UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

FWK Holdings, L.L.C., on behalf of itself and all others similarly situated, Plaintiff, v. ACTAVIS ELIZABETH, LLC, TEVA PHARMACEUTICALS USA, INC., PLIVA, INC., MYLAN INC., MYLAN PHARMACEUTICALS INC., UDL LABORATORIES, INC.; PAR PHARMACEUTICAL, INC., HERITAGE PHARMACEUTICALS INC., BRECKENRIDGE PHARMACEUTICAL, INC., and UPSHER-SMITH LABORATORIES, INC., Defendants.	Civil Action No. 1:16-cv-09901-JSR Hon. Jed. S. Rakoff **CONSOLIDATED AMENDED DIRECT PURCHASER CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**
CÉSAR CASTILLO, INC., individually and on behalf of all those similarly situated, Plaintiff, v. ACTAVIS ELIZABETH, LLC, BRECKENRIDGE PHARMACEUTICAL, INC., HERITAGE PHARMACEUTICALS INC., MYLAN INC., MYLAN PHARMACEUTICALS INC., PAR PHARMACEUTICAL, INC., PLIVA, INC., TEVA PHARMACEUTICALS USA, INC., UDL LABORATORIES, INC., and UPSHER-SMITH LABORATORIES, INC., Defendants.	Civil Action No. 1:17-cv-00078-JSR Hon. Jed. S. Rakoff

REDACTED PURSUANT TO FEBRUARY 6, 2017 PROTECTIVE ORDER

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Plaintiffs FWK Holdings, L.L.C. ("FWK") and César Castillo, Inc. ("CCI") (together, "Plaintiffs"), on behalf of themselves and all others similarly situated, against: 1) Actavis Elizabeth, LLC; 2) Teva Pharmaceuticals USA, Inc., and Pliva, Inc. (together defined below as "Teva"); 3) Mylan Inc., Mylan Pharmaceuticals Inc., and UDL Laboratories, Inc. (together defined below as "Mylan"); 4) Par Pharmaceutical, Inc. ("Par"); 5) Heritage Pharmaceuticals Inc.; 6) Breckenridge Pharmaceutical, Inc.; and 7) Upsher-Smith Laboratories, Inc. (collectively, the "Defendants") allege as follows based upon information and belief[1], except as to the allegations pertaining to Plaintiffs and the allegations based upon certain data obtained from non-parties, documents produced by non-parties in this Action, and certain publicly available information:

I. INTRODUCTION

1. This is a civil antitrust action seeking treble damages arising out of the Defendants' unlawful scheme to fix, maintain, and stabilize the prices, rig bids and allocate customers for generic propranolol tablets and capsules (collectively, "Propranolol").

2. Propranolol is the generic version of Inderal. The U.S. Food and Drug Administration approved Inderal, developed by Wyeth Pharmaceuticals, Inc., in 1967.

3. Propranolol is a beta-blocker. Beta-blockers affect the heart and circulation (blood flow through arteries and veins). Propranolol is used to treat tremors, angina (chest pain), hypertension (high blood pressure), heart rhythm disorders, and other heart or circulatory

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[1] The Complaint pleads facts alleged upon information and belief where the facts are peculiarly within the possession and control of Defendants. *Arista Records, LLC v. Doe 3*, 604 F.3d 110, 120 (2d Cir. 2010) ("The *Twombly* plausibility standard, which applies to all civil actions, *see Iqbal,* 129 S.Ct. at 1953, does not prevent a plaintiff from '"pleading facts alleged 'upon information and belief'" where the facts are peculiarly within the possession and control of the defendant . . . .").

conditions. It is also used to treat or prevent heart attack, and to reduce the severity and frequency of migraine headaches. Propranolol is reportedly the highest-selling beta-blocker as measured by prescriptions.

4. As alleged below, Defendants' scheme injured Plaintiffs and the Classes of direct purchasers they seek to represent (as defined below), causing them to pay overcharges. Plaintiffs seek to recover these overcharges and seek other relief arising out of Defendants' conspiracy to charge supra-competitive prices for: 1) propranolol capsules during the period from November 14, 2013 to the present ("Propranolol Capsules Class Period"), and 2) propranolol tablets during the period from January 2015 to the present ("Propranolol Tablets Class Period").

5. Based on the conduct alleged herein, Plaintiffs allege that during the Class Periods, Defendants combined, conspired and contracted to fix, raise, maintain and stabilize prices at which propranolol would be sold in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

6. In addition, as alleged herein Defendants agreed to allocate products and customers in violation of Section 1 of the Sherman Act.

7. As a result of Defendants' unlawful conduct, Plaintiffs and the other members of the Classes paid artificially inflated prices that exceeded the amount they would have paid if a competitive market had determined prices for propranolol.

A. Defendants Who Sold Propranolol Capsules Drastically Increased Their Prices.

8. Beginning in November 2013, contrary to a well-established past practice, Defendants Actavis, Breckenridge, and Upsher-Smith ("Capsule Defendants") increased the price of propranolol capsules dramatically, as alleged below in Paragraphs 146-73. The increases were the result of an agreement among the Capsule Defendants to increase pricing, restrain competition, and allocate customers for the sale of propranolol capsules in the United States. As alleged below,

the agreement was furthered by discussions held at various trade association meetings and events, including, but not limited to, meetings and events held by: 1) the National Association of Chain Drug Stores ("NACDS"); 2) the Generic Pharmaceutical Association ("GPhA"); 3) Efficient Collaborative Retail Marketing ("ECRM"); 4) the National Pharmacy Forum ("NPF"); 5) the Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP"); and 6) the Healthcare Distribution Management Association ("HDMA").

B. Defendants Who Sold Propranolol Tablets Increased Their Prices by an Extraordinary Amount.

9. For years, Defendants Actavis, Heritage, Mylan, Par, and Teva ("Tablet Defendants") charged pennies per tablet for propranolol tablets. By at least the beginning of the Propranolol Tablet Class Period, the Tablet Defendants caused the price of propranolol tablets to dramatically increase, as alleged in Paragraphs 174-212. The increases were the result of an agreement among the Tablet Defendants to increase pricing and restrain competition for the sale of propranolol tablets in the United States. As alleged below, the agreement was furthered by discussions held at trade association meetings and events, including NACDS, GPhA, ECRM, NPF, MMCAP and HDMA meetings and events.

C. Defendants' Generic Drug Prices Increases Are Being Investigated by the DOJ, the U.S. Congress, and 40 States' Attorney General.

10. Defendants' dramatic and unexplained price increases have resulted in extensive scrutiny by federal and state regulators, including by the Antitrust Division of the United States Department of Justice ("DOJ"), the United States Senate, the United States House of Representatives, and 40 States' Attorneys General.

11. On October 2, 2014, U.S. Senator Bernie Sanders and U.S. Congressman Elijah Cummings sent letters to several generic drug manufacturers, including Defendants Actavis, Heritage, Mylan and Teva.

12. On November 20, 2014, Senator Sanders's committee held a hearing entitled "Why Are Some Generic Drugs Skyrocketing In Price?" Various witnesses discussed the price increases for generic drugs. No chief executive of a generic drug manufacturer testified.

13. The DOJ is currently conducting a wide-ranging criminal investigation into collusion among generic drug companies. According to *Bloomberg News,* the investigation reportedly covers more than 12 companies and at least 24 drugs.

14. According to a June 26, 2015 report by the service Policy and Regulatory Report ("PaRR Report") (available at http://www.mergermarket.com/pdf/DoJCollusion-Generic-Drug-Prices-2015.pdf):

> A PaRR source says prosecutors see the case much like its antitrust probe of the auto parts industry, which has gone on for years and morphed into the department's largest criminal antitrust probe ever. Like in that case, prosecutors expect "to move from one drug to another in a similar cascading fashion."

15. On December 14, 2016, the DOJ unsealed criminal Informations against Heritage's Jason T. Malek (former Senior Vice President, Commercial Operations, and subsequently President) and Jeffrey A. Glazer (former CEO and Chairman) for violations of Section 1 of the Sherman Antitrust Act (15 U.S.C. § 1) for their roles in conspiracies to fix prices, rig bids, and allocate customers for certain generic drugs (Glyburide and Doxycycline Hyclate DR). The criminal actions are styled *U.S. v. Glazer* (16cr506) and *U.S. v. Malek* (16cr508), and are pending in the United States District Court in the Eastern District of Pennsylvania.

16. Malek and Glazer have now entered plea agreements admitting that between April 2013 through December 2015, each engaged in a conspiracy to allocate customers, rig bids, and

fix and maintain prices of doxycycline hyclate, and a similar conspiracy between April 2014 and December 2015 concerning glyburide. Their plea agreements provide for cooperation in any federal investigation involving violations of criminal and antitrust law concerning "the production and sale of generic pharmaceuticals in the United States." In exchange, the government promised immunity from criminal prosecution regarding doxycycline hyclate, glyburide, or any generic pharmaceutical product enumerated on a list filed under seal.

17. Reportedly, the DOJ is preparing additional cases involving other generic drugs.

18. On December 15, 2016, several states' attorneys general (including the New York Attorney General), filed a civil action for violations of the Sherman Act against Heritage and other sellers of Glyburide and Doxycycline Hyclate DR, including Defendants Teva and Mylan. The action filed by the attorneys general is styled *The State of Connecticut, et al., v. Aurobindo Pharma USA, Inc., Citron Pharma, LLC, Mylan Pharmaceuticals USA, Inc. and Teva Pharmaceuticals USA, Inc., Heritage Pharmaceuticals, Inc., and Mylan Pharmaceuticals, Inc.*, and is pending in the United States District Court for the District of Connecticut (16-cv-2056) (the "State AG Action").

19. The multistate group of plaintiff states includes New York, Connecticut, Delaware, Florida, Hawaii, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Nevada, North Dakota, Ohio, Pennsylvania, Virginia and Washington.

20. On March 1, 2017, the complaint filed in the AG Action was amended to add the following plaintiff-states: Alabama, Arizona, California, Colorado, Illinois, Indiana, Michigan, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, Tennessee, Utah, Vermont.

21. Connecticut Attorney General George Jepsen stated the following about the AG Action:

> My office has dedicated significant resources to this investigation for more than two years and has developed compelling evidence of collusion and anticompetitive conduct across many companies that manufacture and market generic drugs in the United States," said Attorney General Jepsen. "While the principal architect of the conspiracies addressed in this lawsuit was Heritage Pharmaceuticals, we have evidence of widespread participation in illegal conspiracies across the generic drug industry. Ultimately, it was consumers – and, indeed, our healthcare system as a whole – who paid for these actions through artificially high prices for generic drugs. We intend to pursue this and other enforcement actions aggressively, and look forward to working with our colleagues across the country to restore competition and integrity to this important market."[2]

22. New York Attorney General Eric T. Schneiderman stated the following about the AG Action:

> Lawsuit Alleges Widespread Conspiracy Among Competitors To Reduce Competition, Increase Prices For Generic Prescription Drugs . . .
>
> The investigation, which is still ongoing as to a number of additional generic drugs, uncovered evidence of a broad, well-coordinated and long running series of conspiracies to fix prices and allocate markets for certain generic pharmaceuticals in the United States.[3]

23. According to the State AG Action, the information developed through its multi-year investigation (which is still ongoing) uncovered evidence of a broad, well-coordinated and long-running series of schemes to fix the prices and allocate customers for a number of generic pharmaceuticals in the U.S. Although the State AG Action focuses on Glyburide and Doxycycline Hyclate DR, it alleges that the Plaintiff States have uncovered a wide-ranging series of conspiracies

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[2] http://www.ct.gov/ag/cwp/view.asp?Q=588538&A=2341 (December 15, 2016 Press Release).

[3] https://ag.ny.gov/press-release/ag-schneiderman-files-federal-antitrust-lawsuit-19-other-states-against-heritage (December 15, 2016 press release).

implicating numerous different drugs and competitors, specifically Defendants Heritage, Mylan and Teva in the first complaint filed by the AGs.

24. Defendants operate, through their respective senior leadership and marketing and sales executives, in a manner that fosters and promotes routine and direct interaction among their companies. They exploited their interactions at various and frequent industry trade shows, customer conferences and other similar events, to develop relationships and sow the seeds for their illegal agreements. The anticompetitive agreements are further refined and coordinated at regular "industry dinners", "girls nights out", lunches, parties, and numerous and frequent telephone calls, emails and text messages.

25. This anticompetitive conduct – schemes to fix and maintain prices, allocate customers and otherwise thwart competition – has caused a significant, lasting and ultimately harmful rippling effect in the United States healthcare system, which is still ongoing today. Moreover, many of these schemes were conceived and directed by executives at the highest levels of the Defendant companies.

26. The State AG Action alleges that the anticompetitive schemes have been carried out in two principal ways: First, to avoid competing with one another and thus eroding the prices for certain generic drugs, the conspirators, including Heritage, Teva and Mylan communicated with each other to determine and agree on how much market share or which customers each competitor was entitled to. They then effectuated the agreement by either refusing to bid for particular customers or by providing a cover bid that they knew would not be successful. These schemes have the effect of reducing or eliminating competition for a particular drug, and have allowed the conspirators to maintain artificially supracompetitive prices in these markets throughout the United States.

27. Alternatively, or often in conjunction with those schemes, competitors in a particular market simply communicated -- typically either in person, by telephone, or by text message -- and agreed to collectively raise prices for a particular generic drug.

28. Most of the conspiratorial communications were intentionally done in person or telephonically, in an effort to avoid creating a record of their illegal conduct. Defendants had opportunities to communicate and collude at trade shows, customer events and smaller, more intimate dinners and meetings. When communications were made in writing, or by text message, some of the conspirators even took overt and calculated steps to destroy evidence of those communications.

29. Heritage, Teva and Mylan and other Defendants routinely sought out their competitors in an effort to reach agreement to allocate market share, maintain high prices and/or avoid competing on price. These agreements had the effect of artificially maintaining high prices for a large number of generic drugs and creating an appearance of competition when in fact none existed.

30. For example, in 2013 and 2014, Malek, then-President of Defendant Heritage, and Glazer, then-CEO and Chairman of Defendant Heritage, compiled a large list of generic drugs, including propranolol, and instructed employees to contact competitors to reach agreement to increase prices and allocate customers. Malek was responsible for contacting Defendants Teva and Mylan and did so with respect to a number of drugs, including propranolol. The employees also contacted competitors and reached agreements to raise prices.

31. For example, Malek at Heritage, asked an executive at Heritage to set up a call between Malek and the Vice President of Sales at Mylan, Bob Potter ("Potter"). Malek and Potter frequently attended the same industry events. For example, both attended the NACDS Store Expo

held every August throughout the Class Periods. Potter recommended that Malek contact Jan Bell ("Bell") Director, National Accounts at Mylan.

32. Malek promptly connected with Bell through the website LinkedIn. Malek and Bell communicated by phone on multiple occasions and continued to communicate about various drugs including propranolol.

33. Similarly, Glazer at Heritage emailed an executive at Mylan. The Mylan executive responded with a phone number where he could be reached in England, and the two spoke the next day.

34. During the course of these communications, Heritage, Teva and Mylan executives agreed to raise prices, allocate market share and refrain from competing with one another for customers for various drugs, including propranolol. The objective was to avoid a price war which would reduce profitability for Defendants. Mylan agreed to "walk away" from at least one large national wholesaler and one large pharmacy chain to allow Heritage to obtain the business and increase its market share.

35. In addition to reaching agreements with competitors to allocate markets for a number of different generic drugs, including, propranolol, Heritage, Mylan, Teva and other Defendants routinely and as part of their regular course of business, sought and obtained agreements with competitors to fix and raise prices.

36. In addition to Mylan, Malek was also responsible for communicating with Defendant Teva, among others, which was a competitor on several of the drugs on the list, including propranolol. Malek had a direct relationship with a Teva executive and was able to successfully communicate with her and reach an agreement to raise prices on several drugs, including propranolol.

37. Both Malek and Glazer pushed Heritage employees to communicate with their competitors and obtain agreements to raise prices.

D. Receipt of Grand Jury Subpoenas and Other Information Requests from Government Entities.

38. Defendants Teva, Actavis, Par and Mylan have received grand jury subpoenas. Heritage is cooperating with the DOJ.

39. In December 2015, Endo International Inc., Defendant Par's parent, received Interrogatories and Subpoenas Duces Tecum from the Connecticut AG requesting information regarding pricing of certain of its generic products.

40. In June 2015, Actavis received a subpoena from the DOJ seeking documents and other information relating to the marketing and pricing of certain of its generic products and communications with competitors about such products.

41. On June 21, 2016, Teva received a subpoena from the DOJ seeking documents and other information relating to the marketing and pricing of certain of Teva's generic products and communications with competitors about such products.

42. On July 12, 2016, Teva received a subpoena from the Connecticut AG seeking documents and other information relating to potential state antitrust law violations. Defendant Actavis has also received a similar subpoena from the Connecticut AG.

43. On October 7, 2016, Mylan disclosed in a filing with the U.S. Securities and Exchange Commission ("SEC") that on September 8, 2016, the DOJ "subpoenaed a company subsidiary, a senior executive and other employees about alleged price fixing and also executed multiple search warrants related to its probe." Mylan further disclosed that the DOJ is seeking "additional information relating to the marketing, pricing and sale of" several generic drugs,

including Propranolol, cidofovir, glipizide-metformin, and verapamil "and any communications with competitors about such products."

44. On January 24, 2017, the State of New Hampshire sent a Notice of Intent to File Civil Enforcement Action against Teva based on alleged violations of the New Hampshire Consumer Protection Act, which arise from unfair and deceptive conduct, actions and methods of competition in relation to generic drug markets.

45. On February 2, 2017, the State of South Carolina notified Teva that it is considering pursuing actions against the company under state and federal antitrust and consumer protection laws.

II. PARTIES

46. Plaintiff FWK is an Illinois limited liability company located in Glen Ellyn, Illinois. FWK is the assignee of antitrust claims possessed by Frank W. Kerr Company ("Kerr") and brings this action as successor-in-interest to Kerr's claims arising from its purchase of propranolol capsules directly from Defendants Actavis and Breckenridge, and propranolol tablets directly from Defendants Heritage, Teva and Mylan during the Class Periods at artificially inflated prices. As a direct and proximate result of Defendants' collusion, manipulative conduct, and unlawful acts, FWK was injured in its business or property.

47. Plaintiff CCI is a corporation organized under the laws of the Commonwealth of Puerto Rico, with its principal place of business and headquarters located at Bo. Quebradas Arena, Rd. #1 Km. 26.0, Rio Piedras, Puerto Rico, 00926. During the Class Period, CCI purchased propranolol tablets directly from Defendant Mylan at artificially inflated prices. As a direct and proximate result of Defendants' collusion, manipulative conduct, and unlawful acts, CCI was injured in its business or property.

48. Defendant Actavis Elizabeth, LLC ("Actavis") is a Delaware limited liability company with its principal place of business at 200 Elmora Ave., Elizabeth, NJ 07207. At the beginning of the Propranolol Capsules Class Period, Actavis was a subsidiary of Actavis, plc. In March 2015, Actavis, plc completed a merger with Allergan, plc ("Allergan") and adopted Allergan's name. In August 2016, Teva (defined below) purchased the Actavis Generics business, which included Defendant Actavis, from Allergan. Actavis is an indirect wholly-owned subsidiary of Teva Pharmaceutical Industries Ltd., an Israeli corporation with its principal place of business at 5 Basel Street, Petach Tikva 49131, Israel ("Teva Israel"). During the Class Periods, Actavis sold propranolol tablets and capsules in this District and throughout the United States.

49. Defendant Teva Pharmaceuticals USA, Inc. ("Teva") is a Delaware corporation with its principal place of business at 1090 Horsham Road, North Wales, PA 19454. Teva is an indirect wholly-owned subsidiary of Teva Israel. During the Propranolol Tablets Class Period, Teva sold propranolol tablets in this District and throughout the United States. Teva divested all propranolol tablets to Global (Impax) Pharmaceuticals in August 2016.

50. Defendant Pliva, Inc. ("Pliva") is a New Jersey corporation with its principal place of business at 72 Deforest Ave, East Hanover, NJ 07936. Pliva, Inc. is an indirect wholly-owned subsidiary of Teva Israel. During the Propranolol Tablets Class Period, Pliva sold propranolol tablets in this District and throughout the United States.

51. In this Complaint, Teva and Pliva will be referred to collectively as "Teva." Teva maintains an office in this District at 145 West 57th Street, NY, NY 10019.

52. Defendant Mylan Inc. is a Pennsylvania corporation with its principal place of business at 1000 Mylan Blvd., Canonsburg, PA 15317. Defendant Mylan Inc. is indirectly wholly owned by Mylan N.V., a Netherlands corporation with global headquarters in Hertfordshire, U.K.,

and in Canonsburg, Pennsylvania. During the Propranolol Tablets Class Period, Mylan Inc. sold propranolol tablets in this District and throughout the United States through its subsidiaries, Mylan Pharmaceuticals Inc. and UDL Laboratories, Inc.

53. Defendant Mylan Pharmaceuticals Inc. is a West Virginia corporation with its principal place of business at 781 Chestnut Ridge Road, Morgantown, WV 26505. Defendant Mylan Pharmaceuticals Inc. is a wholly-owned subsidiary of Mylan Inc., which is indirectly wholly owned by Mylan N.V. During the Propranolol Tablets Class Period, Mylan Pharmaceuticals Inc. sold propranolol tablets in this District and throughout the United States.

54. Defendant UDL Laboratories, Inc. ("UDL") is an Illinois corporation with its principal place of business at 1718 Northrock Ct, Rockford, IL 61103. UDL, n/k/a Mylan Institutional Inc., is a wholly-owned subsidiary of Mylan Inc., which is indirectly wholly owned by Mylan N.V. During the Propranolol Tablets Class Period, UDL sold propranolol tablets in this District and throughout the United States.

55. In this complaint, Defendants Mylan Inc., Mylan Pharmaceuticals Inc. and UDL will be referred to collectively as "Mylan." Mylan maintains an office in this District at 405 Lexington Avenue, NY, NY 10174.

56. Defendant Par Pharmaceutical, Inc. ("Par"), is a New York corporation with its principal place of business in Chestnut Ridge, New York. During the Propranolol Tablets Class Period, Endo International PLC's ("Endo") subsidiary, Qualitest Pharmaceuticals, Inc. ("Qualitest"), sold propranolol tablets in this District and throughout the United States. In September 2016, Endo completed an acquisition of Par at which time it created a combined U.S. Generics segment that included Par and Qualitest, naming the segment Par Pharmaceutical, Inc.,

an Endo International Company. Qualitest merged into Par. In this complaint, Defendant Par and Qualitest will be referred to collectively as "Par."

57. Defendant Heritage Pharmaceuticals Inc. ("Heritage") is a Delaware corporation with its principal place of business at 12 Christopher Way #300, Eatontown, NJ 07724. During the Propranolol Tablets Class Period, Heritage sold propranolol tablets in this District and throughout the United States. Heritage is registered to do business in New York and does business in this District. Heritage is a wholly owned subsidiary of Emcure Pharmaceuticals Ltd., an Indian corporation.

58. Heritage sold substantial amounts of propranolol in New York throughout the relevant period. Data available on the website of the Centers for Medicare & Medicaid Services reflect that New York Medicaid authorities paid over 100,000 claims for the use of propranolol manufactured by Heritage between 2010 and September of 2016, not including purchases of propranolol paid for by Medicare, private insurers or directly by consumers.

59. Defendant Breckenridge Pharmaceutical, Inc. ("Breckenridge") is a Delaware corporation with its principal place of business at 1 Passaic Ave, Fairfield, NJ 07004. During the Propranolol Capsules Class Period, Breckenridge sold propranolol capsules in this District and throughout the United States. Breckenridge maintains an office in this District at 60 E. 42nd Street, Suite 5210, New York, NY 10165. Breckenridge is wholly owned by Pensa Pharma S.A.

