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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

IN RE NCS HEALTHCARE, INC. SHAREHOLDERS LITIGATION	:	Consolidated C.A. No. 19786

NOTICE OF FILING CONSOLIDATED AMENDED COMPLAINT

TO: David C. McBride, Esquire
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PLEASE TAKE NOTICE that, pursuant to paragraph 5 of the Consolidation Order of August 30, 2002, plaintiffs herewith file their Consolidated Amended Complaint.

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	:	CONSOLIDATED AMENDED COMPLAINT

Plaintiffs allege upon information and belief, except as to Paragraph 14, which is alleged on knowledge, as follows:

NATURE OF THE ACTION

1. On July 29, 2002, NCS Healthcare, Inc. ("NCS" or the "Company") announced that it had entered into a definitive merger agreement (the "Genesis Merger Agreement") with Genesis Health Ventures, Inc. ("Genesis") and its wholly owned subsidiary, Geneva Sub, Inc. ("Geneva Sub"). In the proposed merger, each of NCS' approximately 23.7 million shares of common stock outstanding would be exchanged for 0.1 share of Genesis common stock, which, on July 26, 2002 (the last trading day prior to the announcement of the proposed merger), closed at $16 per share on NASDAQ, making the merger worth about $38 million to NCS common stockholders, or $1.60 per NCS share. Genesis would also assume NCS debt of approximately $308 million. Under the proposed Genesis merger, NCS public shareholders would own approximately 4.2% of the combined company. The equity market value of Genesis is approximately $650 million and the combined Genesis/NCS would have approximately $874 million of net debt and preferred stock as of March 31, 2002.

2. On July 26, 2002, prior to NCS' entry into the Genesis Merger Agreement, Omnicare, Inc. ("Omnicare"), which had been attempting to negotiate an acquisition of NCS or its assets for approximately one year, made a far superior $3.00 per share cash offer to acquire all

of the outstanding shares of NCS common stock, plus the assumption of NCS' debt. Omnicare, a leading provider of pharmaceutical care for the elderly, with an equity market value of approximately $1.5 billion, then promptly (a) raised its offer to $3.50 per share; (b) commenced a tender offer at that price; and (c) repeatedly offered to "discuss all aspects of our proposal . . . including structure, economics and . . . consider[ing] a stock transaction in order to allow NCS stockholders to share in the upside of the combined companies." Notwithstanding the plainly superior offers made by Omnicare, defendants Jon H. Outcalt ("Outcalt"), Kevin E. Shaw ("Shaw"), Boake A. Sells ("Sells") and Richard L. Osborne ("Osborne") (collectively, the "Director Defendants"), constituting the entire Board of Directors of NCS, declined even to consider the Omnicare offers, in patent violation of the duties they owed to plaintiffs and the other public stockholders of NCS.

3. Instead of considering Omnicare's offers, the Director Defendants, in violation of their fiduciary obligations to plaintiffs and the other public stockholders of NCS, approved the proposed Genesis Merger Agreement, which provides NCS stockholders with less than half the value being offered by Omnicare. In further violation of their fiduciary obligations to NCS stockholders, the Director Defendants have also agreed to a host of coercive and draconian defensive measures with respect to the proposed Genesis merger that are disproportionate to any perceived threat posed to NCS and that effectively preclude acceptance of any superior bid, including the premium offers made by Omnicare.

4. Specifically, defendants have structured the Genesis Merger Agreement so that the stockholders will theoretically have the opportunity to vote on it, while making the outcome of that vote a foregone conclusion.

5. The Genesis Merger Agreement is premised upon the concept that

defendants Outcalt and Shaw control sufficient voting strength to ensure approval because, while holders of Class A shares are allowed one vote per share, holders of Class B shares (principally Outcalt, with 3,476,086 such shares, and Shaw, with 1,141,134) are allowed ten votes per share. Defendants have attempted to guarantee such approval by means of voting agreements executed in conjunction with the Genesis Merger Agreement, pursuant to which Outcalt and Shaw have granted Genesis an irrevocable proxy to vote all their shares of Class B common stock (the "Locked-Up Shares") in favor of the Genesis Merger Agreement (the "Director Proxy Lock-Up"). While the Director Proxy Lock-Up is ostensibly terminable if the Genesis Merger Agreement is terminated, the Genesis Merger Agreement prohibits the Director Defendants from terminating the Genesis Merger Agreement prior to the stockholder vote to approve it (the "No Termination Provision").

6. As explained below, the Director Proxy Lock-Up violates the NCS Amended and Restated Certificate of Incorporation ("the NCS Certificate") and, by transferring all control of their Class B shares to Genesis, defendants Outcalt and Shaw have irrevocably converted their Class B shares into Class A shares under provisions of the NCS Certificate. Nonetheless, as designed and being implemented, the Director Proxy Lock-Up and the No Termination Provision constitute patent violations of fiduciary duty by improperly seeking to preclude any possibility that NCS stockholders receive the benefit of superior offers.

7. The Genesis Merger Agreement also prevents the Director Defendants from considering or engaging in discussions with respect to alternative offers (the "No Shop Provision"). Specifically, they may not:

i. solicit, initiate, encourage (including by way of furnishing information), facilitate or induce inquiries with respect to any competing proposal;

ii. discuss, negotiate or furnish non-public information with respect to any competing proposal;

iii. approve, endorse or recommend any competing proposal; or

iv. enter into any letter of intent or similar document or any contract, agreement or commitment contemplating or relating to any competing proposal.

8. The proposed Genesis merger, as structured, requires the approving vote of only 51% of the outstanding NCS shares, with the Class A and B shares voting as a single class. As defendants Outcalt and Shaw claim to own or control more than 65% of the voting power of the NCS shares entitled to vote on the merger, the vote will be meaningless. In effect, defendants Outcalt and Shaw claim to have the power to cram the merger down the throats of NCS Class A common shareholders, the owners of approximately 77% of the economic interest in NCS.

