IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

SOUTHEAST MISSOURI HOSPITAL, on behalf of itself and all others similarly situated,	)	**Case No. _____**
Plaintiff	)	
vs.	)	
C.R. BARD; TYCO INTERNATIONAL (US), INC.; TYCO HEALTH CARE GROUP,	)	**CLASS ACTION COMPLAINT FOR DAMAGES AND EQUITABLE RELIEF**
Defendants	)	**DEMAND FOR JURY TRIAL**

CLASS ACTION COMPLAINT

Southeast Missouri Hospital ("Plaintiff"), on behalf of itself and all others similarly situated, for its Class Action Complaint ("Complaint") against C.R. Bard, Tyco International (US), Inc., and Tyco Healthcare Group, L.P. (collectively, the "Defendants") alleges as follows upon information and belief:

FACTUAL SUMMARY

1. Plaintiff purchased urological catheters produced, promoted, sold, marketed, and/or distributed by one or more of the Defendants from January 1, 2002 to the present (the "Class Period'). Plaintiff alleges that Defendants were involved in anticompetitive schemes to combine or conspire to eliminate or lessen competition and to acquire and maintain monopoly power in urological catheter products and markets.

2. Defendants C.R. Bard, Tyco International (US), Inc., and Tyco Healthcare Group, L.P. manufacture urological catheters and control approximately 90% of the market. Urological

catheters are flexible tubes that are passed through the urethra to drain the bladder during surgery and in post-operative recovery. They may also be used to dissolve and remove gall stones as well as treat severe incontinence and prostate disorders.

3. The relevant market in this case includes direct purchases of urological catheters by hospitals and other healthcare providers in the United States, including the purchase of : (a) standard Foley catheters; (b) infection control Foley catheters; and (c) coude, ureteral and urethral catheters (collectively, the "Relevant Markets"). Products in each of these markets are herein collectively referred to as "Urological Catheters."

4. During the relevant period, Defendants effectuated an anticompetitive scheme by using exclusionary compliance discounts, sole-source exclusive dealing contracts, and bundled discounts and rebates to preclude other companies from competing in the Urological Catheter market. In the face of competition from other manufacturers of Urological Catheters, such as Rochester Medical Corporation, Defendants improperly exercised their monopoly power to prevent and eliminate competition.

5. As a result of Defendants' unlawful conduct, Plaintiff and the Class paid prices for Urological Catheters that were artificially inflated, and were foreclosed from the opportunity to purchase more effective and innovatively advanced Urological Catheters. Plaintiff seeks to recover damages for itself and on behalf of direct purchasers of Urological Catheters, as well as recurring injunctive relief from these ongoing violations of federal antitrust laws.

JURISDICTION AND VENUE

6. This Complaint is filed under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, to recover treble damages, equitable relief, expenses and costs of suit, including reasonable attorney fees, for injuries sustained by Plaintiff and the Class resulting from

violations by Defendants of Section 1 of the Sherman Act, 15 U.S.C. § 1, Section 2 of the Sherman Act, 15 U.S.C. § 2, and Section 3 of the Clayton Act, 15 U.S.C. § 14. Jurisdiction is proper under 15 U.S.C. §§ 15 and 22, and 28 U.S.C. §§ 1331 and 1337(a).

7. The activities of Defendants were within the flow of, were intended to, and did have a substantial effect on interstate commerce of the United States. Venue, therefore, lies within this District under 15 U.S.C. § 22 and 28 U.S.C. § 1391(b) and (c).

PARTIES

8. Plaintiff Southeast Missouri Hospital is a corporation organized under the laws of the State of Missouri and is located at 1701 Lacey Street, Cape Girardeau, Missouri 63701. During the Class Period, Plaintiff purchased Urological Catheters produced, promoted, sold, marketed, and/or distributed by each of the Defendants, their subsidiaries, divisions, units or affiliates. As a result, Plaintiff paid supra-competitive and artificially inflated prices for Urological Catheters and has been injured by reason of the illegal conduct alleged herein.

9. Defendant C.R. Bard ("Bard") is incorporated in the State of New Jersey with its principal place of business located at 730 Central Avenue Murray Hill, New Jersey 07974. Plaintiff purchased Urological Catheters directly from Defendant Bard during the Class Period.

