

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

ST. MARY’S HOSPITAL, DECATUR, )  
OF THE HOSPITAL SISTERS OF THE )  
THIRD ORDER OF ST. FRANCIS, )  
on behalf of itself and all others similarly )  
situated, )

Plaintiff, )

v. )

IMMUCOR, INC., ORTHO-CLINICAL, )  
DIAGNOSTICS, INC., and JOHNSON & )  
JOHNSON HEALTH CARE SYSTEMS, )  
INC., )

Defendants. )

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

Plaintiff St. Mary’s Hospital, Decatur, of the Hospital Sisters of the Third Order of St. Francis (hereafter "Plaintiff), individually and on behalf of a Class of all those similarly situated, brings this action for treble damages under the antitrust laws of the United States against Defendants, and demands a trial by jury.

**INTRODUCTION AND OVERVIEW**

1. Plaintiff alleges that Defendants and unnamed co-conspirators entered into a conspiracy to fix, raise, maintain or stabilize the prices paid by Plaintiff and the members of the Class for Blood Reagents.

2. Plaintiff brings this action on its own behalf and on behalf of all purchasers of Blood Reagents in the United States and its territories, who purchased directly from the Defendants during the period from January 1, 2000 through the present (the "Class

Period"). As used herein, "Blood Reagents" refers to "traditional" (as opposed to "proprietary") Blood Reagents manufactured and sold by the Defendants or their parents, subsidiaries, or affiliates.

3. Defendants Immucor, Inc., Ortho-Clinical Diagnostics, Inc. and Johnson & Johnson Health Care Systems, Inc (collectively, "Defendants") develop, manufacture, market, and sell Blood Reagents, which are used primarily by clinical laboratories, blood banks, and hospitals like Plaintiff in various tests performed to detect and identify certain properties of the cell and serum components of human blood before blood transfusion. Collectively, Defendants dominate and control the Blood Reagents industry.

4. At all relevant times herein, Defendants manufactured, marketed and/or sold Blood Reagents. During the Class Period, Defendants agreed, combined, and conspired with each other to fix prices for Blood Reagents sold in the United States and thereby to fix, raise, maintain or stabilize the prices for such products, a per se violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

5. As a result of Defendants' unlawful conduct, Plaintiff and the Class (as defined in this Complaint) paid supra-competitive prices for these products, and have suffered injury to their business and property.

6. This lawsuit comes in the wake of a criminal antitrust investigation initiated by the United States Department of Justice's Antitrust Division ("DOJ") against Defendants concerning Blood Reagents. On April 24, 2009, Defendant Immucor, Inc. ("Immucor") announced that it received a grand jury subpoena from the DOJ requesting documents from September 1, 2000 through the present regarding an investigation of possible violations of the federal criminal antitrust laws in the blood reagents industry. Shortly

thereafter, on May 5, 2009, Johnson & Johnson disclosed that its subsidiary, Defendant Ortho-Clinical Diagnostics, Inc., also received a grand jury subpoena from the DOJ in April 2009 requesting documents from September 1, 2000 through the present concerning the same subject matter. That the DOJ has begun a criminal antitrust investigation is significant, as strongly suggests the presence of price-fixing, bid-rigging, or customer allocation activity in the relevant market.

7. The DOJ investigation follows a Federal Trade Commission ("FTC") investigation of Immucor that began on or about October 2007 and focuses both on whether three acquisitions made between 1996 and 1999 harmed competition in violation of federal antitrust laws, and whether it or others engaged in unfair methods of competition by restricting price competition. The FTC investigation occurred subsequent to Immucor's former President and CEO's proclamation that Immucor made the acquisitions with the specific intent to restrict competition and raise prices.

8. An examination of Defendants' pricing practices before and during the Class Period is also telling. Defendants' prices of Blood Reagents during the Class Period increased consistently, at nearly the same time, and in nearly parallel and lock-step fashion. This represents a noteworthy departure from the price competition that characterized several decades of vigorous price competition that produced consistently lower prices. Moreover, Defendants' identical pricing behavior during the Class Period would have only made sense if they were cooperating, rather than competing, on pricing.

9. The conspiracy is even more plausible based on an examination of the industry characteristics present in the U.S. Blood Reagents industry. The structure and

characteristics of the industry in the U.S. are particularly conducive to a price-fixing agreement, and have made collusion particularly attractive in this market.

