

STATE OF SOUTH CAROLINA )

COUNTY OF SPARTANBURG )

AstraZeneca Pharmaceuticals, LP, )

Plaintiff(s) )

vs. )

Alan Wilson, in his capacity as Attorney General for )  
the State of South Carolina, )

Defendant(s) )

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2011-CP - ~~40~~<sup>42</sup> 1213

(Please Print)

Submitted By: Marguerite S. Willis  
Susan P. McWilliams  
Nikole S. Mergo

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.  NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- |  |  |   |   |
|--|--|---|---|
| <p><b>Contracts</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Constructions (100)</li> <li><input type="checkbox"/> Debt Collection (110)</li> <li><input type="checkbox"/> Employment (120)</li> <li><input type="checkbox"/> General (130)</li> <li><input type="checkbox"/> Breach of Contract (140)</li> <li><input type="checkbox"/> Other (199)</li> </ul>   | <p><b>Torts - Professional Malpractice</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Dental Malpractice (200)</li> <li><input type="checkbox"/> Legal Malpractice (210)</li> <li><input type="checkbox"/> Medical Malpractice (220)</li> <li>Previous Notice of Intent Case #<br/>20__-CP-_____-</li> <li><input type="checkbox"/> Notice/ File Med Mal (230)</li> <li><input type="checkbox"/> Other (299)</li> </ul>   | <p><b>Torts - Personal Injury</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Assault/Slander/Libel (300)</li> <li><input type="checkbox"/> Conversion (310)</li> <li><input type="checkbox"/> Motor Vehicle Accident (320)</li> <li><input type="checkbox"/> Premises Liability (330)</li> <li><input type="checkbox"/> Products Liability (340)</li> <li><input type="checkbox"/> Personal Injury (350)</li> <li><input type="checkbox"/> Wrongful Death (360)</li> <li><input type="checkbox"/> Other (399)</li> </ul> | <p><b>Real Property</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Claim &amp; Delivery (400)</li> <li><input type="checkbox"/> Condemnation (410)</li> <li><input type="checkbox"/> Foreclosure (420)</li> <li><input type="checkbox"/> Mechanic's Lien (430)</li> <li><input type="checkbox"/> Partition (440)</li> <li><input type="checkbox"/> Possession (450)</li> <li><input type="checkbox"/> Building Code Violation (460)</li> <li><input type="checkbox"/> Other (499)</li> </ul>   |
| <p><b>Inmate Petitions</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> PCR (500)</li> <li><input type="checkbox"/> Mandamus (520)</li> <li><input type="checkbox"/> Habeas Corpus (530)</li> <li><input type="checkbox"/> Other (599)</li> </ul>   | <p><b>Judgments/Settlements</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Death Settlement (700)</li> <li><input type="checkbox"/> Foreign Judgment (710)</li> <li><input type="checkbox"/> Magistrate's Judgment (720)</li> <li><input type="checkbox"/> Minor Settlement (730)</li> <li><input type="checkbox"/> Transcript Judgment (740)</li> <li><input type="checkbox"/> Lis Pendens (750)</li> <li><input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)</li> <li><input type="checkbox"/> Other (799)</li> </ul> | <p><b>Administrative Law/Relief</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Reinstate Driver's License (800)</li> <li><input type="checkbox"/> Judicial Review (810)</li> <li><input type="checkbox"/> Relief (820)</li> <li><input type="checkbox"/> Permanent Injunction (830)</li> <li><input type="checkbox"/> Forfeiture-Petition (840)</li> <li><input type="checkbox"/> Forfeiture-Consent Order (850)</li> <li><input type="checkbox"/> Other (899)</li> </ul>  | <p><b>Appeals</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Arbitration (900)</li> <li><input type="checkbox"/> Magistrate-Civil (910)</li> <li><input type="checkbox"/> Magistrate-Criminal (920)</li> <li><input type="checkbox"/> Municipal (930)</li> <li><input type="checkbox"/> Probate Court (940)</li> <li><input type="checkbox"/> SCDOF (950)</li> <li><input type="checkbox"/> Worker's Comp (960)</li> <li><input type="checkbox"/> Zoning Board (970)</li> <li><input type="checkbox"/> Public Service Commission (990)</li> <li><input type="checkbox"/> Employment Security Commission (991)</li> <li><input type="checkbox"/> Other (999)</li> </ul> |
| <p><b>Special/Complex /Other</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Environmental (600)</li> <li><input type="checkbox"/> Automobile Arb. (610)</li> <li><input type="checkbox"/> Medical (620)</li> <li><input checked="" type="checkbox"/> Other (699)</li> <li><input type="checkbox"/> Pharmaceuticals (630)</li> <li><input type="checkbox"/> Unfair Trade Practices (640)</li> <li><input type="checkbox"/> Out-of State Depositions (650)</li> <li><input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)</li> <li><input type="checkbox"/> Sexual Predator (510)</li> </ul> |  |   |   |

Submitting Party Signature: Marguerite S. Willis

Date: March 14, 2011

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

**FOR MANDATED ADR COUNTIES ONLY**

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

**You are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

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STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS  
FOR THE  
SEVENTH JUDICIAL CIRCUIT

AstraZeneca Pharmaceuticals, LP,  
Plaintiff,

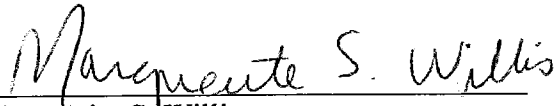
vs.

