Practices**

3 48. In 2016, following widespread criticism of Mylan’s unrelenting, self-promoting sales  
 4 practices, many aspects of Mylan’s business were called into question by federal and state regulators.

5 **1. The United States Department of Justice Begins Fraud Investigations**

6 49. In September 2016, the United States Department of Justice investigated Mylan’s  
 7 Medicaid Drug rebate program following allegations that the company had improperly classified the  
 8 EpiPen® as a generic drug, “which provides a rebate of 13 percent to state Medicaid programs, rather  
 9 than as a [name-brand] drug, which pays a minimum rebate of 23.1 percent.”<sup>36</sup>

10 50. The difference between the 13 and 23.1 percent rebate is made up by the taxpayer who  
 11 was handed a hefty bill: “Medicaid spent about \$66.4 million on EpiPen®s in 2011. That amount was  
 12 up to \$365 million last year. Medicare’s prescription drug program, Medicare Part D, spent \$20 million  
 13 on the auto-injectors in 2011 and a whopping \$121.7 million in 2015.”<sup>37</sup>

14 51. The Centers for Medicare and Medicaid Services, “on multiple occasions, provided  
 15 guidance to the industry and Mylan on the proper classification of drugs and has expressly advised  
 16 Mylan that their classification of EpiPen® for purposes of the Medicaid Drug Rebate program was  
 17 incorrect.”<sup>38</sup>

18 52. Besides paying Medicaid a too-low rebate on EpiPen® purchases, the Centers for  
 19 Medicare and Medicaid Services alleged that Mylan failed to pay Medicaid a second rebate that is  
 20 required when a brand-name drug price rises more than inflation; and “[t]he price of an EpiPen® pack  
 21  
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 23  
 24

25 <sup>36</sup> Diane Bartz, *U.S. Agency Told Mylan that EpiPen was Misclassified*, Reuters (Sept. 28, 2016),  
 26 <http://www.reuters.com/article/us-congress-mylan-nl-idUSKCN11Y1X5>.

27 <sup>37</sup> Emily Willingham, *EpiPen Make Mylan Agrees to \$465 Million Settlement With DOJ*, Forbes (Oct. 7,  
 2016), <http://www.forbes.com/sites/emilywillingham/2016/10/07/epipen-maker-mylan-agrees-to-465-million-settlement-with-doj/#15439733c921>.

28 <sup>38</sup> Diane Bartz, *U.S. Agency Told Mylan that EpiPen was Misclassified*, Reuters (Sept. 28, 2016),  
<http://www.reuters.com/article/us-congress-mylan-nl-idUSKCN11Y1X5>.

1 rose 23 percent a year on average between 2007 and 2016 [while] [i]nflation has averaged less than 2  
2 percent a year over the same period.”<sup>39</sup>

3 53. Mylan has said it “falls under an exemption that allows it to pay the 13 . . . percent rebate,  
4 since the medication inside EpiPen® is off-patent [even though] the device itself is patent-protected.”<sup>40</sup>

5 54. However, on October 7, 2016, Mylan announced a \$465 million settlement<sup>41</sup> with the  
6 United States Department of Justice to “resolve questions that have been raised about the classification  
7 of [the] EpiPen® Auto-Injector and EpiPen Jr® Auto-Injector (collectively, “EpiPen Auto-Injector”) for  
8 purposes of the Medicaid Drug Rebate Program.”<sup>42</sup>

9 55. The settlement terms provide for resolution of all potential rebate liability claims by  
10 federal and state governments as to whether the product should have been classified as a name brand  
11 drug for the Centers for Medicare and Medicaid Services’ purposes and subject to a higher rebate  
12 formula. In connection with the settlement, Mylan expects to enter into a corporate integrity agreement  
13 with the Office of Inspector General of the Department of Health and Human Services.

14 56. The settlement has not been finalized, however, and has drawn criticism from some  
15 government officials. According to Senator Richard Blumenthal, the settlement is “a shadow of what it  
16 should be. The deal short-circuits investigation and fact-finding necessary to determine the scope of  
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22 <sup>39</sup> Linda A. Johnson, *Mylan to Pay \$465M Settlement over Medicaid EpiPen Rebates*, Jems (Oct. 10,  
23 2016), <http://www.jems.com/articles/news/2016/10/mylan-to-pay-465m-settlement-over-medicoid-epipen-rebates.html>.

24 <sup>40</sup> Mylan, *Mylan Agrees to Settlement on Medicate Rebate Classifications for EpiPen Auto-Injector*,  
25 (Nov. 9, 2016), <http://newsroom.mylan.com/2016-10-07-Mylan-Agrees-to-Settlement-on-Medicoid-Rebate-Classification-for-EpiPen-Auto-Injector>.

