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NEW JERSEY CITIZEN ACTION and UNITED SENIOR ACTION OF INDIANA, INC., Individually and On Behalf of All Others Similarly Situated Plaintiffs, v. JOHNSON & JOHNSON, INC.; CENTOCOR, INC.; JOHN DOE Manufacturers (1-50); JOHN DOE Distributors (1-50); JOHN DOE Marketing (1-50); and JOHN DOE Sellers (1-50), Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY CIVIL ACTION DOCKET NO. **CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

COME NOW Plaintiffs, by and through counsel, and for their Class Action Complaint against Defendants Centocor, Inc. and Johnson & Johnson, Inc., state as follows:

INTRODUCTION

1. Plaintiffs bring this action pursuant to the New Jersey Consumer Fraud Act (N.J. Stat. §56:8-1 et seq.) and New Jersey common law as a class action on behalf of thousands of individuals (the "Class") to obtain injunctive relief to enjoin ongoing unlawful practices and

recover hundreds of millions of dollars recover hundreds of millions of dollars overpaid as a result of a fraudulent scheme orchestrated by Defendants Centocor, Inc. and Johnson & Johnson, Inc. (collectively, "Defendants") that targeted Medicare patients, health insurers, and others.

2. Defendant Johnson and Johnson, Inc., by and through its wholly-owned and fully controlled subsidiary Centocor, Inc., is and at all relevant times was in the business of manufacturing, marketing and selling pharmaceuticals, including the rheumatoid arthritis and Crohn's disease drug Remicade®.

3. From August 24, 1998 to the present, Defendants created and implemented a fraudulent marketing and sales scheme designed to artificially heighten demand for and increase the sales of Remicade®, reaping unlawful profits at the expense of Medicare patients, healthcare insurers, and other members of the class. Defendants systematically created a pervasive, illegal system to cause individual patients and their insurers to overpay substantial amounts of money for the specific purpose of increasing the market share of Remicade® and maximizing their profit at the expense of Plaintiffs and the Class.

4. Specifically, Defendants have deliberately overstated and continues to overstate the average wholesale price ("AWP") for Remicade® -- the rate upon which Medicare reimbursement (and Medicare beneficiaries co-payments) as well as many private insurers' payments are set -- such that Plaintiff and members of the Class pay an artificially inflated amount of money for Remicade®. The published AWP for Remicade® continued to increase each year during the class period. For example, the AWP was listed as $611.33 for a 100 mg vial of Remicade® as of November 1999, and rose to $665.65 when listed in the 2001 edition of the Red Book. At the same time, Defendants have continued to sell Remicade® at a price well below the AWP to physicians intending and/or knowing that reimbursement would be sought for the drug at

a much higher price based upon the AWP.

5. The scheme allowed Defendants to control, as part of their sales and marketing strategies, the level of reimbursement that would be made under Medicare and other insurance plans for Remicade®, as well as corresponding co-payments made by consumers. Defendants deliberately marketed and promoted the sale of Remicade® to physicians based on the availability of inflated payments made by Medicare, Plaintiffs and the Class, and repeatedly assured physicians that they would make a significant profit from the purchase of Remicade®.

6. The difference between the AWP and the actual cost of a drug was marketed by Defendants as the "spread" that would be returned to a physician's practice as a result of administering Remicade®. This spread was marketed directly to physicians as a financial incentive to increase demand for Remicade®.

7. Defendants' scheme caused Plaintiffs and the Class to pay the artificially inflated prices for Remicade®. This class action seeks injunctive relief to enjoin the Defendants' ongoing unlawful marketing practices and seeks to recover the monies lost by reason of the Defendants' unlawful marketing scheme, on behalf of all individuals and entities that paid a portion of the cost of Remicade®, including consumers, Medigap insurers, third party insurers, and others.

PARTIES

8. Plaintiff New Jersey Citizen Action ("NJCA") is New Jersey's largest independent citizen watchdog. It is located at 85 Raritan Ave., #100, Highland Park, New Jersey 08904. It is comprised of 60,000 members and over 90 affiliated organizations. NJCA works to protect and expand the rights of individuals and families on a variety of issues, including health care.

