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**Superior Court of California, County of Alameda**  
**Rene C. Davidson Alameda County Courthouse**

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Christensen  <p style="text-align: right;">Plaintiff/Petitioner(s)</p> VS.  Nestle Health Science - PamLab  <p style="text-align: right;">Defendant/Respondent(s) (Abbreviated Title)</p>	No. <u>RG16807318</u>  Order  Demurrer to the First Amended Complaint Overruled
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The Demurrer to the First Amended Complaint was set for hearing on 10/17/2017 at 03:00 PM in Department 23 before the Honorable Brad Seligman. The Tentative Ruling was published and has not been contested.

**IT IS HEREBY ORDERED THAT:**

The tentative ruling is affirmed as follows: The Demurrer of Alfasigma USA, Inc., to First Amended Complaint is **OVERRULED**.

On a demurrer the court considers only the complaint, accepts the facts as alleged, and takes all inferences in favor of the complaint. Alfasigma's requests for judicial notice are **DENIED**. Alfasigma's explanations of why it made representations and took actions are matters for an answer or other motion and are not appropriate in a demurrer.

The First Amended Complaint alleges generally that Alfasigma marketed its Brand products to doctors and even while it was making identical generic products, which lead to "no substitute" prescriptions, which lead to higher payouts by insurance companies. The more specific allegations are that Alfasigma warned of the dangers of "imposter generics," gave Co-Pay Savings Cards to patients, and encouraged consumers to use a "Brand Direct Health" website.

The complaint asserts a claim for false insurance claims under Penal Code 550(a) and (b). "Penal Code section 550 may be violated not only by the knowing submission of claims that are "false or fraudulent"..., but also by the knowing concealment or failure to disclose material information, and by knowingly making "false or misleading" statements in connection with insurance claims." (State ex rel. Wilson v. Superior Court (2014) 227 Cal.App.4th 579, 600.)

The complaint asserts the claims under Penal Code 550(a) and (b) with adequate specificity. The complaint describes the business practices and the information is in the in possession of the defendant. The complaint does not need to name specific doctors, specific insurance companies, and similar information. It describes a course of action whereby defendant's sales representatives are instructed to misinform health care providers, and specifically alleges the conduct of relator in this regard.

In *Committee On Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, the Supreme Court stated; ""Fraud actions ... are subject to strict requirements of particularity in pleading. ... We observe, however, certain exceptions which mitigate the rigor of the rule requiring specific pleading of fraud. Less specificity is required when "it appears from the nature of the allegations that

the defendant must necessarily possess full information concerning the facts of the controversy," ... "[e]ven under the strict rules of common law pleading, one of the canons was that less particularity is required when the facts lie more in the knowledge of the opposite party .... Additionally, in a case such as the present one, considerations of practicality enter in. A complaint should be kept to reasonable length, ..."

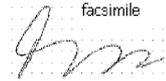
The complaint adequately alleges affirmative misrepresentations. The complaint asserts that despite the fact that Alfasigma manufactures an equivalent generic, it instructed its sales representatives to say the Brand drug is "the only" drug with certain characteristics (Par. 21-22) and thus should tell doctors to write prescriptions that would prevent a generic substitution (par 34) and thus to tell providers "a little white lie" (Par. 35). The Relator then alleges that Alfasigma "disseminated misinformation regarding the uniqueness" of the Brand product, and in reliance "dozens" of providers wrote "hundreds of prescriptions" with the "do not substitute" or "capsules only" language. (Par. 41)

Having found that the complaint adequately alleges an affirmative misrepresentation, the court does not need to reach the issue of whether the complaint adequately alleges a special relationship between Alfasigma and insurance companies and fraud by suppression of facts information by one with duty to disclose. (Civil Code 1710(3).)

Alfasigma must file an answer on or before 11/3/17.

Prevailing party shall serve a copy of this order upon all parties forthwith and file a proof of service with the Court.

Dated: 10/17/2017

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Judge Brad Seligman

SHORT TITLE:

Christensen VS Nestle Health Science - Pamlab

CASE NUMBER:

RG16807318

ADDITIONAL ADDRESSEES

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