26 <sup>41</sup> Mylan, *Mylan Agrees to Settlement on Medicate Rebate Classifications for EpiPen Auto-Injector*,  
27 (Nov. 9, 2016), <http://newsroom.mylan.com/2016-10-07-Mylan-Agrees-to-Settlement-on-Medicoid-Rebate-Classification-for-EpiPen-Auto-Injector>, (Mylan will include a pre-tax charge of approximately  
28 \$465 million in the quarter ended Sept. 30, 2016 as a result of this settlement).

<sup>42</sup> Antoine Gara, *Mylan Surges After Quickly Settling with DOJ Over EpiPen Medicaid Rebates*, Forbes  
(Oct. 8, 2016), <http://www.forbes.com/sites/antoinegara/2016/10/08/mylan-surges-after-quickly-settling-with-doj-over-epipen-medicoid-rebates/#2d0dd25c6afb>.



1 illegality, culpability of individuals and proof of criminal wrongdoing.”<sup>43</sup>

2 57. Senator Blumenthal went on to explain: “This settlement is blatantly inadequate, not only  
3 in dollar amount, but also Mylan’s avoiding admission of moral and legal responsibility.”<sup>44</sup>

4 58. Senator Charles Grassley also voiced his concerns, explaining that: “It’s unclear whether  
5 this settlement is fair or in proportion to the amount Mylan overcharged the taxpayers. It’s also unclear  
6 how much money is going back to the states.”<sup>45</sup>

7 59. At the time of this filing, Mylan also announced that it was also under investigation by  
8 the Securities and Exchange Commission.<sup>46</sup>

## 10 **2. Senators Ask the Federal Trade Commission To Investigate Mylan**

11 60. Also in September 2016, two United States Senators—Senator Richard Blumenthal and  
12 Senator Amy Klobuchar—asked the Federal Trade Commission to investigate whether Mylan violated  
13 federal antitrust laws to protect EpiPen®s from competition.<sup>47</sup>

14 61. According to Senator Richard Blumenthal’s office: “Schools [who used the  
15 EpiPen4Schools® Program] were required to sign a contract agreeing not to purchase any products  
16 from Mylan’s competitors for a period of 12 months — conduct that can violate the antitrust laws when  
17 taken by a monopolist.”<sup>48</sup>

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19  
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21 <sup>43</sup> Jeff Overley, *Mylan Inks \$465M Deal Over EpiPen Rebates*, Law360,  
22 <http://www.law360.com/articles/849765/mylan-inks-465m-deal-over-epipen-rebates> (Oct. 7, 2016).

23 <sup>44</sup> *Id.*

24 <sup>45</sup> Zachary Tracer, *Mylan Agrees to \$465 Million EpiPen Settlement With U.S.*, Bloomberg (Oct. 7,  
2016), <http://www.bloomberg.com/news/articles/2016-10-07/mylan-agrees-to-465-million-settlement-with-u-s-over-epipen>.

25 <sup>46</sup> *Id.*

26 <sup>47</sup> Dan Mangan, *New York Attorney General Launches Antitrust probe of Mylan’s EpiPen Contracts*,  
CNBC (Sept. 6, 2016), <http://www.cnn.com/2016/09/06/new-york-attorney-general-launches-antitrust-probe-of-mylans-epipen-contracts.html>.

27 <sup>48</sup> Richard Blumenthal, Blumenthal & Klobuchar, *Call for Immediate Federal Investigations into  
28 Possible Antitrust Violations by EpiPen Manufacturer* (Sept. 6, 2016),  
<https://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-and-klobuchar-call-for-immediate-federal-investigation-into-possible-antitrust-violations-by-epipen-manufacturer>.

### 3. The New York State Attorney General Begins Antitrust Investigations

62. The New York State Attorney General began a similar investigation into Mylan's effort to require that schools and other public places carry their product, alleging that it was in violation of state and federal anti-trust laws.<sup>49</sup>

63. Specifically, New York Attorney General Eric Schneiderman alleged that schools using Mylan's "EpiPen4Schools® Program"—a program that provides free EpiPen® products to schools—were contractually barred from buying products from Mylan's competitors for one year.<sup>50</sup>

64. In announcing his investigation, Attorney General Eric Schneiderman said: "If Mylan engaged in anti-competitive business practices, or violated antitrust laws with the intent and effect of limiting lower cost competition, we will hold them accountable."<sup>51</sup>

### 4. The West Virginia State Attorney General Initiates Fraud Investigations

65. In September 2016, the West Virginia State Attorney General opened an investigation into Mylan's Medicaid Drug rebate program.<sup>52</sup>

66. Specifically, the West Virginia Attorney General "is investigating if Mylan was issuing Medicaid rebates for EpiPen®s at 'non-innovator' levels, which are typically used for generic drugs, rather than at 'innovator' levels, which are used for name-brand drugs."<sup>53</sup>

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<sup>49</sup> Erik Larson & Jared S. Hopkins, *Mylan's EpiPen School Sales Trigger N.Y. Antitrust Probe*, Bloomberg (Sept. 6, 2016), <http://www.bloomberg.com/news/articles/2016-10-07/mylan-agrees-to-465-million-settlement-with-u-s-over-epipen>.

