

3. Pursuant to 28 U.S.C. § 1446(d), Bayer has filed a copy of this Notice of Removal with the Clerk of the Circuit Court, Dane County, Wisconsin. Bayer has also served the State with a copy of this Notice of Removal.

I. BACKGROUND

A. **The AWP MDL In Boston**

4. The Complaint allegations are virtually identical to well over a dozen cases that have been transferred and consolidated from district courts throughout the country to a Multidistrict Litigation (“MDL”) proceeding currently pending before Judge Patti Saris in the United States District Court of the District of Massachusetts, *In re Pharmaceutical Average Wholesale Price Litigation*, MDL 1456.

5. Like this case, many of these Average Wholesale Price (“AWP”) cases now pending in the MDL proceeding before Judge Saris were originally filed in state courts before removal to federal court. To preserve judicial resources and avoid potentially inconsistent decisions, almost all these removed cases were initially stayed pending transfer by the Judicial Panel on Multidistrict Litigation to the MDL proceedings.¹ Upon removal of this action,

¹ Specifically, the courts issued stays pending action by the MDL Panel in the following nine AWP actions: (1) *Geller v. Abbott Labs, Inc., et al.*, Case No. CV 02-00553 DDP (C.D. Cal. Mar. 22, 2002) (Pregerson, J.) (“The Court finds that all factors, including the jurisdictional issues presented and the potentially expansive nature of this litigation, favor granting the stay”); (2) *Montana v. Abbott Labs, Inc., et al.*, Case No. CV 02-09-H-DWM (D. Mont. June 21, 2002) (Molloy, J.) (“In this case, the benefit of judicial economy and consistency among pretrial rulings outweighs any prejudice plaintiff may suffer as a result of a stay”); (3) *Nevada v. American Home Prods., Inc.*, No. CV-N-02-202-ECR (D. Nev. July 26, 2002) (Reed, J.); (4) *Thompson v. Abbott Labs, Inc., et al.*, Case No. CGC-02-411813 (N.D. Cal. Sept. 30, 2002) (Wilken, J.); (5) *Rice v. Abbott Labs, Inc., et al.*, Case No. 02-3925 (N.D. Cal. Nov. 26, 2002) (Jenkins, J.); (6) *Virag v. Allergan, Inc., et al.*, Case No. 02-8417 RSWL (C.D. Cal. Jan. 7, 2003) (Lew, J.); (7) *Turner v. Abbott Labs, et al.*, Case No. 02-CV-050006 (Jenkins, J.) (order granting stipulation by parties regarding stay of all proceedings); (8) *Swanston v. TAP Pharmaceutical Products Inc., et al.*, Case No. 03-CV-62 (D. Ariz. May 16, 2003) (McNamee, J.) (“[T]he benefit of judicial economy and consistency among pretrial rulings outweighs any potential prejudice

(Footnote continued)

Defendants shall similarly seek a stay of proceedings pending transfer by the Judicial Panel on Multidistrict Litigation.

B. The Complaint Allegations And Parties.

6. The five-count Complaint alleges claims for violation of Wis. Stat. §100.18(1) (Count I), violation of Wis. Stat. § 100.18(10)(b) (Count II), violation of the Wisconsin Trust and Monopolies Act (Count III), violation of Wis. Stat. § 49.49(4m)(a)(2), Medical Assistance Fraud (Count IV), and unjust enrichment (Count V). The Complaint seeks restitution, forfeitures, disgorgement, damages (including treble damages), injunctive relief, attorney's fees, and costs. The Complaint seeks such restitution, disgorgement, forfeiture, and damages for the period from at least 1992 to the present. Compl. ¶ 24.

7. The Complaint alleges claims against virtually the entire pharmaceutical industry based on the use of "Average Wholesale Price" ("AWP"). The Complaint points out that although Medicare, a federally administered government assistance program, does not generally cover prescription drug costs, it does cover "[a]pproximately 450 drugs," "including ones that are administered by a doctor, and certain oral anti-cancer drugs." Compl. ¶ 40. The Complaint provides further that, for the relevant period, Medicare "calculated reimbursement for . . . covered drugs on the basis of [a certain percentage] of the published AWP" for the drugs. Compl. ¶ 42. The Complaint also states that the State of Wisconsin's Medicaid program covers medical and prescription drug costs for certain low income and disabled citizens of Wisconsin, Compl. ¶ 33, and that "reimbursement to pharmacies and physicians for drugs covered by the

Plaintiff may suffer as a result of a stay."); (9) *International Union of Operating Engineers, Local No. 68 Welfare Fund v. AstraZeneca PLC*, 03 CV 03230 (D. N.J. July 23, 2003) (Chesler, J.) (granting stay pending MDL transfer).

