IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

IN RE CAREMARK INTERNATIONAL INC. DERIVATIVE LITIGATION	:	CONSOLIDATED Civil Action No. 13670

NOTICE OF FILING
AMENDED DERIVATIVE COMPLAINT

TO: Kevin G. Abrams, Esquire
Richards, Layton & Finger
One Rodney Square
Wilmington, DE 19801

PLEASE TAKE NOTICE that plaintiffs herewith file the within Amended Complaint as of course pursuant to Rule 15(a).

In compliance with Rule 15(aa), plaintiffs aver that the within Amended Complaint is in full substitution for the Complaint filed on August 5, 1994.

ROSENTHAL, MONHAIT, GROSS
& GODDESS, P.A.

By _____

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AMENDED DERIVATIVE COMPLAINT

Plaintiffs, by their attorneys, allege upon information and belief, except as to the allegations which pertain to plaintiffs, which are alleged upon knowledge, as follows:

INTRODUCTION

1. This is a shareholder derivative action brought on behalf of and in the right of Caremark International Inc. ("Caremark" or the "Company") for injuries suffered by Caremark as a result of breaches of the fiduciary and other duties owed to it by the defendants.

2. The derivative claims arise out of a pervasive and systematic course of business dealings in which the defendants consciously allowed Caremark to engage in violations of Federal and State anti-kickback laws for Medicaid and Medicare patients, which has resulted in a massive federal investigation, the indictment of Caremark and certain officers of the Company, and several federal and state law suits.

3. As a result of these indictments, investigations and lawsuits, Caremark faces the loss of millions of dollars from legal defense, criminal penalties, civil restitution (including treble damages) and lost business resulting from possible

exclusion from Medicare and Medicaid programs, which accounted for 14% of the Company's 1993 revenues.

THE PARTIES

4. Plaintiffs Carole Friedman, Claire Blum, Peroje Tejani, Kenneth Steiner, Paul C. Hagan and Elaine Drage were at the time of the transactions and events complained of and are still shareholders of Caremark.

5. Caremark is a Delaware corporation engaged in the business of providing: (1) alternative site health care services, including infusion therapy, growth hormone therapy, and hemophilia therapy, and (2) managed care services for prescription drug benefit programs and multi-physician group practices. The Company is based in Northbrook, Illinois, but provides services in numerous locations throughout the United States and overseas.

6. A significant part of Caremark's health care services consists of infusion therapies. Caremark's infusion therapies include: (1) total parenteral nutrition therapy ("TPN") (which is the intravenous feeding for patients unable to ingest or absorb nutrients due to gastrointestinal illnesses or conditions); (2) enteral nutrition therapy (which is nutritional therapy administered to patients with at least partial digestive tract function); (3) antibiotics, antiviral and antifungal therapies (which are used to treat various infections and diseases, including bone infractions and infections related to HIV/AIDS); (4) chemotherapy (which involves the infusion of cancer fighting drugs, blood product therapies and certain biotechnology drugs for cancer patients); and (5) pain management

therapy (which involves the administration of pain-controlling drugs to terminally or chronically ill patients). In addition to its alternative site infusion therapies, Caremark also offers other alternate site patient care services, including pharmaceutical service alliance programs, hemophilia therapy, immune deficiency therapy and rehabilitation services.

7. Caremark's managed care segment includes (1) prescription drug benefit administration; (2) a preferred provider network; and (3) a business initiative in multi-specialty physician group practice management. Regarding this third managed care segment, Caremark initiated a physician practice management business in 1992 which provides a package of administrative services. These include billing, accounting and personnel services to large multi-specialty medical group practices.

8. Caremark derives most of its patient care revenues from third party payors, including private insurers, Medicare, Medicaid and workers compensation programs. Approximately 25 percent of Caremark's patient care revenues have historically been attributable to Medicare and Medicaid patients. Caremark also provides services as a subcontractor to hospitals, physicians or other alternate site providers, including joint ventures formed by Caremark with hospitals, physicians, nursing agencies and other healthcare providers, that receive the assignment of benefits or reimbursement from the patient and pay Caremark a negotiated fee.

9. Caremark was incorporated in August 1992 as a wholly-owned subsidiary of Baxter International, Inc. ("Baxter"). On

November 30, 1992, Baxter distributed to holders of its common stock all of the outstanding shares of common stock of Caremark, together with preferred stock purchase rights.