<sup>50</sup> Fortune, *Mylan's EpiPen Problems Just Got a Whole Lot Worse* (Sept. 6, 2016), <http://fortune.com/2016/09/06/mylan-antitrust-probe-epipen-new-york-ag/>.

<sup>51</sup> Attorney General Eric T. Schneiderman, *A.G. Schneiderman, Launches Antitrust Investigation Into Mylan Pharmaceuticals Inc., Maker Of Epipen* (Sept. 6, 2016), <http://www.ag.ny.gov/press-release/ag-schneiderman-launches-antitrust-investigation-mylan-pharmaceuticals-inc-maker>.

<sup>52</sup> Jeff Feeley, & Robert Langreth, *Mylan Investigations Mount as West Virginia Opens Fraud Probe*, Bloomberg News (Sept. 20 2016).

<sup>53</sup> Gillian Mohny, *West Virginia Attorney General Investigate EpiPen Maker Mylan*, ABC News (Sept. 20, 2016), <http://abcnews.go.com/Health/west-virginia-attorney-general-investigates-epipen-maker-mylan/story?id=42231963>.

1 67. Mylan has refused to co-operate with the West Virginia Attorney General's  
2 investigation.<sup>54</sup>

3 **H. In September 2016, Congress Convened a Hearing Regarding Mylan's Price Hikes in**  
4 **Response to Consumer Complaints**

5 68. Consumers' outcry over the price of EpiPen®s has been emphatic and desperate, and the  
6 Federal Trade Commission has been flooded with complaints by consumers who can no longer afford  
7 their medication, a few of which are reproduced below:

8 A. A New Jersey Consumer reported: "My son has required an EpiPen® since he was born.  
9 Over the past 21 years the cost has skyrocketed and I can no longer afford it. My insurance company  
10 informs me that our out of pocket cost this year is \$622.23."<sup>55</sup>

11 B. A Washington Consumer reported: "When refilling my annual prescription for an  
12 EpiPen® needed because of my allergy to bees, I learned I would have to pay \$610+ out of pocket. I  
13 have health insurance with a high deductible and this cost seems out of control. Even the generic  
14 alternative at Costco is priced at \$500+. This feels like price gouging/fixing as most people won't be  
15 able to forgo filling this prescription. Compounding the problem is that the medication is only available  
16 in a 2-pack. I chose not to refill mine at that cost."<sup>56</sup>

17 C. A Vermont Consumer reported: "I got a prescription from my doctor and just could not  
18 believe the pen with no insurance is now \$500 and my co-pay \$200 which I simply cannot afford yearly.  
19 I am on disability with a very limited income. I just want to cry! Mylan and others simply MUST be  
20 price regulated. I can't find any other assistance program for this. I have written to Mylan about this, in  
21 this month of Nov., but there has been no response."<sup>57</sup>

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<sup>54</sup> *Id.*

27 <sup>55</sup> Matt Novak, *EpiPen Price Gouging Complaints Have Flooded the FTC for Years*, Gizmodo (Sept. 7,  
2016), <http://gizmodo.com/epipen-price-gouging-complaints-have-flooded-the-ftc-fo-1786325838>.

28 <sup>56</sup> *Id.*

<sup>57</sup> *Id.*

1           69. In response to these and other complaints, on September 27, 2016, the House Oversight  
2 and Government Reform Committee held a hearing to address concerns over Mylan regarding the  
3 company's 500% price increase.

4  
5 **I. Mylan, Seeking to Justify its Price Increases, Made a Number of Material  
6 Misrepresentations to the Congressional Committee**

7           70. Mylan's CEO Heather Bresch testified before the House Oversight and Government  
8 Reform Committee and gave a number of explanations for the company's practices, many of which the  
9 company was forced to rescind and/or clarify.

