IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

RETRACTABLE TECHNOLOGIES, INC., Plaintiff, v. BECTON DICKINSON & COMPANY, TYCO INTERNATIONAL (US), INC., TYCO HEALTHCARE GROUP, L.P., NOVATION, L.L.C., VHA, INC., PREMIER, INC. AND PREMIER PURCHASING PARTNERS, L.P. Defendants.	§	C.A. 5 01 C V 036 JURY TRIAL DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT

Retractable Technologies, Inc. ("Plaintiff" or "Retractable") files this original complaint against Becton Dickinson & Company, Tyco International (US), Inc., Tyco Healthcare Group, L.P., Novation, L.L.C., VHA, Inc., Premier, Inc., and Premier Purchasing Partners, L.P. (collectively called "Defendants").

Plaintiff brings this civil action against Defendants to recover injunctive relief and damages arising out of their violations of the antitrust laws of the United States, as well as the common-law and antitrust law of Texas, and demands a jury trial pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Plaintiff asserts that Defendants combined or conspired to eliminate or lessen competition and to acquire and maintain monopoly power among hospitals and health care technology providers. The conspiracy was intended to, and did have, a foreseeable and substantial effect on U.S. commerce. As a result of their activities, Plaintiffs allege causes of action against Defendants arising under the state and federal antitrust acts and the statutory and common law of

Texas. Plaintiff has suffered cognizable injuries as a result of Defendants' wrongful conduct. In support of these claims, Plaintiff respectfully shows the following:

I. PARTIES

1. Retractable Technologies, Inc. ("Retractable" or "Plaintiff") is a Texas corporation.

2. Becton Dickinson & Company ("Becton Dickinson") is a foreign corporation duly formed and existing under the laws of the State of New Jersey. Becton Dickinson has obtained a certificate of authority, is duly authorized to transact business in the State of Texas, and may be served with process by serving its registered agent for service, C.T. Corporation Systems, at 350 N. St. Paul Street, Dallas, Texas 75201.

3. Tyco International (US), Inc. is a foreign corporation duly formed and existing under the laws of the State of Massachusetts. Tyco International (US), Inc. has obtained a certificate of authority, is duly authorized to transact business in the State of Texas, and may be served with process by serving its registered agent for service, C.T. Corporation Systems, at 350 N. St. Paul Street, Dallas, Texas 75201. On information and belief, Tyco International (US), Inc. was formerly known by the name "Tyco International, Ltd." and was previously authorized to do business in Texas under that name.

4. Tyco Healthcare Group, L.P. is a Delaware partnership, and a Tyco International (US), Inc. affiliated company. On information and belief, Tyco Healthcare Group, L.P. was formerly named the Kendall Company, L.P. Tyco Healthcare Group, L.P. has obtained a certificate of authority, is duly authorized to transact business in the State of Texas, and may be served with process by serving its registered agent for service, C.T. Corporation Systems, at 350 N. St. Paul Street, Dallas, Texas 75201. Tyco International (US), Inc. and Tyco Healthcare Group, L.P. shall be referred to individually and collectively as "Tyco." On further information and belief, other Tyco affiliates such as Kendall Healthcare Products Company and Sherwood-Davis & Geck are equally liable for the actions and omissions giving rise to this lawsuit, and use

of the term "Tyco" herein includes those entities as well. Becton Dickinson and Tyco shall be collectively referred to as "Defendant Manufacturers."

5. Novation, L.L.C. is a foreign corporation duly formed and existing under the laws of the State of Delaware, with its principal place of business in Irving, Dallas County, Texas. Novation, L.L.C. has obtained a certificate of authority, is duly authorized to transact business in the State of Texas, and may be served with process by serving its registered agent for service, C.T. Corporation Systems, at 350 N. St. Paul Street, Dallas, Texas 75201. On information and belief, Novation, L.L.C. was formed through a merger transaction between defendant VHA, Inc. and non- party UHC, Inc., and remains affiliated with defendant VHA, Inc.

6. VHA, Inc. is a foreign corporation duly formed and existing under the laws of the State of Delaware, with its principal place of business in Irving, Dallas County, Texas. VHA, Inc. has obtained a certificate of authority, is duly authorized to transact business in the State of Texas, and may be served with process by serving its registered agent for service, Prentice-Hall Corp. Systems, 800 Brazos, Austin, Texas 78701. VHA, Inc. and Novation, L.L.C. shall be referred to individually and collectively as "Novation."

7. Premier, Inc. is a foreign corporation that does business in Texas. Premier, Inc. has obtained a certificate of authority, is duly authorized to transact business in the State of Texas, and may be served with process by serving its registered agent for service, Esperanza Tamez, at 801 Lincoln Street, Laredo, Texas 78040.

8. Premier Purchasing Partners, L.P. is a limited partnership doing business in Texas. Premier Purchasing Partners, L.P. has sufficient contacts with Texas that, under the Texas Long-Arm Statute, Section 17.044 *et seq.* of the Texas Civil Practice and Remedies Code, it may be served with process by serving the Texas Secretary of State, with process to be forwarded to Defendant's registered agent in California, Anthony E. Moreno, 12760 High Bluff Drive, Suite 250, San Diego, California 92130. Premier, Inc. and Premier Purchasing Partners, L.P. shall collectively be referred to as "Premier."

II. JURISDICTION AND VENUE

A. SUBJECT MATTER JURISDICTION

9. This action arises under the state and federal antitrust acts and the statutory and common law of Texas. The antitrust conspiracy that is the subject of this action, including activities in furtherance of the conspiracy in the United States and elsewhere, was intended to and did have a reasonably foreseeable, direct and substantial effect upon U.S. commerce, including but not limited the commerce among the states. This Court has subject matter jurisdiction pursuant to 15 U.S.C. § 15(a), 28 U.S.C. § 1331, 28 U.S.C. § 1337, and 28 U.S.C. § 1367(a).

B. PERSONAL JURISDICTION

10. This Court has personal jurisdiction over Becton Dickinson because it regularly does business in the State of Texas, and because of its commission of a tort in whole or in part, that is at issue in this matter, in the United States, Eastern District of Texas.

11. This Court has personal jurisdiction over Tyco International (US), Inc. because it regularly does business in the State of Texas, because it maintains an office, place of business and/or agency for transacting business in the State of Texas, and because of its commission of a tort in whole or in part, that is at issue in this matter, in the United States, Eastern District of Texas.

12. This Court has personal jurisdiction over Tyco Healthcare Group, L.P. because it regularly does business in the State of Texas, because it maintains an office, place of business and/or agency for transacting business in the State of Texas, and because of its commission of a tort in whole or in part, that is at issue in this matter, in the United States, Eastern District of Texas.

13. This Court has personal jurisdiction over Novation, L.L.C. because the it regularly does business in the State of Texas, because it maintains an office, place of business

and/or agency for transacting business in the State of Texas, and because of its commission of a tort in whole or in part, that is at issue in this matter, in the United States, Eastern District of Texas.

14. This Court has personal jurisdiction over VHA, Inc. because it regularly does business in the State of Texas, because it maintains an office, place of business and/or agency for transacting business in the State of Texas, and because of its commission of a tort in whole or in part, that is at issue in this matter, in the United States, Eastern District of Texas.

15. This Court has personal jurisdiction over Premier, Inc. because it regularly does business in the State of Texas, and because of its commission of a tort in whole or in part, that is at issue in this matter, in the United States, Eastern District of Texas.

16. This Court has personal jurisdiction over Premier Partners, L.P. because it regularly does business in the State of Texas, and because of its commission of a tort in whole or in part, that is at issue in this matter, in the United States, Eastern District of Texas.

C. VENUE

17. Venue for this case is proper in the United States District Court for the Eastern Division of Texas, Texarkana Division, pursuant to 15 U.S.C. § 15(a) and 28 U.S.C. § 1391(b), (c), and (d) because Defendants reside (as defined by 28 U.S.C. § 1391(c)) in the Eastern District of Texas; maintain principal offices and an agent in the Eastern Division of Texas; are aliens; or a substantial part of the events or omissions giving rise to the claim occurred in the Eastern District of Texas.

III. FACTS

A. GENERAL BACKGROUND

18. Retractable designs, develops, manufactures, and markets disposable syringes and blood collection tube holders that have retractable needles ("Retractable's safety devices") for use in the healthcare industry. Retractable's safety devices represent a breakthrough in safety for healthcare workers. They operate so that the needle automatically retracts into the barrel of the syringe or blood collection tube holder upon being withdrawn from the patient. This helps to

prevent the potentially life-threatening accidental needle sticks that can result from handling non-retractable needle devices after they have been exposed to infectious bodily fluids.

19. Retractable's safety devices have a demonstrated success in sharply reducing the incidence of accidental needle sticks among healthcare workers, and the associated risks of exposure to deadly blood borne pathogen diseases such as HIV, hepatitis B, and hepatitis C. Retractable's safety devices are so novel that the United States Patent and Trademark Office has granted several patents to Retractable covering those devices.

20. Defendants Becton Dickinson and Tyco are large corporations that also manufacture disposable syringes and blood collection tube holders. Defendants manufacture what they term a safety syringe, using technology that is different from and inferior to Retractable's technology. Novation and Premier do not manufacture, handle, or ship medical devices with the possible exception of certain private label products. Instead, they are administrative "middlemen" between medical device manufacturers and healthcare providers, also known as "Group Purchasing Organizations" or "GPOs." In practice, Novation's and Premier's true function in the medical device market is to deliver substantial market share to monopolistic medical device manufacturers, such as Becton Dickinson and Tyco, in exchange for substantial "administrative fees" and other forms of remuneration.

B. THE DEFENDANTS' CONSPIRACY TO ELIMINATE OR LESSEN COMPETITION

21. Upon information and belief, until the end of 1999, Defendant Becton Dickinson controlled over seventy percent of the market for disposable syringes in Texas and the United States, and Becton Dickinson and Tyco together controlled well over ninety percent of those markets. Tyco exited the market at the end of 1999, and since then Becton Dickinson has controlled over ninety percent of those markets. Upon further information and belief, Becton Dickinson controls over ninety percent of the market for disposable blood collection tube holders in Texas and in the United States.

22. Defendant Manufacturers individually and collectively have attempted to acquire, and have acquired and maintained, this dominant market position by engaging in a systematic and pervasive course of illegal conduct designed to unlawfully exclude and suppress competition in the relevant markets in violation of the state and federal antitrust acts.

23. One consequence of this unlawful, anti-competitive conduct has been to block access for many thousands of healthcare workers to the superior safety medical devices offered by smaller competitors, such as Retractable. Upon information and belief, Defendants' deliberate conduct in this regard has resulted in thousands of preventable needle sticks, injuries, disease and deaths among healthcare workers, along with very substantial costs in time lost from work, mental anguish, and the diagnosis and treatment of serious and life-threatening diseases.

24. Defendants have jointly engaged in a focused and concerted effort to monopolize and restrain competition in, and to eliminate Retractable and other competitors from, each of the relevant markets.

25. Upon information and belief, among other agreements and acts, Defendants unlawfully created interlocking, exclusive, multi-year contracts between and among Becton Dickinson, Tyco, Novation, Premier, and certain hospitals and other healthcare providers. Upon information and belief, Novation's and Premier's contracts frequently require hospitals to purchase up to ninety percent of their medical devices through Novation and Premier, which, in turn, have a "sole source" supplier relationship with Becton Dickinson or Tyco.

26. Upon further information and belief, Novation and Premier offer incentives for even higher levels of "compliance" with their terms and impose stringent sanctions, including expulsion, for non-compliance with the contractual purchase obligations.

C. EFFECT OF DEFENDANTS' UNLAWFUL CONDUCT

27. The purpose and effect of Defendants' combination and conspiracy is to fix, raise, and maintain prices that hospitals or other purchasers had to pay for health care products Defendants deprived Plaintiff and others the benefit of free and open competition in the sale of

such products and restrained, suppressed and eliminated competition through the use of the interlocking, exclusive, multi-year contracts and by other means.

28. Among the benefits to each Defendant from engaging in these unlawful concerted activities are:

a. they enable the Defendant Manufacturers to increase and maintain their dominance and market power in the relevant markets;

b. they permit Novation and Premier to collect sizable "administrative fees" for doing little more than preserving and expanding market share for monopolistic or anti-competitive manufacturers; and

c. they allow the hospitals to retain certain cost savings in the form of large incentive kickbacks (called "administrative rebates") that, effectively, are passed from Defendant Manufacturers to the hospitals through intermediary GPOs such as Novation and Premier.

IV. CAUSES OF ACTION

A. STATE AND FEDERAL ANTITRUST ACTS

29. Retractable reiterates the factual allegations contained in paragraphs 1 – 28.

30. Defendants violated state and federal antitrust acts:

a. by combining or conspiring among themselves to eliminate, reduce, or interfere with competition in the selling of health care products, particularly blood collection tubes and needles;

b. by agreeing among themselves about the prices and "administrative rebates" through the use of interlocking, multi-year, anti-competitive contracts in a manner that affected, limited, or avoided competition;

c. by using their market power to coerce purchases of tied products, which resulted in the foreclosure of a substantial amount of commerce in the tied product market;

d. by combining or conspiring among themselves with the specific intent to attempt to monopolize the market(s) for health care products in such a way that a dangerous probability exists or existed that their actions would ultimately result in actual monopolization of the relevant market(s);

e. by combining or conspiring among themselves to actually monopolize the relevant market;

f. by engaging, in the course of commerce, in predatory pricing practices, where the effect of such practices may be to substantially lessen competition or tend to create a monopoly in any line of commerce;

g. by paying, in the course of commerce, compensation, where the effect of such payments may be to substantially lessen competition or tend to create a monopoly in any line of commerce;

h. by tying, in the course of commerce, undesirable purchases to the sale of more desirable products, where the effect of such tying may be to substantially lessen competition or tend to create a monopoly in any line of commerce; and

i. by engaging, in the course of commerce, in exclusive-dealing contracts, where the effect of such contracts may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

This behavior by Defendants produced, and continues to produce, adverse, anti-competitive effects on interstate commerce in the United States, including, but not necessarily limited to, commerce in or affecting Texas.

31. As a proximate result of Defendants' acts, Retractable was denied access to the relevant market(s), and was damaged thereby.

32. As a consequence of Defendants' wrongful acts, Retractable is entitled to recover a joint and several judgment against all Defendants for its actual damages trebled, costs of suit, including reasonable attorneys' fees, and pre-judgment and post-judgment interest at the maximum rate permitted by law.

