

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. _____

JACQUELINE GASTON, MATT
GUSTAFSON, MARLENE JACOBUS, and
RACHEL BERG, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

ABB/CON-CISE OPTICAL GROUP LLC
ALCON LABORATORIES, INC.; BAUSCH
& LOMB INC; JOHNSON & JOHNSON
VISION CARE, INC.; and COOPERVISION,
INC.

Defendants.

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiffs bring this class action suit against the above-named Defendants for damages, injunctive relief, and other relief pursuant to the federal antitrust laws and state antitrust, unfair competition, and consumer protection laws. Plaintiffs make the following allegations based upon personal knowledge as to their own acts, and upon information and belief and their attorneys' investigative efforts as to Defendants' actions and misconduct, and allege as follows:

PRELIMINARY STATEMENT

1. This case is an antitrust class action about a conspiracy among the four leading contact lens manufacturers and the leading contact lens distributor in the United States. The conspiracy was aimed at putting a stop to discounting among retailers of contact lenses through the imposition of a minimum resale price maintenance scheme, which was intended to and did

have the effect of artificially fixing, raising, maintaining, or stabilizing the prices charged to consumers for contact lenses.

2. Defendants Alcon Laboratories, Inc. (“Alcon”); Bausch & Lomb Inc. (“Bausch & Lomb”); Johnson & Johnson Vision Care, Inc. (“Johnson & Johnson”); and CooperVision, Inc. (“CooperVision”) (collectively, “Manufacturer Defendants”) are manufacturers of disposable contact lenses. The Manufacturer Defendants conspired with each other and with Defendant ABB/Con-Cise Optical Group LLC (“ABB”), a wholesaler, as well as independent eye care professionals represented by ABB (such as optometrists and ophthalmologists who sell contact lenses to consumers) and their trade association, the American Optometric Association, in order to impose minimum resale prices on certain contact lens lines. Defendants conspired to impose so-called “Unilateral Pricing Policies” on all entities that sell those contact lens lines to consumers. Defendants’ goal was to eliminate price competition on those products sold to consumers by big box stores, buying clubs, and internet-based retailers by preventing those sellers from discounting the products. This new pricing scheme represents a fundamental shift in how contact lenses are sold to consumers.

3. The Manufacturer Defendants, ABB, and eye care professionals all share an interest in increasing the retail price of contact lenses and limiting competition from big box stores, buying clubs, and internet-based retailers. The Manufacturer Defendants have expressed concern about the deep discounts offered by internet-based retailers, because they saw price-bargaining power shifting away from manufacturers towards big buyers. These concerns were reportedly exacerbated after Luxottica, the world’s largest glasses and sunglasses manufacturer, agreed to purchase 1-800 Contacts in 2014. ABB, which is the largest distributor of contact lenses in the United States and which services more than two-thirds of eye care professionals,

shares the Manufacturer Defendants' goal of increasing retail prices. Eye care professionals, which traditionally have sold contact lenses at prices much higher than those offered by big box stores, buying clubs, and internet-based retailers, similarly sought to limit price competition.

4. Competition in the market for contact lenses in the United States is distorted by the unique role played by eye care professionals. Unlike prescription drugs, which are prescribed by doctors but sold only by pharmacies, eye care professionals both prescribe and sell contact lenses. When an eye care professional writes a prescription for a patient, he prescribes not only the type and power of the lenses, but also the particular brand. Unless the patient comes back for another eye exam, or switches eye care professionals, he or she is locked into buying the prescribed brand of lenses for the length of the prescription, which is typically from one to two years.

5. The power to prescribe makes eye care professionals the gatekeepers of the disposable contact lens market. Eye care professionals have the power and economic incentive to prescribe lenses that give them the largest margin. Contact lens manufacturers understand these incentives all too well. Eye care professionals will refuse to prescribe a manufacturer's contact lenses if their profit margins are undercut by more efficient retailers such as online and mail-order retailers, buying clubs, and big box stores. As a result, contact lens manufacturers have always done what they can to insulate eye care professionals from price competition. The economic purpose of the Unilateral Pricing Policies was to insulate eye care professionals from price competition from more efficient distributors.

6. ABB plays an important role in the industry. ABB is the nation's largest distributor of soft contact lenses, and it supplies more than two-thirds of eye care professionals in the United States with brand name contact lenses, ophthalmic lenses, and customizable gas

permeable lenses. ABB sells primarily to independent eye care professionals rather than eye care professionals employed by chain optical stores such as LensCrafter. Independent eye care professionals charge the highest average prices for contact lenses compared to any other channel of distribution. ABB's unique role in the industry is buttressed by its focus on raising eye care professionals' profit margins. Angel Alvarez, ABB's chief executive officer, describes his company as the "category captain" for eye care professionals, and says ABB is "helping them manage [the contact lens] portion of their business." Alvarez's stated goal is to help eye care professionals grow their practices and "make more money." ABB is not merely a wholesale vendor. It regularly surveys its eye care professional customers to find out how much they are charging their patients for each different type and brand of contact lenses. ABB then publishes the results of the surveys in its periodic *Retail Price Matrix* publication so that eye care professionals can make sure their prices are as high as their fellow practitioners. In its *Profit Advisor* newsletter, ABB also advises its eye care professional customers to charge as much as possible for contact lenses—even above the minimum retail prices set by the Manufacturer Defendants' Uniform Pricing Policies.

7. To accomplish their shared goals, the Manufacturer Defendants, ABB, and independent eye care professionals jointly agreed to alter the pricing model. Before June 2013, each of the Manufacturer Defendants allowed distributors and retailers to determine their own retail prices for contact lenses. Now, each of the Manufacturer Defendants prohibits retailers from selling certain lines of contact lenses below mandated prices. This major change in the pricing model would not have occurred in the absence of a conspiracy among the Defendants. Contact lenses are the only prescription medical device sold in the United States pursuant to a

retail price maintenance scheme, which the Defendants in this case refer to as their Uniform Pricing Policies.