60. Defendant Upsher-Smith Laboratories, Inc. ("Upsher-Smith") is a Minnesota corporation with its principal place of business at 6701 Evenstad Drive, Maple Grove, MN 55369. During the Propranolol Capsules Class Period, Upsher-Smith sold propranolol capsules in this District and throughout the United States and has a sales person responsible for sales in New York, Amanda Strow, CNS Account Sales Manager. Upsher-Smith representatives regularly attended

trade association events in New York during the Propranolol Capsules Class Period. For example, Scott Hussey, Senior Vice President, Sales, and Jim Maahs, Vice President, Commercial Portfolio Management, attended the NACDS annual NYC Week and annual foundation dinner in New York City on December 3, 2013, 2014, 2015. Brad Leonard, Senior Director, National Accounts, attended the 2015 NACDS annual NYC Week and annual foundation dinner in New York in 2015.

61. Upsher sold substantial amounts of propranolol in New York throughout the relevant period. Data available on the website of the Centers for Medicare & Medicaid Services reflect that between 2010 and September of 2016 New York Medicaid authorities paid over 15,000 claims for the use of propranolol manufactured by Upsher, not including purchases of propranolol paid for by Medicare, private insurers or directly by consumers.

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

A. Agents and Co-Conspirators

63. Each Defendant acted as the principal of, or agent for, all other Defendants with respect to the acts, violations, and common course of conduct described in this Complaint.

64. Various other persons, firms, companies, and corporations not named as Defendants knowingly and willingly conspired with Defendants, and performed acts and made statements in furtherance of the conspiracy and the alleged anticompetitive conduct.

65. The wrongful acts alleged to have been done by any one Defendant or co-conspirator were authorized, ordered, or done by its directors, officers, managers, agents,

employees, or representatives while actively engaged in the management, direction, or control of such Defendant's or co-conspirator's affairs.

III. JURISDICTION AND VENUE

66. Plaintiffs bring this action to recover treble damages, attorneys' fees, litigation expenses, and court costs. Plaintiff CCI also seeks to secure injunctive relief for violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, pursuant to Sections 4 and 16 of the Clayton Act of 1914 ("Clayton Act"), 15 U.S.C. §§ 15 and 26.

67. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1337(a), 1407, and 15 U.S.C. § 15.

68. Venue is proper in this District pursuant to 15 U.S.C. §§ 15(a), 22 and 28 U.S.C. §§ 1391(b), (c), and (d) because during the Class Periods, Defendants resided, transacted business, were found, or had agents in this District, and a substantial portion of the alleged activity affecting interstate trade and commerce, discussed below, has been carried out in this District.

69. Defendants' conduct, as described in this Complaint, was within the flow of, was intended to, and did have a substantial effect on, the interstate commerce of the United States, including in this District.

70. This Court has personal jurisdiction over each Defendant, because each Defendant has transacted business, maintained substantial contacts, and/or committed overt acts in furtherance of its illegal scheme and conspiracy throughout the United States and including in this District. The scheme and conspiracy have been directed at, and have had the intended effect of, causing injury to persons residing in, located in, or doing business throughout the United States, including in this District.

IV. INTERSTATE TRADE AND COMMERCE

71. Defendants are the leading manufacturers and suppliers of propranolol capsules and tablets sold in the United States.

72. Propranolol capsules and tablets are produced by or on behalf of Defendants or their affiliates in the United States and/or overseas.

73. During the Class Periods, Defendants, directly or through one or more of their affiliates, sold propranolol capsules and tablets throughout the United States in a continuous and uninterrupted flow of interstate commerce, including through and into this District.

74. The activities of Defendants and their co-conspirators were within the flow of, intended to, and had a substantial effect on interstate commerce in the United States.

75. Defendants' and their co-conspirators' conduct, including the marketing and sale of propranolol capsules and tablets, took place within, and has had, and was intended to have, a direct, substantial, and reasonably foreseeable anticompetitive effect upon interstate commerce within the United States.

76. The conspiracy alleged in this Complaint has directly and substantially affected interstate commerce in that Defendants deprived Plaintiffs of the benefits of free and open competition in the purchase of propranolol within the United States.

77. Defendants' agreement to inflate, fix, raise, maintain, or artificially stabilize prices and allocate customers for propranolol capsules and tablets, and their actual inflating, fixing, raising, maintaining, or artificially stabilizing propranolol prices and customer allocation, were intended to have, and had, a direct, substantial, and reasonably foreseeable effect on interstate commerce within the United States and on import trade and commerce with foreign nations.

V. FACTUAL ALLEGATIONS

A. Overview of the Generic Drug Market

1) Generic drugs should lead to lower prices

78. Brand name drugs are typically patented and the patent owner can charge a monopoly price. After the patent expires, generic drugs enter the market. Generic drugs typically provide consumers with a lower cost alternative to brand name drugs while providing the same treatment. Specifically:

> A generic drug is the same as a brand name drug in dosage, safety, strength, how it is taken, quality, performance, and intended use. Before approving a generic drug product, FDA requires many rigorous tests and procedures to assure that the generic drug can be substituted for the brand name drug. The FDA bases evaluations of substitutability, or "therapeutic equivalence," of generic drugs on scientific evaluations. By law, a generic drug product must contain the identical amounts of the same active ingredient(s) as the brand name product. Drug products evaluated as "therapeutically equivalent" can be expected to have equal effect and no difference when substituted for the brand name product.

FDA, Generic Drugs: Questions and Answers, *available at* http://www.fda.gov/Drugs/ResourcesForYou/Consumers/QuestionsAnswers/ucm100100.htm.

79. Further, "[d]rug products classified as therapeutically equivalent can be substituted with the full expectation that the substituted product will produce the same clinical effect and safety profile as the prescribed product." *Id.*

80. Generic versions of brand name drugs are priced significantly below the brand versions. Because of the price differentials, and other institutional features of the pharmaceutical market, generic versions are liberally and substantially substituted for their brand counterparts. In every state, pharmacists are permitted (and, in some states, required) to substitute a generic product for a brand product unless the doctor has indicated that the prescription for the brand product must

be dispensed as written. States adopted substitution laws following the federal government's 1984 enactment of the Hatch-Waxman Act.

81. Before the propranolol capsule and tablet conspiracies began, the FDA has recognized that "[g]eneric competition is associated with lower drug prices[.]" A Federal Trade Commission study reached the same conclusion finding that in a "mature generic market, generic prices are, on average, 85% lower than the pre-entry branded drug prices." Economic literature in the healthcare market further confirms that competition by generic products results in lower prices for consumers. In the period before generic entry, a brand drug commands 100% of the market share for that drug and the brand manufacturer can set the price without the impact of competitive market forces. Once the first generic enters the market, however, a brand drug rapidly loses sales, on average 90% within a year. As more generic manufacturers enter the market, prices for generic versions of a drug predictably will continue to decrease because of competition among the generic manufacturers, and the loss of sales volume by the brand drug to the corresponding generic accelerates as more generic options are available to purchasers.

82. A mature generic market, such as the market for propranolol, has several generic competitors. Due to the fact that each generic is readily substitutable for another generic of the same brand drug, the products behave like commodities, with pricing being the main differentiating feature and the basis for competition among manufacturers.[4] Over time, generics' pricing nears the generic manufacturers' marginal costs.

83. Generic competition usually enables purchasers to purchase generic versions of the

[4] *See, e.g.*, FTC, AUTHORIZED GENERIC DRUGS: SHORT-TERM EFFECTS AND LONG-TERM IMPACT, at 17 (Aug. 2011) ("[G]eneric drugs are commodity products marketed to wholesalers and drugstores primarily on the basis of price."); Congressional Budget Office, "How Increased Competition From Generic Drugs Has Affected Prices and Returns in the Pharmaceutical Industry" (July 1998).

brand drug at a substantially lower price than the brand drug. Generic competition to a single blockbuster brand drug product can result in billions of dollars in savings to direct purchasers, consumers, insurers, local, state, and federal governments, and others. Indeed, one study found that the use of generic medicines saved the United States healthcare system $1.68 trillion between 2005 and 2014.

2) Pricing of Generic Pharmaceuticals

84. The pricing of prescription pharmaceutical products in the U.S. is governed by institutional features typically not present in the marketplace for other consumer products.

85. Ordinarily, the price for a consumer product is set by the retailer based on the amount the typical consumer is willing to pay. Because of the unique features of the prescription drug marketplace, however, pricing of prescription drugs for most consumers is not determined between the retailer and the consumer. Rather, because most consumers' prescription drug purchases are reimbursed by public or private health plans, the pricing for prescription drugs is determined by reimbursement agreements between these prescription drug payors, *i.e.*, health plans and their prescription benefit managers, and the pharmacies that dispense drugs to the payors' insured consumers.

86. At one time, payors relied on cost-based pricing metrics to reimburse pharmacies that dispensed drugs to their insured consumers, paying the dispensing pharmacies an amount based on the manufacturer's list price for the drug, plus a small mark-up and/or dispensing fee. Over time, however, it was learned that the list price for most generic drugs published by their manufacturers was substantially higher than the actual cost incurred by pharmacies to acquire the drugs.

87. To reduce the cost of prescription drugs to the public, prescription drug payors developed Maximum Allowable Cost prices ("MACs") to determine the amount that pharmacies would be reimbursed for dispensing generic pharmaceuticals. The MAC price refers to the maximum amount that a payor will reimburse a pharmacy for a given strength and dosage of a generic drug or brand name drug that has a generic version available. A MAC price thus represents the upper limit that a prescription drug payor will pay a pharmacy for a generic drug.

88. Payors set the MAC price of a drug based on a variety of factors, including, most significantly, the lowest acquisition cost for each generic drug paid by retail pharmacies purchasing from a wholesaler for each of a drug's generic versions.

89. MAC pricing is designed to incentivize pharmacies to purchase the least costly version of a generic drug available in the market, without regard to the manufacturer's list price. Because the reimbursement amount to a pharmacy is limited by the MAC price for a generic drug regardless of the pharmacy's acquisition cost, a pharmacy's profit will be reduced, or lost altogether, if it purchases other than the lowest cost generic product. Alternatively, if a retail pharmacy purchases the lowest priced generic version of the drug, it will maximize its profit.

90. MAC pricing also incentivizes an individual generic manufacturer to refrain from unilaterally increasing its prices. Because MAC pricing bases reimbursement on the generic drug's lowest acquisition cost, a generic manufacturer that unilaterally increases its price for a drug will swiftly lose sales to a competing generic manufacturer whose price remains constant.

91. Consequently, in the absence of coordinated pricing activity among generic manufacturers, an individual manufacturer cannot significantly increase its price without incurring the loss of a significant volume of sales.

B. The DOJ and 40 States' Attorneys General Are Investigating How Generic Drug Companies Utilized Trade Associations to Reach Illegal Agreements

92. The DOJ is reportedly looking closely at trade associations. According to an intelligence report from Policy and Regulatory Report, a source that was given inside information by someone with knowledge of the government's generic pricing investigation, the DOJ is looking closely "at trade associations as part of their investigation as having been one potential avenue for facilitating the collusion between salespeople at different generic producers."

93. At these various conferences and trade shows, representatives from Defendants have opportunities to interact with each other and discuss their respective businesses and customers. Attendant with many of these conferences and trade shows are organized recreational and social events, such as golf outings, lunches, cocktail parties, dinners, and other scheduled activities that provide further opportunity to meet with competitors outside of the traditional business setting. Of particular importance here, generic drug manufacturer representatives who attend these functions use these opportunities to discuss and share upcoming bids, specific generic drug markets, pricing strategies and pricing terms in their contracts with customers, among other competitively-sensitive information.

94. In short, these trade shows and customer conferences provide generic drug manufacturers with ample opportunity to meet, discuss, devise and implement a host of anticompetitive schemes that unreasonably restrain competition in the United States' market for generic drugs.

1) Generic Pharmaceutical Association

95. GPhA is the "leading trade association for generic drug manufacturers and distributors, manufacturers of bulk active pharmaceutical chemicals, and suppliers of other goods and services to the generic industry." GPhA was formed in 2000 from the merger of three industry

trade associations: GPhA, the National Association of Pharmaceutical Manufacturers, and the National Pharmaceutical Alliance. On February 14, 2017, GPhA issued a press release stating it is "becoming the Association for Accessible Medicines.

96. According to GPhA's website, "GPhA member companies supply approximately 90 percent of the generic prescription drugs dispensed in the U.S. each year." GPhA states that, "[b]y becoming part of GPhA, you can participate in shaping the policies that govern the generic industry and help secure the future of this vital pharmaceutical market segment. In addition, GPhA provides valuable membership services, such as business networking opportunities, educational forums, access to lawmakers and regulators, and peer-to-peer connections."

97. Defendants and their senior executives are active members of the GPhA. For example, a number of Defendants' high-ranking corporate officers served on GPhA's Board of Directors before and during the Class Periods:

a. 2012 Board of Directors: Tony Mauro, President of Mylan North America; Debra Barrett, Sr. VP of Government and Public Affairs for Teva; Doug Boothe, President and CEO of Actavis; and Jeffrey Glazer, CEO of Heritage;

b. 2013 Board of Directors: Tony Mauro, President of Mylan North America; Debra Barrett, Sr. VP of Global Government Affairs and Public Policy for Teva; Jeffrey Glazer, President and CEO of Heritage; and Charlie Mayr, Chief Communications Officer at Actavis;

c. 2014 Board of Directors: Jeffrey Glazer, CEO of Heritage; Tony Mauro, President of Mylan North America; and Allan Oberman, President and CEO of Teva Americas Generics;

d. 2015 Board of Directors: Debra Barrett, Sr. VP Global Government Affairs for Teva; Jeff Glazer, CEO of Heritage; Marcie McClintic Coates, VP & Head of Global Regulatory Affairs for Mylan; and Tony Pera, Chief Commercial Officer for Par Pharmaceuticals;

e. 2016 Board of Directors: Debra Barrett, Sr. VP Global Government Affairs for Teva; Heather Bresch, CEO of Mylan; and Tony Pera, Chief Commercial Officer for Par Pharmaceuticals.

98. Representatives from each of the Defendants regularly attended GPhA meetings during the Class Periods.

2) Healthcare Distribution Management Association

99. HDMA's Business and Leadership Conference ("BLC") purports to be the healthcare distribution industry's signature annual conference, developed by and for healthcare supply chain leaders and innovators. Exclusive to HDMA member companies, the conference brings together high-level executives, thought leaders and influential managers from across the healthcare supply chain to hold strategic business discussions on the most pressing industry issues. BLC meetings provided Defendants opportunities to collude in "one-on-one" meeting areas. In 2016, HDMA became the Healthcare Distribution Alliance, or HDA.

100. Representatives of Defendants regularly attended BLCs during the Class Periods.

3) Minnesota Multistate Contracting Alliance for Pharmacy

101. According to its website, MMCAP is a "free, voluntary group purchasing organization for government facilities that provide healthcare services. MMCAP has been delivering pharmacy and healthcare value to members since 1985. MMCAP's membership extends across nearly every state in the nation, delivering volume buying power. Members receive access

to a full range of pharmaceuticals and other healthcare products and services; such as, medical supplies, influenza vaccine, dental supplies, drug testing, wholesaler invoice auditing and returned goods processing."

102. MMCAP's Charter provides that "[i]n 1989, the Minnesota Department of Administration, an agency of the State of Minnesota, began a cooperative purchasing venture program to procure pharmaceutical products at the best price possible for the benefit of any other state interested in participating in the program . . . In 1996, the cooperative purchasing venture was named Minnesota Multistate Contracting Alliance for Pharmacy . . . and currently provide healthcare-related contracting to state and local government members located across the United State of America. Total purchasers by MMCAP member facilities for all MMCAP programs exceed $1 billion annually . . . ."

103. Representatives of Defendants Breckenridge, Mylan, Teva, Upsher, Actavis and Heritage regularly attended MMCAP meetings during the Class Periods.

4) National Association of Chain Drug Stores

104. According to documents produced to Plaintiffs, the mission of NACDS is to advance the interests and objectives of the chain community pharmacy industry, by fostering its growth and promoting its role as a provider of healthcare services and consumer products.

105. Representatives from each of the Defendants regularly attended NACDS events during the Class Periods.

5) National Pharmacy Forum

106. The National Pharmacy Forum is co-sponsored by the Healthcare Supply Chain Association ("HSCA") and the Healthcare Industry Supply Chain Institute ("HISCI").

107. The HSCA provides opportunities to meet and discuss the purchase and sale of generic drugs.

108. The HISCI is an association dedicated to improving and increasing efficiencies within the healthcare supply chain specifically for companies who work with group purchasing organizations and their integrated delivery networks.

109. Representatives from Actavis, Breckenridge, Mylan and Teva regularly attended National Pharmacy Forums during the Class Periods.

6) Efficient Collaborative Retail Marketing

110. According to its website, Efficient Collaborative Retail Marketing ("ECRM") conducts Efficient Program Planning Sessions that are made up of one-on-one strategic meetings that connect decision makers in an effort to maximize time, grow sales and uncover industry trends.

111. At annual meetings organized by ECRM, generic pharmaceutical suppliers have scheduled meetings with generic drug buyers at chain drug stores, supermarkets, mass merchants, wholesalers, distributors, and buy groups for independents.

112. Representatives of Defendants Actavis, Breckenridge, Heritage, Par, Teva and Upsher-Smith attended ECRM's Efficient Program Planning Sessions.

7) Defendants Opportunities for Collusion

113. On August 10-13, 2013, NACDS held its 2013 Total Store Expo at the Sands Expo Convention Center in Las Vegas, Nevada. NACDS's August 2013 Total Store Expo was attended by the following representatives from Defendants, who were key executives for generic drug sales and pricing:

a. **Actavis**: Andrew Boyer, Senior Vice President (Generic Sales, Marketing, National Accounts); Marc Falkin, Vice President (Marketing, Pricing and

Contracts); Richard Rogerson, Executive Director (Pricing & Business Analytics);

b. **Breckenridge**: Larry Lapila, President;

c. **Heritage**: Matthew Edelson, Senior Director of Sales; Jeffrey A. Glazer (then CEO and Chairman), Jason T. Malek, SVP (then Senior Vice President, Commercial Operations, and subsequently President), Gina Gramuglia, Commercial Operations; Neal O'Mara, Senior Director, National Accounts; Anne Sather, Senior Director, National Accounts;

d. **Mylan**: Mike Aigner, Director National Accounts; Kevin McElfresh, Executive Director National Accounts; Joe Duda, President; Robert Potter, Senior Vice President North America National Accounts and Channel Development; Rob O'Neill, Head of Sales; Lance Wyatt, Director National Accounts;

e. **Par**: Jon Holden, Vice President of Sales; Renee Kenney, Senior Advisor Generic Sales; Karen O'Connor, Vice President National Accounts; Lori Minnihan, Manager, Pricing & Analytics; Warren Pefley, Director, National Accounts; Charles "Trey" Propst, Vice President, National Accounts; Michael Reiney, Vice President, Sales; Jeremy Tatum, Demand Manager;

f. **Teva**: Theresa Coward, Senior Director of Sales; David Rekenthaler, Vice President, Sales; Maureen Cavanaugh, Senior Vice President and Chief Operating Officer N.A. Generics; Kevin Galowina, Head of Marketing

Operations; Jessica Peters, Manager of Corporate Accounts; Allan Oberman, President and CEO Teva Americas Generics;

g. **Upsher-Smith**: Scott Hussey, Senior Vice President, Sales; Brad Leonard, Senior Director, National Accounts; Jim Maahs, Vice President, Commercial Portfolio Management.

114. On October 28-30, 2013, GPhA held a meeting in Bethesda, Maryland that was attended by representatives from each of the Defendants.

115. On December 3, 2013, NACDS held its 2013 NYC Week and annual foundation dinner in New York City, which was attended by the following representatives from Defendants:

a. **Actavis**: Andrew Boyer, Senior Vice President (Generic Sales, Marketing, National Accounts); Marc Falkin, Vice President (Marketing, Pricing and Contracts);

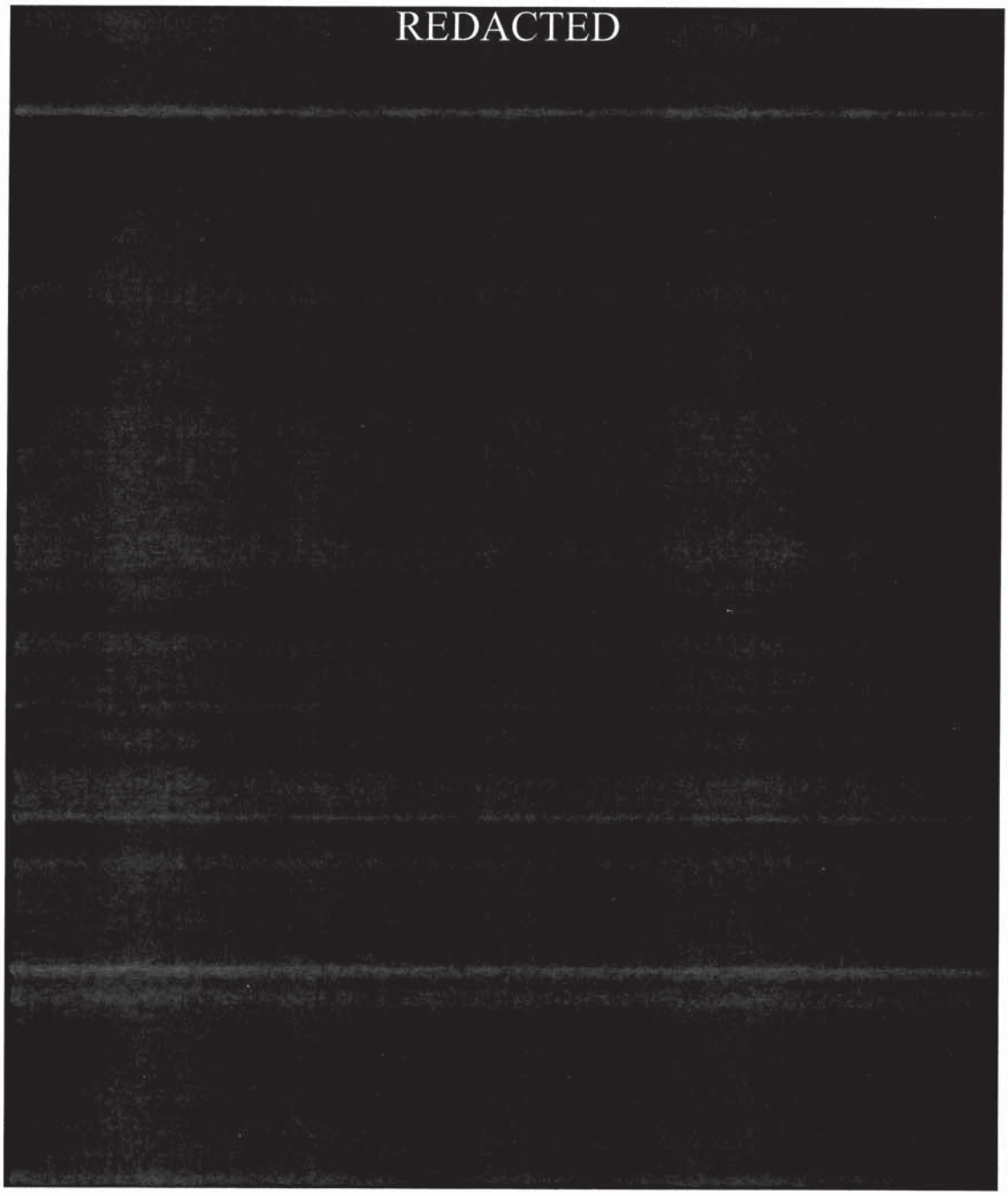
b. **Mylan**: Joe Duda, President; Tony Mauro, COO; Robert Potter, Senior Vice President North America National Accounts; Rob O'Neill, Head of Sales;

c. **Teva**: Theresa Coward, Senior Director of Sales; David Rekenthaler, Vice President, Sales; Maureen Cavanaugh, Senior Vice President and Chief Operating Officer N.A. Generics;

d. **Upsher-Smith**: Scott Hussey, Senior Vice President, Sales; Jim Maahs, Vice President, Commercial Portfolio Management; Mike McBride, Vice President Partner Relations.