B. STATE ANTITRUST CONSPIRACY TO MONOPOLIZE

33. Retractable reiterates the factual allegations contained in paragraphs 1 - 28.

34. Defendants acted in direct violation of the state antitrust act in conspiring to monopolize the relevant market(s).

35. Defendants have participated in a conspiracy to monopolize the markets for disposable needle products and blood collection tube holders in Texas and the United States. In conducting the conspiracy, Defendants had a common design and understanding, or a meeting of

the minds, directed for the purpose of acquiring and maintaining monopoly power in the relevant market(s).

36. As a result of Defendants' intentional and unlawful conduct and conspiracy, Defendants wrongfully blocked Retractable's access to the relevant market(s), and thus caused Retractable to sustain damage to its business and property.

C. TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONSHIPS

37. Retractable reiterates the factual allegations contained in paragraphs 1 - 28.

38. Defendants have acted intentionally and maliciously in a manner that prevented Retractable from entering into business contracts where a reasonable probability existed that the contracts would have been entered into but for these Defendants' interference. By combining unlawfully to exclude Retractable's products from the market, Defendants intentionally and maliciously interfered with Retractable's prospective agreements.

39. Defendants were not privileged or otherwise justified in manipulating the market in such a way as to foreclose Retractable from entering into agreements in the relevant market(s).

40. As a result of Defendants' intentional, unlawful, and unexcused interference with Retractable's ability to enter into agreements for the sale of blood collection tubes and retractable needles, Retractable was injured and financially damaged.

41. Defendants are jointly and severally liable for their actions as described in the foregoing paragraphs. In addition, because of the knowing and reckless nature of their conduct, the Defendants are liable for punitive damages.

D. BUSINESS DISPARAGEMENT

42. Retractable reiterates the factual allegations contained in paragraphs 1 - 28.

43. The Defendants have utilized disparaging words against Retractable grounded in falsity and malice. Defendants knew of these falsities, acted with reckless disregard for the truth, or acted with ill will or intent to interfere in the economic interests of Retractable.

44. As a result of Defendants' intentional, unlawful, and unexcused use of disparaging words grounded in falsity and malice, Retractable was injured and financially damaged.

45. Defendants are jointly and severally liable for their actions as described in the foregoing paragraphs. In addition, because of the knowing and reckless nature of their conduct, the Defendants are liable for punitive damages.

E. COMMON LAW CONSPIRACY

46. Retractable reiterates the factual allegations contained in paragraphs 1 - 28.

47. Defendants combined and conspired to defraud Retractable by engaging in the conduct described above, including, but not limited to, price-fixing and tying agreements, and to attempt to monopolize the sale of blood collection tubes and needles. Each Defendant agreed and intended to participate in the conspiracy, and engaged in one or more overt acts in the United States or Texas, or both, in furtherance of the conspiracy.

48. As a result of Defendants' intentional, unlawful and unexcused conduct and conspiracy, Defendants wrongfully denied Retractable's access to the relevant market(s), thereby injuring Retractable and damaging it financially.

49. Defendants are jointly and severally liable for Retractable's damages. Further, because of the knowing and reckless nature of their conduct, the Defendants are liable for punitive damages.

V. NOTICE

50. As required by Section 15.21(c) of the Texas Business and Commerce Code, a copy of this Original Complaint has been mailed to the Attorney General of the State of Texas.

VI. INJUNCTIVE RELIEF

51. Defendants and their co-conspirators have engaged in a continuing pattern and practice of antitrust violations that are likely to recur unless each is permanently enjoined from engaging in such unlawful conduct in the future.

52. Retractable seeks an injunction enjoining each Defendant from continuing the unlawful conduct alleged herein, and from entering into any other combination, conspiracy or agreement having similar purposes and effects.

VII. PRAYER

Accordingly, Plaintiff Retractable Technologies, Inc. respectfully requests that Defendants Becton Dickinson & Company, Tyco International (US), Inc., Tyco Healthcare Group, L.P., Novation, L.L.C., VHA, Inc., Premier, Inc., and Premier Purchasing Partners, L.P., be cited to appear, and that Retractable have judgment against Defendants (jointly and severally where appropriate) for:

(1) actual damages;

(2) punitive damages;

(3) treble damages as provided by statute;

(4) injunctive relief;

(5) costs of suit, including reasonable attorneys' fees;

(6) pre-judgment and post-judgment interest at the maximum rate permitted by law; and

(7) such other relief to which Retractable may be entitled.

Respectfully submitted,

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Olds tortious interference
, disparagement
, damages
, injunctive relief
punitive
damages
access to Fed anti-
Trust statutes

not abated yet.

NO. 5333*JG98

RETRACTABLE TECHNOLOGIES INC.,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
v.	§	BRAZORIA COUNTY, TEXAS
BECTON DICKENSON & COMPANY, ET AL.,	§	
Defendants.	§	239th JUDICIAL DISTRICT

DEFENDANT BECTON DICKINSON AND COMPANY'S SPECIAL EXCEPTIONS AND ORIGINAL ANSWER TO PLAINTIFF'S FIRST AMENDED PETITION

Defendant Becton Dickinson and Company ("Becton") files its special exceptions and original answer to the first amended petition of plaintiff Retractable Technologies Inc. ("RTI").

SPECIAL EXCEPTIONS

1. Pursuant to Rule 91, Tex. R. Civ. P., Becton specially excepts to the first amended petition in its entirety because, even taking every material allegation as true, it fails to state a claim against Becton on which relief can be granted.

2. More specifically, Becton specially excepts to the following allegations found in the First Amended Petition:

> 9. . . . Defendants participated in an antitrust conspiracy and other illegal conduct in Brazoria County, Texas . . .
>
> * * *
>
> 11. Defendants, including defendant hospitals, contracted among themselves and many other hospitals, doctors and other health care organizations to exclude RTI

from selling the Safety Devices to hospitals, clinics and medical organizations throughout the United States. Such action represents violations of the TFEA.

12. B-D [Becton] and Tyco are sole-source suppliers to hospitals throughout the United States, including Brazoria County, acting to prohibit hospitals from purchasing the Safety Products manufactured by Plaintiff. These actions represent violations of the TFEA.

13. Plaintiff has suffered an antitrust injury. On account of Defendants' unlawful conduct, RTI has been unable to sell the Safety Devices, consumers in the relevant market have been unable to buy the Safety Devices, and the public has been unable to enjoy the benefits of a significant product innovation.

* * *

16. For purposes of antitrust analysis, the relevant market is hospitals who procure syringes and other blood collection or needle devices in the United States. Tyco and B-D control 94% of this market, thereby making them a oligopoly. Tyco and B-D further, as previously alleged, act in concert to maintain this market share. Further, Tyco can, through its own efforts, significantly effect competition in the relevant markets.

* * *

3. Becton specially excepts to the quoted portion of paragraph 9 of the petition because this allegation is vague, obscure, general, and lacking in sufficient specificity to inform defendants exactly what is being alleged; this allegation, for example, nowhere alleges when the alleged conspiracy was formed, who the members of the alleged conspiracy are or were, when they allegedly joined and withdrew from the conspiracy, the identity, date and parties to the alleged contracts, the purpose of the alleged conspiracy and the overt acts each defendant allegedly performed in furtherance of the conspiracy.

4. Becton specially excepts to paragraphs 11 and 12 of the petition on the grounds that they are vague, obscure and general in that they do not identify the contract(s) or other "sole source"

supply arrangements, attach copies, or otherwise allege the provisions of any such contracts or other "sole source" supply arrangement about which plaintiff is complaining.

5. Becton specially excepts to paragraph 13 of the petition on the grounds that it is vague, obscure, general, and lacking in sufficient specificity to inform defendants what "unlawful conduct" is being alleged.

6. Becton specially excepts to paragraph 16 of the petition on the grounds that it is vague, obscure, general and lacking in sufficient specificity to inform defendants how Tyco and Becton allegedly "act in concert."

7. Becton also specially excepts to paragraph 16 of the petition on the ground that being a participant in an alleged oligopoly is not illegal under the Texas Free Enterprise and Antitrust Act of 1983 or any other applicable statute.

For these reasons, Becton asks that its special exceptions be sustained, that the quoted portions of the first amended petition be stricken, that RTI be given leave to replead, and that if RTI does replead but still fails to provide the requisite detail or still fails to state a claim upon which relief can be granted, that this action be dismissed.

ORIGINAL ANSWER

8. Becton asserts a general denial under Rule 92 of the Texas Rules of Civil Procedure to RTI's first amended petition.

9. RTI's action is barred in whole or in part by (a) the Local Government Antitrust Act of 1984, 15 U.S.C. §§ 34-36, which is made applicable to this action by the Texas Free Enterprise

and Antitrust Act, Tex. Bus. & Comm. Code Ann. § 15.05(g), and by (l) the same section of the Texas Free Enterprise and Antitrust Act.

10. RTI lacks antitrust standing.

11. RTI has not suffered antitrust injury.

12. The relevant market includes not only hospitals that purchase syringes and blood specimen collection products but also includes all purchasers in the relevant geographic market who purchase or could purchase the relevant product.

13. RTI has not been damaged in its business or property as a result of any actions by Becton.

14. Any damages incurred by RTI are the result of its own business and financial mismanagement, the inferior quality of its products, and misguided marketing practices, and are not the result of any unlawful or wrongful action of any kind by Becton.

15. There were, and are, business justifications for any conduct of Becton.

16. RTI failed to mitigate its alleged damages.

For these reasons, defendant Becton Dickinson and Company prays for a take nothing judgment denying plaintiff any relief against it, for all costs, and all other relief to which it is justly entitled.

Respectfully submitted,

FULBRIGHT & JAWORSKI L.L.P.

By: _____

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CERTIFICATE OF SERVICE

This pleading was served in compliance with Rules 21 and 21a of the Texas Rules of Civil Procedure on November 6th, 1998.

_____
William R. Pakalka

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

RETRACTABLE TECHNOLOGIES, INC.,	§	
	§	
Plaintiff,	§	
	§	Civil Action No.
v.	§	5:01-CV-036
	§	
BECTON DICKINSON & COMPANY, ET AL.,	§	JURY TRIAL DEMANDED
	§	
	§	
Defendants.	§	

PLAINTIFF'S SECOND AMENDED COMPLAINT

Retractable Technologies, Inc. ("Plaintiff" or "Retractable") files this second amended complaint against Becton Dickinson & Company; Tyco International (US), Inc.; Tyco Healthcare Group, L.P.; Novation, L.L.C.; VHA, Inc.; Premier, Inc.; and Premier Purchasing Partners, L.P. (collectively called "Defendants").

Plaintiff brings this civil action against Defendants to recover injunctive relief and damages arising out of their violations of the antitrust laws of the United States, as well as the common law and antitrust law of Texas, and demands a jury trial pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Plaintiff asserts that Defendants combined or conspired to eliminate or lessen competition and to acquire and maintain monopoly power among hospitals and healthcare providers. The conspiracy was intended to, and did, have a foreseeable and substantial effect on U.S. commerce. As a result of these activities, Plaintiff alleges causes of action against Defendants arising under the state and federal antitrust acts. Plaintiff also asserts that

Defendants have tortiously interfered with Plaintiff's existing and prospective business relationships and contracts. Plaintiff also asserts that Defendants have used disparaging words against Plaintiff and its products, and that such words are grounded in falsity and made with malice. Plaintiff has suffered cognizable injuries as a result of Defendants' wrongful conduct. In support of these claims, Plaintiff respectfully shows the following:

I. PARTIES

1. Retractable Technologies, Inc. ("Retractable" or "Plaintiff") is a Texas corporation.

2. Becton Dickinson & Company ("Becton Dickinson") is a foreign corporation duly formed and existing under the laws of the State of New Jersey. Becton Dickinson has been previously served and can be served with this amended complaint in accordance with the certificate of service.

3. Tyco International (US), Inc. is a foreign corporation duly formed and existing under the laws of the State of Massachusetts. On information and belief, Tyco International (US), Inc. was formerly known by the name "Tyco International, Ltd." and was previously authorized to do business in Texas under that name. Tyco International (US), Inc. has been previously served and can be served with this amended complaint in accordance with the certificate of service.

4. Tyco Healthcare Group, L.P. is a Delaware partnership, and a Tyco International (US), Inc. affiliated company. On information and belief, Tyco Healthcare

Group, L.P. was formerly named the Kendall Company, L.P. Tyco International (US), Inc. and Tyco Healthcare Group, L.P. shall be referred to individually and collectively as "Tyco." On further information and belief, other Tyco affiliates such as Kendall Healthcare Products Company and Sherwood-Davis & Geck are equally liable for the actions and omissions giving rise to this lawsuit, and use of the term "Tyco" herein includes those entities as well. Becton Dickinson and Tyco shall be collectively referred to as "Defendant Manufacturers." Tyco Healthcare Group, L.P. has been previously served and can be served with this amended complaint in accordance with the certificate of service.

5. Novation, L.L.C. is a foreign corporation duly formed and existing under the laws of the State of Delaware, with its principal place of business in Irving, Dallas County, Texas. On information and belief, Novation, L.L.C. was formed through a merger transaction between defendant VHA, Inc. and non-party UHC, Inc., and remains affiliated with defendant VHA, Inc. On further information and belief, Novation, L.L.C. is being sued not only as an independent entity, but also as an agent for its member facilities. Novation, L.L.C. has been previously served and can be served with this amended complaint in accordance with the certificate of service.

6. VHA, Inc. is a foreign corporation duly formed and existing under the laws of the State of Delaware, with its principal place of business in Irving, Dallas County, Texas. VHA, Inc. and Novation, L.L.C. shall be referred to individually and collectively as "Novation." On information and belief, VHA, Inc. is being sued not only as an independent entity, but also as an agent for its member facilities. VHA, Inc. has been previously served and can be served with this amended complaint in accordance with the certificate of service.

7. Premier, Inc. is a foreign corporation that does business in Texas. Premier, Inc. has obtained a certificate of authority, and is duly authorized to transact business in the State of Texas. On information and belief, Premier, Inc. is being sued not only as an independent entity, but also as an agent for its member facilities. Premier, Inc. has been previously served and can be served with this amended complaint in accordance with the certificate of service.

8. Premier Purchasing Partners, L.P. is a limited partnership doing business in Texas. Premier, Inc. and Premier Purchasing Partners, L.P. shall collectively be referred to as "Premier." On information and belief, Premier Purchasing Partners, L.P. is being sued not only as an independent entity, but also as an agent for its member facilities. Premier Purchasing Partners, L.P. has been previously served and can be served with this amended complaint in accordance with the certificate of service.