9. Plaintiff United Senior Action of Indiana, Inc. ("USAI") is not-for-profit corporation incorporated under the laws of the State of Indiana. It has an office at 1920 W.

Morris St., #246, Indianapolis, Indiana 46221-1540. It has a membership of approximately 15,000 individuals, and serves as a voice for senior citizens with regard to all issues affecting their lives, including in large part health care.

10. Defendant Johnson & Johnson, Inc. ("J&J") is a corporation in good standing organized under the laws of the State of New Jersey. It is located at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933. Johnson & Johnson has 197 operating companies in 54 countries and sells products in virtually every country in the world. Among other things, Johnson & Johnson and its subsidiaries manufacture, market and sell pharmaceutical products.

11. Defendant Centocor, Inc. ("Centocor") is a Pennsylvania corporation in good standing located at 200 Great Valley Parkway, Malvern, Pennsylvania 19355. Centocor is in the business of biotechnology and pharmaceutical development; it manufactures and markets the cardiac drugs ReoPro® and Retavase®, as well as the drug at issue in this litigation, Remicade®. Centocor merged with J&J on October 6, 1999 in a $4.9 billion stock deal and became a wholly owned subsidiary of J&J at that time.

12. As its wholly-owned subsidiary, Defendant Centocor is fully controlled by Defendant J&J, which exercises said control from its headquarters in New Brusnwick.

13. At all times relevant herein the Defendants, John Doe Manufacturers (1-50), were individuals or business entities whose identities are currently unknown engaged in, among other things, the manufacturing and development of pharmaceutical products in and within the State of New Jersey and/or in other parts of the country, including but not limited to Remicade® (Infliximab).

14. At all times relevant herein the Defendants, John Doe Distributors (1-50), were individuals or business entities whose identities are currently unknown engaged in, among other

things, the distributing of pharmaceutical products in and within the State of New Jersey and/or in other parts of the country, including but not limited to Remicade® (Infliximab).

15. At all times relevant herein the Defendants, John Doe Marketing (1-50), were individuals or business entities whose identities are currently unknown engaged in, among other things, the marketing of pharmaceutical products in and within the State of New Jersey and/or in other parts of the country, including but not limited to Remicade® (Infliximab).

16. At all times relevant herein the Defendants, John Doe Sellers (1-50), were individuals or business entities whose identities are currently unknown engaged in, among other things, the selling of pharmaceutical products in and within the State of New Jersey and/or in other parts of the country, including but not limited to Remicade® (Infliximab).

JURISDICTION AND VENUE

17. This Court has jurisdiction over this matter and all parties.

18. Venue is proper in this Court pursuant to N.J. Court Rule 4:3-2. Defendant Johnson & Johnson, Inc. is located within this county, Defendants do business in this county, certain acts giving rise to the claims asserted in this Complaint occurred within this county, and some members of the Class sustained injury within this county as a result of Defendants' illegal actions.

CLASS ACTION ALLEGATIONS

19. Plaintiffs bring this action as a nationwide class action pursuant to the provisions of Rule 4:32 of the New Jersey Court Rules, individually and on behalf of a class as defined as follows:

> All persons and entities in the United States who paid any portion of the cost of Remicade® during the period August 24, 1998 to the present (the "Class Period"), including consumers paying the twenty percent (20%) co-payment or deductible

amount for themselves under Medicare Part B, Medigap insurers, and other third-party payors. Excluded from the Class are all Defendants, their respective subsidiaries and affiliates, all governmental entities, and all judges and justices assigned to hear any portion of this case.

20. The members of the Class are so numerous that joinder of all members is impracticable. Plaintiffs' claims are typical of the claims of the Class Members. Defendants' unlawful conduct has been targeted against all members of the Class in a similar manner, i.e., they have all been subjected to an unlawfully inflated AWP which causes them to pay well in excess of fair market value for their share of the allowable charge for Remicade®.

21. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs' interests are harmonious with and are not antagonistic to those of the Class. Plaintiffs are represented by counsel who are experienced and competent in the prosecution of complex class action litigation, including the areas of mass tort, health care, consumer and antitrust class actions.

