IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA

[redacted]

Plaintiffs,

v.

WAYNE SCOTT HARRINGTON, DMD; W. SCOTT HARRINGTON, DMD, INC.; TERRI (WAUGH) VELEGA; LISA YOUNG; HOSPIRA, INC.; PHARMACEUTICAL SYSTEMS, INC.; SOUTHERN ANESTHESIA & SURGICAL, INC.; and DOE DEFENDANTS 1 THROUGH 10;

Defendants.

CASE NO. CJ-2013-04122

CARLOS J. CHAPPELLE

PETITION
(JURY TRIAL DEMANDED)

COMES NOW, Plaintiffs [redacted] and [redacted] ("Plaintiffs"), by and through undersigned counsel, and allege as follows:

PARTIES AND JURISDICTION

PLAINTIFF PARTIES

1. Plaintiffs, [redacted] and [redacted] are individuals and residents of Tulsa County, Oklahoma.

2. Plaintiff, [redacted] and [redacted] were, and are, legally married as husband and wife and residents of Mayes County, Oklahoma.

3. Plaintiffs, [redacted] and [redacted] were, and are, legally married as husband and wife and residents of Mayes County, Oklahoma.

DEFENDANT PARTIES

DEFENDANT DOCTOR AND DEFENDANT DOCTOR'S PRACTICE

4. Defendant, Wayne Scott Harrington, DMD, is an individual and resident of Tulsa County, Oklahoma who may be served with process at 7134 S. Yale, Tulsa, Oklahoma 74114.

5. Defendant, W. Scott Harrington, DMD, INC., is a duly formed Oklahoma professional corporation that may be served with process though its registered agent, John A. Gaberino, Jr., at 1000 ONEOK Plaza, Tulsa, Oklahoma 74103, or its place of business at 3128 N. MacArthur Boulevard, Oklahoma City, Oklahoma 73142.

DEFENDANT MEDICAL STAFF

6. Plaintiffs are informed and believe and thereupon allege that Defendant, Terri (Waugh) Velega, is an individual and resident of Tulsa County, Oklahoma who may be served with process in said jurisdiction.

7. Plaintiffs are informed and believe and thereupon allege that Defendant, Lisa Young, is an individual and resident of Tulsa County, Oklahoma who may be served with process in said jurisdiction.

DEFENDANT DISTRIBUTORS, MANUFACTURERS AND INSPECTION ENTITIES

8. Defendant, Hospira, Inc. is a duly formed Delaware corporation that may be served with process though its registered agent, CT Corporation System, at 208 S. Lasalle Street, Suite 814, Chicago, Illinois 60604.

9. Defendant, Pharmaceutical Systems, Inc. is a duly formed Oklahoma corporation that may be served with process though its registered agent, Linda L. Behnken, at 8240 S. Lewis Avenue, Tulsa, Oklahoma 74137.

10. Defendant, Southern Anesthesia & Surgical, Inc. is a duly formed Delaware corporation that may be served with process though its registered agent, Corporation Service Company, at 1703 Laurel Street, Columbia, South Carolina 29201.

11. Plaintiffs are informed and believe that various inspection entities, including but not limited to the aforementioned parties, undertook on-site review and issued recommendations for institution of policies and procedures for delivery of quality care in accordance with national standards for the Defendant Doctor's Practice for the direct or indirect benefit of patients and that, in performing such activities, said entities were negligent in failing to detect the dangerous procedures that the Defendant Doctor's Practice was using regarding the administration of anesthesia (including, but not limited to, inappropriate aseptic techniques) and/or said entities were negligent in failing to make appropriate recommendations to stop such dangerous procedures.

DOE DEFENDANTS

12. The true names and capacities, whether individual, corporate, associate, or otherwise of Defendants, Does 1 through 10, inclusive, are unknown to Plaintiffs and are believed to be owners, operators, partners and/or managing agents of the Defendant Doctor's Practice, physician, certified registered nurse, nurse anesthetists, registered nurses, or other health care providers who provided care and treatment to the Plaintiffs; owners, operators, partners and/or managing agents of an inspection entity, and/or are manufacturers, marketers, distributors and/or sellers of anesthetic agents, autoclave components, and other medical devices utilized by physicians and health care providers in connection with services to patients at the Defendant Doctor's Practice at the relevant time periods who, therefore, sue said Defendants by such fictitious names but are believed to be agents, servants, and/or employees of Defendants.