10 **1. Mylan Misrepresented its Costs & Profits**

11           71. Bresch first testified to Congress, under oath, that the high price of EpiPen®s is justified  
12 because the company makes only \$100 in profit from a \$608 two pack of EpiPen®s. Specifically, she  
13 explained:

14 I know there is considerable concern and skepticism about the pricing of EpiPen® Auto-  
15 Injectors. I think many people incorrectly assume we make \$600 off each EpiPen®. This  
16 is simply not true. In the complicated world of pharmaceutical pricing there is something  
17 known as the Wholesale Acquisition Cost or WAC. The WAC for a 2 unit pack of  
18 EpiPen® Auto-Injectors is \$608. After rebates and various fees, Mylan actually receives  
19 \$274. Then you must subtract our cost of goods which is \$69. This leaves a balance of  
20 \$205. **After subtracting all EpiPen® Auto-Injector related costs our profit is \$100,  
or approximately \$50 per pen.** The misconception about our profits is understandable,  
and at least partly due to the complex environment in which pharmaceutical prices are  
determined. The pricing of a pharmaceutical product is opaque and frustrating, especially  
for patients.<sup>58</sup>

21           72. The following day, however, Mylan confirmed admitted that these statements made by its  
22 CEO, under oath, were misleading. In response to questions from *The Wall Street Journal*, Mylan  
23 reported that "the profit figure . . . included taxes, which the company didn't clearly convey to Congress.  
24  
25  
26

27 <sup>58</sup> Testimony of Mylan CEO Heather Bresch before the United States House of Representatives  
28 Committee on Oversight and Government Reform (Sept. 21, 2016), <http://www.mylan.com/-/media/mylancom/files/news/oral-testimony-of-mylan-ceo-heather-bresch-before-the-united-states-house-of-representatives-committee-on-oversight-and-government-reform.pdf>.

1 The company substantially reduced its calculation of EpiPen® profits by applying the statutory U.S.  
2 corporate tax rate of 37.5%—five times Mylan’s overall tax rate last year.”<sup>59</sup>

3 73. In reality, “Mylan’s profits on the EpiPen 2-Pak® were about 60% higher than the figure  
4 given to Congress,”<sup>60</sup> according to a number of exposés,<sup>61</sup> reproduced below:



5  
6  
7  
8  
9  
10 <http://californiahealthline.org/morning-breakout/mylan-misrepresented-epipen-profits-to-congress-by-60-percent/>

## 11 2. Mylan Misrepresented its “Re-Design” of the EpiPen®

12 74. Bresch also testified that it invested “more than one billion dollars” in the EpiPen®  
13 product “to enhance the product and make it more available.”<sup>62</sup> Specifically, Bresch claimed:

14 In the more than 8 years we have owned the EpiPen® product, we have worked diligently  
15 and invested to enhance the product and make it more available. In fact, we have invested  
16 more than one billion dollars in the efforts. On many fronts we have succeeded. We put a  
17 much improved EpiPen® device on the market in 2009. We’ve also invested so that we  
18 can soon offer a longer shelf life, which means patients will go longer before needing a  
19 refill.<sup>63</sup>

20  
21 <sup>59</sup> Mark Maremont, *Mylan’s EpiPen Pretax Profits 60% Higher Than Number Told to Congress*, The  
22 Wall Street Journal (Sept. 26, 2016), <http://www.wsj.com/articles/mylan-clarifies-epipen-profit-figures-it-provided-to-congress-last-week-1474902801>.

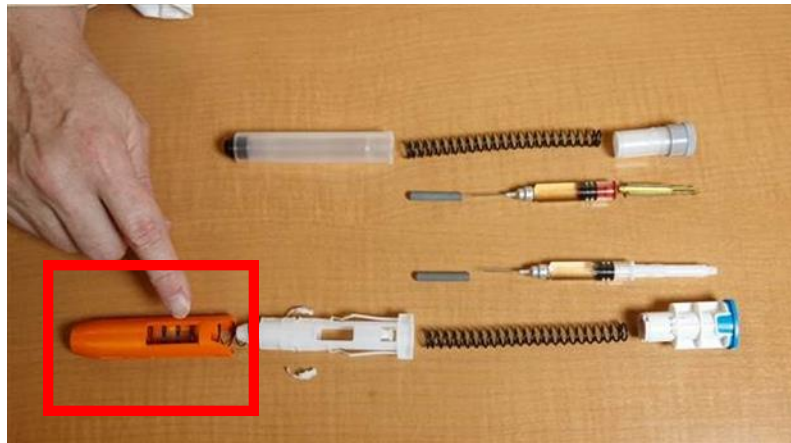
23 <sup>60</sup> Meg LaTorre-Snyder, *Lawmakers Misled: EpiPen Profits are 60% Higher Than What Mylan  
24 Disclosed to Congress*, Pharmaceutics Processing (2016).

25 <sup>61</sup> *Id.*; California Healthline, *Mylan Misrepresented EpiPen Profits to Congress by 60 Percent* (Sept. 27,  
26 2016), <http://californiahealthline.org/morning-breakout/mylan-misrepresented-epipen-profits-to-congress-by-60-percent/>.

27 <sup>62</sup> Ben Popken, *Mylan’s Upgraded EpiPen Torn Apart By Experts*, NBC News (Sept. 20, 2016),  
28 <http://www.nbcnews.com/business/consumer/mylan-says-it-upgraded-epipen-2009-so-experts-looked-inside-n652651>.