Alan Wilson, in his capacity as Attorney  
General for the State of South Carolina,  
Defendant.

Civil Action No. 2011-CP-~~40~~<sup>42</sup> 1213

**SUMMONS  
(DECLARATORY JUDGMENT  
ACTION)**

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at their offices, 1230 Main Street, Suite 700, Columbia, South Carolina 29201, within thirty (30) days after the service hereof, exclusive of date of service; and if you fail to answer the Complaint within time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

  
Marguerite S. Willis  
Susan P. McWilliams  
Nikole S. Mergo  
NEXSEN PRUET, LLC  
1230 Main Street, Suite 700 (29201)  
Post Office Drawer 2426  
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MORGAN, LEWIS & BOCKIUS LLP  
1701 Market Street  
Philadelphia, PA 19103

*Attorneys for Plaintiff AstraZeneca  
Pharmaceuticals, LP*

March 14, 2011  
Columbia, South Carolina

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**STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG**

AstraZeneca Pharmaceuticals, LP,  
Plaintiff,

vs.

Alan Wilson, in his capacity as Attorney  
General for the State of South Carolina,  
Defendant.

**IN THE COURT OF COMMON PLEAS  
FOR THE  
SEVENTH JUDICIAL CIRCUIT**

Case No. 2011-CP- 42-1213

**COMPLAINT  
(DECLARATORY JUDGMENT  
ACTION)**

AstraZeneca Pharmaceuticals, LP (hereinafter "AstraZeneca") brings this action, pursuant to the South Carolina Uniform Declaratory Judgments Act, S.C. Code §§ 15-53-10 *et seq.* and 42 U.S.C § 1983, to obtain a declaratory judgment that the actions of the Attorney General, in connection with his prosecution of *State of South Carolina ex rel. Alan Wilson, in his capacity as Attorney General of the State of South Carolina v. AstraZeneca Pharmaceuticals, LP, et al.*, 2009-CP-42-0097 (the "Underlying Litigation"), violate AstraZeneca's rights to Due Process of Law under both the United States Constitution and the South Carolina Constitution.

#### **SUMMARY**

The Underlying Litigation is no ordinary lawsuit. Rather, despite the civil caption, the underlying lawsuit is actually a law enforcement proceeding, brought by the State Attorney General in his capacity as the State's chief law enforcement officer, seeking sanctions against AstraZeneca that are punitive in purpose and effect. Indeed, the Attorney General concedes that he is not trying to recover damages for alleged injuries to the State or any person, but instead seeks only to punish AstraZeneca for acts that the Attorney General does not intend to prove harmed anyone in South Carolina. Nevertheless, and as detailed below, the Attorney General is

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using outside private contingent-fee counsel to prosecute the Underlying Litigation against AstraZeneca and seeks to impose massive statutory penalties upon AstraZeneca.

In short, the Attorney General's lawsuit against AstraZeneca for statutory penalties under the South Carolina Unfair Trade Practices Act ("SCUTPA") is a law enforcement action akin to a criminal proceeding. Accordingly, due process prohibits the Attorney General from retaining private contingent-fee counsel -- or permitting any attorney who shares that contingent-fee interest -- to prosecute the case. Put differently, the due process clauses of the United States and South Carolina Constitutions prohibit the state from awarding contingent fees to its lawyers based on the outcome of law enforcement proceedings seeking only statutory penalties. To the contrary, proper law enforcement requires more principled decision-making, untainted by financial incentives to the prosecutors.

Under the operative contingency fee agreement, the Attorney General (who is entitled to keep ten percent (10%) of the contingent fee) and private counsel (who is entitled to keep up to 23% of each penalty) have both a direct and sizeable financial interest in advocating for the broadest possible interpretation of prohibited conduct, the maximum number of violations and the maximum amount of penalties for such claimed violations. This improper financial incentive has shaped the actual course of the prosecution of the Underlying Litigation. In this regard, the Attorney General and his private counsel contend that every prescription ever written in South Carolina for Seroquel®, AstraZeneca's prescription drug, constitutes a separate violation of SCUTPA for which AstraZeneca must be penalized the maximum statutory penalty of \$5,000. Given the sheer number of such prescriptions, if the Attorney General and his outside private counsel were successful, the monetary penalties in this case would be enormous. Both the Attorney General's and private counsel's financial interest in the "successful" prosecution of claims against AstraZeneca could be staggeringly high, and, under the District Attorney's stated

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position, any such recovery would be wholly unhinged from any required showing of harm to the State of South Carolina or its citizens.