10. In fiscal 1993, Caremark's total revenues were approximately $1.78 billion. According to the Company's Form 10-K for the fiscal year ended December 31, 1993, approximately 14% of the Company's revenues were directly attributable to Medicare and Medicaid patients.

11. Defendants C.A. Lance Piccolo, James G. Connelly, III, and Thomas W. Hodson are collectively referred to as the "Officer/Director Defendants." Defendants Piccolo, Connelly and Hodson have all been directors of Caremark since 1992. Defendant Piccolo has been Chairman of the Board and Chief Executive Officer of Caremark since August 1992. Defendant Connelly has been President and Chief Operating Officer of Caremark since August 1992. Defendant Hodson has been a Senior Vice President and Chief Financial Officer of Caremark since August 1992.

12. Defendants Raymond D. Oddi, Peter F. Whitington, Blaime J. Yarrington, Ira J. Harris, Ralph W. Muller, Kenneth N. Pontikes, Vincent A. Calarco, Roger L. Headrick and Philip B. Rooney are and have been directors of Caremark since 1992. Defendant Nancy G. Brinker has been a director since 1993. Defendants Oddi, Whitington, Yarrington, Harris, Muller, Pontikes, Calarco, Headrick, Rooney, and Brinker are collectively referred to as the Non-Officer Director Defendants.

13. The Officer/Director Defendants and the Non-Officer Director Defendants are jointly referred to as the Director Defendants.

14. Caremark's "pay philosophy" for executives, as explained in its Proxy Statement dated March 22, 1994, emphasized "pay-for-performance" incentives with compensation based in part upon pre-tax earnings growth. Each of the Officer/Directors Defendants holds options to purchase Caremark stock and restricted performance stock subject to, among other factors, annual performance-based vesting conditions.

15. Pursuant to the Caremark International Inc. 1992 Stock Option Plan for Non-Employee Directors, each non-employee director receives, in lieu of one-third of his or her annual retainer of $33,000, an option to purchase shares of Caremark common stock. The Non-Officer Directors may elect to receive options in lieu of all or a portion of the remaining two-thirds of their retainer and, according to the Company's 1994 Proxy Statement, all of the directors had elected to receive all of their compensation through the date of the annual meeting of stockholders in 1998 in the form of options. As a consequence, the Non-Officer Director Defendants also had a strong incentive to encourage short term earnings from the illegal conduct in which Caremark was engaged.

16. The Director Defendants had the same financial incentive -- attain the highest short term earnings regardless of the long term health of the Company, thereby maximizing their incentive bonuses and the value of their stock options.

OPERATIVE FACTS

17. Caremark is the leading provider of home-infusion services in the United States with about a 30% market share. As such, significant portions of its business are subject to state

and federal statutes and regulations governing reimbursement under federal and state medical assistance programs and the financial relationships between healthcare providers and potential referral sources, in particular, physicians and hospitals.

18. For example, in November 1987, Congress enacted the Omnibus Budget Reconciliation Act of 1987 which contains a section entitled "Physician Ownership of, and Referral to, Health Care Entities." This section commonly known as the "Stark Legislation" requires a provider seeking payment from the Medicare program to disclose the provider's referral sources and any ownership interest by physician investors.

19. Under this legislation, it is unlawful for physicians to receive a direct or indirect fee i.e., a kickback, in return for referring patients to health care providers or for prescribing drugs to patients.

20. In addition, many States have adopted statutes, rules and regulations prohibiting the direct or indirect payment of fees primarily for the referral of patients or the prescription of drugs.

21. In August of 1991, shortly after "safe-harbor" regulations were issued identifying appropriate business relationships between physicians and health care providers, and prior to the Company's spin-off from Baxter, Caremark was notified that the Office of the Inspector General of the Department of Health and Human Services ("HHS-OIG"), in conjunction with the U.S. Department of Justice, was beginning an investigation of Caremark's fee for services arrangements.

22. As part of the investigation, the OIG initially issued subpoenas to Caremark for approximately 130 standard form contracts between Caremark and physicians who were paid fees by Caremark for the so-called monitoring of home-care patients. At issue was whether the fees paid by Caremark were for legitimate services or disguised fees for referrals of Medicare patients. Subsequently, a federal grand jury was empaneled to determine whether the Company' fee-for-service and other arrangements with physicians and hospitals in connection with infusion therapy services violated federal laws which prohibit the payment of remuneration to induce the referral of Medicare and Medicaid beneficiaries.