Wisconsin Medicaid Program is made at the AWP minus a percentage (currently 12 percent), plus other fees.” Compl. ¶ 34.

8. The Complaint alleges further that pharmaceutical manufacturers report AWP for their drugs to private, third-party pharmaceutical industry publications, such as the *Red Book*, and “[f]ederal and state agencies, as well as private payers, utilize these prices as a basis for their drug payments or reimbursements.” Compl. ¶ 23

9. Plaintiff further alleges that all Defendants “fraudulently inflated the average wholesale prices of their drugs, and drugs sold by their subsidiaries,” Compl. ¶ 27, and that some Defendants have “engaged in a practice of inducing some of their providers to prescribe their drugs. . . .” Compl. ¶ 31. As a result, Medicare Part B participants and private payers, as well as Wisconsin’s Medicaid program, have allegedly paid more for prescription drugs, insurance premiums, and/or co-pays than they would have if Defendants had published true wholesale prices. Compl. ¶¶ 36-37, 43, 51-52.

10. The State of Wisconsin is the named plaintiff in this action, although the State specifically purports to prosecute this action on behalf of its citizens and Wisconsin organizations who pay prescription drugs costs of their members (“private payers”) and who allegedly “have paid inflated prices for defendants’ prescription drugs as a result of defendants’ unlawful conduct” concerning AWP information. Compl. ¶¶ 2, 24; *see also* Compl. ¶¶ 56, 60 (requesting restitution for private payers). For example, the Complaint alleges that “[i]n excess of 700,000 Wisconsin residents are entitled to reimbursement under Medicare Part B for their medicines” alone. Compl. ¶ 40.

11. Each Defendant, including Bayer,² is a corporation organized and existing under the laws of a state other than Wisconsin, with its principal place of business in a state other than Wisconsin. As reflected by the allegations in the Complaint, ¶¶ 4-21, it is undisputed that no Defendant is incorporated in Wisconsin or maintains its principal place of business in Wisconsin.

II. DIVERSITY JURISDICTION

12. Removal of this case is appropriate pursuant to 28 U.S.C. §§ 1332 & 1446 under this Court's diversity jurisdiction. *See Stromberg Metal Works, Inc. v. Press Mechanical, Inc.*, 77 F.3d 928, 931-32 (7th Cir. 1996); *State of Connecticut v. Levi Strauss & Co.*, 471 F. Supp. 363, 370-71 (D. Conn. 1979).

A. Complete Diversity

13. There is complete diversity of citizenship between opposing parties in the State Court Action. First, there is no dispute that, as alleged in the Complaint, not one of the corporate defendants is incorporated in Wisconsin or maintains its principal place of business in Wisconsin. Compl. ¶¶ 4-21.

14. Second, although, as a general rule, a state plaintiff cannot be considered a citizen of any state, *Illinois v. City of Milwaukee*, 406 U.S. 91, 97 n.1 (1972), this rule does not apply when, as here, a state brings a lawsuit that seeks relief on behalf of a circumscribed group of its citizens. Instead, courts have recognized that, to the extent a state initiates an action on behalf of a specific group of its residents, and seeks a recovery for the benefit of those residents, then the citizen status of those residents, not the state, controls for diversity purposes. As the

² As alleged in the Complaint, ¶ 9, Bayer is an Indiana Corporation with its principal place of business in Pennsylvania.

district court concluded in *Levi Strauss*, 471 F. Supp. at 371: “When Connecticut claims refunds to be distributed to identifiable purchasers, the citizen status of the purchasers rather than the sovereign status of their benefactor controls for diversity purposes.” Similarly, in *Butler v. Cadbury Beverages, Inc.*, 1998 WL 422863 at *2 (D. Conn. 1998), the district court found diversity jurisdiction in an action brought by the Commissioner of the state Department of Labor, reasoning that, where the state seeks to recover damages for an identified resident, “the citizen status of that individual controls for diversity purposes.” *Cf. Pennsylvania v. New Jersey*, 426 U.S. 660, 665-66 (1976) (where a state brings a *parens patriae* action to recover damages for an identified group of its residents, it is the citizenship of the residents, not the status of the state, that governs jurisdictional analysis).