Moreover, one of the Attorney General's private counsel also serves, or has served, as counsel to numerous individual plaintiffs and the Attorneys General of several other states who are pursuing AstraZeneca over the same drug. This private counsel has already displayed overt bias in the Underlying Litigation stemming from those representations, and there exists the distinct possibility of continuous unfair bias, including that such private counsel will attempt to leverage his retention here in South Carolina to advantage his position in other litigation.

Finally, there is no adequate supervision of the Attorney General in connection with the Underlying Litigation. Upon information and belief, the Attorney General reports to no one concerning his strategic decisions, either with regard to this litigation arrangement with private counsel, or his commercial enterprise to obtain larger statutory penalties in order to fund his operation.

Attorney General Wilson is the chief law enforcement official of the State of South Carolina. Under the United States Constitution, as well as the Constitution of this State, he is allowed to prosecute actions with appropriate advocacy. However, he is not permitted to hire financially interested, contingent-fee lawyers to prosecute criminal-like proceedings, and/or risk the appearance of (and, in fact, create an actual) impermissible bias in such matters. Taken in their totality, the actions of Attorney General Wilson, and his predecessor Henry McMaster, in the Underlying Litigation violate AstraZeneca's federal and state Constitutional rights to Due Process of Law.

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### PARTIES

1. The Plaintiff is AstraZeneca Pharmaceuticals, LP, a limited liability partnership organized and existing under the laws of the state of Delaware, with its principal place of

business in Delaware. AstraZeneca manufactures and sells Seroquel®, a prescription, brand-name second-generation antipsychotic (“SGA”) drug, which has been approved by the United States Food and Drug Administration (“FDA”). The FDA has approved Seroquel as a treatment for serious mental health conditions, including schizophrenia, certain bipolar disorders, depressive episodes associated with bipolar disorders, and adjunctive treatment to antidepressants in adults with Major Depressive Disorder.

2. Since the FDA approval in 1997, South Carolina physicians have prescribed Seroquel to treat their patients, and continue to do so to this day. South Carolina has had a legislative proviso in place since 2004 which provides “open access” for all mental health drugs, including atypicals such as Seroquel, enabling physicians to write prescriptions for Seroquel without any prior authorization or limitations. The legislative proviso has been renewed annually. In July 2005, the State placed Seroquel on a Voluntary Preferred Drug List (“VPDL”) which lists atypical antipsychotics by price. The VPDL was touted by the State as a guide for prescribing those drugs that result in optimal health care outcomes at a reasonable cost. Seroquel remains on the State’s VPDL to date.

3. Plaintiff here is a defendant in the Underlying Litigation, *State of South Carolina ex rel. Alan Wilson, in his capacity as Attorney General of the State of South Carolina v. AstraZeneca Pharmaceuticals, LP, et al.*, 2009-CP-42-0097. This action against Attorney General Wilson is brought against him in his official capacity.

4. The Defendant is Alan Wilson, Attorney General for the State of South Carolina, and successor in interest to the Litigation Retention Agreement, and the Addendum thereto. Defendant here is the plaintiff in the Underlying Litigation.

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5. The acts alleged herein were authorized, ordered, done or ratified by Defendant or his predecessor, Henry McMaster, while acting in the official capacity as Attorney General for the State of South Carolina under color of state law and pursuant to official policy or custom.

**JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction over this matter and personal jurisdiction of the parties hereto. Venue is appropriate in Spartanburg County pursuant to S. C. CODE ANN. § 15-7-30 because, among other things, a substantial part of the alleged acts or omissions occurred in Spartanburg County, South Carolina.

7. The jurisdiction of this Court is founded upon S.C. Const. Ann. Art. V § 11, which gives the Circuit Court general jurisdiction over civil actions, as well as the South Carolina Uniform Declaratory Judgments Act, S.C. CODE ANN. §§ 15-53-10, *et seq.*

**FACTUAL BACKGROUND**

8. Henry McMaster was elected Attorney General in 2002. After he assumed office, and in response to the concerns with the involvement of private contingent-fee counsel in the State's tobacco litigation, Attorney General McMaster, upon information and belief, imposed a moratorium on entering into contingency agreements with private counsel. During this moratorium, which lasted more than a year, Attorney General McMaster developed a model contingency fee agreement for use with private counsel. Upon information and belief, the original contingency fee agreement at issue in this proceeding is similar, if not identical, to the model contingency fee agreement developed by Attorney General McMaster.