10. Plaintiff brings this action on behalf of itself and all those similarly situated that purchased Blood Reagents directly from Defendants during the Class Period to be compensated for the financial harm that the conspiracy has inflicted on it and many others. As a result of Defendants' unlawful conduct, Plaintiff and the Class paid supra-competitive prices for these products, and have suffered injury to their business and property.

#### **JURISDICTION AND VENUE**

11. This action is instituted under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, to recover treble damages, and the costs of this suit, including reasonable attorneys' fees, against Defendants for the injuries sustained by Plaintiff and the members of the Class by reason of the violations, as hereinafter alleged, of Section 1 of the Sherman Act, 15 U.S.C. § 1.

12. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1337 and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15(a) and 26.

13. This Court has personal jurisdiction over each Defendant because each Defendant transacted business throughout the United States, including in this District, sold Blood Reagents throughout the United States, including in this District, had substantial contacts with the United States, including in this District; and/or or engaged in an illegal scheme and price-fixing conspiracy that was directed at and had the intended effect of causing injury to persons residing in, located in, or doing business throughout the United States, including in this District.

14. The activities of Defendants and their co-conspirators, as described in this Complaint, were within the flow of and substantially affected interstate commerce.

15. During the Class Period, Defendants and their co-conspirators sold substantial quantities of Blood Reagents, in a continuous and uninterrupted flow of interstate commerce, including through and into this District.

16. Venue is proper in this District pursuant to Sections 4, 12, and 16 of the Clayton Act, 15 U.S.C. §§ 15, 22, and 26 and 28 U.S.C. § 1391 (b), (c) and (d) because during the Class Period the Defendants transacted business, were found, or had agents in this District, and because a substantial portion of the affected interstate trade and commerce described herein is and has been carried out in this District.

#### **PARTIES**

17. Plaintiff St. Mary's Hospital, Decatur, of the Hospital Sisters of the Third Order of St. Francis is an Illinois corporation with its principal place of business in Decatur, Illinois. Plaintiff purchased Blood Reagents directly from one or more of the Defendants during the Class Period. As a result of the unlawful conspiracy alleged herein, Plaintiff has been injured in its business or property.

18. Defendant Immucor, Inc. ("Immucor") is a Georgia corporation with its principal place of business at 3130 Gateway Drive, P.O. Box 5625, Norcross, Georgia 30091-5625. Defendant Immucor manufactured marketed and/or sold Blood Reagents in this District and throughout the United States during the Class Period. Defendant Immucor is the largest supplier of Blood Reagents in the United States, and has been since 1999.

19. Defendant Ortho-Clinical Diagnostics, Inc. ("Ortho") is a New York corporation with its principal place of business at 1001 Route 202, Raritan, New Jersey 08869.

Defendant Ortho manufactured, marketed and/or sold Blood Reagents in this District and throughout the United States during the Class Period. Ortho is a wholly-owned subsidiary of Johnson & Johnson, and is the second-largest supplier of Blood Reagents in the United States.

20. Defendant Johnson & Johnson Health Care Systems, Inc. ("J&J Health Care") is a New Jersey corporation with its principal place of business at 425 Hoes Lane, Piscataway, New Jersey 08854. J&J Health Care is also a wholly-owned subsidiary of Defendant Johnson & Johnson, and an affiliate of Ortho. J&J Health Care provides account management, contracting, supply chain and business services to hospitals and group purchasing organizations. J&J Health Care facilitated the sale and distribution of Ortho's Blood Reagents during the Class Period.

21. Defendants Immucor and Ortho are the only companies in the U.S. with a complete line of blood reagents. Together, they control the U.S. market for Blood Reagents.

22. All acts alleged in this Complaint to have been done by Defendants were performed by their officers, directors, agents, employees or representatives while engaged in the management, direction, control or transaction of Defendants' business affairs.

#### **CO-CONSPIRATORS**

23. Various other persons, firms or corporations, not named as Defendants herein, have participated as co-conspirators with Defendants and have performed acts and made statements in furtherance of the conspiracy.

24. Whenever in this Complaint reference is made to any act, deed or transaction of any corporation, the allegation means that the corporation engaged in the act, deed or transaction by or through its officers, directors, agents, employees or representatives while they were actively engaged in the management, direction, control or transaction of the corporation's business or affairs.

### **CLASS ACTION ALLEGATIONS**

25. Plaintiff brings this action on behalf of itself and as a class action under the provisions of Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of all members of the following Class:

All persons and entities in the United States who, at any time from January 1, 2000 through the present, purchased Blood Reagents from any Defendant or any current or former parent, subsidiary or affiliate thereof.