15. Here, the Complaint expressly asserts claims of a circumscribed group of Wisconsin citizens and organizations (those making payments for pharmaceutical products whose pricing allegedly was unlawfully inflated). *See, e.g.*, Compl. ¶¶ 38-43 (describing alleged injuries to Medicare Part B participants); ¶¶ 44-51 (describing alleged injuries to Wisconsin organizations paying for members’ prescription drugs). In addition, the Complaint seeks discrete recoveries directly for these Wisconsin individuals and organizations (whether styled as “restitution” or “disgorgement”), in addition to injunctive relief. *See, e.g.*, Compl. ¶ 56.C. (requesting “restitution to restore their pecuniary loss” for Wisconsin “citizens” and “private payers,” pursuant to Wis. Stat. § 100.18(11)(d)); Compl. ¶ 60.C. (same, pursuant to Wis. Stat. § 100.18(11)(d)); Compl. ¶ 74.C. (requesting that defendants “disgorge all profits they realized as a result of their unlawful conduct”).

16. Indeed, the statutory basis alleged for Counts I and II, Wis. Stat. § 100.18, could only authorize restitution payments directly to such allegedly injured Wisconsin citizens or

organizations. *See* Wis. Stat. § 110.18(11)(d) (authorizing court to “restore to any person any pecuniary loss suffered”); *State v. Excel Mgmt. Servs., Inc.*, 111 Wis.2d 479, 488, 331 N.W.2d 312, 316 (1983) (“the legislature intended to provide remedies for those persons who had been damaged”); *Lueck’s Home Improvement, Inc. v. Seal Tite Nat’l, Inc.*, 142 Wis.2d 843, 845-46, 419 N.W.2d 340, 341 (Ct. App. 1987) (ordering restitution to individual franchisees).

17. Because the State brings such claims on behalf of this defined group of residents and organizations, and requests payments to these individuals and organizations, it is their citizenship status, not the State’s, that controls for the purpose of determining diversity jurisdiction. *Butler*, 1998 WL 422863, at * 2; *Levi Strauss*, 471 F.Supp. at 371. The Complaint identifies these claimants as Wisconsin citizens and organizations. Compl. ¶¶ 2, 52. For purposes of diversity jurisdiction, therefore, plaintiffs are citizens of Wisconsin while each Defendant is a citizen of a state other than Wisconsin.³

B. Jurisdictional Amount.

18. Removal of this action is proper because the amount in controversy exceeds \$75,000, exclusive of interest and costs. *See Rubel v. Pfizer Inc.*, 361 F.3d 1016, 1020 (7th Cir. 2004) (“Removal is proper if the defendant’s estimate of the stakes [as exceeding \$75,000] is plausible”); *Shaw v. Dow Brands, Inc.*, 994 F.2d 364, 366 (7th Cir. 1993) (jurisdictional amount requirement met if “reasonable probability” that a plaintiff’s claim exceeds \$75,000); *West Bend Elevator v. Rhone-Poulenc S.A.*, 140 F. Supp.2d. 963, 966 (E.D.

³ Moreover, under settled Seventh Circuit law, only *one* identified diverse plaintiff that otherwise meets the \$75,000 jurisdictional threshold is needed to justify the assertion of federal diversity jurisdiction, with the remaining non-diverse plaintiffs subject to the federal court’s supplemental jurisdiction under 28 U.S.C. § 1367(a). *See Stromberg Metal Works v. Press Mech’l, Inc.*, 77 F.3d 928, 931 (7th Cir. 1996) (recognizing that § 1367 “allows suit by a pendent plaintiff who meets the jurisdictional amount but not the diversity requirement”).

Wis. 2000) (jurisdictional amount may be met by combining actual and punitive damages available for plaintiff's claim).

19. If any single plaintiff satisfies the \$75,000 jurisdictional threshold against each defendant, then the Court has supplemental jurisdiction over all the claims brought in the same Complaint pursuant to 28 U.S.C. § 1367. *See Stromberg Metal Works*, 77 F.3d at 930-31.

20. The \$75,000 jurisdictional threshold is met here for two independent reasons. First, based on the allegations of the Complaint and public information, the claims asserted on behalf of large private payers in Wisconsin – with hundreds of thousands of members – undoubtedly exceed \$75,000 for each Defendant. Second, where, as here, injunctive relief is requested, the Seventh Circuit recognizes that the defendant's cost of complying with the injunction counts toward establishing the jurisdictional minimum. *See Rubel v. Pfizer, Inc.*, 361 F.3d 1016, 1017 (7th Cir. 2004). The costs of the injunctive relief requested – requiring in part that each Defendant create a unique pharmaceutical price-reporting scheme for Wisconsin residents – will far exceed \$75,000 per Defendant.