9. At some point in time, Attorney General McMaster decided to file lawsuits against three companies that manufacture and sell SGAs: Eli Lilly and Company ("Lilly") who sells Zyprexa, Janssen Pharmaceutica, Inc. ("Janssen") who sells Risperdal, and AstraZeneca

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who sells Seroquel. Since the lawsuits were separate proceedings, Attorney General McMaster signed a separate contingency fee agreement with private counsel in each case.

10. In connection with the Underlying Litigation against AstraZeneca, Attorney General McMaster signed a contingency fee agreement entitled “Litigation Retention Agreement for Special Counsel Appointed by the Attorney General” on October 20, 2006 with three private attorneys (hereinafter the “2006 Agreement”). A copy of this agreement is attached hereto as Exhibit A. Upon information and belief, this agreement was extended beyond its October 23, 2010 termination date pursuant to Article 1 of Exhibit A.

11. Under the 2006 Agreement, Attorney General McMaster designated the private attorneys as “Special Counsel to the Attorney General” in an attorney-client relationship. The 2006 Agreement also set forth a fee schedule that gave private counsel a sliding percentage of any settlement or recovery of actual damages as attorneys’ fees—ranging from twenty-three percent (23%) of the first \$5 million recovered to four percent (4%) of any amount over \$100 million. Importantly, Article IV, section A.1 of the 2006 Agreement expressly provided **“that civil penalties shall not be included in calculating the gross or total recovery, and Special Counsel shall not receive any fees or costs from awards of civil penalties with such penalty payments to be made to the Office of the Attorney General for the State of South Carolina.”** (Emphasis added.) Under the 2006 Agreement, private counsel had no financial stake or interest in obtaining a recovery of any penalties against AstraZeneca under SCUTPA.

12. For reasons detailed herein, an action brought by the Attorney General under the color of state law to obtain statutory penalties under SCUTPA is akin to a criminal proceeding. Attorney General McMaster, upon information and belief, recognized that appointing contingent-fee counsel to prosecute such an action was prohibited by federal and state Constitutional mandates of due process. Accordingly, Attorney General McMaster specifically excluded

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statutory penalties from the 2006 Agreement. Upon information and belief, this specific exclusion also appeared in the model contingency fee agreement over which Attorney General McMaster thoughtfully labored for more than a year.

13. On May 25, 2007, Attorney General McMaster filed his lawsuit against Lilly. On April 30, 2008, Attorney General McMaster filed his lawsuit against Janssen. Finally, on January 9, 2009, Attorney General McMaster filed the underlying action against AstraZeneca. All three actions were filed before this court in Spartanburg, South Carolina. It is the official policy or custom of the Attorney General to enter into similar litigation retention agreements with outside private contingent-fee counsel to pursue such lawsuits.

14. Attorney General McMaster entered into a similar litigation retention agreement with the same outside private contingent-fee counsel in his pursuit of the case against Lilly. In that agreement dated July 19, 2006, the Attorney General expressly prohibited private counsel from being paid any fees based upon the award of statutory penalties. A true and correct copy of the Lilly retention agreement is attached as Exhibit B.

15. Therefore, when the Attorney General reached a settlement with Lilly in October 2009, no fees were paid to either the outside private counsel or to the Attorney General based upon an award or recovery of statutory penalties.

16. Upon information and belief, the Attorney General entered into the same retention agreement with the same outside private contingent-fee counsel in his pursuit of the case against Janssen. However, that agreement is not publicly available.

17. The original complaint against AstraZeneca contained eight causes of action seeking, *inter alia*, actual damages for injuries allegedly caused by Seroquel. The original complaint is attached hereto as Exhibit C. That complaint also sought punitive damages for certain conduct, as well as statutory penalties under SCUTPA. The State expressly brought the

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original case, as *parens patriae*, “on behalf of the State Medicaid program, the South Carolina Department of Mental Health (‘SCDMH’) and the South Carolina State Employees Health Plan (‘SHP’) as injured purchasers and/or reimbursers of prescription drugs.” The State also made express allegations regarding the knowledge of those State players, alleged reliance by them and asserted injury to them. See, e.g., Exhibit C at 1 and ¶¶ 1, 2, 13-15, 85-93 and 119-124.

18. Had there been a recovery of actual or punitive damages by Attorney General McMaster under the original complaint, the 2006 Agreement would have allowed the payment of contingency fees to private counsel from such recoveries. Had there been a recovery of statutory penalties under SCUTPA, however, neither private counsel nor the Attorney General would have shared, in any fashion, in such a recovery under the 2006 Agreement.