116. On February 19-21, 2014, GPhA held its Annual Meeting in Orlando, Florida that was attended by representatives from each of the Defendants.

117. On February 23-26, 2014, ECRM held its annual Retail Pharmacy Efficient Program Planning Session at Omni Amelia Island Plantation Resort in Amelia Island, Florida. ECRM's February 23-26, 2014 meeting was attended by the following representatives of Defendants, who were key executives for generic drug sales and pricing:



118. On April 26-29, 2014, NACDS held its 2014 annual meeting in Scottsdale, Arizona. NACDS's 2014 annual meeting was attended by the following representatives from Defendants, who were key executives for generic drug sales and pricing:

a. **Actavis**: Andrew Boyer, Senior Vice President (Generic Sales, Marketing, National Accounts); Marc Falkin, Vice President (Marketing, Pricing and Contracts);

b. **Breckenridge**: Larry Lapila, President; Brian Guy, Vice President, Business Development; Martin Schatz, Senior Vice President, Sales;

c. **Heritage**: Jeffrey Glazer (then CEO and Chairman);

d. **Mylan**: Joe Duda, President; Tony Mauro, President; Robert Potter, Senior Vice President North America National Accounts and Channel Development; Rob O'Neill, Head of Sales;

e. **Par**: Jon Holden, Vice President of Sales; Paul Campanelli, President; Renee Kenney, Senior Advisor Generic Sales;

f. **Teva**: Theresa Coward, Senior Director of Sales; David Rekenthaler, Vice President, Sales; Maureen Cavanaugh, Senior Vice President and Chief Operating Officer N.A. Generics; Allan Oberman, President and CEO Teva Americas Generics;

g. **Upsher-Smith**: Scott Hussey, Senior Vice President, Sales; Brad Leonard, Senior Director, National Accounts; Jim Maahs, Vice President, Commercial Portfolio Management; Mark Evenstad, CEO; Rusty Field, President.

119. On May 12-15, 2014, MMCAP held its National Member Conference in Bloomington, Minnesota. At MMCAP's 2014 National Member Conference, topics included "RFPs under consideration for Pharmacy," "contract evaluation," and "pharmaceutical price increases." At the MMCAP conference, a Heritage employee met in person and discussed price increase strategies with a number of different competitors and was able to personally confirm agreement to raise prices of at least one drug (Glyburide).

120. MMCAP's May 12-15, 2014 National Member Conference was attended by the following representatives from Defendants, who were key executives for generic drug sales and pricing:

a. **Breckenridge**: Scott Cohon, National Accounts Director;

b. **Mylan**: Jan Bell, Director, National Accounts;

c. **Teva**: Nick Gerebi, National Account Manager;

d. **Upsher-Smith**: Michelle Brassington, Regional Account Manager;

e. **Actavis**: Mark Blitman, Executive Director of Sales for Government Markets;

f. **Heritage**: Anne Sather, Director, National Accounts.

121. On June 1-4, 2014, the HDMA held a BLC at the JW Marriott Desert Ridge in Phoenix, Arizona. The June 1-4, 2014 BLC was attended by the following representatives from Defendants, who were key executives for generic drug sales and pricing:

a. **Upsher-Smith**: Scott Hussey, Senior Vice President, Sales; Jim Maahs, Vice President, Commercial Portfolio Management; JoAnn M. Gaio, Senior National Account Manager, Consumer Health; Brad Leonard, Senior

Director, National Accounts; Michael McBride, Vice President, Partner Relations;

b. **Actavis**: Anthony Giannone, Executive Director, Sales; Marc Falkin, Senior Vice President Sales, U.S. Generics;

c. **Mylan**: Richard Issac, Senior Manager, Strategic Accounts; Lance Wyatt, Director, National Accounts

d. **Heritage**: Neal O'Mara, Senior Director, National Accounts; Anne Sather, Senior Director National Accounts;

e. **Par**: Lisa Walker, Director, Distribution and Customer Service;

f. **Teva**: Theresa Coward, Senior Director, Sales and Trade Relations; Jessive Peters, Director, Trade Relations.

122. On June 3-4, 2014, GPhA held a meeting in Bethesda, Maryland that was attended by representatives from Defendants Actavis, Teva, Mylan, Par, Heritage and Breckenridge.

123. On August 23-26, 2014, NACDS held its 2014 Total Store Expo at the Boston Convention Center in Boston, Massachusetts. NACDS's August 2014 Total Store Expo was attended by the following representatives from Defendants, who were key executives for generic drug sales and pricing:

a. **Actavis**: Andrew Boyer, Senior Vice President (Generic Sales, Marketing, National Accounts); Marc Falkin, Vice President (Marketing, Pricing and Contracts); Richard Rogerson, Executive Director (Pricing & Business Analytics);

b. **Breckenridge**: Larry Lapila, President; Martin Schatz, Senior Vice President, Sales;

c. **Heritage**: Heather Beem, National Accounts Manager, Institutional; Katie Brodowski, Associate Director Institutional Sales; Matthew Edelson, Senior Director of Sales; Jeffrey A. Glazer (then CEO and Chairman), Jason T. Malek, SVP (then Senior Vice President, Commercial Operations, and subsequently President); Gina Gramuglia, Commercial Operations; Neal O'Mara, Senior Director, National Accounts; Anne Sather, Senior Director National Accounts;

d. **Mylan**: Joe Duda, President; Robert Potter, Senior Vice President North America National Accounts; Mike Aigner, Director, National Accounts; Tony Mauro, President; Kevin McElfresh, Executive Director, National Accounts; Gary Tighe, Director, National Accounts; Lance Wyatt, Director, National Accounts;

e. **Par**: Jon Holden, Vice President of Sales; Renee Kenney, Senior Advisor Generic Sales; Lori Minnihan, Manager, Pricing & Analytics; Warren Pefley, Director, National Accounts; Charles "Trey" Propst, Vice President, National Accounts; Michael Reiney, Vice President, Sales; Jeremy Tatum, Demand Manager;

f. **Teva**: David Rekenthaler, Vice President, Sales; Maureen Cavanaugh, Senior Vice President and Chief Operating Officer N.A. Generics; Kevin Galowina, Head of Marketing Operations; Jessica Peters, Manager of Corporate Accounts; Nisha Patel, Director of National Accounts;

g. **Upsher-Smith**: Scott Hussey, Senior Vice President, Sales; Brad Leonard, Senior Director, National Accounts; Jim Maahs, Vice President, Commercial Portfolio Management.

124. On October 27-29, 2014, GPhA held a meeting in Bethesda, Maryland that was attended by representatives from each of the Defendants.

125. On December 3, 2014, NACDS held its 2014 NYC Week and annual foundation dinner in New York City, which was attended by the following representatives from Defendants, who were key executives for generic drug sales and pricing:

a. **Actavis**: Andrew Boyer, Senior Vice President (Generic Sales, Marketing, National Accounts); Marc Falkin, Vice President (Marketing, Pricing and Contracts); Brent Saunders, President, CEO and Chairman;

b. **Mylan**: Mike Aigner, Director National Accounts; Robert Potter, Senior Vice President North America National Accounts; Tony Mauro, COO;

c. **Teva**: Theresa Coward, Senior Director of Sales; David Rekenthaler, Vice President, Sales; Maureen Cavanaugh, Senior Vice President and Chief Operating Officer N.A. Generics; Jessica Peters, Director National Accounts;

d. **Upsher-Smith**: Scott Hussey, Senior Vice President, Sales; Jim Maahs, Vice President, Commercial Portfolio Management; Mike McBride, Vice President Partner Relations.

126. Defendants also attended the GPhA Annual Meeting in Miami Beach, Florida on February 9-11, 2015 that was attended by representatives from each of the Defendants.

127. On February 16-18, 2015 the NPF took place at the Marriott Waterside Hotel & Marina in Tampa Florida.

128. At the February 2015 NPF, speaker topics included: "current pricing and spending trends"; "a critique of the rationale for high prices offered by manufacturers"; and "the U.S. pharmaceutical market and the ongoing changes within the pharmaceutical world," including "market trends."

129. The National Pharmacy Forum was attended by the following representatives from Defendants, who were key executives for generic drug sales and pricing:

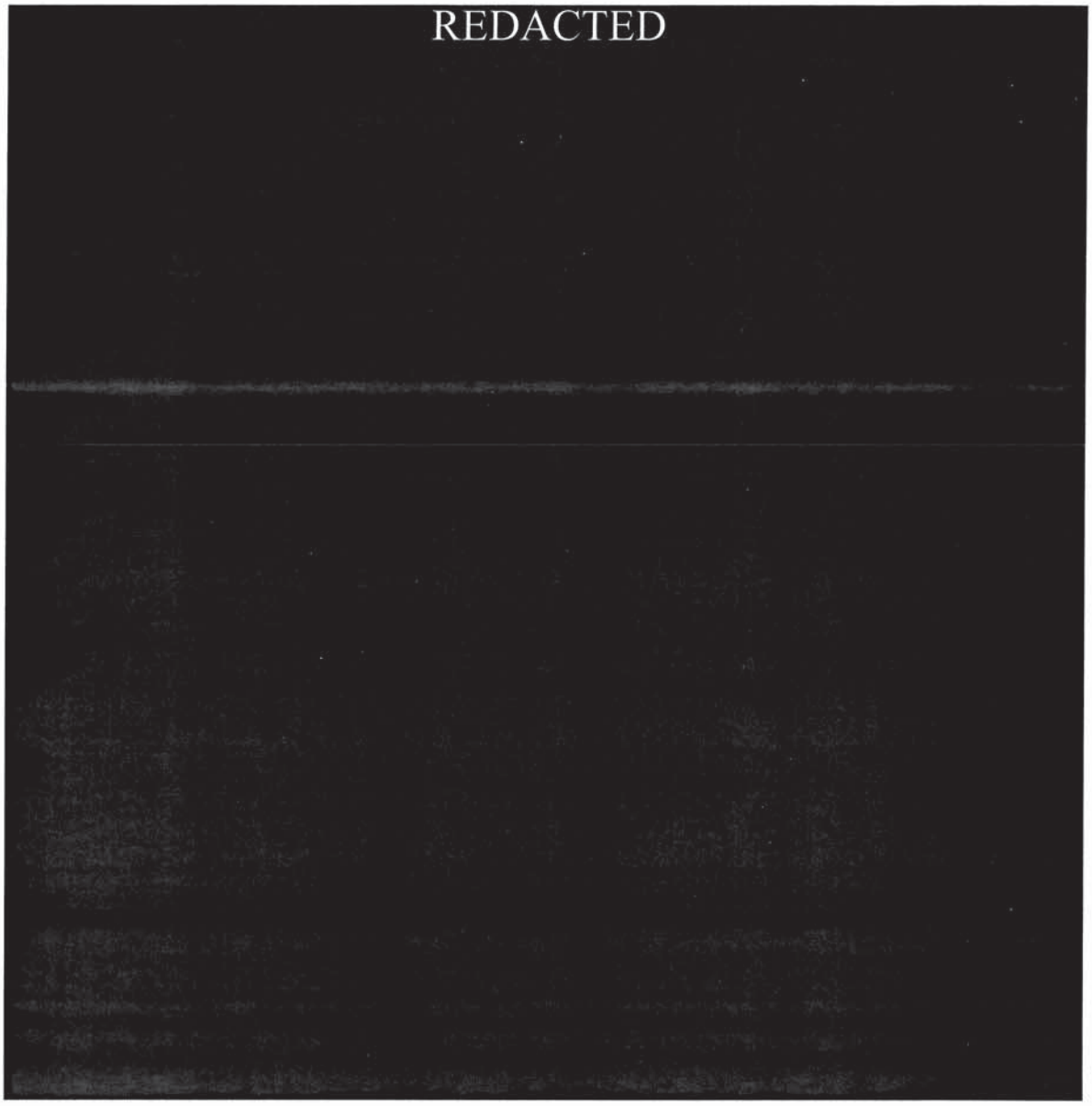
a. **Actavis**: John Fallon, Executive Director, Sales;

b. **Breckenridge**: David Giering, Manager, Marketing and Trade Relations;

c. **Mylan**: Lee Rosencrance, District Manager; Martin Wingerter, Director of National Accounts; Jan Bell, Director of National Accounts; Heather Paton, VP at Institutional Sales; Mark Pittenger: Sr. Director of National Accounts;

d. **Teva**: Nick Gerebi: Director, National Accounts; Jeff McClard, Sr. Director, National Accounts; Cam Bivens, Director, National Accounts; Brad Bradford, Director, National Accounts.

130. On February 22-25, 2015, ECRM held its annual Retail Pharmacy Efficient Program Planning Session at the Hilton Sandestin Beach Golf Resort & Spa in Destin, Florida. ECRM's February 22-25, 2015 meeting was attended by the following representatives of Defendants, who were key executives for generic drug sales and pricing:



131. On April 25-28, 2015, NACDS held its 2015 annual meeting at The Breakers, Palm Beach, Florida. NACDS's 2015 annual meeting was attended by the following representatives from Defendants, who were key executives for generic drug sales and pricing:

a. **Actavis**: Andrew Boyer, Senior Vice President (Generic Sales, Marketing, National Accounts); Marc Falkin, Vice President (Marketing, Pricing and Contracts);

b. **Breckenridge**: Larry Lapila, President; Brian Guy, Vice President, Business Development; Martin Schatz, Senior Vice President, Sales;

c. **Mylan**: Robert Potter, Senior Vice President North America National Accounts; Rob O'Neill, Head of Sales; Tony Mauro, President; Gary Tighe, Director National Accounts;

d. **Par**: Michael Altamuro, Vice President Marketing and Business Analytics; Jon Holden, Vice President of Sales;

e. **Teva**: Maureen Cavanaugh, Senior Vice President and Chief Operating Officer N.A. Generics; Theresa Coward, Senior Director of Sales;

f. **Upsher-Smith**: Scott Hussey, Senior Vice President, Sales; Brad Leonard, Senior Director, National Accounts; Jim Maahs, Vice President, Commercial Portfolio Management; Mark Evenstad, Chief Executive Officers.

132. The June 7-10, 2015 HDMA BLC was held in San Antonio, Texas. The June 2015 BLC included a networking event sponsored by Mylan. The June 2015 BLC was attended by the following representatives from Defendants, who were key executives for generic drug sales and pricing:

a. **Heritage**: Jeffrey A. Glazer (then CEO and Chairman); Jason T. Malek, SVP (then Senior Vice President, Commercial Operations, and subsequently President); Neal O'Mara, Senior Director, National Accounts; Anne Sather, Senior Director, National Accounts; Matthew Edelson, Associate Director, National Accounts;

b. **Actavis**: Andrew Boyer, Senior Vice President, Generic Sales and Marketing; Marc Falkin, Senior Vice President, U.S. Generics; Richard Rogerson, Executive Director, Pricing & Business Analytics, Sales Marketing Generics; Anthony J. Giannone, Executive Director, Sales;

c. **Teva**: Theresa Coward, Senior Director of Sales; Nick Gerebi, Director National Accounts; Nisha Patel, Director of National Accounts; Jessica Peters, Director, National Accounts; Gary C. Skalski, Senior Director of Sales;

d. Mylan: Todd Bebout, Vice President - NA Supply Chain Management; Janet Bell, Director, National Accounts; Richard Isaac, Senior Manager, Strategic Accounts; Stephen Krinke, National Account Manager; Robert O'Neill, Head of Sales Generic, NA, Sean Reilly, National Account Manager; John Shane, Trade Relations; Erik Williams, VP NA Pricing & Contracts; Lance Wyatt, Director, National Accounts;

e. **Par**: Sandra Bayer, Senior National Account Executive; Warren Pefley, Director, National Accounts; Charles "Trey" Propst, Vice President, National Accounts; Michael Reiney; Lisa Walker, Director, Distribution & Customer Service;

f. **Breckenridge**: Scott Cohon, National Accounts Director; Philip Goldstein, Director of National Accounts;

g. **Upsher-Smith**: JoAnn Gaio, Senior National Account Manager, Trade; Scott Hussey, Senior Vice President, Sales; Brad Leonard, Senior Director, National Accounts.

133. On June 9-10, 2015, GPHA held a meeting in Bethesda, Maryland that was attended by representatives from Defendants Actavis, Teva, Mylan, Par, Heritage and Upsher-Smith.

134. On August 22-25, 2015, NACDS held its 2015 Total Store Expo at the Denver Convention Center in Denver, Colorado. NACDS's August 2015 Total Store Expo was attended by the following representatives from Defendants, who were key executives for generic drug sales and pricing:

a. **Actavis**: Andrew Boyer, Senior Vice President (Generic Sales, Marketing, National Accounts); Marc Falkin, Vice President (Marketing, Pricing and Contracts); Richard Rogerson, Executive Director (Pricing & Business Analytics);

b. **Breckenridge**: Larry Lapila, President; Martin Schatz, Senior Vice President, Sales;

c. **Heritage**: Matthew Edelson, Senior Director of Sales; Jeffrey A. Glazer (then CEO and Chairman), Jason T. Malek, SVP (then Senior Vice President, Commercial Operations, and subsequently President); Gina Gramuglia, Commercial Operations; Neal O'Mara, Senior Director, National Accounts; Anne Sather, Senior Director, National Accounts;

d. **Mylan**: Robert Potter, Senior Vice President North America National Accounts; Mike Aigner, Director National Accounts; Tony Mauro, President; Kevin McElfresh, Executive Director National Accounts; Rob O'Neill, Head of Sales;

e. **Par**: Jon Holden, Vice President of Sales; Lori Minnihan, Manager, Pricing & Analytics; Warren Pefley, Director, National Accounts; Charles "Trey"

Propst, Vice President, National Accounts; Michael Reiney, Vice President, Sales; Jeremy Tatum, Demand Manager;

f. **Teva**: Theresa Coward, Senior Director of Sales; Maureen Cavanaugh, Senior Vice President and Chief Operating Officer N.A. Generics; Kevin Galowina, Head of Marketing Operations; Jessica Peters, Manager of Corporate Accounts; Nisha Patel, Director of National Accounts;

g. **Upsher-Smith**: Scott Hussey, Senior Vice President, Sales; Brad Leonard, Senior Director, National Accounts.

135. In 2016, Defendants continued to regularly attend trade association meetings, conferences and events, including: i) the April 11-14, 2016, MMCAP National Member Conference in Bloomington, Minnesota at the Minneapolis Airport Marriott; ii) the June 12-15, 2016 HDA BLC at the Broadmoor Hotel Colorado Springs, Colorado; and iii) the August 19-22, 2016, NACDS 2016 Total Store Expo at the San Diego Convention Center in San Diego, California.

136. In addition to these frequent conferences and trade shows, representatives of Defendants get together separately, in more limited groups, allowing them to further meet face-to-face with their competitors and discuss their business. A large number of generic drug manufacturers, including several of the Defendants, are headquartered in close proximity to one another in New Jersey, eastern Pennsylvania, or New York, giving them easier and more frequent opportunities to meet and collude. In fact, high-level executives of many generic drug manufacturers get together periodically for what at least some of them refer to as "industry dinners."

137. For example, in January 2014, at least thirteen high-ranking male executives, including CEOs, Presidents, and Senior Vice Presidents of various generic drug manufacturers, met at a steakhouse in Bridgewater, New Jersey.

138. Female generic pharmaceutical sales representatives also get together regularly for what they refer to as a "Girls Night Out" ("GNO"), or alternatively "Women in the Industry" meetings and dinners.

139. During these GNOs, meetings and dinners, these representatives meet with their competitors and discuss competitively sensitive information.

140. For example, on information and belief, these individuals attended the GNO held during the August 2015 NACDS Store Expo in Denver, Colorado: Anne Sather, National Account Manager at Defendant Heritage, and Gina Gramuglia, Commercial Operations at Defendant Heritage; Lori Minnihan, Manager, Pricing & Analytics at Par; Theresa Coward, Senior Director of Sales at Teva; Maureen Cavanaugh, Senior Vice President and Chief Operating Officer N.A. Generics at Teva; Jessica Peters, Manager of Corporate Accounts at Teva; Nisha Patel, Director of National Accounts at Teva. As alleged above in Paragraph 134, these individuals attended the August 2015 NACDS Store Expo in Denver, Colorado, and therefore, it is a reasonable inference that they also attended the GNO held at the August 2015 NACDS.

141. Several different GNOs were held in 2015, including: (1) at the ECRM conference in February 2015 (involving representatives from Heritage, among others) alleged above in Paragraph 130; (2) in Baltimore in May 2015 (involving at least defendants Heritage and Teva, among others); and (3) as alleged above, at the NACDS conference in August 2015.

142. "Women in the Industry" dinners were frequently organized by Anne Sather from defendant Heritage. As discussed above, Heritage executives were instructed to contact and make price agreements and allocate customers with Heritage's would-be competitors.

143. As a result of these various interactions, Defendants' sales and marketing executives are often acutely aware of their competition and, more importantly, each other's current

and future business plans. This familiarity and opportunity often leads to agreements among competitors to fix prices or to allocate a given market so as to avoid competing with one another on price.

144. Defendants routinely communicate and share information with each other about bids and pricing strategy. This can include forwarding bid packages received from a customer (e.g., a Request for Proposal or "RFP") to a competitor, either on their own initiative, at the request of a competitor, or by contacting a competitor to request that the competitor share that type of information.

145. Defendants also share information regarding the terms of their contracts with customers, including various terms relating to pricing, price protection and rebates. Generic drug manufacturers use this information from their competitors to negotiate potentially better prices or terms with their customers, which could be to the ultimate detriment of consumers.

C. Propranolol Prices Soar

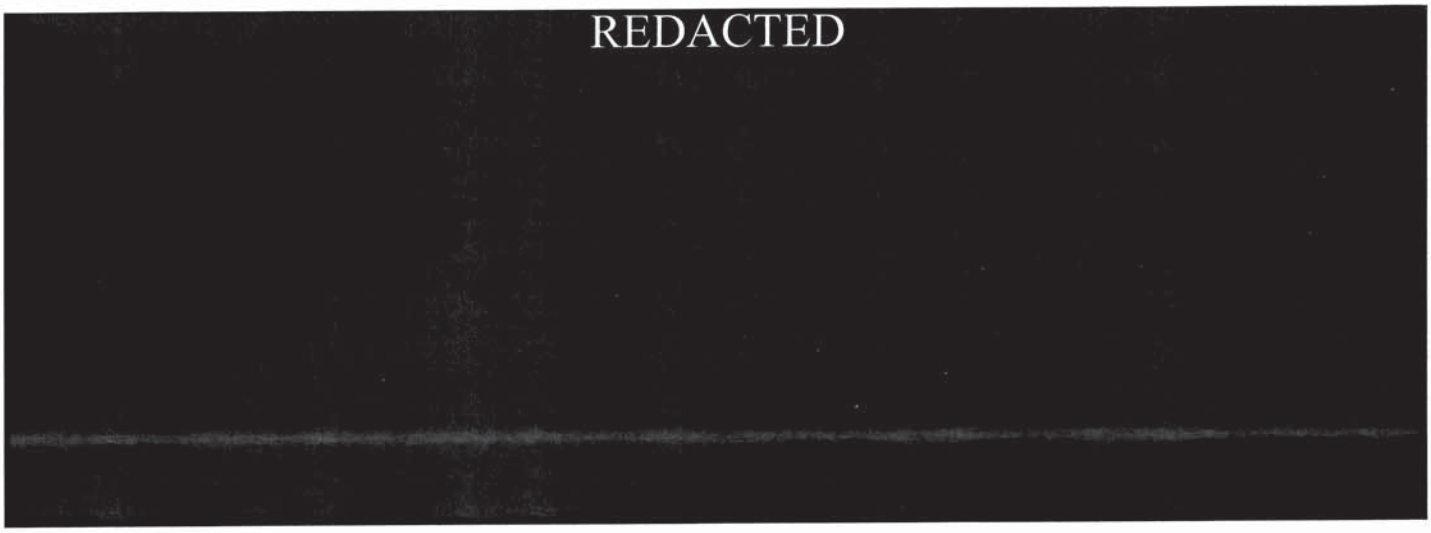
1) Defendants Who Sold Propranolol Capsules Drastically Increased Their Prices.

