IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

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

NOTICE

TO: Kevin G. Abrams, Esquire
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PLEASE TAKE NOTICE that the within motion will be presented at the earliest time convenient to the Court and counsel.

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

By_____
First Federal Plaza
P.O. Box 1070
Wilmington, DE 19899
Attorneys for Plaintiffs

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MOTION FOR LEAVE TO FILE SECOND AMENDED DERIVATIVE COMPLAINT

Plaintiffs move for leave to file their Second Amended Derivative Complaint in the form attached hereto as Exhibit A. The grounds for this motion are that plaintiffs' Second Amended Derivative Complaint sets forth allegations concerning relevant matters and events which have come to the attention of plaintiffs' counsel since the filing of plaintiffs' Amended Derivative Complaint on October 28, 1994.

ROSENTHAL, MONHAIT, GROSS
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SECOND 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 and in the right of Caremark International Inc. ("Caremark" or the "Company") for injuries suffered by Caremark and its shareholders as a result of breaches of the fiduciary and other duties owed to it and its shareholders by the individual defendants, who constitute its Board of Directors (the term "defendants" shall refer to the individual defendants unless otherwise indicated).

2. The derivative claims arise out of a pervasive and systemic course of business dealings in which the defendants wrongfully 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, several federal and state law suits and an ongoing investigation of Caremark's practice

of paying doctors throughout the Country for patient referrals since at least 1991.

3. The defendants have specifically acknowledged since 1992 in publicly filed reports of Caremark (a) the existence of these long-term investigations by, among other agencies, the U.S. Department of Justice and the Office of the Inspector General of the Department of Health and Human Services (the "HHS-OIG"), and (b) the material adverse effect criminal indictments or other penalties could have on Caremark's business. They have also acknowledged publicly on several occasions that they would take steps to terminate such illegal conduct.

4. Nonetheless, in reckless disregard of their obligation to act in the best interest of the Company and its stockholders the defendants caused, countenanced or allowed Caremark to continue to engage in such misconduct to Caremark's detriment and damage.

5. As a result of the indictments, investigations and lawsuits arising from Caremark's continued illegal conduct, Caremark faces the loss of millions of dollars from legal defense costs, 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. In this action, plaintiffs seek relief on behalf of Caremark requiring defendants to account to it for all damages arising from defendants' wrongdoing.

THE PARTIES

6. 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.

7. Caremark is a Delaware corporation with its executive offices located in Northbrook, Illinois. Caremark provides the following services throughout the United States and overseas: (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.

8. A significant part of Caremark's health care services consists of infusion therapies, which 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.

9. Caremark's managed care segment consists of (1) prescription drug benefit administration; (2) a preferred provider network; and (3) a business initiative in multi-specialty physician group practice management, which includes administrative services such as billing, accounting and personnel services to large multi-specialty medical group practices.

10. 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.

11. 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.

12. 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.

13. Defendants C.A. Lance Piccolo, James G. Connelly, III, and Thomas W. Hodson are collectively referred to as the "Officer/Director Defendants." 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. Defendant Piccolo was an executive vice president of Baxter and from 1988 to 1992 served as a director of Baxter. Defendant Connolly was a group and corporate vice president at Baxter prior to 1992. Defendant Hodson was a group, corporate and senior vice president at Baxter and was responsible for Baxter's financial relations, strategic planning and acquisition/divestitures.

14. 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. Defendant Oddi had previously been a senior vice president and chief financial officer at Baxter. Defendant Yarrington served on the Baxter board of

directors from 1988 to 1992. Defendants Oddi, Whitington, Yarrington, Harris, Muller, Pontikes, Calarco, Headrick, Rooney, and Brinker are collectively referred to as the Non-Officer Director Defendants.

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

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

OPERATIVE FACTS

17. Caremark is the leading provider of home-infusion services in the United States with about a 30% market share. The Company's business is subject to extensive state and federal regulation 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. 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. Likewise, many of the 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 HHS-OIG, in conjunction with the U.S. Department of Justice, had begun an investigation of Caremark's fee for services arrangements.