10. Defendant Tyco International (US), Inc. is incorporated in the State of Massachusetts with its principal place of business at One Tyco Park, Exeter, New Hampshire 03833. Plaintiff purchased Urological Catheters directly from Defendant Tyco International (US), Inc. during the Class Period.

11. Defendant Tyco Healthcare Group, L.P. is a limited partnership formed under the laws of the State of Delaware with its principal place of business at 15 Hampshire Street, Mansfield, Massachusetts 02048. Plaintiff purchased Urological Catheters directly from

Defendant Tyco Healthcare Group, L.P. during the Class Period Defendants Tyco Healthcare Group, L.P. and Tyco International (US), Inc. are referred to collectively as "Tyco".

CLASS ACTION ALLEGATIONS

12. Plaintiff brings this class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, as a representative of the following Class:

> All persons or entities, including hospitals and other healthcare providers, in the United States who directly purchased Urological Catheters produced, promoted, sold, marketed and/or distributed by one or more of the Defendants, from January 1, 2002 through the present (the "Class Period"). Excluded from the Class are: all federal, state, or local governmental entities; Defendants, and subsidiaries and affiliates of Defendants; all persons who indirectly purchased manufactured and/or sold from any Defendant or from any other manufacturer of Urological Catheters.

13. Plaintiff does not know the exact size of the Class at the present time. However, Plaintiff believes that due to the nature of the trade and commerce involved, there are thousands of class members geographically dispersed throughout the United States such that joinder is impracticable. These direct purchasers may be identified from information and records maintained by Defendants.

14. Plaintiff's claims are typical of those of the Class and all Class members are similarly affected by Defendants' wrongful conduct in violation of federal antitrust laws. All Class members have paid artificially inflated prices for Urological Catheters and were deprived of the benefits of a competitive market for these products as a result of Defendants' unlawful conduct.

15. Plaintiff, as a representative of the Class, will fairly and adequately protect the interests of the Class members. Plaintiff has engaged counsel who are highly experienced and competent in class action litigation and complex antitrust and consumer protection litigation. The interest of Plaintiff is consistent with, and not antagonistic to, those of the Class members.

An effective and practicable manner of notice to such Class members can be fashioned by the Court.

16. Common questions of law and fact exist as to all Class members and predominate over any questions solely affecting individual Class members. Such common questions of law and fact include:

a. Whether the Defendants engaged in a contract, combination or conspiracy among themselves to fix, raise, maintain or stabilize the prices of, or allocate the market for Urological Catheters?

b. Whether the Defendants and their co-conspirators were participants in the contracts, combinations or conspiracies alleged herein?

c. Whether the Defendants and their co-conspirators engaged in conduct that violated Sections 1 and 2 of the Sherman Act and Section 4 of the Clayton Act?

d. Whether the Defendants and their co-conspirators engaged in unlawful, unfair or deceptive contracts, combinations or conspiracies among themselves, express or implied, to fix, raise, maintain, or stabilize prices of Urological Catheters sold in and/or distributed in the United States?

f. Whether the anticompetitive conduct of the Defendants caused prices of Urological Catheters to be artificially inflated to non-competitive levels?

g. Whether the Defendants unjustly enriched themselves as a result of their inequitable conduct at the expense of the Class members?

h. Whether Plaintiff and the Class are entitled to injunctive relief?

i. Whether Plaintiff and other Class members were injured by the conduct of Defendants and, if so, the appropriate class-wide measure of damages?

j. What is the scope of the relative market for Urological Catheters?

k. Whether Defendants have market power in the Urological Cather?

17. Prosecution of separate actions by individual Class members would create the risk of inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct for Defendants.

18. This Class action is superior to any alternatives for the fair and efficient adjudication of this controversy because:

a. It will avoid a multiplicity of suits and consequent burden on the courts and Defendants;

b. It would be virtually impossible for all Class members to intervene as parties-plaintiff in this action;

c. It is appropriate for treatment on a fluid recovery basis, which will obviate any manageability problems; and

d. It will provide court oversight of a claims process for all Class members, once Defendants' liability is adjudicated.

19. Defendants have acted on grounds generally applicable to the Class in that Defendants' anticompetitive actions foreclosed competition in the market in which all Class members purchased Urological Catheters. Accordingly, injunctive relief is necessary to protect all Class members from further antitrust injury.