146. During the Propranolol Capsules Class Period, the Capsule Defendants sold 60, 80, 120 and 160 mg propranolol capsules.

147. According to IMS[5], before the price increases, Defendants' effective prices were remarkably stable. For example, the following graph illustrates the stability of Actavis and Upsher-Smith's propranolol capsules from December 2010 through October 2013:

REDACTED

[5] "IMS" mean QuintilesIMS Inc., a provider of information, technology and service solutions for the healthcare industry.



149. Beginning in November 2013, contrary to a well-established past practice, the Capsule Defendants increased the price of propranolol capsules dramatically. The increases were the result of an agreement among the Capsule Defendants to increase pricing, restrain competition, and allocate customers for the sale of propranolol capsules in the United States. The agreement was furthered by discussions held at various trade association meetings and events, including the meetings and events alleged above in Paragraphs 113-35.

150. For example, on August 10-13, 2013, the NACDS held its 2013 Total Store Expo at the Sands Expo Convention Center in Las Vegas, Nevada. As alleged above in Paragraph 113, NACDS's August 2013 Total Store Expo was attended by key executives for generic drug pricing and sales from the Capsule and Tablet Defendants.

151. In addition, as alleged in Paragraphs 114 and 116-17, representatives from the Capsule Defendants attended the GPhA meetings in Bethesda, Maryland in October 2013, and February 2014 in Orlando, Florida, and ECRM's February 2014 event. As alleged in Paragraph 115, key executives for generic drug pricing and sales from Defendants Actavis and Upsher-Smith attended the December 2013 NACDS.

152. After a substantial period of relative stability in prices, shortly after the meeting and events alleged in Paragraphs 114-17, among others, the Capsule Defendants, who in

November 2013 controlled [redacted] of the propranolol capsules market, began to increase the price of propranolol HCl SA capsules (60, 80, 120, 180 mg) by extraordinary amounts. As alleged below in Paragraph 228 (and the accompanying charts), **the Capsule Defendants' market share** remained stable from November 2013 through approximately July 2016.

153. As part of the conspiracy, the Capsule Defendants coordinated increases of their reported Wholesale Acquisition Cost (WAC)[6] benchmark prices[7]:

Propranolol HCl ER Oral Capsule Extended Release 24 Hour 60 MG	NDC	Date	Prior WAC[8]	New WAC	Percentage increase
REDACTED					

Propranolol HCl ER Oral Capsule Extended Release 24 Hour 80 MG	NDC	Date	Prior WAC	New WAC	Percentage increase
REDACTED					

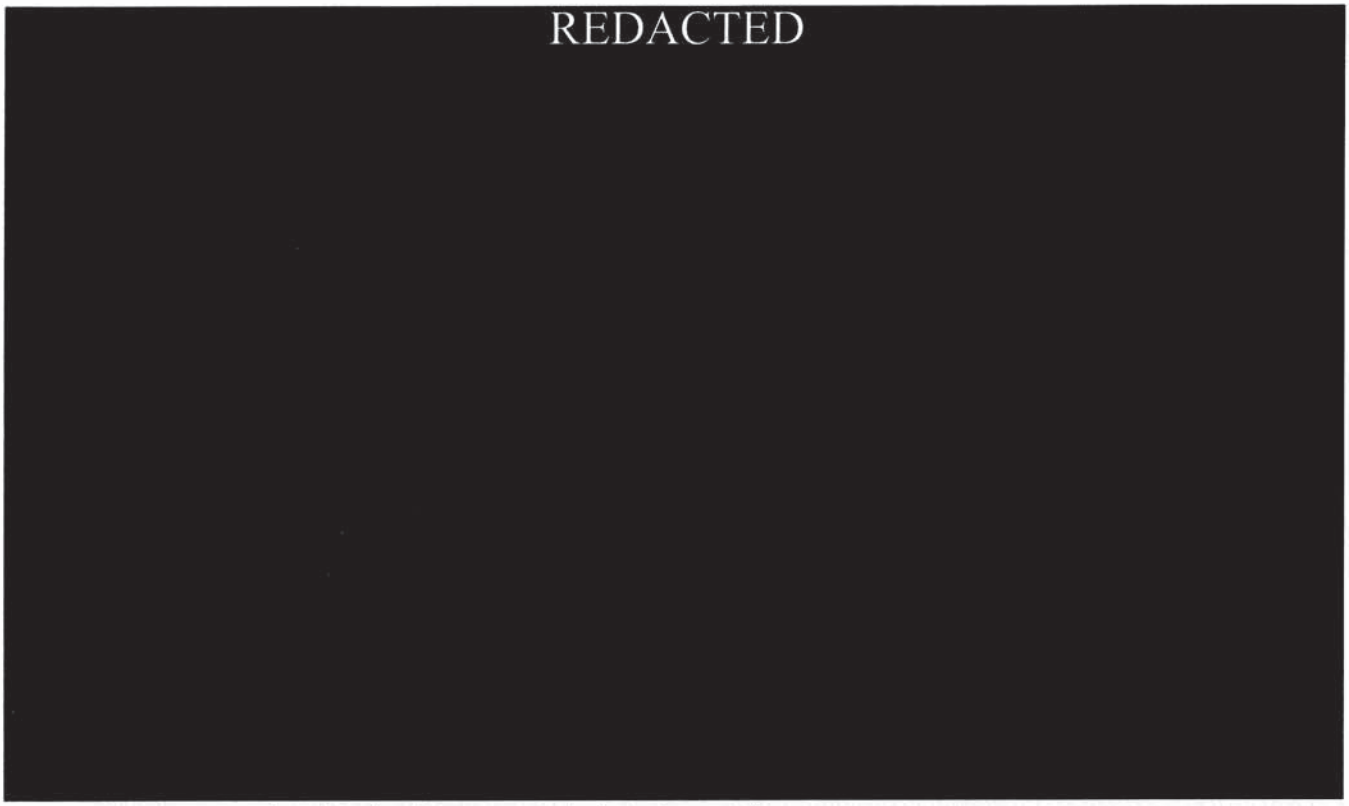
[6] WAC is a benchmark price that represents the manufacturer's published catalog or list price for a drug product to wholesalers as publicly reported by the manufacturer. WAC does not represent actual transaction prices and does not include discounts, rebates or reductions in price. As noted above, "effective prices" represent actual transaction prices, as reported by IMS. However, an increase in the WAC benchmark price results in an increase in effective prices.

[7] Upsher-Smith's WAC benchmark prices at this time are unknown to Plaintiffs. To the best of their knowledge, Upsher-Smith does not publish them.

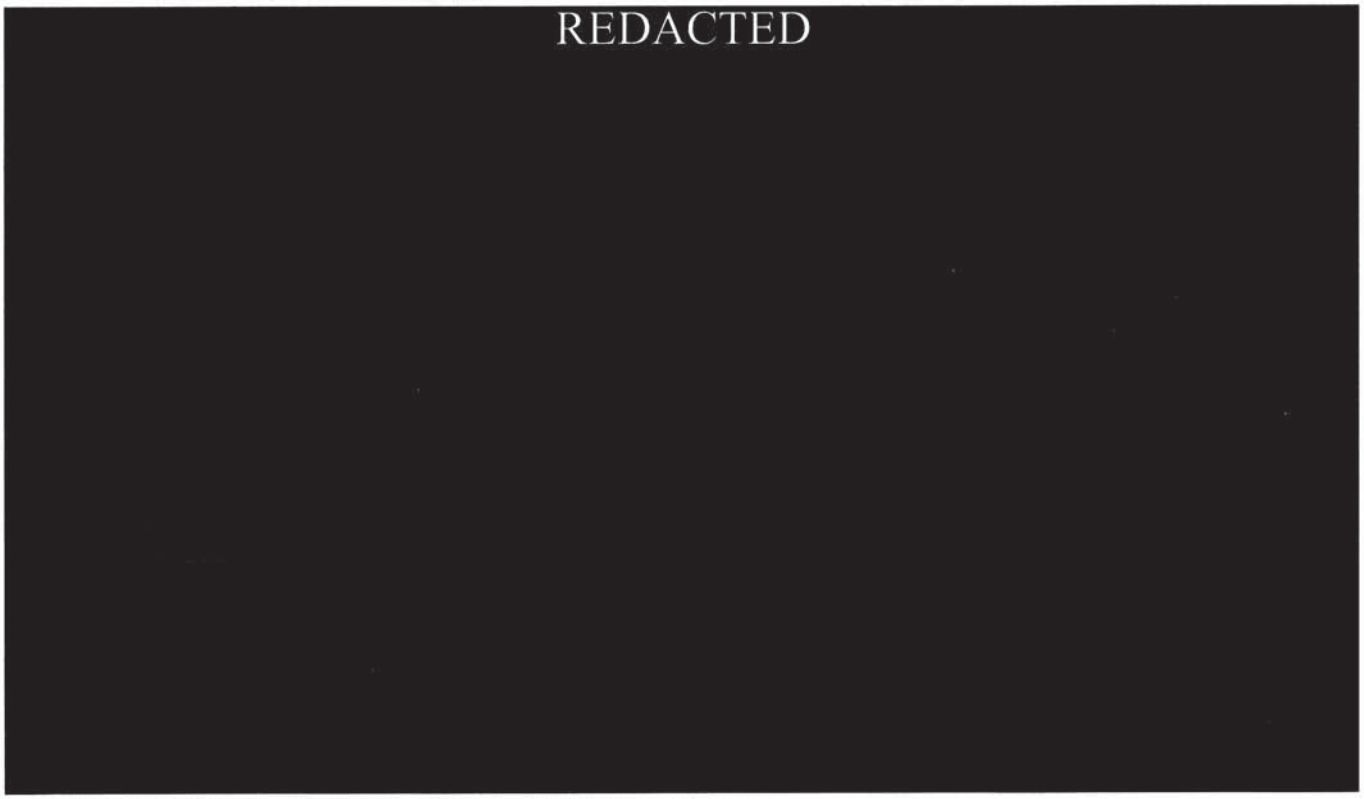
[8] For ease of reference, throughout the Complaint, prices are represented to the nearest cent. However, percentage increases are calculated based on actual reported prices, which may be reported up to 12 decimal points.

Propranolol HCl ER Oral Capsule Extended Release 24 Hour 120 MG*	NDC	Date	Prior WAC	New WAC	Percentage increase
REDACTED					

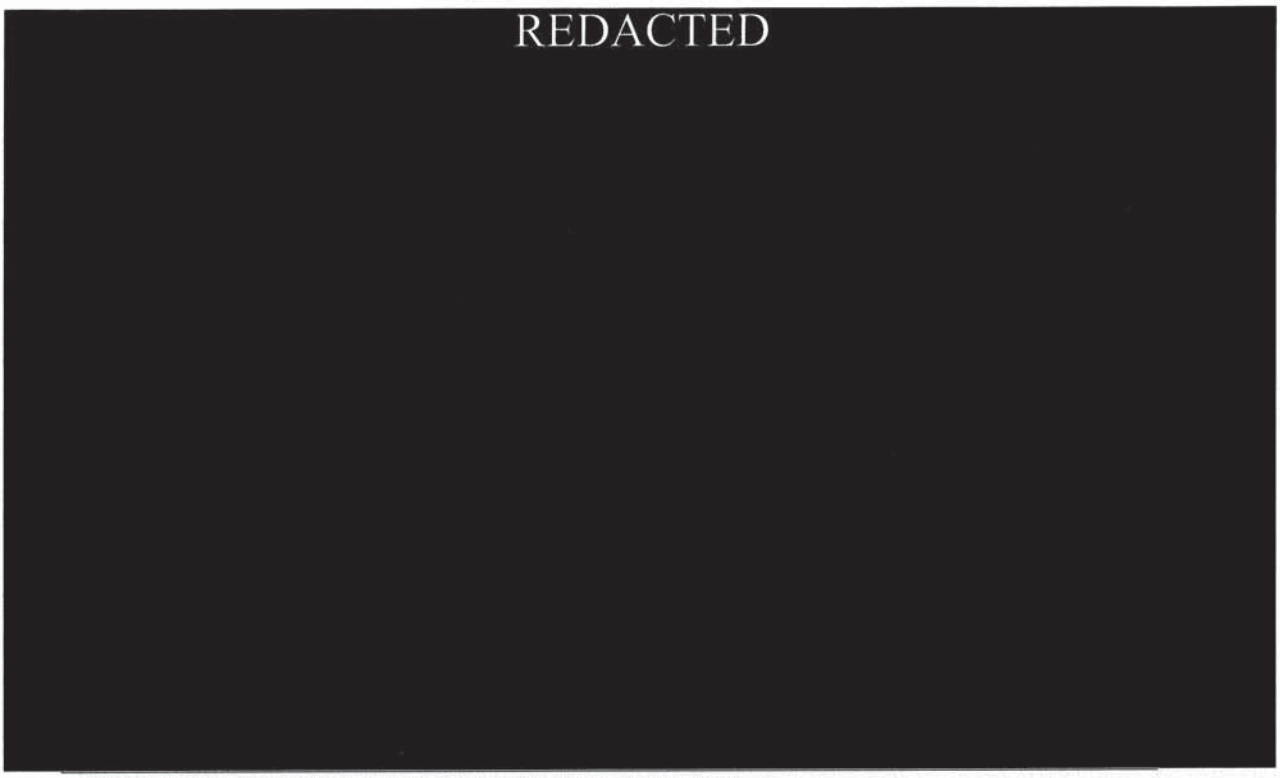
Propranolol HCl ER Oral Capsule Extended Release 24 Hour 160 MG	NDC	Date	Prior WAC	New WAC	Percentage increase
REDACTED					



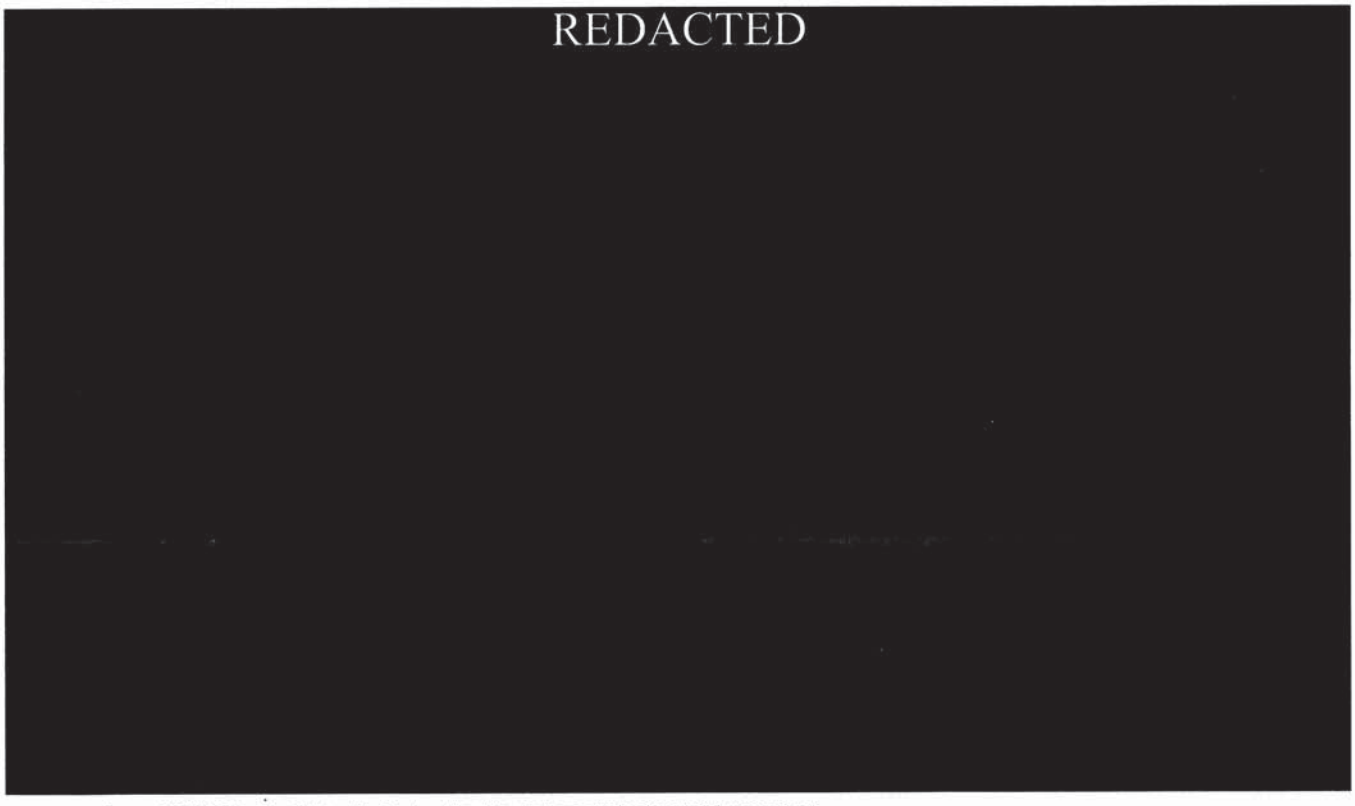
Source: IMS NSP Data. Note that outlier Breckenridge data points prior to the class period were omitted.



Source: IMS NSP Data. Note that outlier Breckenridge data points prior to the class period were omitted.

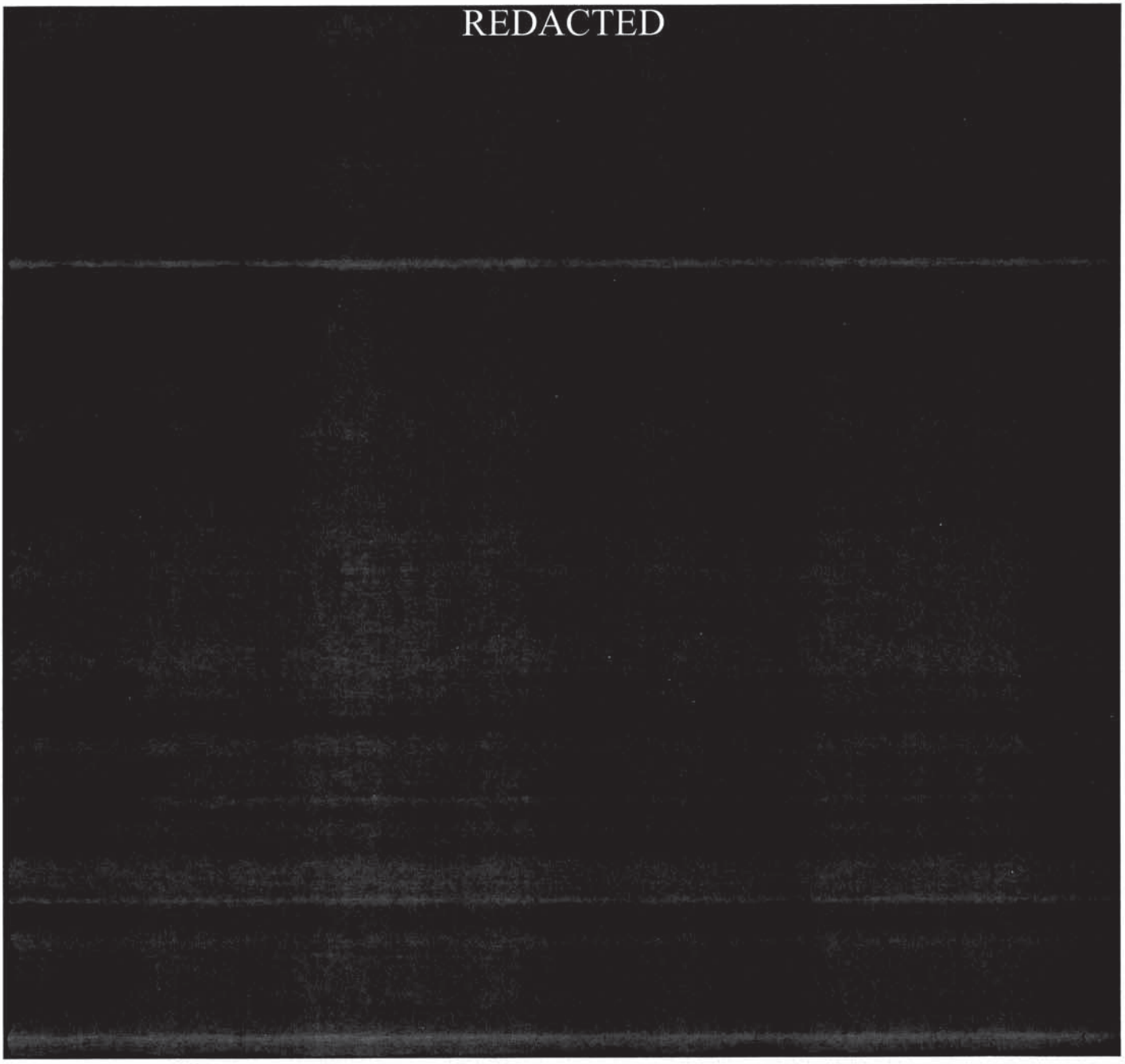


Source: IMS NSP Data. Note that outlier Breckenridge data points prior to the class period were omitted.