Plaintiffs are informed and believe, and therefor allege, that each of the Defendants designated as a Doe corporation are responsible in some manner for the events and happenings herein referred to, and caused injury and damages proximately thereby to Plaintiffs, as herein alleged; that such Doe Defendants were the agents, servants, or employees of each other and, in doing the things herein alleged, each was acting within the scope and course of said agency, servitude and employment, with the knowledge, permission and consent of the other Defendants. Plaintiffs will ask leave of this Court to amend this Complaint to insert true names and capacities of said Does 1 through 10, when the same have been ascertained by Plaintiffs, together with the appropriate charging allegations and to join such Defendants in this action.

13. At all times relevant herein, all Defendants, and each of them including Doe Defendants, were the agents, servants, partners and employees of each and every other Defendant, and were acting within the course and scope of their agency, partnership and employment and, to the extent permitted by law, are jointly and severally liable.

JURISDICTION AND VENUE

14. Plaintiffs allege an amount in controversy in excess of the minimal jurisdictional limits of this court.

15. Venue is proper in this county pursuant to 12 Okla. St. § 134 (2013) because (1) this is the county where Plaintiffs' cause of action or some part thereof arose; and (2) this is the county where Defendant Doctor's Practice is located. At all relevant times, all Defendants conducted regular and sustained business in Oklahoma and in this county and derived substantial revenue from such business. All Defendants expected or should have expected that their acts would have consequences within the United States of America, including the State of Oklahoma.

ALTERNATIVE ALLEGATIONS

16. To the extent any allegation in the FACTS or CAUSES OF ACTION sections that follow are deemed inconsistent with any other allegation, such inconsistent allegations are pleaded "in the alternative."

GENERAL FACTUAL ALLEGATIONS

17. Defendant Doctor owned and operated dental clinics in Tulsa County, Oklahoma and provided surgical procedures in connection with its provision of dental care to its patients.

18. Plaintiffs' operating physician ("Defendant Doctor") performed invasive medical procedures requiring anesthesia directly upon Plaintiffs in Tulsa County, Oklahoma.

19. Plaintiffs' operating Medical Staff also performed, assisted and/or observed physicians and/or other health care providers in the performance of medical procedures including the administration of anesthesia, and sterilization of medical equipment directly upon Plaintiffs in Tulsa County, Oklahoma.

20. Prior to March 2013 (the "relevant time period"), Defendants treated Plaintiffs with contaminated medical equipment and/or medications that were previously exposed to unknown persons at the dental clinic, which included utilizing propofol vials manufactured, marketed, distributed and/or sold by Pharmaceutical Systems, Inc. and/or Southern Anesthesia & Surgical, Inc. during the relevant time period.

21. Propofol (i.e., "Diprivan") was initially approved for marketing on October 2, 1989 for use as an anesthetic in outpatient and inpatient procedures.

22. Plaintiffs are informed and believe and thereupon allege that, following the launch of the original formulation of propofol (i.e. "Diprivan"), that the original manufacturer (i.e., ICI Pharmaceuticals, which later became Zeneca Pharmaceuticals) and the FDA began to receive

reports of infections associated with the failure of health care providers in the United States to use appropriate aseptic techniques in the administration of propofol; which reports raised concerns among Zeneca, the FDA and the Centers for Disease Control and Prevention (the "CDC") about propofol multi-dosing and its potential contaminant effect.

23. On June 29, 1990, the CDC reported in the MMWR (June 29, 1990/39(25); 426, 247, 433) that 48% to 90% of anesthesia personnel were reusing syringes to administer propofol to multiple patients:

> Two recent surveys of anesthesia personnel show that aseptic technique and infection control practices are frequently not implemented during administration of anesthesia. In these surveys, from 48% to 90% of respondents reused syringes to multiple patients.

24. Plaintiffs are informed and believe and thereupon allege that, between June 1990 and February 1993, the CDC conducted investigations at seven hospitals with unusual outbreaks of infections after surgical procedures using propofol and, focusing on four clusters of post-operative infections in four states, the CDC concluded that contamination occurring from propofol administration was caused by mishandling the propofol.

25. On July 6, 1990, Nancy E. Nazari of Stuart Pharmaceuticals sent a "Dear Doctor" letter to health care professionals regarding propofol (i.e. "Diprivan") discussing, among other things, potential multiple-dose vial contamination.