23. The OIG investigation was widely reported in the media. In the September 16, 1991 edition of Modern Healthcare, it was reported that Caremark's practice of paying doctors for "monitoring" patients was widespread, but that Caremark denied any wrongdoing. At the time, physicians were paid anywhere from $15 to $150 per week under Caremark's standard form "Quality of Service Agreement." In total, the federal government had paid approximately $130 million in 1991 to Caremark for home-care services provided to Medicare and Medicaid patients.

24. Caremark's top management publicly responded to the new "safe harbor guidelines" and their potential impact upon Caremark. Management represented that Caremark would discontinue this service for Medicare and Medicaid home-care patients as of October 1, 1991, the same day new federal regulations went into effect:

> The safe-harbor regulations were created to determine what is beyond reproach regarding provider and physician practices with Medicare and Medicaid.
>
> The regulations are drawn very narrowly, and do not address physician involvement in home care. As a result, Caremark is taking the conservative position of discontinuing this service to Medicare and Medicaid patients, effective Oct. 1, until the issue is resolved.
>
> Caremark is working closely with HHS. Our actions have always been conducted in compliance with the law. We believe strongly that physicians should be involved in home health care.
>
> Unlike what happens in hospitals, no reimbursement is available through Medicare or Medicaid to physicians who support home-care patients. We will actively seek clear regulations that enable physicians to play an integral role in providing high-quality, cost-effective care to Medicare and Medicaid patients.

25. Charles H. Blanchard, then President and Chief Executive Officer, also told Business Week (October 7, 1991) that the Company knew that those payments fell into a "gray area" in that they were not specifically prohibited by the Federal anti-kickback law. Blanchard also confirmed that beginning October 1, 1991, Caremark would stop paying physicians and hospitals who referred Medicare and Medicaid patients to its facilities.

26. It is thus evident that at least as early as 1991, the senior management of Caremark was well aware that the Company's fees-for-services arrangements were likely illegal and could subject the Company to significant penalties, among other things.

27. Blanchard was quoted by Modern Health Care (November 4, 1991) as stating that "HCFA was well aware of what we were doing.

We're not ashamed of what we're doing." The New York Times December 26, 1991 edition also reported that Caremark took the position that the practice of paying doctors to monitor therapy for patients of Caremark was legal within the vague guidelines issued by Congress and the States, but that Caremark was stopping this practice.

28. The risks resulting from a Federal indictment were extremely serious and made known to Caremark early on. As reported in the Form 10-Q for June 30, 1992, just months before the spin-off of Caremark from Baxter:

> The Office of the Inspector General of the U.S. Department of Health and Human Services and the U.S. Department of Justice are investigating Caremark to determine whether Caremark's fee-for-service and other arrangements with physician and hospitals, violate federal laws prohibiting payments to induce the referral of Medicare or Medicaid beneficiaries. Penalties for violating these laws could include exclusion from participation on the Medicare and Medicaid programs and civil and criminal fines and penalties. If imposed, these penalties could have a material adverse effect on Caremark's business.

29. On November 30, 1992, Caremark became a public company. At the time, the Company's Board of Directors was fully informed based upon, at a minimum, the OIG investigation, the public filings relating to the OIG investigation of Caremark, the public statements made by Caremark's senior management, including Blanchard, and reports from Caremark's management and advisors (1) that Caremark's wide-spread practices regarding direct and indirect payments (e.g., consulting, monitoring, marketing, and research fees) to physicians who refer patients to Caremark were

potentially illegal and violative of Medicaid and Medicare laws; (2) that the investigation by the OIG and the U.S. Department of Justice could result in the loss of millions of dollars in revenue for Caremark; and (3) that the Company had publicly committed to terminate paying physicians for "monitoring" Medicare patients.

30. Indeed, the Director Defendants have admitted that they were well aware of the material effect that the investigation and resulting indictments could have on the Company's business operations. The Director Defendants (except Brinker) gave detailed disclosures in Caremark's Form 10-K for fiscal year ended December 31, 1992:

> The OIG and the U.S. Department of Justice are investigating Caremark to determine whether Caremark's fee-for-service and other arrangements with physicians and hospitals violate federal law (the "Medicare Referral Payments Law") prohibiting the payment of remuneration to induce the referral of Medicare Referral Payments Law include exclusion from participation in the Medicare and Medicaid program. Criminal penalties could include fines of up to $25,000 per violation or up to five years imprisonment, or both, subject to increases under the Federal Organizational Sentencing Guidelines. <u>If imposed, such penalties could have a material adverse effect on Caremark's business</u>. The outcome of this investigation is not presently determinable. Growth in sales slowed following initial publicity related to this investigation as well as reported investigations of others. Based on these changes and discussions with customers, Caremark believes that this publicity had adversely affected revenues from certain patient care services and may continue to do so. (emphasis added)

31. The Caremark Directors reviewed and approved similar disclosures regarding the OIG Investigation in Caremark's

quarterly reports on Form 10-Q for the periods ending March 31, June 30, and September 30, 1993.