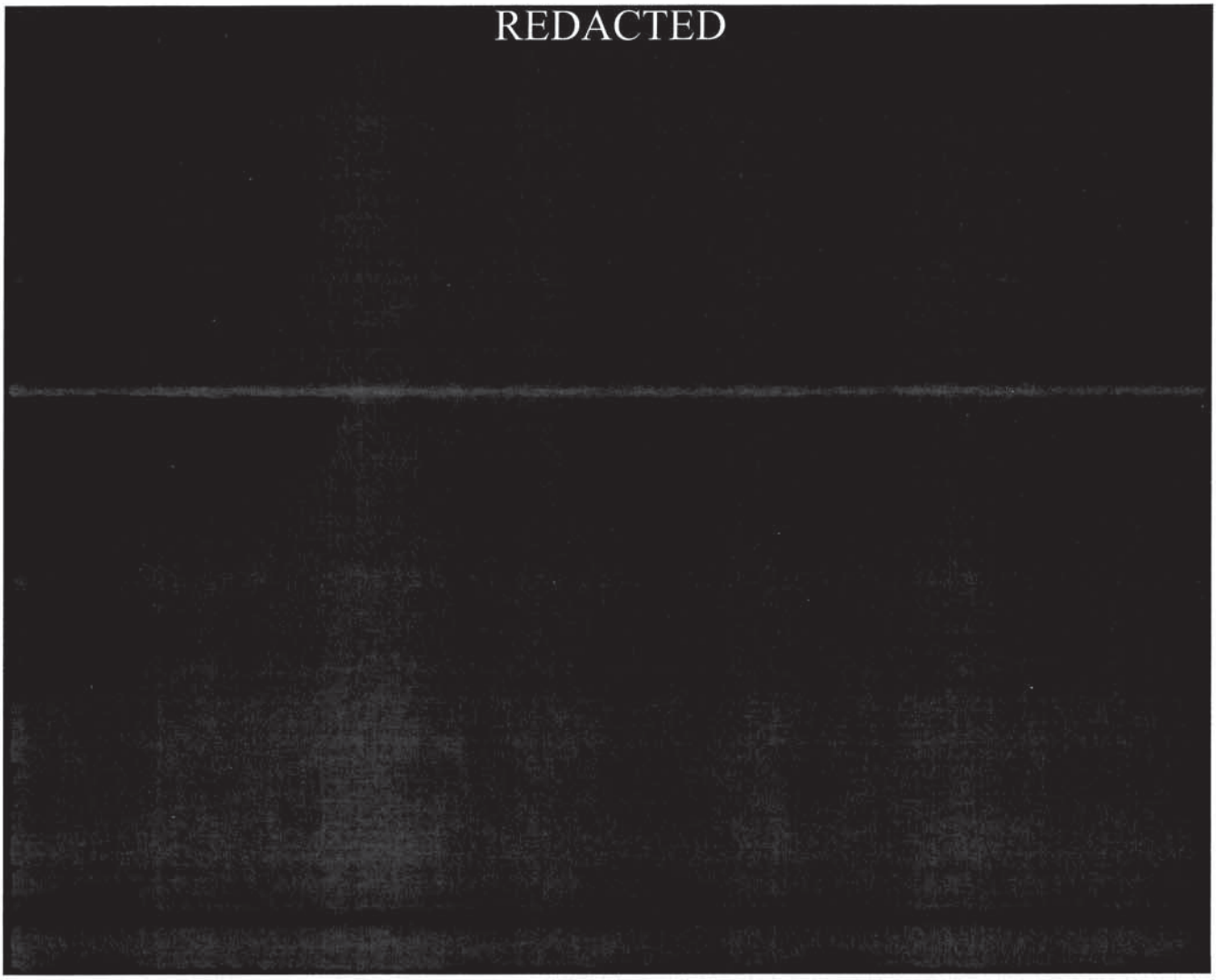


Source: IMS NSP Data. Note that outlier Breckenridge data points prior to the class period were omitted.

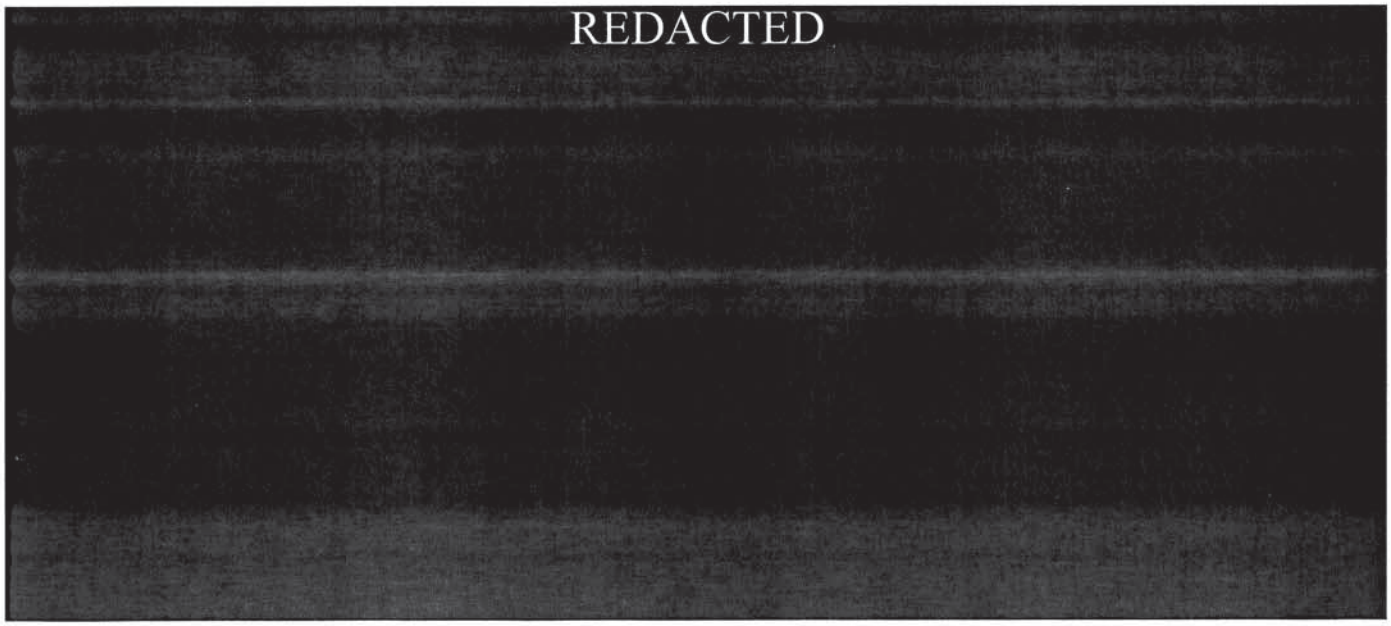
i) Breckenridge

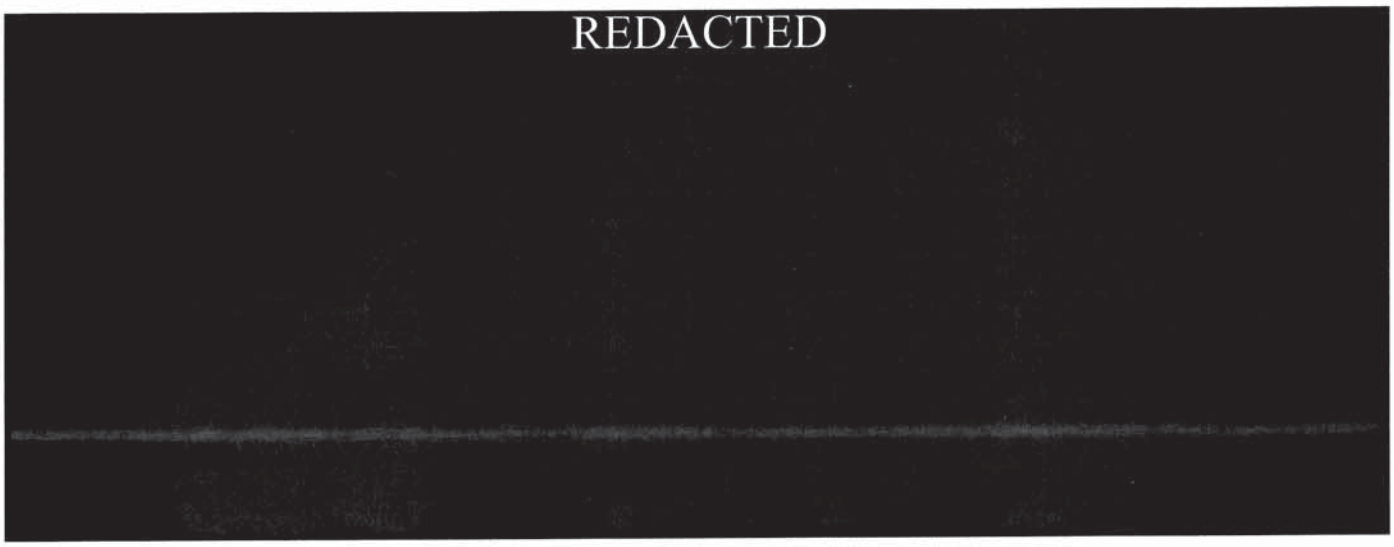


ii) Actavis



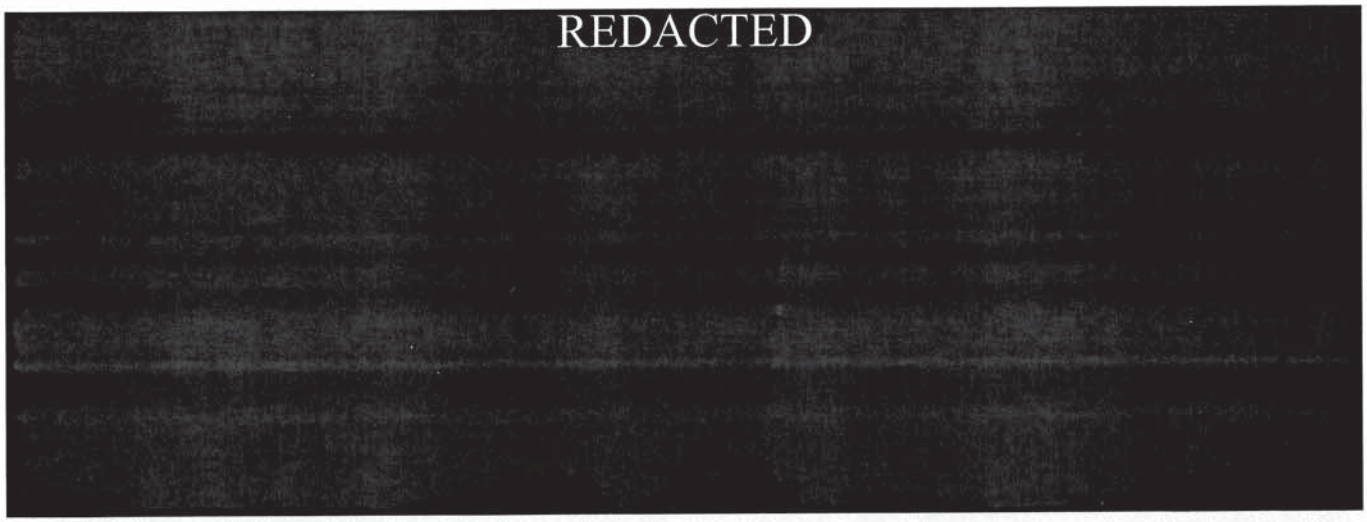
iii) **Upsher-Smith**

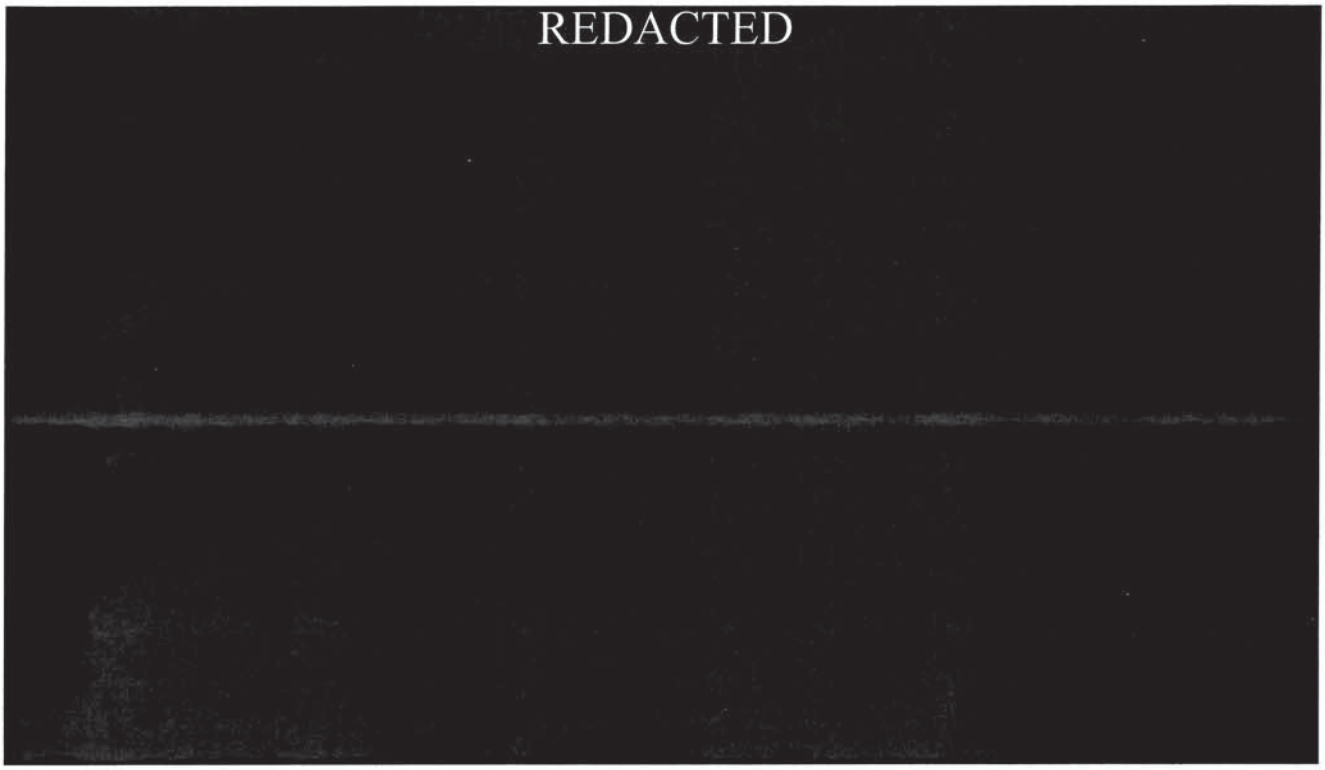




2) Defendants Who Sold Propranolol Tablets Increased Their Prices by an Extraordinary Amount.

174. During the Propranolol Tablets Class Period, the Tablet Defendants each sold 10, 20, 40, and 80 mg propranolol Tablets. Defendants Heritage, Teva, Mylan and Par each sold 60 mg propranolol tablets.





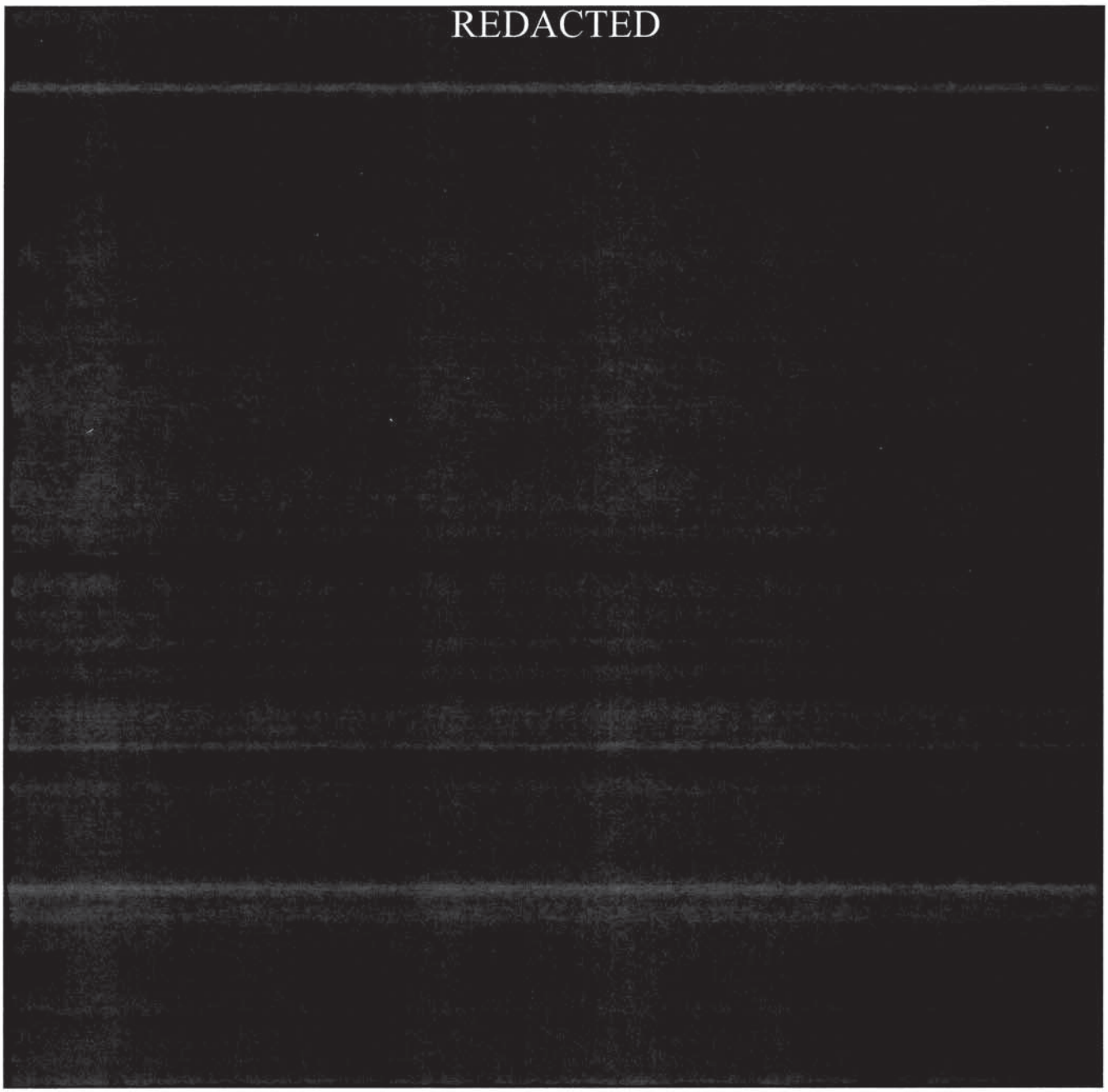
176. By at least the beginning of the Propranolol Tablet Class Period, the Tablet Defendants caused the price of propranolol tablets to dramatically increase. The increases were the result of an agreement among the Tablet Defendants to increase pricing and restrain competition for the sale of propranolol tablets in the United States.

177. The agreement was furthered by discussions held at trade association meetings and events, including NACDS, GPhA, ECRM, NPF, MMCAP and NDMA meetings and events, as alleged above in Paragraphs 113-35.

178. For example, on August 23-26, 2014, NACDS held its 2014 Total Store Expo at the Boston Convention Center in Boston, Massachusetts. As alleged above in Paragraph 123, NACDS's August 2014 Total Store Expo was attended by representatives from the Tablet Defendants, who were the key executives for generic drug pricing and sales.

179. In October 2014 and February 2015, GPhA held meetings in Bethesda, Maryland, and in Miami Beach, Florida that were attended by representatives of the Tablet Defendants.

180. The prices for propranolol tablets had been stable for a substantial period until January 2015. As alleged below, most of the Tablet Defendants began their price increases in January and February 2015. For comparison purposes, December 2014 is considered the last pre-conspiracy price.

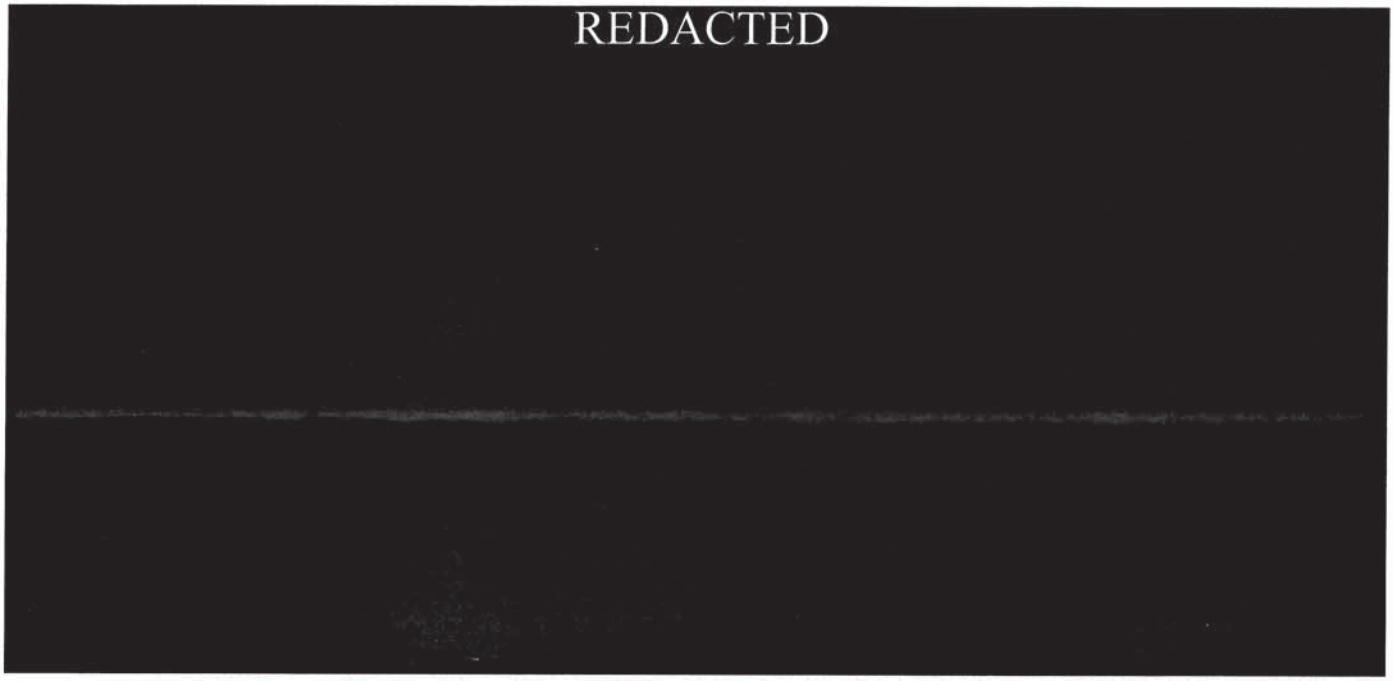


REDACTED

REDACTED [9]:

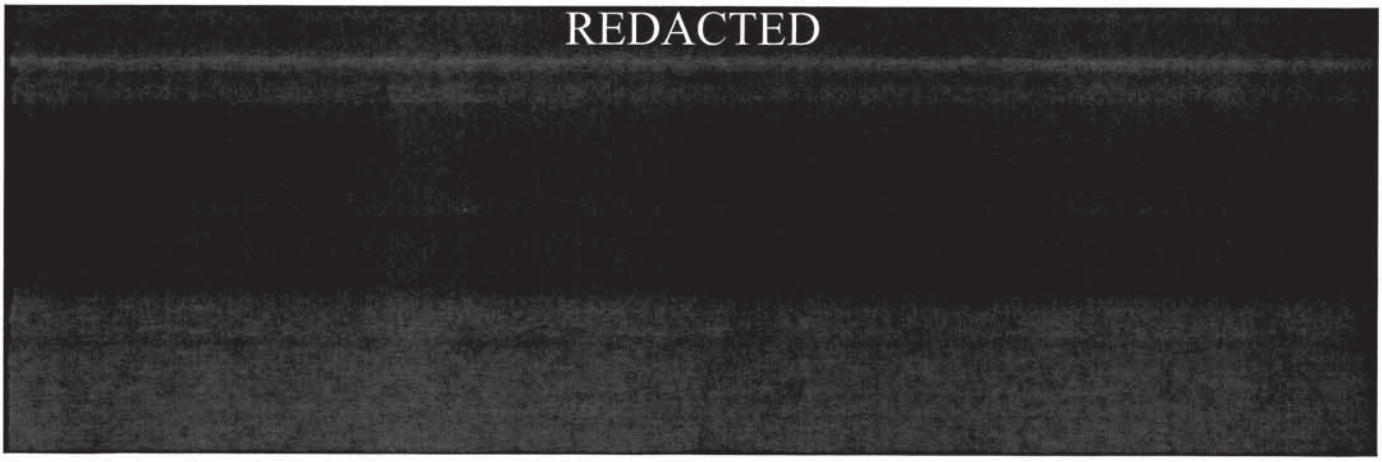
REDACTED

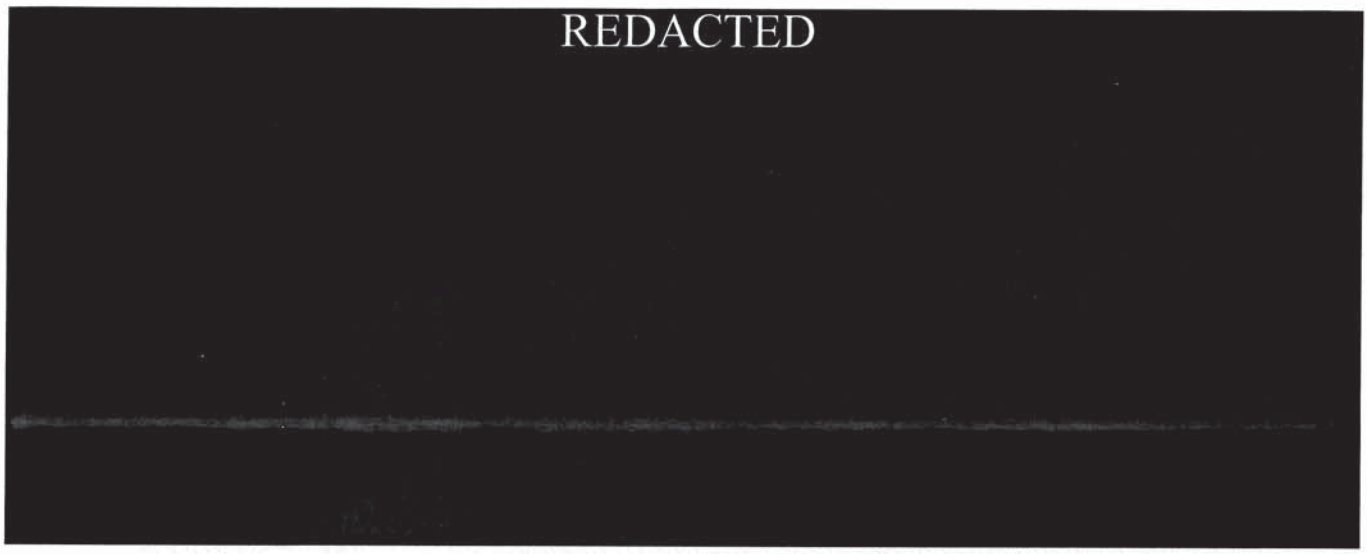
[9] Par (Qualitest's) pre-conspiracy WAC benchmark prices at this time are unknown to Plaintiffs. To the best of their knowledge, Par did not publish them until after the conspiracy began.