9. Although the Genesis Merger Agreement purports to provide a 'fiduciary out," in the event of a "Superior Offer" to acquire NCS, the operative clause is a sham. The Director Proxy Lock-Up and No Termination Provisions are designed to ensure that the "out" can never actually be exercised and that no other offer, regardless of its superiority, can displace the deal the Director Defendants have struck with Genesis.

10. To further impede superior proposals, defendants provided in the Genesis Merger Agreement that if it does not obtain the required stockholder approval, thus preventing consummation of the merger (an unlikely event if the other provisions described above have their intended effect), NCS will face a $6 million penalty if it pursues any alternative acquisition within 12 months of the termination of the Genesis Merger Agreement (the "Break-Up Penalty"). This provision, a further attempt to dissuade other bidders from offering NCS stockholders fair value for their shares, provides Genesis with a windfall, while betraying the interests of NCS

stockholders by making it virtually impossible for NCS to negotiate with third parties willing to offer NCS stockholders greater value than they will realize through the Genesis Merger Agreement.

11. Thus, the Director Defendants, by agreeing to the Director Proxy Lock-Up, the No Termination Provision, the No Shop Provision, the Break-Up Penalty and the rest of the indisputably inferior terms offered by Genesis, have effectively abdicated their fiduciary duties to manage NCS for the benefit of stockholders and have impermissibly sought to lock plaintiffs and other NCS public stockholders into a transaction that denies them anything close to fair value.

12. Genesis and Geneva Sub, for their part, have knowingly, purposefully, actively and substantially aided and abetted the Director Defendants in this regard by insisting upon, extracting from the Director Defendants, and agreeing to the Director Proxy Lock-Up, the No Termination Provision, the No Shop Provision and the Break-Up Penalty.

13. This action seeks to enjoin the defendants' wrongful course of conduct because it violates (a) the Director Defendants' fiduciary and statutory duties under Delaware law and (b) the NCS Certificate by disregarding the fact that the Class B shares owned by defendants Outcalt and Shaw have been converted into Class A shares.

THE PARTIES

14. Plaintiffs Dolphin Limited Partnership I, L.P., Ramesh Mehan, Renee Mehan, Rence Mehan IRA, Saroj Mehan, Maneesh Mehan, Rahul Mehan, Joel Mehan, Lajia Mehan, Darshan Mehan IRA, Darshan Mehan (Rollover IRA), Arsh N. Mehan, Arsh N. Mehan (Roth IRA), Ashok K. Mehan, Ashok K. Mehan IRA, Robert M. Miles, Guillermo Marti, Anthony Noble, Jeffrey Treadway and Tillie Saltzman own shares of the Class A common stock of NCS.

15. NCS is a corporation organized and existing under the laws of the State of

Delaware, with its principal place of business in Beachwood, Ohio. NCS is an independent provider of pharmacy and related services to long-term care and acute-care facilities, including skilled nursing centers, assisted living facilities, and hospitals.

16. Defendant Outcalt is Chairman of the Board of Directors of NCS and a founding principal of NCS. As such, he owes fiduciary duties to NCS stockholders. Outcalt receives an annual salary of $200,000 plus other benefits and, in addition, he receives a monthly retention bonus of $17,000 for services in connection with the NCS' "restructuring program." Upon completion of the Genesis merger, Outcalt will receive numerous payments and perquisites, including a $200,000 "Executive Officer Bonus," a $200,000 "continuation payment" and a $200,000 "success fee," as well as salary continuation benefits for two years. Genesis has also agreed to pay Outcalt an additional $200,000 one year after the closing and $175,000 (plus benefits) each year for at least four years. As a result, Outcalt will personally receive a total of at least $13 million, if the Proposed Genesis Merger is consummated. Moreover, Genesis has agreed to accord Outcalt "Founder" status, which entitles him to additional payments from Genesis; to "seriously consider" him to fill the next opening on the Genesis board; and to maintain an office for him, including secretarial and parking costs, for at least one year.

17. Defendant Shaw is a founding principal and has been President, Secretary, and a Director of NCS since 1986. As such, he owes fiduciary duties to NCS stockholders. Shaw received an annual salary of $187,000 for fiscal 2001 plus other benefits, and a "retention bonus" of $25,000 payable during 2001 and 2002. His salary for fiscal 2002 increased to $196,000. Shaw will receive a $200,000 "Executive Officer Bonus" upon the closing of the Proposed Genesis Merger, salary continuation benefits for two years and reimbursement of certain legal expenses in connection with the negotiation of the merger.

18. Defendant Sells has been a member of the Board since 1993 and serves on the Audit and Human Resources Committees of the Board. Sells has been receiving a director's fee of $35,000 per year, plus a monthly consulting fee of $10,000 (or $120,000 per year). As a Director of NCS, Sells owes fiduciary duties of loyalty and care to NCS stockholders.

19. Defendant Osborne has been a member of the Board since 1986 and serves on the Audit and Human Resources Committees of the Board. Osborne has been receiving a director's fee of $35,000 per year. As a Director of NCS, Osborne owes fiduciary duties of loyalty and care to NCS stockholders.

20. Defendants Osborne and Sells have served as members of a Special Committee of the NCS Board of Directors (the "Special Committee") and, in that capacity, have recommended to the entire Board of Directors, consisting of Outcalt and Shaw in addition to themselves, approval of the proposed Genesis merger. Defendants' appointment of a Special Committee in connection with the effort to sell or "restructure" Genesis indicates that defendants believe that defendants Outcalt and Shaw suffer from conflicts of interests, as reflected in the salaries, payments, consulting agreement and other perquisites to be provided as a result of the Genesis merger. However, Sells' ability to act independently is compromised by a conflict of interest arising from his $120,000 per year consulting fee with NCS, for which he is beholden to defendants Outcalt and Shaw. And, as detailed in ¶¶35-36, *infra*, the Special Committee's deliberations were a sham guided by the same legal and financial advisors representing the Company's insiders.