21. The Complaint alleges an “industry practice” to inflate the prices of “virtually all” of the “more than 1500 drugs” that Defendants manufacture. Compl. ¶¶ 27, 29, 24. The Complaint specifically identifies tens and hundreds of pharmaceutical products manufactured and sold by *each* Defendant (including dozens by Bayer Corp.) that allegedly used “inflated” AWP, causing injury to Wisconsin private payers and citizens. Compl. ¶¶ 28, 29 & App. A & B. Moreover, this purported conduct is alleged to have been ongoing for at least the past twelve years, since 1992. Compl. ¶ 24.

22. Some “[e]xamples” of the allegedly inflated drug prices allegedly resulted in a “spread” of more than \$1000 per dose, Compl. ¶ 30, as part of a general “scheme” to

increase drug prices. Indeed, the *average* unlawful price “spread” alleged by the Complaint’s representative list of examples is over \$200 per dose (Compl. App. C); at this alleged spread, only a total of 375 doses would need to be at issue over the twelve year period charged in the Complaint in order to reach the \$75,000 jurisdictional threshold.

23. In addition, the Complaint, besides seeking restitution, requests forfeitures against each Defendant, including Bayer, of up to \$10,000 for *each* alleged violation of Wis. Stat. 100.18. Compl. ¶¶ 56, 60; *see* Wis. Stat. §§ 100.26(4) and 100.264(2); *see also* *State v. Menard, Inc.*, 358 N.W.2d 813, 815 (Ct. App. 1984) (holding that each publication of improper advertisement subject to separate forfeiture). Thus only eight violations would be necessary to reach the jurisdictional minimum based on the maximum forfeiture amount sought. *See West Bend Elevator v. Rhone-Poulenc S.A.*, 140 F. Supp.2d 963, 966 (E.D. Wis. 2000) (Where “punitive damages ... are recoverable as a matter of state law” in diversity case, “the court has subject matter jurisdiction unless it is clear beyond a legal certainty that the plaintiff would under no circumstances be entitled to recover the jurisdictional amount.”) (citations and internal quotations omitted).

24. Taking these allegations at face value, and for purposes of this Notice of Removal only, there is little doubt that the State claims that certain large Wisconsin private payers should be entitled to a recovery of more than \$75,000 from each Defendant.

25. For example, the Complaint seeks restitution and disgorgement on behalf of the following large “private payers” in Wisconsin, which the Complaint alleges overpay for prescription medicines through their use of PBMs (Compl. ¶¶ 44-51):

- **Blue Cross Blue Shield of Wisconsin.** Blue Cross Blue Shield of Wisconsin, based in Milwaukee, Wisconsin, currently provides coverage and services to more

than 711,000 Wisconsin members, according to its web site. *See* Exhibit B (attached hereto).

- **Security Health Plan.** Security Health Plan, owned and operated by Marshfield Clinic and based in Marshfield, Wisconsin, provides coverage and services to more than 118,000 Wisconsin residents in a 29-county area in northern, western, and central Wisconsin. Security Health Plan's web site notes that it offers a network of more than "2600 affiliated physicians and other providers, and over 45,000 pharmacies nationwide." *See* Exhibit C (attached hereto).
- **Dean Health Plan.** Dean Health Plan, based in Madison, Wisconsin, states in its web site that it is "one of the largest and most diversified HMOs in the Midwest[, with] nearly 1,000 physicians, more than 50 clinic sites, 27 hospitals and 200 pharmacies in [its] 22-county service area." *See* Exhibit D (attached hereto).

26. As noted above, the Complaint also seeks broad injunctive relief against the Defendants that concerns all their prescription medicines. Compl. ¶¶ 56.B., 60.B., 65.B. The requested injunctive relief, if granted, would require that each of the Defendants create a unique price-reporting system for Wisconsin. Such an exercise would inevitably entail substantial and ongoing costs associated with the administrative and marketing work needed to implement a Wisconsin-only system. The cost to each Defendant of complying with such an injunction would be far greater than \$75,000.

27. This cost of compliance with the requested injunction thus independently meets the jurisdictional minimum and justifies the exercise of federal jurisdiction. *See Rubel v. Pfizer, Inc.*, 361 F.3d 1016, 1017 (7th Cir. 2004) (defense cost of compliance with requested

injunction appropriately considered in determining amount in controversy); *In re Brand Name Prescription Drugs Antitrust Litig.*, 123 F.3d 599, 609 (7th Cir. 1997) (same).