19. The Lilly case, because it was filed first, proceeded ahead of the Underlying Litigation (which is still in preliminary stages). The discovery record developed in the Lilly case, however, demonstrated that, with regard to SGAs, mental health professionals in South Carolina, both those in private practice and those employed by the State, generally supported the use of SGAs and generally opposed the litigation and the positions asserted by the State therein. In addition, the discovery record in Lilly suggested there was no actual deception of mental health professionals as to the potential side effects of SGAs in South Carolina. The discovery record also suggested that it would be difficult, if not impossible, for Attorney General McMaster to establish actual deception of South Carolinians by AstraZeneca.

20. The Lilly case was settled on the eve of trial in October, 2009. Prior to that settlement, however, Lilly moved to disqualify contingent-fee counsel in that case on several bases, including that the Attorney General’s retention of such counsel violated Lilly’s constitutional right to Due Process of Law. The litigation retention agreement in that case, as stated above, prohibited private counsel from being paid from a recovery of statutory penalties,

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so the issue raised in the instant Complaint was not at issue in Lilly. Accordingly, the Attorney General opposed the motion and argued, *inter alia*, that the case against Lilly was “a tort action plain and simple” where the State was out to recover “actual damages.” A true and correct copy of the Court’s September 22, 2009 Order in the Lilly case is attached hereto as Exhibit D. In denying Lilly’s motion, the Court agreed:

First, this is a tort action plain and simple. The State of South Carolina is out to recover actual damages it suffered from Lilly’s allegedly tortious conduct. It is seeking damages for money it claims that Lilly wrongfully caused to be paid from the State treasury. This tort action is not significantly different than one brought by a private corporation or individual who suffered harm as a result of another person or entity’s alleged wrongdoing.

Exhibit D at p. 6.

21. With the Lilly case concluded, Attorney General McMaster and private counsel made certain strategic decisions concerning the Underlying Litigation against AstraZeneca. Upon information and belief, the Attorney General and private counsel decided to dismiss all of the original claims against AstraZeneca, except a single claim for statutory penalties under the SCUTPA in an attempt to avoid discovery from the State and in recognition of their inability to prove actual damages.

22. Before dismissing the other counts of the original complaint, however, Attorney General McMaster and private counsel secretly executed an Addendum to the 2006 Agreement. That Addendum, dated December 2009 (the “Addendum”), was not provided to AstraZeneca’s counsel until December 9, 2010 and is attached hereto as Exhibit E.

23. The sole purpose of the Addendum was to delete the provision in the original agreement that expressly excluded statutory penalties from the gross or total recovery used as the basis for contingency fees awarded to private counsel and the Attorney General. Under that Addendum, and in contrast to General McMaster’s model agreement, the Attorney General

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expressly provided that private counsel and the Attorney General could be paid a contingent fee from a recovery of statutory penalties.

24. This Addendum changed the substance and structure of the 2006 Agreement. Under the 2006 Agreement, as stated above, private counsel were not to be compensated, in any way, from a recovery of statutory penalties. With the Addendum in place, private counsel would now recover the maximum amount of contingent fees, previously applicable only to recoveries of actual damages, from a recovery of statutory penalties. In fact, under the Addendum, private counsel would now collect a higher percentage of contingency fees from a recovery of statutory penalties than they would from a recovery of punitive or exemplary damages.

25. In addition, under the Addendum, Attorney General McMaster's own office now would retain ten percent (10%) of the contingency fees that private counsel earned from any recovery of statutory penalties. In other words, under the 2006 Litigation Retention Agreement, as amended by the Addendum, the Attorney General's office and private counsel were now to be financially rewarded for imposing penalties on AstraZeneca by recovering contingent fees from awards of such penalties, regardless of whether the State could claim or prove actual reliance or actual damages.

26. After the Addendum was in place, Attorney General McMaster and private counsel filed a First Amended Complaint on March 23, 2010 in which they abandoned all of the causes of action and the demand for damages against AstraZeneca, except the claim for statutory penalties under SCUTPA. Absent the Addendum, neither the private counsel nor the Attorney General's office would have earned any fees based on the nature of the only claim remaining. Under the Addendum, as stated above, private counsel and the Attorney General could now be paid the highest contingency fee from the recovery of any such penalties.

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27. On August 6, 2010, Attorney General McMaster and private counsel filed a Second Amended Complaint, which, as detailed below, further narrowed the claim for statutory penalties under SCUTPA. In the Second Amended Complaint, the State no longer brings the action, as *parens patriae*, on behalf of the State Medicaid program, the SCDMH and the SHP; those allegations from the original complaint referenced above in Paragraph 17 are conspicuously absent. The Second Amended Complaint is attached hereto as Exhibit F.

28. As the Second Amended Complaint alleges, the Attorney General now claims that the package insert for Seroquel, which was approved in each iteration by the FDA, constitutes a violation of SCUTPA sufficient to support the imposition of a statutory penalty. The Attorney General further contends that every prescription written for Seroquel, since its launch in 1997 until the current date, constitutes a separate violation of the statute, which he claims justifies the imposition of the maximum penalty of \$5,000. See, e.g., Exhibit F, ¶¶ 54, 60.

