

# EXHIBIT 1



(“CH200”) (collectively, “Cardinal”) and Owens & Minor, Inc. (“O&M, Inc.”) and Owens & Minor Distribution, Inc. (“O&M Distribution”) (collectively, “O&M” and together with Cardinal “Defendants”) pursuant to section 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15(a) and 26, to recover treble damages, equitable relief, costs of suit, and reasonable attorneys’ fees for Defendants’ violations of sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2, and Section 3 of the Clayton Act, 15 U.S.C. § 3. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337(a).

2. Venue is proper in this Court pursuant to section 12 of the Clayton Act, 15 U.S.C. § 22 because Defendants are found or transact business in this District and because a substantial part of the events giving rise to Plaintiff’s claims occurred in this District. Venue is also proper pursuant to 28 U.S.C. § 1391.

### **NATURE OF THE ACTION**

3. Plaintiff is a Pennsylvania non-profit corporation that operates two acute care hospitals in Pottsville, Pennsylvania. Plaintiff directly pays one or more Defendants for the distribution of sutures and endomechanical (“endo”) products (“sutures and endo distribution services”). Plaintiff brings this class action on behalf of itself and all other similarly situated acute care provider purchasers of sutures and endo distribution services from Defendants, challenging Defendants’ exclusionary and anticompetitive conduct.

4. Through the repeated and ongoing exclusionary and anticompetitive conduct alleged herein and described below, at all relevant times, Defendants have unlawfully maintained dominance in the U.S. market for sutures and endo distribution services, thereby artificially inflating the prices paid by Plaintiff and the members of the proposed class. Defendants employed unlawful means including, *inter alia*, a scheme to enforce exclusionary provisions of

its distribution contract provisions that impede and effectively preclude Plaintiff's and the class members' ability to purchase sutures and endo distribution services from Defendants' competitors. Defendants accomplish this effect by repeatedly implementing contractual provisions that impose substantial penalties on purchasers of sutures and endo distribution services if they buy even small quantities of such services from Defendants' competitors. The scheme injures purchasers by suppressing competition, preventing entry and expansion by rivals, imposing supracompetitive prices, and stifling innovation. As a result of Defendants' anticompetitive scheme, Plaintiff and the members of the proposed class have directly paid Defendants overcharges for sutures and endo distribution services.

### **PARTIES**

5. Plaintiff Schuylkill Health System is a Pennsylvania non-profit corporation with its principal place of business at 420 South Jackson Street, Pottsville, Pennsylvania 17901. Plaintiff operates multiple acute care hospitals. During the Class Period (defined *infra*) Plaintiff purchased sutures and endo distribution services directly from one or more of the Defendants and was damaged as a result of Defendants' unlawful conduct.

6. Defendant Cardinal Health, formed in 1979, is a corporation organized and existing under the laws of the State of Ohio with its principal place of business at 7000 Cardinal Place, Dublin, Ohio 43017. Cardinal's common stock is traded on the New York Stock Exchange under the symbol "CAH."

7. Cardinal Health's Medical segment develops, manufactures, sources and distributes medical, surgical and laboratory products including sutures and endo products. Cardinal's Medical segment operates over 50 medical-surgical distribution, assembly, manufacturing and research facilities. Cardinal serves customers in this District from a

distribution center in Swedesboro, New Jersey. According to Cardinal's most recent Annual Report, its Medical segment realized revenues in 2012 of over \$9.6 billion.

8. Defendant CH200 is a Delaware limited liability company which is wholly owned by Allegiance Corporation, a Delaware corporation. Allegiance Corporation is wholly owned by Cardinal Health. CH200 has a principal place of business at 1430 Waukegan Road, McGaw Park, Illinois 60085. CH200's registered agent is the Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. CH200 distributes Med-Surg (defined *infra*) supplies to hospitals and other acute care providers across the United States and Canada, including in this district.

9. Defendant O&M, founded in 1882, is a corporation organized and existing under the laws of Virginia, with its principal place of business at 9120 Lockwood Boulevard, Mechanicsville, Virginia 23116. O&M's common stock is traded on the New York Stock Exchange under the symbol "OMI." O&M serves customers in this District from a distribution center in Allentown, Pennsylvania.

10. As stated in its most recent Annual Report, O&M's "core" business is the "distribution of finished medical and surgical products." O&M reported net revenue of over \$8.6 billion for 2011.