26. On February 5, 1991, Nancy E. Nazari of Stuart Pharmaceuticals sent a "Dear Doctor" letter to health care professionals regarding propofol (i.e. "Diprivan") discussing, among other things, potential multiple-dose vial contamination.

27. On July 20,1995, The New England Journal of Medicine published an article entitled "Postoperative Infections Traced to Contamination of an Intravenous Anesthetic, Propofol" that

describes the above-referenced CDD investigation and, in addition, provided in pertinent part that anesthesia personnel were in fact reusing multidose vials on multiple patients despite written recommendations to the contrary:

> Despite the written recommendations of professional associations, such as the American Society of Anesthesiologists and the American Association of Nurse Anesthetics, which specifically advocate the use of aseptic techniques during the handling of medications, several authors have reported poor compliance with aseptic techniques and infection-control practices by anesthesia personnel. Contamination of multidose vials, use of a single syringe to administer medication to different patients, assembling infusion equipment far in advance of use, and contamination of syringes and catheters have all be implicated in other outbreaks. Studies show that reuse of multidose vials can cause contamination of the medication in the vials and that contamination can occur during the opening of a glass vial whose surface has not been disinfected. Injecting medications into intravenous catheters can cause syringes to become contaminated even if the needle is changed, so that using common syringes to administer medication to different patients can transmit infectious agents. (Emphasis added)

28. Defendant, Hospira filed a Suitability Petition with the FDA requesting permission to supplement an abbreviated new drug application ("ANDA") to market vials of propofol.

29. Plaintiffs are informed and believe and thereupon allege that, in or about 2002, 12 patients contracted Hepatitis C at a Manhattan physician's endoscopy center caused by medication drawn through multi-use vials.

30. Plaintiffs are informed and believe and thereupon allege that, in or about 2002, 38 patients contracted Hepatitis C at a Manhattan pain clinic caused by medications drawn through multi-use vials.

31. In 2003, the World Health Organization reported that single-dose vials should be used and that "the use of multi-dose vials has been reported to be a potential source of infections in 19 studies." Bulletin of the World Health Organization 2003, 81 (7), entitled "Best infection control practices for intradermal, subcutaneous, and intramuscular needle injections." One of the 19 studies referenced involved Hepatitis caused by "preparation of multi-dose heparin". (See Oren, "A common-source outbreak of fulminant hepatitis B in a hospital." Annals of Internal Medicine 1989: 110:691-8).

32. In June 2007, the FDA issued an alert that referenced reports of "several clusters of patients who have developed fever, chills, and body aches shortly after receiving propofol from 7 different facilities in 4 different states and stated that the same propofol vial was used on multiple patients: "To date, all affected patients received propofol for sedation in gastrointestinal suites. Some facilities where the propofol was administered used propofol vials, intended only for single-patient use, for more than one patient."

33. Plaintiffs are informed and believe and thereupon allege that, because of the hepatitis outbreaks in New York described above, the New York State Health Commissioner, Richard Daines, and the New York City Health Commissioner, Dr. Thomas Frieden, have called for an outright ban on multi-dose vials.

34. Contaminated vials of propofol are defective products unfit for intended use, as the contaminated propofol vials exposes persons to communicable infectious diseases from the prior persons that the contaminated propofol vials were used upon.

35. Autoclave components which fail to provide confirmation of effective sterilization of medical equipment are defective products unfit for intended use, as component failures expose persons to communicable infectious diseases from the prior persons that the contaminated unsterilized equipment was used upon.

36. Plaintiffs underwent certain invasive medical procedures, requiring the utilization of anesthesia services at the dental clinic at the relevant time period, as provided by the Defendant Doctor and/or Medical Staff. Plaintiffs are informed and believe that they were exposed to contaminated propofol vials and/or equipment not effectively sterilized by autoclave components, at the dental clinic which resulted in Plaintiffs contracting infectious diseases. Health officials and health care providers recommended that the Plaintiffs be tested for Hepatitis B, Hepatitis C and HIV and continue to undergo testing and/or treatment in the future for all of these infectious diseases.

37. Plaintiffs, [redacted] and [redacted], have been tested and diagnosed with infectious diseases and are also at risk for contraction of other blood borne pathogens all due to the conduct of the Defendants.