29. Although AstraZeneca will present numerous defenses to the Attorney General's claim -- including but not limited to the propriety of AstraZeneca's FDA-approved package insert, the fact that South Carolina health experts continue to recognize the strong public interest in treating patients with Seroquel and SCUTPA's 3-year statute of limitations -- the Attorney General and his outside private contingent-fee counsel seek the Court's award of the maximum statutory penalty of \$5,000 for every Seroquel prescription ever written in South Carolina since the FDA's approval of Seroquel in 1997. Applying the formula in the 2006 Agreement, as amended by the Addendum, the contingency fees that would be awarded to private counsel from the statutory penalties under their extremely aggressive (and ill-founded) theory would be staggering. The Attorney General's share of those contingency fees would, in turn, be significant and actually could approximate or exceed the annual budget for his office.

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30. In January 2011, Alan Wilson became the Attorney General for the State of South Carolina, thereby succeeding Henry McMaster as a party to the 2006 Agreement, and Addendum thereto, as well as the Underlying Litigation.

31. It is the position of Attorney General Wilson in the Underlying Litigation that he does not have to prove actual deception, actual reliance, or actual damages in order to obtain statutory penalties against AstraZeneca under SCUTPA. For example, in his January 11, 2011 supplemental interrogatory answers, the Attorney General repeatedly objected to providing substantive answers based on the assertion that “information pertaining to the State’s actual deception by AstraZeneca and/or reliance on statements or representations made by AstraZeneca” is “completely irrelevant and not likely to lead to the discovery of admissible evidence.” See Plaintiff the State of South Carolina’s First Supplemental Answers to Defendants’ First Set of Interrogatories to Plaintiff, attached hereto as Exhibit G at pp. 3, 5 and 6. On the basis of this position, Attorney General Wilson has refused to make certain discovery requested by AstraZeneca in the Underlying Litigation, thereby compromising AstraZeneca’s right to defend these serious allegations on a number of bases, including the fact that mental health professionals in South Carolina who prescribed Seroquel were not actually deceived and that individuals in South Carolina who used Seroquel were not actually harmed.

32. Moreover, the Attorney General has refused to tell AstraZeneca what is actually or even potentially deceptive about the current FDA-approved Seroquel package insert. Thus, even if AstraZeneca thought it were necessary or appropriate to modify its FDA-approved insert in South Carolina, AstraZeneca does not know, and Attorney General Wilson refuses to state, what he contends must be changed to avoid the continuing imposition of statutory penalties under SCUTPA.

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33. The Underlying Litigation, as it now stands, is an orchestrated plan by Attorney General Wilson and private counsel to seek the maximum penalty under SCUTPA for the maximum number of alleged violations, in the absence of any proof of actual deception, actual reliance on any alleged deception, or actual harm from any of AstraZeneca's actions in connection with the manufacture and sale of Seroquel. Moreover, pursuant to the 2009 Addendum to the 2006 Agreement, the Attorney General and private counsel have now created an enterprise whereby they will jointly attempt to exploit the Attorney General's law enforcement authority, so they can both profit on a massive contingency fee from AstraZeneca being penalized to the maximum extent of the law. And conversely, both the Attorney General and private counsel now have to consider how much of a potential payday they will have to forego if they use reasoned prosecutorial discretion to seek a lesser penalty or settle the Underlying Litigation.

34. The Attorney General's remaining claim seeks only statutory penalties and that claim is based on the AstraZeneca package inserts reviewed, approved and permitted by the FDA. The need to avoid the influence of monetary incentives that improperly motivate private counsel (and the Attorney General given his 10% retention interest) to seek massive statutory penalties is particularly important here, as is the government interest, because the FDA is not only concerned with the potential for underwarning about a prescription drug's risks, but with the possible overwarning of such risks in a manner that discourages prescribers (i.e., named intermediaries) and their patients from using a beneficial medicine.

35. The important governmental interest in making mental health drugs available to the citizens of South Carolina has been repeatedly recognized by the South Carolina legislature through its annual enactment of the statutory proviso that ensures the availability of such drugs to the citizens of South Carolina.

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36. When regulating prescription drug labeling, the FDA focuses its expertise, experience and attention on ensuring the proper balance between overwarning and underwarning the learned intermediaries and through them their patients. The private counsel's (and the Attorney General's) claim in pursuit of statutory penalties in this case, under the terms of the Addendum, is wholly unhinged from any required showing of harm and improperly skews the critical balancing of interests struck by the FDA through its review and approval of the labeling for Seroquel.

37. The actions of Attorney General Wilson, in his official capacity, and by and through his private counsel, in the Underlying Litigation prejudice AstraZeneca in its abilities to defend the allegations against it.