11. Formed in 2001, Defendant O&M Distribution, is a Virginia corporation with its principal place of business at 9120 Lockwood Boulevard, Mechanicsville, Virginia 23116. O&M Distribution is a wholly-owned subsidiary of O&M Inc. O&M Distribution distributes Med-Surg products to hospitals and other acute care providers, including in this District.

**INTERSTATE TRADE AND COMMERCE**

12. The sutures and endo distribution services at issue in this action are sold in interstate commerce, and the unlawful activities alleged in this Complaint have occurred in, and have had a substantial effect upon, interstate commerce.

13. Throughout all of the Class Period, Defendants frequently transmitted funds, contracts, invoices, and/or other forms of business communications and transactions in a continuous and uninterrupted flow of commerce across state lines in connection with the relevant market.

14. Cardinal operates its medical-surgical distribution business from fifty medical-surgical distribution, assembly, manufacturing, and research operation facilities in forty-four states.

15. O&M operates its medical-surgical distribution business from forty-eight distribution centers nationwide.

**FACTUAL BACKGROUND**

***Medical and Surgical Supply Distribution***

16. Defendants O&M and Cardinal are the nation's largest sellers of distribution services for Medical and Surgical ("Med-Surg") products ("Med-Surg distribution services"). For acute care providers, O&M has a market share of 39 percent and Cardinal has an estimated 33 percent market share. Because of the substantial presence of Cardinal and O&M, the market for Med-Surg distribution services is highly concentrated, creating an environment susceptible to anticompetitive levels of price and output and collusion.

17. Collectively, Defendants control 72 percent of the Med-Surg distribution services market with respect to acute care providers like Plaintiff. Upon information and belief,

Defendants possess similar shares in the sutures and endo distribution services market with respect to acute care providers. Individually, and in unison, Defendants hold dominant market positions.

18. Distributors of Med-Surg products like Defendants acquire the products at bulk prices directly from manufacturers. Distributors take possession of the Med-Surg products and then resell the products to end-users like Plaintiff through proprietary distribution networks and distribution centers.

19. Distributors sell distribution services to buyers calculated as a percentage cost of the underlying product.

20. Acute care providers, like Plaintiff, require a wide range of Med-Surg products and procure Med-Surg products from one or more distributors rather than enter into costly and time-consuming arrangements with individual manufacturers.

21. Annually, acute care providers purchase approximately \$22 billion worth of Med-Surg products.

22. Over 88 percent of the volume sold by Med-Surg distributors comes from thirty product categories.

23. Domestic distribution services for Med-Surg products to acute care providers (exclusive of sutures and endo products) constitutes a relevant market. At all relevant times, Defendants had monopoly power in the market for distribution services for Med-Surg products (exclusive of sutures and endo products) to acute care providers.

24. Free from anticompetitive contracts and agreements, distributors would compete with each other to serve the Med-Surg distribution services needs of acute care providers.

*Sutures and Endomechanical Products*

25.     Sutures and endo products are two categories of Med-Surg products.
26.     Defendants' sutures and endo distribution services market shares are the same or substantially similar to their market shares for the overall Med-Surg distribution services market.
27.     Sutures are medical devices that hold body tissues together after surgery or injury.
28.     Endo products are devices used in minimally invasive surgeries such as laparoscopic surgery.
29.     According to data compiled by the Health Industry Distributors Association (HIDA), sutures and endo products make up approximately 10% of the Med-Surg products sold and distributed each year to acute care providers. The value of the distributed sutures and endo products is over \$2 billion annually.
30.     Acute care providers require distribution services for a large variety of sutures and endo products because many sutures and endo products are specific to particular medical and surgical applications. Different types of wounds, for example, require different types of sutures. Additionally, individual medical practitioners have individual preferences among particular sutures and endo products.
31.     Since acute care providers require a broad range of sutures and endo products, all else equal, acute care providers prefer distributors that reliably offer a large selection at a low price.
32.     Since 1998, a distributor named Suture Express, Inc. ("Suture Express") has competed against O&M and Cardinal by focusing on sutures and endo distribution services. Suture Express is a national Med-Surg distributor to acute care providers specializing in two Med-Surg product categories—sutures and endo products. By specializing, Suture Express is

able to offer acute care providers superior service, lower distribution prices, faster and more efficient delivery and more comprehensive product line.

33. Entry by a distributor offering distribution services along one or two product lines is more feasible than entry across all Med-Surg products. Defendants' scheme is aimed at forcing entrants to compete simultaneously across the distribution of all Med-Surg products, which raises competitors' costs and barriers to entry.

34. From 1998 through 2008, Suture Express experienced significant growth in revenues and profitability by competing with Defendants to meet the suture and endo distribution services needs of acute care providers.