CAUSES OF ACTION

COUNT I: NEGLIGENCE (DEFENDANT DOCTOR, DEFENDANT DOCTOR'S PRACTICE, MEDICAL STAFF, AND DOE)

38. Plaintiffs hereby adopt and incorporate by reference all prior paragraphs as though fully set forth herein.

39. At all times mentioned herein, Defendants knew, or in the exercise of reasonable care should have known, that providing of medical care and treatment was of such a nature that, if it was not properly given, it was likely to injure the persons to whom it was given.

40. Plaintiffs allege that Defendants fell below the standard of care for health providers who possess the degree of professional learning, skill and ability of other similar health care providers in failing to properly treat Plaintiffs.

41. Plaintiffs allege that Defendants were negligent by failing to correctly treat Plaintiffs during medical procedures directly resulting in exposure to and contraction of Infectious Diseases.

42. As a direct result and proximate result of the negligence and carelessness of Defendants incorrectly treating Plaintiffs, Plaintiffs were required to undergo testing and have contracted infectious diseases.

43. As a direct and proximate result of the conduct of Defendants, Plaintiffs have suffered damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

COUNT II: RES IPSA LOQUITUR

44. Plaintiffs incorporate by reference the factual portion of this petition as if fully set forth herein and additionally, or in the alternative, if same be necessary, alleges as follows.

45. The events herein described do not normally occur absent negligent conduct. Moreover, Plaintiffs contracted a foreign substance, that being an infectious disease, following the medical procedure(s) at the dental clinic, and an injury was suffered during the course of treatment to a part of the body not directly involved in the treatment or proximate thereto. The Plaintiffs therefore invoke the doctrine of res ipsa loquitur against the Dental Clinic, Defendant Doctor, and Medical Staff.

46. As a direct and proximate result of the negligence and carelessness of Defendants incorrectly treating Plaintiffs, Plaintiffs were required to undergo testing and have contracted an Infectious Disease.

47. As a direct and proximate result of the conduct of Defendants, Plaintiffs have suffered damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

COUNT III: NEGLIGENT HIRING AND SUPERVISION

(DEFENDANT DOCTOR'S PRACTICE, DEFENDANT DOCTOR & DOE)

48. Plaintiffs incorporate by reference the factual portion of this petition as if fully set forth herein and additionally, or in the alternative, if same be necessary, allege as follows.

49. At all times mentioned herein, Defendants knew or in the exercise of reasonable care should have known, that providing medical care and treatment was of such a nature that, if it was not properly given, it was likely to injure the persons to whom it was given. Further, Defendants owed a duty to Plaintiffs to employ competent medical and staff personnel, including supervisors adequately trained to provide care and treatment to its patients.

50. As a result of the medical care and treatment of Defendants' employees and/or agents, Defendants breached their duty to Plaintiffs by failing to employ professional personnel adequately trained to protect their patients from foreseeable harm, resulting in exposure to and contraction of infection diseases.

51. As a direct and proximate result of the negligence of carelessness of Defendants, Plaintiffs are required to undergo testing and have contracted infectious diseases.

52. The Defendants' conduct demonstrated a conscious disregard of known accepted procedures, protocols, care and treatment, all with the knowledge or utter disregard that such conduct could or would expose Plaintiffs to contracting an Infectious Disease.

53. As a direct and proximate result of the conduct of Defendants, Plaintiffs have suffered damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

COUNT IV: CORPORATE NEGLIGENCE/VICARIOUS LIABILITY

(DEFENDANT DOCTOR'S PRACTICE, DEFENDANT DOCTOR AND DOE)

54. Plaintiffs incorporate by reference the factual portion of this petition as if fully set forth herein and additionally, or in the alternative, if same by necessary, allege as follows.

55. Defendants' agents and/or employees were acting in the scope of their employment, under Defendants' control, and in furtherance of Defendants' interests at the time their actions caused injury to Plaintiffs.

56. Defendants are vicariously liable for damages resulting from its agents' and/or employees negligent actions against Plaintiffs during the scope of their employment.

57. As a direct and proximate result of the negligence and carelessness of Defendants, Plaintiffs are required to undergo testing and have contracted an Infectious Disease.

58. As a direct and proximate result of the conduct of Defendants, Plaintiffs have suffered damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

COUNT V: STRICT PRODUCT LIABILITY – DEFECTIVE PRODUCT

(HOSPIRA, INC., PHARMACEUTICAL SYSTEMS, INC.