32. The Director Defendants also made similar disclosures in Caremark's Form 10-K for fiscal year ended December 31, 1993, as follows:

> OIG Investigation
>
> Caremark was notified in August 1991 that the OIG and the U.S. Department of Justice, with subsequent grand jury participation, are investigating Caremark to determine whether Caremark's fee-for-service and other arrangements with physicians and hospitals in connection with infusion therapy services violate federal laws prohibiting payment of remuneration to induce the referral of Medicare and Medicaid beneficiaries. Caremark has provided and continues to provide information and documents. The nature, scope timing and outcome of the investigation are not currently determinable. Civil penalties for violating this law could include exclusion from participation in the Medicare and Medicaid programs. Criminal penalties could include exclusion from participation in the Medicare and Medicaid programs. Criminal penalties could include fines of up to $25,000 per violation or up to five years imprisonment, or both, subject to increases under the Federal Organizational Sentencing Guidelines. In 1993, approximately 14% of Caremark's revenues were directly attributable to Medicare and Medicaid patients. Although such revenues do not directly generate a material percentage of Caremark's profits, there can be no assurance that exclusion from these programs would not adversely affect Caremark's ability to attract and retain non-Medicare and Medicaid business. As such, if imposed, such penalties, although not estimable at this time, could have a material adverse effect on Caremark's business. Growth in revenues slowed following initial publicity related to this investigation as well as reported investigations of other companies. Based on these changes and discussions with customers, Caremark believes that this publicity has adversely affected revenues, however not materially, from certain patient care

services and may adversely affect revenues in the future. (emphasis added)

33. As also disclosed by Caremark in the 1993 Form 10-K, exclusion from Medicare or Medicaid programs and/or an indictment which has not been dismissed within a 90-day period were events which would be an event of default under the Company's $150 million bank credit agreement (although no borrowings were outstanding as of December 31, 1993 under the facility). If the Company were to default on the terms of its credit facility, it would be unable to obtain any borrowing from conventional bank sources as the Company tried to redirect its business efforts -- a necessary high-cost venture once Medicare and Medicaid revenues terminated. Thus, default on a credit facility regardless of actual borrowing would severely affect Caremark's business and the value of shareholders' investments.

34. At an international health care conference run by First Boston in early October 1993, Caremark's new Chairman and Chief Executive Officer, Lance Piccolo, confirmed that the OIG investigation was ongoing, but that no charges had yet been brought.

35. Based upon the allegations set forth in 21-34, there is little doubt that the Director Defendants of Caremark were fully aware (a) that Caremark had engaged in widespread practices of indirectly paying doctors who referred patients to Caremark, among other illegal activities, and (b) of the significant adverse consequences of such conduct. Nonetheless, two recent indictments against inter alia, Caremark and/or doctors with whom it was associated, and a recently filed state court case,

encaptioned Booth v. Rankin, and other public disclosures, demonstrate that, in fact, the Director Defendants allowed Caremark to continue in its illegal activities.

A. The University of Minnesota Scheme

36. In October 1993, it was publicly disclosed that, like the illegal "payment for monitoring" practice, Caremark had paid doctors in the University of Minnesota's home infusion program about $3 million over a 2-1/2 year period for patient referrals.

37. Doctors in the departments of surgery, medicine and pediatrics formed a nonprofit corporation called Physician Managed Care ("PMC"). PMC then joined with Caremark in a for-profit partnership called Managed Care Incentives. The contract between Caremark and PMC provided for the doctors to receive 18% of all patient revenues, about 20% of which they had referred to Caremark.

38. In the first year of Caremark's joint venture, its Minnesota revenues went up 19%. In less than three years, Caremark has pulled in a profit of $17 million, with the doctors receiving about $3 million, as reported by the Minneapolis Star Tribune on October 18, 1993.