35. Suture Express succeeded by distinguishing itself from Defendants by offering a superior distribution services that includes (1) the largest selection of sutures and endo products; (2) superior delivery service; (3) lower distribution prices; (4) higher order fill rates; and (5) no additional handling or restocking fees.

36. It was only after Suture Express's entry into and success within the sutures and endo distribution services market that Defendants implemented their exclusionary and anticompetitive scheme. The scheme resulted in substantial foreclosure and reduced Suture Express' market share.

#### **RELEVANT MARKET AND MONOPOLY POWER**

37. To the extent that Plaintiff is legally required to prove monopoly power circumstantially by first defining a relevant product market, Plaintiff alleges that three product markets are potentially relevant to Plaintiff's antitrust claims: (1) distribution services for Med-Surg products (exclusive of sutures and endo distribution services) to acute care providers; (2)

distribution services for sutures to acute care providers; and (3) distribution services for endo products to acute care providers.

38. Defendants have monopoly power in the Med-Surg distribution services market (exclusive of sutures and endo distribution services) to acute care providers and the sutures and endo distribution services markets to acute care providers.

39. The relevant geographic market is the United States. Distributors of Med-Surg products sell distribution services throughout the United States. Med-Surg distribution services are priced by distributors on a national level.

40. There are no reasonably interchangeable substitutes for sutures and endo distribution services to acute care providers. Accordingly, there is not a high positive cross-elasticity of demand among distribution services for sutures and endo products and other products or services.

41. At all relevant times, Defendants have been able to profitably charge supracompetitive prices for sutures and endo distribution services—without losing substantial sales—due to their monopoly power and exclusionary conduct.

42. Defendants could sustain a small but significant, non-transitory price increase above competitive levels on its distribution services for sutures and endo products without causing so significant a loss of sales as to make that artificial price inflation unprofitable.

43. In each of the aforementioned product markets, barriers to entry—including high fixed costs, high risk of failure in the business development process, and difficult regulatory hurdles—render the entry of new distribution services competitors difficult. Providing Med-Surg distribution services requires substantial investment in a distribution network and regulatory compliance. Thus, there are very rarely new Med-Surg distributors.

44. As reported by one of the Defendants, the “medical/surgical supply distribution industry is subject to regulation by federal, state and local government agencies.” Intense regulation constitutes a barrier to entry to the relevant markets, as entrants must assure compliance with laws and regulations “governing operating, storage, transportation, safety and security standards,” as well as the procurement of the licenses necessary to market distribution services for Med-Surg products.

45. Economies of scale are a barrier to entry to the relevant markets, as entrants into the relevant markets are handicapped by the bundling practices employed by Cardinal and O&M, the only major nationwide entities that offer distribution services for the full line of Med-Surg products to acute care providers.

46. Acute care providers need to purchase sutures and endo distribution services for a wide variety of products. The majority of acute care providers do this by contracting with Defendants. A minority of acute care providers use competitors to Defendants as their primary sutures and endo products distributor. Purchasers are increasingly unable to use competitors to Defendants as a primary distributor of sutures and endo products because: (1) there are exclusive distribution contracts between acute care providers and Defendants; and (2) Defendants have acted in concert to implement similar exclusionary distribution contracts.

47. There are very few sutures and endo product distributors and Med-Surg product distributors operating in the United States. Since 2004, the number of such distributors has declined. Other than Defendants, distributors of sutures and endo products are relegated to a small share of the market in large part because of the conduct alleged herein.

48. Defendants have used (and continue to use) their monopoly power and collusion with respect to distribution services for sutures and endo products to artificially preserve

monopoly power in the relevant markets. Defendants have maintained supracompetitive prices for sutures and endo distribution services notwithstanding other distributors entry, or attempted entry, to the relevant markets.

### **DEFENDANTS' ANTICOMPETITIVE CONDUCT**

49. As discussed above, the Med-Surg distribution services market is characterized by high fixed costs for entry, risk of failure, and regulatory hurdles.

50. While over 88 percent of the volume sold by Med-Surg distributors comes from thirty product categories, the exclusionary and anticompetitive behavior at issue asserted by Plaintiff applies to two Med-Surg product categories: sutures and endo products.

51. Faced with competition from a distributor like Suture Express that offered customers superior distribution services at a lower price, Defendants deployed exclusionary and anticompetitive practices leveraging their power in the Med-Surg distribution services market (exclusive of sutures and endo distribution services). Defendants have entered into exclusionary contracts with acute care providers that penalize those that purchase sutures and endo distribution services from rivals.

