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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

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Bergen Brunswig Corporation, an Arizona) Case No.:
non-profit corporation,)
)
Plaintiff,) COMPLAINT
v.)
)
Dialysist West, Inc.,)
)
Defendant.)

Plaintiff Bergen Brunswig Corporation ("Bergen"), by its undersigned attorneys, for its complaint against Dialysist West, Inc. ("Dialysist"), alleges as follows:

1. This action arises from the sale by Dialysist to Bergen of approximately \$8.5 million in counterfeit pharmaceuticals.
2. Bergen is a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business in the State of California.
3. Dialysist is a corporation organized and existing under the laws of the State of Arizona, with its principal place of business in the State of Arizona.

(1)

1 12. Bergen purchased a total of approximately 2082 boxes of Epogen from Dialysist
2 and paid approximately \$4090 per box, for a total of approximately \$8,515,380.

3 13. In or about May 2002, Amgen announced that it had become aware of the existence
4 of counterfeit Epogen in the marketplace. A copy of the announcement is attached to this
5 Complaint as Exhibit "C" and made a part hereof. According to Amgen, the counterfeit vials
6 contained Epogen's active ingredient, but in a concentration 20 times lower than Epogen. The
7 counterfeit Epogen came in vials with counterfeit labels, which in turn were packed in
8 counterfeit boxes. Both the labels and the boxes closely resembled legitimate Epogen labels and
9 boxes.

10 14. After receiving notification of the problem from Amgen, Bergen determined that
11 between approximately 50% and 100% of the Epogen that Bergen purchased from Dialysist was
12 counterfeit. A more precise determination will require an examination of the records of
13 Dialysist and its suppliers.

14 15. Shortly after receiving notification from Amgen, Bergen advised Dialysist of the
15 problem with its goods and demanded repayment. Dialysist did not make payment to Bergen,
16 and Bergen has set-off certain funds owing to Dialysist. Notwithstanding these set-offs, several
17 million dollars remain owing from Dialysist to Bergen.

18 **FIRST CLAIM FOR RELIEF**
19 **(Lanham Act)**

20 16. Bergen incorporates by reference the preceding paragraphs of the Complaint as if
21 set forth in full herein.

22 17. By reason of the foregoing, Dialysist used in commerce words, terms, names,
23 symbols, and devices, and combinations thereof, false designations of origin, false and
24 misleading descriptions of fact, and/or false or misleading representations of fact which were
25 likely to cause confusion, likely to cause mistake and/or likely to deceive as to the origin,
26 sponsorship, and/or approval of its goods by another person within the meaning of 15 U.S.C. §
27 1125(a).

28 18. By reason of Dialysist's conduct, Bergen has suffered substantial damages.

1 **FOURTH CLAIM FOR RELIEF**
2 **(Breach Of Implied Warranty Of Merchantability)**

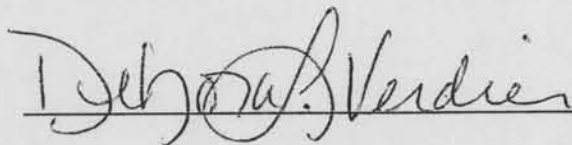
3 25. Bergen incorporates by reference the preceding paragraphs of the Complaint as if
4 set forth in full herein.

5 26. By reason of the foregoing, Dialysist breached the implied warranty of
6 merchantability pursuant to A.R.S. § 47-2314.

7 27. By reason of the foregoing, Bergen has suffered substantial damages.

8 WHEREFORE, Bergen demands judgment against Dialysist for damages
9 according to proof, plus reasonable attorneys fees, costs of this suit, and such other
10 further relief as the court deems just.

11 Dated this 2nd day of August, 2002.

12 
13 _____

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