<sup>63</sup> Testimony of Mylan CEO Heather Bresch before the United States House of Representatives  
Committee on Oversight and Government Reform Wednesday, September 21, 2016,  
<http://www.mylan.com/-/media/mylancom/files/news/oral-testimony-of-mylan-ceo-heather-bresch-before-the-united-states-house-of-representatives-committee-on-oversight-and-government-reform.pdf>.

1           75. But according to Dr. Julie C. Brown, a University of Washington School of Medicine  
 2 pediatric emergency physician, Mylan’s “redesign” uses the same core device that’s been in use for  
 3 some time.<sup>64</sup> Indeed, as the below image indicates, the most notable difference between the original and  
 4 redesigned EpiPen® is a plastic sheathing<sup>65</sup> —hardly a justification for a 500% price increase.  
 5



<http://www.nbcnews.com/business/consumer/mylan-says-it-upgraded-epipen-2009-so-experts-looked-inside-n652651>

13           76. Further, according to Lauren Kashtan, the Head of North America Communications at  
 14 Mylan, in a letter to NBC News reproduced below,<sup>66</sup> the re-design includes many cosmetic changes,  
 15 such as changing the color of the plastic used.  
 16

17           77. When asked by investigative reporters about the company’s 400-500% increase in prices,  
 18 Kashtan provided the following list of ‘improvements’, none of which come close to justifying Mylan’s  
 19 extreme price increases:  
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 21  
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26 \_\_\_\_\_  
 27 <sup>64</sup> Ben Popken, *Mylan’s Upgraded EpiPen Torn Apart By Experts*, NBC News (Sept. 20, 2016),  
<http://www.nbcnews.com/business/consumer/mylan-says-it-upgraded-epipen-2009-so-experts-looked-inside-n652651>.

28 <sup>65</sup> *Id.*

<sup>66</sup> *Id.*



1 result he is required to store six to eight pens at all times – including two at his workplace, two at home,  
2 and two in his car. Mr. Beaulieu also stores expired pens in order to meet this requirement. The cost to  
3 Mr. Beaulieu has varied significantly over the years, but has ranged from \$15.00 for a single-pack to  
4 close to \$300.00 out of pocket, after insurance.  
5

## 6 VI. CLASS ALLEGATIONS

7 80. Plaintiffs brings this suit on behalf of themselves and, pursuant to Federal Rule of Civil  
8 Procedure 23, on behalf of the following Class:

9 All persons who, for purposes other than resale, purchased or paid for EpiPen® products  
10 from at least 2007 through the present. For purposes of the Class definition, individuals  
11 “purchased” these drugs if they paid all or part of the purchase price.

12 81. Excluded from the Class are the Defendants, the officers, directors or employees of the  
13 Defendants, the attorneys in this case and any judge assigned to this matter, including the Court’s staff.

14 82. **Numerosity.** The proposed Class is sufficiently numerous and its members are  
15 dispersed throughout the United States, making joinder of all members impracticable. Indeed, millions  
16 of EpiPen®s are purchased annually throughout the United States.

17 83. **Commonality.** Common questions of fact and law exist for each cause of action and  
18 predominate over questions affecting only individual class members, including: whether Defendants  
19 charged an excessive price for their product; whether Defendants made material misrepresentations  
20 regarding their product; whether Defendants abused their dominant market position; whether Defendants  
21 acted intentionally with respect to the foregoing; whether Defendants acted in violation of state and  
22 federal law; and whether Plaintiffs are entitled to damages and/or injunctive relief.

23 84. **Typicality.** Plaintiffs’ claims are typical of the claims of members of the proposed Class  
24 because, among other things, Plaintiffs and Class members sustained similar injuries as a result of  
25 Defendants’ uniform wrongful conduct and their legal claims all arise from the same conduct.  
26

27 85. **Adequacy.** Plaintiffs will fairly and adequately protect the interests of the proposed  
28 Class. Plaintiffs’ interests do not conflict with Class members’ interests and Plaintiffs’ have retained





1 90. California’s Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750, *et seq.*,  
2 proscribes “unfair methods of competition and unfair or deceptive acts or practices undertaken by any  
3 person in a transaction intended to result or which results in the sale or lease of goods or services to any  
4 consumer.”

5 91. Defendants’ EpiPen® products are “goods” as defined in Cal. Civ. Code § 1761(a).

6 92. Plaintiff Corcoran and the other California members of the Class are “consumers” as  
7 defined in Cal. Civ. Code § 1761(d).

8 93. Plaintiff Corcoran, the other California members of the Class, Mylan Pharmaceuticals,  
9 Inc. and Mylan Specialty L.P. are “persons” as defined in Cal. Civ. Code § 1761(c).