52. Defendants' anticompetitive practices began no later than 2008.

53. Defendants' exclusionary scheme also involves Defendants' efforts to enforce the exclusionary provisions of its contracts in order to punish buyers who defect to purchase even small quantities of sutures and endo products from Defendants' rivals.

54. Defendants have entered into exclusionary contracts with at least a majority of acute care providers, covering a majority of private sector purchasers; these contracts penalize the acute care providers for buying distribution services for sutures and endo products from Defendants' rivals through the use of unlawful bundling provisions.

55. Defendants' exclusionary contracts are "contracts that reference rivals," or "CRRs" because the price paid by a customer depends on whether the customer buys from the Defendants' competitor. In 2012, a senior official of the Antitrust Division of the Department of Justice explained that "CRRs have the potential to harm consumers and competition, particularly—but not always—when they involve firms with market power." *See* Fiona Scott-Morton, *Contracts That Reference Rivals*, Speech at Georgetown University Law Center (Apr. 5, 2012) (transcript available at <http://www.justice.gov/atr/public/speeches/281965.pdf>), at 3.

56. Defendants unlawfully bundle sutures and endo distribution services with Med-Surg distribution services (exclusive of sutures and endo products). Defendants' distribution contracts provide that if an acute care provider wants to purchase Med-Surg products excluding sutures and endo products, the customer will be forced to pay a penalty in the form of an enhanced distribution fee on the remainder of the Med-Surg basket, which encompasses some twenty-eight product categories exclusive of sutures and endo products.

57. An acute care provider that does not purchase its sutures and endo product requirements from Defendants is forced to pay a distribution services penalty on the full range of Med-Surg products purchased from Defendants. The distribution services penalty ranges from 1 percent to 5 percent of the price of the full range of Med-Surg products.

58. The distribution services penalty is economically prohibitive because the savings an acute care provider realizes by purchasing distribution services for sutures and endo products from Defendants' rival are overwhelmed by the distribution services penalty the acute care provider must pay on the other twenty-eight categories of Med-Surg products.

59. Defendants are aware that this bundling blocks actual and potential competitors' ability to compete fairly because—through the bundled distribution services pricing—a

purchaser who buys from a competitor not only pays a steep distribution services penalty on all of the sutures and endo products that she buys, but also pays a distribution services penalty to Defendants on all other purchased *unrelated* Med-Surg products. There is no way that a competitor like Suture Express, that specializes in sutures and endo products, can compensate an acute care provider to make up for Defendants' distribution services penalties on these other Med-Surg products. In this respect, an equally efficient (or more efficient) provider of sutures and endo distribution services is precluded from the marketplace as a result of Defendants' anticompetitive bundling practices.

60. On information and belief, Defendants' costs of goods sold for sutures and endo distribution services ranges from 90.5% to 94% of sales; Defendants' additional costs attributable to the distribution of sutures and endo products ranges from 2% to 7%.

61. To employ their scheme, Defendants monitor class members' purchases.

62. Thus, if an acute care provider bought more than 10% of its requirements for sutures and endo products from a competitor of Defendants, then it would pay a stiff distribution services penalty on all of the Med-Surg products in Defendants' bundle. In effect, through the bundled pricing scheme, Defendants are able to raise the price of buying their competitors' sutures and endo distribution services.

63. Defendants often conceal the exclusionary distribution services penalty scheme as a discount program. Defendants market a bundle of Med-Surg products that include sutures and endo products with a so-called discounted distribution services fee. The discount is lost when a customer removes sutures and endo products from the bundle.

64. The contracts do not exempt purchases from distributors that do not offer a full line of Med-Surg products from discount calculations.

65. Defendants have leveraged their size, monopoly power, market dominance, and the breadth of their product lines to impose anticompetitive agreements upon acute care providers. The exclusionary scheme has substantially foreclosed competitors from increasing their market shares and has blocked new entry or expansion into the relevant markets.

66. The exclusionary and anticompetitive schemes employed by Defendants are strikingly similar to each other and functionally identical.

67. Defendants have employed their scheme in unison and at or about the same time, the effect of which is that Defendants do not compete with each other for sutures and endo distribution services. If either Defendant wanted to compete to gain market share, it would remove the bundling penalties in its agreements with acute care providers.

68. Defendants' unified front against distributors that focus on sutures and endo products defies the logic of independent economic actors. For example, following Cardinal's imposition of contractual penalties against acute care providers that "break the bundle" and purchase sutures and endo distribution services from a rival, if O&M was acting independently, it would offer the products without penalty to increase its market share. Instead, O&M offers the same contractual terms as its supposed competitor, Cardinal.