8. As part of this conspiracy, ABB worked with the Manufacturer Defendants to develop Uniform Pricing Policies for several of the most advanced and most popular lines of contact lenses sold by the Manufacturer Defendants. Over the course of 15 months beginning in June 2013, each Manufacturer Defendant implemented this strategy by imposing a minimum resale price maintenance scheme that it called a Uniform Pricing Policy. Under this resale price maintenance scheme, each Manufacturer Defendant promulgated a minimum resale price for its affected products and threatened to stop supplying retailers that sold below the minimum price. In June 2013, Alcon became the first Manufacturer Defendant to impose its Uniform Pricing Policy, and it expanded the number of contact lens product lines subject to the policy to four in succeeding months. Bausch & Lomb followed suit in February 2014 with respect to one of its major contact lens product lines. Johnson & Johnson was next, in June 2014, with respect to at least eight of its contact lens product lines. Finally, CooperVision followed suit in September 2014 with respect to one of its contact lens product lines.

9. Testimony given at a hearing held on July 30, 2014, before the Subcommittee on Antitrust, Competition Policy and Consumer Rights of the United States Senate's Judiciary Committee concerning the practices described in this Complaint estimated that the minimum resale price maintenance policies implemented by Alcon, Bausch & Lomb, and Johnson & Johnson encompassed 40% of the domestic contact lens market, and that the Manufacturer Defendants would extend their Uniform Pricing Policies to cover 80% of the market by the end of 2015.

10. Even though the Manufacturer Defendants refer to this minimum resale price maintenance scheme as “Uniform Pricing Policies,” those agreements are not “unilateral” pricing policies. Instead, the Manufacturer Defendants agreed to limit retail price competition after extensive consultation with independent eye care professionals and ABB. After implementing their Uniform Pricing Policies, the Manufacturer Defendants enforced the minimum resale price maintenance agreements through actual retaliation, threats, warnings, and other communications to ensure compliance.

11. The minimum resale price maintenance agreements were intended to eliminate discounting by big box stores, online retailers, and buyers clubs, thereby increasing those retailers’ ability to compete with independent eye care professionals who also sell contact lenses. The minimum resale price maintenance agreements have had the desired effect, as reflected in statements by independent eye care professionals, ABB, and big box stores, online retailers, and buyers clubs.

12. Jim Murphy, the vice president of Alcon, described Alcon’s minimum resale price maintenance agreements in a public podcast as “a win” for Alcon and for eye care professionals. Independent eye care professionals have enthusiastically endorsed the minimum resale price maintenance agreements. As Gary Gerber, an influential independent eye care professional, put it, the agreements guarantee doctors “a margin they have not seen for 20 years.” ABB has also touted the minimum resale price maintenance agreements; its chief executive officer, Angel Alvarez, called them one of the best developments of the last 20 years because they help eye care professionals increase their profit margins.

13. The minimum resale price maintenance agreements, which have resulted in the highest margins for eye care professionals in 20 years, must be viewed in the context of

successful prior industry efforts to suppress price competition for contact lenses. Contact lens manufacturers conspired with eye care professionals to restrict the supply of contact lenses to alternative sources of distribution (such as mail order). In 1996, 32 state attorneys general and consumers brought antitrust lawsuits against Johnson & Johnson, Bausch & Lomb, CIBA Vision (Alcon's predecessor), and the American Optometric Association to curtail these practices. The cases eventually settled and the challenged practices were discontinued.

14. In 2009, the German Federal Cartel Office levied a €11.5 million fine against CIBA Vision (Alcon's predecessor) for fixing minimum resale prices of contact lenses and restricting internet and wholesale prices of its contact lenses. The German Federal Cartel office found that CIBA utilized a price maintenance program through which it enforced minimum resale prices for contact lenses in violation of European and German law.

15. In 2014, Johnson & Johnson and Bausch & Lomb were fined ¥3.6 million and ¥3.7 million, respectively, by China's National Development and Reform Commission for adopting Uniform Pricing Policies and forcing retailers to adhere to minimum resale price maintenance agreements, in violation of China's Anti-Monopoly Law.

16. Minimum resale price maintenance policies represent the latest effort by the Manufacturer Defendants and independent eye care professionals to ensure that retailers do not discount contact lenses. The injured parties, as in 1996, are the tens of millions of consumers who use contact lenses.

17. The minimum resale price maintenance practices of the Defendants constitute unreasonable restraints of trade in violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, and state antitrust and unfair competition laws. As a result of Defendants' antitrust

violations, Plaintiffs and Class members have paid millions of dollars more for disposable contact lenses than they otherwise would have paid.

PARTIES

A. Plaintiffs

18. Plaintiff Jacqueline Gaston is a Minnesota resident. During the Class Period, she has purchased contact lenses that were manufactured by one of the Manufacturer Defendants and that were subject to a Uniform Pricing Policy.

19. Plaintiff Matt Gustafson is a North Dakota resident. During the Class Period, he has purchased contact lenses that were manufactured by one of the Manufacturer Defendants and that were subject to a Uniform Pricing Policy.

20. Plaintiff Marlene Jacobus is a Nebraska resident. During the Class Period, she has purchased contact lenses that were manufactured by one of the Manufacturer Defendants and that were subject to a Uniform Pricing Policy.

21. Plaintiff Rachel Berg is a Wisconsin resident. During the Class Period, she has purchased contact lenses that were manufactured by one of the Manufacturer Defendants and that were subject to a Uniform Pricing Policy.

B. Defendants

22. Defendant ABB is a Delaware limited liability company headquartered in Coral Springs, Florida. ABB states on its website that it is “the nation’s largest distributor of soft Contact Lenses,” and that it “supplies nearly two-thirds of eye care professionals across the country with brand name contact lenses, fully customizable gas permeable and custom specialty soft contact lenses, stock ophthalmic lenses and more.” ABB is a wholesale seller of contact lenses it purchases from the Manufacturer Defendants, and it services over 19,000 eye care professionals nationwide.

23. Defendant Alcon is a Delaware corporation headquartered in Fort Worth, Texas. Alcon is owned by Novartis International AG, a Swiss multinational pharmaceutical corporation based in Basel, Switzerland. Alcon makes eye care products, including disposable contact lenses.

24. Defendant Bausch & Lomb is a New York corporation headquartered in Bridgewater, New Jersey. Bausch & Lomb is owned by Valeant Pharmaceuticals, Inc. Bausch & Lomb makes eye care products, including disposable contact lenses.

25. Defendant Johnson & Johnson is a Florida corporation headquartered in Jacksonville, Florida. Johnson & Johnson makes eye care products, including disposable contact lenses.

26. Defendant CooperVision is a New York corporation headquartered in Pleasanton, California. CooperVision makes eye care products, including disposable contact lenses.