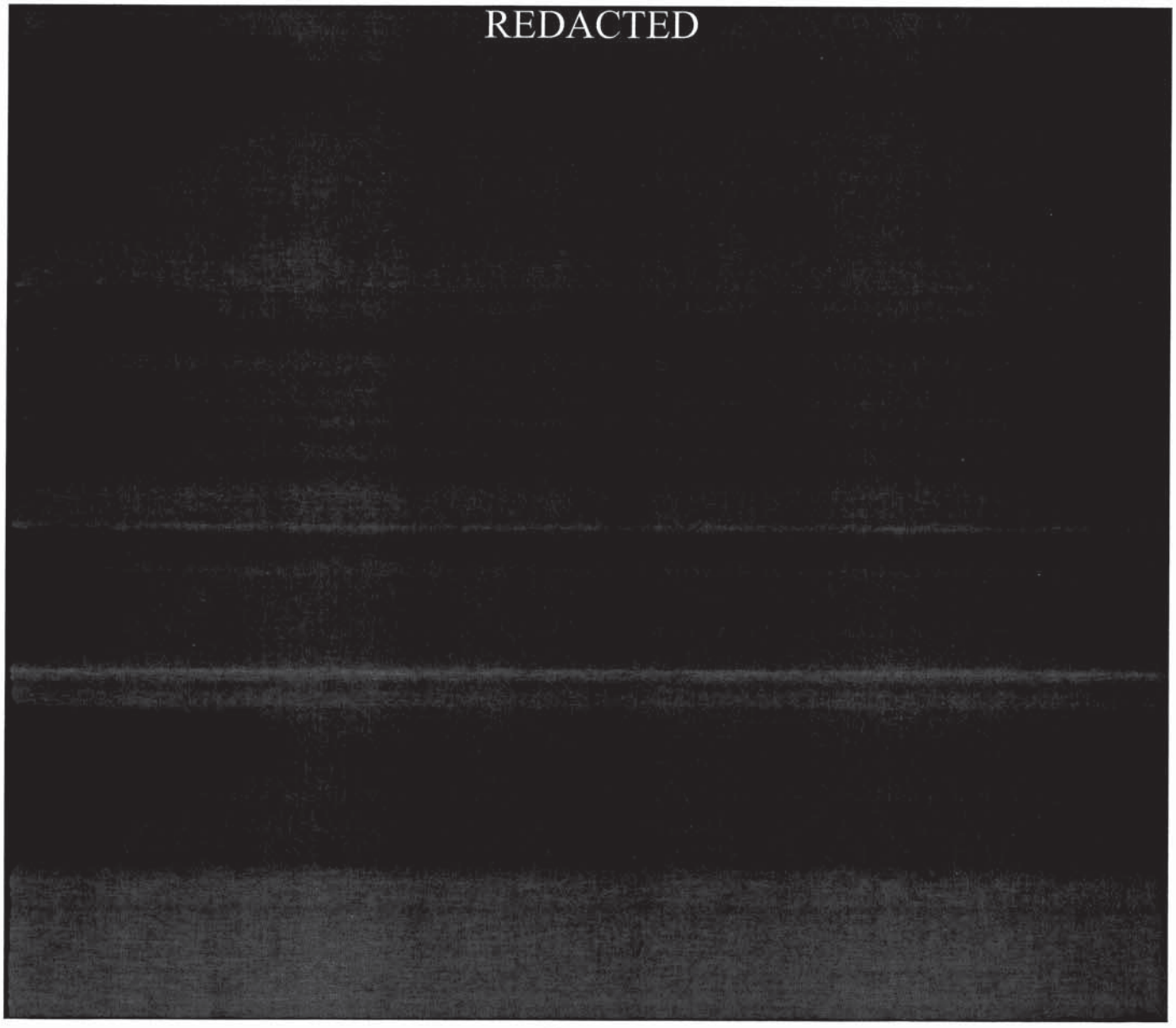
i) Heritage

187. According to a complaint filed by Heritage against its former executives, in March and April 2015, its then most senior executives, Jeffrey A. Glazer (then CEO and Chairman), and Jason T. Malek, SVP (then Senior Vice President, Commercial Operations, and subsequently President), communicated by text messages and discussed how to sell propranolol at a high price with their new label. Heritage's prices continued to rise during the Tablet Class Period.





ii) Teva



REDACTED

iii) **Actavis**

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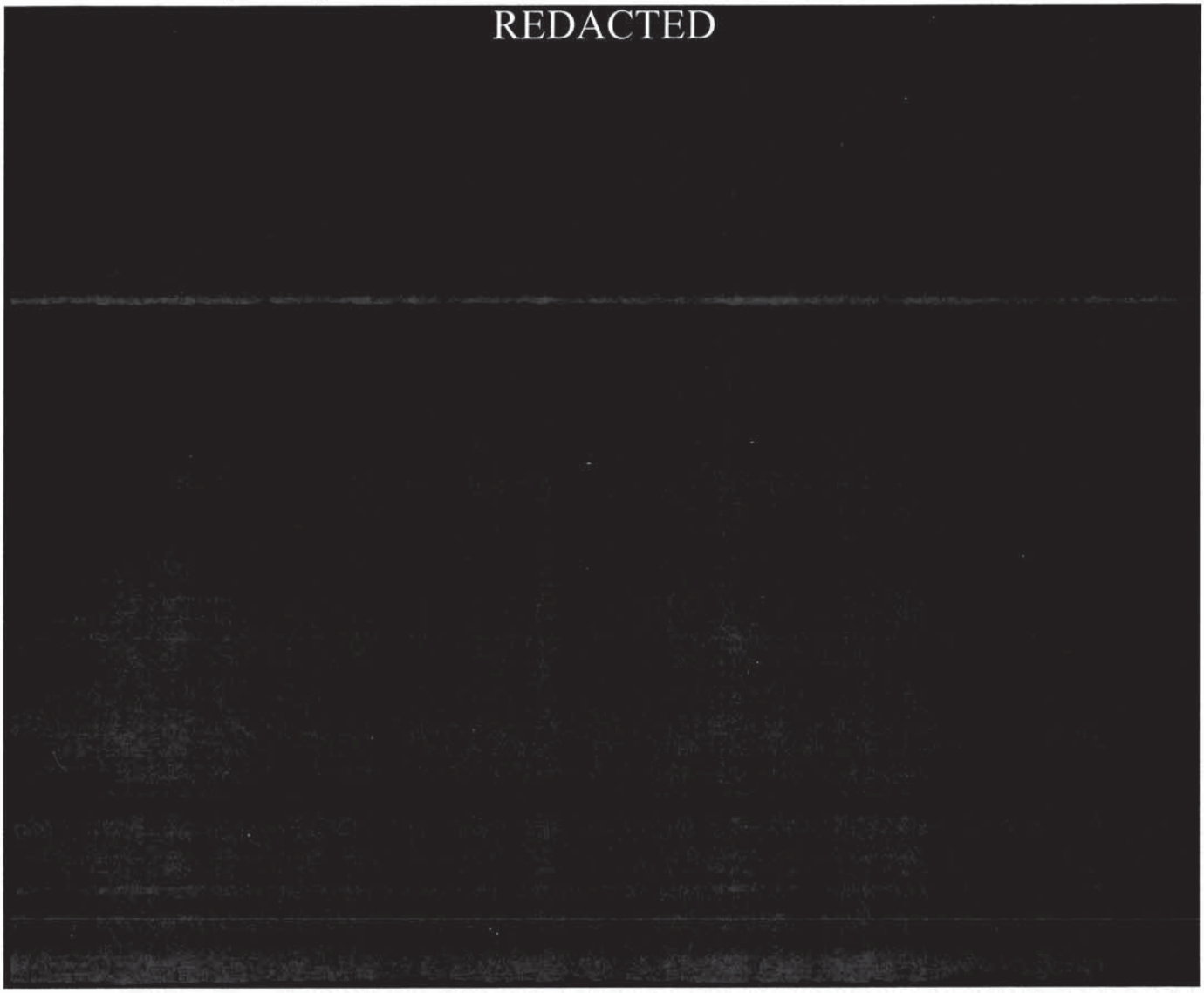
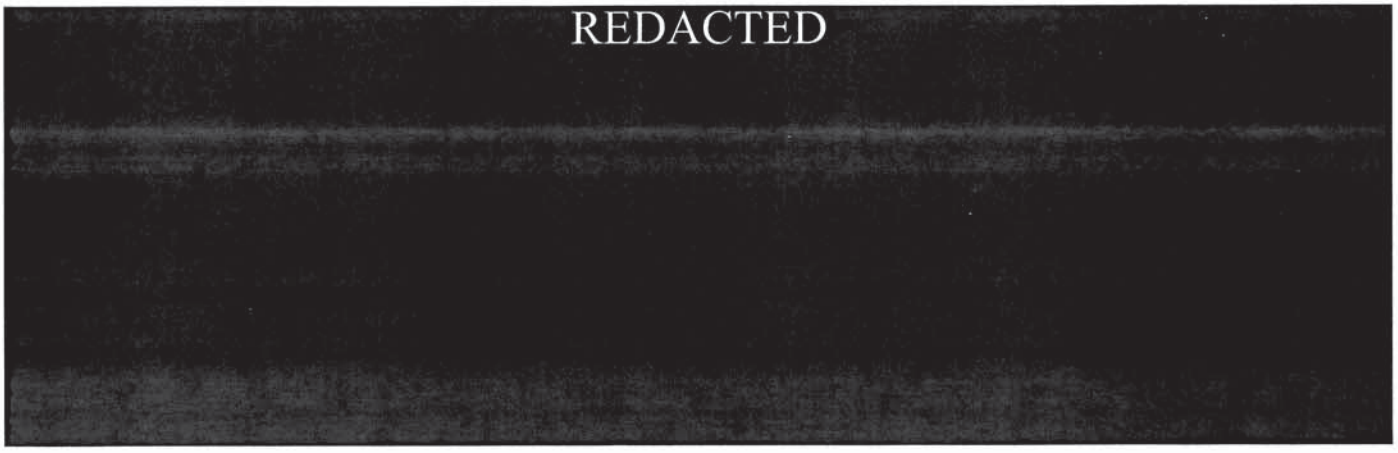
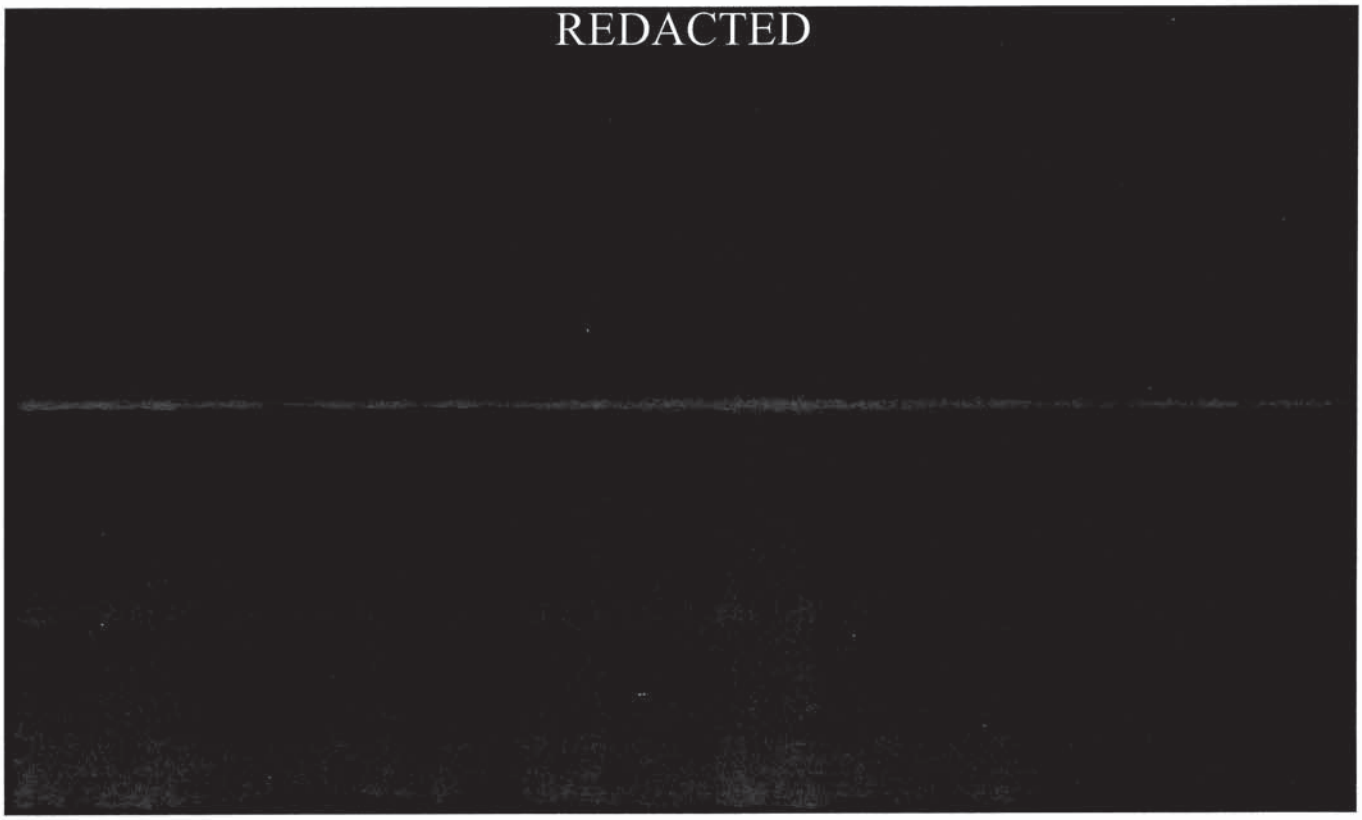
iv) Mylan



v) Par





213. Defendants' prices for propranolol tablets remained at supra-competitive levels throughout the Class Period.

214. There were no reasonable justifications for this abrupt shift in pricing, as Defendants' price increases were not necessitated by increased manufacturing costs, or research and development costs.

215. In a report dated April 21, 2015, Richard Evans, Scott Hinds and Ryan Baum at Sector & Sovereign Research concluded that: "A plausible explanation is that generic manufacturers . . . **are cooperating to raise the prices of products whose characteristics** (low sales due to either very low prices or very low volumes) accommodate price inflation." (Emphasis added).

216. A 2015 white paper examining generic drug pricing, published by Wolters Kluwer, explained:

> While the impact is being felt across the industry, small to mid-sized pharmacies can face notably greater challenges, as they do not have the resources, prescription volume, or affiliations with other purchasers that can empower them to bargain for discounts in a competitive marketplace. A survey conducted by the National Community Pharmacists Association (NCPA) revealed that pharmacy acquisition prices for many essential generic drugs have generally risen by between 600% and 1,000% in recent years. The same survey revealed that **84% of pharmacists at small or mid-sized pharmacies believed that increasing generic drug costs could result in unsustainable losses that would have a "very significant" impact on their ability to remain in business.**[10]

217. As a result of Defendants' unlawful conduct, Plaintiffs and the other members of the Classes paid artificially inflated prices that exceeded the amount they would have paid if a competitive market had determined prices for propranolol.

3) Medicaid Reimbursement Data Reflects Defendants' Price Increases

218. Data showing Medicaid reimbursements—which are the amounts that Medicaid has paid to cover its beneficiaries drug purchases—provides prices by manufacture and is an indirect indication that Defendants increased their prices in very similar fashion over time for both propranolol capsules and tablets.

219. The following charts display the per-unit amounts that Medicaid has reimbursed for its beneficiaries' purchases of Defendants' propranolol capsules:

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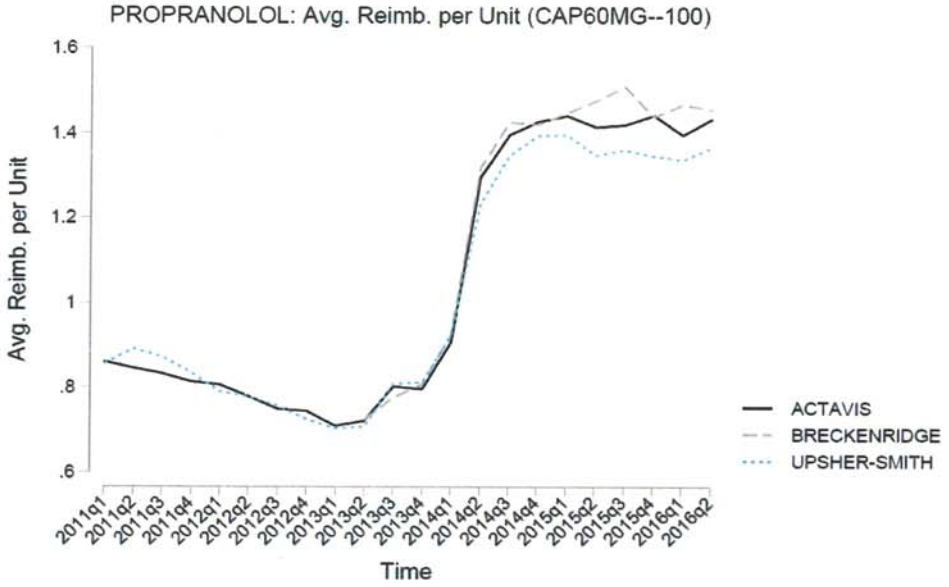
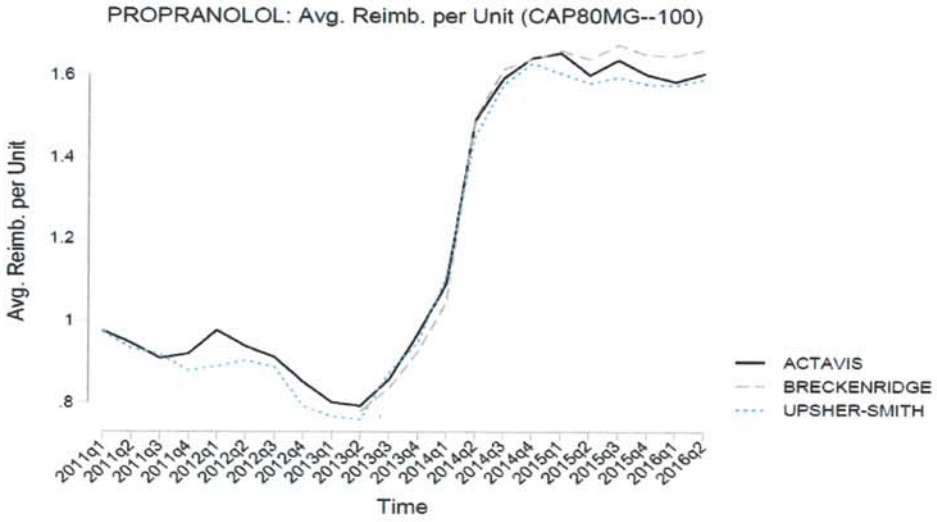
[10] Donald J. Dietz, RPh, MS, and Fred Hamilin, "Generic Drug Pricing: Understanding the Impact," available at http://www.wolterskluwercdi.com/documents/white-papers/ms-generic-pricing-info.pdf.

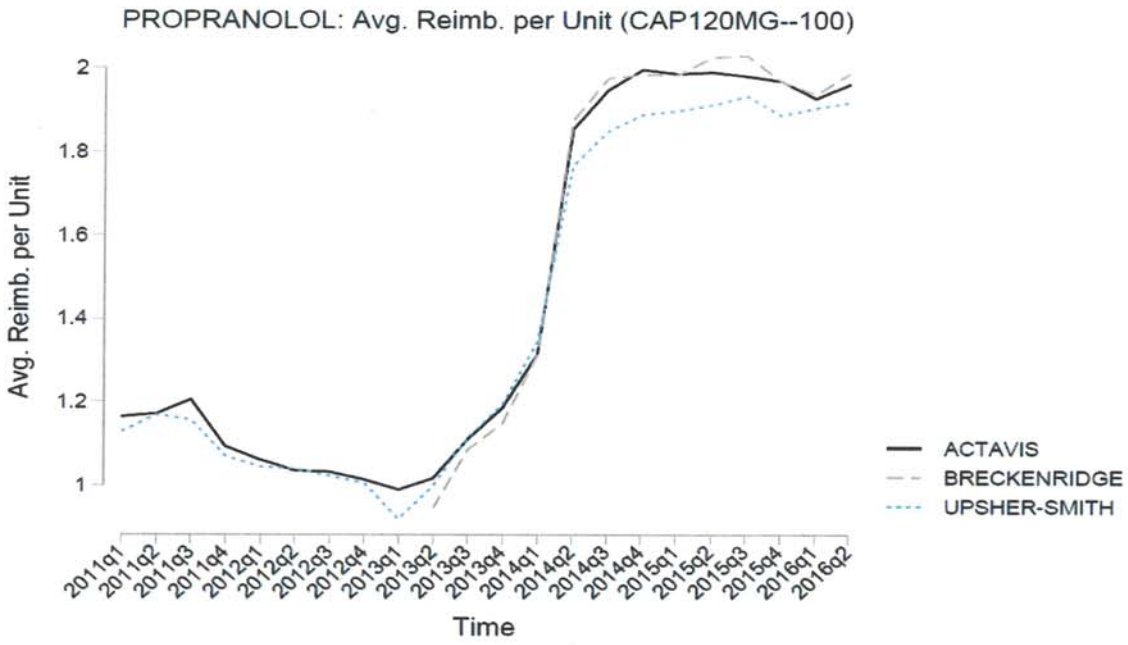
a. **60 mg Capsules – 100 Capsule Bottle**



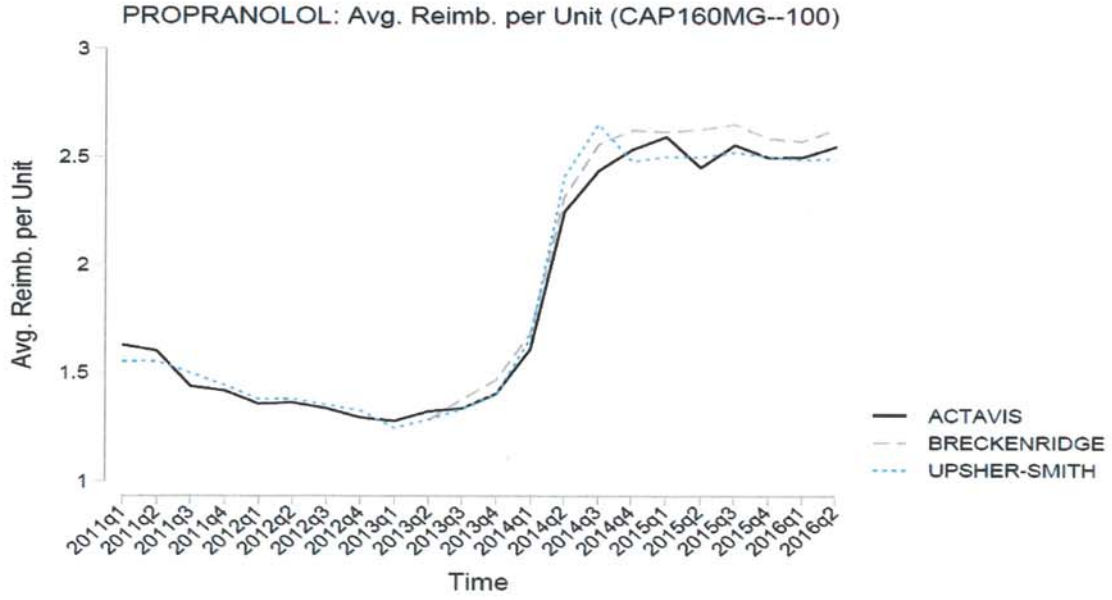
b. **80 mg Capsules – 100 Capsule Bottle**



c. **120 mg Capsules – 100 Capsule Bottle**



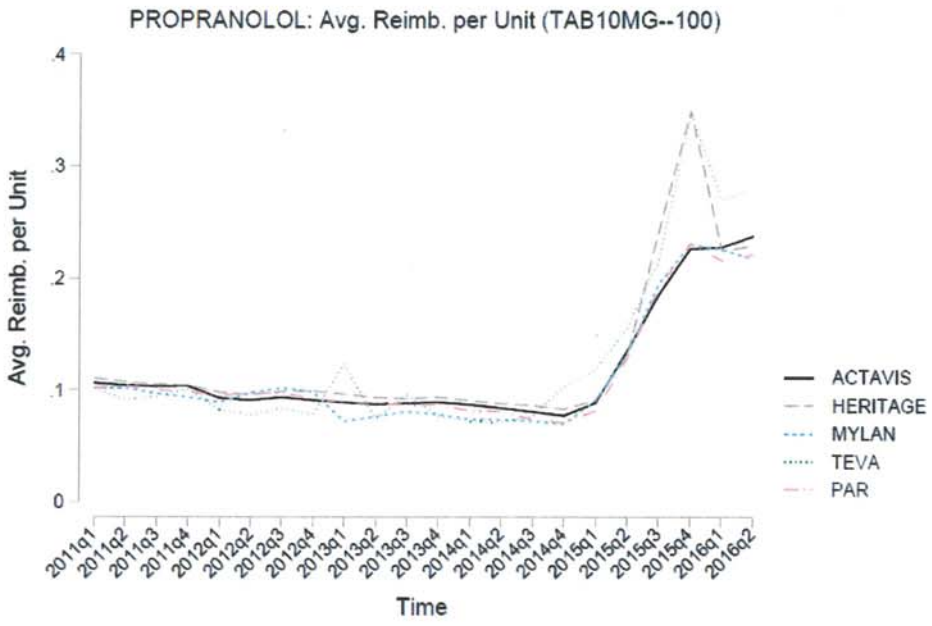
d. **160 mg Capsules – 100 Capsule Bottle**



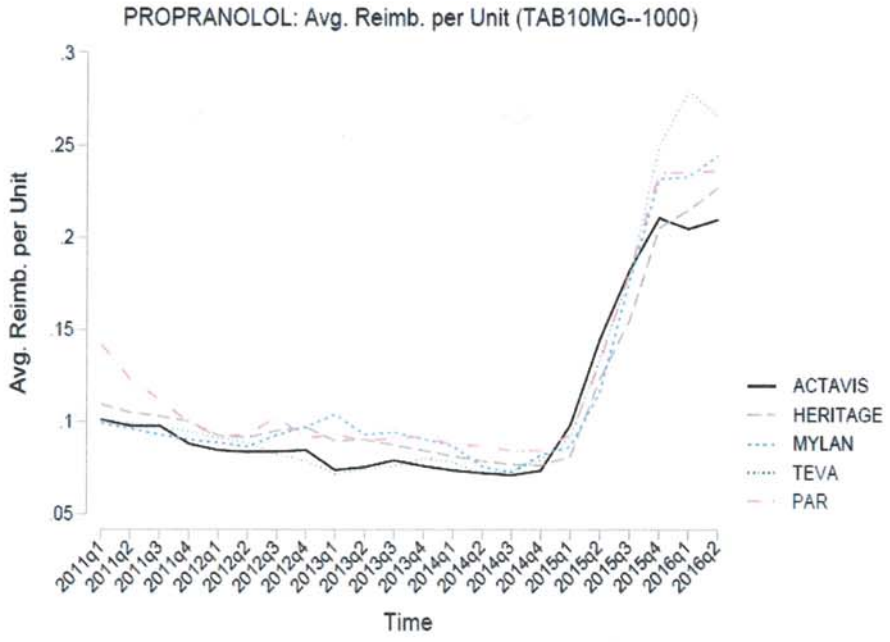
220. The following charts display the per-unit amounts that Medicaid has reimbursed for its beneficiaries' purchases of Defendants' propranolol tablets:

a. 10 mg Tablets

i. 100 Tablet Bottle

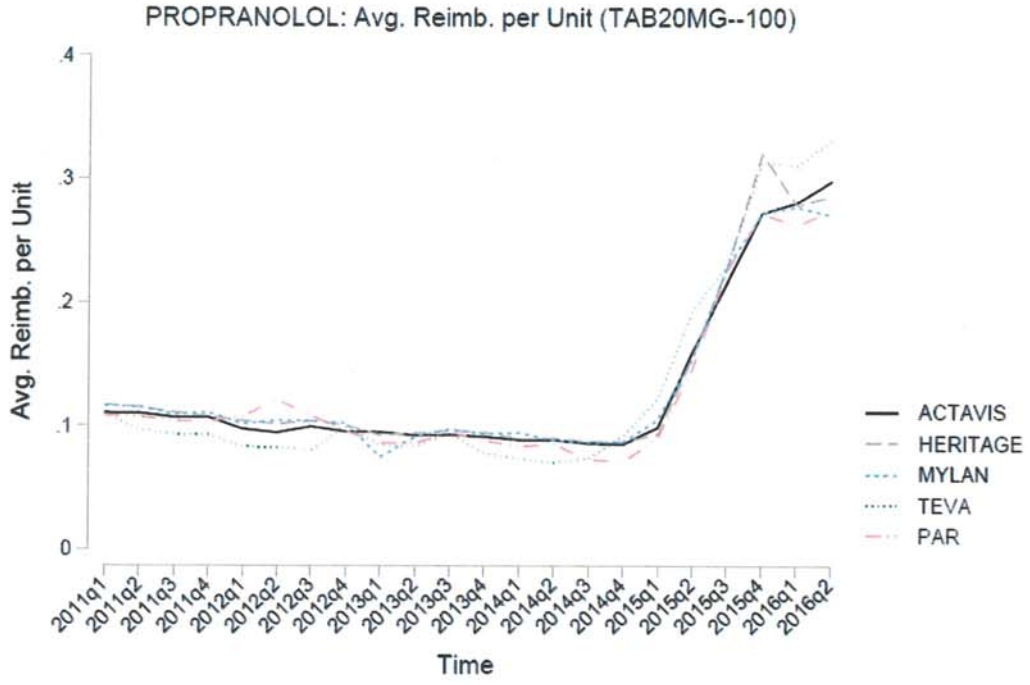


ii. 1000 Tablet Bottle

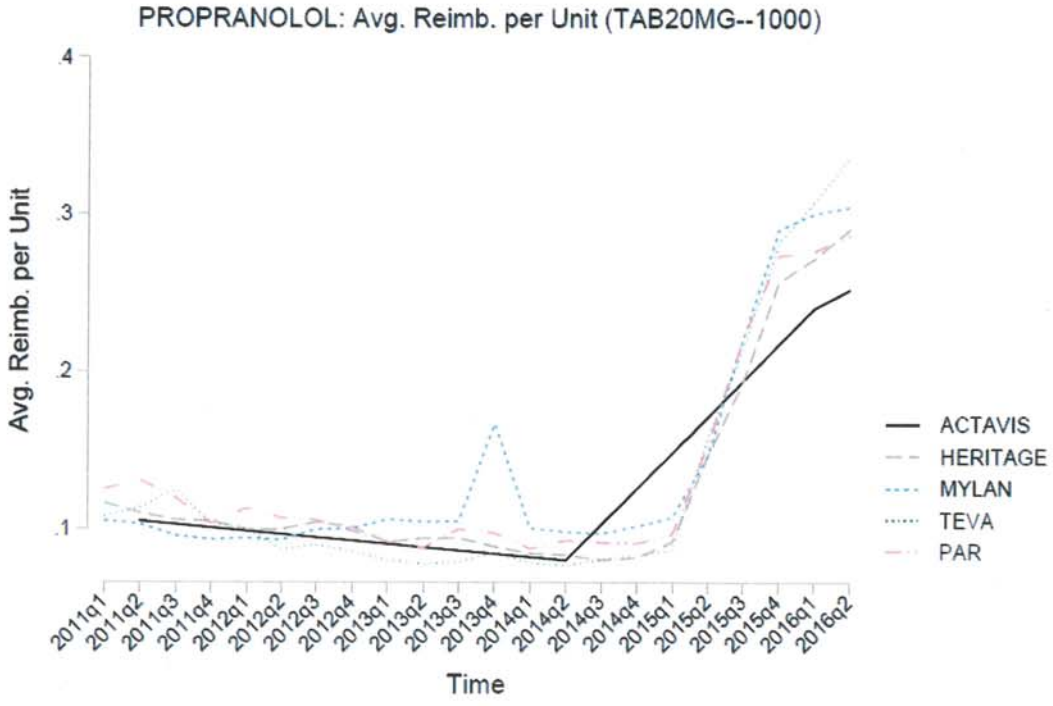


b. 20 mg Tablets

i. 100 Tablet Bottle

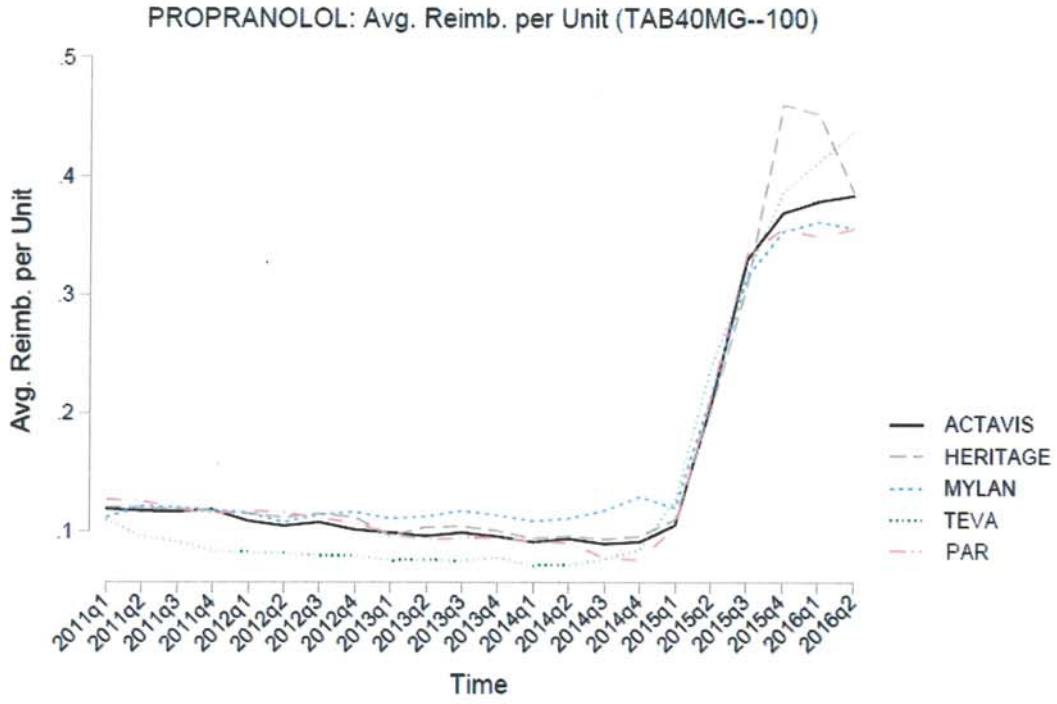


ii. 1000 Tablet Bottle

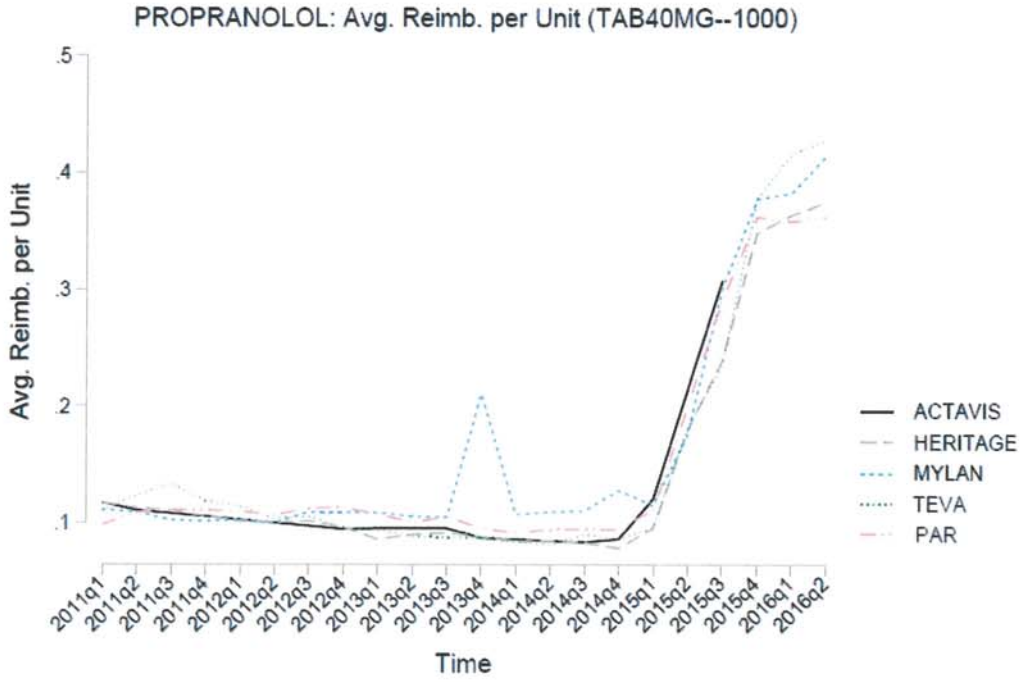


c. 40 mg Tablets

i. 100 Tablet Bottle

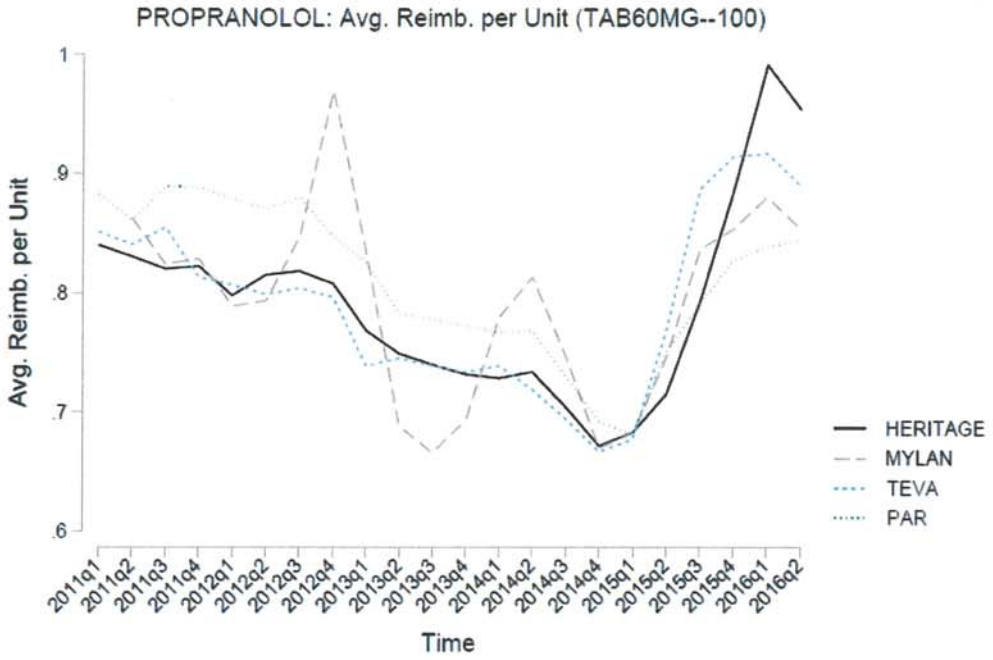


ii. 1000 Tablet Bottle



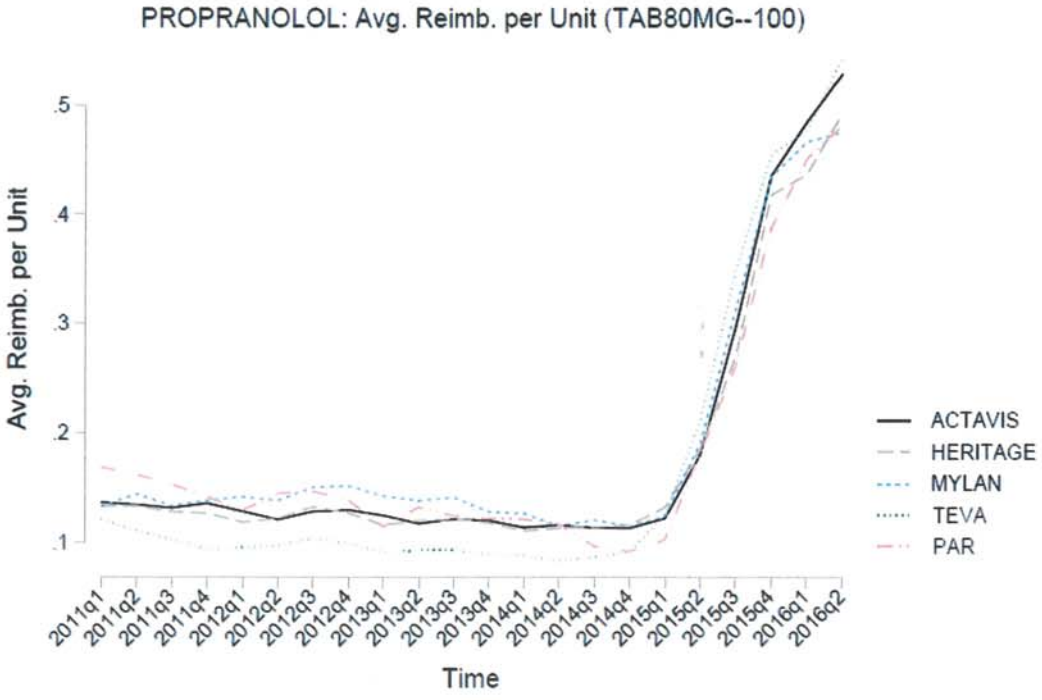
d. 60 mg Tablets

i. 100 Tablet Bottle

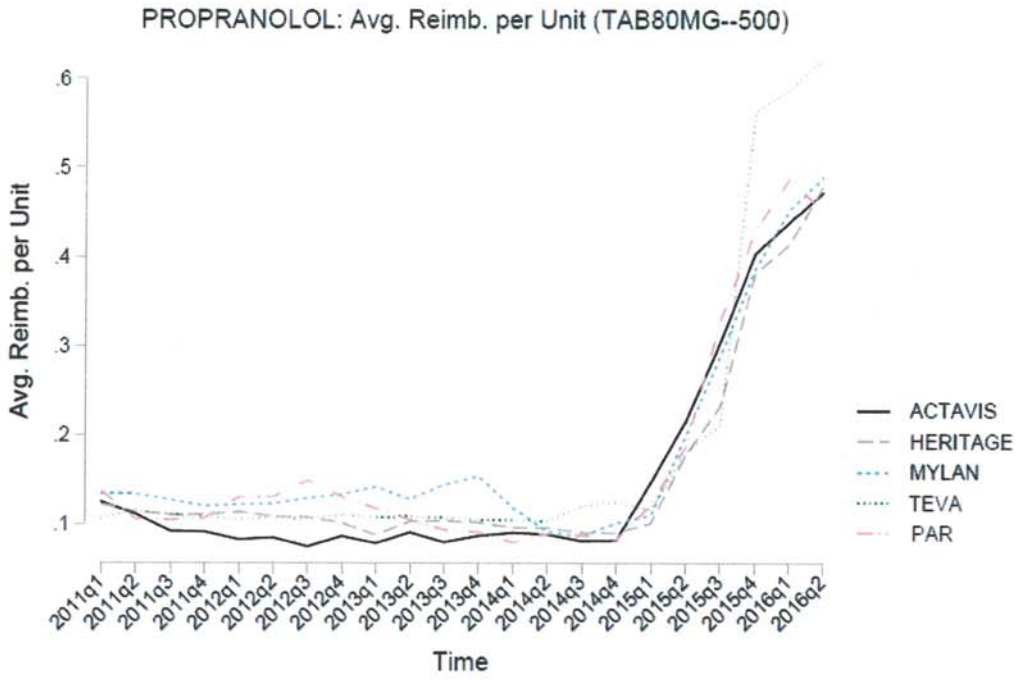


e. 80 mg Tablets

i. 100 Tablet Bottle



ii. 500 Tablet Bottle



4) Defendants' Price Increases Were Against Their Self-Interest

221. Defendants' price increases for propranolol capsules and tablets were against their economic self-interest. Propranolol is a commodity product. Therefore, absent a cartel, if any manufacturer increased the price of propranolol capsules or tablets, it would be expected that its competitors would not increase the price but would seek to sell more propranolol capsules or tablets to the first manufacturer's customers. Accordingly, it would not be in any manufacturer's unilateral self-interest to increase the price of the propranolol capsules or tablets it sold unless it had an agreement with the other manufacturers that they would do the same.

5) There Were No Shortages Reported to the FDA

222. There were no reported shortages of propranolol capsules that could account for Defendants' price increases.

223. Federal law requires drug manufacturers to report potential drug shortages to the FDA, the reasons therefor, and the expected duration of the shortage. No supply disruption was reported to the FDA by Defendants with respect to propranolol during the Class Periods.