20. Plaintiff knows of no difficulty that would prevent this case from being maintained as a class action. Class action treatment is a superior method for the fair and efficient adjudication of this controversy. Class action treatment will, among other things, allow a large number of similarly situated persons to prosecute their common claims in a single forum, thus avoiding the unnecessary duplication of resources that numerous individual actions would require. Moreover, class action treatment allows injured persons the ability to seek redress on claims that might be impracticable to pursue individually.

FACTUAL ALLEGATIONS

A. Types of Urological Catheters

21. According to industry reports, the demand for Urological Catheters is expected to reach $700 million in 2009, up 2.6% annually from 2004. Catheter usage in hospitals, nursing homes and the homecare sector has been increasing steadily as a result of age-related illnesses.

22. Urological catheters are used to manage bladder functions of surgical and critical care patients. They come in a variety of types including: (a) standard Foley catheters; (b)

infection control Foley catheters; and (c) coude, ureteral and urethral catheters. Each type is comprised of flexible tubes, which are made from polyvinyl chloride, latex or silicon.

23. A standard Foley catheter is a tube with an inflatable balloon at the tip that is inserted through the urethra during urinary cathertization and into the bladder for drainage. This apparatus provides for continuous bladder drainage of surgical and critical care patients. The opposite end is connected to a collection bag. Once the device is installed and held in place by inflating the balloon tip, the urine flows from the bladder through the tube to the external collection bag. A meter is often attached to the bag to measure the level of urine output and temperature for diagnostic purposes.

24. Foley catheters are sold individually as "strips" or in a package as "trays." The trays contain a Foley catheter and its associated components, including a urine collection bag and connecting tubes. Strips are usually sold in quantities of 10 or 20 for between $2 and $3 each. The contract price for trays varies depending on the number of items. Generally, the price for the trays ranges from $3 to $12.

25. Urinary tract infection is a common side effect of catheterization with a Foley catheter, as bacteria easily colonize in the Foley catheter and travel into the bladder along the interface where the urethra and the catheter touch. Reports suggest that roughly 40% of all infections contracted in hospitals are urinary tract infections.

26. Infection control Foley catheters were created by catheter manufacturers to combat urinary infections. These catheters are typically coated with an antibacterial agent to prevent the colonization of bacteria on the catheter surface. A more advanced type of infection control catheter actually utilizes a controlled-release to deliver an antibacterial agent into the tissues of the urethral tract to protect it and the bladder from possible infection.

27. Other types of urological catheters include coude, ureteral and urethral. These are intended to be used periodically for draining the bladder and discarded after the bladder is drained. They are also used to deliver drugs and irrigating solutions into the urinary tract. Unlike the Foley catheter, coude, ureteral and urethral catheters are not intended for long-term use. Rather, they are inserted and removed as needed during surgery and post-operative care. A major application of these urological catheters is to dissolve or remove gall stones. In addition, ureteral and urethral catheters are often used to treat severe incontinence and prostate disorders.

B. Rochester Medical Corporation Threatens Defendants' Monopoly Over Urological Catheters

28. Although Defendants manufacture infection control Foley catheters, Rochester Medical Corporation ("Rochester") was one of the first companies to successfully develop a line of infection control catheters clinically proven to reduce infections. Rochester designs, develops, manufacturers and markets urological catheters and incontinence products for urinary dysfunction management and urine drainage management. Its product line includes Foley catheters, infection control Foley catheters and urethral catheters as well as catheter accessories. The company developed an infection control catheter called the Release-Nitrofurazone Anti-Infection Foley Catheter® ("Release-NF® Catheter") in the 1990s. The U.S. Food and Drug Administration approved the Release-NF® Catheter in 1998. Rochester's products are so innovative that the U.S. Patent and Trademark Office has awarded it numerous patents, including one for the Release-NF® Catheter.

29. Rochester's Release-NF® Catheter operates such that an antibacterial agent, nitrofurazone, is layered onto the catheter's outer surface. During catheterization, nitrofurazone spreads into the urethral-catheter boundary to provide localized antibacterial activity, thereby protecting the urethral tract and bladder from possible infection. The company's devices,

particularly the Release-NF® Catheter, have proven to be highly effective in reducing urinary tract infections. Clinical studies by prestigious medical schools such as Johns Hopkins and the University of Wisconsin have demonstrated the efficacy of the Release-NF® Catheter, with clinical results indicating an exponential reduction in bacterial infections and therefore life-saving quality.

C. Defendants Implement an Anticompetitive Scheme to Maintain Their Monopoly Power

30. Defendants Bard and Tyco manufacture various catheter products and accessories including standard Foley catheters, infection control Foley catheters, and coude, uretral and urethral catheters. At all times, Defendants have enjoyed overwhelming market power in the market for Urological Catheters with a combined U.S. market share exceeding 90%. Defendant Bard alone controls approximately 75% of the market for standard Foley catheters sold in the United States, and together with Defendant Tyco, they control in excess of 90% of that market. Defendant Bard also controls a market share believed to be in excess of 95% of the infection control Foley catheters. Defendant Tyco has recently entered the infection control catheter market. Rochester, despite developing the only infection control catheters recognized in clinical trials, controls less than 1% of the market.

31. Defendants perceived Rochester as a threat, and so embarked upon an anticompetitive scheme to maintain their market power and preserve their monopoly profits. As a result, Rochester was only able to sell a limited number of standard Foley catheter products, and was virtually excluded from selling its innovative and highly effective Release-NF® Catheter.

32. A key element of Defendants strategy was to exploit their market power over Urological Catheters by using illegal exclusive dealing and bundling arrangements in their contracts with group purchasing organizations ("GPOs"), integrated delivery networks ("IDNs")

(which are groups of hospitals that band together for contracting purposes), and individual hospitals. Hospitals join a GPO as members, in an effort to increase the individual hospital's bargaining power. The GPO then exercises its collective leverage (gained from representing member hospitals) in negotiating contracts with medical equipment manufacturers and other suppliers. Despite the GPOs ostensible purpose to negotiate on behalf of hospitals, medical equipment manufacturers and suppliers provide GPOs with hefty "administrative fees" and other forms of remuneration. GPOs receive a significant portion of their revenues from these payments, which are based on the number of products purchased by GPO member hospitals from the particular manufacturer or supplier. These multi-million dollar payments, as well as other fees and incentives, give companies such as Defendants Bard and Tyco significant economic leverage over GPOs and hospitals.

33. The vast majority of the approximately 5,000 hospitals in the United States belong to a GPO. Contracts negotiated by GPOs with medical manufacturers and suppliers govern their member hospitals' purchases of the medical supplies contained in the GPO contracts. However, the GPOs only serve as negotiators of the contracts and the member hospitals themselves are the direct purchasers of the supplies. When hospitals make purchases pursuant to GPO contracts, hospitals generally must do so under terms consistent with the terms of the contracts between their GPO and the supplier. Member hospitals that do not comply with the contracts negotiated by GPOs face the risk of financial penalties or expulsion from the GPO.

34. The exclusivity provisions in the contracts with Defendants manifested themselves in many ways. First, they induced GPOs and IDNs to enter into "committed," "sole-source" or "dual-source" exclusive dealing contracts, which required hospitals to make a significant number of their purchases for Urological Catheters from Defendants. Second, Defendants used market-

share maintenance compliance pricing contracts or loyalty discounts, which conditioned the receipt of rebates, prices or discounts on a hospital purchasing a specified percentage of Urological Catheters from Defendants. Third, Defendants used bundled pricing to extend their market power over Urological Catheters. Through these bundling arrangements, a hospital might receive a rebate or a discount only if it purchased both a significant, specified percentage of Urological Catheters from Defendants (generally 90%) and a significant, specified percentage (generally 90%) of other unrelated products.

35. In furtherance of their conspiracy, Defendants also engaged in a campaign of misinformation about the urological products manufactured by competitors. For example, Defendants instructed sales personnel to misrepresent the efficacy of Rochester's infection control catheters, suggesting that these catheters could foster the development of and spread of antibiotic resistant pathogens.

(1) Exclusive Dealing Contracts

36. Upon information and belief, during the relevant time period, Defendants pursued sole-source or dual-source exclusive dealing contracts for urological products with various GPOs including Novation, LLC, Premier, Inc. and VHA, Inc. These exclusive dealing contracts had the effect of foreclosing Rochester and other manufacturers of urological products from selling to GPO members. Under so-called "committed" contracts a type of exclusive contract with certain GPOs, member hospitals were required to purchase their urological products needs only from Defendants. Even hospitals that were members of a GPO with a committed sole-source contract generally adhered to the exclusivity provisions in the contract. If a GPO member hospital did not adhere to these contractual restrictions, they would be severely penalized, as Defendants would require that the member hospital pay significantly higher prices for other

urological products covered under the contract.

(2) Market-Share Maintenance/Compliance Contracts

37. During the relevant time period, Defendants entered into contracts with GPOs, IDNs and hospitals, which based the availability of discounts on the condition that the hospitals refrain from purchasing competing urological products. These compliance-based contracts granted substantial discounts to Defendants' customers in exchange for a hospital's contractual commitment: (a) to purchase no more than a small percentage (usually about 10%) of urological products from Defendants' rivals and the remaining percentage (usually about 90%) from Defendants; and (b) to utilize Defendants' urological products throughout 90% (or other specified commitment percentage) of the hospital.

38. These market-share maintenance contracts were a core component of Defendants' unlawful efforts to exclude Rochester and other manufacturers of Urological Catheters from the market. The agreements were based on terms that operated to exclude competitors in contrast to volume-based discounts, which reflect actual supply and demand for products based on the product's merits. Defendants' compliance-based discounts combined with its use of sole-source and dual-source contracts, created exclusivity that substantially foreclosed Rochester and other rivals from the Urological Catheter market.

(3) Bundled Pricing

39. During the relevant time period and in furtherance of the strategy to foreclose rivals from the markets for urological products, Defendants entered into contracts with GPOs, IDNs and hospitals that conditioned Defendants' best discounts and rebates of urological products upon the hospital's commitment to purchase not only a specified percentage (usually 90%) of its needs of urological products but a specified percentage (usually 90%) of its needs for

other, unrelated products that Defendants manufactured. The purpose of these bundled discount programs was to leverage Defendants' position in Urological Catheters to fight "price erosion" for their products.

40. Smaller companies such as Rochester, which only offers catheters and incontinence products and accessories, could not effectively compete against Defendants' bundled discount programs. In fact, Defendants offer numerous other urological products, which Rochester does not sell. Customers would lose significant discounts on Defendants' urological products as well as other bundled products if they bought any of Rochester's urological products. Thus, by offering bundled discounts and rebates, Defendants were able to maintain their monopoly over urological products because smaller companies do not manufacture all of the products in Defendants' bundles, and therefore these companies could not make a comparable offer to customers.

41. Moreover, by offering substantial discounts on multiple, unrelated products only if all of the products were purchased together, Defendants impeded the ability of hospitals to select products based on price and quality and created leverage to induce hospitals to purchase a substantial percentage of their urological product needs from Defendants. These bundled contracts contributed to the exclusion of Rochester and other competitors from the Urological Catheter market.

D. Defendants' Enforcement of Exclusionary Provisions

42. Defendants Bard and Tyco did not simply pursue a strategy of including exclusivity provisions in its contracts with GPOs, IDNs and hospitals. Defendants enforced adherence to these exclusivity provisions further restraining the ability of hospitals to freely choose alternatives to these contracts. Specifically, Defendants did not give the best discounts

on urological products to a hospital that failed to agree to the exclusivity provisions. Moreover, a hospital that did not agree to buy substantially all of its urological products from Defendants would be compelled to pay penalty prices and forego rebates that could total as high as several millions of dollars per year on unrelated products. In addition, Defendants enforced "clawback" provisions that required hospitals to pay back rebates the hospital had received, if the hospital failed to maintain Defendants' exclusivity requirements. Thus, the prospect of having to repay Defendants for their exclusionary rebates precludes hospitals from switching to any other supplier, ensuring the foreclosure of the market to rivals.

43. Defendants also relied upon the GPOs to enforce the exclusivity provisions and report any non-compliance of these provisions. As previously mentioned, hospitals that did not adhere to Defendants' exclusivity requirements faced withdrawal of product availability, withdrawal of business opportunities and withdrawal of financial incentives. In some case, the hospitals could be expelled from the GPO.

TRADE AND COMMERCE

44. At all material times, Defendants shipped Urological Catheters across state lines.

45. During the relevant time period, and in connection with purchase and sale of Urological Catheters, monies as well as contracts, bills and other forms of business communication and transactions were transmitted in continuous and uninterrupted flow across state lines. During the relevant time period, various devices were used to effectuate the illegal acts alleged herein, including the United States mail, interstate travel, and interstate commerce.