JURISDICTION AND VENUE

27. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a). There is minimal diversity and the amount in controversy exceeds \$5 million, exclusive of interest and costs.

28. Additionally and alternatively, this Court has jurisdiction over Plaintiffs' Sherman Act claims for injunctive relief pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26, and pursuant to 28 U.S.C. §§ 1331 and 1337. The Court has supplemental jurisdiction over the remaining claims pursuant to 28 U.S.C. § 1367(a).

29. Venue is proper in this District pursuant to Sections 4 and 12 of the Clayton Act, 15 U.S.C. §§ 15(a) and 22, and 28 U.S.C. § 1391(b) and (c) as Defendants are located in, licensed to do business in, and/or do business in this District, and a substantial part of the events or occurrences giving rise to the claims alleged occurred in this District. In particular, ABB's

company headquarters are located in this District. Johnson & Johnson's corporate headquarters are also located in Florida.

30. This Court has personal jurisdiction over each Defendant because, among other things, each Defendant transacted business in this District; directly or indirectly sold and delivered contact lenses in this District; has substantial aggregate contacts with this District; and/or engaged in illegal anticompetitive conduct that was directed at, and had the intended effect of causing injury to, persons and entities residing, located, or doing business in this District.

FACTUAL ALLEGATIONS

A. The Contact Lens Industry

1. *Industry Background*

31. For purposes of this Complaint, unless otherwise specified, "contact lenses" refers to disposable contact lenses. Disposable contact lenses were first introduced in the United States in 1987, and they now account for approximately 90% of all contact lenses sold in the United States.

32. Contact lenses may be worn and then disposed of daily, weekly, or monthly. Contact lenses may be spherical lenses, which contain a single refractive power, or specialty lenses, which are crafted to address specific issues such as toric lenses (for astigmatism) and bifocal and multifocal lenses (for presbyopia).

33. FDA regulations classify contact lenses as Class II and Class III pharmaceutical devices. This means that consumers must obtain a prescription from an eye care professional to purchase contact lenses. Typically, after performing an eye exam and contact lens fitting, an eye

care professional will issue to the patient a prescription for a specific brand and type of contact lens.

34. After obtaining a prescription, consumers can choose to purchase the specified contact lenses their eye care professional, another eye care professional, or through other retailers, such as big box stores, buying clubs, or online retailers.

35. Contact lenses are a commoditized product, which Jim Murphy, Alcon's vice president, has publicly admitted. According a 2005 FTC Report, "the replacement lens a consumer purchases pursuant to a prescription that specifies a brand will be identical, regardless of where it is purchased." *The Strength of Competition in the Sale of Rx Contact Lenses: An FTC Study* ("2005 FTC Report").

36. The Fairness to Contact Lens Consumers Act, 15 U.S.C. § 7601 *et seq.*, was enacted in December 2003 to ensure that consumers can freely choose their preferred retail channel to buy contact lenses. This law was enacted in response to complaints that eye care professionals were withholding prescriptions from their patients, and it requires eye care professionals to immediately provide patients with copies of their contact lens prescriptions so their method of purchase is uninhibited.

37. Congress recognized that consumers would benefit from the Fairness to Contact Lens Consumers Act through intrabrand price competition by alternative retail options. The legislative history states that the Act "*promotes competition, consumer choice, and lower prices* by extending to contact lens wearers the same automatic right to copies of their own prescriptions and allows consumers to purchase contact lenses from the provider of their choice." H.R. Rep. No. 108-318 (2003) (emphasis added).

38. The Federal Trade Commission subsequently implemented the Contact Lens Rule, which protects the requirements under the Act that give patients control over their contact lens prescriptions and allows patients to shop around when buying their contact lenses. 16 C.F.R. § 315 (2004).

2. *Contact Lens Pricing and Retail Channels*

39. The 2005 FTC Report concluded that contact lens manufacturers “distribute the largest share of lenses through independent [eye care professionals] and the smallest through the online/mail-order channel.” This remains the case today. A more recent industry survey has estimated that retail chains and mass merchandisers will reach a 20.5% share of contact lens sales in 2015, with online retailers reaching an additional 9.2%.

40. Prior to implementation of the Uniform Pricing Policies, contact lenses were more expensive when purchased through eye care professionals rather than through buying clubs, big box stores, or online retailers.

41. A March 2004 study by 1-800 CONTACTS, which was published in a 2004 FTC Report called *Possible Anticompetitive Barriers to E-Commerce: Contact Lenses* (“2004 FTC Report”), shows that eye care professionals charged approximately 25-28% more than mass merchants and internet retailers for the same exact contact lenses.

42. A 2005 FTC study found that contact lenses were the least expensive, on average, when purchased through buying clubs (on average, prices were found to be approximately \$30 less than the prices charged by eye care professionals). The study also found that contact lenses cost approximately \$15 less when purchased through online retailers rather than offline retailers. The study applauded the success of the Fairness to Contact Lens Consumers Act’s requirements,

which resulted in increased competition for contact lenses and lower prices across the United States.

43. Eye care professionals took notice of the price competition from other retail channels, and viewed it as a threat.

3. *Defendants Unlawfully Stifled Competition by Colluding to Implement and Enforce their Anticompetitive Minimum Resale Price Maintenance Scheme*

44. In response to price competition from alternative retailers to eye care professionals, the Manufacturer Defendants implemented their Uniform Pricing Policies nearly simultaneously.

45. Alcon announced its Uniform Pricing Policy in June 2013 and immediately applied it to its DAILIES TOTAL1 line of contact lenses. Alcon expanded its pricing policy in January 2014 to its DAILIES AquaComfort Plus Multifocal and DAILIES AquaComfort Plus Toric lines of contact lenses. Alcon expanded its Uniform Pricing Policy again in June 2014 to include its AIR OPTIX COLORS line of contact lenses.

46. In January 2014, Sauflon Pharmaceuticals announced a Uniform Pricing Policy for its CLARITI family of contact lenses. Sauflon Pharmaceuticals was acquired by CooperVision in August 2014; in September, CooperVision announced that it would continue the Sauflon's Uniform Pricing Policies.

47. In February 2014, Bausch & Lomb implemented its Uniform Pricing Policy for its ULTRA line of contact lenses.

48. In June 2014, Johnson & Johnson implemented Uniform Pricing Policies for all of its major lines of contact lenses, and simultaneously announced that it planned to discontinue all lines of contact lenses that were not subject to a Uniform Pricing Policy. Johnson & Johnson

estimated that its Uniform Pricing Policies would impact approximately 9.66 million contact lens wearers, which is roughly 69% of all Johnson & Johnson contact lens consumers.