Excluded from the Class are all Defendants, their parent companies, subsidiaries and affiliates, any co-conspirators, and all federal governmental entities and instrumentalities of the federal government.

26. Although Plaintiff does not know the exact number of Class members because such information is in the exclusive control of Defendants, due to the nature of the trade and commerce involved, Plaintiff believes that there are, at a minimum, thousands of members in the class as defined. Accordingly, the Class is so numerous and geographically dispersed that the joinder of all members is impracticable.

27. There are questions of law and fact common to the Class, including:

- a. Whether Defendants and their co-conspirators engaged in a combination and conspiracy among themselves to fix, raise, maintain or stabilize the prices of Blood Reagents sold in the United States;
- b. The identity of the participants of the alleged conspiracy;

- c. The duration of the alleged conspiracy and the acts carried out by Defendants and their co-conspirators in furtherance of the conspiracy;
- d. Whether the alleged conspiracy constitutes a per se violation of Section 1 of the Sherman Act, 15 U.S.C. §1;
- e. Whether the alleged conspiracy otherwise violates Section 1 of the Sherman Act, 15 U.S.C. §1;
- f. Whether the conduct of Defendants and their co-conspirators, as alleged in this Complaint, caused injury to the business or property of the Plaintiff and the other members of the Class;
- g. The effect of the alleged conspiracy on the prices of Blood Reagents sold in the United States during the Class Period;
- h. Whether the Defendants and their co-conspirators fraudulently concealed the conspiracy's existence from the Plaintiff and the other members of the Class; and
- i. The appropriate class-wide measure of damages.

28. Plaintiff is a member of the Class. Plaintiff's claims are typical of the claims of the Class members, and Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff was a direct purchaser of Blood Reagents from one or more of the Defendants, and its interests are entirely consistent with, and not antagonistic to, those of the other members of the Class.

29. Plaintiff is represented by counsel who are competent and experienced in the prosecution of antitrust and class action litigation.

30. A class may appropriately be certified pursuant to Rule 23(b)(2) in that the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendants.

31. A class may also be appropriately certified pursuant to Rule 23(b)(3) in that the questions of law and fact common to the members of the Class predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages. Moreover, a class action is superior to other available methods for the fair and efficient adjudication of this controversy. The Class is readily definable and is one for which records should exist. Prosecution as a class action will eliminate the possibility of repetitious litigation. Treatment as a class action will permit a large number of similarly situated persons to adjudicate their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender. Neither Plaintiff nor its counsel are aware of any difficulties in management that would preclude maintenance as a class action.

### **FACTUAL ALLEGATIONS**

#### **Overview of the U.S. Market for Blood Reagents**

32. Blood Reagents are organic compounds that are used in tests performed prior to blood transfusions to determine the blood group and type of patient and donor blood, in the detection and identification of blood group antibodies, in platelet antibody detection, and in connection with prenatal care. Blood Reagents are sold in plastic packages of 200 to 1100 cubic milliliters.

33. In "traditional" applications, which account for at least 75% of the total U.S. Blood Reagent market, Blood Reagents are used by laboratory technicians who perform blood testing manually. In "proprietary" applications, Blood Reagents are used in combination with automated diagnostic devices that test blood without the need for as much or any manual labor.

34. Defendants develop, manufacture and sell Blood Reagents for use in both "traditional" and "proprietary" applications. Defendants also develop and sell automated diagnostic devices for use in combination with their "proprietary" Blood Reagent products.

35. The mature U.S. market for "traditional" Blood Reagents would be – in the absence of Defendants' anticompetitive conspiracy – a highly competitive one, marked by competitive prices for customers and reasonable margins for the Defendants. Indeed, at the beginning of the antitrust conspiracy alleged herein, Defendant Immucor stated that "[o]ver the past several years manufacturers have been facing increased costs of manufacturing while during the same period market prices for blood bank products have decreased." As a result of the Defendants' illegal conspiracy, however, the U.S. market for "traditional" Blood Reagents has seen supra-competitive pricing imposed on Plaintiff and the members of the Class, and astronomically high margins enjoyed by the Defendants.

36. While the development, formulation, manufacturing and permitted applications of Blood Reagents is highly regulated by the Food and Drug Administration ("FDA"), "traditional" Blood Reagents are nonetheless a fungible product, and one Defendant's

"traditional" Blood Reagent can be easily substituted for a Blood Reagent made by the other Defendant.

37. The U.S. market for "traditional" Blood Reagents is well over \$300 million annually, and during the Class Period the U.S. market for "traditional" Blood Reagents has been over \$2 billion.