II. JURISDICTION AND VENUE

A. SUBJECT MATTER JURISDICTION

9. This action arises under the state and federal antitrust acts and the statutory and common law of Texas. The antitrust conspiracy that is the subject of this action, including activities in furtherance of the conspiracy in the United States and elsewhere, was intended to and did have a reasonably foreseeable, direct and substantial effect upon U.S. commerce, including but not limited to commerce among the states. This Court has subject matter jurisdiction pursuant to 15 U.S.C. § 15(a), 28 U.S.C. § 1331, 28 U.S.C. § 1337, and 28 U.S.C. § 1367(a).

B. PERSONAL JURISDICTION

10. This Court possesses personal jurisdiction over Becton Dickinson because it regularly does business in the State of Texas, and because of its commission of a tort in whole or in part, that is at issue in this matter, in the United States, Eastern District of Texas.

11. This Court possesses personal jurisdiction over Tyco International (US), Inc. because it regularly does business in the State of Texas, because it maintains an office, place of business and/or agency for transacting business in the State of Texas, and because of its commission of a tort in whole or in part, that is at issue in this matter, in the United States, Eastern District of Texas.

12. This Court possesses personal jurisdiction over Tyco Healthcare Group, L.P. because it regularly does business in the State of Texas, because it maintains an office, place of business and/or agency for transacting business in the State of Texas, and because of its commission of a tort in whole or in part, that is at issue in this matter, in the United States, Eastern District of Texas.

13. This Court possesses personal jurisdiction over Novation, L.L.C. because the it regularly does business in the State of Texas, because it maintains an office, place of business and/or agency for transacting business in the State of Texas, and because of its commission of a tort in whole or in part, that is at issue in this matter, in the United States, Eastern District of Texas.

14. This Court possesses personal jurisdiction over VHA, Inc. because it regularly does business in the State of Texas, because it maintains an office, place of business and/or agency for transacting business in the State of Texas, and because of its commission of a tort

in whole or in part, that is at issue in this matter, in the United States, Eastern District of Texas.

15. This Court possesses personal jurisdiction over Premier, Inc. because it regularly does business in the State of Texas, and because of its commission of a tort in whole or in part, that is at issue in this matter, in the United States, Eastern District of Texas.

16. This Court possesses personal jurisdiction over Premier Purchasing Partners, L.P. because it regularly does business in the State of Texas, and because of its commission of a tort in whole or in part, that is at issue in this matter, in the United States, Eastern District of Texas.

C. VENUE

17. Venue for this case is proper in the United States District Court for the Eastern District of Texas, Texarkana Division, pursuant to 15 U.S.C. § 15(a) and 28 U.S.C. § 1391(b), (c), and (d) because Defendants reside (as defined by 28 U.S.C. § 1391(c)) in the Eastern District of Texas; maintain principal offices and an agent in the Eastern District of Texas; are aliens; or a substantial part of the events or omissions giving rise to the claim occurred in the Eastern District of Texas.

III. FACTS & ALLEGATIONS

A. GENERAL BACKGROUND

18. Retractable designs, develops, manufactures, and markets hypodermic products that have retractable needles ("Retractable's safety devices") for use in the healthcare industry. Retractable's safety devices represent a breakthrough in safety for healthcare providers. They operate so the needle automatically withdraws from the patient

and retracts into the barrel of the hypodermic product. This helps prevent the potentially life-threatening needle stick injuries that can result from handling non-retractable needle devices after they have been exposed to infectious bodily fluids.

19. Retractable's safety devices have a demonstrated success in sharply reducing (i) the incidence of needle sticks injuries, and the (ii) associated risks of exposure to deadly blood borne pathogen diseases such as HIV, hepatitis B, and hepatitis C. Retractable's safety devices are so novel that the United States Patent and Trademark Office has granted several patents covering those devices.

20. Defendants Becton Dickinson and Tyco are large corporations that also manufacture hypodermic products. Becton Dickinson and Tyco manufacture what they term a safety syringe, using technology that is different from, and inferior to, Retractable's technology. Novation and Premier do not manufacture, handle, or ship medical devices, with the possible exception of certain private label products. Instead, Defendants Novation and Premier are administrative "middlemen," the conduit between medical device manufacturers and healthcare providers, also known as "Group Purchasing Organizations" or "GPOs."[1] In practice, Defendant GPOs' true function in the medical device market is to deliver substantial market share to monopolistic medical device manufacturers, such as Defendant Manufacturers, in exchange for substantial "administrative fees" and other forms of remuneration and benefits. The GPOs in this case are being sued not only as independent entities, but also as agents for their member facilities.

[1] In some portions of this Complaint, Plaintiff shall refer to "Defendant GPOs" to represent Novation, L.L.C.; VHA, Inc.; Premier, Inc.; and Premier Purchasing Partners, L.P.

21. The hospitals and other healthcare providers who are members of GPOs retain their individual capacity to act collectively with other purchaser members in the GPOs and with the GPO itself. As such, the GPOs are not unitary organizations, but are comprised of autonomous or semi-autonomous members. The members of each GPO, as autonomous entities, both (i) retain the capacity to act collectively, and (ii) have acted collectively as participants in the GPOs.

B. THE DEFENDANTS' CONSPIRACY TO RESTRAIN TRADE UNLAWFULLY AND OTHERWISE TO ELIMINATE OR LESSEN COMPETITION

22. The relevant product market in this lawsuit consists of the market for hypodermic products purchased from Defendant Manufacturers either with or without the help of GPOs and eventually sold to hospitals, healthcare providers, and consumers throughout the United States. "Hypodermic products" are disposable syringes and their needles and blood collection devices and their needles.

23. Upon information and belief, until the end of 1999, Defendant Becton Dickinson controlled over seventy percent (70%) of the market for hypodermic products in the United States, and Becton Dickinson and Tyco together controlled well over ninety percent (90%) of that market. Due to a shift in the control of GPO contracts at the end of 1999, Becton Dickinson now has control over ninety percent (90%) of that market.

24. With the knowledge, consent, and assistance of Defendant GPOs, Defendant Manufacturers individually and collectively have attempted to acquire, and have acquired and maintained, their dominant market position by engaging in a systematic and pervasive

course of illegal conduct designed to unlawfully exclude and suppress competition in the relevant market in violation of the state and federal antitrust laws.

25. In the alternative, in addition to the relevant product market as defined above, Defendant Manufacturers have used their market power to create leverage and exclude Retractable from other product markets ("leveraged product markets"). The leveraged product markets in this lawsuit consist of:

a. the market for winged IVs purchased from Defendant Manufacturers either with or without the help of GPOs and eventually sold to hospitals, healthcare providers, and consumers throughout the United States;

b. the market for catheter devices purchased from Defendant Manufacturers either with or without the help of GPOs and eventually sold to hospitals, healthcare providers, and consumers throughout the United States; and

c. the market for dental syringes purchased from Defendant Manufacturers either with or without the help of GPOs and eventually sold to hospitals, healthcare providers, and consumers throughout the United States.

26. The hypodermic products market in this lawsuit, as defined above, is used by Defendants as traditional leveraging to improve their ability to compete in the winged IV, catheter, and dental syringe markets where their technology is lagging behind; and/or as defensive leveraging to foreclose those winged IV, catheter, and dental syringe markets because of worries about a possible declining hypodermic products market dominance. This leveraging to gain or keep market share is used by Defendants in ways other than by competitive means.

27. In the further alternative, the relevant product market in this lawsuit consists of the market for non-safety hypodermic products purchased from Defendant Manufacturers either with or without the help of GPOs and eventually sold to hospitals, healthcare providers, and consumers throughout the United States. "Non-safety hypodermic products" are non-safety disposable syringes and their needles and non-safety blood collection devices and their needles, as defined in the federal legislation on sharps injury prevention, known as the *Needlestick Safety and Prevention Act*. The leveraged product market in this lawsuit consists of the market for safety hypodermic products purchased from Defendant Manufacturers either with or without the help of GPOs and eventually sold to hospitals, healthcare providers, and consumers throughout the United States. "Safety hypodermic products" are safety disposable syringes and their needles and safety blood collection devices and their needles, as defined in the federal legislation on sharps injury prevention, known as the *Needlestick Safety and Prevention Act*.

28. The non-safety hypodermic products market in this lawsuit, as defined above, is used by Defendants as traditional leveraging to improve their ability to compete in the safety hypodermic market where their technology is lagging behind; and/or as defensive leveraging to foreclose that safety hypodermic products market because of worries about a possible declining non-safety hypodermic products market dominance. This leveraging to gain or keep market share is used by Defendants in ways other than by competitive means.

29. With the knowledge, consent, and assistance of Defendant GPOs, Defendant Manufacturers individually and collectively have attempted to acquire, and have acquired and maintained, their dominant market position by engaging in a systematic and pervasive

course of illegal conduct designed to unlawfully exclude and suppress competition in the relevant market or markets in violation of the state and federal antitrust laws. As a proximate result of the exercise of monopoly power and anti-competitive acts, Retractable has not only been able to sell only a limited number of hypodermic products, but it has also been totally excluded from other needle product markets, such as for winged IVs, catheter devices, and dental syringes.

30. With the knowledge, consent, and assistance of Defendant GPOs, Defendant Manufacturers have used anti-competitive sales and marketing practices (such as tying and/or bundling) and have entered into exclusive dealing contracts and/or other agreements with Defendant GPOs, other GPOs, hospitals, and healthcare providers to restrict the purchasing decisions to Defendant Manufacturers for hypodermic products in derogation of competition. These combinations and the resulting anti-competitively favored access has enabled Defendant Manufacturers to acquire and maintain their dominant and anti-competitive market position in the relevant product market.

31. Specifically, through contracts and other agreements between Defendant Manufacturers and Defendant GPOs, Defendant Manufacturers induced Defendant GPOs to grant Defendant Manufacturers virtually exclusive availability to purchases of member hospitals and healthcare providers, and induced Defendant GPOs and healthcare providers not to deal with, contract with, or enter into business relationships with Defendant Manufacturers' competitors, including Plaintiff, in the market for hypodermic products and/or other leveraged markets. Defendant Manufacturers have taken such actions with the

knowledge, consent, and assistance of Defendant GPOs. Examples of these actions and combinations include, but are not limited to, the following:

a. Tyco exercised control over VHA, Inc. and the relevant market when representatives of VHA, Inc. told Retractable representatives that they would need permission from Tyco to allow Retractable to sell products to "VHA facilities." Retractable was further told by a VHA representative that without Tyco's permission, no sales of Retractable products would ever occur in VHA facilities, even if Retractable provided their hypodermic products for free. This exercise of market power unreasonably constrained consumer choices among market alternatives and caused loss of sales for Retractable.

b. Becton Dickinson exercised control over Novation and the relevant market when representatives of Novation told Retractable representatives that they wanted to market Retractable's blood collection product by substantially raising its price and splitting the profits. However, it was made clear that Becton Dickinson would have to approve such an arrangement. This exercise of power unreasonably constrained consumer choices among market alternatives, adversely affected the entry of a competitor to the market, and caused loss of sales for Retractable.

c. Becton Dickinson exercised control over Premier when a representative of Premier sent a letter to Doug Hawthorne, President and CEO of Presbyterian Healthcare System, a founding and shareholding member of

Premier, stating that in order for Retractable to break into the market he would recommend that Retractable visit a Premier-Becton Dickinson development site and pay to have the product evaluated against other technologies, including Becton Dickinson's products. He further recommended that Retractable contact specific people at Mount Sinai Hospital in New York, who upon information and belief have ties to Defendants Premier and Becton Dickinson, to have the product evaluated, at a cost of $1 million. Upon further information and belief, these suggestions were nothing more than a charade, another barrier to the relevant market or markets. This exercise of power unreasonably constrained consumer choices among market alternatives and caused loss of sales for Retractable.

d. Becton Dickinson exercised control over Novation when Baptist Health System, a San Antonio, Texas facility under a VHA Opportunities Contract, reported that if it purchased even one box of Retractable hypodermic products, it would lose $300,000 in rebates and incentives.

These actions (i) decreased quality of hypodermic products, (ii) increased Defendants' market power, and (iii) had a dramatic anti-competitive impact in restraining entry of a competitor into the relevant market or markets. The actions and combinations described herein further have foreclosed opportunities for consumers to shop elsewhere for hypodermic products. The pervasive control by Becton Dickinson, through interlocking contracts and its relationship with GPOs, effectively prevents any GPO member from shopping elsewhere.

While healthcare providers not a member of a GPO could theoretically make purchases from some manufacturer other than Defendant Manufacturers, that same control has kept other competitors, such as Terumo, out of the hypodermic market, so much so that consumers could not collectively turn to other manufacturers for alternatives.

32. Furthering the "sole source" supplier relationship with Defendant Manufacturers, through unlawfully created interlocking, exclusive, multi-year contracts between and among (i) Defendant Manufacturers, (ii) Defendant GPOs, and (iii) certain hospitals and other healthcare providers, Defendant GPOs have required and continue to require some hospitals and healthcare providers to purchase almost ninety percent (90%), and in some cases one hundred percent (100%) of their medical devices through Defendant GPOs. This ninety percent (90%) plus requirement is evidenced in such items as contracts, Contract Commitment Schedules and Contract Information Sheets. Examples of such contracts are the Premier Purchasing Policy and the Contract Information Sheet between Premier and Becton Dickinson for the Hypodermic Products (Sole Source Award) PP-MS-012A. This type of anti-competitive bundling strategy has blocked entry by a potentially formidable competitor.

33. Defendant Manufacturers, with the knowledge, consent, and assistance of Defendant GPOs, also illegally provided kickbacks to (i) Defendant GPOs, (ii) other GPOs, (iii) hospitals, (iv) healthcare providers, and (v) other individuals -- in the form of "administrative fees," "rebates," "reimbursements," and/or "incentives." Evidence of these illegal kickbacks includes, but is not limited to: the Premier/Becton Dickinson January 2001 Agreement Alignment, and other remuneration to induce hospitals, CEOs, and other

hospitals' employees, and healthcare providers to (i) grant Defendant Manufacturers virtually exclusive availability to purchases by these groups, and (ii) to induce Defendant GPOs not to contract or enter into business relationships or contracts with Defendant Manufacturers' competitors, including Plaintiff, in the relevant market.

34. Defendant Manufacturers, with the knowledge, consent, and assistance of Defendant GPOs, also monitored and illegally threatened Defendant GPOs, other GPOs, hospitals, and healthcare providers with sanctions consisting of, but not limited to: (i) expulsion or threat of expulsion from the GPO, (ii) withdrawal of product availability, (iii) withdrawal of business opportunities, and (iv) withdrawal of financial incentives and kickbacks. An example includes, but is not limited to when Premier threatened the withdrawal of financial incentives of Becton Dickinson if a hospital or facility participated in an evaluation contract for retractable products offered by Premier. Premier also threatened to expel Iowa Health Systems as a stockholder member for breach of a Purchasing Partners Compliance Policy. These actions were taken to induce Defendant GPOs, other GPOs, hospitals, and healthcare providers to grant Defendant Manufacturers virtually exclusive availability to purchases by these groups, and to induce Defendant GPOs not to deal with, contract with, or enter into business relationships with Defendant Manufacturers' competitors, including Plaintiff, in the relevant market.