49. Johnson & Johnson's lines of contact lenses subject to Uniform Pricing Policies include 1-DAY ACUVUE MOIST, 1-DAY ACUVUE MOIST FOR ASTIGMATISM, 1-DAY ACUVUE TRUEYE, ACUVUE OASYS WITH HYDRACLEAR PLUS, ACUVUE OASYS FOR ASTIGMATISM, and ACUVUE OASYS FOR PRESBYOPIA.

50. In a letter dated June 24, 2014, Johnson & Johnson acknowledged the coordinated effort to implement its Uniform Pricing Policies. Johnson & Johnson thanked eye care professionals for their "open and candid responses," which allowed it "to define our strategy and implement the changes and actions you told us were needed."

51. Johnson & Johnson's president, Laura Angelini, described the company's new pricing scheme as a "holistic multifaceted pricing policy to refocus the conversation between the doctor and the patient on eye health and product performance rather than price." It was designed to eliminate the patient's "incentive to shop around" for lower prices, and to "give[] the optometrist the ability to improve his or her capture rate in the office."

52. Johnson & Johnson has already made repeated anticompetitive changes to its Uniform Pricing Policies based on input from eye care professionals.

53. Johnson & Johnson has robust monitoring and enforcement procedures in place. In addition to Johnson & Johnson's own employees, it uses two independent firms to assist in monitoring the retail prices charged by its customers to consumers. If a retailer violates the Uniform Pricing Policy, Johnson & Johnson will refuse to supply the retailer and will exercise its right to repurchase the customer's inventory.

54. Jim Murphy, the vice president of Alcon, has confirmed that Alcon warns companies in violation of the Uniform Pricing Policies that those companies are selling below the minimum resale price, and gives them an opportunity to cure. If the company refuses to increase its price, Alcon punishes this violation by prospectively denying the retailer access to the product for up to one year.

55. Angel Alvarez, ABB's chief executive officer, has stated publicly that the Manufacturer Defendants are very serious about policing their Uniform Pricing Policies, and that he has first-hand knowledge that some eye care professionals had been given a "warning" for violating the Uniform Pricing Policies. Alvarez said that the Manufacturer Defendants are "holding the gun" and are willing to lose business in order to police their minimum resale price maintenance agreements.

56. The Manufacturer Defendants needed the agreement of their distributors, including ABB, to implement and enforce the Uniform Pricing Policies and to avoid the Uniform Pricing Policies being undercut by interbrand competition at the wholesale level.

57. The coordination between the Manufacturer Defendants and their distributors, including ABB, is clear from the face of Johnson & Johnson's Uniform Pricing Policies, which provide: "Under this policy, Johnson & Johnson . . . and its authorized distributors will cease to supply UPP products to any reseller who advertises or sells UPP products to patients at a price below the UPP price."

58. ABB is actively encouraging retailers to utilize Uniform Pricing Policies as a way to maximize revenue. ABB's *Profit Advisor* publication advises eye care professionals about how they can increase revenue and charge above Uniform Pricing Policy prices.

59. Defendants' conspiracy was successful. After the coordinated implementation of the Uniform Pricing Policies, prices for contact lenses increased significantly. For example, Johnson & Johnson's lines of contact lenses subject to the Uniform Pricing Policies increased by anywhere from 75% to nearly 200%.

60. The Manufacturer Defendants and ABB share a conscious commitment to a common scheme designed to achieve an unlawful objective.

61. ABB and independent eye care professionals played a significant role in colluding with the Manufacturer Defendants in developing the minimum resale price maintenance agreements.

62. Robert Atkinson, the president of Information Technology and Innovation Foundation, testified at the July 2014 Senate hearing about how the eye care professionals communicated and colluded with the Manufacturer Defendants. Atkinson testified that anticompetitive social norms are expressed in a variety of ways, "particularly in articles in professional journals and on social media channels." The minimum resale price maintenance agreements "instantly create[] a perfectly level playing field," which eliminates volume discounts for large practices, buying groups, and retailers. Atkinson testified that the Manufacturer Defendants used the minimum resale price maintenance agreements to "support and protect brand equity." Eye care professionals will prescribe the contact lenses subject to the Uniform Pricing Policies because they can protect their margin and not worry about losing the sale to rivals offering lower prices. Atkinson cited social media in which, for example, one eye care professional wrote: "Wow, great news. Now I might actually fit more of their [Johnson & Johnson's] lenses. Hopefully Cooper gets on board with this soon." Another user wrote: "I think I'll tell my patients that the onliner must have been selling counterfeit contacts. Why else would

they suddenly raise their prices to what I'm selling them." Another eye care professional described the "Ultra launch," stating that when Bausch & Lomb announced its Uniform Pricing Policy, "there was a Huge applause" and that Bausch & Lomb was "largely pleasing their [eye care professional] base when they followed Alcon's lead on the UPP."

63. Eye care professionals have consistently spoken out in support of the minimum resale price maintenance agreements, touting their benefits both to the eye care professionals and to the Manufacturer Defendants. Some of them are actually employed by the Manufacturer Defendants. For example, Barry Eiden is a consultant for Alcon, Bausch & Lomb, and CooperVision. Eident told an audience at the Global Contact Lens Forum that the new pricing policies represented "one of the monumental changes in contact lenses in my career." Another, Kerry Korden Giedd, pledged her support for the Uniform Pricing Policies in industry publications at the same time that she was being paid as a consultant by Alcon and CooperVision. Yet another eye care professional who consults for Alcon, David Kading, stated that the Uniform Pricing Policies were "fantastic" because they "set an even playing field and it also does not support companies who want to price cut their products in an effort to increase utilization."

64. The support of eye care professionals for the minimum resale price maintenance scheme is widespread. Eye care professionals and their agents and trade associations—including ABB, the American Optometric Association, and state-level optometric associations—have enthusiastically endorsed and supported the Manufacturer Defendants' minimum resale price maintenance agreements because they signal an end to retail price competition for contact lenses. A poll on healio.com/optometry posted after the July 2014 Senate hearing asked eye care professionals about the concept of minimum resale price maintenance agreements; 85% of the

204 people who took the poll said they supported these agreements. Another poll, conducted by ABB, similarly found high approval (82%) by eye care professionals of the minimum resale price maintenance agreements.