22. As part of the investigation, the HHS-OIG initially issued subpoenas to Caremark on August 9, 1991 for 800 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's 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 HHS-OIG investigation was highly publicized. In the September 16, 1991 edition of Modern Healthcare, it was reported that Caremark's practice of paying doctors for "monitoring" patients was widespread. 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. On September 9, 1991, Caremark's spokesman Les Jacobson, as reported in the Chicago Tribune, represented that Caremark would discontinue consulting arrangements with doctors for Medicare and Medicaid home-care patients as of October 1, 1991, the same day new federal regulations went into effect. Carmark's then president and Chief Executive Officer Charles H. Blanchard ("Blanchard") stated:

> 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.

25. Blanchard also told Business Week (October 7, 1991) that the Company knew that the payments to physicians described above fell into a "gray area" in that they were neither prohibited by the Federal anti-kickback law nor expressly permitted. However,

Blanchard also confirmed that beginning October 1, 1991, Caremark had stopped paying physicians and hospitals who referred Medicare and Medicaid patients to its facilities.

26. Thus, at least as early as 1991, Caremark's senior management knew that the Company's fees-for-services arrangements were likely illegal and could subject the Company to significant penalties. Further, the Company's upper-level management had publicly committed to cease such conduct by Caremark. Caremark's upper-level management also publicly admitted that Caremark was already at risk for such conduct resulting from a Federal indictment. As Caremark publicly reported in its 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 physicians 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.

27. On November 30, 1992, Caremark became a public company. At the time, the Company's Board of Directors was fully informed about Caremark's exceedingly risky and potentially criminal practices. The directors' knowledge was derived, at a minimum, from existence of the HHS-OIG investigation, the public filings

relating to the HHS-OIG investigation of Caremark, the public statements made by Caremark's senior management, including CEO Blanchard, that they would stop Caremark from engaging in its likely illegal practices, together with reports from Caremark's management and advisors that (1) Caremark's wide-spread practice of making direct and indirect payments (e.g., consulting, monitoring, marketing, and research fees) to physicians who refer patients to Caremark was potentially illegal and violative of Medicaid and Medicare laws; (2) the investigation by the HHS-OIG and the U.S. Department of Justice could result in the loss of millions of dollars in revenue for Caremark; and (3) the Company had publicly committed to stop paying physicians for "monitoring" Medicare patients.

28. The Director Defendants also admitted that they were well aware of the material adverse effect that the HHS-OIG investigation and resulting indictments could have on the Company's business operations (and thus the materially adverse effect the continuation of Caremark's practices could have on its financial condition). For example, the Director Defendants (except Brinker) made detailed disclosures in Caremark's Form 10-K for fiscal year ended December 31, 1992, soon after the spin-off, that:

> The OIG and the Department of Justice are investigating Caremark to determine whether Caremark's fee-for-service and other arrangements with physicians and hospitals violate the Medicare Referral Payments Law (the federal law prohibiting the payment of remuneration to induce the referral of Medicare and Medicaid patients). Caremark has received several document requests from the OIG and the Department of Justice. Civil

> penalties for violating the 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. If imposed, such penalties could have a material adverse effect on Caremark's business. 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).

29. The Caremark Directors also reviewed and approved similar disclosures regarding the HHS-OIG Investigation which were made in Caremark's quarterly reports on Form 10-Q for the periods ending March 31, June 30, and September 30, 1993.

30. 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)

31. Caremark also disclosed in the 1993 Form 10-K that both the exclusion from Medicare or Medicaid programs and/or an indictment which has not been dismissed within a 90-day period constituted events of default under the Company's $150 million bank credit agreement (although no borrowings were then outstanding). 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 to redirect its business efforts -- a necessary high-cost venture once Medicare and Medicaid revenues terminated. Thus, default on a credit facility would severely affect Caremark's

business and the value of plaintiffs' investments regardless of the Company's actual borrowings.