35. Defendant Manufacturers, with the knowledge, consent, and assistance of Defendant GPOs, have induced hospitals and healthcare providers to purchase their inferior hypodermic products in part through the use of "tying" or other comparable anti-competitive leveraging arrangements. Specifically, Defendant Manufacturers, with the knowledge and

assistance of Defendant GPOs, have included their less desirable hypodermic products as a part of a larger collection of products provided by Defendant Manufacturers that hospitals and healthcare providers are required to purchase in one lot in order (i) to be rewarded with discounts and financial incentives, or (ii) to avoid sanctions and penalties. The Defendant Manufacturers, with the knowledge and assistance of the Defendant GPOs, bundle substantially every product needed by a GPO member from Defendant Manufacturers with its inferior hypodermic products, and by use of its ninety percent (90%) relevant market power and member-penalties for non-compliance, leveraged the members into purchasing Defendant Manufacturers' diminished inferior products in the relevant market and other markets such as the winged IV market, catheter market and dental syringe market, thereby reducing (i) the quality of the products in the markets, (ii) competition within the product markets, and (iii) competition for any reasonably interchangeable alternative product.

36. In addition to the contracts and other agreements that establish the existence of the concerted action and conspiracy between Defendant Manufacturers and Defendant GPOs, evidence of such concerted action and conspiracy is found in the actions of Defendants' attempts to "correct" their prior illegal actions by granting Plaintiff – on a superficial level – an opportunity to participate in the relevant market through an evaluation contract. During this process, however, such Defendants continued to maintain the aforementioned illegal purchasing practices, kickbacks, threats, and pricing structures in order to induce hospitals and healthcare providers to continue to purchase the products of Defendant Manufacturers. Premier notified hospitals and facilities that choosing another product could affect Becton Dickinson contract incentives. Not surprisingly, Defendants were successful in their

attempts to unreasonably restrain competition in the relevant market or markets, with an adverse effect on the welfare of consumers and providers (who make use of inferior products at greater risk to their safety).

37. Defendant Manufacturers unreasonably constrained consumer choices among market alternatives through their collective action in restricting access to distributors. An illustration of this behavior by way of analogy is that both companies managed to keep another competitor's (Terumo) hypodermic products out of the relevant market by contracting with distributors to carry only their manufactured hypodermic products. This exercise of power effectively made it impossible for Terumo to get its products delivered to healthcare facilities. These actions also decreased quality, increased defendants' market power and had a dramatic impact unreasonably restraining entry into the relevant market.

38. Defendants took such action collectively and individually with a specific intent to monopolize the relevant market and to leverage that monopoly into other markets, and with the effect of lessening competition. Defendants have been successful in the creation of a monopoly. In the alternative, Defendants' actions, if allowed by this court to continue, present a dangerous risk of reaching monopoly power under the circumstances.

39. Retractable was injured and financially damaged as a result of such illegal conduct.

C. THE DEFENDANTS' INTERFERENCE WITH RETRACTABLE'S EXISTING AND PROSPECTIVE CONTRACTS

40. Retractable reiterates the factual allegations contained in paragraphs 1 – 39.

41. Prior to the events in controversy, Retractable had entered into contractual relationships with a number of hospitals and healthcare providers for the sale of Retractable's superior hypodermic products. The following incidents of interference with existing contracts are examples of the many instances of interference with existing contracts that occurred:

a. Retractable entered into a contract for safety hypodermic products with Kaiser Foundation Health Plan, Inc. that was to be effective from May 1, 1999, to April 30, 2000, and which made Retractable one of two companies (Becton Dickinson being the other) that supplied safety hypodermic products to the Kaiser hospital system. Shortly after that contract went into effect, Becton Dickinson and Kaiser announced the establishment of a Becton Dickinson funded $30 million joint clinical study and a joint product development program. This agreement allowed Kaiser facilities to purchase Becton Dickinson safety-engineered medical devices at non-safety prices and called for a study of safety-engineered medical device effectiveness in Kaiser facilities. After the Kaiser agreement became effective, (i) Retractable had to negotiate a contract with a Kaiser-dictated-distributor that demanded a huge rebate, (ii) Retractable's products were moved into facilities more slowly that Becton Dickinson's, (iii) Retractable's products were ordered by Kaiser facilities in sizes and quantities which did not reflect actual usage, (iv) false rumors that Retractable's products were on backorder circulated, and (v)

Retractable's products were finally removed from Kaiser because of reported minor defects that were within standard tolerances. Becton Dickinson's willful and intentional acts were the proximate cause of Retractable's products ultimately being pulled from the shelves of Kaiser facilities, and Retractable has suffered the loss of sales under that contract.

b. Retractable entered into a contract for safety hypodermic products effective April 1, 1998, through January 31, 2001, with the Department of Veterans Affairs, Federal Supply Schedule Contact No. V797P-3646k. Sales representatives from Becton Dickinson worked tirelessly to interfere with meetings scheduled at VA hospitals, pressuring purchasing agents to delay Retractable evaluations and using Becton Dickinson evaluation and presentation time to discuss reasons (false) the hospital should not buy Retractable products rather than reasons it should buy Becton Dickinson products. Becton Dickinson's willful and intentional acts were the proximate cause of Retractable's loss of sales under that contract.

c. Retractable has had various contracts with Sortimat Assembly Systems, Inc. from October 27, 1995, to build automated assembly equipment. Some time in the year 2000, Retractable learned that at some time in the years preceding, Becton Dickinson representatives pressured Sortimat to cease doing business with Retractable. Retractable has also learned that Retractable was not offered the best machine Sortimat could have made for it. Further, Sortimat has not lived up to its warranty requirements on the

machines it made for Retractable which, on information and belief, occurred because Becton Dickinson pressured and offered financial incentives to Sortimat to breach its warranty requirements. Becton Dickinson's willful and intentional acts were the proximate cause of loss of sales because of problems with its assembly machines.

42. Further, Retractable was in the process of, and continues to negotiate and discuss contractual relationships with a number of hospitals and healthcare providers for the sale of Retractable's superior hypodermic products. Several of such prospective relationships were reasonably certain to have resulted in actual contracts between Retractable and hospitals and healthcare providers, given the prospective customers' pleasure with Retractable's (i) superior products in providing safety for healthcare workers in preventing life-threatening needle stick injuries, and (ii) price. The following incidents of interference with prospective contracts are examples of many instances of interference that occurred:

a. Retractable had dealings with Tenet HealthSystem Medical, Inc. and its facilities during the last quarter of 1998 and the first quarter of 1999. These dealings included evaluations of Retractable's products where positive feedback resulted. After such evaluations, Tenet sent a proposed contract for Retractable to sign, which upon award would give Retractable approved vendor status within the Tenet system. Although Retractable was able to show that its products would save hospitals money, ultimately Retractable was not awarded a Tenet contract. Upon information and belief, Becton Dickinson interfered with that potential contract, by, among

other things, giving Tenet better pricing and other incentives if it would specifically not award a contract to Retractable. Becton Dickinson's willful and intentional acts were the proximate cause of loss of sales under that potential Tenet contract.

b. Retractable had dealings with Columbia/HCA Healthcare Corporation and its facilities during most of 1997 and into 1998. These contacts resulted in over sixty Columbia facilities being interested in purchasing Retractable's products. When a meeting was set up to discuss volumes and pricing at the end of 1997, (i) the meeting was abruptly canceled, (ii) Retractable representatives were told that the meeting was no longer a priority, and (iii) Retractable representatives were told that the meeting would not be rescheduled for several months. Retractable was further told that although the meeting was to be to discuss price, the Retractable products were too expensive, so no meeting would occur. Upon information and belief, Becton Dickinson interfered with that potential contract, by, among other things, giving Columbia better pricing and other incentives if it would not award a contract to Retractable. Becton Dickinson's willful and intentional acts were the proximate cause of loss of sales under that potential Columbia contract

43. As a direct result of Defendants' conspiracy to monopolize and anti-competitive behavior, as well as conduct in providing kickbacks, threats, sanctions, inducements, and other illegal conduct, hospitals and healthcare providers which had

contracted with Retractable terminated their contractual relationships in order to conduct business with Defendant Manufacturers and Defendant GPOs.

44. As a direct result of Defendants' conspiracy to monopolize and anti-competitive behavior, as well as conduct in providing kickbacks, threats, sanctions, inducements, and other illegal conduct, hospitals and healthcare providers who had reasonable probabilities of entering into contractual relationships with Retractable terminated their contacts and refused to enter into contractual relationships.

45. The result of such conduct of Defendants was foreseeable, and occurred directly as a result of Defendants' intentional and malicious actions for the purpose of building and maintaining their monopolistic practices, as well as for the purpose of harming Plaintiff and other competitor manufacturers of hypodermic products. The evidence will show that under such circumstances, Defendants acted illegally and without privilege or justification in taking such coercive action.

46. Retractable was injured and financially damaged as a result of such conduct.

D. DEFENDANTS' CONDUCT IN DISPARAGING PLAINTIFF AND PLAINTIFF'S PRODUCTS

47. Retractable reiterates the factual allegations contained in paragraphs 1 – 46.

48. In the course of building and maintaining its monopolistic practices, Defendants published to Retractable's customers, prospective customers, other GPOs, and other purchasers of hypodermic products certain statements about Retractable and the quality of Plaintiff's products. Some specific examples of such disparagement include, but are not limited to:

a. Telling representatives of the healthcare workers union, the SEIU, that Tom Shaw is the reason that no one will purchase Retractable products;

b. Publishing to healthcare workers that the Retractable products deliver inaccurate dosaging;

c. Publishing to healthcare workers that the Retractable products cause hematomas;

d. Telling members of the financial world that the Retractable products cannot be manufactured for less than $.50 per syringe, a cost that would not allow for widespread use, because of difficulties manufacturing in high volumes; and

e. Telling healthcare workers that Retractable's employees are not reasonable business people.

49. Such statements were, at the time, and continue to be, false statements of fact.

50. Defendants were aware of the statements' falsity at the time, and they nonetheless elected to make such statements. In the alternative, Defendants entertained serious doubts as to the truthfulness of the statements about Plaintiff and Plaintiff's products, and nevertheless elected to make such statements.

51. The result of such false statements of Defendants was foreseeable, and occurred directly as a result of Defendants' intentional and malicious actions for the purpose of building and maintaining their monopolistic practices; such statements were made with ill will for the purpose of harming the Plaintiff in the relevant market or markets. The evidence

will show that under such circumstances, Defendants acted with malice and without privilege in making such statements.

52. Retractable was injured and suffered special damages as a result of such statements and conduct. Retractable suffered (i) a loss of reasonably foreseeable net profits, (ii) lost goodwill from prospective purchasers, and (iii) lost standing and suffered discouragement of prospective purchasers by being held in disrepute.

E. EFFECTS OF DEFENDANTS' PRACTICES IN ELIMINATING OR LESSENING COMPETITION

53. The effects of Defendants' unlawful, anti-competitive conduct are extreme, and have directly and proximately caused injury to the Plaintiff in the relevant interstate market or markets. Defendants' unlawful conduct has also unreasonably restrained competition in the relevant interstate market or markets and has unreasonably restrained the reasonable interchange of product alternatives for the relevant market or markets; and such anti-competitive effects outweigh any negligible pro-competitive benefits.

54. One consequence of the aforementioned unlawful, anti-competitive conduct has been lack of access for many thousands of healthcare providers and consumers to the superior safety medical devices offered by smaller competitors, such as Retractable. Upon information and belief, Defendants' deliberate conduct in this regard has resulted in thousands of preventable needle sticks, injuries, disease and deaths, along with very substantial costs in time lost from work, mental anguish, and the diagnosis and treatment of serious and life-threatening diseases. These concerns are embodied in federal legislation

aimed at providing enhanced safety for healthcare providers who are at risk from needle sticks.

55. A second consequence of this unlawful, anti-competitive conduct has been that Defendant Manufacturers, with the knowledge, consent, and assistance of Defendant GPOs, have been successful in directly fixing prices in the nationwide market for hypodermic products and/or in the products in the leveraged markets. More specifically, Defendant Manufacturers have been successful at charging purchasers of hypodermic products and/or other leveraged market products roughly the same price, which eliminates or reduces competition in these market areas. In the alternative, because of the acts of Defendants, the resulting price for the purchase of hypodermic products and/or products in the leveraged markets are virtually parallel nationwide, and cannot be explained merely in terms of coincidence, fate, or the conformity of behavior due to unilateral action.

56. A third consequence of this unlawful, anti-competitive conduct has been that Defendant Manufacturers, with the knowledge, consent, and assistance of Defendant GPOs, have been successful in indirectly fixing prices in the nationwide market for hypodermic products and/or products in the leveraged markets. More specifically, Defendant Manufacturers and Defendant GPOs have indirectly influenced the price for hypodermic products and/or other leveraged market products by (i) restraining competition in the relevant market or markets, (ii) limiting available supply of similar products to member hospitals and healthcare providers, (iii) refusing to deal with and thereby blocking entry of competitors of Defendant Manufacturers, and (iv) exchanging information that has an influence on pricing decisions. Alternatively, because of the acts of Defendants, the resulting price for the

purchase of hypodermic products and/or other leveraged market products are virtually parallel nationwide, and cannot be explained merely in terms of coincidence, fate, or the conformity of behavior due to unilateral action.

57. A fourth consequence of this unlawful, anti-competitive conduct has been that Defendant Manufacturers, with the knowledge, consent, and assistance of Defendant GPOs, have deprived Plaintiff and others of the benefit of free and open competition in the sale of hypodermic products and/or other leveraged market products. These practices (i) decreased quality of those products, (ii) increased Defendants' market power or powers, (iii) unreasonably restrained entry into the relevant market or markets, (iv) increased costs to consumers by preventing competitive entrants from reaching economies of scale, and (v) unreasonably restrained competition by channeling consumer choices to Defendant Manufacturers' products, thereby effectively excluding all competing vendors' access to the hypodermic product market and/or other leveraged markets and unreasonably constraining consumer choices among market alternatives. These actions permit Retractable to recover from Defendants: (1) actual damages in lost profits and additional compensation; (2) punitive damages; (3) additional damages as provided by statute; (4) injunctive relief; (5) costs of suit, including reasonable attorney fees and prejudgment and post-judgment interest.