**Consolidation and Concentration of the Market for Blood Reagents**

38. Into the mid-1990s, the U.S. Blood Reagent market was highly competitive and relatively un-concentrated, with over a dozen Blood Reagent producers occupying the market. While the Defendants were some of the larger players in the U.S. Blood Reagent market – with Defendant Ortho historically enjoying a substantial market share – the market in the mid-1990s did not present the Defendants with the opportunity to engage in the type of anticompetitive conduct that has marked the Blood Reagent industry since the beginning of their conspiracy in 2000.

39. Beginning in the late 1990s, the U.S. Blood Reagent market became increasingly more concentrated in the wake of a wave of acquisitions and mergers, and increasingly more susceptible to the type of successful antitrust conspiracy alleged in this Complaint.

40. Starting with the purchase of its primary Canadian competitor, Dominion Biologicals, Ltd., in late 1996, Defendant Immucor rapidly undertook a series of acquisitions of competing North American Blood Reagent producers. In October, 1998, Defendant Immucor acquired Gamma Biologicals, Inc., then the third-largest Blood Reagent producer in the United States. After its acquisition of the BCA blood bank division assets of Biopool International, Inc. in early 1999, Defendant Immucor became

the North American market leader in Blood Reagents, with an estimated market share of slightly over 50%.

41. Defendant Ortho's Blood Reagents occupy all but an insignificant portion of the remaining U.S. market. Since 2000, Defendant Immucor has consistently described Defendant Ortho as its "sole competitor" in the U.S. market for Blood Reagents.

42. At all times during the Class Period, the market for Blood Reagents has been highly concentrated, with the Defendants controlling all but a small fraction of the entire U.S. market. Such a highly concentrated market facilitates the type of collusion alleged herein, and Defendants have operated a profitable and illegal conspiracy at the expense of Plaintiff and members of the Class.

**Substantial Barriers to Entry Exist in the U.S. Market for Blood Reagents**

43. In addition to the high market concentration, there are substantial barriers to entry in the U.S. market for "traditional" Blood Reagents that have eased the operation and ensured the success of the conspiracy alleged herein.

44. Defendant Immucor recently noted that "the requirement to register products with the FDA and have them produced at an FDA-licensed facility acts as a barrier to entry into this market," and the time, expense and effort associated with surmounting these regulatory barriers have kept the majority of the world's other Blood Reagent manufacturers out of the U.S. market until very recently.

**Defendants' History of Imposing Massive Price Increases on Plaintiff and Members of the Class During the Class Period**

45. Shortly after securing its place as the U.S. market leader in late 1999, Defendant Immucor implemented a dramatic new pricing strategy aimed at exploiting its nascent

market dominance. Defendant Immucor now employs a tiered, "standardized" pricing mechanism whereby all but a small fraction of purchasers are susceptible to its massive and collusive price increases.

46. At the beginning of the Class Period, Defendant Immucor began what it dubbed a "significant market price adjustment" in what became a successful and anticompetitive effort to "utilize its market leadership position in the United States to realign its prices with its costs." However, Defendant Immucor's new pricing strategy was implemented not as an effort to "realign its prices with its costs" – the public rationale used to provide Defendants with the cover necessary to effect their conspiracy – but was rather a manifestation of Defendants' illegal price-fixing conspiracy.

47. Throughout the Class Period, Defendants have implemented a series of massive price increases, occurring in tandem, causing substantial injury to the business and property of Plaintiff and members of the Class. As a direct and proximate results of Defendants' unlawful conspiracy, prices for Blood Reagents sold in the United States has increased tremendously during the Class Period.

48. Price increases imposed in lockstep by the Defendants have raised the prices for some "traditional" Blood Reagents as much as 1000% during the Class Period. Purchasers of a wide variety of "traditional" Blood Reagents have seen their prices increase by hundreds of percentage points – often in the course of a year or eighteen months.

49. Beginning in 2000 and into 2001, Defendants began raising prices on "traditional" Blood Reagents. Defendants' price increases typically came simultaneously or nearly-simultaneously.

50. In late 2004, Defendants substantially increased prices for a wide variety of "traditional" Blood Reagents, ranging from 87% to as much as 254% for some products.

51. For example, in November of 2005, Defendants simultaneously increased prices for ABO and other "traditional" Blood Reagents, ranging from 24-42%.

52. Similarly, in April, 2008, Defendants simultaneously increased prices for "traditional" Blood Reagents anywhere from 50-100%.