10 94. Mylan Pharmaceuticals, Inc. and Mylan Specialty L.P.’s conduct, as described herein,  
11 was and is in violation of the CLRA.  
12

13 95. Mylan Pharmaceuticals, Inc. and Mylan Specialty L.P.’s conduct violates at least the  
14 following enumerated CLRA provisions:  
15

16 A. Cal. Civ. Code § 1770(a)(5): Representing that goods have characteristics, uses, and  
17 benefits which they do not have;

18 B. Cal. Civ. Code § 1770(a)(7): Representing that goods are of a particular standard, quality,  
19 or grade, if they are of another; and  
20

21 C. Cal. Civ. Code § 1770(a)(9): Advertising goods with intent not to sell them as advertised.

22 96. As alleged throughout this Complaint, Mylan Pharmaceuticals, Inc. and Mylan Specialty  
23 L.P. engaged in unfair methods of competition and unfair or deceptive acts or practices in violation of  
24 California’s Consumers Legal Remedies Act including, but not limited to: (A) misclassifying its  
25 EpiPen® products as generic drugs; (B) making material misrepresentations regarding its reasons for  
26 increasing the price of its EpiPen® products; (C) making material misrepresentations regarding the  
27 reason its EpiPen® products are sold only in two packs; and (D) exploiting its dominant market position  
28 to unreasonably increase the price of EpiPen® products.

1 97. Plaintiff Corcoran and the California members of the Class have suffered injury in fact  
2 and actual damages resulting from Mylan Pharmaceuticals, Inc. and Mylan Specialty L.P.'s material  
3 omissions and misrepresentations because they paid an inflated price for EpiPen® products.

4 98. The facts concealed and omitted by Mylan Pharmaceuticals, Inc. and Mylan Specialty  
5 L.P. were material in that a reasonable consumer would have considered them to be important.  
6

7 99. Plaintiff Corcoran and the California members of the Class' injuries were proximately  
8 caused by Mylan Pharmaceuticals, Inc. and Mylan Specialty L.P.'s material omissions and  
9 misrepresentations because they paid an inflated price for EpiPen® products.

10 **SECOND CLAIM FOR RELIEF**  
11 **VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW**  
12 **On Behalf of Plaintiff Corcoran and the California Members of the Class Against All Defendants**  
13 **(Cal. Bus. & Prof. Code §§ 17500, *et seq.*)**

14 100. Plaintiff Corcoran incorporates by reference all preceding allegations as though fully set  
15 forth herein.

16 101. Plaintiff Corcoran brings this Count on behalf of all members of the Class who are or  
17 have been residents of California at any relevant time ("California members of the Class").

18 102. California Bus. & Prof. Code § 17500 provides:

19 It is unlawful for any corporation...with intent directly or indirectly to dispose of real or  
20 personal property...to induce the public to enter into any obligation relating thereto, to  
21 make or disseminate or cause to be made or disseminated from this state before the public  
22 in any state, in any newspaper or other publication, or any advertising device, ... or in any  
23 other manner or means whatever, including over the Internet, any statement ... which is  
24 untrue or misleading, and which is known, or which by the exercise of reasonable care  
25 should be known, to be untrue or misleading.

26 103. As alleged throughout this Complaint, Mylan Pharmaceuticals, Inc. and Mylan Specialty  
27 L.P. caused to be made or disseminated throughout California and the United States, through  
28 advertising, marketing and other publications, statements that were untrue or misleading, and which  
were known, or which by the exercise of reasonable care should have been known to Mylan

1   Pharmaceuticals, Inc. and Mylan Specialty L.P. to be untrue and misleading to consumers, including  
2   Plaintiffs and the other Class members.

3           104.   Plaintiff Corcoran and the other Class members have suffered an injury in fact, as a result  
4   of Mylan Pharmaceuticals, Inc. and Mylan Specialty L.P.’s unfair, unlawful, and/or deceptive practices.  
5   Mylan made misrepresentations and/or omissions of Mylan Pharmaceuticals, Inc. and Mylan Specialty  
6   L.P. with respect to the design, cost, and efficacy of Defendants’ EpiPen® products.

7  
8           105.   All of the wrongful conduct alleged herein occurred, and continues to occur, in the  
9   conduct of Mylan Pharmaceuticals, Inc. and Mylan Specialty L.P.’s business. Mylan Pharmaceuticals  
10   Inc. and Mylan Specialty L.P.’s wrongful conduct is part of a pattern or generalized course of conduct  
11   that is still perpetuated and repeated, both in the State of California and nationwide.

12  
13           106.   Plaintiff Corcoran individually and on behalf of the other California members of the  
14   Class, request that this Court enter such orders or judgments as may be necessary to enjoin Mylan  
15   Pharmaceuticals, Inc. and Mylan Specialty L.P. from continuing their unfair, unlawful, and/or deceptive  
16   practices and to restore to Plaintiffs and the other Class members any money Mylan Pharmaceuticals,  
17   Inc. and Mylan Specialty L.P.’s acquired by their violations of California’s False Advertising law,  
18   including restitution and/or restitutionary disgorgement, and for such other relief set forth below.