AND SOUTHERN ANESTHESIA & SURGICAL, INC.)

59. Plaintiffs incorporate by reference the factual portion of this petition as if fully set forth herein and additionally, or in the alternative, if same be necessary, allege as follows.

60. Multiple use of propofol by the dental office on more than one patient was a foreseeable misuse of propofol vials.

61. Defendants Hospira, Pharmaceutical Systems, and Southern Anesthesia knew that the smaller vial sizes were safer for oral surgery centers given the amount of propofol typically used by such centers and the economic allure to such centers to use, instead of discarding, remaining propofol in a larger vial.

62. Plaintiffs are informed and believe and thereupon allege that Defendants Hospira, Pharmaceutical Systems, and Southern Anesthesia knew of incidents prior to the shipment of the propofol used in this case wherein an oral surgery center reportedly used propofol on more than one patient.

63. At the time the propofol was shipped, propofol in larger vial sizes was unreasonably dangerous for use in an oral surgery center, that is dangerous to any extent beyond that which would be contemplated by the ordinary and prudent patient using such product, considering the characteristics of the product (including, but not limited to, the much smaller propofol dosage normally required for one patient undergoing oral surgery), its propensities, risks (including, but not limited to the potential for transmitting infectious disease such as hepatitis B or C or HIV if propofol from the same vial was used on multiple patients), its dangers and uses.

64. As a direct and proximate result of the conduct of Defendants Hospira, Pharmaceutical Systems, and Southern Anesthesia, Plaintiffs have suffered damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

65. Plaintiffs are informed and believe and thereupon allege that the conduct of Defendants Hospira, Pharmaceutical Systems, and Southern Anesthesia in manufacturing, distributing, marketing and/or selling propofol in larger vials to oral surgery centers was willful, reckless, malicious and in total disregard to health and safety of the patients or, alternatively, was in

conscious and deliberate disregard of known safety procedures, thereby justifying an award of punitive damages.

COUNT VI: BREACH OF IMPLIED WARRANTY

OF FITNESS FOR PARTICULAR PURPOSE

(HOSPIRA, INC., PHARMACEUTICAL SYSTEMS, INC.

AND SOUTHERN ANESTHESIA & SURGICAL, INC. AND DOE)

66. Plaintiffs incorporate by reference the factual portion of this petition as if fully set forth herein and additionally, or in the alternative, if same be necessary, allege as follows.

67. At all times relevant hereto, Defendant Hospira, Inc. ("Hospira") was a Delaware corporation with its principal place of business in Illinois and was engaged in the business of manufacturing, distributing, marketing and/or selling propofol. Plaintiffs are informed and believe that Hospira manufactured propofol for Pharmaceutical Systems, Inc. and Southern Anesthesia & Surgical, Inc.; and that Pharmaceutical Systems, Inc. and Southern Anesthesia & Surgical, Inc. sold the propofol used during Plaintiffs' treatment.

68. At all times relevant hereto, Defendant Pharmaceutical Systems, Inc. ("Pharmaceutical Systems") was an Oklahoma corporation with its principal place of business in Oklahoma and was engaged in the business of manufacturing, distributing, selling and/or marketing propofol.

69. At all times relevant hereto, Defendant Southern Anesthesia & Surgical, Inc. ("Southern Anesthesia") was a Delaware corporation with its principal place of business in South Carolina and was engaged in the business of manufacturing, distributing, selling and/or marketing propofol.

70. Plaintiffs are informed and believe and thereupon allege that propofol provided by Hospira, Pharmaceutical Systems, and/or Southern Anesthesia was used as anesthetic for the operation wherein Plaintiffs were infected.

71. At the time that Hospira, Pharmaceutical Systems, and/or Southern Anesthesia manufactured, distributed, marketed and/or sold propofol to the dental office, Defendants Hospira, Pharmaceutical Systems, and/or Southern Anesthesia knew that the propofol was being used or potentially was being used in an oral surgery center, and impliedly warranted that the propofol was safe and fit for the purpose for which the product was ordinarily used at an oral surgery center, which was for anesthesia.

72. Plaintiffs reasonably relied upon the skill and judgment of Hospira, Pharmaceutical Systems, and Southern Anesthesia as to whether the propofol sold was safe and fit for its intended use as anesthesia in an oral surgery center.