39. While the Minnesota doctors have claimed that Caremark's payments were not for referring patients, but rather for providing a unique technology involving cost-conscious managed care that is not available anywhere else, in fact, similar managed-care components are widely used in home infusion programs throughout the country and have been described in detail in published reports. Further, the university doctors offered

Caremark their technological program before it was even developed and have not published any of its findings.

40. The Star Tribune also reported legal experts' conclusions that the money need not go directly to doctors to constitute an illegal kickback under federal and states statutes. According to the legal experts, the test is whether doctors derive a benefit directly or indirectly, as when money applied to a particular program frees up other funds for salary or research reports. Thus, the payments would be considered a kickback regardless of whether the payments went to research and education, rather than into the doctors' own pockets.

41. The Star Tribune further reported that Caremark has had special access to university patients that other local home-infusion companies do not. Although the university doctors say they don't keep figures on total referrals, they conceded that almost half of home-infusion patients have gone to Caremark. As of June, 1993, Caremark had served 686 university patients in 2-1/2 years.

42. Caremark has such close ties to the university that company nurses are stationed in the hospital and help plan patient discharges to Caremark's home-care program. The university declined to say whether other companies' representatives can see patients in the hospital; however, one company official said his nurses were turned away.

43. Notably, Dr. Randall Moore, who negotiated the Caremark deal, quit the university to become a medical director at Caremark's headquarters in Illinois.

B. The Minnesota Indictment

44. Also in 1993, the OIG investigation was expanded to determine whether Carmark was making illegal kickbacks to physicians who prescribed a human growth hormone called Protropin, manufactured by Genetech, Inc. Caremark is the largest distributor of Protropin, accounting for about 75% of the $217 million in revenues from sales in 1993.

45. Despite their knowledge of the OIG investigation which had expanded to include prescription drugs, the highly-publicized Minnesota kickback scheme, the "consulting," "marketing" and "research" relationships with physicians who provided millions of dollars in patient referrals to Caremark, and the dire consequences to Caremark's business which could result if these indirect payments were not stopped, defendants permitted these wide-spread practices of Caremark officers and employees to continue unchecked in order to maintain Caremark's market share.

46. Consequently, on August 4, 1994, the United State Attorney for the District of Minnesota issued a press release reporting that a federal grand jury in Minneapolis had indicted Caremark and Caremark vice presidents James R. Mieszala and Joseph L. Herring, and a former general manager, Judy F. Giel. United States v. Brown et al., Wo. Cr. 4-94-95 (D. Minn.) (the "Minneapolis Indictment"). The fifty-one count indictment charged that Caremark, Mieszala, Herring, Giel and Edmon E. Jennings of Genentech, Inc. conspired to pay over $1.1 million in kickbacks to Dr. David A. Brown to induce him to prescribe the growth hormone Protropin produced by Genentech and marketed by Caremark. The kickbacks were disguised as payments for a

fictitious medical study and other purported services. The indictment was based on conduct beginning as early as 1986 and continuing into 1994, a period which includes the period of the Director Defendants' stewardship of Caremark.

47. The indictment states that, among others involved in this scheme was then Caremark President Blanchard, and the memoranda and other documents critical to the scheme were sent by persons located at Caremark's Chicago headquarters.

48. The Minneapolis Indictment further states that among the documents contained in Caremark's files was a document entitled "Return on the Investment in Research Grants - An Analysis of Caremark Inc." which analyzes the return which Caremark enjoys for every "dollar" invested in research, and calculated that Caremark enjoys a return of $6.55 for each research dollar. The report further states that Dr. Brown was paid $100,000 by Caremark for research from January 1989 through April 1, 1990 while Caremark received $4,372,000 in patient referral revenues from Brown. In another document, defendant Herring stated that Caremark would approve a $50,000 research grant so long as there were 150 patient referrals in return.

49. The Minneapolis Indictment recites numerous payments to Brown for patient or drug referrals made to Caremark, including

(a) $75,000 in 1993 disguised as a "consulting fee" to one of Brown's companies, Applied Biomedical Consultants ("ABC"), while Brown was relatively inexperienced in home infusion therapies and related issues;

(b) periodic payments of $15,000 each beginning October 1, 1992 until February 1994 which were disguised as a "marketing fee"; and

(c) that in late 1992, Brown convinced Caremark executives to create a new Protropin sales and marketing position in Caremark's Minneapolis branch, and to hire a friend of Brown who did not even have a college degree, to fill the position.

50. The Minnesota Indictment further states the Caremark officers had specifically questioned the payments to Brown in writing. One business manager in the Chicago office wrote that Brown had been paid $409,000 from 1988 until 1992, and he still had not published any research results.