65. David Cockrell, president of the American Optometric Association, testified in support of the Manufacturer Defendants' actions at the Senate hearing. The American Optometric Association also submitted written comments in support of the minimum resale price maintenance agreements.

66. The American Optometric Association and state associations of optometrists have been active in opposing legislative efforts in certain states to condemn the Manufacturer Defendants' use of minimum resale price maintenance agreements.

67. Johnson & Johnson publicly acknowledged the role that eye care professionals played in the formulation of its Uniform Pricing Policy, explaining that its Uniform Pricing Policy was a reaction to the "open and candid responses" of the eye care professionals and to the eye care professionals' business needs.

68. Robert Ferrigno, CooperVision's president of North America, stated that CooperVision held 12 focus groups and met with 100 eye care professionals before acting to implement its minimum resale price maintenance agreements.

69. As early as February 2013—before any of the Manufacturer Defendants had instituted Uniform Pricing Policies—Angel Alvarez of ABB stated publicly that ABB's focus was to be "aligned with manufacturers." A subsequent press release confirmed ABB's integral role in developing the Uniform Pricing Policies.

70. ABB repeatedly advised independent eye care professionals to charge their customers more than the minimum resale price, and to try to reach a gross profit margin of close

to 50%. ABB and its cohorts viewed the Manufacturer Defendants' minimum resale price maintenance agreements as an occasion to gouge consumers even more for the price of contact lenses than would have been possible before the implementation of those agreements, with the hope that many consumers would not even realize that they were paying a surcharge on the price mandated by the Uniform Pricing Policies, which was duplicative of the service fees that the consumers were already paying. And ABB collected data in its Retail Price Matrix that facilitated the ability of independent eye care professionals to engage in such systematic price-gouging.

B. The United States Contact Lens Market Structure and Characteristics Support the Existence of a Conspiracy

71. The relevant product market is the contact lens market. The relevant geographic market is the United States. This is the market analyzed in the 2004 and 2005 FTC Reports.

72. The structure and characteristics of the market for contact lenses in the United States are conducive to a price-fixing agreement among market participants and have made collusion particularly attractive.

73. The market is highly concentrated, has high barriers to entry, has inelasticity of demand, is highly homogenized, has abundant opportunities for Defendants to meet and conspire, and is comprised of participants that have motives to conspire. In addition, Defendants are engaging in conduct that is against each of their individual economic self-interest and have implemented Uniform Pricing Policies that represent a drastic shift in the way contact lenses are priced and sold.

1. *The Market for Contact Lenses Is Highly Concentrated*

74. The contact lens market is highly concentrated. The four Manufacturer Defendants collectively control 97% of the United States contact lens market. Johnson &

Johnson has a 35.3% market share; Alcon has a 30.6% market share; CooperVision has a 23.9% market share; and Bausch & Lomb has a 7.2% market share.

2. *The Market for Contact Lenses Has High Barriers to Entry*

75. A collusive arrangement that raises product prices above competitive levels would, under basic economic principles, attract new entrants seeking to benefit from the supra-competitive pricing. But when there are significant barriers to entry, new entrants are much less likely. Thus, barriers to entry help to facilitate the formation and maintenance of a cartel.

76. Significant barriers preclude, reduce, or make more difficult for competitors to enter the contact lens market. To develop and manufacture contact lenses would take years and require complex technology, industry expertise, and skilled labor.

77. Regulations governing the sale of contact lenses require that patients obtain a prescription from an eye care professional for a particular line of contact lenses. A potential contact lens manufacturer would incur substantial costs marketing its product to eye care professionals and establishing a sophisticated distribution network to reach the eye care professionals and consumers.

3. *The Demand for Contact Lenses Is Inelastic*

78. For a cartel to profit from raising prices above competitive levels, demand must be relatively inelastic at competitive prices. Otherwise, increased prices would result in declining sales, revenues, and profits as customers purchased substitute products or declined to buy altogether. Inelastic demand is a market characteristic that facilitates collusion, allowing producers to raise their prices without triggering customer substitution and lost sales revenue.

79. Demand for contact lenses is highly inelastic. The requirement that eye care professionals must prescribe the brand and type of contact lens a consumer can wear causes there

to be no cross-elasticity of demand with other contact lenses and leaves consumers unable to constrain market abuses.

80. A small, non-transitory increase in the price for a prescribed contact lens would not cause contact lens consumers to switch to glasses or another product or service to correct their vision in significant enough numbers to overcome the price increase. Similarly, a small, non-transitory price increase would not cause contact lens distributors or retailers to change their activities sufficiently to make such a price increase unprofitable to a manufacturer with market power.

81. There are no substitutes for a contact lens wearer's prescribed brand of contact lenses. As pointed out by the American Antitrust Institute, "[t]he law does not permit the consumer to substitute another brand for the prescribed brand . . . generic equivalents cannot be obtained for branded contact lenses. American Antitrust Institute, Letter to the FTC and DOJ (Oct. 24, 2014), at 2.

4. Contact Lenses Are Highly Homogenous

82. Contact lenses are a commodity-like product.

83. Given the unique regulatory nature of the contact lens industry, a consumer may only purchase the brand of contact lens prescribed by his or her eye care professional.

84. When different types of retailers offer the particular brand prescribed to a consumer, the consumer will make his or her purchase decision based primarily on price. The core considerations for a purchaser will be where, when, and how much.

85. This commoditization and interchangeability of contact lenses facilitated Defendants' conspiracy by making coordination on price much simpler than if consumers were able to choose from numerous distinct brands and lines of contact lenses with varying features.

5. *Defendants Had Ample Opportunities to Meet and Conspire*

86. Defendants attended industry events where they had the opportunity to meet, have improper discussions under the guise of legitimate business contacts, and perform acts necessary for the operation and furtherance of the conspiracy.

87. For example, some Manufacturer Defendants were members of the Contact Lens Manufacturers' Association. The Contact Lens Manufacturers' Association hosts an annual meeting, publishes bi-weekly presidential updates to its members, and regularly publishes a newsletter.

88. The Manufacturer Defendants are the *only* members of the Contact Lens Institute. According to the Contact Lens Institute's website, it was created to "represent[] the interests of its members."