IV. CAUSES OF ACTION

A. STATE AND FEDERAL ANTITRUST ACTS

58. Retractable reiterates the factual allegations contained in paragraphs 1 – 57.

59. The aforementioned illegal conduct of Defendants, in concert and in conspiracy with one another, violates state and federal antitrust law in the following manner:

a. by combining or conspiring among themselves to eliminate, reduce, or interfere with nationwide competition in the selling of hypodermic products and/or other leveraged market products;

b. by using Defendant GPOs to provide different prices for members versus non-member suppliers and purchasers for the sale and purchase of goods of similar grade and quality, resulting in substantial competitive injury to interstate commerce and competition;

c. by entering into exclusive dealing contracts or other anti-competitive agreements to purchase or exclusively provide to member hospitals and healthcare providers only those hypodermic products and/or other leveraged market products manufactured by Defendant Manufacturers;

d. by entering into contracts or other agreements not to deal with, contract, or purchase hypodermic products manufactured by Plaintiff or other manufacturers.

e. by agreeing to use interlocking, multi-year, anti-competitive contracts and agreements that directly affected, limited, or avoided competition;

f. by providing kickbacks, bribes and other illegal financial incentives to affect, limit, and avoid competition in the market for hypodermic products and/or in other leveraged products markets, and to enter into future transactions;

g. by receiving kickbacks, bribes, and other illegal financial incentives to affect, limit, and avoid competition in the market for hypodermic products and/or in other leveraged products markets, and to enter into future transactions;

h. by illegally threatening purchasers and potential purchasers of hypodermic products and/or other leveraged market products from making purchases from suppliers other than Defendant Manufacturers, and to enter into future transactions;

i. by attempting to use market share in one market as leverage to gain market share in another market or markets other than by competitive means;

j. by using their market power to coerce purchases of tied products, which resulted in the foreclosure of a substantial amount of commerce in the tied product market or markets and protected their market dominance in the tying product market; and

k. by directly or indirectly fixing prices in the market for hypodermic products and/or in the leveraged products markets.

60. This behavior by Defendants produced, and continues to produce, adverse, anti-competitive effects on interstate commerce in the United States, including, but not necessarily limited to, commerce in or affecting Texas.

61. As a proximate result of Defendants' acts, Retractable was denied access to the relevant market or markets, and was thereby damaged.

62. As a consequence of Defendants' wrongful acts, Retractable is entitled to recover a joint and several judgment against all Defendants for its actual damages trebled, costs of suit, including reasonable attorneys' fees, and pre-judgment and post-judgment interest at the maximum rate permitted by law.

B. STATE ANTITRUST CONSPIRACY TO MONOPOLIZE

63. Retractable reiterates the factual allegations contained in paragraphs 1 - 62.

64. Defendants acted in direct violation of the state antitrust act in conspiring to monopolize the relevant market.

65. Defendants have participated in a conspiracy to monopolize the market for hypodermic products in Texas and the United States. In conducting the conspiracy, Defendants had a common design and understanding, or a meeting of the minds, directed for the purpose of acquiring and maintaining monopoly power in the relevant market.

66. As a result of Defendants' intentional and unlawful conduct and conspiracy, Defendants wrongfully blocked Retractable's access to the relevant market, and thus caused Retractable to sustain damage to its business and property.

C. TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIPS

67. Retractable reiterates the factual allegations contained in paragraphs 1 - 66.

68. Defendants interfered with Retractable's business relations, including its existing and prospective business contracts.

69. Defendants had actual knowledge of the existence of Retractable's contracts and its interest therein, or knowledge of facts and circumstances that would lead a reasonable person to know of their existence. Defendants have willfully and intentionally committed

acts that were calculated to, and did as a result of the interference, cause damage to Retractable in its lawful business. Defendants' acts were the proximate cause of actual damage and loss to Retractable.

70. Defendants have also acted intentionally and unlawfully without privilege or justification in a manner that has interfered with Retractable's prospective business relations, and/or has prevented Retractable from entering into business contracts where a reasonable probability existed that the contracts would have been entered into but for these Defendants' interference. Defendants' intentional, unlawful, and unexcused interference with Retractable's ability to enter into business relations and business contracts with potential purchasers for the sale of hypodermic products was the proximate cause of actual injury and financial damage to Retractable.

71. Defendants are jointly and severally liable for their actions as described in the foregoing paragraphs. In addition, because of the knowing or reckless nature of their conduct, Defendants are liable for punitive damages.

D. BUSINESS DISPARAGEMENT

72. Retractable reiterates the factual allegations contained in paragraphs 1 – 71.

73. Defendants have utilized disparaging words against Retractable grounded in falsity and malice. Defendants lacked privilege in making these statements, knew of these falsities, acted with reckless disregard for the truth, or acted with ill will or intent to interfere in the economic interests of Retractable.

74. As a result of Defendants' intentional, unlawful, and unexcused use of disparaging words grounded in falsity and malice, Retractable was injured and financially damaged.

75. Defendants are jointly and severally liable for their actions as described in the foregoing paragraphs. In addition, because of the knowing and reckless nature of their conduct, Defendants are liable for punitive damages.

E. COMMON LAW CONSPIRACY

76. Retractable reiterates the factual allegations contained in paragraphs 1 - 75.

77. Defendants combined and conspired to defraud Retractable by engaging in the conduct described above, including, but not limited to, price-fixing and tying agreements, bribes and kickbacks, illegal threats, and attempts to monopolize the sale of hypodermic products. Each Defendant agreed and intended to participate in the conspiracy, and engaged in one or more overt acts in the United States or Texas, or both, in furtherance of the conspiracy.

78. As a result of Defendants' intentional, unlawful and unexcused conduct and conspiracy, Defendants wrongfully denied Retractable's access to the relevant market or markets, thereby injuring Retractable and damaging it financially.

79. Defendants are jointly and severally liable for Retractable's damages. Further, because of the knowing and reckless nature of their conduct, Defendants are liable for punitive damages.

V. NOTICE

80. As required by Section 15.21(c) of the Texas Business and Commerce Code, a copy of this second amended original complaint has been mailed to the Attorney General of the State of Texas.

VI. INJUNCTIVE RELIEF

81. Defendants and their co-conspirators have engaged in a continuing pattern and practice of antitrust violations that are likely to recur unless each is permanently enjoined from engaging in such unlawful conduct in the future.

82. Retractable seeks an injunction enjoining each Defendant from continuing the unlawful conduct alleged herein, and from entering into any other combination, conspiracy or agreement having similar purposes and effects.

VII. PRAYER

Accordingly, Plaintiff Retractable Technologies, Inc. respectfully requests that Defendants Becton Dickinson & Company, Tyco International (US), Inc., Tyco Healthcare Group, L.P., Novation, L.L.C., VHA, Inc., Premier, Inc., and Premier Purchasing Partners, L.P., be cited to appear, and that Retractable have judgment against Defendants (jointly and severally where appropriate) for:

a. actual damages;

b. punitive damages;

c. additional and/or treble damages as provided by statute;

d. injunctive relief;

e. costs of suit, including reasonable attorneys' fees; pre-judgment and post-judgment interest at the maximum rate permitted by law; and

f. such other relief to which Retractable may be entitled.

Respectfully submitted,

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Certificate of Service

I hereby certify that I have forwarded a true and correct copy of the above and foregoing instrument in accordance with the Federal Rules of Civil Procedure to the following counsel of record by U.S. Certified Mail, Return Receipt Requested and by facsimile (fastest method) as indicated with an asterisk below, on January, 18, 2002:

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course of illegal conduct designed to unlawfully exclude and suppress competition in the relevant market or markets in violation of the state and federal antitrust laws. As a proximate result of the exercise of monopoly power and anti-competitive acts, Retractable has not only been able to sell only a limited number of hypodermic products, but it has also been totally excluded from other needle product markets, such as for winged IVs, catheter devices, and dental syringes.

30. With the knowledge, consent, and assistance of Defendant GPOs, Defendant Manufacturers have used anti-competitive sales and marketing practices (such as tying and/or bundling) and have entered into exclusive dealing contracts and/or other agreements with Defendant GPOs, other GPOs, hospitals, and healthcare providers to restrict the purchasing decisions to Defendant Manufacturers for hypodermic products in derogation of competition. These combinations and the resulting anti-competitively favored access has enabled Defendant Manufacturers to acquire and maintain their dominant and anti-competitive market position in the relevant product market.

31. Specifically, through contracts and other agreements between Defendant Manufacturers and Defendant GPOs, Defendant Manufacturers induced Defendant GPOs to grant Defendant Manufacturers virtually exclusive availability to purchases of member hospitals and healthcare providers, and induced Defendant GPOs and healthcare providers not to deal with, contract with, or enter into business relationships with Defendant Manufacturers' competitors, including Plaintiff, in the market for hypodermic products and/or other leveraged markets. Defendant Manufacturers have taken such actions with the

knowledge, consent, and assistance of Defendant GPOs. Examples of these actions and combinations include, but are not limited to, the following:

a. Tyco exercised control over VHA, Inc. and the relevant market when representatives of VHA, Inc. told Retractable representatives that they would need permission from Tyco to allow Retractable to sell products to "VHA facilities." Retractable was further told by a VHA representative that without Tyco's permission, no sales of Retractable products would ever occur in VHA facilities, even if Retractable provided their hypodermic products for free. This exercise of market power unreasonably constrained consumer choices among market alternatives and caused loss of sales for Retractable.

b. Becton Dickinson exercised control over Novation and the relevant market when representatives of Novation told Retractable representatives that they wanted to market Retractable's blood collection product by substantially raising its price and splitting the profits. However, it was made clear that Becton Dickinson would have to approve such an arrangement. This exercise of power unreasonably constrained consumer choices among market alternatives, adversely affected the entry of a competitor to the market, and caused loss of sales for Retractable.

c. Becton Dickinson exercised control over Premier when a representative of Premier sent a letter to Doug Hawthorne, President and CEO of Presbyterian Healthcare System, a founding and shareholding member of

Premier, stating that in order for Retractable to break into the market he would recommend that Retractable visit a Premier-Becton Dickinson development site and pay to have the product evaluated against other technologies, including Becton Dickinson's products. He further recommended that Retractable contact specific people at Mount Sinai Hospital in New York, who upon information and belief have ties to Defendants Premier and Becton Dickinson, to have the product evaluated, at a cost of $1 million. Upon further information and belief, these suggestions were nothing more than a charade, another barrier to the relevant market or markets. This exercise of power unreasonably constrained consumer choices among market alternatives and caused loss of sales for Retractable.

d. Becton Dickinson exercised control over Novation when Baptist Health System, a San Antonio, Texas facility under a VHA Opportunities Contract, reported that if it purchased even one box of Retractable hypodermic products, it would lose $300,000 in rebates and incentives.

These actions (i) decreased quality of hypodermic products, (ii) increased Defendants' market power, and (iii) had a dramatic anti-competitive impact in restraining entry of a competitor into the relevant market or markets. The actions and combinations described herein further have foreclosed opportunities for consumers to shop elsewhere for hypodermic products. The pervasive control by Becton Dickinson, through interlocking contracts and its relationship with GPOs, effectively prevents any GPO member from shopping elsewhere.

While healthcare providers not a member of a GPO could theoretically make purchases from some manufacturer other than Defendant Manufacturers, that same control has kept other competitors, such as Terumo, out of the hypodermic market, so much so that consumers could not collectively turn to other manufacturers for alternatives.

32. Furthering the "sole source" supplier relationship with Defendant Manufacturers, through unlawfully created interlocking, exclusive, multi-year contracts between and among (i) Defendant Manufacturers, (ii) Defendant GPOs, and (iii) certain hospitals and other healthcare providers, Defendant GPOs have required and continue to require some hospitals and healthcare providers to purchase almost ninety percent (90%), and in some cases one hundred percent (100%) of their medical devices through Defendant GPOs. This ninety percent (90%) plus requirement is evidenced in such items as contracts, Contract Commitment Schedules and Contract Information Sheets. Examples of such contracts are the Premier Purchasing Policy and the Contract Information Sheet between Premier and Becton Dickinson for the Hypodermic Products (Sole Source Award) PP-MS-012A. This type of anti-competitive bundling strategy has blocked entry by a potentially formidable competitor.

33. Defendant Manufacturers, with the knowledge, consent, and assistance of Defendant GPOs, also illegally provided kickbacks to (i) Defendant GPOs, (ii) other GPOs, (iii) hospitals, (iv) healthcare providers, and (v) other individuals -- in the form of "administrative fees," "rebates," "reimbursements," and/or "incentives." Evidence of these illegal kickbacks includes, but is not limited to: the Premier/Becton Dickinson January 2001 Agreement Alignment, and other remuneration to induce hospitals, CEOs, and other

hospitals' employees, and healthcare providers to (i) grant Defendant Manufacturers virtually exclusive availability to purchases by these groups, and (ii) to induce Defendant GPOs not to contract or enter into business relationships or contracts with Defendant Manufacturers' competitors, including Plaintiff, in the relevant market.

34. Defendant Manufacturers, with the knowledge, consent, and assistance of Defendant GPOs, also monitored and illegally threatened Defendant GPOs, other GPOs, hospitals, and healthcare providers with sanctions consisting of, but not limited to: (i) expulsion or threat of expulsion from the GPO, (ii) withdrawal of product availability, (iii) withdrawal of business opportunities, and (iv) withdrawal of financial incentives and kickbacks. An example includes, but is not limited to when Premier threatened the withdrawal of financial incentives of Becton Dickinson if a hospital or facility participated in an evaluation contract for retractable products offered by Premier. Premier also threatened to expel Iowa Health Systems as a stockholder member for breach of a Purchasing Partners Compliance Policy. These actions were taken to induce Defendant GPOs, other GPOs, hospitals, and healthcare providers to grant Defendant Manufacturers virtually exclusive availability to purchases by these groups, and to induce Defendant GPOs not to deal with, contract with, or enter into business relationships with Defendant Manufacturers' competitors, including Plaintiff, in the relevant market.

35. Defendant Manufacturers, with the knowledge, consent, and assistance of Defendant GPOs, have induced hospitals and healthcare providers to purchase their inferior hypodermic products in part through the use of "tying" or other comparable anti-competitive leveraging arrangements. Specifically, Defendant Manufacturers, with the knowledge and

assistance of Defendant GPOs, have included their less desirable hypodermic products as a part of a larger collection of products provided by Defendant Manufacturers that hospitals and healthcare providers are required to purchase in one lot in order (i) to be rewarded with discounts and financial incentives, or (ii) to avoid sanctions and penalties. The Defendant Manufacturers, with the knowledge and assistance of the Defendant GPOs, bundle substantially every product needed by a GPO member from Defendant Manufacturers with its inferior hypodermic products, and by use of its ninety percent (90%) relevant market power and member-penalties for non-compliance, leveraged the members into purchasing Defendant Manufacturers' diminished inferior products in the relevant market and other markets such as the winged IV market, catheter market and dental syringe market, thereby reducing (i) the quality of the products in the markets, (ii) competition within the product markets, and (iii) competition for any reasonably interchangeable alternative product.