22. Questions of law and fact common to the Class substantially outweigh any individual issues, and include but are not limited to:

a. Whether Defendants engaged in a fraudulent scheme of improperly setting and/or adjusting the AWP for Remicade®;

b. Whether Defendants artificially inflated the AWP for Remicade® in order to increase their market share, sales figures, demand and revenue;

c. Whether Defendants prepared marketing and sales materials emphasizing the spread between AWP and actual sales price to induce health care providers to prescribe Remicade® based upon profit motive in lieu of other less expensive and/or more effective drugs;

d. Whether Defendants should be enjoined from further continuing their unlawful

conduct of marketing profit-spreads to prescribing physicians;

e. Whether Defendants engaged in a pattern and practice of selling Remicade® to health care providers at a price well below the AWP listed in the Red Book and other industry publications;

f. Whether Defendants are liable to Plaintiffs and the Class for treble damages for conduct actionable under the New Jersey Consumer Fraud Act;

g. Whether Defendants have been unjustly enriched through their conduct; and,

h. Whether Defendants should be required to pour their ill-gotten profits into a constructive trust for the benefit of Plaintiffs and members of the class.

23. Class action treatment is a superior method for the fair and efficient adjudication of the controversy, in that, among other things, such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, and expense that individual actions would engender. The benefits of proceeding through the class mechanism, including providing injured persons or entities with a method for obtaining redress on claims that might not be practicable to pursue individually, substantially outweigh any difficulties that may arise in management of this class action.

24. Plaintiffs know of no difficulty to be encountered in the maintenance of this action that would preclude its maintenance as a class action.

25. Defendants have acted on grounds generally applicable to the entire Class, thereby causing injury to the Class and making injunctive and equitable relief wholly appropriate.

REMICADE®

26. Remicade® (infliximab) is a chimeric monoclonal antibody that binds to tumor

necrosis factor alpha (TNF-α), which is believed to be a central causative factor in the inflammatory process in humans. Remicade® blocks the activity of TNF-α. It is the global market share leader among TNF-α therapies.

27. Remicade® is used in the treatment of moderate to severely active rheumatoid arthritis and in the treatment of Crohn's disease, a serious gastrointestinal disorder. Remicade® is the first and only FDA-approved product indicated for the treatment of Crohn's disease.

28. Due in part to its impact on the immune system -- Remicade® can cause severe side effects, including heightened susceptibility to tuberculosis and infections caused by fungi or bacteria -- Remicade® is typically used after patients have tried other treatments and failed to adequately respond to them. Moreover, because Remicade® is a combination of human and mouse antibodies, many patients must also take methotrexate to prevent their immune systems from rejecting the drug.

29. Remicade® is administered via intravenous infusion, typically in the arm; a full dose of the medication takes approximately two hours to administer. Remicade® is available by prescription only, and may only be prepared and administered by a health care professional.

30. Remicade® is covered by Medicare Part B as an injectable administered directly by a health care provider, and is also covered by many health care insurers. In fact, Remicade® is the only biologic covered by Medicare.

31. Remicade®'s sales have steadily increased since it entered the market in 1998. Sales of the drug tripled in the U.S from 1999 to 2000, at which time Remicade®'s U.S. sales were approximately $222.4 million. Worldwide sales increased substantially from 2000 to 2001 as well, from $370 million in 2000 to $511 million in 2001 through September, putting it on pace for over $680 million in worldwide sales in 2001 overall.

32. The AWP listed in the 2001 edition of the Red Book for Remicade® was $665.65 for a 100 mg vial of the drug. An infusion of Remicade® typically involves injection of more than one vial per treatment; a patient taking Remicade® for rheumatoid arthritis, for example, needs to take 2 to 3 vials per treatment. The AWP for such a treatment would be between $1331.30 and $1996.95.

33. The amount charged to physicians administering the drug is substantially less. Industry publications suggest that the actual selling price for Remicade® may only be approximately one-third of its AWP.