21. Defendant Genesis is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business in Kennett Square, Pennsylvania. Genesis is a provider of pharmacy services to long term health care institutions. Genesis has

recently emerged from bankruptcy proceedings and, as of March 31, 2002, had approximately $600 million of net debt and redeemable preferred stock. Genesis has never declared or paid cash dividends on its common stock. Moreover, Genesis' ability to pay dividends is restricted by its senior credit facility and senior secured noted. Its Chief Executive Officer left in May and the position of CEO is presently being filled on an interim basis by a member of the Genesis Board of Directors. Additionally, on June 21, 2002, Genesis announced that another of its senior executives, Vice Chairman David C. Borr, had resigned to pursue other opportunities.

22. Defendant Geneva Sub, a wholly owned subsidiary of Genesis, is a corporation organized and existing under the laws of the State of Delaware. Geneva Sub was formed by Genesis to acquire NCS. References to "Genesis" include Geneva Sub.

23. Omnicare, NCS, and Genesis are all in the same or similar lines of business. They all are providers of pharmacy services to long term health care institutions.

CLASS ACTION ALLEGATIONS

24. Plaintiffs bring this action on their own behalf and as a class action on behalf of all holders of Class A common stock of NCS and their successors in interest (except defendants, their families, and their affiliates) who are threatened with injury arising from defendants' actions.

25. This action is properly maintainable as a class action.

a. The class is so numerous that joinder of all members is impracticable; approximately 18.5 million publicly held shares of NCS Class A common stock are held by hundreds, if not thousands, of shareholders throughout the country.

b. There are questions of law and fact which are common to the class, including, *inter alia*, the following:

i. whether the individual defendants are breaching the fiduciary duties owed by them to plaintiff and the members of the class by failing to maximize shareholder value, in a sale of NCS;

ii. whether the individual defendants are breaching their fiduciary duties by refusing to consider in good faith the vastly superior offer by Omnicare to acquire NCS;

iii. whether the NCS public shareholders are entitled to injunctive relief or damages as a result of the individual defendants' breaches of their fiduciary duties.

c. Plaintiffs are committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature. Plaintiffs' claims are similar to those of the Class and plaintiffs have no interests that are adverse to the Class.

26. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for defendants, or adjudications with respect to individual members of the Class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or would substantially impair or impede the ability of members of the Class to protect their interests.

27. Defendants have acted, or refused to act, on grounds generally applicable to, and causing injury to, the Class and, therefore, preliminary and final injunctive relief on behalf of the Class as a whole is appropriate.

ADDITIONAL SUBSTANTIVE ALLEGATIONS

Omnicare's Initial Efforts to Acquire NCS At Ever-Increasing Prices

28. Since approximately April 2000, NCS has been in default under its senior credit

facility. Thereafter, NCS elected not to make an interest payment due February 15, 2001 on its outstanding bonds and began a series of discussions with its banks and with a committee of bondholders (the "Ad Hoc Committee") regarding a possible restructuring of its debt.

29. In July 2001, Omnicare President and CEO Joel F. Gemunder ("Gemunder") expressed an interest in acquiring NCS. Defendant Shaw responded that the Director Defendants would consider Omnicare's interest. In a July 20, 2001 letter to the Director Defendants, Gemunder stated Omnicare was prepared to offer approximately $225 million in cash to acquire NCS' assets, was willing to discuss the details of its proposal, and would need only limited due diligence.

30. An August 9, 2001 letter from NCS' counsel directed Omnicare to conduct all further communications with NCS' advisors, rather than directly with NCS.

31. On August 29, 2001, Omnicare sent NCS, the Ad Hoc Committee and respective legal and financial advisors a written offer to pay $270 million in cash to acquire NCS, excluding cash and certain liabilities. Given NCS' then-existing financial situation, the proposal contemplated a purchase pursuant to Section 363 of the United States Bankruptcy Code, but Omnicare made clear that it was open to other alternatives. NCS never responded.

32. In late September 2001, the parties' advisors agreed to the terms of a confidentiality agreement. In October 2001, NCS' financial advisors proposed that Omnicare buy NCS, make a modest cash payment to stockholders and pay off bondholders at a modest discount to par, but NCS subsequently refused to provide the financial data Omnicare needed to analyze the proposal.

33. Because NCS would not respond to Omnicare, Omnicare met in November 2001 with the Ad Hoc Committee and its financial and legal advisors to discuss Omnicare's interest in

NCS. After the Ad Hoc Committee stated that it believed that it could obtain NCS' support for a transaction, Omnicare and the Ad Hoc Committee attempted to negotiate such a transaction over the ensuing months. However, those negotiations were unsuccessful, as NCS refused to participate directly or meaningfully in the process.

34. In February 2002, NCS was informed by representatives of the Ad Hoc Committee that the Committee was engaged in discussions with Omnicare regarding a possible transaction involving NCS. As part of those discussions, Omnicare prepared and provided to the Ad Hoc Committee a draft purchase agreement under which Omnicare would purchase NCS under the bankruptcy laws for $313,750,000.

35. In March 2002, recognizing the obvious conflicts of interests arising from any direct participation by Outcalt and Shaw in negotiating and recommending any sale of NCS, the Director Defendants set up the Special Committee, a supposedly "independent" committee of the NCS board of directors comprised of defendants Sells and Osborne, for the express purpose of reviewing, evaluating and negotiating possible strategic transactions.

36. The Special Committee, however, was a sham for several reasons. First, given Defendant Sells' lucrative, and material, consulting contract with NCS, which nets him approximately $120,000 a year, Sells cannot be considered "independent." Moreover, the Special Committee did not receive *any* independent legal or financial advice. To the contrary, the Special Committee was advised by the same lawyers and investment bankers NCS management had employed prior to the creation of the Special Committee and continued to employ thereafter.

37. On or before April 10, 2002, NCS received from the Ad Hoc Committee a copy of Omnicare's proposal to acquire NCS for $313,750,000. Again, NCS declined to participate in

the Ad Hoc Committee's discussions with Omnicare.

38. On May 14, 2002, the NCS Special Committee (*i.e.*, defendants Sells and Osborne) met with the financial advisors, Brown, Gibbons, Lang & Company, LLP ("Brown Gibbons") to review the progress of the restructuring efforts for NCS. At that meeting, Brown Gibbons recommended that NCS pursue a "structured auction process," including Genesis and Omnicare, to maximize shareholder value. That recommendation was ignored by the Special Committee, notwithstanding Omnicare's repeated offers to acquire NCS at ever-increasing prices.

39. Although strapped for cash, on June 26, 2002, NCS entered into a retention and indemnification agreement with each of the officers and directors of NCS. Defendants caused a trust for that purpose to be funded by NCS with $975,000.

40. Prior to July 1, 2002, NCS was being marketed rigorously and expansively by its financial advisors. Simply put, the Directors Defendants had put NCS up for sale and therefore had a duty to achieve the highest price reasonably available for NCS Stockholders.

41. Indeed, as noted previously, by April 2002, NCS had received an offer from Omnicare to acquire the Company for approximately $313.8 million. The Director Defendants, however, were bent on closing a deal with Genesis at any cost, regardless of whether other suitors, such as Omnicare, were prepared to offer a higher price.

The Exclusivity Agreement

42. To that end, on July 3, 2002, at a time when Genesis had submitted a bid for NCS that was almost $2 million *less than* Omnicare's most recent proposal, NCS entered into an extraordinary exclusive dealing agreement with Genesis that effectively locked up a deal with Genesis before it had even been struck. Under that Agreement (the "Exclusivity Agreement"),

NCS was precluded from engaging in any "discussions" with Omnicare or any other prospective bidder, and was flatly precluded from "accept[ing]" or "recommend[ing]" any "Competing Transaction," no matter how favorable to the public stockholders of NCS. The Exclusivity Agreement had an initial expiration date of July 19, 2002, but then was extended by NCS and Genesis until July 26, and then July 31, effectively precluding Omnicare or any other prospective bidders from the merger negotiation process.

The Omnicare Merger Proposal

43. On July 26, 2002, Gemunder, President and CEO of Omnicare, sent a letter to defendant Outcalt proposing an acquisition of NCS by Omnicare in a merger transaction pursuant to which NCS Stockholders would receive $3.00 per share in cash and Omnicare would assume and/or retire the existing $308 million NCS debt that is presently in default (as of March 31, 2002) at its full principal amount plus accrued interest. Omnicare also offered to consider a stock transaction if that were the preference of NCS. Neither NCS, its Board of Directors, nor any of their representatives responded to the Omnicare buy-out proposal -- which was at a price more than four times the then-trading price of NCS shares.

44. On July 29, 2002, Gemunder sent another letter to defendant Outcalt, expressing Omnicare's disappointment that NCS and its representatives had continued to refuse to meet with Omnicare to discuss Omnicare's proposal to acquire NCS. The letter noted that Omnicare's $3.00-per-share offer represented more than four times NCS' then-current stock price of $.74 per share, which was already at its highest level in two years.

45. The letter also noted that this proposal would provide almost $400 million in cash to NCS's equity and debt holders, and reiterated Omnicare's continued belief that such a proposal provided exceptional value to the NCS security holders.

46. The letter further recited that Omnicare's Board had authorized the proposal, that Omnicare was prepared to negotiate quickly and execute a mutually acceptable definitive merger agreement, and that Omnicare, having done extensive due diligence on NCS, would need to do only confirmatory due diligence, which would involve only a review of certain non-public information typical for a transaction of this type, in order to proceed with a definitive merger agreement. The letter stated that, with the cooperation of the NCS board members, such confirmatory due diligence could be completed, and a definitive merger agreement executed, in one week. To help clarify and facilitate its proposal, Omnicare enclosed a draft merger agreement, which contained provisions customary for transactions of this type.

47. Significantly, as the letter pointed out, Omnicare's proposal was not subject to any financing contingencies, did not contain any request for voting or similar agreements from NCS stockholders, and did not require that NCS agree to a "break-up" or similar fee that might act as a deterrent to someone willing to provide greater value to NCS' equity and debt holders. The letter expressed Omnicare's belief that the securityholders of NCS should have the option to choose a transaction providing them with the greatest value without any impediment to that choice or the payment of any penalty for that choice.

48. Gemunder's letter concluded by expressing the hope that defendant Outcalt and the other members of the NCS Board of Directors would view the proposal as Omnicare did – an excellent opportunity for the equity and debt holders of NCS to realize full value for their securities to an extent not likely to be available to them in the marketplace. The letter concluded as follows:

> We continue to believe that there are clear and compelling advantages to both Omnicare and NCS from the combination of our two companies and that such a transaction would create

> significant value for each of our companies and our respective security holders. We trust that you and the other members of the NCS Board of Directors will give this proposal immediate and serious consideration. Your fiduciary duties to your equity and debt holders require no less. We look forward to hearing from you promptly.

49. NCS never responded to that letter.

The Genesis Merger Agreement

50. Instead, on July 29, 2002, NCS announced that, on July 28, 2002, it had entered into the Genesis Merger Agreement. Under the terms of the Genesis Merger Agreement, each outstanding share of NCS would be exchanged for 0.1 of a share of Genesis. This offer purportedly represented a value of $1.60 per share of NCS stock at the time the transaction was announced (far less than the $3.00 per share in cash then being offered by Omnicare). The Director Defendants simply ignored Omnicare's all-cash proposal with a value of four times NCS' current stock price.

51. As designed by defendants, in flagrant violation of Delaware law and the NCS Certificate, the Genesis Merger Agreement and the associated Director Proxy Lock-Up would have the effect of locking up NCS for Genesis and precluding any superior offer. The Director Proxy Lock-Up, for example, requires that defendants Outcalt and Shaw, who collectively held approximately 65% of the voting power of all NCS stockholders through their holdings of Class B common stock, (a) grant Genesis a proxy to vote their respective shares in favor of adoption and approval of the Proposed Genesis Merger and against proposals for other transactions, no matter how superior; and (b) not transfer their shares prior to consummation of the merger with Genesis. In addition, the No Shop Provision was designed to prevent the Director Defendants from considering or engaging in discussions with respect to alternative offers.

52. NCS' ability to negotiate with third parties willing to offer NCS stockholders greater value is further impeded by the requirement that NCS pay the $6 million Break-Up Penalty if it enters into an acquisition agreement with another company, if any such an acquisition is consummated, or if the Board recommends that NCS enter into such an agreement within 12 months of the termination of the Genesis Merger Agreement. This penalty amounts to nearly 16% of the equity value of the transaction.

53. The Director Proxy Lock-Up, the No Termination Provision, the No Shop Provision and the Break-Up Penalty are intended to preclude Omnicare (and any other third party) from concluding a merger with NCS for greater value than the Genesis Merger Agreement and, therefore, represent an abdication by the Director Defendants of their fiduciary responsibilities under Delaware law.

54. Indeed, NCS has admitted in a recently filed SEC Form S-4 that the Director Defendants were advised in advance of entering into the Genesis Merger Agreement of the preclusive effect of the Director Proxy Lock-Up, the illusory nature of the "fiduciary out" provision, and the fact that by entering into those agreements they would be disabling themselves from exercising their fiduciary duties. Specifically, the Form S-4 states that prior to the July 28, 2002 decision of the Special Committee to recommend the Genesis Merger Agreement to the full Board of Directors:

> [outside] legal counsel reminded the NCS independent committee that under the terms of the [Genesis] merger agreement and because NCS stockholders representing in excess of 50% of the outstanding voting power [*i.e.*, Defendants Outcalt and Shaw] would be required by Genesis to enter into stockholder voting agreements contemporaneously with the signing of the merger agreement, and would agree to vote their shares in favor of the merger agreement, stockholder approval of the merger would be assured even if the NCS board of directors were to withdraw or

> change its recommendation. *These facts would prevent NCS from engaging [in] any alternative or superior transaction in the future.*

The full board received the same advice from outside counsel before approving the Genesis Merger Agreement later that same day.

The Omnicare Tender Offer

55. On August 1, 2002, following the Director Defendants' continuing refusal even to respond to (let alone consider) Omnicare's proposals, Omnicare issued a press release announcing its intention to commence a tender offer for all outstanding shares of NCS common stock and to raise its offer to $3.50 per share in cash. In that press release, the President of Omnicare stated:

> We are taking these steps after continued refusals by NCS to discuss Omnicare's offer to acquire the company. We believe that the board of directors of NCS has breached its fiduciary duties by entering into the Genesis agreement while they were fully aware of our superior offer. Omnicare's offer will deliver more than twice the value to NCS stockholders, and the NCS board should not prevent their stockholders from accepting this offer.

56. On August 8, 2002, Omnicare, through a wholly owned subsidiary, commenced its tender offer for all outstanding shares of NCS common stock at $3.50 per share in cash.

57. That same day, Gemunder, the President and CEO of Omnicare, sent the Director Defendants a letter stating that their refusal even to discuss Omnicare's offer and their apparent disregard of their fiduciary duties had left Omnicare no alternative but to take its offer directly to NCS stockholders. That letter reiterated that Omnicare would prefer to work with the NCS board toward a transaction maximizing value for stockholders, bondholders and creditors, and remained willing to discuss all aspects of its offer, including structure, price and type of consideration, and to execute a merger agreement substantially identical to the Genesis Merger

Agreement, *except* that it would include neither a break-up fee, voting agreements, nor any other feature designed to deter competing bids. Gemunder further represented that Omnicare could consummate such a transaction very quickly.

58. On August 20, 2002, NCS filed with the SEC a Schedule 14D-9 in response to the Omnicare tender offer, in which the Director Defendants set forth various purported reasons for recommending that NCS stockholders reject Omnicare's offer, including baseless assertions that Omnicare's offer is "highly conditional" and "illusory" and that many of the conditions contained therein are not capable of being satisfied -- because of the Director Proxy Lock-Up, the No Termination Provision, the No Shop Provision and other restrictions contained in the Genesis Merger Agreement.

59. As noted previously, defendants Outcalt and Shaw will be handsomely rewarded by Genesis as a result of the merger. Outcalt will (a) receive two payments, each equal to his current annual base salary of $200,000, with the first payment to be made on the closing date of the merger and the second payment to be made one year later; (b) receive a "success fee" of $200,000, purportedly for completing the restructuring of NCS; (c) be hired by Genesis as a $175,000 per year consultant for a guaranteed period of four years; (d) be reimbursed by Genesis during the period of time he is a consultant for certain "customary benefits and perquisites", including health insurance and life insurance; (e) be seriously considered by Genesis to fill the next available seat on the Genesis Board of Directors; and (f) receive "Founder" status from Genesis, which entitles Outcalt to receive a salary from Genesis in return for as-needed services relating to NCS. Defendant Shaw will also receive a series of payments as a result of the change of control that will result from the merger with Genesis, as well as reimbursement of legal fees of up to $7,000 in connection with the negotiation of the merger.

60. In further violation of their fiduciary obligations to NCS Class A stockholders, the Director Defendants have also agreed to a host of onerous and draconian defensive measures with respect to the proposed Genesis merger that are disproportionate to any perceived threat posed to NCS or its shareholders and that effectively preclude acceptance of any superior bid, including the premium offer made by Omnicare.

61. Although NCS stockholders will go through the formality of voting for or against the Genesis merger, the outcome of that vote is already a foregone conclusion. Because holders of NCS Class A shares are allowed one vote per share, while holders of NCS Class B shares (principally Director Defendants Outcalt and Shaw) are allowed ten votes per share, defendants claim that Outcalt and Shaw possess sufficient voting strength to ensure approval of the Genesis merger agreement.

62. Such approval is guaranteed by the fact that NCS, Genesis and Director Defendants Outcalt and Shaw have executed the Director Proxy Lock-Up -- an "irrevocable proxy" to vote all their shares of NCS Class B common stock in favor of the Genesis Merger Agreement-- in contravention of the Director Defendants' fiduciary obligations to the public stockholders of NCS and Section 7(a) of the NCS Certificate, which prohibits transfer, assignment or appointment of Class B shares.