36. In addition to the contracts and other agreements that establish the existence of the concerted action and conspiracy between Defendant Manufacturers and Defendant GPOs, evidence of such concerted action and conspiracy is found in the actions of Defendants' attempts to "correct" their prior illegal actions by granting Plaintiff – on a superficial level – an opportunity to participate in the relevant market through an evaluation contract. During this process, however, such Defendants continued to maintain the aforementioned illegal purchasing practices, kickbacks, threats, and pricing structures in order to induce hospitals and healthcare providers to continue to purchase the products of Defendant Manufacturers. Premier notified hospitals and facilities that choosing another product could affect Becton Dickinson contract incentives. Not surprisingly, Defendants were successful in their

attempts to unreasonably restrain competition in the relevant market or markets, with an adverse effect on the welfare of consumers and providers (who make use of inferior products at greater risk to their safety).

37. Defendant Manufacturers unreasonably constrained consumer choices among market alternatives through their collective action in restricting access to distributors. An illustration of this behavior by way of analogy is that both companies managed to keep another competitor's (Terumo) hypodermic products out of the relevant market by contracting with distributors to carry only their manufactured hypodermic products. This exercise of power effectively made it impossible for Terumo to get its products delivered to healthcare facilities. These actions also decreased quality, increased defendants' market power and had a dramatic impact unreasonably restraining entry into the relevant market.

38. Defendants took such action collectively and individually with a specific intent to monopolize the relevant market and to leverage that monopoly into other markets, and with the effect of lessening competition. Defendants have been successful in the creation of a monopoly. In the alternative, Defendants' actions, if allowed by this court to continue, present a dangerous risk of reaching monopoly power under the circumstances.

39. . Retractable was injured and financially damaged as a result of such illegal conduct.

C. THE DEFENDANTS' INTERFERENCE WITH RETRACTABLE'S EXISTING AND PROSPECTIVE CONTRACTS

40. Retractable reiterates the factual allegations contained in paragraphs 1 – 39.

41. Prior to the events in controversy, Retractable had entered into contractual relationships with a number of hospitals and healthcare providers for the sale of Retractable's superior hypodermic products. The following incidents of interference with existing contracts are examples of the many instances of interference with existing contracts that occurred:

a. Retractable entered into a contract for safety hypodermic products with Kaiser Foundation Health Plan, Inc. that was to be effective from May 1, 1999, to April 30, 2000, and which made Retractable one of two companies (Becton Dickinson being the other) that supplied safety hypodermic products to the Kaiser hospital system. Shortly after that contract went into effect, Becton Dickinson and Kaiser announced the establishment of a Becton Dickinson funded $30 million joint clinical study and a joint product development program. This agreement allowed Kaiser facilities to purchase Becton Dickinson safety-engineered medical devices at non-safety prices and called for a study of safety-engineered medical device effectiveness in Kaiser facilities. After the Kaiser agreement became effective, (i) Retractable had to negotiate a contract with a Kaiser-dictated-distributor that demanded a huge rebate, (ii) Retractable's products were moved into facilities more slowly that Becton Dickinson's, (iii) Retractable's products were ordered by Kaiser facilities in sizes and quantities which did not reflect actual usage, (iv) false rumors that Retractable's products were on backorder circulated, and (v)

Retractable's products were finally removed from Kaiser because of reported minor defects that were within standard tolerances. Becton Dickinson's willful and intentional acts were the proximate cause of Retractable's products ultimately being pulled from the shelves of Kaiser facilities, and Retractable has suffered the loss of sales under that contract.

b. Retractable entered into a contract for safety hypodermic products effective April 1, 1998, through January 31, 2001, with the Department of Veterans Affairs, Federal Supply Schedule Contact No. V797P-3646k. Sales representatives from Becton Dickinson worked tirelessly to interfere with meetings scheduled at VA hospitals, pressuring purchasing agents to delay Retractable evaluations and using Becton Dickinson evaluation and presentation time to discuss reasons (false) the hospital should not buy Retractable products rather than reasons it should buy Becton Dickinson products. Becton Dickinson's willful and intentional acts were the proximate cause of Retractable's loss of sales under that contract.

c. Retractable has had various contracts with Sortimat Assembly Systems, Inc. from October 27, 1995, to build automated assembly equipment. Some time in the year 2000, Retractable learned that at some time in the years preceding, Becton Dickinson representatives pressured Sortimat to cease doing business with Retractable. Retractable has also learned that Retractable was not offered the best machine Sortimat could have made for it. Further, Sortimat has not lived up to its warranty requirements on the

machines it made for Retractable which, on information and belief, occurred because Becton Dickinson pressured and offered financial incentives to Sortimat to breach its warranty requirements. Becton Dickinson's willful and intentional acts were the proximate cause of loss of sales because of problems with its assembly machines.

42. Further, Retractable was in the process of, and continues to negotiate and discuss contractual relationships with a number of hospitals and healthcare providers for the sale of Retractable's superior hypodermic products. Several of such prospective relationships were reasonably certain to have resulted in actual contracts between Retractable and hospitals and healthcare providers, given the prospective customers' pleasure with Retractable's (i) superior products in providing safety for healthcare workers in preventing life-threatening needle stick injuries, and (ii) price. The following incidents of interference with prospective contracts are examples of many instances of interference that occurred:

a. Retractable had dealings with Tenet HealthSystem Medical, Inc. and its facilities during the last quarter of 1998 and the first quarter of 1999. These dealings included evaluations of Retractable's products where positive feedback resulted. After such evaluations, Tenet sent a proposed contract for Retractable to sign, which upon award would give Retractable approved vendor status within the Tenet system. Although Retractable was able to show that its products would save hospitals money, ultimately Retractable was not awarded a Tenet contract. Upon information and belief, Becton Dickinson interfered with that potential contract, by, among

other things, giving Tenet better pricing and other incentives if it would specifically not award a contract to Retractable. Becton Dickinson's willful and intentional acts were the proximate cause of loss of sales under that potential Tenet contract.

b. Retractable had dealings with Columbia/HCA Healthcare Corporation and its facilities during most of 1997 and into 1998. These contacts resulted in over sixty Columbia facilities being interested in purchasing Retractable's products. When a meeting was set up to discuss volumes and pricing at the end of 1997, (i) the meeting was abruptly canceled, (ii) Retractable representatives were told that the meeting was no longer a priority, and (iii) Retractable representatives were told that the meeting would not be rescheduled for several months. Retractable was further told that although the meeting was to be to discuss price, the Retractable products were too expensive, so no meeting would occur. Upon information and belief, Becton Dickinson interfered with that potential contract, by, among other things, giving Columbia better pricing and other incentives if it would not award a contract to Retractable. Becton Dickinson's willful and intentional acts were the proximate cause of loss of sales under that potential Columbia contract

43. As a direct result of Defendants' conspiracy to monopolize and anti-competitive behavior, as well as conduct in providing kickbacks, threats, sanctions, inducements, and other illegal conduct, hospitals and healthcare providers which had

contracted with Retractable terminated their contractual relationships in order to conduct business with Defendant Manufacturers and Defendant GPOs.

44. As a direct result of Defendants' conspiracy to monopolize and anti-competitive behavior, as well as conduct in providing kickbacks, threats, sanctions, inducements, and other illegal conduct, hospitals and healthcare providers who had reasonable probabilities of entering into contractual relationships with Retractable terminated their contacts and refused to enter into contractual relationships.

45. The result of such conduct of Defendants was foreseeable, and occurred directly as a result of Defendants' intentional and malicious actions for the purpose of building and maintaining their monopolistic practices, as well as for the purpose of harming Plaintiff and other competitor manufacturers of hypodermic products. The evidence will show that under such circumstances, Defendants acted illegally and without privilege or justification in taking such coercive action.

46. Retractable was injured and financially damaged as a result of such conduct.

D. DEFENDANTS' CONDUCT IN DISPARAGING PLAINTIFF AND PLAINTIFF'S PRODUCTS

47. Retractable reiterates the factual allegations contained in paragraphs 1 – 46.

48. In the course of building and maintaining its monopolistic practices, Defendants published to Retractable's customers, prospective customers, other GPOs, and other purchasers of hypodermic products certain statements about Retractable and the quality of Plaintiff's products. Some specific examples of such disparagement include, but are not limited to:

a. Telling representatives of the healthcare workers union, the SEIU, that Tom Shaw is the reason that no one will purchase Retractable products;

b. Publishing to healthcare workers that the Retractable products deliver inaccurate dosaging;

c. Publishing to healthcare workers that the Retractable products cause hematomas;

d. Telling members of the financial world that the Retractable products cannot be manufactured for less than $.50 per syringe, a cost that would not allow for widespread use, because of difficulties manufacturing in high volumes; and

e. Telling healthcare workers that Retractable's employees are not reasonable business people.

49. Such statements were, at the time, and continue to be, false statements of fact.

50. Defendants were aware of the statements' falsity at the time, and they nonetheless elected to make such statements. In the alternative, Defendants entertained serious doubts as to the truthfulness of the statements about Plaintiff and Plaintiff's products, and nevertheless elected to make such statements.

51. The result of such false statements of Defendants was foreseeable, and occurred directly as a result of Defendants' intentional and malicious actions for the purpose of building and maintaining their monopolistic practices; such statements were made with ill will for the purpose of harming the Plaintiff in the relevant market or markets. The evidence

will show that under such circumstances, Defendants acted with malice and without privilege in making such statements.

52. Retractable was injured and suffered special damages as a result of such statements and conduct. Retractable suffered (i) a loss of reasonably foreseeable net profits, (ii) lost goodwill from prospective purchasers, and (iii) lost standing and suffered discouragement of prospective purchasers by being held in disrepute.

E. EFFECTS OF DEFENDANTS' PRACTICES IN ELIMINATING OR LESSENING COMPETITION

53. The effects of Defendants' unlawful, anti-competitive conduct are extreme, and have directly and proximately caused injury to the Plaintiff in the relevant interstate market or markets. Defendants' unlawful conduct has also unreasonably restrained competition in the relevant interstate market or markets and has unreasonably restrained the reasonable interchange of product alternatives for the relevant market or markets; and such anti-competitive effects outweigh any negligible pro-competitive benefits.

54. One consequence of the aforementioned unlawful, anti-competitive conduct has been lack of access for many thousands of healthcare providers and consumers to the superior safety medical devices offered by smaller competitors, such as Retractable. Upon information and belief, Defendants' deliberate conduct in this regard has resulted in thousands of preventable needle sticks, injuries, disease and deaths, along with very substantial costs in time lost from work, mental anguish, and the diagnosis and treatment of serious and life-threatening diseases. These concerns are embodied in federal legislation

aimed at providing enhanced safety for healthcare providers who are at risk from needle sticks.

55. A second consequence of this unlawful, anti-competitive conduct has been that Defendant Manufacturers, with the knowledge, consent, and assistance of Defendant GPOs, have been successful in directly fixing prices in the nationwide market for hypodermic products and/or in the products in the leveraged markets. More specifically, Defendant Manufacturers have been successful at charging purchasers of hypodermic products and/or other leveraged market products roughly the same price, which eliminates or reduces competition in these market areas. In the alternative, because of the acts of Defendants, the resulting price for the purchase of hypodermic products and/or products in the leveraged markets are virtually parallel nationwide, and cannot be explained merely in terms of coincidence, fate, or the conformity of behavior due to unilateral action.

56. A third consequence of this unlawful, anti-competitive conduct has been that Defendant Manufacturers, with the knowledge, consent, and assistance of Defendant GPOs, have been successful in indirectly fixing prices in the nationwide market for hypodermic products and/or products in the leveraged markets. More specifically, Defendant Manufacturers and Defendant GPOs have indirectly influenced the price for hypodermic products and/or other leveraged market products by (i) restraining competition in the relevant market or markets, (ii) limiting available supply of similar products to member hospitals and healthcare providers, (iii) refusing to deal with and thereby blocking entry of competitors of Defendant Manufacturers, and (iv) exchanging information that has an influence on pricing decisions. Alternatively, because of the acts of Defendants, the resulting price for the

purchase of hypodermic products and/or other leveraged market products are virtually parallel nationwide, and cannot be explained merely in terms of coincidence, fate, or the conformity of behavior due to unilateral action.

57. A fourth consequence of this unlawful, anti-competitive conduct has been that Defendant Manufacturers, with the knowledge, consent, and assistance of Defendant GPOs, have deprived Plaintiff and others of the benefit of free and open competition in the sale of hypodermic products and/or other leveraged market products. These practices (i) decreased quality of those products, (ii) increased Defendants' market power or powers, (iii) unreasonably restrained entry into the relevant market or markets, (iv) increased costs to consumers by preventing competitive entrants from reaching economies of scale, and (v) unreasonably restrained competition by channeling consumer choices to Defendant Manufacturers' products, thereby effectively excluding all competing vendors' access to the hypodermic product market and/or other leveraged markets and unreasonably constraining consumer choices among market alternatives. These actions permit Retractable to recover from Defendants: (1) actual damages in lost profits and additional compensation; (2) punitive damages; (3) additional damages as provided by statute; (4) injunctive relief; (5) costs of suit, including reasonable attorney fees and prejudgment and post-judgment interest.

IV. CAUSES OF ACTION

A. STATE AND FEDERAL ANTITRUST ACTS

58. Retractable reiterates the factual allegations contained in paragraphs 1 – 57.

59. The aforementioned illegal conduct of Defendants, in concert and in conspiracy with one another, violates state and federal antitrust law in the following manner:

a. by combining or conspiring among themselves to eliminate, reduce, or interfere with nationwide competition in the selling of hypodermic products and/or other leveraged market products;

b. by using Defendant GPOs to provide different prices for members versus non-member suppliers and purchasers for the sale and purchase of goods of similar grade and quality, resulting in substantial competitive injury to interstate commerce and competition;

c. by entering into exclusive dealing contracts or other anti-competitive agreements to purchase or exclusively provide to member hospitals and healthcare providers only those hypodermic products and/or other leveraged market products manufactured by Defendant Manufacturers;

d. by entering into contracts or other agreements not to deal with, contract, or purchase hypodermic products manufactured by Plaintiff or other manufacturers.

e. by agreeing to use interlocking, multi-year, anti-competitive contracts and agreements that directly affected, limited, or avoided competition;

f. by providing kickbacks, bribes and other illegal financial incentives to affect, limit, and avoid competition in the market for hypodermic products and/or in other leveraged products markets, and to enter into future transactions;

g. by receiving kickbacks, bribes, and other illegal financial incentives to affect, limit, and avoid competition in the market for hypodermic products and/or in other leveraged products markets, and to enter into future transactions;

h. by illegally threatening purchasers and potential purchasers of hypodermic products and/or other leveraged market products from making purchases from suppliers other than Defendant Manufacturers, and to enter into future transactions;

i. by attempting to use market share in one market as leverage to gain market share in another market or markets other than by competitive means;

j. by using their market power to coerce purchases of tied products, which resulted in the foreclosure of a substantial amount of commerce in the tied product market or markets and protected their market dominance in the tying product market; and

k. by directly or indirectly fixing prices in the market for hypodermic products and/or in the leveraged products markets.