38. The specter of penalties, under the totality of circumstances here, makes doing business in South Carolina a risky proposition for any business engaged in the manufacture or sale of any product that is sold under labeling that could be subjectively viewed by a financially motivated prosecutor as potentially deceiving.

39. The monetary incentive now provided to private counsel and the Attorney General, through the express terms of the Addendum, impacts the proper exercise of neutral judgment of private counsel and the Attorney General. Although they purport to bring this action on behalf of the public, they seek only statutory penalties that are designed to penalize AstraZeneca for its use of the labeling and package inserts reviewed and approved by the FDA and at the same time to financially reward private counsel and the Attorney General based upon their prosecution of a different, and entirely subjective, view about the proper balance between overwarning and underwarning the learned intermediaries about Seroquel.

40. Rather than pursuing a claim consistent with: (a) the FDA's review, approval and direction to use the specific labeling required by the FDA, (b) the South Carolina legislature's

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proviso ensuring open access to Seroquel, and (c) the informed view of South Carolina mental health officials, the Attorney General and his contingent-fee counsel seek to impose punitive penalties unhinged from (and inconsistent with) such considerations.

41. On December 9, 2010, in response to AstraZeneca's request, the Attorney General, through his counsel, provided AstraZeneca a copy of both the 2006 Agreement, as well as the Addendum. This was the first time that AstraZeneca or its counsel had seen these documents or been aware of the existence of the Addendum.

42. Thereafter, starting in late December 2010, AstraZeneca and Attorney General McMaster and then Attorney General Wilson, through their respective counsel, discussed the propriety of the terms of the 2006 Agreement, and its 2009 Addendum, on multiple occasions.

43. In February, 2011, the Court denied summary judgment in the parallel litigation against Janssen. The relief sought in the Janssen case is substantially similar to the relief sought in the Underlying Litigation against AstraZeneca – *i.e.*, the Attorney General seeks to impose a maximum \$5,000 statutory penalty under SCUPTA for each prescription of Janssen's SGA product, Risperdal, filled in South Carolina. Indeed, in stark contrast to the Lilly action, which the court described as "a tort action plain and simple. . . . to recover actual damages . . ." (*see supra* ¶ 20 and Exhibit D), when recently denying summary judgment in Janssen, the Court characterized the Attorney General's allegation against Janssen as a "cause of action [that] **not an action for damages** to any particular person, but is rather to **penalize** a company or individual for engaging in unfair or deceptive practices in the conduct of its trade or commerce." See Exhibit H, Order at 5 (emphasis added).

44. Accordingly, the Court determined that there were *only* two issues before it: whether Janssen is "**guilty** of employing unfair methods of competition" and whether Janssen was "**willfully** using . . . a method, act or practice declared **unlawful** . . ." *Id.* at 9 (emphasis

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added). The verbiage used by the Court (e.g., “penalize”, “guilty”, “willful”, “unlawful”) to characterize the Attorney General’s claims (which are remarkably similar in nature to his claims against AstraZeneca), confirmed what AstraZeneca had been telling the Attorney General for months, i.e., notwithstanding the civil action number, the claims in the Underlying Litigation are akin to criminal allegations.

45. During his opening statement in the Janssen trial on March 8, 2011, the Attorney General’s contingent-fee counsel stated as follows: “**This is not a civil case** like a car wreck or a product liability case where somebody is coming in and saying, hey, I got hurt, give me a lot of money from the defendant. This case is simply about right and wrong, doing the right thing. **This case is about obeying the law**, following the rules and regulations instead of twisting them around so that you can try to make some kind of obscene profit.” (Emphasis added.) A true and correct copy of selected pages of the March 8, 2011 transcript is attached hereto as Exhibit I, at p. 193. He later stated as follows: “There is no requirement in the act that we prove that any doctor relied on that letter or relied on what they said in writing a prescription. **This is not a fraud case.** We don’t have to prove reliance. **This is an enforcement case.** The law says you can’t do this, if you do it, you broke the law. It doesn’t matter what -- it’s kind of like you go in to **rob the 7-Eleven** and it turns out there’s no money in there or the clerk pulls out a gun and you have to run away. If the police catch you, the fact that you didn’t get any money or the fact that the clerk ran you away and was able to fend off the attack isn’t going to save you from prosecution. **If you break the law, you have to pay the consequences.**” (Emphasis added.) Id. at pp. 204-205.

46. On March 2, 2011, pursuant to the request of the Office of Attorney General, AstraZeneca set forth in a letter high-level legal support for its position that use of contingent-fee counsel in the Underlying Litigation violated AstraZeneca’s right to Due Process.