69. Cardinal and O&M are both members of the Health Industry Distributors Association ("HIDA"), a trade association representing medical products distributors that provides its members with "access to unsurpassed networking opportunities."

70. Providing opportunities for Defendants to collude, every year, HIDA hosts a number of annual conferences covering various subjects. Among these annual conferences is the "Streamlining Healthcare Conference," formerly known as the "MedSurg Conference and Expo" ("HIDA's Med-Surg Conference").

71. Representatives from Cardinal and O&M routinely attend HIDA's Med-Surg Conference; most recently, five representatives from Cardinal spoke at the 2012 conference. Both companies are slated to attend the 2013 conference in Washington, D.C.

72. In September of 2007, HIDA's Med-Surg Conference was held in Boston, Massachusetts.

73. In October of 2008, HIDA's Med-Surg Conference was held in Chicago, Illinois.

74. In September of 2009, HIDA's Med-Surg Conference was held in Washington, D.C.

75. In October of 2011, HIDA's Med-Surg Conference was held in Charlotte, North Carolina.

76. In October of 2012, HIDA's Med-Surg Conference was held in Chicago, Illinois.

77. The Med-Surg distribution industry is highly concentrated between Cardinal and O&M. A high degree of concentration facilitates the operation of an agreement in restraint of trade or to allocate markets because an agreement with fewer participants is easier to coordinate.

78. Since 2004, the number of firms operating within the acute care medical surgical supply distribution industry has declined, as Cardinal and O&M acquire their competitors.

79. For example, in September of 2006, O&M acquired McKesson Medical Surgical Solutions, its only major nationwide competitor besides its co-conspirator Cardinal.

80. Most recently, in February of 2013, Cardinal acquired medical supply distributor AssuraMed for just over \$2 billion.

81. As reported by O&M, the only remaining major nationwide distributors in the acute care medical surgical supply distribution industry are Cardinal and O&M, and the only

remaining smaller nationwide distributor is Medline, Inc., with the remainder of the market composed solely of small regional and local distributors.

82. As such, co-conspirators O&M and Cardinal do not compete with any major nationwide distributors in the acute care medical surgical supply distribution industry.

83. Any purported legitimate business justifications for Defendants' anticompetitive practices are mere pretexts.

84. In September of 2012, Cardinal received a civil investigative demand from the Department of Justice under the Federal False Claims Act requiring the production of documents relating to the structures of discounts offered or provided to Cardinal's customers.

**DEFENDANTS HAVE WILLFULLY MAINTAINED AND EXPANDED  
THEIR MONOPOLY POWER IN THE SUTURES AND ENDO  
PRODUCTS DISTRIBUTION SERVICES MARKETS THROUGH THE USE OF AN  
ANTICOMPETITIVE EXCLUSIONARY CONTRACTING SCHEME**

85. The exclusionary penalties, discounts and contracts that Defendants have imposed have had the purpose and effect of foreclosing actual or potential competitors' ability to compete fairly in the sutures and endo distribution services market. It does so by making equally efficient rival distributors in the tied market (i.e., sutures and endo distribution services) operate below cost to making it economically attractive to break Defendants' bundle. Defendants' exclusionary scheme requires Plaintiff and the proposed class members to buy Defendants' sutures and endo distribution services to the near total exclusion of Defendants' competitors.

86. Defendants' scheme has made the cost of buying sutures and endo distribution services from competitors like Suture Express prohibitively expensive, and has effectively precluded Suture Express and other actual or potential competitors' ability to compete fairly for market share. Defendants' practices have excluded and unreasonably impaired actual and potential rival providers of sutures and endo distribution services.

87. The healthcare industry is under substantial pressure to impose cost containment. Accordingly, penalty fees such as those imposed by Defendants can effectively prohibit customer choice in the sutures and endo distribution services market.

88. Defendants have been able to maintain their market share and monopoly power in the sutures and endo distribution services market.

89. Rival distributors have no efficient or reasonably effective means of combating Defendants' anticompetitive and exclusionary conduct.

90. The overall effect of Defendants' anticompetitive and exclusionary scheme has been to substantially foreclose and impair competition (and the threat of such competition) from lower-priced and/or superior quality providers of sutures and endo distribution services. Defendants have monopoly power in the Med-Surg distribution service market. Defendants have used the pricing and supply of the full range of Med-Surg products to preserve and extend their monopoly power in the sutures and endo distribution services market.