51. The Minneapolis Indictment is the first public manifestation of a three-year investigation of Caremark launched by the Justice Department with the assistance of the FBI and the HHS-OIG. As reported by the Wall Street Journal on August 4, 1994, these agencies are involved in an ongoing investigation of Caremark's alleged illegal practice of paying doctors throughout the United States to refer patients to its home infusion programs.

52. Caremark's potential liability relating to the Minneapolis Indictment alone is reported to be $12 million. As other indictments are rendered, Caremark's legal liability will escalate. Additionally, Caremark faces numerous other legal actions.

53. The August 4, 1994 Wall Street Journal article notes that the Minneapolis Indictment is separate from another investigation involving a Caremark joint venture at the

University of Minnesota Hospital, which is described in ¶¶ 36-43, supra.

54. On August 31, 1994, while in possession of undisclosed material information regarding the breadth of the federal inquiries, Defendant Brinker sold 3,000 shares of Caremark stock.

C. The Ohio Indictment

55. The August 4, 1994 Wall Street Journal article further disclosed that a federal investigation was scrutinizing doctors in Columbus, Ohio, and that an additional indictment could come within the next few weeks with respect to regular payoffs by Caremark to a physician there. The article further noted that investigators were planning to interview between 100 and 120 doctors who allegedly received large payments from Caremark. Additionally, the article revealed that federal authorities foresee pursuing possible civil restitution.

56. On September 20, 1994, a federal grand jury in Columbus Ohio, indicted a doctor on charges that he accepted $134,600 in kickbacks from a "home infusion company" for the referral of patients from 1991 through September 1994. United States v. Neufeld, P.O., No. CR-2-94-144 (S.D. Ohio) (the "Ohio Indictment"). The unnamed company has been uniformly reported by media sources such as the Wall Street Journal and Financial World to be Caremark.

57. The Ohio doctor was charged with one count of conspiracy to solicit and accept kickbacks, 24 counts of acceptance and solicitation of kickbacks and three counts of mail fraud. The Ohio Indictment alleged that, among other indirect

benefits, the home-infusion company, (i.e., Caremark) had supplied the physician with a facsimile machine, a computer, and nurses to staff his office, all at no cost, whereas federal law makes illegal any payments in return for referral of Medicare or Medicaid patients.

58. On September 21, 1994, the Wall Street Journal reported that Caremark was the Company that had paid kickbacks to the physician in the Ohio Indictment and that "[g]overnment officials said this is one of multiple federal criminal cases being pursued related to Caremark."

D. The Atlanta Overbilling and Kickback Scheme

59. Caremark also paid kickbacks to at least 10 to 12 physicians in the Atlanta area who would prescribe Caremark's services or would prescribe medication which Caremark distributed. This fee was usually a flat percentage (generally 25%) of whatever Caremark billed to their patient's insurance carriers.

60. Two of the Atlanta physicians who participated in this scheme, Michael D. Rankin and Mark L. Tanner, practiced together at the Atlanta Family Practice. In order to control the scheme, these physicians would use Dr. Rankin's taxpayer identification number for all non-Caremark business and Dr. Tanner's taxpayer identification number for all of their Caremark business. Caremark paid these physicians at least 25% of Caremark's billings to the patients they referred. Rankin and Tanner have individually received from Caremark many million of dollars in referral fees.

61. Pursuant to this scheme, once the participating physicians signed up a patient, they would send that patient to a specific pharmacy in Atlanta, the Howell Mill Pharmacy, to have their prescriptions filled. This pharmacy had an arrangement with Caremark whereby Caremark would bill the patients's insurance carrier for the medications rather than have the pharmacy bill the carrier itself. In doing so, Caremark would inflate the price of the medications sometimes by up to 500% when billing the insurance carrier. Caremark would then pay a kickback not only to the physician who prescribed the medications, but also to the pharmacy. An August 26, 1994 article in The New York Times states that a patients of Dr. Rankin was told by "him to allow Caremark to take care of all of his prescription needs. Caremark would arrange for him to get his drugs at the Howell Mill Pharmacy Inc., which was adjacent to Dr. Rankin's office, and Caremark would bill the insurance company directly. [The patient] need never see a bill."