53. All of these collusive price increases have substantially increased Defendants' profit margins – far above a level necessary to achieve Defendant Immucor's pretext that it needed to "realign its prices with its costs." For example, during the Class Period, Defendant Immucor's profit margin for its "traditional" Blood Reagent products increased from roughly 45% in 2001 to nearly 80% in the first quarter of 2009. Defendants' windfall profits have come at the expense of Plaintiff and members of the Class, and are a direct and proximate result of the conspiracy.

54. Furthermore, Defendants have undertaken concerted and anticompetitive actions to ensure the successful implementation of their lockstep price increases.

55. For example, in the wake of their massive lockstep price increases in the fall of 2004, Defendants Immucor and Ortho nearly simultaneously cancelled long-standing contracts with some of the nation's largest group purchasing organizations ("GPOs"), whose substantial collective negotiating power was insufficient to overcome the Defendants' illegal antitrust conspiracy. Defendant Immucor flatly stated that the cancellation of the GPO contracts "was undertaken for the purpose of increasing prices to the members of each group which will occur simultaneously with the cancellation."

56. Defendants' price fixing has been aided by a customer-allocation scheme that has restricted competition in what should be a competitive market. At least some of Defendant Immucor's customers have attempted to secure Blood Reagents from Defendant Ortho, but were unable to do so because Defendant Ortho either quoted unreasonably high prices for the company's products or simply refused to entertain customers' requests for Blood Reagent products. Similarly, at least some of Defendant Ortho's customers have attempted to secure Blood Reagents from Defendant Immucor, but were informed that Defendant Immucor would not furnish the customers with price quotes for the requested products. Such conduct is diametrically opposed to a competitive marketplace, and is instead entirely consistent with the anti-competitive scheme alleged herein.

57. Defendants are also members of a number of trade associations and industry groups, including the American Association of Blood Banks and the American Association for Clinical Chemistry. Both these entities, as well as a number of other trade associations or industry groups in which the Defendants participate, hold regular meetings and conferences throughout the United States. Such trade association and industry group meetings provide the opportunity for participants in illegal cartels of the type alleged herein to undertake the acts necessary for the operation of their illegal conspiracy.

#### **Federal Investigations into the Blood Reagents Industry**

58. On April 24, 2009, Defendant Immucor disclosed that it had been served with a grand jury subpoena by the Atlanta office of the Antitrust Division of the U.S. Department of Justice "requesting documents for the period beginning September 1, 2000

through the present, pertaining to an investigation of possible violations of the federal criminal antitrust laws in the blood reagents industry." Upon information and belief, a grand jury empanelled in the Northern District of Georgia is investigating the criminal antitrust conspiracy alleged herein.

59. On May 5, 2009, Johnson & Johnson disclosed that Defendant Ortho had also "received a grand jury subpoena from the U.S. Department of Justice, Antitrust Division, requesting documents and information for the period beginning September 1, 2000 through the present, pertaining to an investigation of alleged violations of the antitrust laws in the blood reagents industry."

60. The U.S. Department of Justice has confirmed that it has started an investigation of the Blood Reagents industry.

61. Defendant Immucor has been under scrutiny for its anticompetitive actions since the Fall of 2007, when the company disclosed that the Federal Trade Commission had informally requested documents and information related to a non-public investigation of whether Defendant Immucor's spate of acquisitions in the 1990s, as well as the company's "product pricing activities since then," had violated antitrust laws or otherwise indicated "unfair methods of competition by restricting price competition." In the Summer of 2008, Defendant Immucor further disclosed that the FTC had issued a "Civil Investigative Demand," formalizing its earlier request and asking Defendant Immucor "to provide certain additional information within the same general scope of its previous requests."

**FRAUDULENT CONCEALMENT AND**  
**TOLLING OF THE STATUTE OF LIMITATIONS**

62. Plaintiff and members of the Class did not discover, and could not have discovered through the exercise of reasonable diligence, the existence of the conspiracy alleged herein until April 24, 2009, when the criminal investigation was first publicly reported.

63. Because Defendants' agreements, understandings, and conspiracies were kept secret until April 24, 2009, Plaintiff and members of the Class were unaware of Defendants' unlawful conduct alleged herein before that time, and did not know that they were receiving supra-competitive prices for "traditional" Blood Reagents throughout the United States during the Class Period.

64. The affirmative acts of the Defendants alleged herein, including acts in furtherance of the conspiracy, were wrongfully concealed and carried out in a manner that precluded detection.