19  
20                                   **THIRD CLAIM FOR RELIEF**  
21                                   **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW**  
22                                   **On Behalf of Plaintiff Corcoran and the California Members of the Class Against All Defendants**  
23                                   **(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

24           107.   Plaintiffs incorporate by reference each preceding paragraph as though fully set forth  
25   herein.

26           108.   Plaintiff Corcoran brings this Count on behalf of all members of the Class who are or  
27   have been residents of California at any relevant time (“California members of the Class”).

28           109.   California Business and Professions Code § 17200 prohibits any “unlawful, unfair, or  
fraudulent business act or practices.” Mylan Pharmaceuticals, Inc. and Mylan Specialty L.P. has

1 engaged in unlawful, fraudulent, and unfair business acts and practices in violation of California's  
2 Unfair Competition law.

3 110. As alleged throughout this Complaint, Mylan engaged in unfair, deceptive, and/or  
4 unlawful practices in violation of California's Unfair Competition law including, but not limited to: (A)  
5 misclassifying its EpiPen® products as generic drugs; (B) making material misrepresentations regarding  
6 its reasons for increasing the price of its EpiPen® products; (C) making material misrepresentations  
7 regarding the reason its EpiPen® products are sold only in two packs; and (D) exploiting its dominant  
8 market position to unreasonably increase the price of EpiPen® products.  
9

10 111. Defendants' unfair, unlawful and/or deceptive activity alleged herein caused Plaintiffs  
11 and the California members of the Class to purchase EpiPen® products at inflated prices.  
12

13 112. Accordingly, Plaintiff Corcoran and the California members of the Class have suffered  
14 injury in fact including lost money or property as a result of Defendants' misrepresentations and  
15 omissions.

16 113. Plaintiff Corcoran seeks to enjoin further unlawful, unfair, and/or fraudulent acts or  
17 practices by Defendant under Cal. Bus. & Prof. Code § 17200.  
18

19 114. Plaintiffs request that this Court enter such orders or judgments as may be necessary to  
20 enjoin Mylan Pharmaceuticals, Inc. and Mylan Specialty L.P. from continuing their unfair, unlawful,  
21 and/or deceptive practices and to restore to Plaintiffs and members of the Class any money Defendants'  
22 acquired by unfair competition, including restitution and/or restitutionary disgorgement, as provided in  
23 Cal. Bus. & Prof. Code § 17203 and Cal. Bus. & Prof. Code § 3345; and for such other relief set forth  
24 below.  
25  
26  
27  
28

1 **FOURTH CLAIM FOR RELIEF**  
2 **VIOLATIONS OF THE MASSACHUSETTS CONSUMER PROTECTION ACT**  
3 **On Behalf of Plaintiff Beaulieu and the Massachusetts Members of the Class Against All**  
4 **Defendants**  
5 **(Mass. Gen. Laws Ch. 93A §§ 1, et seq.)**

6 115. Plaintiffs incorporate by reference each preceding paragraph as though fully set forth  
7 herein.

8 116. Plaintiff Beaulieu bring this Count on behalf of all members of the Class who are or have  
9 been residents of Massachusetts at any relevant time (“Massachusetts members of the Class”).

10 117. Massachusetts’s Consumer Protection Act, Mass. Gen. Laws ch. 93A makes it unlawful  
11 to engage in any unfair methods of competition and unfair or deceptive acts or practices in the conduct  
12 of any trade or commerce. Unfair acts or practices include practices that are within at least the  
13 penumbra of some common-law, statutory, or other established concept of unfairness; immoral,  
14 unethical, oppressive, or unscrupulous acts; or acts that cause substantial injury. Deceptive acts or  
15 practices include those that would reasonably cause a person to act differently from the way he or she  
16 otherwise would have acted.

17 118. As alleged throughout this Complaint, Mylan engaged in unfair, deceptive, and/or  
18 unlawful practices in violation of Mass. Gen. Laws ch. 93A including, but not limited to: (A)  
19 misclassifying its EpiPen® products as generic drugs; (B) making material misrepresentations regarding  
20 its reasons for increasing the price of its EpiPen® products; (C) making material misrepresentations  
21 regarding the reason its EpiPen® products are sold only in two packs; and (D) exploiting its dominant  
22 market position to unreasonably increase the price of EpiPen® products.

23 119. As alleged throughout this Complaint, Mylan also engaged in unfair and unscrupulous  
24 practices by raising the price of life-saving medication without justification and limiting patient access  
25 to alternatives resulting in substantial harm.