73. Contrary to such implied warranty, multi-use propofol vials were not safe or fit for intended use as anesthesia in dental procedures, and was and is unreasonably dangerous and unfit for use as anesthesia in an oral surgery center because of the foreseeable misuse of treating multiple patients from the multi-use propofol vials.

74. As a direct and proximate result of the conduct of Hospira, Pharmaceutical Systems, and Southern Anesthesia, Plaintiffs have suffered damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

COUNT VII: VIOLATIONS OF THE OKLAHOMA CONSUMER PROTECTION ACT

75. Plaintiffs incorporate by reference the factual portion of this petition as if fully set forth herein and additionally, or in the alternative, if same be necessary, alleges as follows.

76. The Defendants Hospira, Pharmaceutical Systems, and Southern Anesthesia engaged in the unfair trade practices as set forth above and specifically declared unlawful under 15 Okla. St. § 753. Such practices include making false or misleading representations, knowingly or with reason to know, as to the characteristics of multi-use propofol vials and by committing a deceptive trade practice as defined by 15 Okla. St. § 752.

77. Plaintiffs demand judgment against Hospira, Pharmaceutical Systems, and Southern Anesthesia for actual damages plus costs and attorneys' fees incurred in bringing this action as provided for in 15 Okla. St. § 761.1(a). In addition, Plaintiffs pray for an award of a civil penalty against Hospira, Pharmaceutical Systems, and Southern Anesthesia in the amount of $2,000 per violation, pursuant to 15 Okla. St. § 761.1 due to Hospira's, Pharmaceutical Systems', and Southern Anesthesia's unconscionable conduct.

COUNT VIII: VIOLATIONS OF THE OKLAHOMA DECEPTIVE TRADE PRACTICES ACT

78. Plaintiffs incorporate by reference the factual portion of this petition as if fully set forth herein and additionally, or in the alternative, if same be necessary, alleges as follows.

79. The actions Defendants Hospira, Pharmaceutical Systems, and Southern Anesthesia set forth herein constituted deceptive trade practices within the meaning of the Oklahoma Deceptive Trade Practices Act, 78 Okla. St. § 51, *et seq.*

80. Plaintiffs demand judgment against Defendants Hospira, Pharmaceutical Systems, and Southern Anesthesia for damages suffered by Plaintiffs as a result of Defendants Hospira's, Pharmaceutical Systems', and Southern Anesthesia's deceptive trade practices, plus attorneys' fees and costs incurred in bringing this action.

COUNT IV: LOSS OF CONSORTIUM

(AS TO ALL DEFENDANTS)

81. As a direct and proximate result of each of the Defendants' negligence, and as a result of the injuries and damages to Plaintiffs, Plaintiffs [redacted] and [redacted] have each suffered loss of love, comfort, society, and consortium and consequent severe emotional distress all to Plaintiffs' damage in excess of Ten Thousand Dollars ($10,000.00).

82. As a further direct and proximate result of Defendants' negligence, Plaintiffs have had to retain the services of attorneys and therefore seek reimbursement of attorneys' fees and costs.

PUNITIVE DAMAGES

83. Plaintiffs incorporate by reference the factual portion of this petition as if fully set forth herein and additionally, or in the alternative, if same be necessary, allege as follows.

84. The Defendants' conduct in designing, manufacturing, marketing, labeling, packaging, and selling the unreasonably safe and defective multi-use propofol vials amounts to outrageous, unconscionable, willful, wanton, and/or reckless conduct and/or criminal indifference to civil obligations affecting the rights of others, including Plaintiffs.

85. The acts, conduct, and omissions of the Defendants as alleged throughout this petition were willful and malicious and were done with a conscious disregard for the rights of Plaintiffs and other users of the multi-use propofol vials and for the primary purpose of increasing profits. The Defendants' outrageous and unconscionable conduct warrants an award of exemplary and punitive damages against each of them in an amount appropriate to punish and make an example of them.

86. Plaintiffs are therefore entitled to an award of punitive damages.

PRAYER FOR RELIEF

87. **WHEREFORE**, Plaintiffs pray for judgment against the Defendants as follows:

a. for damages in excess of $10,000.00;

b. for punitive damages in an amount to be determined at trial;

c. for reasonable attorneys' fees;

d. for costs of suit; and

e. for any such further relief this Court deems appropriate.

Dated: September 3, 2013

Respectfully Submitted,

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