32. At an international health care conference run by First Boston in early October 1993, Caremark's new Chairman and Chief Executive Officer, Lance Piccolo ("Piccolo"), publicly reaffirmed that the HHS-OIG investigation was still in progress, but that no charges had yet been brought.

33. Based upon the foregoing, there is little doubt that the Director Defendants were fully aware of (a) Caremark's widespread practices of indirectly paying doctors who referred patients to Caremark, among other illegal activities; (b) the significant adverse consequences of such conduct; and (c) the public commitment of Caremark's directors and senior management that it would terminate its "fee for services" practices.

34. Nonetheless, two recent indictments against Caremark and/or doctors with whom the Company was associated, a recently filed state court case captioned Booth v. Rankin, a class action on behalf of Protropin users, and other public disclosures reveal that, in fact, the Director Defendants have acted in reckless disregard of their fiduciary obligations in permitting Caremark to continue its illegal activities on a nationwide basis after the November 1992 spin-off until the present.

A. The University of Minnesota Scheme

35. In October 1993, it was publicly disclosed that Caremark had paid doctors in the University of Minnesota's (the

"University") home infusion program about $3 million over a 2-1/2 year period for referring patients to Caremark.

36. Doctors in the University's surgery, medicine and pediatrics departments formed a nonprofit corporation called Physician Managed Care ("PMC"). PMC formed a partnership with Caremark called Managed Care Incentives. The contract between Caremark and PMC provided that the doctors were to receive 18% of all patient revenues.

37. The Minneapolis Star Tribune reported on October 18, 1993, that, as a consequence of the illegal referral arrangement, in less than three years Caremark had pulled in a profit of $17 million while the University doctors had received about $3 million from the PMC/Caremark venture.

38. The Star Tribune also reported that the payments to the doctors would be considered a "kickback" by governmental authorities regardless of whether the payments went to University research and education, rather than into the doctors' own pockets.

39. The Star Tribune further reported that Caremark has had special access to University patients that other local home-infusion companies do not. The Star Tribune reported that although the University doctors said they do not keep figures on total referrals, they conceded that almost half of home-infusion patients have gone to Caremark.

40. 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. In contrast, an

official of a competitor said that his nurses were turned away at the same hospital.

41. 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

42. In 1993, the HHS-OIG investigation against Caremark was expanded to include Caremark's nationwide scheme of illegal kickbacks to physicians who prescribed a human growth hormone called Protropin, manufactured by Genentech, Inc. Caremark was then the largest distributor of Protropin, accounting for about 75% of the $217 million in 1993 revenues.

43. Despite their knowledge of: (i) the expansion of the HHS-OIG investigation to include prescription drugs particularly Protropin, (ii) the highly-publicized Minnesota kickback scheme, (iii) the "consulting," "marketing" and "research" relationships with physicians who provided millions of dollars in patient referrals to Caremark, (iv) and the dire consequences to Caremark's business which could result if these indirect payments were not stopped, defendants consciously allowed and facilitated the continuation of these wide-spread illegal practices regarding Protropin in order to maintain Caremark's market share.

44. On August 4, 1994, the United States 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 Caremark, Mieszala, Herring, Giel and Edmon E. Jennings of Genentech, Inc. with conspiring 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 alleged to have been 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.

45. The Minnesota Indictment implicates Caremark's prior president, and describes memoranda and other documents critical to the scheme which originated at Caremark's Chicago headquarters as late as 1993.

46. Among the documents in Caremark's files which serve as a basis of the indictment is a document entitled "Return on the Investment in Research Grants -- An Analysis of Caremark Inc." This document analyzes the return which Caremark enjoys for every dollar invested in research, and calculated that Caremark obtained $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 a Mr. Herring, identified in the indictment, stated that Caremark would approve a

$50,000 research grant so long as there were 150 patient referrals in return.

47. The Minneapolis Indictment recites numerous payments, in cash and in kind, to Brown for patient or drug referrals made to Caremark, including

(a) a $75,000 "consulting fee" paid in 1993 to one of Brown's companies, Applied Biomedical Consultants ("ABC"), notwithstanding that 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) creating, at Brown's request, a Protropin sales and marketing position in Caremark's Minneapolis branch, and hiring, in late 1992, a non-college graduate female friend of Brown to fill the position.