26 120. Mylan’s conduct offends public policy and is immoral, unethical, oppressive,  
27 unscrupulous, or substantial injurious to consumers. Additionally, Mylan’s conduct was deceptive  
28

1 because it caused Plaintiffs and the Massachusetts members of the Class to act differently from the way  
2 they would have otherwise acted.

3 121. Mylan's unfair and/or deceptive acts or practices in violation of Mass. Gen. Laws Ch.  
4 93A, § 2, proximately caused Plaintiffs and the Massachusetts members of the Class adverse  
5 consequences or losses, including the loss of money from purchasing Mylan's EpiPen® products at an  
6 inflated price. The losses and adverse consequences that Plaintiffs and the Massachusetts members of  
7 the Class suffered by purchasing Mylan's EpiPen® products were foreseeable results of Mylan's unfair,  
8 deceptive, and/or unlawful advertising and marketing.  
9

10 122. As a result of Mylan's violations of Massachusetts's Consumer Protection Act, Plaintiffs  
11 and the Massachusetts members of the Class seek an order of this Court awarding actual damages,  
12 punitive damages, restitution, an injunction against the use of unlawful trade practices, attorneys' fees  
13 and costs, and for such other relief as set forth below.  
14

15 **FIFTH CLAIM FOR RELIEF**  
16 **FRAUD BY CONCEALMENT**

17 123. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth  
18 herein.

19 124. Mylan intentionally concealed and suppressed material facts concerning the quality and  
20 efficacy of its EpiPen® products. Mylan, at least: (A) misclassified its EpiPen® products as generic  
21 drugs; (B) made material misrepresentations regarding its reasons for increasing the price of its EpiPen®  
22 products; (C) made material misrepresentations regarding the reason its EpiPen® products are sold only  
23 in two packs; and (D) exploited its dominant market position to unreasonably increase the price of  
24 EpiPen® products.  
25

26 125. Plaintiffs and the Class reasonably relied upon Mylan's false representations and/or were  
27 forced to purchase Mylan's products despite those representations due to Mylan's unfair commercial  
28 practices. They had no way of knowing that Mylan representations were false and gravely misleading.







1 143. An actual controversy has arisen regarding Mylan's current obligations to provide  
2 accurate information to consumers regarding their EpiPen® products and offer those products at a fair  
3 and reasonable price. On information and belief, Mylan denies that it previously had nor now has any  
4 such obligation.

5  
6 144. Plaintiffs thus seek a declaration that, in order to comply with its existing obligations,  
7 Mylan must truthfully sell and market its EpiPen® products.

### 8 **VIII. REQUEST FOR RELIEF**

9 WHEREFORE, Plaintiffs, individually and on behalf of members of the Class respectfully  
10 request that the Court enter judgment in their favor and against Mylan, as follows:

11 A. Certification of the proposed Class, including appointment of Plaintiffs' counsel as Class  
12 Counsel;

13  
14 B. An order temporarily and permanently enjoining Mylan from continuing the unlawful,  
15 deceptive, fraudulent, and unfair business practices alleged in this Complaint;

16 C. Injunctive relief, including public injunctive relief, as the court deems appropriate;

17 D. Costs, restitution, damages, and disgorgement in an amount to be determined at trial;

18 E. Revocation of acceptance;

19 F. Declaratory relief as the court deems appropriate;

20 G. Treble and/or punitive damages as permitted by applicable laws;

21 H. An order requiring Mylan to pay both pre- and post-judgment interest on any amounts  
22 awarded;

23  
24 I. An award of costs and attorneys' fees; and

25 J. Such other or further relief as may be appropriate.

### 26 **IX. JURY TRIAL DEMANDED**

27 Plaintiffs hereby demand a trial by jury on all issues so triable.  
28

1 DATED this 17th day of October, 2016.

2 KELLER ROHRBACK L.L.P.

3  
4 By /s/ Jeffrey Lewis

5 Jeffrey Lewis (66587)  
6 Jacob Richards (273476)  
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*Attorneys for Plaintiffs*

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Kimberly Corcoran and Todd Beaulieu, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff Contra Costa (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Jeffrey Lewis, Keller Rohrbach L.L.P., 300 Lakeside Dr, Ste. 1000, Oakland, CA 94612, 510-463-3900, jlewis@kellerrohrbach.com

DEFENDANTS

MYLAN PHARMACEUTICALS INC. and MYLAN SPECIALTY L.P.

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

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

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

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

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

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, PERSONAL INJURY, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1332(d) Brief description of cause: Unfair Trade Practice Acts and/or Consumer Protection Acts and Unjust Enrichment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [ ] No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) [X] SAN FRANCISCO/OAKLAND [ ] SAN JOSE [ ] EUREKA-MCKINLEYVILLE

DATE: 10/17/2016

SIGNATURE OF ATTORNEY OF RECORD: /s/ Jeffrey Lewis

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Says Mylan Illegally Inflated EpiPen Prices](#)

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