THE MEDICARE PROGRAM

34. In 1965, Congress enacted Title XVIII of the Social Security Act ("Medicare" or the "Medicare Program") to pay for the cost of certain medical services and care. The Act and its associated programs is codified at 42 U.S.C. §1395 *et seq.*

35. The United States Department of Health and Human Services ("HHS") is responsible for the funding, administration and supervision of the Medicare Program. The Centers for Medicare and Medicaid Services ("CMMS"), formerly known as the Health Care Financing Administration ("HCFA"), is a division of HHS and is directly responsible for the administration of the Medicare Program.

36. Medicare Part B was created by Congress to provide individuals who are over the age of 65, disabled, or suffering from end-stage renal failure with the opportunity to obtain supplemental medical insurance if they so choose. Participants in the program requires payment of a monthly premium, a yearly deductible before benefits begin, and a twenty percent co-pay for each covered treatment.

37. The Medicare Program itself does not generally cover the cost of prescription

drugs that a Medicare beneficiary self administers (e.g., by swallowing the drug in liquid or pill form). Medicare Part B does cover some drugs, however, including the following: (1) drugs that must be administered by a health care provider; (2) drugs needed to facilitate the use of covered durable medical equipment; (3) certain immunizations; and (4) self-administered drugs usually relating to cancer or immunosuppressant therapy. Since Remicade® is an injectable drug which is administered directly by a health care provider, it is covered under Medicare Part B.

38. In administering the program, Medicare calculates an allowed charge for covered drugs, which is the maximum amount it will reimburse any given provider for the drug. During the period 1992 through 1997, Medicare reimbursement for all covered drugs was set at the lesser of the estimated acquisition cost or national AWP. This payment methodology was set forth in 42 C.F.R. § 405.517, a regulation first published in the Federal Register on November 25, 1991 which became effective on or about January 1, 1992.

39. Programs such as Medicare look to pharmaceutical industry publications such as the Red Book, Medi-Span and First DataBank to determine what the AWP for a given drug is and, accordingly, how much should be reimbursed under the health care coverage provided. These publications are widely-available and simply report the AWP for the numerous reimbursable products listed therein as reported to the publications by the products' manufacturers.

40. The estimated acquisition cost for a drug could be determined by the Medicare program "based on surveys of the actual invoice prices paid for the drug" taking into consideration the estimated acquisition cost, including "factors such as inventory, waste and spoilage."

41. In practice, however, it has historically been the case that the AWP published in the Red Book has been used as the basis for Medicare reimbursement since 1992.

42. On January 1, 1998, 42 C.F.R. § 405.517 was amended to provide that the allowed amount would be based upon the lower of the actual charge on the Medicare claim form or 95 percent of AWP. The Medicare Program has publicly announced that it would use the AWP published in pharmaceutical industry magazines as the basis for reimbursement. Specifically, in PM AB-99-63 (as of January 1, 1998), a publicly available Medicare Program bulletin, it states that reimbursement for certain Medicare Part B drugs and biologicals are paid based on the lower of the actual billed charge or 95 percent of the AWP reflected in pharmaceutical industry publication sources.

43. Medicare Part B reimburses medical providers 80% of the allowable amount. The remaining 20% is paid by the Medicare beneficiary, and is called the "co-payment" amount. All medical providers are required by law to not only send the patient a bill for the 20% co-payment, but to make attempts beyond merely billing to collect that amount. In addition, beneficiaries under Part B are required to pay an annual deductible amount before Part B benefits are payable.

44. Some Medicare beneficiaries are able to purchase private Medigap insurance, which covers, among other things, all or part of the 20% co-payment for Part B drugs.

45. Where a health care provider elects to accept payment directly from the program, it may not charge the individual enrollee more than 20 percent of the reasonable cost of the Covered Drug or biological. 42 U.S.C. §§ 1395(j)-1395(w-4).

SETTING AVERAGE WHOLESALE PRICE

46. Medicare Plan B carriers, who are third party organizations experienced as health care service payors contracted by the government to administer Medicare, rely upon the AWP published in pharmaceutical industry publications, such as the Red Book, to ascertain the allowable Medicare reimbursable amount.

47. The AWP is intended to be an estimate of the wholesalers' price for a pharmaceutical product. Indeed, the glossary included at the conclusion of Centocor's "Remicade Billing Guide" available on Remicade®'s web site (http://www.remicade.com) specifically adopts this definition, stating that AWP is "[a]n estimate of wholesalers' price for a pharmaceutical product." *See* ***Exhibit A***. (Note that this Billing Guide and the Office-Based Infusion Guide, referred to herein as Exhibit B, although available on the website as recently as April 2, 2002, have now apparently been removed.)

48. Publications like the Red Book rely entirely upon the manufacturers, distributors and suppliers of the listed products to accurately report the actual AWP for those products. As indicated in the foreword to the 2001 edition of the Red Book, "all prices are current as of the date Red Book went to press and are based upon data obtained from manufacturers, distributors, and other suppliers." Although the 2001 edition specifically references the perception that "some manufacturers were inflating their wholesale prices to gain a competitive advantage," it is still the case that the Red Book does not vouch for, nor does it independently verify the accuracy of, the AWP for any of the products listed therein.

49. The AWP system is therefore dependent upon the honesty of the drug manufacturers and other industry players to accurately report the price. Defendants knew that they could manipulate the AWP and insure a higher profit to their practice for prescribing physicians by simply fabricating and reporting a higher AWP to the Red Book and other industry publications for Remicade®. Defendants were further aware that the actual sales price data for Remicade® sold directly to health care providers was not publicly available, and accordingly keep this information highly confidential.

50. Remicade® is among the products listed in these industry publications. For

example, the AWP listed in the 2001 edition of the Red Book for Remicade® was $665.65 for a 100 mg vial of the drug. This is an increase from previous years; the average wholesale price for Remicade® as of November 1999 was $611.33 per vial.

51. In fact, there have been significant differences between the AWP provided to industry publications like the Red Book and the actual prices charged to purchasers of Remicade® throughout the relevant class period, which was significantly less. The different AWPs provided by the Defendants do not reflect the plain meaning or any reasonable interpretation of the terms "average" or "wholesale," and do not meet the definition adopted by Defendants' in the Remicade Billing Guide.

52. As a direct and proximate result of Defendants' pattern and practice of fraudulently and artificially inflating the AWP for Remicade® well beyond the actual average wholesale price, Plaintiffs and members of the class have substantially overpaid for Remicade®. Moreover, demand for Remicade® has been artificially inflated for Remicade® as a result of the incentive provided to physicians to prescribe Remicade®, causing some members of the class to pay this inflated price for treatment that may have been provided by less expensive and/or more effective means.

THE ONGOING GOVERNMENT INVESTIGATION

53. Beginning in or about early 1999, the Congressional Committee on Commerce ("Commerce Committee") commenced an investigation of the prices that Medicare pays for Medicare-covered outpatient drugs. Other federal committees and agencies joined in or have conducted their own investigation including, *inter alia*, the Department of Justice, the United States General Accounting Office ("GAO"), the Office of the Inspector General ("OIG"), certain subcommittees of the Congressional Committee on Energy and Commerce, the Committee on

Ways and Means, and HHS.

54. As a result of the ongoing investigations, during May 2000, the Justice Department released to states a list of 479 drugs that the department said had inflated AWPs. (Guiden, "Special Report: States Mull Suits Against Drug Companies," http://www.stateline.org (April 2, 2001).)

55. For the year 2000, the OIG found that Medicare's total authorized payments for twenty-four (24) leading drugs were $887 million more than the actual wholesale prices available to physicians and suppliers. Of this amount, beneficiaries, *i.e.*, consumers and third party payors, would have paid over $175 million less in coinsurance for just these twenty-four (24) leading drugs in the year 2000 alone had the cost of the drugs been based on actual wholesale prices.

DEFENDANTS' WRONGFUL CONDUCT

56. During the Class Period, Defendants deliberately and intentionally published an AWP that was significantly higher than the actual average price at which Remicade® is sold. Defendants created and perpetuated this scheme so that the medical providers who purchased Remicade® at a low cost could bill patients and their insurers at the inflated AWP and earn a substantial profit from the "spread" between the retail cost and the various AWP-related reimbursement rates. This profit potential was created and marketed by Defendants to influence medical providers' decisions to recommend Remicade® and thereby increase Defendants' market share and revenues. Clinicians were induced to prescribe Remicade® based upon greed and profit motive, rather than efficacy or the individualized needs of patients.

57. Defendants knew and understood that entities administering Medicare and members of the Class used the Red Book and other publications to determine the AWP. Because Defendants controlled the AWP as published in the Red Book and other industry compendia, Defendants knew and understood that they could manipulate the doctors' profits obtained from Plaintiffs and the Class. The purpose of artificially inflating the doctors' profits was to increase

demand for and ultimately sales of Remicade®.

58. As part of their scheme to increase their market share and revenues, Defendants induced greater Remicade® sales by telling medical providers to charge Medicare, Plaintiffs and the Class a price based upon the inflated AWP, notwithstanding that the providers were being charged a fraction of that amount to obtain the drug. For example, in a November 10, 1999 press release announcing FDA approval for use of Remicade® to treat rheumatoid arthritis, Defendants stated, "[i]nfused drugs, such as REMICADE(tm), meet current criteria for Medicare reimbursement, which is an important consideration because as many as 50 percent of patients with rheumatoid arthritis are eligible to receive Medicare benefits." *See* ***Exhibit B*** (www.jnj.com/news_finance/138.htm). In another example, the Remicade Billing Guide claims that, "[p]rivate payors generally will provide favorable reimbursement for REMICADE® (infliximab)." *See* ***Exhibit A***.

59. Defendants created promotional materials and worksheets to allow them to market the spread between AWP and the actual selling price to doctors. For example, a publication accessible through Defendants' web sites entitled "Office-Based Infusion Guide" demonstrates Defendants' aggressive marketing of this spread, specifically noting that, "[d]epending on reimbursement, office-based infusion may provide a financial impact to a physician's practice." *See* ***Exhibit C***. Moreover, the "Financial Analysis" section of the Guide includes a "REMICADE® (infliximab) Financial Impact Worksheet," which helps doctors see in actual dollars how much additional revenue the use of Remicade® would bring to their practice. *See* ***Exhibit C***. Attached to this Complaint as Exhibit D is an alternate version of the Guide and a completed worksheet, which upon information and belief is provided directly to physicians in order to demonstrate the "financial benefit" to the practice of providing Remicade infusions in the

office setting. It uses the same language as Exhibit C, although it specifically references a "financial benefit" to the doctors' practices as opposed to "financial impact." *See* ***Exhibit D***.

60. Defendants knew and understood that, because Medicare and other insurers relied upon the Red Book and other compendia to establish AWPs, and because Defendants could precisely control the published Remicade® AWP, Defendants could increase whenever they so desired the profit obtained by physicians from Plaintiffs and the Class. Accordingly, Defendants could control the amount of the financial incentive that a physician would receive by prescribing Remicade® to his or her patients.

61. During the Class Period the published AWP for Remicade® continued to increase and bore no relation to the actual price of the drug.

COUNT I -- VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT

62. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein and further allege as follows.

63. The New Jersey Consumer Fraud Act, N.J. STAT. §56:8-1 et seq. states in relevant part as follows:

> The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.
> N.J. STAT §56:8-2 (1971).

64. The actions of Defendants as described with more specificity throughout Plaintiffs' Class Action Complaint constitute violations of N.J. STAT §56:8-2 (1971), including but not limited to the following actions:

a. Fraudulently misrepresenting the AWP of Remicade®;

b. Fraudulently concealing the true selling price of Remicade®;

c. Marketing Remicade® based upon return to practice, and failing to advise patients that their physician's decision to use Remicade® may be based upon factors other than efficacy or patient need; and,

d. Encouraging physicians to charge members of the Class a price based upon an AWP for Remicade® they knew did not bear any rational relationship to the actual average wholesale price of the drug;

65. All of the conduct alleged herein occurred and continues to occur in the course of Defendants' business in connection with the sale of Remicade®.

66. As a direct and proximate result of Defendants' wrongful conduct described herein, Plaintiffs and members of the class paid more for their share of the cost of Remicade® than they would have in the absence of such conduct.

67. The New Jersey Consumer Fraud Act provides a private cause of action for Plaintiffs and members of the Class at N.J. STAT §56:8-19, which provides in relevant part:

> Any person who suffers any ascertainable loss of moneys . . . as a result of the use or employment by another person of any method, act, or practice declared unlawful under this act . . . may bring an action . . . in any court of competent jurisdiction. In any action under this section the court shall, in addition to any other appropriate legal or equitable relief, award threefold the damages sustained by any person in interest. In all actions under this section . . . the court shall also award reasonable attorneys' fees, filing fees and reasonable costs of suit.

68. Accordingly, Defendants are liable to Plaintiffs and members of the class for damages, costs, attorneys' fees, declaratory relief, and other appropriate relief.

69. Moreover, Defendants should be enjoined from continuing to inflate its reported AWP, and should be enjoined from marketing the spread between the inflated AWP and selling

price of Remicade® to physicians thereby encouraging them the administer the side-effect-ridden drug based upon profit motive rather than safety and efficacy.

COUNT TWO -- UNJUST ENRICHMENT

70. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein and further allege as follows:

71. As a direct and proximate result of the unlawful conduct described above, Defendants have been and will continue to be unjustly enriched by the receipt of illegal profits on their sale of Remicade® based upon unlawfully inflated AWPs.

72. As a direct and proximate result of Defendants' conduct, the Plaintiffs and members of the Class have suffered a detriment and the Defendants have received a benefit. It would be inequitable for defendants to be permitted to retain any of their ill-gotten gains resulting from the overpayments for Remicade® made by Plaintiffs and members of the Class.

73. As a direct and proximate result of Defendants' actions, the law implies a debt, founded in equity, as it were upon a contract to recover back money, which ought not in justice to be kept.

74. Plaintiffs and members of the Class are entitled are entitled to the return of Defendants' ill-gotten gains resulting from their unlawful, unjust and inequitable conduct. Plaintiffs and the Class members are entitled to the establishment of a constructive trust consisting of all overcharges for their benefit.

NOTICE TO ATTORNEY GENERAL OF ACTION

75. A copy of this Class Action Complaint shall be mailed to the Attorney General of the State of New Jersey within ten days after filing with the Court pursuant to N.J.STAT. § 56:8-20.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on their own behalf and on behalf of all others similarly situated, prays this Court award the following relief:

a. Certify the Class described herein under the appropriate provisions of Rule 4:32 of the New Jersey Court Rules;

b. Appoint Plaintiffs to represent the Class described herein;

c. Appoint Plaintiffs' counsel as counsel for the Class;

d. Enter judgment declaring Defendants' practices described herein to be unlawful and in violation of the New Jersey Consumer Fraud Act and New Jersey common law;

e. Award Plaintiffs and the other members of the Class compensatory damages against Defendants for ascertainable money and damages in an amount to be determined at trial

f. Award Plaintiffs and the Class damages statutory under the New Jersey Consumer Fraud Act in an amount three times that which would fairly compensate them for their overpayment stemming from Defendants' unlawful practices;

g. Enter judgment enjoining Defendants from inflating the AWP of Remicade® when reporting the AWP;

h. Enter judgment enjoining Defendants from marketing the spread between the inflated AWP and selling price of Remicade® to physicians;

i. Award Plaintiffs and the Class punitive damages against Defendants in an amount to be determined at trial;

j. Enter judgment compelling Defendants to place all ill-gotten profits derived from

their unlawful behavior in a constructive trust for the benefit of Plaintiffs and the Class;

k. Award Plaintiffs and the Class their costs;

l. Award Plaintiffs and the Class attorneys' fees; and,

m. Award such other and further relief as this Court deems just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Demand is hereby made for a trial by jury.

CERTIFICATION PURSUANT TO RULE 4:5-1

Plaintiff upon information and belief is not aware of any pending or contemplated action. Further, upon information and belief, she/he is not aware of any other party who should be joined in this action.

DATED: April 11, 2002

By: _____

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