48. The Minnesota Indictment further states that Caremark officers had specifically questioned the payments to Brown in writing indicating that senior management was aware of this arrangement but refused to act. For instance, 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.

49. The announcement of the Minneapolis Indictment was the first public disclosure of the Justice Department's three-year investigation of Caremark. As reported by The Wall Street Journal

on August 4, 1994, the investigation is ongoing into Caremark's illegal practice of paying doctors throughout the United States to refer patients to its home infusion programs.

50. The August 4, 1994 Wall Street Journal article also notes that the Minneapolis Indictment is separate from another investigation involving a Caremark joint venture at the University of Minnesota Hospital, which is previously described.

51. 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.

52. On November 24, 1994, the federal indictment against Dr. Brown was expanded to include charges of defrauding Medicaid, Medicare, John Hancock Insurance Co., and Aetna Insurance Co. of $391,152. Additionally, it was disclosed that the family of a young patient who paid $150,000 for the Genentech growth hormone treatment had filed a class action lawsuit alleging, inter alia, that comparable treatments cost 30% less than Caremark's program.

53. Caremark's potential liability relating to the Minneapolis Indictment alone is reported to be $12 million. As other indictments and civil actions are commenced, Caremark's legal liability will escalate.

C. The Ohio Indictment

54. The August 4, 1994 Wall Street Journal article disclosed that a federal investigation was scrutinizing other aspects of Caremark's modus operandi, namely, payments to doctors located in Columbus, Ohio, and that an additional indictment could come within

the next few weeks. The article further noted that investigators were planning to interview between 100 and 120 additional doctors who allegedly received large payments from Caremark. The article also stated that Federal authorities were considering pursuing possible civil restitution.

55. 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.

56. 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. Federal law makes illegal any payments in return for referral of Medicare or Medicaid patients, including staffing and equipment purchases.

57. 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**

58. Caremark has also paid kickbacks to physicians in the Atlanta area in return for referrals to Caremark for prescribing medication which Caremark distributes. This fee was usually a flat percentage (generally 25%) of whatever Caremark billed to the patient's insurance carriers.

59. At least 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 for Caremark's services or medication. Rankin and Tanner have received from Caremark several million dollars in referral fees, while Caremark has made tens of millions of dollars from just this facet of the scheme.

60. As part of this scheme, when participating physicians signed up a patient, they would send that patient to the Howell Mill Pharmacy in Atlanta to have 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.

61. 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 (Sup. Ct. Fulton County) (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.

62. This lawsuit was settled on November 29, 1994. In return for signing an exculpatory affidavit, the AIDS victim was given lifetime home care services which includes nursing, patient assistance with claims processing and coordination of care, 24-hour care delivery and emergency services. Additionally, Caremark agreed to pay an undisclosed amount covering the AIDS victims legal costs and fees.

63. The plaintiffs' lawyer said that he was cooperating with the Federal Bureau of Investigation and other federal agencies, which are looking into Caremark's payments to doctors in over a dozen states.

64. In an October 25, 1994 Financial World article, defendant Piccolo admitted that he was not concerned with the possibility

that Caremark could lose its Medicaid and Medicare business for Federal violations since government reimbursement was only a fraction of Caremark's sales and produced "scant profits."

E. The Detroit "Dollars For Docs" Scheme

65. On November 11, 1994, The Wall Street Journal reported that the Federal government was investigating Dr. Bruce A. Margolis, President of Caremark's Detroit office, for making kickbacks of up to $100,000 to doctors in return for patient referrals, in the guise of fees for services rendered. The practice was openly called "dollars for docs" in Caremark's Detroit office.

66. Dr. Margolis' scheme started with his joint venture with Caremark Physician Health Resources to provide home infusion therapy, employing Dr. Margolis' private company, Physician Care P.C., to make the kickbacks. The joint venture in 1989 split $4.7 million before taxes. Altogether, Dr. Margolis' scheme brought him $11.5 million between 1988 and 1992.