91. As a result of Defendants' exclusionary contracting scheme, the aggregate penalty that a purchaser pays for buying distribution services from competitors like Suture Express is so large that if that purchaser subtracts that penalty from the overall price of the sutures and endo products, the resulting price would be below Defendants' competitors' average variable costs. An equally efficient distributor of sutures and endo products would have to distribute sutures and endo products at a loss due to Defendants' scheme. This is because equally efficient (or superior) competitors to Defendants need to compensate the buyer for all the distribution price penalties that the buyer would incur (on multiple Med-Surg products) for breaking Defendants' exclusivity and buying that rival's sutures and endo distribution services. Because the scheme raises rivals' costs, Defendants may charge higher prices than they could without the scheme.

And to the extent the scheme prevents single- or dual-product distribution rivals such as Suture Express from evolving into full-line distribution competitors, the scheme likely inflates the prices of all Med-Surg products.

92. The penalty price imposed on the distribution of Med-Surg products other than sutures and endo products exceeds the price that would be charged by a monopoly provider of such services.

93. Defendants' anticompetitive and exclusionary scheme has had a direct and substantial adverse effect on competition by enhancing Defendants' monopoly power in the sutures and endo distribution services market, artificially creating barriers to entry in the relevant markets, foreclosing competition, and stifling innovation.

94. Absent Defendants' exclusionary and anticompetitive conduct, Defendants' rivals such as Suture Express would be able to sell sutures and endo distribution services for less than class members, such as Plaintiff, presently pay to one or more of the Defendants.

95. Absent Defendants' exclusionary and anticompetitive conduct, barriers to entry to the sutures and endo distribution services market would have been lower, which would have made it easier for existing or new competitors to enter or expand their positions.

96. Defendants' abuses of monopoly power have harmed Plaintiff and other direct purchasers of distribution services by causing them to pay prices for sutures and endo distribution services that have been and continue to be higher than the prices that would have prevailed in a competitive market.

97. The presence of unfettered competition from actual or potential competitors would have forced Defendants to lower the price of sutures and endo distribution services to remain competitive and/or to counter a perceived risk of additional entry. Moreover, customers

would have been able to purchase sutures and endo distribution services from Defendants' competitors at a lower price.

98. Thus, Plaintiff and similarly situated direct purchasers that purchased sutures and endo distribution services directly from Defendants have been overcharged due to Defendants' scheme.

### **CLASS ACTION ALLEGATIONS**

99. Plaintiff brings this action on behalf of itself and all others similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure as representatives of a class (the "Class") defined as follows:

Acute care providers in the United States and its territories that purchased sutures and endo distribution services from O&M and/or Cardinal or any of Defendants' divisions, subsidiaries, predecessors, or affiliates during the period from December 18, 2008 through such time as the effects of Defendants' illegal conduct have ceased (the "Class Period"), and excluding federal government entities, Defendants, and Defendants' divisions, subsidiaries, predecessors, and affiliates.

100. On information and belief, hundreds or thousands of acute care providers in the United States have purchased sutures and endo distribution services directly from Defendants. Thus, the Class is so numerous that joinder is impracticable.

101. Plaintiff's claims are typical of those of the Class.

102. Plaintiff and all members of the Class were injured in the form of overcharges by the same conduct of the Defendant.

103. Plaintiff will fairly and adequately protect and represent the interests of the Class. The interests of the Plaintiff are not antagonistic to the Class.

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

105. Questions of law and fact common to the members of the Class predominate over questions, if any, that may affect only individual members because Defendants have acted and refused to act on grounds generally applicable to the entire Class. Such generally applicable conduct is inherent in Defendants' exclusionary and anticompetitive conduct in monopolizing and attempting to monopolize the sutures and endo distribution services market, as more fully alleged herein.

106. Questions of law and fact common to the Class include:

- a. whether Defendants intentionally and unlawfully impaired or impeded competitors in the sutures and endo distribution services markets;
- b. whether Defendants possessed, maintained or enhanced monopoly power in relevant markets;
- c. whether Defendants engaged in anticompetitive conduct in order to unlawfully disadvantage their competitors and maintain their monopoly power in the relevant markets;
- d. whether the geographic market for Med-Surg, sutures and endo distribution services is the United States;
- e. whether the relevant markets applicable to this case are distribution services for Med-Surg products (exclusive of sutures and endo) to acute care providers; distribution services for sutures to acute care providers; and distribution services for endo products to acute care providers;
- f. whether Defendants' scheme caused an equally efficient rival to price its distribution services for sutures and endo products below its costs to make an acute care provider whole;

- g. whether Defendants had procompetitive reasons for their conduct, and whether the procompetitive effects of their conduct, if any, outweigh any anticompetitive effects;
- h. the effects of Defendants' maintenance or enhancement of monopoly power on prices for sutures and endo distribution services;
- i. whether Plaintiff and other members of the Class have been overcharged and thus damaged by paying artificially inflated prices for sutures and endo distribution services as a result of Defendants' unlawful behavior; and
- j. the proper measure of damages.