89. The Contact Lens Institute's board of directors consists of one executive from each of the Manufacturer Defendants. Laura Angelini, Johnson & Johnson's president, is the chair. Andrew Sedgwick, CooperVision's vice president of global commercial strategy and business development, is the vice chair. Richard Weisbarth, Alcon's vice president of professional affairs, is the treasurer. Joseph Barr, Bausch & Lomb's vice president of clinical and medical affairs, is the director.

90. The Manufacturer Defendants exchanged information through the Contact Lens Institute. The members of the Contact Lens Institute, along with other participating companies, participate in a quarterly statistical program to track manufacturer shipment data of contact lens and lens care products. This program's goal is, according to the Contact Lens Institute's website, "to provide participants with accurate and timely consolidated market data while maintaining the confidentiality of each participant's individual data."

91. The Contact Lens Institute's program is managed by Veris Consulting. According to Veris's website, the program "track[s] sales at a detailed level worldwide" and "is more valuable than other sources of market data because sales are reported directly from manufacturers. Veris reviews the data annually to ensure accuracy, and has implemented an "internal review process to reassure participants that they could be confident in the data." Veris asks the participants to pull sales information and revenue data "directly from their internal system at the model, or SKU level." The resulting low margin of error "is extremely important to participants since they use this data for strategic planning," and the data is reported to the Manufacturer Defendants on a quarterly and annual basis. Karen Eftekari, Veris's senior manager for this work, also works with member companies such as Johnson & Johnson and Bausch & Lomb "performing high-level data analysis and designing custom reporting tools and dashboards."

92. As members of these industry associations, the Manufacturer Defendants had regular opportunities to meet, exchange information, and signal marketing intentions to one another.

6. *Defendants Had Motives to Conspire*

93. Each Manufacturer Defendant had a motive to maintain high retail prices for contact lenses.

94. The Manufacturer Defendants shared the concern that if retailers charged low prices, it would put pressure on them to lower their wholesale prices.

95. The Manufacturer Defendants were motivated to keep eye care professionals—the largest retail channel—satisfied so the eye care professionals would prescribe the Manufacturer

Defendants' contact lenses. They knew that high retail prices would keep the eye care professionals satisfied.

96. ABB, which is the largest distributor of the Manufacturer Defendants' contact lenses in the United states, and which sells their contact lenses to two-thirds of eye care professionals, has stated that it "worked with" the Manufacturer Defendants to develop and implement the Uniform Pricing Policies. ABB served as the hub in a hub-and-spoke conspiracy and communicated with each Manufacturer Defendant to facilitate the industry shift to implement Uniform Pricing Policies.

7. *Defendants' Actions Are Against Each of Their Independent Economic Self-Interest*

97. The Manufacturer Defendants' acts in implementing their Uniform Pricing Policies were contrary to their independent economic self-interest.

98. During an analyst presentation on September 11, 2014, CooperVision admitted that the "Potential Downsides/Challenges" of adopting Uniform Pricing Policies included the following: (a) "Enforcement can be challenging"; (b) "Consumer activism may generate legislative backlash and negative public perceptions"; and (c) "May alienate larger customers who want greater pricing freedom and cross marketing." Despite these concerns, CooperVision went forward with implementing a new Uniform Pricing Policy on its Clariti line of contact lenses.

99. The Manufacturer Defendants implemented the Uniform Pricing Policies despite the consequential declining sales growth for 2014. According to an industry analyst, contact lens sales in the United States grew only 2% through the third quarter of 2014.

100. Because discount retailers in the contact lens market have significant buying power, it would have been against each Manufacturer Defendant's economic self-interest to

unilaterally implement the Uniform Pricing Policies without assurance that its competitors would do the same. If only some Manufacturer Defendants implemented Uniform Pricing Policies, discount retailers likely would have switched their purchases to another Manufacturer Defendant that did not have Uniform Pricing Policies in place.

101. After the first three Manufacturer Defendants had Uniform Pricing Policies in place—Alcon, Bausch & Lomb, and Johnson & Johnson—Costco notified its customers of the Uniform Pricing Policies and urged them to switch contact lens brands to CooperVision, which at that time was the remaining manufacturer that did not have a Uniform Pricing Policy in place. However, CooperVision soon followed suit and implemented its own Uniform Pricing Policy on its Clariti line of contact lenses.

8. *The Manufacturer Defendants' Uniform Pricing Policies Were a Sudden and Drastic Shift in the Way Contact Lenses Are Priced and Sold*

102. Before June 2013, none of the Manufacturer Defendants had minimum resale price requirements in place such as those implemented through the Uniform Pricing Policies. After Alcon implemented its first Uniform Pricing Policy, all of its major competitors followed suit over the next 15 months.

103. Angel Alvarez, ABB's chief executive officer, has acknowledged the "Fundamental Shift" these Uniform Pricing Policies represented in the market for contact lenses.

C. There Is No Legitimate Business Justification for Defendants' Concerted Minimum Resale Price Maintenance Policies

104. Defendants cannot justify their Uniform Pricing Policies as legitimate business decisions. Any purported pro-competitive justification is pretextual.

105. Free-riding by retailers is not at issue, since Uniform Pricing Policies do not affect fitting fees charged by eye care professionals that are necessary for patients to receive their

contact lens prescriptions. Even if patients attempt to have their prescriptions filled by a different retailer, the eye care professional has already been compensated through its fitting fee.

106. The Uniform Pricing Policies do not require investment by retailers by way of services or promotional efforts to improve care to patients or to aid the manufacturer's position compared to its rivals. Retailers who are not eye care professionals are unable to influence the brand of contact lens prescribed to consumers, and thus have no incentive to participate in promotional programs. By contrast, the Uniform Pricing Policies do incentivize eye care professionals to prescribe certain lenses, because the eye care professionals can increase their margin by prescribing lenses subject to the Uniform Pricing Policies.

107. The Manufacturer Defendants have also attempted to justify their resale price maintenance agreements as a way to protect consumers from injury by buying contact lenses from substandard retailers. But this is not true. Carol Alexander, a director of professional affairs for Johnson & Johnson, stated during a Utah Senate Business & Labor Committee hearing that she could not identify any instance of this type of harm occurring. She admitted that Johnson & Johnson did not adopt its Uniform Pricing Policy out of concern about harm to patients.

D. Defendants Have Engaged in Similar Anticompetitive Conduct Previously

108. This is not the first time the Manufacturer Defendants have been accused of conspiring to unlawfully suppress competition in the market for contact lenses.