28. In sum, the Complaint allegations and prayer for relief, although strongly disputed by Defendants, has put in controversy an amount in excess of \$75,000 for each Defendant.

III. PROCEDURAL MATTERS

29. As discussed above, this action is virtually identical to dozens of cases that have been transferred and consolidated from district courts throughout the country to a Multidistrict Litigation proceeding currently pending before Judge Saris in the United States District Court of the District of Massachusetts, *In re Pharmaceutical Average Wholesale Price Litigation*, MDL 1456. Once this action is removed to federal court, Defendants will notify the Panel on Multidistrict Litigation, as required by Rule 7.5(e) of the Rules of the Judicial Panel on Multidistrict Litigation, that this action is closely related to those pending before Judge Saris and thus should be treated as a “tag-along-action” within the meaning of the Rules and transferred to Judge Saris for pretrial proceedings.

30. Removal of this case to this Court is timely. The Complaint was not served on any Defendant before June 15, 2004. This Notice of Removal is filed on July 14, 2004, within thirty days of June 15, 2004. *See* 28 U.S.C. § 1446(b).

31. Consent to removal is required only for served defendants. Bayer has conducted a diligent inquiry, and based on this investigation, is informed and believes that, as of the date of this Notice, all Defendants consent to this removal and will join in this Notice of Removal.

32. Bayer reserves the right to amend or supplement this Notice of Removal.

WHEREFORE, Defendant Bayer requests that this case be removed to this Court pursuant to 28 U.S.C. §§ 1332 & 1446.

Dated: July 14, 2004.

Respectfully submitted,

BAYER CORP.

By:



One of Its Attorneys

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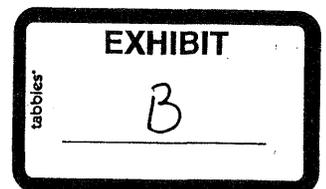
Blue Cross Blue Shield of Wisconsin has consistently served the health care needs of Wisconsin residents since 1940. Blue Cross Blue Shield of Wisconsin together with its affiliate, CompCareBlue, provides health care services to more than 711,000 members.

Offering a full continuum of product and coverage options, Blue Cross Blue Shield of Wisconsin operates as the largest health insurance provider in Wisconsin providing customers with unparalleled choice and flexibility in meeting their health plan needs. These options are continually fine-tuned to enhance access to affordable, quality health care for as many Wisconsin residents within its service area as possible. With its strong track record of innovation, the Company focuses on progressive products and services designed to improve the health status of Wisconsin residents. Product offerings available in the individual, small group, large group, and senior markets include a full range of integrated medical and specialty products .

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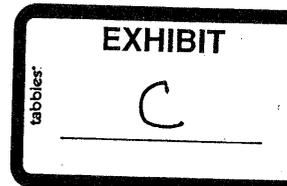
History & Facts

Security Health Plan of Wisconsin, Inc., is a health maintenance organization (HMO) dedicated to providing its members excellent health care coverage in cooperation with its many affiliated providers. Security Health Plan members have peace of mind knowing they can get health care from doctors they know and trust.



Our history, statistics and benefits:

- Security Health Plan of Wisconsin, Inc., is the only health maintenance organization owned and operated by Marshfield Clinic.
- Security Health Plan is a physician-directed health plan. Security Health Plan's physicians make coverage decisions on our members' behalf.
- It was established in 1986 as an outgrowth of the Greater Marshfield Community Health Plan, which began in 1971. Serving more than 118,000 people in a 29-county area in northern, western and central Wisconsin, Security Health Plan offers a network of 22 affiliated hospitals, more than 2,600 affiliated physicians and other providers, and over 45,000 pharmacies nationwide.
- We offer policies for large and small groups, and individuals and families of all ages and income levels.
- Security Administrative Services, a department within Security Health Plan, offers claim administration for self-funded plans.
- Flexible benefit options are available to meet employers' needs. A typical plan offers coverage for such services as physician, hospital and mental health services; prescription drug coverage; preventive medicine; durable medical equipment; skilled nursing home care; home health care; diabetic services and many organ and tissue transplants.
- With the support of our affiliated providers, including one of Wisconsin's most respected names in health care, Marshfield Clinic, our goal is to keep health care costs down by keeping members healthy. We provide coverage for many routine preventive health services and have programs to help members manage chronic diseases.
- Security Health Plan is consistently ranked high in surveys for customer satisfaction and customer retention. Our members say they would recommend Security Health Plan to their family and friends.
- Security Health Plan promotes healthy living through community wellness programs such as Bike Rodeos for children, and health fairs.
- Security Health Plan members can get free health information and advice any time of the day or night, every day of the year, through Security Health Plan's Nurse Line and Health Information Line. In addition, Security Health Plan helps to take care of its members'



health with chronic health management programs, Tobacco Free Program (a phone-based smoking cessation program), health information mailings and other educational efforts.