67. Caremark's senior management was well aware of Margolis' activities. Caremark's Executive Vice President Sheldon D. Asher was a frequent house guest, attended Detroit Piston games with Margolis and shared an active rivalry with Margolis regarding exotic sports cars. In 1990, Asher was instrumental in inducing Margolis to continue with Caremark after he received a "sweetened deal" to stay with Caremark. Margolis later became President of Caremark's Detroit branch. As Pat Moorhatch, a former Caremark Operations Manager explained:

> There was upper-management support for what Bruce was doing. . . . My impression was that Shelly [Asher] approved what Bruce was doing.

68. Reportedly, a Michigan doctor enlisted by Margolis, Joseph Natale, generated Caremark sales of over $2 million a year by placing hundreds of people on a home antibiotic therapy for Lyme Disease at a time when very few cases of Lyme Disease were reported in Michigan. A 1992 Caremark internal document describes Natole as producing "good and growing volume" of some $866,000 per year. In one year, Natole and Caremark split $600,000 in profits. Philip I. Frame, a state assistant attorney general, has concluded that "the overdiagnosis and the Caremark issue are intertwined. The more you overdiagnose, the more you made. Ninety-five percent of [Dr. Natole's] cases are misdiagnosed."

F. Kickbacks -- A Widespread Caremark Policy

69. Recent disclosures confirm that Caremark's illegal practices, including its kickback scheme, were an integral and accepted part of the Company's business practices. For instance, Mark Deponio ("Deponio"), Caremark's Grand Rapids General Manager in 1991, confirmed that kickbacks were part of the sales pitch given to Caremark employees and managers, and was an integral component of Caremark's business practice. Deponio said that he found the payments to doctors so repugnant that he quit after a few months. He related that "[w]hat came through at a sales meeting was that the intent of these payments was to steer business" to

Caremark. "The clear intent of the payments was to influence patient referrals."

70. Barbara Petroff, a former Caremark pharmacist in Detroit confirmed that illegal kickbacks were rampant at Caremark and a widespread Caremark policy, stating that "[p]robably two-thirds of the payments were just paying off doctors."

71. Another Margolis enlistee was Dr. Jay Collins, a surgeon in West Branch, Michigan. In 1992, he received kickbacks of between $1,300 and $1,900 a month in return for prescribing intravenous nutrients known as TPN. The hospital Collins is affiliated with, as well as Federal law enforcement officials and Blue Cross/Blue Shield of Michigan are currently investigating Collins' "treatment" strategy and his relationship with Caremark.

72. On November 18, 1994, The New York Times and Chicago Tribune reported that the three year old investigation of kickbacks by Caremark had expanded to Caremark's Detroit area office.

G. The Federal Trade Commission Inquiry into Improper Influencing of Doctor Services

73. On November 26, 1994, it was disclosed that the Federal Trade Commission ("FTC") was expanding its inquiry into Caremark's contractual alliances with drug companies, including "such matters as competition, pricing, restrictions on the availability of drugs and efforts to influence what doctors prescribe." The investigation is centered on the role of Caremark's prescription drug benefit management services which had previously announced that its managed-care unit had arranged special relationships with several

drug makers, including Pfizer Inc., Bristol-Myers, Squibb and Rhone-Poulenc Rorer.

H. The Civil and Criminal Lawsuits

74. The Federal indictments have caused the Company to increase its expenditures for legal counsel and retain a high profile, high cost former United States prosecutor to assist in defending itself 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.

75. The Director Defendants have failed to sue any of the Company officers for wasting corporate assets by having entered into the illegal kickback schemes. 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.

DEFENDANTS' BREACH OF THEIR FIDUCIARY DUTIES

76. Each Director Defendant owed and owes to the Company and to its shareholders fiduciary duties to act in good faith and exercise due care and diligence in the management and administration of the affairs of Caremark and in the use and preservation of its property and assets.