109. In 1996, both consumers and the attorneys general of 32 states brought antitrust lawsuits against Bausch & Lomb, Johnson & Johnson, CIBA Vision (Alcon's predecessor), and the American Optometric Association. *In re Disposable Contact Lens Antitrust Litig.*, 170 F.R.D. 524 (M.D. Fla. 1996). The plaintiffs alleged that the defendants conspired to "restrict the supply of replacement contact lenses to alternative channels of distribution." The plaintiffs also alleged

that the manufacturers engaged in an unlawful group boycott by restricting wholesale sales to “alternative suppliers” such as mail order retailers and pharmacies. This anticompetitive conduct resulted in consumers paying supra-competitive prices for their contact lenses. *In re Disposable Contact Lens Antitrust Litig.*, MDL No. 1030, 2001 WL 493244 (M.D. Fla. Feb. 8, 2001).

110. The *Disposable Contact Lens* cases settled after several weeks of trial. The defendants agreed to stop engaging in the challenged practices and paid millions of dollars in settlement.

111. Contact lens manufacturers not involved in the Disposable Contact Lens litigation continued to engage in anticompetitive practices, which led to an investigation by the United States government. A hearing was held by the Commerce, Trade and Consumer Protection Subcommittee of the House Energy and Commerce Committee on September 15, 2006. *Contact Lens Sales: Is Market Regulation the Prescription?* After that hearing, the manufacturer that most visibly engaged in restrictive distribution practices abandoned its policies, which eliminated the need for legislative action.

112. Johnson & Johnson and other contact lens manufacturers have also been accused of restricting competition and stabilizing prices in other countries.

113. In 2009, Germany’s Federal Cartel Office fined contact lens manufacturers, including CIBA Vision (Alcon’s predecessor), for pressuring retailers to follow recommended resale prices, among other practices.

114. In May 2014, China’s National Development and Reform Commission found that Johnson & Johnson and Bausch & Lomb’s minimum resale price maintenance policies, among other practice, violated China’s Anti-Monopoly Law and fined them ¥3.6 million and ¥3.7 million, respectively.

CLASS ACTION ALLEGATIONS

115. Plaintiffs bring this action on behalf of themselves and all others similarly situated under Rules 23(b)(2) and (b)(3), as members of a proposed Class defined as follows:

All persons who purchased disposable contact lenses subject to a Unilateral Pricing Policy and manufactured by Alcon, Bausch & Lomb, CooperVision, or Johnson & Johnson, from June 1, 2013, to the present.

116. The Class includes subclasses of persons located in Minnesota, North Dakota, Nebraska, and Wisconsin.

117. Plaintiffs do not know the exact number of Class members, but Plaintiffs believe that there are hundreds of thousands of Class members.

118. Common questions of law and fact exist as to all members of the Class. This is particularly true given the nature of Defendants' conspiracy, which was generally applicable to all Class members, thereby making appropriate relief with respect to the Class as a whole. Such questions of law and fact common to the Class include, but are not limited to:

- a. Whether Defendants and their co-conspirators engaged in a combination and conspiracy among themselves to fix, raise, maintain, or stabilize the prices of contact lenses;
- b. Whether Defendants implemented the alleged minimum resale price maintenance scheme;
- c. Whether Defendants' conduct caused the prices of contact lenses sold in the United States to be artificially high;
- d. The identity of the participants of the alleged conspiracy;
- e. The duration of the alleged conspiracy;

- f. The acts carried out by Defendants and their co-conspirators in furtherance of the conspiracy;
- g. Whether the alleged conspiracy violated the Sherman Act;
- h. Whether the alleged conspiracy violated state antitrust and unfair competition law;
- i. The effect of the alleged conspiracy on the prices of contact lenses sold in the United States during the Class Period; and
- j. The scope of any injunctive relief to which Plaintiffs and the other members of the Class are entitled.

119. Plaintiffs' claims are typical of the claims of the members of the Class because Plaintiffs purchased contact lenses covered by one or more of Defendants' Uniform Pricing Policies.

120. Plaintiffs and all members of the Class are similarly affected by Defendants' wrongful conduct because they paid artificially inflated prices for contact lenses purchased indirectly from the Defendants.

121. Plaintiffs will fairly and adequately protect the interests of the Class members. Plaintiffs are members of the Class (and the Minnesota, Nebraska, North Dakota, and Wisconsin subclasses).

122. Plaintiffs' claims arise out of the same common course of conduct giving rise to the claims of the other Class members. Plaintiffs' interests are the same as, and not antagonistic to, the interest of the other Class members.

123. Plaintiffs are represented by counsel who are competent and experienced in the prosecution of antitrust and class action litigation.

124. Defendants have acted on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

125. The questions of law and fact common to the members of the Class predominate over any questions affecting only individual Class members, including the legal and factual issues relating to liability and damages.

126. Class action treatment is a superior method for the fair and efficient adjudication of the controversy. Class action 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, and expense that numerous individual actions would require. The benefits of proceeding as a class action, including providing injured persons or entities with a method for obtaining redress for claims that it might not be practicable to pursue individually, substantially outweigh any difficulties that may arise the management of this class action.

127. There will be no material difficulty in the management of this action as a class action. Prior class action litigation involving similar conduct with respect to a similar consumer class, similar conduct by many of the same Defendants, and similar products was successfully managed through trial. *See In re Disposable Contact Lens Antitrust Litig.*, MDL No. 1030 (M.D. Fla.).

128. The prosecution of separate actions by individual Class members would create the risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendants.

PLAINTIFF AND CLASS MEMBERS SUFFERED ANTITRUST INJURY

129. Defendants' minimum resale price maintenance scheme and price-fixing conspiracy had the following effects, among others:

- a. Price competition has been restrained or eliminated with respect to contact lenses;
- b. The prices of contact lenses have been fixed, raised, maintained, or stabilized at artificially inflated levels;
- c. Indirect purchasers of contact lenses have been deprived of free and open competition; and
- d. Indirect purchasers of contact lenses paid artificially inflated prices for contact lenses.

130. During the Class Period, Plaintiffs and the members of the Class paid supra-competitive prices for contact lenses.

131. The purpose of Defendants' conspiratorial conduct and their co-conspirators was to impose minimum resale prices and to thereby raise, fix, or stabilize the price of contact lenses.