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

108. Plaintiff knows of no difficulty to be encountered in the maintenance of this action as a class action.

**FIRST CAUSE OF ACTION**  
**Monopolization of the**  
**Sutures and Endo Product Market (15 U.S.C. § 2)**

109. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 108 above.

110. At all relevant times, Defendants have had monopoly power in the sutures and endo distribution services markets.

111. Defendants have possessed monopoly power in distribution services for Med-Surg products (exclusive of suture and endo) to acute care providers, and they willfully maintained their monopoly power in the sutures and endo distribution services markets through exclusionary and anticompetitive means. As described in more detail above, Defendants imposed exclusive contractual terms that are difficult to terminate on purchasers of sutures and endo distribution services that severely penalized customers from buying more than a modest amount of distribution services for sutures and endo products from rivals. At least since 2008, Defendants' exclusionary contracts have unfairly impaired the ability of rivals to compete for market share, and thereby preserved Defendants' monopoly power in the sutures and endo distribution services markets. By engaging in this conduct, Defendants have gained an artificial competitive advantage from its monopoly power and broad list of product offerings, instead of its lower price or superior quality, and unfairly impeded and impaired competitors in sutures and endo distribution services markets. The purpose and effect of Defendants' conduct have been to suppress rather than promote competition on the merits.

112. By suppressing competition and maintaining monopoly power, Defendants were able to artificially inflate the price of sutures and endo distribution services above levels that would have been obtained in a world in which Defendants did not engage in the anticompetitive

conduct alleged herein. Instead of lowering prices to meet a new rival, Defendants' anticompetitive and exclusionary conduct allowed it to sell sutures and endo distribution services at supracompetitive prices. Accordingly, the challenged conduct caused Plaintiff and members of the proposed class to pay artificially inflated prices for sutures and endo distribution services.

113. In the alternative, each Defendant's conduct is an attempt by each to monopolize these markets; Defendants' conduct is undertaken with the specific intent to exclude competitors and monopolize the sutures and endo distribution services market with respect to acute care providers. Each has sufficient market power to create a dangerous probability of success of monopolizing this market.

114. There is no procompetitive justification for Defendants' conduct.

115. Plaintiff has been injured in its businesses and property by reason of Defendants' unlawful monopolization. Plaintiff's injury consists of paying higher prices to purchase distribution services than it would have paid absent Defendants' conduct. Plaintiff's injury is of the type the antitrust laws were designed to prevent and flow from that which makes Defendants' conduct unlawful.

**SECOND CAUSE OF ACTION**  
**Anticompetitive Agreements in Restraint of Trade (15 U.S.C. § 1)**

116. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 115 above.

117. As set forth above, Defendants have used the size and breadth of product categories and monopoly power over distribution services for Med-Surg products, to preserve and extend market share in the sutures and endo distribution services markets. Defendants entered into agreements that included written exclusionary non-easily terminable agreements in

unreasonable restraint of trade, which included various exclusionary contractual terms.

Defendants have enforced these exclusionary agreements by imposing penalties.

118. In particular, because of Defendants' scheme an equally efficient competitor would have to sell rival distribution services at a loss to compete.

119. As alleged above, there was no legitimate business justification for these agreements and these agreements: (a) substantially foreclosed and excluded competition from other relevant sutures and endo products distributors; and (b) resulted in Defendants' willful maintenance and unlawful exercise of market power in the relevant markets.

120. At all relevant times, Defendants' exclusionary agreements assisted Defendants in: (a) effectively excluding less expensive, superior competitive distribution services from the relevant markets; (b) maintaining Defendants' dominant market share and monopoly power in the relevant markets; (c) maintaining prices at artificially high levels for sutures and endo distribution services; and (d) otherwise reaping the benefits of its illegal monopoly power.