62. In April 1994, Caremark, along with others, was named as a defendant in a federal civil action brought under RICO for "plunder[ing] one million dollars in insurance benefits" from an Atlanta AIDS patient. Booth v. Rankin, et. al., Civ. No. E-2758 (Super. Cty. Fulton Cty.) (the "Atlanta Lawsuit"). The Complaint alleged that "Caremark has developed a fraudulent scheme that it has implemented on a nationwide basis whereby it pays criminal kickbacks to physicians . . . for unwarranted patient referrals for unconscionable fees and charges." The Complaint stated that Caremark paid kickbacks of as much as 33% of billings to physicians.

63. In an October 25, 1994 Financial World article, (the "October 25 Article") defendant Piccolo candidly expressed Caremark's viewpoint that it was not concerned with the possible loss of Medicaid and Medicare business for Federal violations since government reimbursement was only a fraction of Caremark's sales and produced "scant profits."

64. The Defendant Directors continuing intentional disregard of Caremark's mounting legal problems is further exemplified by defendant Piccolo's response to a Financial World reporter's question regarding further news about federal legal action -- he responded: "They say 12% of the people in jail are innocent."

65. The federal indictments have caused the Company to increase its expenditures for legal counsel and retain a high profile, high cost former U.S. prosecutor to assist in defending against the Department of Justice lawsuit. Additionally, Caremark faces at least 13 shareholder lawsuits, criminal and civil penalties and the loss of millions of dollars in Medicaid and Medicare revenues.

66. The Director Defendants have failed to sue any of the Company officers for wasting corporate assets by having entered into the illegal kickback scheme. The Director Defendants have consciously permitted the waste of corporate assets and consciously failed to take action to recover corporate assets diverted to the kickback scheme, in the misguided hope that by doing so they would be able to continue to inflate Caremark's revenues and its market share, in the home infusion market, among others.

DUTIES AND OBLIGATIONS OF OFFICERS AND DIRECTORS

67. By reason of their positions and because of their ability to control the business and corporate affairs of Caremark at all relevant times, the Director Defendants owed to the Company and to its stockholders, fiduciary obligations of fidelity, trust, loyalty, and due care, and were and are required to manage the Company in a fair, just and equitable manner, and to act in furtherance of the best interests of the Company and its stockholders.

68. To discharge these duties, each Director Defendant was required to exercise reasonable and prudent judgment as to the management, policies, practices, controls and financial affairs of Caremark, and to insure that the company seeks recompense from those responsible for prior and current wrongs done to it. By virtue of this obligation of due care and diligence, defendants were required, among other duties and obligations:

(a) To set and carry-out policies, manage and conduct, supervise and direct the employees, business, and affairs of Caremark, in accordance with State and federal laws and regulations, and the charters, regulations, rules, and by-laws of the Company;

(b) To exercise reasonable and prudent judgment and control and supervision over the officers, employees and agents of Caremark;

(c) To remain informed as to how Caremark conducted its operations;

(d) To ensure the prudence and soundness of the policies and practices undertaken or proposed to be undertaken by Caremark;

(e) To make a reasonable investigation upon receiving notice or information of an imprudent or unsound decision, condition, or practice, and to take steps to correct any imprudent or unsound decision, condition, or practice; and

(f) To conduct the affairs of the Company in an efficient business-like manner so as to make it possible to provide the highest quality performance of its business and to thereby maximize the profits to the stockholders.

69. The Director Defendants breached their fiduciary duties by, among other things:

(a) consciously directing, encouraging and/or concealing the unlawful kickback scheme and other illegal practices of Caremark;

(b) falsely representing to the public that corrective action was being taken to stop illegal payments to physicians when it was not (resulting in, among other things - federal securities lawsuits);

(c) intentionally permitting the illegal business practices to continue notwithstanding that the federal investigations could likely lead to indictments against Caremark and its employees and loss of business, in the unreasonable hope and expectation that the financial rewards from Caremark's illegal kickback and overbilling scheme would outweigh the risks and any punishment attendant thereto;

(d) intentionally failing to implement adequate corrective procedures after they were informed of the federal investigation;

(e) intentionally inadequately supervising the employees, managers and upper level executives of Caremark who were directly involved in the illegal schemes, and failing to instruct them to act with honesty and integrity in order to preserve and enhance Caremark's reputation in the business community and its assets;

(f) recklessly exposing Caremark to millions of dollars of losses, including the loss of future business opportunities as a result of their conscious decision to allow Caremark and its employees, to operate in violation of federal and state laws and their encouragement of the Company's improper practices; and

(g) taking no steps to remove or institute legal action against those officers, directors and employees responsible for permitting Caremark to engage in the improper and illegal practices described in detail above thereby exposing the Company to financial injury.