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47. Nonetheless, despite months of discussions and the provision of the March 2 letter, AstraZeneca has never received a satisfactory response from the Attorney General to its concerns about the 2009 Addendum to the contingency fee agreement. AstraZeneca has filed this lawsuit seeking a declaration that the Attorney General’s contingency fee arrangement in the Underlying Litigation, and other actions as set forth herein, violate AstraZeneca’s constitutional rights to Due Process of Law.

**APPLICABLE CONSTITUTIONAL AND  
STATUTORY FRAMEWORK**

48. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution and the Due Process Clause of the South Carolina Constitution, S.C. Const., art. I, § 3, ensure the rights of AstraZeneca to Due Process of Law.

49. Section 1983 of Title 42 of the U.S. Code forbids the deprivation of any rights, privileges, or immunities secured by the U.S. Constitution by a person acting under color of state law. Section 1983 permits civil actions against any such person to redress an official policy or custom that causes the plaintiff to be subjected to a denial of a constitutional right.

50. In taking the actions alleged herein against AstraZeneca, Defendant, and his predecessor, acted under color of state law and pursuant to official policy or custom and, as detailed herein, violated AstraZeneca’s constitutional rights to Due Process of Law.

51. SCUTPA empowers the Attorney General to take certain law enforcement actions that are not available to private citizens under the statute. When the Attorney General has “reasonable cause to believe” a violation of SCUTPA has occurred or is about to occur, he can bring a court action for injunctive relief, or commence an investigation, with the power to subpoena witnesses, conduct hearings, and “promulgate such rules and regulations as may be

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necessary, which rules and regulations shall have the force and effect of law.” S.C. CODE ANN. §§ 39-5-50, 70, 80.

52. SCUTPA empowers the Attorney General to request solicitors and county and city attorneys to provide assistance in the “prosecution” of SCUTPA actions and, similarly, declares that it is the duty of such public attorneys to provide the requested assistance. S.C. CODE ANN. §§ 39-5-130.

53. Should the Attorney General obtain an injunction under SCUTPA, and a corporation violates that injunction, the Attorney General may seek the dissolution or suspension of its franchise or corporate charter. S.C. CODE ANN. §§ 39-5-120.

54. Importantly, SCUTPA reserves to the Attorney General, and the Attorney General alone, the right to seek statutory penalties of any sort for violations of SCUTPA. S.C. CODE ANN. §§ 39-5-110. If a court finds that a defendant is guilty of employing unfair or deceptive acts or practices in the conduct of any trade and that the defendant willfully used an act or practice declared unlawful under SCUTPA (i.e., a scienter requirement), the Attorney General may recover “on behalf of the State” a maximum statutory penalty of \$5,000 per violation. Id.

55. According to the Attorney General’s claim in the Underlying Litigation, the imposition of the maximum statutory penalty is unhinged from any need to show actual harm, reliance or damages and, therefore, is punitive in nature.

56. Although SCUTPA expressly provides that a private citizen may recover attorneys’ fees for prosecuting an individual action under SCUTPA (an action that explicitly requires that the citizen have suffered an “ascertainable loss”) (see S.C. CODE ANN. §§ 39-5-140), SCUTPA makes no provision for the recovery of attorney fees by the Attorney General (or contingency-fee counsel) for pursuit of statutory penalties under SCUTPA.

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57. A “prosecution” by the Attorney General to obtain statutory penalties under SCUTPA is akin to a criminal proceeding. Moreover, the analogy to a criminal proceeding is even stronger when, as is the case here, the Attorney General’s lawsuit does not allege any actual injury and does not seek any compensatory remedy, but rather, solely seeks to punish AstraZeneca on the basis of the number of purported “willful” acts committed.

**COUNT I – FOR A FIRST DECLARATION**  
**(Due Process: Contingent-fee Counsel)**

58. AstraZeneca incorporates by reference the foregoing allegations as if set forth at length herein.

59. The Due Process Clause of the Fourteenth Amendment of the U.S. Constitution and the Due Process Clause of the South Carolina Constitution, S.C. Const., art. I, § 3, restrict the personal and financial interests that a prosecutor, like Defendant, pursuing statutory penalties, may have in the outcome of a lawsuit.

60. A government attorney’s personal or financial interest in the outcome of a statutory-penalties lawsuit is a due process violation when there is a sufficient risk that such an interest will lead to a biased prosecution.

61. Defendant’s prosecution of the Underlying Litigation against AstraZeneca is akin to a criminal prosecution because Attorney General Wilson is not seeking damages for actual harm, but rather is acting in a law enforcement capacity and seeking only statutory penalties.

62. Moreover, the Underlying Litigation resembles a criminal prosecution because the sole remaining purpose of the lawsuit is to penalize AstraZeneca for alleged violations, regardless of whether they involved any actual deception or whether they caused any actual harm. The underlying action also resembles a criminal prosecution because, under SCUTPA, only the Attorney General, acting on behalf of the State in his official capacity as the State’s

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