121. There is no procompetitive justification for Defendants' conduct.

122. Plaintiff has been injured in its businesses and property by reason of the alleged agreements in restraint of trade, which facilitated, enabled, assisted, and furthered Defendants' substantial foreclosure and exclusion or impairment of competition and enhancement of monopoly power in the relevant markets. Plaintiff's injury consists of paying higher prices to purchase the relevant distribution services than it would have paid absent Defendants' unlawful conduct. Plaintiff's injury is the type the antitrust laws were designed to prevent and flow from that which makes Defendants' conduct unlawful.

**THIRD CAUSE OF ACTION**  
**Conspiracy to Restrain Trade (15 U.S.C. § 1)**

123. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 122 above.

124. Defendants entered into and engaged in a conspiracy in unreasonable restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

125. The conspiracy consists of an agreement, understanding and/or concerted action between and among Defendants to allocate markets and/or employ functionally identical contractual terms that prevent their customers from being able to purchase sutures and endo distribution services from Defendants' rivals. This conduct defies each individual Defendant's independent economic interest.

126. As a proximate result of Defendants' anticompetitive conduct, Plaintiff and the Class have suffered injury in that they have paid supracompetitive prices for sutures and endo distribution services during the Class Period.

**FOURTH CAUSE OF ACTION**  
**Conspiracy to Monopolize (15 U.S.C. § 2)**

127. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 126 above.

128. Defendants have conspired to intentionally and unlawfully maintain monopoly power in the relevant sutures and endo distribution services market.

129. Defendants, in concert, have excluded, or attempted to exclude, competition in this market by engaging in anticompetitive conduct, including as described above, the unlawful bundling of sutures and endo distribution services to Med-Surg distribution services. These

practices were implemented in a nearly identical fashion despite such conduct being directly contrary to each of Defendants' independent economic interests.

130. The anticompetitive conduct described above affects a substantial volume of commerce in the sutures and endo distribution services market and has injured competition and consumers in this market.

**FIFTH CAUSE OF ACTION**  
**Exclusive Dealing (Clayton Act Section 3, 15 U.S.C. § 14)**

131. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 130 above.

132. Defendants have made sales of Med-Surg distribution services, including sutures and endo distribution services, and have set the prices and fees charged, based on the condition, agreement or understanding that the purchaser will not purchase sutures and endo distribution services distributed by Defendants' competitors.

133. Defendants' exclusive dealing violates Section 3 of the Clayton Act because it has foreclosed Defendants' competitors from substantial portions of the markets for the distribution of sutures and endo products, has substantially lessened competition in these markets, and tends to create a monopoly.

134. Plaintiff has been damaged by paying supracompetitive prices.

**SIXTH CAUSE OF ACTION**  
**Illegal Tying of Suture and Endo Distribution Services (15 U.S.C. § 1)**

135. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 134 above.

136. Defendants have tied Med-Surg distribution services (excluding sutures and endo) (tying products) to the purchase of sutures and endo distribution services (tied products) by

threatening exorbitant penalties for distribution services for the tying products, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The penalties can only be avoided by also purchasing the tied distribution services from Defendants. Defendants condition the availability of their tying distribution services on the buyer's purchase of their tied distribution services to the exclusion of competitors' sutures and endo distribution services.

137. Sutures and endo distribution services represent distinct product categories within the standard basket of Med-Surg distribution services sold by Defendants..

138. Defendants each possess appreciable power in the market for distribution services for Med-Surg products, exclusive of sutures and endo products distribution services.

139. Defendants leverage this market power to coerce buyers to purchase the tied distribution services.

140. Defendants' tying arrangements affect a substantial volume of commerce in the relevant Med-Surg, sutures and endo distribution services markets and Plaintiff and the Class have suffered injury in that they have paid supracompetitive prices for sutures and endo distribution services during the Class Period.

### **PETITION FOR RELIEF**

WHEREFORE, Plaintiff petitions that:

- a. The Court determine that this action may be maintained as a class action pursuant to Federal Rule of Civil Procedure 23, that Plaintiff be appointed class representative, and that Plaintiff's counsel be appointed as counsel for the Class;

- b. The conduct alleged herein be declared, adjudged, and/or decreed to be unlawful under Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2 and Section 3 of the Clayton Act, 15 U.S.C. § 3.
- c. Plaintiff and the Class recover their overcharge damages, trebled, and the costs of the suit, including reasonable attorneys' fees as provided by law; and
- d. Plaintiff and the Class be granted such other, further, and different relief as the nature of the case may require or as may be determined to be just, equitable, and proper by this Court.

**JURY TRIAL DEMANDED**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of all of the claims asserted in this Complaint so triable.

Dated: April 4, 2013

**FARUQI & FARUQI, LLP**

By: \_\_\_\_\_

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