60. This behavior by Defendants produced, and continues to produce, adverse, anti-competitive effects on interstate commerce in the United States, including, but not necessarily limited to, commerce in or affecting Texas.

61. As a proximate result of Defendants' acts, Retractable was denied access to the relevant market or markets, and was thereby damaged.

62. As a consequence of Defendants' wrongful acts, Retractable is entitled to recover a joint and several judgment against all Defendants for its actual damages trebled, costs of suit, including reasonable attorneys' fees, and pre-judgment and post-judgment interest at the maximum rate permitted by law.

B. STATE ANTITRUST CONSPIRACY TO MONOPOLIZE

63. Retractable reiterates the factual allegations contained in paragraphs 1 - 62.

64. Defendants acted in direct violation of the state antitrust act in conspiring to monopolize the relevant market.

65. Defendants have participated in a conspiracy to monopolize the market for hypodermic products in Texas and the United States. In conducting the conspiracy, Defendants had a common design and understanding, or a meeting of the minds, directed for the purpose of acquiring and maintaining monopoly power in the relevant market.

66. As a result of Defendants' intentional and unlawful conduct and conspiracy, Defendants wrongfully blocked Retractable's access to the relevant market, and thus caused Retractable to sustain damage to its business and property.

C. TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIPS

67. Retractable reiterates the factual allegations contained in paragraphs 1 - 66.

68. Defendants interfered with Retractable's business relations, including its existing and prospective business contracts.

69. Defendants had actual knowledge of the existence of Retractable's contracts and its interest therein, or knowledge of facts and circumstances that would lead a reasonable person to know of their existence. Defendants have willfully and intentionally committed

acts that were calculated to, and did as a result of the interference, cause damage to Retractable in its lawful business. Defendants' acts were the proximate cause of actual damage and loss to Retractable.

70. Defendants have also acted intentionally and unlawfully without privilege or justification in a manner that has interfered with Retractable's prospective business relations, and/or has prevented Retractable from entering into business contracts where a reasonable probability existed that the contracts would have been entered into but for these Defendants' interference. Defendants' intentional, unlawful, and unexcused interference with Retractable's ability to enter into business relations and business contracts with potential purchasers for the sale of hypodermic products was the proximate cause of actual injury and financial damage to Retractable.

71. Defendants are jointly and severally liable for their actions as described in the foregoing paragraphs. In addition, because of the knowing or reckless nature of their conduct, Defendants are liable for punitive damages.

D. BUSINESS DISPARAGEMENT

72. Retractable reiterates the factual allegations contained in paragraphs 1 – 71.

73. Defendants have utilized disparaging words against Retractable grounded in falsity and malice. Defendants lacked privilege in making these statements, knew of these falsities, acted with reckless disregard for the truth, or acted with ill will or intent to interfere in the economic interests of Retractable.

74. As a result of Defendants' intentional, unlawful, and unexcused use of disparaging words grounded in falsity and malice, Retractable was injured and financially damaged.

75. Defendants are jointly and severally liable for their actions as described in the foregoing paragraphs. In addition, because of the knowing and reckless nature of their conduct, Defendants are liable for punitive damages.

E. COMMON LAW CONSPIRACY

76. Retractable reiterates the factual allegations contained in paragraphs 1 - 75.

77. Defendants combined and conspired to defraud Retractable by engaging in the conduct described above, including, but not limited to, price-fixing and tying agreements, bribes and kickbacks, illegal threats, and attempts to monopolize the sale of hypodermic products. Each Defendant agreed and intended to participate in the conspiracy, and engaged in one or more overt acts in the United States or Texas, or both, in furtherance of the conspiracy.

78. As a result of Defendants' intentional, unlawful and unexcused conduct and conspiracy, Defendants wrongfully denied Retractable's access to the relevant market or markets, thereby injuring Retractable and damaging it financially.

79. Defendants are jointly and severally liable for Retractable's damages. Further, because of the knowing and reckless nature of their conduct, Defendants are liable for punitive damages.

V. NOTICE

80. As required by Section 15.21(c) of the Texas Business and Commerce Code, a copy of this second amended original complaint has been mailed to the Attorney General of the State of Texas.

VI. INJUNCTIVE RELIEF

81. Defendants and their co-conspirators have engaged in a continuing pattern and practice of antitrust violations that are likely to recur unless each is permanently enjoined from engaging in such unlawful conduct in the future.

82. Retractable seeks an injunction enjoining each Defendant from continuing the unlawful conduct alleged herein, and from entering into any other combination, conspiracy or agreement having similar purposes and effects.

VII. PRAYER

Accordingly, Plaintiff Retractable Technologies, Inc. respectfully requests that Defendants Becton Dickinson & Company, Tyco International (US), Inc., Tyco Healthcare Group, L.P., Novation, L.L.C., VHA, Inc., Premier, Inc., and Premier Purchasing Partners, L.P., be cited to appear, and that Retractable have judgment against Defendants (jointly and severally where appropriate) for:

a. actual damages;

b. punitive damages;

c. additional and/or treble damages as provided by statute;

d. injunctive relief;

e. costs of suit, including reasonable attorneys' fees; pre-judgment and post-judgment interest at the maximum rate permitted by law; and

f. such other relief to which Retractable may be entitled.

Respectfully submitted,

Nicholas A. Patton
SBN: 15631000
4605 Texas Boulevard
P. O. Box 5398
Texarkana, Texas 7550505398
(903) 792-7080 (903) 792-8233 (fax)

ATTORNEY IN CHARGE FOR PLAINTIFF
RETRACTABLE TECHNOLOGIES, INC.

OF COUNSEL:

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P.O. Box 2585
Lubbock, Texas 79408-2565
(806) 765-7491 (806) 765-0553 (fax)

Certificate of Service

I hereby certify that I have forwarded a true and correct copy of the above and foregoing instrument in accordance with the Federal Rules of Civil Procedure to the following counsel of record by U.S. Certified Mail, Return Receipt Requested and by facsimile (fastest method) as indicated with an asterisk below, on January, 18, 2002:

Mr. W. David Carter
Mercy, Carter & Elliot, L.L.P.
1730 Galleria Oaks Drive
Texarkana, Texas 75503

Mr. Leslie Gordon Fagen
Mr. Robert A. Atkins
Mr. Joseph J. Frank (*)
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, New York 10019

Mr. David J. Beck
Mr. Alistair Dawson (*)
Beck, Redden & Secrest, L.L.P.
4500 One Houston Center
1221 McKinney Street
Houston, Texas 77010-2010

Mr. Winford L. Dunn, Jr.
Dunn, Nutter & Morgan, L.L.P.
State Line Plaza, Box 8030
Texarkana, Arkansas 71854

Mr. Robert E. Bloch
Mr. Mitchell D. Raup
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Mr. John L. Murchison, Jr.
Mr. John P. DeGeeter
Mr. D. John Neese, Jr.
Vinson & Elkins L.L.P.
2300 First City Tower
1001 Fannin
Houston, Texas 77002-6760

Mr. Damon Young
Young & Pickett
P. O. Box 1897
Texarkana, Arkansas/ Texas 75504

Nicholas A. Patton

To: Michele 972-292-1630
From: Phil Zweig
1 Page

DOCUMENT INVENTORY: RTI vs. BD et al

Phillip L. Zweig

DATE: November 19, 2001

Total Files: 11

1. RTI Press releases (RED)
2. RTI /Correspondence (RED)
3. Media Correspondence (RED)
4. Media Contacts (GREEN)
5. UNICEF (GREEN)
6. FOIA (GREEN)
7. AWARDS (GREEN)
8. RTI TO DO (GREEN)
9. BD DOCS (PURPLE)
10. LITIGATION/LEGISLATION (PURPLE)
11. EMAIL Correspondence (MANILA)

Carlos Torres

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

Retractable Technologies, Inc.	§	
	§	
v.	§	5:01-cv-36
	§	
Becton Dickinson	§	

ORDER

Before the Court is Plaintiff's Emergency Motion to Compel Production/Supplementation of Documents from Defendant Becton Dickinson (Doc. No. 441) and Plaintiff's Emergency Motion to Shorten Response Time. (Doc. No. 442).

Defendant is hereby **ORDERED** to file its response to Plaintiff's Motion to Compel (Doc. No. 442) by Tuesday, June 22, 2004, at noon. This matter is hereby set for hearing on the following day, Wednesday, June 23, 2004, at 10:00 a.m.

SIGNED this 17th day of June, 2004.

DAVID FOLSOM
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

Retractable Technologies, Inc.	§	
	§	
v.	§	5:01-cv-36
	§	
Becton Dickinson	§	

ORDER

This case is hereby set for initial pre-trial conference on Friday, June 18, 2004, at 10:00 a.m. On the occasion of this conference, the following matters will be addressed: 1) jury selection, 2) juror questionnaires, 3) juror notebooks, and 4) other pre-trial issues. However, no pending motions shall be argued at this time.

SIGNED this 8th day of June, 2004.

DAVID FOLSOM
UNITED STATE DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

Retractable Technologies, Inc.	§	
	§	
v.	§	**5:01-cv-36**
	§	
Becton Dickinson	§	

ORDER

On June 18, 2004, the initial pre-trial conference was held in this matter. (Doc. No. 435).

After conferring with the parties, the Court hereby **ORDERS:**

1) Final pre-trial conference shall be held in this case on Tuesday, July 6, 2004.

2) Jury selection shall be held on Wednesday, July 7, 2004. Each side shall have one (1) hour to question the panel. The parties shall bear in mind that jury questionnaires have been employed in this case with the object of simplifying the jury selection process. Each side shall have eight (8) strikes.

3) The initial draft of the proposed jury charge shall be submitted no later than the Friday before testimony begins. Trial will begin on Monday, July 12, 2004. The draft jury charge shall be filed by Friday, July 9, 2004.

4) The motions in limine filed previously (when this case was scheduled for trial in February, 2004) will be revised and resubmitted at the request of the parties. The revised motions in limine shall be filed no later than June 30, 2004.

5) Each side shall provide a minimum of forty-eight (48) hours notice to the other side concerning the witnesses to be called.

6) Each side shall have one (1) hour for their opening statements. As indicated in the Court's order of January 21, 2004 (Doc. No. 411), this time will not be deducted from the thirty (30) hours of trial time which has been allotted to each side.

SIGNED this 21st day of June, 2004.

DAVID FOLSOM
UNITED STATES DISTRICT JUDGE

Distribution Agreement

Retractable Technologies, Inc., a Texas U.S.A. corporation ("Manufacturer"), and SOUANA, INC, an TEXAS corporation ("Distributor"), enter into this Distribution Agreement (the "Agreement") and agree as follows:

1. **Term of Agreement.** The "Term" of this Agreement shall commence on the date of execution by both Manufacturer and Distributor, and shall continue until December 31, 2003. This Agreement may be renewed annually for one year terms not to extend beyond December 31, 2008. Distributor shall ship at least one container per quarter to each country listed as part of the exclusive territory described hereinafter in section 2. Territory, in order for said country to remain a part of the Distributor's exclusive territory.

2. **Territory.** The "Territory" covered by this Agreement consists of the countries listed under "Exclusive Active Territory." Distributor has the right to sell Products to end users and distributors in the Territory. Distributor shall not i) sell Products outside the Territory, either directly or indirectly; ii) sell Products to another who may resell them outside the Territory; or iii) purchase Products outside the Territory unless purchased directly from Manufacturer.

Distributor's "Exclusive Active Territory" is Saudi Arabia, Syria, Iraq, Turkey, Iran, Pakistan, Kuwait, Morocco, Algeria, Tunisia, Egypt, Sudan, Afghanistan, Oman, Yemen, and the United Arab Emirates. Distributor shall use its best efforts to actively solicit orders within Distributor's Active Territory.

3. **Product and Pricing.** The products that Manufacturer will sell to Distributor under this Agreement (the "Products") and the prices at which Manufacturer will sell the Products to Distributor during the first twelve (12) months of this Agreement are set forth in Exhibit A to this Agreement. Manufacturer must provide Distributor with four (4) months prior notice of any price increase. This price does not include, and Distributor shall be responsible for, any applicable shipping costs, any applicable taxes imposed by taxing authorities outside the United States, or any customs duties imposed by the United States government or any other government.

4. **Volume.** Manufacturer shall make available and Distributor shall order a minimum of two (2) containers in the year 2001, four (4) containers in the year 2002 and eight (8) containers in the year 2003. Orders shall be placed for full cases and not partial cases and shall be placed in increments of a twenty (20) foot or six (6) meter shipping "Container". Purchases which exceed this agreed volume are not guaranteed by this Agreement and are conditioned on the further written agreement of the parties regarding price and availability. Any agreement to purchase volumes beyond that set forth above shall (unless such agreement states otherwise) be subject to all terms of this Agreement except for the terms governing price and volume.

5. **Orders.** In the event of any conflict between the terms of this Agreement and the terms of Distributor's purchase orders or Manufacturer's invoices or confirmations, the terms of this Agreement shall prevail.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release, effective April 27, 2004, is made between Retractable Technologies, Inc., a company organized under the laws of the State of Texas and having a principal place of business in Collin County, Texas ("RTI") and Thomas J. Shaw ("Shaw"), an individual residing in Collin County, Texas (collectively "Plaintiffs") and New Medical Technology, Inc. ("NMT, Inc."), an Indiana corporation with its principal place of business at 23 National Drive, Forge Park, Franklin, Massachusetts 02038, New Medical Technology, LTD ("NMT, LTD"), a company organized under the laws of Scotland and the United Kingdom, with its principal place of business in Livingston, Scotland, and NMT Group PLC ("NMT Group"), a company organized under the laws of Scotland and the United Kingdom, with its principal place of business in Livingston, Scotland (collectively "NMT").