63. While the Director Proxy Lock-Up is ostensibly terminable if the Genesis Merger Agreement is terminated, pursuant to the No Termination Provision, NCS has agreed that its obligations to call, give notice of, convene and hold a meeting of the holders of the common stock of the Company shall not be affected by the withdrawal, amendment or modification of the NCS Board of Directors' recommendation. Furthermore, NCS has agreed that such obligations shall not be affected by the commencement, public proposal, public disclosure or communication

to the Company of any acquisition proposal no matter how superior to the consideration being offered through the Genesis merger. As a result, defendants have "locked up" the acquisition of NCS and are proceeding to force this grossly inferior transaction on shareholders owning approximately 77% of the Company.

64. To further impede superior proposals, the Genesis Merger Agreement provides that, if the Proposed Genesis Merger does not obtain the required stockholder approval, thus preventing consummation of the merger (an unlikely event given the other provisions described above), NCS will face a $6 million "Break-up Penalty" (nearly 16% of its equity market value), if it pursues any alternative acquisition within 12 months of the termination of the Genesis Merger. This provision, a further attempt to prevent other bidders from offering NCS stockholders fair value for their shares, provides Genesis with a windfall at the expense of the interests of NCS stockholders.

65. Thus, the Director Defendants, by agreeing to the Exclusivity Agreement and then the No Termination Provision, the No Shop Provision, the Director Proxy Lock-Up, the Break-Up Penalty, and the rest of the indisputably inferior terms offered by Genesis, have effectively abdicated their fiduciary duties to manage NCS for the benefit of stockholders, and have impermissibly locked NCS stockholders into a transaction that denies them anything close to fair value for their shares. All this was done against the backdrop of ever-increasing and superior proposals from Omnicare.

66. Moreover, NCS public stockholders who do not wish to accept Genesis common stock through the NCS merger with Genesis have a statutory right under Delaware law to have the value of their NCS shares determined by this Court through an appraisal proceeding. However, the ability of the NCS public stockholders to make a meaningful determination as to

whether to exercise their statutory appraisal rights has been impeded by defendants' dissemination of numerous statements and public filings that have misrepresented or failed to disclose material facts concerning the proposed transaction and the value of NCS, including the following:

a. the repeated representations that the result of the NCS stockholder meeting is a foregone conclusion is false, as, by virtue of the operation of the NCS Certificate, the execution of the Director Proxy Lock-Up irrevocably converted the supervoting Class B shares owned by defendants Outcalt and Shaw into Class A shares (*see* Count I, *infra*);

b. that Brown Gibbons, the financial advisor to the Special Committee, had recommended to the Special Committee in May 2002 that NCS pursue a structured auction process including both Omnicare and Genesis to maximize stockholder value in the restructuring of NCS, but that that recommendation and Omnicare's repeated overtures were ignored in favor of the exclusive dealing arrangement with Genesis;

c. that the Special Committee utilized the same financial and legal advisors for Genesis that had been representing the interests of management of NCS, rendering the efforts of that Committee a sham;

d. that the numerous statements by defendants concerning the allegedly illusory nature Omnicare's offers and expressions of interest are false;

e. that NCS and its representatives repeatedly declined to provide Omnicare with the due diligence requested for its analysis, slowing Omnicare's ability to evaluate NCS as an acquisition candidate; and

f. that the repeated representations that NCS had not been "directly" contacted by Omnicare for five months (until July 26, 2002) are highly misleading in view of

Omnicare's extensive discussions with the Ad Hoc Committee concerning a proposed transaction, the refusal of the Director Defendants to participate in those discussions, and the numerous steps taken by NCS and the Director Defendants to thwart meaningful discussions with Omnicare.

67. Furthermore, if the Genesis Merger Agreement is consummated according to its terms, with NCS stockholders receiving .1 share of Genesis common stock for each outstanding share of NCS common stock, NCS public stockholders would own only approximately 4.2% of the combined company, which would have approximately $874 million of *pro forma* net debt and preferred stock. Thus, any theoretical long-term benefits of the Genesis merger to NCS public stockholders would be *de minimis*, if they ever materialize. In fact, Genesis stock would have to currently trade at $35 per share to provide a market value equivalent to the Omnicare proposal -- more than double its current trading price of about $15 per share. On the other hand, the Omnicare $3.50 cash offer provides an immediate real and substantial benefit -- a conclusion best confirmed by the fact that, as of September 5, 2002, about 58% of the outstanding Class A shares had been tendered to Omnicare.

68. Recognizing that the onerous No Shop Provision contained in the Genesis Merger Agreement was legally indefensible, defendants embarked upon a ploy to appear reasonable while continuing to stonewall Omnicare's efforts to acquire NCS at a clearly superior price. On September 12, 2002, the Director Defendants caused NCS to file an amended SEC Schedule 14D-9 stating that Genesis had granted NCS a limited waiver of the No Shop Provision in the Genesis Merger Agreement and that NCS planned to hold discussions with Omnicare concerning its offer to acquire NCS. However, NCS and the Director Defendants made plain that those discussions would not include disclosure of any nonpublic information to Omnicare and that

because of the Director Proxy Lock-Up, the No Termination Provision, the Break-Up Penalty and the other onerous conditions included in the Genesis Merger Agreement to discourage superior offers, "[i]t was unlikely that a business combination with Omnicare may be consummated."

69. On or about September 13, 2002, a meeting was held between representatives of Omnicare and NCS to discuss Omnicare's offer to acquire NCS. Notwithstanding the clearly superior transaction being offered by Omnicare, the Director Defendants have chosen to continue supporting the proposed merger with Genesis.

COUNT I

(Declaratory Judgment that the Director Proxy Lock-Up Violates the NCS Certificate and that the Locked-Up Shares Have Converted Into Class a Shares Against All Defendants)

70. Plaintiffs reallege each preceding allegation, as if set forth fully herein.

71. There exists an actual substantial and immediate controversy within this Court's jurisdiction, resulting from the conduct alleged herein, which will be redressed by a judicial decision favorable to plaintiffs and the other NCS public stockholders.