65. Indeed, by its very nature, Defendants' anti-competitive conspiracy was inherently self-concealing.

66. In the context of the circumstances surrounding Defendants' pricing practices, Defendants' acts of concealment were more than sufficient to preclude suspicion by a reasonable person that Defendants' pricing was conspiratorial. For example, the Defendants' proffered justifications for their massive lockstep price increases – typically referring to "new" production, raw material and research-and-development costs – were meant to conceal the fact that the increases stemmed from Defendants' illegal cartel. Accordingly, a reasonable person under the circumstances would not have been alerted to investigate the legitimacy of Defendants' proffered "traditional" Blood Reagent prices before April 24, 2009.

67. Because the alleged conspiracy was both self-concealing and affirmatively concealed by Defendants and their co-conspirators, Plaintiff and members of the Class had no knowledge of the alleged conspiracy, or of any facts or information that would have caused a reasonably diligent person to investigate whether a conspiracy existed, until April 24, 2009, when reports of the criminal investigations into anti-competitive conduct concerning Blood Reagents were first publicly disseminated.

68. As a result of Defendants' fraudulent concealment of their conspiracy, the running of any statute of limitations has been tolled with respect to any claims that Plaintiff and members of the Class have alleged in this Complaint.

### **CAUSE OF ACTION**

#### **Violation of Section 1 of the Sherman Act -15 U.S.C. § 1**

69. Plaintiff incorporates and re-alleges each allegation set forth in the preceding paragraphs of this Complaint.

70. From as early as January 1, 2000 through the present, Defendants and their co-conspirators engaged in a continuing contract, combination or conspiracy with respect to the sale of "traditional" Blood Reagents in the United States in unreasonable restraint of interstate trade and commerce, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

71. The contract, combination or conspiracy consisted of an agreement among the Defendants and their co-conspirators to fix, raise, stabilize or maintain at artificially supra-competitive prices for "traditional" Blood Reagents in the United States, and/or to allocate customers for "traditional" Blood Reagents in the United States amongst one another.

72. In formulating and effectuating this conspiracy, Defendants and their co-conspirators did those things that they combined and conspired to do, including:

- a. participating in meetings and conversations among themselves during which they agreed to price "traditional" Blood Reagents at certain levels, allocate customers, and/or otherwise to fix, increase, maintain or stabilize prices paid by Plaintiff and members of the Class with respect to "traditional" Blood Reagents sold in the United States; and
- b. participating in meetings and conversations among themselves to implement, adhere and police the agreements they reached.

73. Defendants and their co-conspirators engaged in the actions described above for the purpose of carrying out their unlawful agreements to fix, maintain, raise or stabilize prices with respect to "traditional" Blood Reagents.

74. As a direct and proximate result of Defendants' unlawful contract, combination or conspiracy, Plaintiff and the Class have sustained injury and have otherwise been damaged in that:

- a. prices paid by Plaintiff and the members of the Class with respect to "traditional" Blood Reagents were fixed, raised, stabilized or maintained at artificially supra-competitive levels in the United States;
- b. Plaintiff and the other members of the Class paid more for the "traditional" Blood Reagents they purchased than they would have paid in a competitive marketplace, unfettered by Defendants' and their co-conspirators' collusive and unlawful activities;

- c. price competition with respect to the sale of "traditional" Blood Reagents was restrained, suppressed and eliminated; and
- d. as a direct and proximate result of the illegal combination, contract or conspiracy, Plaintiff and the members of the Class have been injured and financially damaged in their businesses and property, in amounts to be determined.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a jury trial as to all issues triable by a jury.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff prays for relief as follows:

- a. That the Court determine that this action may be maintained as a class action under Rules 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure, that Plaintiff be certified as class representative and Plaintiff's counsel be appointed as counsel for the Class;
- b. That the unlawful contract, combination or conspiracy alleged herein be adjudged and decreed to be an unreasonable restraint of trade or commerce in violation of Section 1 of the Sherman Act;
- c. That Defendants be enjoined from maintaining their contract, combination or conspiracy;
- d. That Plaintiff and the Class recover damages, as provided by law, determined to have been sustained as to each of them, in an amount to be

trebled in accordance with the antitrust laws, and that judgment be entered against defendants on behalf of Plaintiff and the Class;

- e. That Plaintiff and the Class recover treble damages, as provided by law;
- f. That Plaintiff and the Class recover their costs of the suit, including attorneys' fees, as provided by law; and
- g. For such other and further relief as is just under the circumstances.

Respectfully submitted,

Dated: June 26, 2009

/s/Eric D. Holland  
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