WHEREAS, Thomas J. Shaw is the owner of the entire right, title, and interest in U.S. Patent Nos. 5,385,551; 5,578,011; and 6,090,077 (the "Asserted Patents") subject only to an exclusive license granted to RTI;

WHEREAS, on February 2, 2002, RTI filed a Complaint against NMT in the United States District Court for the Eastern District of Texas, Sherman Division, Case No. 4:02-CV-34, which alleged that NMT was infringing RTI's rights under U.S. Patent Nos. 5,578,011 ("the '011 patent") and 6,090,077 ("the '077 patent") by using, importing, marketing, distributing, offering for sale, and selling a Safety Syringe (the "NMT Safety Syringe") in the United States;

WHEREAS, on May 2, 2002, RTI filed a First Amended Complaint against NMT in the United States District Court for the Eastern District of Texas, Sherman Division, Case No. 4:02-CV-34, which alleged that NMT was infringing RTI's rights under the '011 and '077 patents by using, importing, marketing, distributing, offering for sale, and selling the NMT Safety Syringe in the United States;

WHEREAS, on July 2, 2002, NMT filed a Counterclaim and Request for Joinder of Thomas J. Shaw in the United States District Court for the Eastern District of Texas, Sherman

Division, Case No. 4:02-CV-34, requesting joinder of Thomas J. Shaw as a party to the Action and alleging that NMT was not infringing the '011 and '077 patents and that the '011 and '077 patents were invalid and unenforceable, and requesting an award of NMT's costs against RTI;

WHEREAS, on August 14, 2002, the United States District Court for the Eastern District of Texas, Sherman Division, ordered the joinder of Thomas J. Shaw as a counter defendant in Case No. 4:02-CV-34;

WHEREAS, on February 19, 2003, RTI and Shaw filed a Complaint in the United States District Court for the Eastern District of Texas, Sherman Division, Case No. 4:03-CV-49, which alleged that NMT was infringing U.S. Patent No. 5,385,551 ("the '551 patent") by using, importing, marketing, distributing, offering for sale, and selling the NMT Safety Syringe in the United States;

WHEREAS, on March 18, 2003, Plaintiffs filed a Second Amended Complaint against NMT in the United States District Court for the Eastern District of Texas, Sherman Division, Case No. 4:02-CV-34, which alleged that NMT was infringing the '011 and '077 patents by using, importing, marketing, distributing, offering for sale, and selling the NMT Safety Syringe in the United States;

WHEREAS, on April 4, 2003, NMT filed a counterclaim against RTI and Shaw alleging that the '551 patent was not infringed, was invalid and unenforceable, and requesting an award of NMT's costs against RTI and Shaw;

WHEREAS, on April 14, 2003, the parties filed a Joint Motion to consolidate Case No. 4:02-CV-34 and Case No. 4:03-CV-49;

WHEREAS, on May 14, 2003, the United States District Court for the Eastern District of Texas, Sherman Division, issued an Order granting consolidation of Case No. 4:02-CV-34 and Case No. 4:03-CV-49 as Case No. 4:02-CV-34 (the "Consolidated Lawsuit");

WHEREAS, NMT ceased manufacturing the NMT Safety Syringe in 2003 and ceased using, marketing, distributing, importing, offering for sale, and selling the NMT Safety Syringe in the United States in 2003; and

WHEREAS, to avoid the expense and inconvenience of further litigation, the parties have agreed to settle the differences between them according to the terms of this Agreement.

Therefore, in consideration of the mutual covenants set forth herein, the parties agree as follows:

1. **Stipulation and Consent Judgment.** The parties have agreed to execute and file the Stipulation and Consent Judgment attached hereto. The parties shall execute the Stipulation and Consent Judgment contemporaneously with their respective execution of this Settlement Agreement and Release.

2. **Payment.** Upon the execution of this Agreement and the Stipulation and Consent Judgment by RTI, Shaw, and NMT, NMT shall deliver by April 28, 2004, to the designated trust account of its Counsel of Record, Baker & Daniels, by electronic wire transfer the sum of ONE MILLION U.S. DOLLARS ($1,000,000.00 U.S.). RTI and Shaw shall cause their Counsel of Record, Locke Liddell & Sapp LLP, to file the executed Stipulation and Consent Judgment with the Court. Within three (3) days of entry of the Stipulation and Consent Judgment by the Court, NMT shall have Baker & Daniels deliver to the designated trust account of Locke Liddell & Sapp LLP by electronic wire transfer the said ONE MILLION U.S. DOLLARS ($1,000,000.00 U.S.) from the said designated Baker & Daniels trust account. The amount paid to RTI by NMT under this paragraph is an amount arrived at by compromise for purposes of settling the Consolidated Lawsuit and shall not be construed as anything other than an agreed amount paid in compromise.

3. **RTI Release.** Subject to payment by NMT of the amount stated in paragraph 2. above, RTI and Shaw hereby release and forever discharge NMT, its officers, shareholders, agents, customers, distributors, subsidiaries, contractors, successors in interest, and assigns from any and all claims, demands, and causes of action of any kind which have been brought or which could have been brought in the Consolidated Lawsuit, or which exist or which may have existed as of the date of execution of this Settlement Agreement and Release, except that this release shall not, under any circumstance, apply or extend to: (1) Becton Dickinson and Company, or any subsidiary or affiliate thereof; (2) Abbott Laboratories or any subsidiary or affiliate thereof; (3) any claim that RTI or Shaw may have under the Asserted Patents or other patents against the syringes or syringe technology advertised by NMT as "Second Generation" as of the date of execution of this Settlement and Release Agreement; (4) any claim that RTI or Shaw may have under the Asserted Patents or other patents against any medical product of NMT, its officers, shareholders, agents, customers, distributors, subsidiaries, contractors, successors in interest, and assigns, other than the NMT Safety Syringe that is made the subject of the Consolidated Lawsuit; or (5) any claim that RTI or Shaw may have against any NMT entity in any jurisdiction outside the United States for infringement of any patent issued by any country or region other than the United States, which patent is owned or exclusively licensed by RTI or Shaw in such jurisdiction.

4. **NMT Release.** NMT agrees to dismiss with prejudice in the accompanying Stipulation and Consent Judgment all claims, counterclaims, affirmative defenses, defenses and demands for relief asserted by NMT against RTI and Shaw in the Consolidated Lawsuit. NMT hereby releases and forever discharges Shaw, RTI, its officers, shareholders, agents, customers, distributors, subsidiaries, contractors, successors in interest and assigns, from any and all claims, demands, and causes of action of any kind which have been brought or which could have been brought in the Consolidated Lawsuit, or which exist or which may have existed as of the date of execution of this Settlement Agreement and Release, provided, however,

that NMT does not by this Settlement Agreement and Release or by the Stipulation and Consent Judgment release any claim, counterclaim, affirmative defense, defense or claim for relief that NMT may have in or to any action brought by RTI or Shaw in any jurisdiction outside the United States in relation to sales of the NMT Safety Syringe made by NMT outside the United States.

5. **Complete and Final Agreement.** This Settlement Agreement and Release is intended by all parties to be the complete agreement with respect to the resolution of the parties' disputes relating to the Asserted Patents and the Consolidated Lawsuit. All prior understandings and agreements are deemed integrated into this Settlement Agreement and Release, or, to the extent that they are inconsistent with this Settlement Agreement and Release, are hereby deemed to be superseded, except that other relief awarded in the accompanying Stipulation and Consent Judgment is not hereby superseded. The terms of this Settlement Agreement and Release shall not be altered except in writing signed by all parties hereto.

6. **Interpretation of Agreement.** As used in this Settlement Agreement and Release, the singular or plural number shall be deemed to include the other whenever the context so indicates or requires. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, not strictly for or against any of the parties.

7. **Governing Law, Binding Nature, Severability**. This Settlement Agreement and Release shall be governed by the laws of the State of Texas. The U.S. District Court for the Eastern District of Texas, Sherman Division, shall retain jurisdiction over this matter and the parties for purposes of enforcing the accompanying Stipulation and Consent Judgment and any dispute arising under this Settlement Agreement and Release. This Settlement Agreement and Release shall further inure to the benefit of and be binding upon the assigns, subsidiaries, and successors in interest of all the parties hereto. The invalidity of any provision of this Settlement Agreement and Release shall not affect the validity of any other

provision; in the event any provision shall be deemed unenforceable for any reason whatsoever, all the parties shall continue to abide by and be bound by the remaining provisions.

8. **Counterparts.** This Settlement Agreement and Release shall be executed in three (3) numbered counterpart originals, each of which, when bearing the inked signatures of all required signatories, shall be deemed an original.

9. **Authorization.** Each of the undersigned represents and warrants that he or she is competent and authorized to execute this Settlement Agreement and Release, and further represents and warrants that he or she has read and understands the terms of this Settlement Agreement and Release.

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have executed this Settlement Agreement and Release this 27th day of April, 2004.

Retractable Technologies, Inc.

By: Thomas J. Shaw

Title: CEO

Thomas J. Shaw

New Medical Technology, Inc.

By:

Title: Authorized Signatory

New Medical Technology, LTD

By:

Title: Chairman

NMT Group PLC

By:

Title: Chairman

CAUSE NO. 5333-JG98

FILED FOR RECORD
98 SEP 30 AM 11:50
DISTRICT CLERK
BRAZORIA CO., TEXAS

RETRACTABLE TECHNOLOGIES INC.	§	**IN THE DISTRICT COURT OF**
VS.	§	**BRAZORIA COUNTY, TEXAS**
BECTON DICKENSON & COMPANY; TYCO INTERNATIONAL (U.S.), INC.; VHA, INC.; THE COMMUNITY HOSPITAL OF BRAZOSPORT; ANGLETON-DANBURY GENERAL HOSPITAL; and SWEENY COMMUNITY HOSPITAL	§	**239TH JUDICIAL DISTRICT**

PLAINTIFF'S FIRST AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Retractable Technologies, Inc. complaining of Becton Dickenson & Company, Tyco International (U.S.), Inc., VHA, Inc., The Community Hospital of Brazosport; Angleton-Danbury General Hospital; and Sweeny Community Hospital, and for causes of action respectfully states as follows:

1. Retractable Technologies, Inc. ("RTI" or "Plaintiff") is a Texas corporation.

2. Becton Dickenson & Company ("B-D") is a foreign corporation which does business in Texas and it may be served through its registered agent, C.T. Corporation System, 350 N. St. Paul, Dallas, Texas 75201.

3. Tyco International (U.S.), Inc. ("Tyco") is a foreign corporation which does business in Texas and it may be served through its registered agent, C.T. Corporation System, 350 N. St. Paul, Dallas, Texas 75201.

4. VHA, Inc. ("VHA") is a foreign corporation with its principle place of business

in Texas which may be served through its registered agent, Prentice Hall Corporation, 800 Brazos, Austin, Texas 78701.

5. The Community Hospital of Brazosport d/b/a Brazosport Memorial Hospital ("Brazosport") is a Texas corporation with its principle place of business in Brazoria County, Texas, and it may be served through its registered agent, Wesley W. Oswald, 100 Medical Drive, Lake Jackson, Texas 77566.

6. Angleton-Danbury General Hospital is a county hospital in Brazoria County which may be served through its hospital administrator at 132 Hospital Drive, Angleton, Texas 77515.

7. Sweeny Community Hospital is a county hospital in Brazoria County which may be served through its hospital administrator at 305 N. McKinney, Sweeney, Texas 77480.

8. The Court has jurisdiction over all parties in that each maintains offices or agents in Texas and each does business in Texas on a regular and systematic basis so as to satisfy all constitutional requirements of due process for maintaining suit against each defendant in Texas. Further, the claims and causes of action asserted herein are exclusively state law causes of action and to the extent Plaintiff could assert causes of action under federal law, Plaintiff has specifically elected not to do so in this petition. Plaintiff in no way seeks remedy for or brings a cause of action on account of, and affirmatively disclaims for purposes of this petition any claims or rights arising under federal law. The amount in controversy exceeds $1,000,000 and is within the jurisdictional limits of this Court.

9. Venue is proper in Brazoria County, Texas, under Tex. Civ. Prac. & Rem. Code 15.002 et seq. and Tex. Bus. & Comm. Code 15.26 (Texas Free Enterprise Act "TFEA"). Defendants participated in an antitrust conspiracy and other illegal conduct in Brazoria County, Texas, and therefore (in addition to other grounds for venue in Brazoria County), can be sued here as the causes of action accrued in Brazoria County, Texas.

10. Plaintiff manufactures retractable syringes and other safety products ("the Safety Devices"). These devices represent new safety technology which would reduce the spread of blood-borne diseases such as hepatitis and AIDS. A common method for the spread of such diseases in the United States is needle sticks. RTI developed syringes in which the needle, after use, is retracted into the barrel of the syringe, thus preventing the spread of blood-borne disease. The special, technologically advanced syringe developed by RTI is patented, and was developed in conjunction with grants from the National Institutes of Health.

11. Defendants, including defendant hospitals, contracted among themselves and many other hospitals, doctors and other health care organizations to exclude RTI from selling the Safety Devices to hospitals, clinics and medical organizations throughout the United States. Such action represents violations of the TFEA.

12. B-D and Tyco are sole-source suppliers to hospitals throughout the United States, including Brazoria County, acting to prohibit hospitals from purchasing the Safety Products manufactured by Plaintiff. These actions represent violations of the TFEA.

13. Plaintiff has suffered an antitrust injury. On account of Defendants' unlawful conduct, RTI has been unable to sell the Safety Devices, consumers in the relevant market

have been unable to buy the Safety Devices, and the public has been unable to enjoy the benefits of a significant product innovation.

14. Plaintiff is an efficient enforcer of the TFEA. Plaintiff's injuries are the most direct of any other conceivable individual. Further, Plaintiff is directed by its grant from National Institutes of Health to create and market a device to decrease needle sticks. Plaintiff can adequately assert all rights arising from Defendants' anti-competitive arrangement. Plaintiff is well-versed in the dangers of needle sticks and in the need for innovations in syringe products.

15. For purpose of antitrust analysis, the relevant product is syringes and blood specimen collection products.

16. For purposes of antitrust analysis, the relevant market is hospitals who procure syringes and other blood collection or needle devices in the United States. Tyco and B-D control 94% of this market, thereby making them a oligopoly. Tyco and B-D further, as previously alleged, act in concert to maintain this market share. Further, Tyco can, through its own efforts, significantly effect competition in the relevant markets.

17. Plaintiff has been significantly injured by the actions of Defendants.

WHEREFORE, Plaintiff prays that Defendants be cited to appear and answer herein and that following trial or hearing hereon that Plaintiff be awarded its actual damages, exemplary damages as provided by state law, costs, attorneys fees, pre-judgment and post-judgment interest, and such other and further relief to which Plaintiff is entitled.

Respectfully submitted,

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