46. The activities of Defendants as charged in this Complaint were within the flow of, and have substantially affected, interstate commerce.

RELEVANT PRODUCT MARKET

47. The relevant product market is the sale of Urological Catheters. The relevant geographic market is the United States. The relevant product and geographic markets constitute the Relevant Market.

48. Upon information and belief, Defendants' market share in the Relevant Market was and has been at all relevant times in excess of 90%. Defendants possess monopoly power in the Relevant Market in that they had the power to control prices and exclude competition. Specifically, Defendants sold Urological Catheters at prices well above competitive prices and enjoyed very high profit margins.

IMPERMISSIBLE MARKET EFFECTS

49. Defendants' unlawful exclusionary conduct has stifled competition in the Urological Catheter market and has had a direct, substantial, and adverse effect on competition by monopolizing the Urological Catheter market, artificially creating barriers to entry in the Urological Catheter market, and foreclosing competition on the basis of price and performance. Defendants' anticompetitive practices were instituted so that Defendants could illegally maintain the monopoly profits that Defendants reaped from its customers.

50. Thus, but for Defendants' illegal conduct, Plaintiff and the Class would have been able to purchase cheaper and superior Urological Catheters, but instead, they have paid artificially inflated prices for these products.

51. By foreclosing competition through its unlawful actions, Defendants overcharged Plaintiff and Class members for their purchases of Urological Catheters and prevented these customers from improving patient care through the use of superior Urological Catheter technology.

52. Defendants' actions as part of, and in furtherance of, the illegal acts alleged

herein, were authorized, ordered or performed by Defendants' officers, agents, employees or representatives while actively engaged in the management of Defendants' affairs.

DAMAGES

53. As a consequence of Defendants' exclusion of competition, Plaintiff and the Class have sustained substantial losses and damage to their business and property in the form of overcharges for urological products. Plaintiff and the Class are threatened with further injury unless Defendants are enjoined from continuing the unlawful conduct alleged herein and from entering into any other combinations, conspiracies or agreements having similar purposes and effects. All Class members were affected in the same manner by Defendants' exclusionary conduct.

EQUITABLE TOLLING AND CONTINUING VIOLATIONS

54. Plaintiff and other Class members had no knowledge of Defendants' unlawful scheme and could not have discovered the actual, cumulative effect of Defendants' unlawful conduct at an earlier date by the exercise of due diligence. As individual hospitals and healthcare providers, neither Plaintiff nor other Class members could have discovered at an earlier date that Defendants' anticompetitive actions resulted in supra-competitive prices in the Relevant Markets. As a result of Plaintiff's lack of knowledge of the effects of Defendants' unlawful scheme, Plaintiff asserts the tolling of any applicable statutes of limitations affecting the right of action by Plaintiff and other Class members.

55. Moreover, Defendants' actions constitute a continuing violation in that Defendants' anticompetitive practices resulted in unlawfully priced sales of Urological Catheters, and each and every sale of these products at artificially inflated prices is an overt act that injured Plaintiff and the Class. These artificially inflated prices continue to exist in the

Relevant Markets as Rochester and other Urological Catheter manufacturers have not yet reached the economies of scale they would have reached absent Defendants' unlawful conduct. Upon each and every instance that Defendants failed to disclose their exclusionary conduct and their effects on the prices of Urological Catheters, Defendants knew or should have known that the undisclosed information was material to those who purchased such products.

56. Therefore, each instance in which Defendants engaged in the conduct complained of herein and each instance in which a Class member unknowingly remitted payment for Urological Catheters at supra-competitive prices constitutes part of a continuing violation and operates to toll any applicable statutes of limitation. Furthermore, Defendants are estopped from relying on any statute of limitations defense because of their unfair and deceptive conduct.

VIOLATIONS ALLEGED

COUNT I
Unreasonable Restraint of Trade (Sherman Act Section 1)

57. Plaintiff incorporates and realleges, as fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint, and further alleges, as follows, against all Defendants:

58. Defendants have entered into agreements that have unreasonably restrained trade and competition in the Relevant Markets, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

59. These agreements include, *inter alia*: (a) committed, sole-source or dual source exclusive dealing contracts which require hospitals to make their purchases of Urological Catheters from Defendants; (b) contracts containing exclusive compliance and loyalty discounts which condition the receipt of rebates, prices or discounts on a hospital's agreement to purchase a specified percentage of Urological Catheters; and (c) contracts containing bundled discounts

and rebates which condition the receipt of rebates or discounts on a hospital's agreement to purchase both a specified percentage of Urological Catheters from Defendants and a specified percentage of other, unrelated products from Defendants.

60. Plaintiff and the Class have been injured in their business and property by reason of Defendants' antitrust violations. This injury consists of paying more for Urological Catheters than Plaintiff and the Class would have paid but for Defendants' exclusionary conduct. Plaintiff's injury is the type the antitrust laws were designed to prevent and flows from that which makes Defendants' conduct unlawful.

61. There are no legitimate business justifications for Defendants' anticompetitive practices and any purported legitimate business justifications are mere pretexts and could have been achieved in a less restrictive manner.

COUNT II
Monopolization (Sherman Act Section 2)

62. Plaintiff incorporates and realleges, as fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint, and further alleges, as follows, against all Defendants:

63. At all relevant times Defendants possessed monopoly power in the Relevant Markets. Defendants wrongfully maintained its monopoly power by, *inter alia*: (a) entering into committed, sole-source or dual-source exclusive dealing contracts which require hospitals to make their purchases of Urological Catheters from Defendants; (b) entering into contracts containing exclusive compliance and loyalty discounts which condition the receipt of rebates, prices or discounts on a hospital's agreement to purchase a specified percentage of Urological Catheters; and, (c) entering into contracts containing bundled discounts and rebates which condition the receipt of rebates or discounts on a hospital's agreement to purchase both a

specified percentage of Urological Catheters from Defendants and a specified percentage of other, unrelated products from Defendants.

64. Through the acts described above and similar conduct and practices, Defendants have willfully and wrongfully maintained and expanded their monopoly power in the Relevant Markets by raising barriers to entry and foreclosing competition.

65. Defendants' actions were taken for the purpose and with the effect of maintaining their monopoly and unreasonably restraining competition in the Relevant Markets.

66. Plaintiff and the Class have been injured in their business and property by reason of Defendants' antitrust violations. This injury consists of paying more for Urological Catheters than Plaintiff and the Class would have paid, but for Defendants' exclusionary conduct. Plaintiff's injury is the type the antitrust laws were designed to prevent and flows from that which makes Defendants' conduct unlawful.

67. There are no legitimate business justifications for Defendants' anticompetitive practices and any purported legitimate business justifications are mere pretexts and could have been achieved in a less restrictive manner.

COUNT III
Exclusive Dealing (Clayton Act Section 3)

68. Plaintiff incorporates and realleges, as fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint, and further alleges, as follows, against all Defendants:

69. Defendants have entered into contracts with GPOs, IDNs and hospitals for the sale of Urological Catheters which condition the availability of products and/or discounts on the condition that the GPO, IDNs and hospitals refrain from purchasing competing products, in violation of Section 3 of the Clayton Act, 15 U.S.C. § 14.

70. Plaintiff and the Class have been injured in their business and property by reason of Defendants' antitrust violations. This injury consists of paying more for Urological Catheters than Plaintiff and the Class would have paid, but for Defendants' exclusionary conduct. Plaintiff's injury is the type the antitrust laws were designed to prevent and flows from that which makes Defendants' conduct unlawful.

71. There are no legitimate business justifications for Defendants' anticompetitive practices and any purported legitimate business justifications are mere pretexts and could have been achieved in a less restrictive manner.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of itself and the Class, respectfully prays:

1. That this action may be maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, that Plaintiff's counsel be appointed Class counsel, and that reasonable notice of this action be given to the Class;

2. That the acts alleged herein be adjudged and decreed to be unlawful restraints of trade in violation of Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act;

3. That the Class recover treble the damages determined to have been sustained by them, and that joint and several judgments be entered against Defendants in favor of the Class;

4. That Defendants be enjoined from entering into the unlawful agreements discussed above;

5. That the Class be granted the costs and expenses of suit, including reasonable attorneys' fees as provided by law; and

6. That the Class be granted such other and further relief as may be determined to be just, equitable and proper by this Court.

JURY DEMAND

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

Dated: February 21, 2007
Cape Girardeau, MO

By */s/ J. Michael Ponder*

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