132. The precise amount of the overcharge impacting the prices of contact lenses paid by consumers can be measured and quantified. Common, well-accepted economic models can be used to measure both the extent and the amount of the supra-competitive charged passed through the chain of distribution. Thus, the economic harm to Plaintiffs and the members of the Class can be quantified.

133. Based on the violations of the antitrust laws and other laws alleged herein, Plaintiffs and Class members have paid higher prices for contact lenses than they would have paid in the absence of Defendants' illegal contract, combination, or conspiracy, and, as a result,

Plaintiffs and the Class members have suffered damages in an amount presently undetermined. This is an antitrust injury of the type that the antitrust laws were meant to punish and prevent.

COUNT I

Violation of Section 1 of the Sherman Act

134. Plaintiffs incorporate the allegations in each above numbered Paragraph.

135. Defendants and unnamed co-conspirators entered into and engaged in a contract, combination, or conspiracy in unreasonable restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

136. The acts done by each of the Defendants as part of, and in furtherance of, their contact, combination, or conspiracy were authorized, ordered, or done by their officers, agents, employees, or representatives while actively engaged in the management of Defendants' affairs.

137. During the Class Period, Defendants and their co-conspirators entered into a continuing agreement, understanding and conspiracy in restraint of trade to impose their minimum resale price maintenance scheme and to artificially fix, raise, stabilize, and control prices for contact lenses, thereby creating anticompetitive effects.

138. The conspiratorial acts and combinations alleged in this Complaint have caused unreasonable restraints in the market for contact lenses.

139. As a result of Defendants' unlawful conduct, Plaintiffs and Class members have been harmed by being forced to pay inflated, supra-competitive prices for contact lenses.

140. In formulating and carrying out the alleged agreement, understanding, and conspiracy, Defendants and their co-conspirators did those things that they combined and conspired to do, including but not limited to the acts, practices, and course of conduct set forth herein.

141. Defendants' conspiracy had the following effects, among others:

- a. Price competition in the market for contact lenses in the United States has been restrained, suppressed, or eliminated;
- b. Prices for contact lenses provided by Defendants and their co-conspirators have been fixed, raised, maintained, and stabilized at artificially high, supra-competitive levels throughout the United States; and
- c. Plaintiffs and Class members who purchased contact lenses indirectly from Defendants have been deprived of the benefits of free and open competition.

142. Plaintiffs and Class members have been injured and will continue to be injured by paying more for contact lenses purchased indirectly from Defendants and their co-conspirators than they would have paid and will pay in the absence of the conspiracy.

143. The alleged contract, combination, or conspiracy is a per se violation of the federal antitrust laws.

144. Plaintiffs seek injunctive relief and attorneys' fees and costs.

COUNT II

Violation of State Antitrust Statutes

(On behalf of Minnesota, Nebraska, North Dakota, and Wisconsin Classes)

145. Plaintiffs incorporate the allegations in each above numbered Paragraph.

146. During the Class Period, Defendants and their co-conspirators entered into a continuing agreement, understanding and conspiracy in restraint of trade to impose their minimum resale price maintenance scheme and to artificially fix, raise, stabilize, and control prices for contact lenses, thereby creating anticompetitive effects.

147. The conspiratorial acts and combinations alleged in this Complaint have caused unreasonable restraints in the market for contact lenses.

148. As a result of Defendants' unlawful conduct, Plaintiffs and Class members have been harmed by being forced to pay inflated, supra-competitive prices for contact lenses.

149. In formulating and carrying out the alleged agreement, understanding, and conspiracy, Defendants and their co-conspirators did those things that they combined and conspired to do, including but not limited to the acts, practices, and course of conduct set forth herein.

150. Defendants' anticompetitive acts were knowing and willful, and they constitute violations or flagrant violations of the following state antitrust statutes.

151. Defendants have entered into an unlawful agreement in restraint of trade in violation of Minn. Stat. § 325D.49 *et seq.*; Neb. Rev. Stat. § 59-801 *et seq.*; N.D. Cent. Code § 51-08.1-01 *et seq.*; and Wis. Stat. § 133.01 *et seq.*

152. Defendants' unlawful conduct had the following effects: (a) contact lens price competition was restrained, suppressed, and eliminated throughout Minnesota, Nebraska, North Dakota, and Wisconsin; (b) contact lens prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Minnesota, Nebraska, North Dakota, and Wisconsin; (c) the Minnesota, Nebraska, North Dakota, and Wisconsin Plaintiffs and Classes were deprived of free and open competition; and (d) the Minnesota, Nebraska, North Dakota, and Wisconsin Plaintiffs and Classes paid artificially inflated, supra-competitive price for contact lenses that were made by the Manufacturer Defendants and subject to Uniform Pricing Policies.

153. Defendants' illegal conduct substantially affected Minnesota, Nebraska, North Dakota, and Wisconsin commerce during the Class Period.

154. As a direct and proximate cause of Defendants' unlawful conduct, the Minnesota, Nebraska, North Dakota, and Wisconsin Plaintiffs and Classes have been injured by paying supra-competitive prices and are threatened with further injury.

155. Defendants have entered into agreements in restraint of trade in violation of Minn. Stat. § 325D.49 *et seq.*; Neb. Rev. Stat. § 59-801 *et seq.*; N.D. Cent. Code § 51-08.1-01 *et seq.*; and Wis. Stat. § 133.01 *et seq.* Accordingly, the Minnesota, Nebraska, North Dakota, and Wisconsin Plaintiffs and Classes seek all relief available under Minn. Stat. § 325D.49 *et seq.*; Neb. Rev. Stat. § 59-801 *et seq.*; N.D. Cent. Code § 51-08.1-01 *et seq.*; and Wis. Stat. § 133.01 *et seq.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for judgment against Defendants as follows:

1. An Order certifying the Class and the State Subclasses under Federal Rules of Civil Procedure 23(b)(2) and (b)(3), and appointing Plaintiffs and their counsel to represent the Class and the State Subclasses;
2. Declarations that the actions of Defendants are unreasonable restraints of trade in violation of Section 1 of the Sherman Act and the state antitrust laws;
3. Appropriate injunctive and equitable relief;
4. Damages, including treble damages, to the fullest extent allowed by law;
5. Costs, disbursements, expenses, and attorneys' fees;
6. Pre- and post-judgment interest, to the extent allowable; and
7. Such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand a trial by jury in this case as to all issues so triable.

Dated: April 8, 2015

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