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28  
29 **UNITED STATES DISTRICT COURT**  
30 **NORTHERN DISTRICT OF CALIFORNIA**

31 MEIJER, INC. and MEIJER DISTRIBUTION,  
32 INC.,

33 Plaintiffs,

34 v.

35 BAUSCH HEALTH COMPANIES INC.,  
36 SALIX PHARMACEUTICALS, LTD., SALIX  
37 PHARMACEUTICALS, INC., SANTARUS,  
38 INC., ASSERTIO THERAPEUTICS, INC.,  
39 LUPIN PHARMACEUTICALS, INC., and  
40 LUPIN LTD.,

41 Defendants.

No.

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

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1 Plaintiffs Meijer, Inc. and Meijer Distribution, Inc. bring this class action, on behalf of  
2 themselves and all others similarly situated, against Bausch Health Companies Inc. (formerly known  
3 as Valeant Pharmaceuticals International, Inc.), Salix Pharmaceuticals, Ltd., Salix Pharmaceuticals,  
4 Inc., Santarus, Inc., Assertio Therapeutics, Inc. (formerly known as Depomed, Inc.), Lupin  
5 Pharmaceuticals, Inc., and Lupin Ltd. (collectively “Defendants”), based on personal knowledge as  
6 to themselves and upon information and belief as to all other allegations, and allege as follows.

## 7 I. INTRODUCTION

8 1. Fair competition would have limited the price of a 30-day supply of diabetes  
9 prescription drug Glumetza to less than \$55. Defendants instead were able to charge more than  
10 \$3,000 for the brand version and more than \$2,200 for the generic version. This Complaint explains  
11 how the Defendants’ blatant violation of the federal antitrust law allowed them to charge more than  
12 50 times the competitive price for Glumetza and steal more than \$2.8 billion from Glumetza  
13 purchasers.

14 2. Patients with Type 2 diabetes use metformin to prevent and control high blood sugar,  
15 helping the body to properly respond to its own naturally produced insulin. A person with Type 2  
16 diabetes who fails to control high blood sugar can develop very serious disabilities, such as kidney  
17 damage, blindness, and loss of limbs or sexual function.

18 3. Prescription metformin has been available as a generic drug since 2002. Defendant  
19 Assertio developed an extended-release version of metformin that can alleviate some of the drug’s  
20 common side effects. Assertio obtained several patents on the extended-release technology and  
21 began selling extended-release metformin, marketed under the brand name Glumetza, in 2005.  
22 Extended-release mechanisms are very common, however, and Assertio’s patents were weak and  
23 narrow and could not prevent competition from generic versions of the drug.

24 4. The effects of generic competition for a brand drug are predictable: sales switch  
25 quickly from the brand drug to the generic version. Generic drugs are priced at a fraction of the  
26 brand drug price, with prices for the generics falling farther as more generics enter the market, and  
27 purchasers shift swiftly to the generics. Brand manufacturers’ profits fall dramatically upon generic  
28 entry. Forestalling generic entry, then, is the name of the (unlawful) game.

1           5.       When Defendant Lupin developed a generic Glumetza, Assertio and its marketing  
2 partner, Defendant Santarus, sued Lupin for patent infringement. That lawsuit triggered an automatic  
3 prohibition on Lupin's entry into the market for 30 months. Just before the 30 months were over and  
4 Lupin would enter the market with generic Glumetza, Assertio/Santarus and Lupin settled the patent  
5 lawsuit.

6           6.       Assertio/Santarus paid Lupin to delay generic entry. The companies settled the patent  
7 litigation in February 2012 with a "reverse payment," that is, a payment from the plaintiffs in the  
8 patent lawsuit, Assertio/Santarus, to the defendant in the patent lawsuit, Lupin. Lupin agreed to stay  
9 out of the market from 2012 to February 2016. In exchange, Assertio/Santarus agreed that, when  
10 Lupin finally did enter the market in 2016, for at least six months they would not compete against  
11 Lupin by marketing their own generic version of Glumetza.

12           7.       Those Defendants allocated the Glumetza market between them: Assertio/Santarus  
13 got the entire market from 2012 to February 2016, and Lupin got the generic sector of the market  
14 from February 2016 until at least August 2016. That market-allocation agreement is blatantly  
15 unlawful under antitrust law.

16           8.       Other generic manufacturers could have upended the Assertio/Santarus/Lupin  
17 anticompetitive scheme. The Assertio patents' weakness created the risk that another manufacturer  
18 could avoid them and market a generic Glumetza before February 2016. To prevent that possibility,  
19 Assertio/Santarus and Lupin included in their agreement two deterrent provisions aimed at other  
20 competitors: (a) if another generic manufacturer succeeded in entering the market before February  
21 2016, Lupin could also enter on that earlier date; and (b) Assertio/Santarus would not grant a license  
22 to any other manufacturer to enter the market sooner than 180 days after Lupin.

23           9.       These deterrents ensured that, no matter how many resources another manufacturer  
24 might expend in overcoming Assertio's patents, it could never get the financial reward of being the  
25 only generic manufacturer on the market. It could not get that reward by winning a patent lawsuit  
26 against Assertio/Santarus—the deterrent provision would allow Lupin to enter earlier; it could not  
27 get that reward by negotiating an earlier-entry license from Assertio/Santarus—the deterrent  
28 expressly prohibited such a license.

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