72. The Court, thus, may properly declare the rights, obligations and other legal relationships of the parties to this action with respect to the Director Proxy Lock-Up, the status of the Locked-Up Shares and all other matters alleged herein.

73. Section 7(a) of the NCS Certificate prohibits transfers of Class B shares, or any interest in those shares, to anyone, including Genesis, who is not a permitted transferee. Thus, Section 7(a) states as follows:

> no person holding any shares of Class B Common Stock may transfer, and the Corporation shall not register the transfer of, such shares of Class B Common Stock or any interest therein, whether by sale, assignment, gift bequest, appointment or otherwise.

74. In violation of this provision, defendants Outcalt and Shaw entered into the Director Proxy Lock-Up and thereby (a) granted Genesis an irrevocable proxy, coupled with an interest, to vote their respective Class B shares (*i.e.*, the Locked-Up Shares), and (b) agreed not to transfer their shares of NCS common stock prior to consummation of the proposed Genesis merger, which, in light of the No Termination Provision, would be a foregone conclusion. As a result, defendants Outcalt and Shaw have improperly transferred not only an interest in, but all meaningful indicia of ownership in and rights to, their Class B shares to Genesis.

75. That transfer automatically and irrevocably converted those Class B shares into Class A shares. Pursuant to Section 7(d) of the NCS Certificate:

> [a]ny purported transfer of shares from Class B Common Stock other than to a permitted transferee shall *automatically, without any further act or deed on the part of the Corporation or any other person, result in the conversion of such shares into shares of Class A Common Stock. (Emphasis added.)*

76. Accordingly, plaintiffs and the Class are entitled to a judgment declaring that the grant of irrevocable proxies by defendants Outcalt and Shaw with respect to, and conveyance of interests in, their respective Class B shares violates Section 7 of the NCS Certificate and that, by operation thereof, the Locked-Up Shares have been irrevocably converted into Class A shares.

77. Plaintiffs and the Class have no adequate remedy at law.

COUNT II

(Violation of 8 Del. C. §141 Against the Director Defendants)

78. Plaintiffs reallege each preceding allegation, as if set forth fully herein.

79. By virtue of their positions as directors of NCS, each of the Director Defendants owes duties to NCS stockholders pursuant to 8 Del. C. §141, including, but not limited to, managing NCS' business and affairs and not taking steps to disable himself from doing so.

80. By agreeing to the terms of the Exclusivity Agreement, the Director Proxy Lock-Up, the No Shop Provision, the No Termination Provision and the Genesis Merger Agreement, the Director Defendants have surrendered any ability to fulfill these statutory duties to NCS and its stockholders.

81. Their decisions with respect to the Exclusivity Agreement, the Director Proxy Lock-Up, the No Shop Provision, the No Termination Provision and the Genesis Merger Agreement constitute a series of deliberate actions which effectively disable the Director Defendants from managing the business and affairs of NCS.

82. The Director Defendants have thus violated 8 Del. C. §141.

83. Unless enjoined by this Court from taking further actions with respect to the Director Proxy Lock-Up and/or the Genesis Merger Agreement, the Director Defendants will continue to violate 8 Del. C. §141 to the detriment of plaintiffs and the other public stockholders of NCS.

84. Plaintiffs and the Class have no adequate remedy at law.

COUNT III

(Breach of Fiduciary Duty Against the Director Defendants)

85. Plaintiffs reallege each preceding allegation, as if set forth fully herein.

86. Each of the Director Defendants owes fiduciary duties to NCS and its stockholders. These duties include, but are not limited to, the obligation to consider and fully evaluate all *bona fide* offers for NCS, the obligation to exercise due care in responding to such offers, the obligation not to put self-interest and personal or other consideration ahead of the interests of the Class A stockholders, the obligation to obtain the best value reasonably available for NCS stockholders in connection with any effort to sell the Company, the obligation not to

take unreasonable defensive measures that are disproportionate to any perceived threat posed to NCS or its shareholders, and the obligation to disclose all material facts to the stockholders of NCS with complete candor.

87. The decisions of the Director Defendants with respect to the Exclusivity Agreement, Director Proxy Lock-Up, the No Shop Provision, the No Termination Provision, the Break-Up Penalty and the Genesis Merger Agreement (a) were entered into by directors with patent conflicts of interest who were neither disinterested nor independent; (b) demonstrate a lack of good faith; (c) could not have been based upon a reasonable inquiry; and (d) unreasonably preclude Omnicare or any other third party from entering into an agreement that offers greater value to NCS stockholders than that offered by the Genesis Merger Agreement.

88. The Director Defendants have breached their duties of good faith, loyalty and care by agreeing to enter into the Exclusivity Agreement, the No Shop Provision, the No Termination Provision, the Break-Up Penalty, the Genesis Merger Agreement and the Director Proxy Lock-Up; and have breached their duty of complete candor by misrepresenting or failing to disclose numerous material facts concerning the proposed transaction and the value of NCS.

89. In addition, the Director Defendants failed to take steps to obtain for NCS stockholders the highest price reasonably available after having initiated an active bidding contest for NCS.

90. The Director Defendants have breached their fiduciary duties by approving and agreeing to enter into the Exclusivity Agreement, the Director Proxy Lock-Up and the Genesis Merger Agreement.

91. In further breach of their fiduciary duties, they have also failed, in any substantive way, even to consider Omnicare's superior offer.

92. The Director Defendants have willfully and purposely refused to explore Omnicare's bid, even when Omnicare specifically invited NCS representatives to engage in discussions with respect to that bid. The Director Defendants' willful blindness and refusal to fully inform themselves of Omnicare's superior offer constitutes a breach of the Director Defendants' fiduciary duties.

93. In further breach of their fiduciary duties, the Director Defendants waived, with respect to all transactions contemplated by the Genesis Merger Agreement, all protections afforded by the provisions of 8 Del. C. § 203 and any other state takeover law or state law limiting or restricting business combinations or the ability to acquire or vote shares.

94. The Director Defendants' refusal to declare Omnicare's $3.50 per share all cash tender offer a superior proposal and to recommend it to NCS' stockholders constitutes a further breach of their fiduciary duties.

95. The Director Defendants have further breached their fiduciary duties by, in effect, disenfranchising the public NCS Class A stockholders by not conditioning the Genesis Merger Agreement on the approval of the Class A shareholders voting as a separate class.

96. Unless enjoined by this Court, the Director Defendants will continue to breach their fiduciary duties to the detriment of the Class A stockholders, thereby preventing NCS' stockholders from even considering potentially superior merger proposals such as the Omnicare merger proposal.

97. Plaintiffs and the Class have no adequate remedy at law.

COUNT IV

(Aiding and Abetting Breach of Fiduciary Duty Against Genesis and Geneva Sub)

98. Plaintiffs reallege each preceding allegation, as if set forth fully herein.

99. By virtue of their positions as directors of NCS, the Director Defendants owe NCS stockholders fiduciary duties.

100. The Director Defendants have breached those duties to the detriment of NCS stockholders.

101. Genesis and Geneva Sub have aided and abetted these breaches. As direct participants in the Exclusivity Agreement, Director Proxy Lock-Up and the Genesis Merger Agreement, Genesis and Geneva Sub purposefully, knowingly and substantially aided and abetted the Director Defendants in their breach of fiduciary duties by insisting upon and agreeing to the excessive and unreasonable features and penalty provisions of the Exclusivity Agreement, Genesis Merger Agreement and the Director Proxy Lock-Up, which were designed by Genesis, Geneva Sub and NCS to interfere with Omnicare's or any other superior merger proposals.

102. Unless enjoined, Genesis and Geneva Sub will continue to aid and abet the Director Defendants' breach of fiduciary duties to NCS and its other stockholders.

103. Plaintiffs and the Class have no adequate remedy at law.

COUNT V

Declaratory Judgment that the Break-Up Penalty is Unreasonable, Invalid and Unenforceable Against All Defendants)

104. Plaintiffs reallege each preceding allegation, as if set forth fully herein.

105. There exists an actual, substantial and immediate controversy within this Court's jurisdiction, resulting from the conduct alleged herein, which will be redressed by a judicial

decision favorable to plaintiffs and the other NCS stockholders.

106. The Court, thus, may properly declare the rights, obligations and other legal relationships of the parties to this action with respect to the Break-Up Penalty and all other matters alleged herein.

107. By virtue of their positions as directors of NCS, the Director Defendants owe fiduciary duties to NCS stockholders, including, but not limited to, considering and fully evaluating all offers for NCS, exercising due care in conducting NCS' affairs, not putting self-interest and person or other consideration ahead of NCS stockholders' interest, and not taking unreasonable defensive measures that are disproportionate to any perceived threat posed to NCS.

108. The decisions of the Director Defendants with respect to the Break-Up Penalty demonstrate a lack of good faith, could not have been based upon a reasonable inquiry, and unreasonably preclude Omnicare or any other third party from entering into an agreement offering NCS stockholders greater value than the Proposed Genesis Merger.

109. The Director Defendants have breached their fiduciary duties by approving to the Break-Up Penalty.

110. Accordingly, plaintiffs and the Class are entitled to a judgment declaring that the Break-Up Penalty is unreasonable, invalid and unenforceable.

111. Plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs demand judgment against the defendants jointly and severally, as follows:

(1) declaring this action to be a class action and certifying plaintiffs as the class representatives and their counsel as class counsel;

(2) enjoining, preliminarily and permanently, the proposed merger between NCS and

Genesis;

(3) declaring that the Director Proxy Lock-Up violates Section 7 of the NCS Certificate and by operation thereof the Locked-Up Shares have been irrevocably converted into Class A shares;

(4) declaring that the Director Defendants violated 8 Del. C. §141 in agreeing to the terms of the Exclusivity Agreement, the Genesis Merger Agreement and the associated Director Proxy Lock-Up and, therefore, that those agreements are null and void;

(5) preliminarily and permanently enjoining (i) NCS, the Director Defendants, Genesis, Geneva Sub, and their respective officers, directors, employees, agents and all persons acting on their behalf from taking further steps or any actions with respect to the Director Proxy Lock-Up and/or the Genesis Merger Agreement; and (ii) Genesis and Geneva Sub, and their respective officers, directors, employees, agents and all persons acting on their behalf from aiding and abetting the Director Defendants' breaches of their fiduciary duties;

(6) declaring that the Break-Up Penalty is unreasonable, invalid and unenforceable;

(7) directing defendants to condition the Genesis merger on the approving vote of the Class A stockholders voting as a separate class;

(8) rescinding the Genesis Merger Agreement or awarding plaintiffs and the Class rescissory damages in the event that the transaction is consummated prior to the entry of this Court's final judgment;

(9) directing that defendants account to plaintiffs and the other members of the class for all damages caused by them and account for all profits and any special benefits obtained as a result of their breaches of their fiduciary duties;

(10) awarding plaintiffs the costs and disbursements of this action, including a

reasonable allowance for the fees and expenses of plaintiffs' attorneys and experts; and

(11) granting plaintiffs and the other members of the Class such other and further relief as the Court deems just and proper.

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CERTIFICATE OF SERVICE

I, Joseph A. Rosenthal, Esquire, do hereby certify that on this 20th day of September, 2002, I caused copies of the foregoing Notice of Filing and Consolidated Amended Complaint to be served by hand delivery upon:

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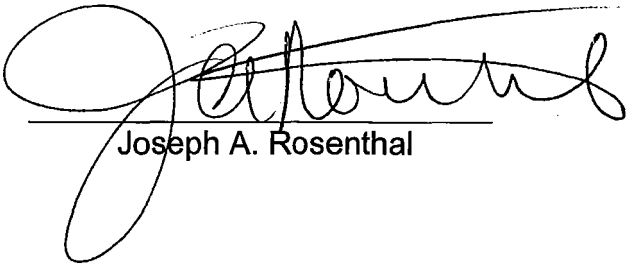

Joseph A. Rosenthal

cc: Donald J. Wolfe, Jr., Esquire