224. Reports on the American Society of Health-System Pharmacists ("ASHP") Drug Shortage website about propranolol tablet availability during the latter part of the Propranolol Tablets Class Period are contradicted by IMS manufacturer units sales data, but even if the reports were validated, none supports Tablet Defendants' early 2015 price increases:

- Par (Qualitest) provided no notices of shortages.
- Mylan did not report shortages (or backorders) until October 2015 through March of 2016. Despite reports, Mylan's sales volume actually increased several fold in 2015 and 2016 in comparison to 2014.
- Teva "could not provide a reason for the shortage[s]" it reported of certain counts of its tablets beginning in July 2015 and through September of 2016. Despite the reports, Teva (now Impax) also increased its sales volume over the Propranolol Tablets Class Period.
- ASHP reported in July and October 2015 that Actavis had a shortage only of its 80 mg, 500 count tablets and like Teva, it could not "provide a reason for the shortage." Despite the report, Actavis actually sold more units of 80 mg tablets in 2015 than in 2014.
- In July 2015 Heritage reported a shortage across all dosages, citing "a raw materials issue"—which no other manufacturers reported, REDACTED REDACTED And in December 2015 through September 2016, ASHP reported that Heritage was not marketing propranolol tablets at that time. Despite "not marketing tablets" at this time, IMS unit sales data shows that after low volumes in late 2015

through mid-2016, Heritage's sales volume increased in June 2016 and held steady through November 2016.

VI. THE PROPRANOLOL MARKET IS HIGHLY SUSCEPTIBLE TO COLLUSION

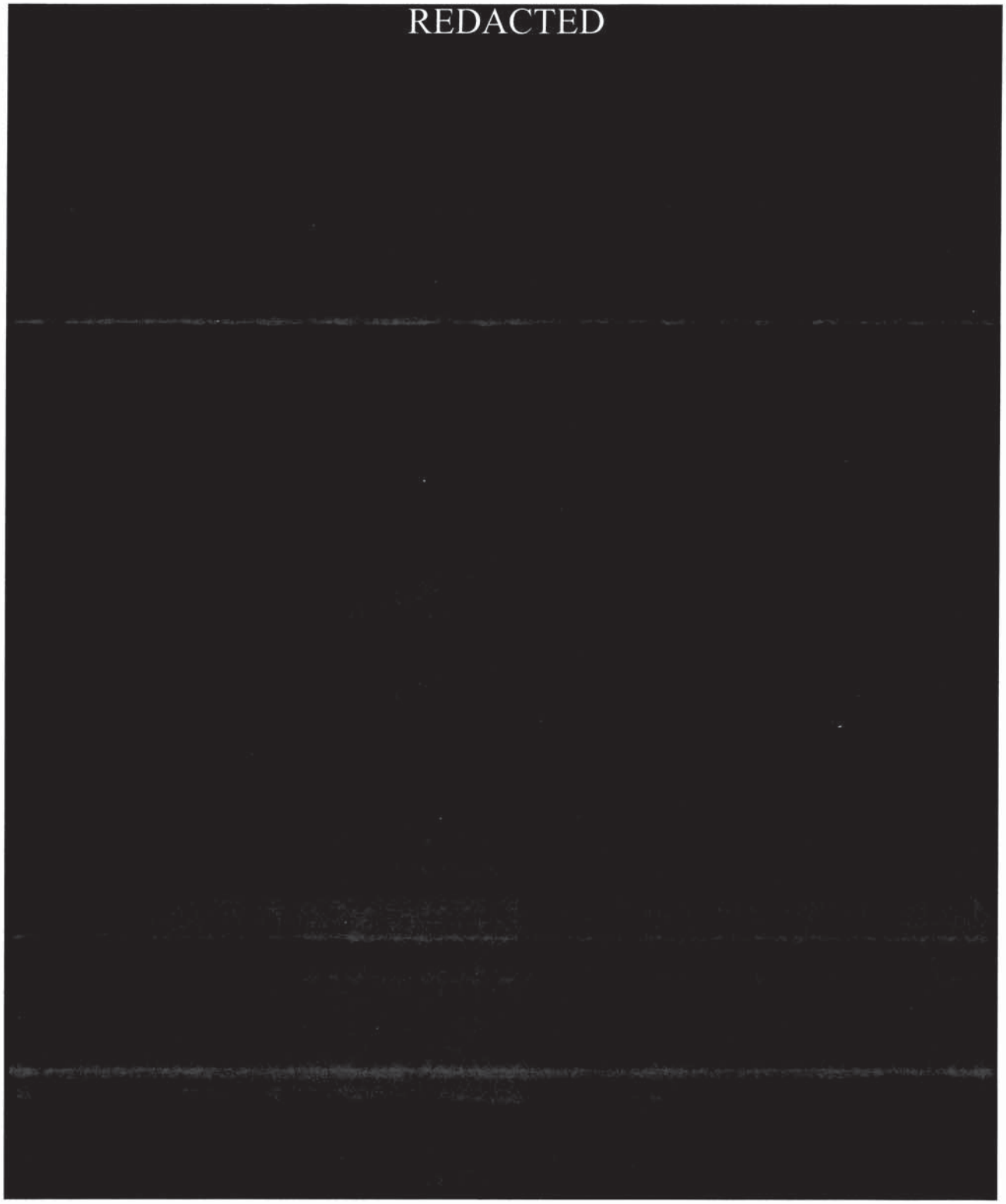
225. Because Defendants' anticompetitive conduct constitutes a conspiracy to fix prices that is a *per se* violation of Section 1 of the Sherman Antitrust Act, Plaintiffs do not need to define a relevant market for purposes of proving liability. However, there are features of the markets relevant to this case that show both (i) that these markets are susceptible to collusion and (ii) that the price increases and market allocations were in fact the result of collusion and not the result of conscious parallelism.

226. **High Degree of Industry Concentration**: A concentrated market is more susceptible to collusion and other anticompetitive practices. The propranolol market is highly concentrated and is dominated by a handful of companies. Therefore, elaborate communications, quick to be detected, would not have been necessary to enable pricing to be coordinated.

227. Each of the markets had a small number of competitors controlling a significant market share for propranolol tablets and capsules. In particular, REDACTED

REDACTED

REDACTED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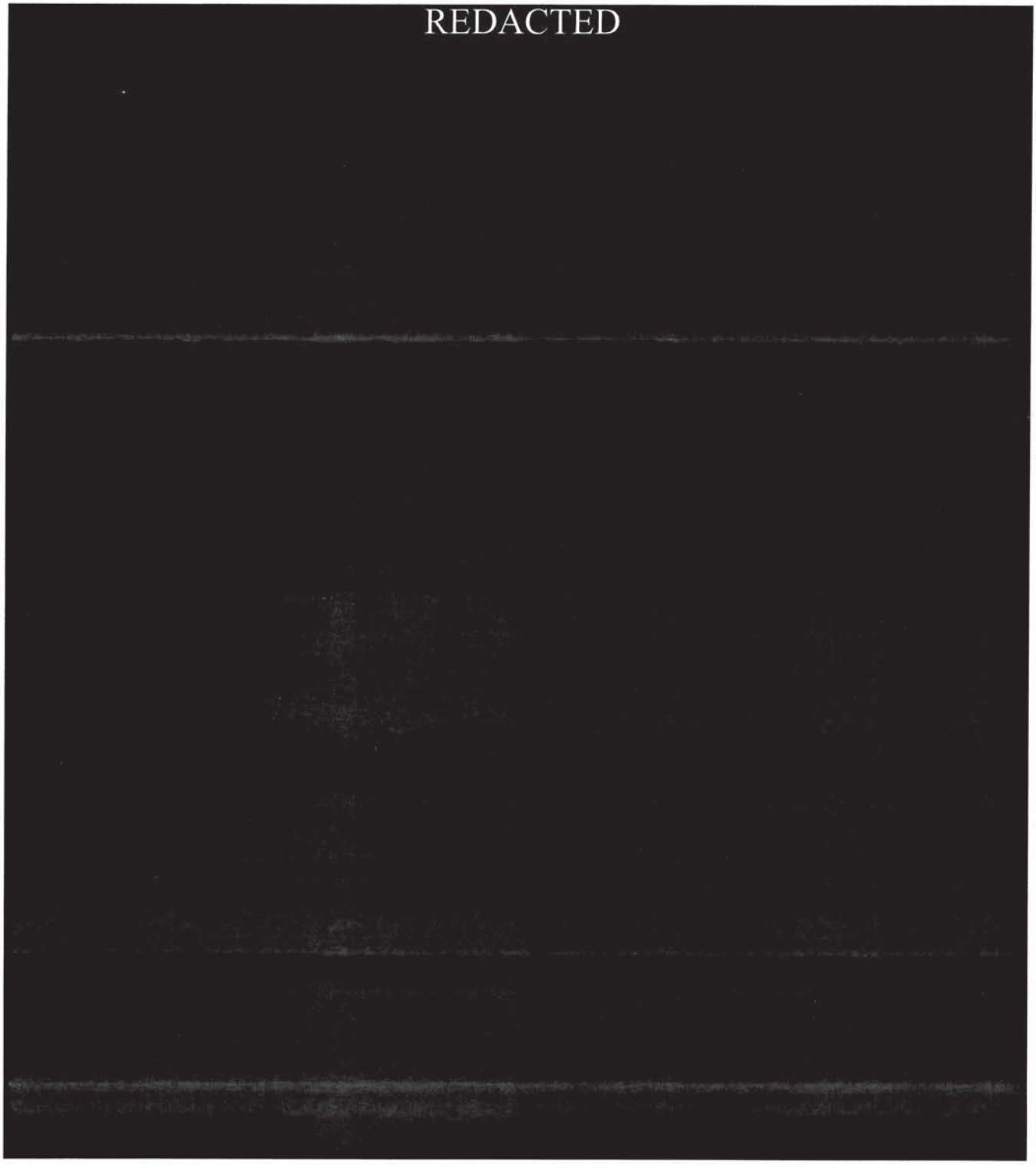

229. **High Barriers to Entry**: Costs of manufacture, intellectual property, and expenses related to regulatory oversight are barriers to entry. Barriers to entry increase a market's susceptibility to a coordinated effort to maintain supracompetitive prices because it is difficult for new suppliers to enter the market and destabilize coordinated supracompetitive prices.

230. As the dominant players in the propranolol market, Defendants were able to fix, raise, and maintain their prices for propranolol without competitive threats from rival generic drug manufacturers.

231. While each of the markets had a small enough number of competitors to foster collusion, the number of makers was large enough that – given decades of experience with competitive generic pricing, and accepted models of how generic companies vigorously compete on price – one would have expected prices to remain at their historical, near marginal cost.

232. REDACTED
REDACTED

233. With numbers of generic competitors such as this, historical fact and accepted economics teaches that – absent collusion – prices would remain at competitive levels.

234. **Lack of Substitutes**: Many patients are unable to substitute other medications for propranolol.

235. **Demand Inelasticity**: "Elasticity" is a term used to describe the sensitivity of supply and demand to changes in one or the other. For example, demand is said to be "inelastic" if an increase in the price of a product results in only a small decline, if any, in the quantity sold of that product. In other words, customers have nowhere to turn for alternative, cheaper products of similar quality, and so continue to purchase the product despite the price increase.

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

237. Demand for propranolol is highly inelastic because it is a unique product for which there is no reasonable substitute. Propranolol is a necessary treatment for millions of patients for which no substitutes are available. Propranolol is thus particularly susceptible to collusive price fixing as price increases will not result in such a loss of sales as to reduce profits, but instead will result in more profits for cartel members.

238. **High Degree of Interchangeability**: Propranolol capsules and tablets are commodity products. Therefore, Defendants' products are interchangeable, as they contain the same chemical compounds made from the same raw materials and are therapeutically equivalent. Thus, propranolol capsules and tablets are standardized across suppliers and are highly interchangeable from one defendant to the next.

239. This characteristic facilitates collusion because cartel members can more easily monitor and detect deviations from a price-fixing agreement. In addition, because these are commodity products, all Defendants had to raise prices for the cartel to work. Indeed, it was against a Defendant's individual economic interest to raise prices since the other Defendants could have priced below that Defendant's price and taken substantial market share.

240. **Opportunities for Contact and Communication Among Competitors**: Defendants are members of or attend meetings of several associations, and attend other industry events and meetings, which provide opportunities to communicate.

241. As alleged above, key executives for generic drug pricing and sales from Defendants' regularly attended meetings and industry events before and during the Class Periods. Indeed, the DOJ and various state attorneys' general are reportedly analyzing trade associations as a potential avenue for facilitating collusion between different generic drug manufacturers as part of their respective investigations into anticompetitive pricing and customer allocation agreements.

242. **Absence of Competitive Sellers**. Defendants have maintained supracompetitive pricing for propranolol capsules and tablets throughout the Class Periods. Thus, Defendants collectively have sufficient market power in the generic propranolol market to enable them to increase and maintain prices without losing significant market share.

243. **Size of the Price Increases:** The magnitude of the price increases alleged above in Paragraphs 153-212 differentiates them from mere parallel price increases. Oligopolists seeking to test price increases, where there is no significant change in supply or demand indicators, usually need to take measured approaches. But here the increases are not 5% or even 10% jumps – the increases are, in just one act, often double, triple or more the current price of the product. A rational oligopolist, when unaided with the certainty that its ostensible competitors would follow, would not make such huge price increases.

244. **Reimbursement of Generic Drugs:** The propranolol capsules and tablets markets, as with many generic drug markets, have institutional features that would inhibit non-collusive parallel price increases. The reimbursement for generic pharmaceuticals to retail pharmacies is limited by Maximum Allowable Cost, or MAC, pricing, which is based on the lowest acquisition cost for each generic pharmaceutical paid by retail pharmacies purchasing from a wholesaler for each of a pharmaceutical's generic equivalent versions.

245. As a result, the usual inhibitions of an oligopolist to unilaterally raise price are embedded in the generic reimbursement system. In the absence of coordinated pricing activity among generic manufacturers, an individual generic manufacturer cannot significantly increase its price without incurring the loss of a significant volume of sales. However, when one observes significant generic price increases – particularly those of the kind alleged here – then generic drug

makers likely had an expectation (based on their expectations of what their ostensible competitors would do) – they colluded.

246. **Recidivist Behavior:** At least one Defendant, Mylan, in the past has allegedly engaged in anticompetitive relating to its generic drug marketing and pricing.

247. In 1998, the Federal Trade Commission ("FTC") filed a complaint that alleged Mylan and others violated the Federal Trade Commission Act by agreeing to restrain trade and conspiring to monopolize the generic lorazepam market and the generic clorazepate market.

248. The Complaint alleged that alleged Mylan Laboratories, Inc., Cambrex Corporation, Profarmaco S.R.L., and Gyma Laboratories of America, Inc. carried out a plan intended to give Mylan the power to raise the price of generic lorazepam tablets and generic clorazepate tablets by depriving its competitors of the active pharmaceutical ingredient (API) necessary to manufacture each product.

249. The complaint alleges that in late 1997, the defendants entered into exclusive licenses that deprived Mylan's competitors of the API for lorazepam and clorazepate. Pursuant to those licenses, Mylan agreed to share the profits from its sales of lorazepam and clorazepate tablets with Cambrex, Profarmaco, and Gyma.

250. Without access to the API for lorazepam or clorazepate tablets, the Commission alleged, Mylan's competitors could not effectively compete for the sale of either product. Therefore, Mylan could and did raise prices approximately 2,000-3,000% depending on the bottle size and strength. For example, in January 1998, Mylan raised the wholesale price of clorazepate from $11.36 to $377.00 for a 500-count bottle of 7.5 mg tablets. In March 1998, Mylan raised the wholesale price of lorazepam from $7.30 to $190 for a 500-count bottle of 1 mg tablets.

251. The FTC's December 1998 complaint alleged that through its agreements with the other defendants, Mylan had earned an additional $120 million.

252. Thirty-two State Attorneys General, the District of Columbia and private plaintiffs filed parallel actions.

253. In November 2000, the FTC approved a $100 million settlement with Mylan and Mylan also agreed to the entry of an injunction barring similar unlawful conduct in the future.

VII. ABSENCE OF WORLDWIDE COST INCREASES; THERE WERE NO WORLDWIDE COST INCREASES THAT WOULD EXPLAIN DEFENDANTS' PRICE INCREASES FOR PROPRANOLOL CAPSULES AND TABLETS.THE DEFENDANTS ACTED AGAINST THEIR UNILATERAL SELF-INTEREST ABSENT A CARTEL

254. Propranolol is a commodity product. Therefore, absent a cartel, if any manufacturer increased the price of propranolol, it would be expected that its competitors would not increase the price but would seek to sell more propranolol to the first manufacturer's customers. Accordingly, it would not be in any manufacturer's unilateral self-interest to increase the price of the propranolol it sold unless it had an agreement with the other manufacturers that they would do the same.

255. During the Class Periods, there was no significant increase in the costs of making propranolol, no significant decrease in supply, and no significant increase in demand. Nonetheless, there were extraordinary increases by each of the Defendants in the prices they charged their customers for propranolol. Such price increases in a commodity product for which there were no significant increases in costs or demand and no significant decrease in supply would not have been in each Defendant's unilateral self-interest absent the existence of a cartel.

VIII. CLASS ACTION ALLEGATIONS

256. Pursuant to Federal Rules of Civil Procedure 23(a), (b)(2) and (b)(3), Plaintiffs bring this action on behalf of the following Classes:

a. All persons or entities that directly purchased propranolol capsules from Defendants in the United States and its territories and possessions at any time during the propranolol Capsules Class Period (November 13, 2013 to the present). Excluded from the Class are Defendants and their officers, directors, management, employees, subsidiaries, or affiliates, and all federal governmental entities; and

b. All persons or entities that directly purchased propranolol tablets from Defendants in the United States and its territories and possessions at any time during the propranolol Tablets Class Period (January 2015 to the present). Excluded from the Class are Defendants and their officers, directors, management, employees, subsidiaries, or affiliates, and all federal governmental entities.

257. Members of the Classes are so numerous that joinder is impracticable. Plaintiffs believe the Class Members are numerous and widely dispersed throughout the United States. Further, the Class is readily identifiable from information and records maintained by Defendants.

258. Plaintiffs' claims are typical of the claims of the members of the Classes. Plaintiffs' interests are not antagonistic to the claims of the other Class Members, and there are no material conflicts with any other member of the Classes that would make class certification inappropriate. Plaintiffs and all members of the Classes were damaged by the same wrongful conduct of Defendants.

259. Plaintiffs will fairly and adequately protect and represent the interests of the Classes. The interests of the Plaintiffs are coincident with, and not antagonistic to, those of the Classes.

260. Plaintiffs are represented by counsel who are experienced and competent in the prosecution of class action litigation, and who have particular experience with class action litigation involving alleged violations of antitrust law in the pharmaceutical industry.

261. Questions of law and fact common to the members of the Classes predominate over questions that may affect only individual Class Members because Defendants have acted on

grounds generally applicable to the entire Classes, thereby determining damages with respect to the Classes as a whole is appropriate. Such generally applicable conduct is inherent in Defendants' wrongful conduct.

262. The common legal and factual questions, which do not vary from Class Member to Class Member and which may be determined without reference to individual circumstances of any Class Member, include, but are not limited to, the following:

a. Whether Defendants and their co-conspirators engaged in a contract, combination, or conspiracy to eliminate competition and thereby artificially increase the prices of propranolol capsules and tablets in the United States;

b. The duration and extent of the alleged contract, combination, or conspiracy;

c. Whether Defendants and their co-conspirators were participants in the contract, combination, or conspiracy alleged herein;

d. The effect of the contract, combination, or conspiracy on the prices of propranolol capsules and tablets in the United States during the Class Period;

e. Whether Defendants' conduct caused supracompetitive prices for propranolol;

f. Whether, and to what extent, the conduct of Defendants and their co-conspirators caused injury to Plaintiffs and other members of the Classes; and

g. Whether the alleged contract, combination, or conspiracy violated Section 1 of the Sherman Act, 15 U.S.C. § 1.

263. Class action treatment is a superior method for the fair and efficient adjudication of the controversy. Such treatment will permit a large number of similarly situated persons or entities to prosecute their common claims in a single forum simultaneously, efficiently, and without the

unnecessary duplication of evidence, effort, or expense that numerous individual actions would engender. The benefits of proceeding through the class mechanism, including providing injured persons or entities a method for obtaining redress on claims that could not practicably be pursued individually, substantially outweighs potential difficulties in management of this class action.

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

IX. ANTITRUST INJURY

265. During the Class Periods, Plaintiffs and Class Members directly purchased propranolol from Defendants. As a result of the Defendants' anticompetitive conduct, Plaintiffs and Class Members paid more for propranolol than they would have and thus suffered substantial overcharges. This is a cognizable antitrust injury and constitutes harm to competition under the federal antitrust laws.

266. Because Defendants' unlawful conduct has successfully eliminated competition, Plaintiffs and Class Members have sustained, and Plaintiff CCI and Class Members continue to sustain, significant overcharges in the form of artificially inflated prices paid to Defendants. The full amount of such overcharges will be calculated after discovery and upon proof at trial.

267. Defendants' misconduct reduced competition in the sale of propranolol, reduced choice for purchasers, and caused injury to purchasers.

268. Defendants' anticompetitive conduct is ongoing, and as a result Plaintiffs and the Classes continue to pay supracompetitive prices for propranolol.

X. VIOLATION OF THE SHERMAN ACT § 1

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

270. Defendants' anticompetitive acts were intentional, were directed at the sales of propranolol in the United States, and had a substantial and foreseeable effect on interstate commerce by raising and fixing propranolol prices throughout the United States.

271. The contract, combination, or conspiracy had the following direct, substantial, and reasonably foreseeable effects upon commerce in the United States:

a. Prices charged to, and paid by, Plaintiffs for propranolol were artificially raised, fixed, maintained, or stabilized at supra-competitive levels;

b. Plaintiffs were deprived of the benefits of free, open, and unrestricted competition in the sale of propranolol in the United States market; and

c. Competition in establishing the prices paid for propranolol was unlawfully restrained, suppressed, or eliminated.

272. Defendants' and their co-conspirators' anticompetitive activities directly and proximately caused injury to Plaintiffs in the United States.

273. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs paid artificially inflated prices for propranolol.

274. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs were damaged in its business or property by paying prices for propranolol that were higher than they would have been but for Defendants' unlawful conduct, which has resulted in an amount of ascertainable overcharges to be established at trial.

DEMAND FOR RELIEF

WHEREFORE, Plaintiffs and Class Members respectfully demand the relief as set forth below:

A. Certification of the action as a Class Action pursuant to Federal Rule of Civil Procedure 23, and appointment of Plaintiffs as Class Representatives and their counsel of record as Class Counsel;

B. That acts alleged herein be adjudged and decreed to be unlawful restraints of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;

C. (Plaintiff CCI only) Permanent injunctive relief that enjoins Defendants from violating the antitrust laws and requires them to take affirmative steps to dissipate the effects of the violations;

D. A judgment against Defendants, jointly and severally, for the damages sustained by Plaintiffs and the Classes defined herein, and for any additional damages, penalties, and other monetary relief provided by applicable law, including treble damages;

E. By awarding Plaintiffs and Class Members pre-judgment and post-judgment interest as provided by law, and that such interest be awarded at the highest legal rate from and after the date of service of the Complaint in this action;

F. The costs of this suit, including reasonable attorney fees; and

G. Such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of itself and all others similarly situated, hereby request a jury trial, pursuant to Federal Rule of Civil Procedure 38, on any and all claims so triable.

Dated: March 3, 2017

Respectfully submitted,

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