ALLEGATIONS REGARDING DEMAND

70. Under the circumstances, demand is excused and is inevitably futile, for at least the following reasons:

(a) The Director Defendants since the Company's spin-off as a public company in November 1992 have known of the wrongs forming the basis for the claims alleged herein and the materiality of such wrongs to the Company's financial condition and reputation, but affirmatively approved of such acts,

unreasonably choosing to take their chances with the government and assorted civil actions rather than discontinue the payments to physicians for lucrative referrals which enhanced Caremark's market share and revenues.

(b) The Director Defendants failed to exercise skill, diligence, and sound business judgment in deciding directly or indirectly, to approve the wrongs alleged herein and did so in affirmative violation of their duties to Caremark and its stockholders. In permitting the systemic wrongs alleged to continue unchecked although they have long had knowledge of those wrongs, the Director Defendants directly participated in a long-term continuing course of corporate misconduct and mismanagement.

(c) The Director Defendants either fostered the illegal kickback scheme or intentionally and, in a concerted manner, took no action since becoming directors of the Company to assure that the known, illegal or "gray area" activities ceased. Their actions and inactions demonstrate their inability to act on a demand request from stockholders.

(d) Because of their direct participation in the mismanagement of Caremark, the Director Defendants are in no position to prosecute this action. Each of them is in an irreconcilable conflict regarding the prosecution of this action. They cannot exercise the requisite disinteredness to make a good faith business judgment because the corporate decision will necessarily have a materially detrimental impact on these defendants, based on the substantial likelihood that each of the Director Defendants will be subject to liability. Under these circumstances, the Director Defendants cannot be expected to

exercise independent business judgment without being influenced by the adverse personal consequences resulting from the decision.

(e) The Director Defendants are intimately and personally involved in approving and fostering the kickback and overbilling schemes. Their interest arises out of the kickback scheme's ultimate aim which was to increase earnings which would inflate the value of the stock options held by them, among other things. It follows that the Director Defendants, all of whom remain interested in assuring that the revelations of the illegal kickback and overbilling scheme does not depress the value of their stock options, are disabled from reviewing a shareholder's demand for corporate action.

AS AND FOR A FIRST CAUSE OF ACTION FOR BREACH OF FIDUCIARY DUTY AGAINST ALL DEFENDANTS

71. Plaintiffs hereby incorporate by reference paragraphs 1 though 70, supra, as if fully set forth herein.

72. Each of the defendants, individually or jointly, as herein alleged, committed one or more of the acts or omissions to act, which constituted waste of corporate assets, mismanagement, gross negligence and violations of their fiduciary duties and their duty to act in the best interests of the Corporation and its shareholders.

73. As a direct and proximate result of defendants' failures to exercise due care and loyalty in the performance of their duties, as alleged herein, and their failure to exercise reasonable business judgment, Caremark has engaged in imprudent and unlawful activities, all of which have caused risk of significant losses to Caremark.

74. The Company was further injured by the waste of valuable corporate assets and loss of goodwill and business opportunities that were proximately caused by the defendants' misconduct.

75. By reason of defendants' misconduct as set forth above, Caremark has suffered damages in an amount not presently determinable but which is expected to be in the millions of dollars.

AS AND FOR A SECOND CAUSE OF ACTION FOR GROSS NEGLIGENCE AGAINST ALL DEFENDANTS

76. Plaintiffs hereby incorporate by reference paragraphs 1 through 75, supra as if fully set forth herein.

77. Each of the defendants committed one or more acts of gross negligence in the conduct of the Company's business. Defendants, as officers and/or directors of Caremark owed Caremark duties of care in the performance of their duties. Each defendant breached his duty of care to Caremark by acting in a grossly negligent fashion in the performance of such duty, and by failing to act in the best interests of the corporation and its shareholders.

78. Caremark has been seriously and irreparably damaged by the wrongs alleged herein.

79. As to both causes of action, plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs demand judgment as follows:

A. Against each defendant and in favor of the Company for the amount of damages sustained by the Company as a result of the breaches of fiduciary duty by each defendant;

B. Against all defendants and in favor of the Company for damages sustained as a result of their gross negligence;

C. Awarding to plaintiffs the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs and expenses; and

D. Granting such other and further relief as the Court may deem just and proper.

Dated: October 27, 1994

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& GODDESS, P.A.

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