For more information on Security Health Plan:

- Call us at 1-800-472-2363
- [Contact us](#) by e-mail

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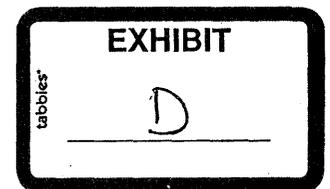
Dean Health Plan was created in 1983 as the managed care partner of the Dean Health System.

Today, Dean Health Plan is one of the largest and most diversified HMOs in the Midwest. With nearly 1,000 physicians, more than 50 clinic sites, 27 hospitals and 200 pharmacies in our 22-county service area, plus our 24-hour Dean On Call nurse line, we are committed to providing you the highest quality service and care.

Dean Health Plan is proud to announce that we have earned an Excellent Accreditation status from the National Committee for Quality Assurance (NCQA) for our commercial HMO product. This is the highest accreditation available for managed care plans nationwide.



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OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

120 North Henry Street, Room 320 • P.O. Box 432 • Madison, WI 53701-0432 • 608-264-5156

April 9, 2003

The Western District of Wisconsin is now transmitting notices, briefing schedules and orders electronically. Pursuant to Fed. R. Civ. P. 5 (b) (2) (D) the party receiving the transmission must consent in writing to receiving it electronically. Consent may be by electronic means.

By providing the court with the information listed below, you have consented to accept the above transmissions electronically in the present case and any subsequent cases.

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Clerk, U.S. District Court

NOTICE TO COUNSEL:

To enable judges of the court to evaluate possible disqualification or recusal, a nongovernmental corporate party shall file with its first appearance, pleading, petition, motion response, or other request this disclosure statement. Promptly file a supplemental statement upon any change in the information.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

v.)
)
)
) Case No. _____
)
)
)

DISCLOSURE STATEMENT

_____ makes the following disclosure in compliance with Federal Rule of Civil Procedure 7.1:

1. Does the named party have a parent corporation?

YES _____ NO _____

If the answer is YES, identify below the parent corporation:

2. Is 10% or more of the named party's stock owned by a publicly owned corporation?

YES _____ NO _____

If the answer is YES, identify below the owners:

(Signature of Counsel)

(Date)

UNITED STATES DISTRICT COURT

District of _____

NOTICE, CONSENT, AND ORDER OF REFERENCE —
EXERCISE OF JURISDICTION BY A UNITED STATES
MAGISTRATE JUDGE

Plaintiff
V.

Case Number:

Defendant

**NOTICE OF AVAILABILITY OF A UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION**

In accordance with the provisions of 28 U.S.C. §636(c), and Fed.R.Civ.P. 73, you are notified that a United States magistrate judge of this district court is available to conduct any or all proceedings in this case including a jury or nonjury trial, and to order the entry of a final judgment. Exercise of this jurisdiction by a magistrate judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge to whom the case has been assigned.

An appeal from a judgment entered by a magistrate judge shall be taken directly to the United States court of appeals for this judicial circuit in the same manner as an appeal from any other judgment of this district court.

CONSENT TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE

In accordance with provisions of 28 U.S.C. §636(c) and Fed.R.Civ.P. 73, the parties in this case consent to have a United States magistrate judge conduct any and all proceedings in this case, including the trial, order the entry of a final judgment, and conduct all post-judgment proceedings.

| Party Represented | Signatures | Date |
|-------------------|------------|-------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

ORDER OF REFERENCE

IT IS ORDERED that this case be referred to _____
United States Magistrate Judge, to conduct all proceedings and order the entry of judgment in accordance with 28 U.S.C.
§636(c) and Fed.R.Civ.P. 73.

_____ Date

_____ United States District Judge

NOTE: RETURN THIS FORM TO THE CLERK OF THE COURT ONLY IF ALL PARTIES HAVE CONSENTED ON THIS FORM TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE.