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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
AT COVINGTON

INDIANA STATE DISTRICT COUNCIL OF )	Civil Action No.
LABORERS AND HOD CARRIERS )	
PENSION AND WELFARE FUND, On )	<u>CLASS ACTION</u>
Behalf of Itself and All Others Similarly )	
Situated, )	COMPLAINT FOR VIOLATION OF THE
)	FEDERAL SECURITIES LAWS
Plaintiff, )	
)	
vs. )	
)	
OMNICARE, INC., JOEL F. GEMUNDER )	
and DAVID W. FROESEL, JR., )	
)	
Defendants. )	
)	<u>DEMAND FOR JURY TRIAL</u>
)	

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## SUMMARY AND OVERVIEW

1. This is a securities fraud class action on behalf of all purchasers of the publicly traded securities of Omnicare, Inc. (“Omnicare” or the “Company”) between August 3, 2005 and January 27, 2006 (the “Class Period”), against Omnicare and certain of its officers and directors for violations of the Securities Exchange Act of 1934 (the “1934 Act”).

2. Omnicare provides pharmaceutical care for elderly people primarily in the United States and Canada. The Company operates through two segments, Pharmacy Services and Contract Research Organization Services. The Company is headquartered in Covington, Kentucky.

3. During the Class Period, defendants made false and misleading statements regarding the Company’s business and prospects. The true facts, which were known by each of the defendants but concealed from the investing public during the Class Period, were as follows:

(a) The Company was artificially inflating its earnings by engaging in improper generic drug substitution. Specifically, the Company was substituting capsules for tablets of Ranitidine, a generic form of the heartburn drug Zantac; giving tablets instead of capsules of Fluoxetine, a generic form of the antidepressant Prozac; and substituting two 7.5 milligram tablets for a single 15 milligram tablet of Buspirone, a generic form of the anti-anxiety drug BuSpar.

(b) The Company was not in compliance with Medicare laws.

(c) The Company’s strategy was *not* sound. In fact, the implementation of Medicare Part D had dramatically increased the Company’s costs and increased the number of rejected Medicare claims to nearly 40%.

(d) The Company was not “well-positioned to add value under the new Medicare Part D” Plan. Rather, the Company lacked adequate staff and internal compliance controls to ensure the Company could benefit from the new plan. Instead, Part D wreaked havoc on the Company’s

business model, sending costs, rejection rates and receivables far higher than shareholders were led to believe.

4. As a result of the defendants' false statements, Omnicare stock traded at inflated levels during the Class Period, trading as high as \$61.85 per share, and the Company was able to complete offerings of more than \$2.5 billion worth of securities.

#### **JURISDICTION AND VENUE**

5. Jurisdiction is conferred by §27 of the 1934 Act. The claims asserted herein arise under §§10(b) and 20(a) of the 1934 Act and Rule 10b-5.

6. (a) Venue is proper in this District pursuant to §27 of the 1934 Act. Many of the false and misleading statements were made in or issued from this District.

(b) Omnicare's executive offices are located in Covington, Kentucky, where the day-to-day operations of the Company are directed and managed.

#### **THE PARTIES**

7. Plaintiff Indiana State District Council of Laborers and HOD Carriers Pension and Welfare Fund purchased Omnicare securities as described in the attached certification and was damaged thereby.

8. Defendant Omnicare provides pharmaceutical care for elderly people primarily in the United States and Canada. The Company operates through two segments, Pharmacy Services and Contract Research Organization Services.

9. Defendant Joel F. Gemunder ("Gemunder") is Chief Executive Officer, President and a director of Omnicare. During the Class Period, Gemunder assisted the Company in selling more than \$2.5 billion worth of Omnicare securities.

10. Defendant David W. Froesel, Jr. (“Froesel”) is Chief Financial Officer, Senior Vice President and a director of Omnicare. During the Class Period, Froesel assisted the Company in selling more than \$2.5 billion worth of Omnicare securities.

11. The individuals named as defendants in ¶¶9-10 are referred to herein as the “Individual Defendants.” The Individual Defendants, because of their positions with the Company, possessed the power and authority to control the contents of Omnicare’s quarterly reports, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, *i.e.*, the market. Each defendant was provided with copies of the Company’s reports and press releases alleged herein to be misleading prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them but not to the public, each of these defendants knew that the adverse facts specified herein had not been disclosed to and were being concealed from the public and that the positive representations which were being made were then materially false and misleading. The Individual Defendants are liable for the false statements pleaded herein at ¶¶20-24, as those statements were each “group-published” information, the result of the collective actions of the Individual Defendants.

#### **SCIENTER**

12. In addition to the above-described involvement, each Individual Defendant had knowledge of Omnicare’s problems and was motivated to conceal such problems. Froesel, as CFO, was responsible for financial reporting and communications with the market. Many of the internal reports showing Omnicare’s forecasted and actual growth were prepared by the finance department under Froesel’s direction. Defendant Gemunder, as CEO, was responsible for the financial results and press releases issued by the Company. Each Individual Defendant sought to demonstrate that he could lead the Company successfully and generate the growth expected by the market.

13. Defendants were motivated to engage in the fraudulent practices alleged herein in order to infuse the Company with badly needed capital. In total, the Company sold \$2.5 billion worth of its securities at artificially inflated prices during the Class Period.

### **FRAUDULENT SCHEME AND COURSE OF BUSINESS**

14. Each defendant is liable for (i) making false statements, *or* (ii) failing to disclose adverse facts known to him about Omnicare. Defendants' fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Omnicare publicly traded securities was a success, as it (i) deceived the investing public regarding Omnicare's prospects and business; (ii) artificially inflated the prices of Omnicare publicly traded securities; (iii) allowed defendants to obtain larger bonuses which were directly tied to the performance of Omnicare; (iv) allowed defendants to complete offerings of \$2.5 billion worth of Omnicare securities; and (v) caused plaintiff and other members of the Class to purchase Omnicare publicly traded securities at inflated prices.

### **BACKGROUND**

15. Omnicare provides pharmaceutical care for elderly people primarily in the United States and Canada. The Company operates through two segments, Pharmacy Services and Contract Research Organization Services.

16. By Fall 2005, investors were becoming increasingly concerned about the Company's transition to Medicare Part D (effective January 1, 2006) and volume-based rebates that Omnicare earned from pharmaceutical manufacturers. Rumors relating to the Company's lack of preparedness for the program were downplayed by defendants' rosy projections.

17. In truth, the implementation of the Medicare Part D program was more challenging than defendants revealed and was negatively impacting the Company's future earnings ability, and the Company was struggling to overcome major glitches associated with the new program. In addition, the Company had learned that federal and state officials had begun investigating allegations

surrounding three generic drugs that it supplied to its nursing home patients and was fielding questions from a federal prosecutor about its relationship with certain drug manufacturers.

18. The first probe involved Omnicare directly. Based on a regulatory filing, the government sought information about the pills the Company supplied to treat three common ailments. Specifically, the government questioned whether Omnicare improperly substituted two 7.5-milligram Buspirone anti-anxiety tablets for one 15-milligram tablet, Fluoxetine anti-depression tablets for capsules and Ranitidine heartburn capsules for tablets.

19. Omnicare had been under fire for executing similar switches in the past. Notably, in 2004, Omnicare paid a \$1 million fine for changes involving a single drug – Ranitidine – in the state of Maine. The Company allegedly switched patients from Ranitidine tablets costing \$15.10 a month to Ranitidine capsules costing \$82.77 a month instead. When announcing the settlement in mid-2004, Maine Attorney General Steven Rowe said the drug switches were initiated specifically to increase revenue to Omnicare of Maine. He added, “The so-called ‘Ranitidine Initiative’ at Omnicare was developed to lessen the impact of a June 2000 federal capping of the Medicaid reimbursement rate for Ranitidine tablets. The reimbursement rate for capsules was not capped.” Prior to the reimbursement change, Rowe’s office stated, less than 5% of Omnicare of Maine patients who took Ranitidine received the capsule form. But after the change, the office said, that number rocketed to 95%. “I have been outraged by this case all along,” Rowe said at the time. As part of the 2004 settlement, Omnicare of Maine agreed to “remain under constant monitoring by its parent company’s compliance officer.”

**DEFENDANTS’ FALSE AND MISLEADING  
STATEMENTS ISSUED DURING THE CLASS PERIOD**

20. On August 3, 2005, the Company issued a press release entitled “Omnicare Reports Second Quarter 2005 Results,” which stated in part:

- Sales Reach Record Highs
- Adjusted Earnings In Line With Expectations
- Recent Acquisitions Provide Strong Platform for Future Growth

Omnicare, Inc., the nation's leading provider of pharmaceutical care for the elderly, reported today financial results for its second quarter ended June 30, 2005.

Financial results for the quarter ended June 30, 2005, as compared with the prior-year period, including the special charge and accounting change noted below, were as follows:

- Earnings per diluted share were 59 cents versus 55 cents
- Net income was \$61.7 million as compared with \$60.5 million
- Sales reached \$1,123.4 million as compared with \$1,010.6 million

The second quarter of 2005 includes a special charge of approximately \$1.1 million pretax for acquisition-related expenses pertaining to a proposed transaction that was not consummated. In addition, the diluted earnings per share for all periods reflect the Company's fourth quarter 2004 adoption of Emerging Issues Task Force Issue No. 04-8 (EITF No. 04-8) related to the calculation of diluted earnings per share for contingently convertible securities. Adjusting for this special item and the accounting change, results for the quarters ended June 30, 2005 and 2004, respectively, were as follows:

- Adjusted earnings per diluted share were 60 cents versus 58 cents
- Adjusted net income was \$62.5 million as compared with \$60.5 million
- Sales reached \$1,123.4 million as compared with \$1,010.6 million

Commenting on the results for the quarter, Joel F. Gemunder, Omnicare's president and chief executive officer, said, "***The second quarter was one of the most important periods in Omnicare's history, highlighted by the continued solid financial performance of our business***, as well as the significant progress we made toward acquiring NeighborCare, RxCrossroads and excelleRx -- three major transactions that we believe will transform our company and provide us with ***a solid platform for future growth. Our sales once again hit record highs, and our operating margins improved on a sequential basis, reflecting the growing benefits of our cost reduction and productivity enhancement initiatives***. As a result, our adjusted second quarter earnings per share were in line with our expectations and consensus estimates."

\* \* \*

*“The continued execution of our acquisition strategy is driving strong sales growth in our pharmacy business, and we will see additional growth in coming quarters as we begin integrating NeighborCare’s business into our operations,” said Gemunder. “Sales growth is also being aided by year-over-year increases in occupancy and acuity in many areas, the expansion of our clinical and other service programs, drug price inflation and market penetration of newer branded drugs, offset, in part, by the increasing use of generic drugs.*

*“We are pleased that our sales growth was achieved despite the ongoing trends in government reimbursement reductions, both state and federal, as well as intense competitive pricing pressures throughout the industry. The productivity enhancement and cost reduction programs we initiated over the past year have helped to partially offset these trends and improve our operating margins on a sequential basis. Additionally, our performance under a previously announced disease management demonstration project provided an anticipated benefit of approximately \$4 million, representing our annual medication management performance payment. Annual medication management payments under this project are expected to continue over at least the next two years. We continue to look toward additional growth opportunities in the disease management arena that utilize our core clinical strengths and distribution assets.”*

\* \* \*

### *Omnicare Outlook*

*In commenting on the outlook for Omnicare and the industry, Gemunder said, “We continue to see relative stability in the long-term care industry. Of course, we are continuing to monitor developments related to healthcare funding, including the efforts of the federal government and state Medicaid programs to contain or reduce costs, either through the legislative process or other means.*

*“Most importantly, we have been focused on the upcoming implementation of the Medicare drug benefit effective January 1, 2006. Under the new Medicare Part D benefit, Prescription Drug Plans, or PDPs, sponsored by commercial insurers or other risk-bearing entities approved by the Centers for Medicare and Medicaid Services (CMS) will offer a drug benefit to Medicare-eligible beneficiaries, including those dually eligible under Medicaid, which will include many residents of the skilled nursing facilities we serve.*

*“We have been actively involved in negotiations with Medicare Part D Plans during the quarter regarding our participation in their pharmacy networks to deliver pharmacy services for their beneficiaries in long-term care facilities. We are pleased with the progress of these negotiations. To date, Omnicare has signed agreements covering more than 100 Medicare Part D Plans across the United States, including a number of organizations planning to provide national coverage as well as numerous agreements with regional and local plans also intending to provide the Medicare Prescription Drug Benefit beginning in 2006.”*

*“There are still many specifics yet to be determined through sub-regulatory guidance by CMS, as well as the approval of specific PDPs by CMS,” said Gemunder. “All things considered, we see nothing materially adverse about the regulations at this time and believe we are well-positioned to add value under the new Medicare Part D benefit. We will monitor developments and continue to ready our company as the year progresses.*

*“Over the next several months, we will be proceeding in a careful, measured way to integrate NeighborCare into our existing operations. As we have said previously, we expect to generate economies of scale in drug purchasing and through consolidation of duplicate operational functions and geographic locations. We expect the acquisition to be significantly accretive to Omnicare’s diluted earnings per share in 2006 and beyond.*

*“While we continue to address the challenges presented by pricing and reimbursement issues, we remain focused on Omnicare’s proven growth strategy – one that has allowed us to provide long-term shareholder value in all types of industry conditions. Overall, our revenue and earnings growth outlook remains positive given our strong underlying fundamentals and our sound strategy, combined with our demonstrated ability to maintain financial strength and flexibility, and the numerous opportunities to leverage our business both through internal and external growth,” concluded Gemunder.*

21. On November 2, 2005, the Company issued a press release entitled “Omnicare Reports Third Quarter 2005 Results,” which stated in part:

- Sales and Adjusted Earnings Reach Record Highs
- Strong Cash Flow from Operations
- Acquisition Integration Plans Underway

Omnicare, Inc., the nation’s leading provider of pharmaceutical care for the elderly, reported today financial results for its third quarter ended September 30, 2005.

Financial results for the quarter ended September 30, 2005, as compared with the prior-year period, including a restructuring charge and other special items, as well as the accounting change noted below, were as follows:

- Earnings per diluted share were 54 cents versus 52 cents
- Net income was \$58.5 million as compared with \$55.9 million
- Sales reached \$1,455.0 million as compared with \$1,053.9 million

Results for both the third quarter 2005 and 2004 include special items (described later herein) of \$16.4 million pretax and \$5.2 million pretax, respectively. In addition, the diluted earnings per share for all periods reflect the Company's fourth quarter 2004 adoption of Emerging Issues Task Force Issue No. 04-8 (EITF No. 04-8) related to the calculation of diluted earnings per share for contingently convertible securities. Adjusting for these special items and the accounting change, results for the quarters ended September 30, 2005 and 2004, respectively, were as follows:

- Adjusted earnings per diluted share were 64 cents versus 57 cents
- Adjusted net income was \$68.8 million as compared with \$59.1 million
- Sales reached \$1,455.0 million as compared with \$1,053.9 million

It should also be noted that, given the appreciation in the Company's stock price during the third quarter of 2005, the average number of diluted shares outstanding rose to 108,038,000 on a sequential basis, reflecting primarily the dilution related to the Company's 4% Trust PIERS (4.00% junior subordinated convertible debentures due 2033 underlying Trust Preferred Income Equity Securities), as well as the dilutive impact of stock options. Triggered by average prices above \$40.82 for Omnicare stock, dilution on the Trust PIERS is calculated on the treasury stock method of accounting, which calculation, along with the impact of stock options, reduced diluted earnings per share by approximately 2 cents, for the third quarter of 2005.

***Commenting on the results for the quarter, Joel F. Gemunder, Omnicare's president and chief executive officer, said, "Our results for the third quarter underscore Omnicare's ongoing transformation and commitment to financial performance. We closed three important acquisitions - RxCrossroads, excelleRx and NeighborCare, the largest in our history. Moreover, we made substantial progress in our integration of NeighborCare as well as in our other initiatives to reduce our costs and enhance productivity. As a result, sales reached a record high and our adjusted third quarter earnings per share were well in line with expectations."***

#### Cash Flow from Operations

Cash flow from operations for the quarter ended September 30, 2005 was \$93.5 million versus \$38.7 million in the prior-year quarter. Year-over-year cash flow was unfavorably impacted by \$39.7 million owing to the continuation of the broad-based delay in receipts from the Illinois Department of Public Aid (Illinois Medicaid). In the third quarter of 2004, a similar slowdown in cash receipts from Illinois Medicaid occurred, impacting cash flow by approximately \$18 million, along with an administrative backup in cash receipts of an incremental \$13 million from Medi-Cal related to the transfer of licenses for certain of our California pharmacies.

“We were extremely pleased with the strength of our cash flow during the quarter, particularly in light of the continued delays in payments from Illinois Medicaid. We are encouraged by recently announced developments related to new financing initiatives by the State of Illinois and are hopeful they will clear-up the backlog of receivables to all Illinois healthcare providers in the near future,” said Gemunder. “Despite the payment delays from Illinois Medicaid throughout most of the year, the strength and continuity of our cash flow elsewhere have allowed us to carry out our plans and deploy our capital to fund acquisitions and pay down debt.”

Earnings before interest, income taxes, depreciation and amortization (EBITDA) for the third quarter of 2005, including the aforementioned special items, was \$162.1 million versus \$120.5 million in the same quarter of 2004. Excluding the special items, adjusted EBITDA for the 2005 quarter, was \$171.0 million versus \$125.6 million in the comparable 2004 quarter.

To facilitate comparisons and to enhance understanding of core operating performance, the discussion that follows includes financial measures that are adjusted from the comparable amount under Generally Accepted Accounting Principles (GAAP) to exclude the impact of the special items described elsewhere herein. For a detailed presentation of reconciling items and related definitions and components, please refer to the attached schedules or to reconciliation schedules posted on the Company’s Web site at [www.omnicare.com](http://www.omnicare.com).

It should also be noted that the results of the NeighborCare, excelleRx and RxCrossroads acquisitions are included from the dates such acquisitions closed (July 28, 2005, August 12, 2005 and August 15, 2005, respectively). All three acquisitions are included in the Pharmacy Services Business segment.

#### Pharmacy Services Business

Omnicare’s pharmacy services business generated record revenues of \$1,410.7 million for the third quarter, approximately 38% higher than the \$1,021.0 million reported in the comparable prior-year quarter. Adjusted operating profit in this business reached \$158.2 million, 32% above the \$120.0 million recorded in the third quarter of 2004. At September 30, 2005, Omnicare served long-term care facilities and other chronic care settings comprising approximately 1,441,000 beds versus approximately 1,071,000 at September 30, 2004, an increase of 35%.

***“The exceptional results in our pharmacy services business reflect the continued success of our acquisition strategy in producing strong growth in our core institutional pharmacy business while broadening our platform for future growth”, said Gemunder. “Our sales growth for the quarter was enhanced significantly by the contribution of the NeighborCare, excelleRx and RxCrossroads businesses.***

***“Strong sales growth in the institutional pharmacy business was attributable not only to the addition of NeighborCare, but also to increased acuity,***

*the expansion of clinical and other service programs, drug price inflation and market penetration of newer branded drugs, offset, in part, by the increasing use of generic drugs.”*

\* \* \*

The Company’s CRO business, including Omnicare Clinical Research and Clinimetrics Research Associates, Inc., generated revenues of \$44.3 million on a GAAP basis for the 2005 third quarter, as compared with the prior-year quarter’s revenues of \$33.0 million. Included in both periods were reimbursable out-of-pocket expenses totaling \$6.5 million in the 2005 period and \$4.5 million in the 2004 period. Excluding these reimbursable out-of-pocket expenses, adjusted revenues of \$37.8 million in the 2005 third quarter compared with revenues of \$28.4 million in the 2004 third quarter. Adjusted operating profit in the 2005 third quarter was \$3.8 million versus the \$3.2 million earned in the comparable 2004 period. Backlog at September 30, 2005 was \$258.3 million.

“Quarterly revenues and operating profit in our larger CRO business, Omnicare Clinical Research, were higher on a year-over-year basis. While the timing of the completion of certain contracts caused some volatility in revenues on a sequential basis, variable operating expenses were reduced, producing expanded margins and consistent operating profit sequentially,” said Gemunder. “In addition, the momentum in Clinimetrics’ business began to rebound during the quarter. New business wins and backlog were higher sequentially as were pending proposals, all of which bodes well for Clinimetrics’ future growth.”

#### Special Items

As noted above, results for the third quarter 2005 included certain special items, including a previously announced restructuring charge of approximately \$8.9 million pretax (\$5.6 million aftertax or 5 cents per diluted share) related primarily to certain costs associated with the NeighborCare integration plan and other productivity initiatives as well as a charge to interest expense of \$7.5 million pretax (\$4.7 million aftertax, or 4 cents per share) related to the debt extinguishment and new debt issuance costs in connection with the new financing arrangement undertaken to provide interim funding for the NeighborCare, excelleRx and RxCrossroads transactions.

The results for the third quarter of 2004 included a special charge totaling \$5.2 million pretax (\$3.2 million aftertax or 3 cents per diluted share) in connection with certain state Medicaid audits related to prior periods, lowering gross profit by approximately \$2.7 million and increasing selling, general and administrative expenses by \$2.5 million.

\* \* \*

#### Omnicare Outlook

*In commenting on the outlook for Omnicare and the industry, Gemunder said, "Ongoing trends in government reimbursement reductions, both state and federal, as well as competitive pricing pressures continue to be facts of life for our industry. We continue to address the challenges presented by pricing and reimbursement issues by broadening our business and through productivity enhancement and cost reduction programs designed to help offset these trends. Moreover, we expect the impact of reimbursement reductions from state Medicaid programs to be greatly reduced with the advent of the new Medicare Drug Benefit on January 1, 2006."*

*Under the new Medicare Part D benefit, Prescription Drug Plans, or PDPs, sponsored by commercial insurers or other risk-bearing entities approved by the Centers for Medicare and Medicaid Services (CMS) will offer a drug benefit to Medicare-eligible beneficiaries, including those dually eligible under Medicaid, which will include many residents of the skilled nursing facilities served by Omnicare.*

*"We remain highly focused on the upcoming implementation of the Medicare Drug Benefit. While bringing about sweeping change in our industry, we believe we are well-positioned to add value under the new Medicare Part D benefit. To date, Omnicare has signed numerous agreements with Medicare Part D Plans across the United States, including a number of organizations planning to provide national coverage, as well as many agreements with regional and local plans also intending to provide the Medicare Prescription Drug Benefit beginning in 2006. The PDPs with whom we've partnered have largely recognized the specialized services required for long-term care residents, as well as Omnicare's experience and expertise in providing pharmaceutical care in this market. As the enrollment process begins, we are busy educating our long-term care facility clients and their residents on the availability and implementation of the new drug benefit," added Gemunder.*

*"Looking ahead, we are proceeding in a careful, measured way to integrate NeighborCare into our existing operations. As we have said previously, we expect the acquisition to be significantly accretive to Omnicare's diluted earnings per share in 2006 and beyond. Moreover, we are excited about the expanded growth platform provided by excelleRx and RxCrossroads," said Gemunder.*

*"Overall, Omnicare's revenue and earnings growth outlook remains positive given our strong underlying fundamentals and our proven growth strategy - one that has allowed us to provide shareholder value in many types of industry conditions. With this, and our demonstrated ability to maintain financial strength and flexibility, we see numerous opportunities to leverage our business both through internal and external growth in the year to come."*

22. On November 7, 2005, the Company issued a statement in response to rumors concerning the Company's illegal practices. Defendants sought to dissuade investors from believing the rumors circulating about the Company:

***“Omnicare’s policy is to comply with all applicable federal and state laws and regulations. To the best of our knowledge, our purchases of pharmaceuticals comply with all applicable laws and regulations and are consistent with Omnicare’s goal of providing appropriate pharmaceutical care cost-effectively for the seniors we serve.”***

23. On December 15, 2005, the Company issued a press release entitled “Omnicare Completes Offerings of \$750 Million of Senior Subordinated Notes, \$977.5 Million of Convertible Senior Debentures and 12,825,000 Shares of Common Stock.” The release stated in part:

Omnicare, Inc. (the “Company”) today announced that it has completed its offering of 12,825,000 shares of common stock (not including the underwriters’ option to purchase additional shares) at \$59.72 per share, and also has completed its offerings of \$225 million aggregate principal amount of 6 3/4% senior subordinated notes due 2013, \$525 million aggregate principal amount of 6 7/8% senior subordinated notes due 2015 and its offering of \$977.5 million aggregate principal amount of 3.25% convertible senior debentures due 2035 (including the exercise in full by the underwriters of their option to purchase additional debentures).

Lehman Brothers, J.P. Morgan and SunTrust Robinson Humphrey acted as joint book-running managers and CIBC World Markets, Wachovia Securities, Merrill Lynch & Co. and Credit Suisse First Boston acted as co-managers for the senior subordinated notes offering. J.P. Morgan, Lehman Brothers and CIBC World Markets acted as joint book-running managers and SunTrust Robinson Humphrey, Wachovia Securities, Merrill Lynch & Co. and Credit Suisse First Boston acted as co-managers for the convertible debentures offering. Lehman Brothers, J.P. Morgan and Merrill Lynch & Co acted as joint book-running managers and Wachovia Securities, CIBC World Markets, SunTrust Robinson Humphrey and Thomas Weisel Partners acted as co-managers for the common stock offering.

24. On January 12, 2006, the Company issued a press release entitled “Omnicare Announces Exercise of Underwriter’s Option to Purchase Additional Shares,” which stated in part:

Omnicare, Inc. today announced that the underwriters of its previously announced common stock offering of 12,825,000 shares of common stock, which closed on December 15, 2005, have exercised their option in part to purchase an additional 850,000 shares of common stock at \$59.72 per share less underwriting discounts and

commissions. The sale of the additional shares is expected to close on January 17, 2006.

Lehman Brothers, J.P. Morgan and Merrill Lynch & Co acted as joint book-running managers and Wachovia Securities, CIBC World Markets, SunTrust Robinson Humphrey and Thomas Weisel Partners acted as co-managers for the common stock offering.

25. On January 16, 2006, the *Cincinnati Business Courier* published an article entitled “Omnicare subpoenaed in generic drug probe,” which stated in part:

Omnicare Inc. has been subpoenaed in an investigation of generic drug distribution.

The U.S. Attorney for Massachusetts has asked for information about Omnicare’s relationships with manufacturers and distributors of three pharmaceutical products, the company said in a news report.

Omnicare defended its pharmaceutical purchases, saying it complied with regulations and will cooperate in the investigation.

Covington-based Omnicare said it believes the government is investigating allegations of substitution of three generic drugs:

Substituting capsules for tablets of Ranitidine, a generic form of the heartburn drug Zantac; Giving tablets instead of capsules of Fluoxetine, a generic form of the antidepressant Prozac; and Substituting two 7.5 milligram tablets for a single 15 milligram tablet of Buspirone, a generic form of the anti-anxiety drug BuSpar.

In September, Johnson & Johnson had been subpoenaed for documents concerning sales and marketing of eight drugs to Omnicare.

26. On January 17, 2006, *TheStreet.com* published an article entitled “Probe News Punishes Omnicare Shares,” which stated in part:

Omnicare is feeling some regulatory pain.

The institutional pharmacy has found itself caught up in two government probes even as it struggles to overcome major glitches associated with the new Medicare Part D drug coverage program. The company recently learned that federal and state officials have begun investigating allegations surrounding three generic drugs that it supplies to its nursing home patients. In addition, it has fielded questions from a federal prosecutor about its relationship with certain drug manufacturers.

The first probe seems to involve Omnicare directly. Based on a regulatory filing Omnicare made late Friday, the government is seeking information about the

pills the company supplies to treat three common ailments. Specifically, the filing indicates, the government is questioning whether Omnicare improperly substituted two 7.5-milligram Buspirone anti-anxiety tablets for one 15-milligram tablet, Fluoxetine anti-depression tablets for capsules and Ranitidine heartburn capsules for tablets.

27. Then on January 27, 2006, *The Cincinnati Enquirer* published an article entitled “Omnicare Offices in Mich. Raided.” The article stated:

The Michigan attorney general’s office said Thursday that its agents led a raid of Omnicare Inc. offices in the Detroit suburb of Livonia and other unspecified cities in search of information it would not disclose.

“The only thing that I can confirm is that the attorney general’s office is executing search warrants, but I can’t give you any details because this is an ongoing investigation,” said Melissa Christianson, a spokeswoman for the agency.

Omnicare already has had three publicized run-ins with law enforcement officials in 2006. Earlier this month, the company received a subpoena from the U.S. Attorney’s Office in Boston for information about the sale of three generic drugs. On Jan. 18, the Ohio attorney general’s office conducted a search of an Omnicare unit in Dublin that sells equipment such as wheelchairs and walkers.

An Omnicare spokesman would not discuss the raid Thursday in Michigan.

“I can’t confirm or comment on government investigations,” spokesman Andy Brimmer said.

The attorney general’s office in Michigan can bring both civil and criminal actions in that state. Christianson said no cases have been filed in connection with Thursday’s raid.

28. On January 30, 2006, *Associated Press* published an article entitled “Omnicare Shares Drop on Michigan Raid Report; Omnicare Declines Comment on Report of Michigan Raid; Stock Falls on Report, Analyst Downgrade.” The article stated in part:

Omnicare Inc. shares fell more than 10 percent Monday following a published report of a raid at the company’s offices in Livonia, Mich., and an analyst downgrade on that report.

The *Cincinnati Enquirer* said Friday that the Michigan attorney general’s office raided Omnicare’s offices in Livonia and other cities last week. The company, which provides pharmacy services for long-term care facilities, also operates pharmacies in Grand Rapids, West Branch and Escanaba, Mich., according to the newspaper.

No details were released on the nature of the search. In a statement Monday, Omnicare declined to comment on, or confirm, whether there was a review. The company said it operates within a highly regulated industry which makes it, and industry peers, subject to government reviews and inquires on a regular basis.

The Covington, Ky.-based company added its goal is “to comply with all laws and regulations.”

Jerry L. Doctrow, an analyst with Stifel Nicolaus, downgraded the stock to “Hold” from “Buy” citing his concerns regarding the raid.

Doctrow reiterated his optimism about Omnicare’s earnings prospects, but said he was “troubled” by news of a fourth investigation at Omnicare’s offices since the beginning of the year, and was concerned about the potential for further raids.

He speculated that the raid may be part of a coordinated multistate review of Omnicare’s drug pricing under state Medicaid programs.

29. In response, Omnicare shares fell \$5.09 to \$49.96 in afternoon trading on the New York Stock Exchange.

30. The true facts, which were known by each of the defendants but concealed from the investing public during the Class Period, were as follows:

(a) The Company was artificially inflating its earnings by engaging in improper generic drug substitution. Specifically, the Company was substituting capsules for tablets of Ranitidine, a generic form of the heartburn drug Zantac; giving tablets instead of capsules of Fluoxetine, a generic form of the antidepressant Prozac; and substituting two 7.5 milligram tablets for a single 15 milligram tablet of Buspirone, a generic form of the anti-anxiety drug BuSpar.

(b) The Company was not in compliance with Medicare laws.

(c) The Company’s strategy was *not* sound. In fact, the implementation of Medicare Part D had dramatically increased the Company’s costs and increased the number of rejected Medicare claims to nearly 40%.

(d) The Company was not “well-positioned to add value under the new Medicare Part D” Plan. Rather, the Company lacked adequate staff and internal compliance controls to ensure

the Company could benefit from the new plan. Instead, Part D wreaked havoc on the Company's business model, sending costs, rejection rates and receivables far higher than shareholders were led to believe.

### **LOSS CAUSATION/ECONOMIC LOSS**

31. During the Class Period, as detailed herein, defendants engaged in a scheme to deceive the market and a course of conduct that artificially inflated Omnicare's stock price and operated as a fraud or deceit on Class Period purchasers of Omnicare stock by misrepresenting the Company's business success and future business prospects. Defendants achieved this façade of success, growth and strong future business prospects by misrepresenting the Company's business and prospects. Later, however, when defendants' prior misrepresentations and fraudulent conduct were disclosed and became apparent to the market, Omnicare stock fell precipitously as the prior artificial inflation came out of Omnicare's stock price. As a result of their purchases of Omnicare stock during the Class Period, plaintiff and other members of the Class suffered economic loss, *i.e.*, damages, under the federal securities laws.

### **COUNT I**

#### **For Violation of §10(b) of the 1934 Act and Rule 10b-5 Against All Defendants**

32. Plaintiff incorporates ¶¶1-31 by reference.

33. During the Class Period, defendants disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

34. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

(a) Employed devices, schemes, and artifices to defraud;

(b) Made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) Engaged in acts, practices, and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of Omnicare publicly traded securities during the Class Period.

35. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for Omnicare publicly traded securities. Plaintiff and the Class would not have purchased Omnicare publicly traded securities at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' misleading statements.

36. As a direct and proximate result of these defendants' wrongful conduct, plaintiff and the other members of the Class suffered damages in connection with their purchases of Omnicare publicly traded securities during the Class Period.

## **COUNT II**

### **For Violation of §20(a) of the 1934 Act Against All Defendants**

37. Plaintiff incorporates ¶¶1-36 by reference.

38. The Individual Defendants acted as controlling persons of Omnicare within the meaning of §20(a) of the 1934 Act. By reason of their positions as officers and/or directors of Omnicare, and their ownership of Omnicare stock, the Individual Defendants had the power and authority to cause Omnicare to engage in the wrongful conduct complained of herein. Omnicare controlled each of the Individual Defendants and all of its employees. By reason of such conduct, the Individual Defendants and Omnicare are liable pursuant to §20(a) of the 1934 Act.

## CLASS ACTION ALLEGATIONS

39. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased Omnicare publicly traded securities on the open market during the Class Period (the “Class”). Excluded from the Class are defendants.

40. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. Omnicare had more than 106 million shares of stock outstanding, owned by hundreds if not thousands of persons.

41. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

- (a) Whether the 1934 Act was violated by defendants;
- (b) Whether defendants omitted and/or misrepresented material facts;
- (c) Whether defendants’ statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- (d) Whether defendants knew or deliberately disregarded that their statements were false and misleading;
- (e) Whether the prices of Omnicare publicly traded securities were artificially inflated; and
- (f) The extent of damage sustained by Class members and the appropriate measure of damages.

42. Plaintiff’s claims are typical of those of the Class because plaintiff and the Class sustained damages from defendants’ wrongful conduct.

43. Plaintiff will adequately protect the interests of the Class and has retained counsel who are experienced in class action securities litigation. Plaintiff has no interests which conflict with those of the Class.

44. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

#### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff prays for judgment as follows:

- A. Declaring this action to be a proper class action pursuant to FRCP 23;
- B. Awarding plaintiff and the members of the Class damages, including interest;
- C. Awarding plaintiff reasonable costs and attorneys' fees; and
- D. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

#### **JURY DEMAND**

Plaintiff demands a trial by jury.

DATED: February 2, 2006

MURPHY, NALLEY & ASSOCIATES, P.S.C.  
KEVIN L. MURPHY (KBA #50646)

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