77. To discharge their fiduciary duties, the Director Defendants were and are 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, and to exercise proper business judgment. Defendants were and are required to assure that Caremark was not involved in illegal conduct. By virtue of this obligation, defendants were required:

(a) To set and carry-out policies, manage and supervise the conduct of Caremark's employees, business, and affairs 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.

78. 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 described herein;

(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 problems -- federal securities lawsuits;

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

(d) deciding not to implement adequate corrective procedures after they were informed of the federal investigation;

(e) facilitating the activities of the employees, managers and upper level executives of Caremark who were directly involved in the illegal schemes, by inter alia, deciding not to direct 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

79. Under the circumstances, pre-suit demand by plaintiffs is excused and is 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 well-being and reputation. The Director Defendants have affirmatively facilitated the continuation of the misconduct detailed herein, unreasonably and recklessly choosing to put at risk Caremark's resources and ability to conduct its business rather than discontinue the unlawful practices and schemes which have led to the numerous investigations, criminal indictments and civil lawsuits described herein.

(b) The Director Defendants recklessly disregarded their fiduciary obligations in failing to exercise skill, diligence and prudent business judgment. They have permitted the systemic wrongs alleged herein to continue unchecked although they have long had knowledge of those wrongs and, in fact, at least since the 1992 Form 10-K, have admitted their knowledge of these wrongs and have represented through the Company's officers that the misconduct would be corrected.

(c) The long-term continuing course of corporate misconduct and mismanagement, alleged in detail herein, is the product of the Director Defendants' breach of their fiduciary duties and is so egregious that there is a substantial likelihood that each of the Director Defendants will be found personally liable to Caremark for the substantial damages which it has suffered and will continue to suffer as a result thereof. Accordingly, each of the Director Defendants suffers from an irreconcilable conflict of interest regarding the prosecution of this action. The Director Defendants cannot exercise the requisite disinterestedness to make good faith business judgments with respect to the matters complained of herein without being influenced by the adverse personal consequences, financially and to their reputations, which they would suffer in pursuing the claims asserted herein.

(d) The Director Defendants were intimately and personally involved in approving, fostering and/or countenancing the kickback and overbilling schemes which are the subject of the

investigations, criminal indictments and civil lawsuits described herein. As a consequence, the Director Defendants are personally and acutely interested in suppressing full disclosure of their wrongs and are thereby disabled from addressing a pre-suit demand with impartiality and independence.

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

80. Plaintiffs hereby incorporate by reference paragraphs 1 though 79, supra, as if fully set forth herein.

81. 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.

82. 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 and will cause significant losses to Caremark.

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

84. By reason of defendants' misconduct as set forth above, Caremark has suffered and will continue to suffer damages amounting to many millions of dollars.

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

85. Plaintiffs hereby incorporate by reference paragraphs 1 through 84, supra as if fully set forth herein.

86. 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 to Caremark duties of care in the performance of their duties. Each defendant breached his or her 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.

87. Caremark has been seriously damaged by the wrongs alleged herein.

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

WHEREFORE, plaintiffs demand judgment as follows:

A. Directing defendants, jointly and severally, to account to the Company for all damages sustained and to be sustained by the Company as a result of the breaches of fiduciary duty and gross negligence of defendants;

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

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

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

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CERTIFICATE OF SERVICE

I, Joseph A. Rosenthal, do hereby certify that on December 30, 1994, I caused copies of the foregoing Notice and Motion for Leave to File Second Amended Derivative Complaint to be served on defendants as follows:

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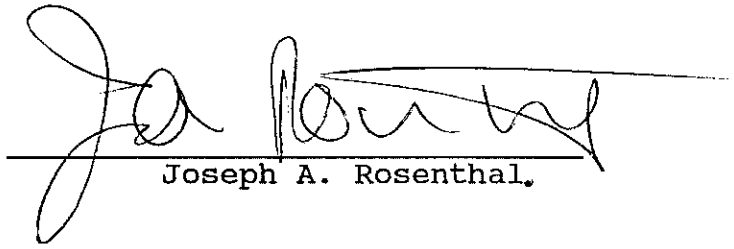

Joseph A. Rosenthal