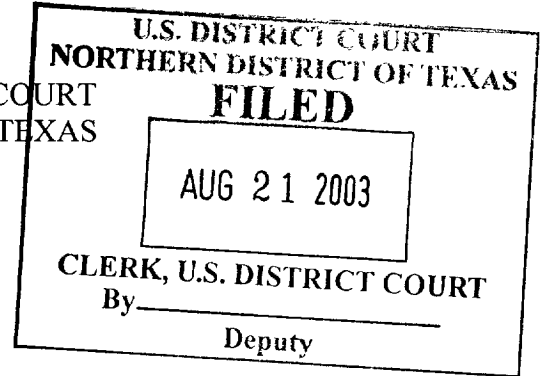


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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
WICHITA FALLS DIVISION



VICTORIA KLEIN and  
ASHLEY SWADLEY,

Plaintiffs,

VS.

O'NEAL, INC., d/b/a O'NEAL, JONES &  
FELDMAN PHARMACEUTICALS,  
CVS REVCO D.S., INC., and  
RETRAC, INC.

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CA 7-03CV-102-R

DEFENDANTS O'NEAL, INC. d/b/a O'NEAL, JONES &  
FELDMAN PHARMACEUTICALS, CVS REVCO D.S., INC.  
AND RETRAC, INC.'S ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants, O'Neal, Inc. d/b/a O'Neal, Jones & Feldman Pharmaceuticals, CVS Revco D.S., Inc. and Retrac, Inc. file this their original answer in response to allegations contained in Victoria Klein and Ashley Swadley's First Amended Original Complaint – Class Action and state as follows:

**I.**  
**JURISDICTION**

1. Defendants are without sufficient information to admit or deny the truth of the allegations contained in Paragraph No. 1 of the complaint.
2. Defendants are without sufficient information to admit or deny the truth of the allegations contained in Paragraph No. 2 of the complaint.
3. Defendants are without sufficient information to admit or deny the truth of the allegations contained in Paragraph No. 3 of the complaint.
4. Defendants admit the truth of the allegations contained in Paragraph No. 4 of the complaint.

**DEFENDANTS O'NEAL, INC. f/k/a O'NEAL, JONES & FELDMAN PHARMACEUTICALS,  
CVS REVCO D.S., INC. AND RETRAC, INC.'S ORIGINAL ANSWER – Page 1**

5. Defendants admit the truth of the allegations contained in Paragraph No. 5 of the complaint.
6. Defendants admit the truth of the allegations contained in Paragraph No. 6 of the complaint.
7. Defendants are without sufficient information to admit or deny the truth of the allegations contained in Paragraph No. 7 of the complaint.
8. Defendants are without sufficient information to admit or deny the truth of the allegations contained in Paragraph No. 8 of the complaint.
9. Defendants are without sufficient information to admit or deny the truth of the allegations contained in Paragraph No. 9 of the complaint.
10. Defendants admit the truth of the allegations contained in Paragraph No. 10 of the complaint.
11. Defendants are without sufficient information to admit or deny the truth of the allegations contained in Paragraph No. 11 of the complaint.

**II.**  
**FACTUAL ALLEGATIONS**

12. In response to Paragraph No. 12 of the complaint, Defendants deny that E-ferol was an entirely new method of delivery not previously available. Defendants deny that all children administered E-ferol suffered some degree of "E-ferol syndrome" resulting in injuries including severe brain injury, blindness and death. Defendants admit Carter-Glougau Laboratories, then a division of Revco, manufactured E-ferol and Defendants admit that O'Neal, Inc. d/b/a O'Neal, Jones & Feldman Pharmaceuticals marketed E-ferol as a Vitamin E supplement suitable for intravenous infusion in premature infants. Defendants admit that E-ferol was marketed to be administered intravenously. Defendants admit that the FDA required a recall of E-ferol. Defendants admit that the corporation and its officers were indicted in the United States District Court for the Eastern District of Missouri, No. 87-172CR(4). Defendants admit that O'Neal

entered a plea of guilty. Defendants admit that James B. Madison pled guilty. Defendants admit Carter-Glougau, Ronald Carter, Sr., Larry K. Hiland, were all convicted. Defendants admit Larry Hiland was also convicted of five counts of committing mail fraud. Defendants admit the jury verdict was appealed to the United Courts of Appeal where the verdict was affirmed. Defendants have insufficient information to admit or deny the truth of any of the remaining allegations contained in Paragraph No. 12 of the response.

13. Defendants are without sufficient information to admit or deny the truth of the allegations contained in Paragraph No. 13 of the complaint.

14. In response to Paragraph No. 14 of the complaint, Defendants deny that E-ferol was the cause of plaintiffs' symptoms. Defendants are without sufficient information to admit or deny the truth of the remaining allegations contained in the rest of Paragraph No. 14 of the complaint.

15. In response to Paragraph No. 15 of the complaint, Defendants deny that E-ferol was the cause of plaintiffs' symptoms. Defendants are without sufficient information to admit or deny the truth of the allegations contained in Paragraph No. 15 of the complaint.

16. In response to Paragraph No. 16 of the complaint, Defendants deny that E-ferol was the cause of Plaintiff Ashley Swadley's symptoms. Defendants admit that E-ferol was manufactured and distributed by Defendants. Defendants are without sufficient information to admit or deny the truth of the remaining allegations in the Paragraph No. 16.

17. Defendants admit the allegations contained in Paragraph No. 17 of the complaint.

18. Defendants admit the allegations contained in Paragraph No. 18 of the complaint.

19. Defendants are without sufficient information to admit or deny the truth of the allegations contained in Paragraph No. 19 of the complaint.

20. Defendants are without sufficient information to admit or deny the truth of the allegations contained in Paragraph No. 20 of the complaint.

21. In response to Paragraph No. 21 of the complaint, Defendants deny that they did not participate in any of the FDA regulatory guidelines for the development of a new drug. Defendants admit the remaining allegations contained in Paragraph No. 21 of the complaint.

22. In response to Paragraph No. 22 of the complaint, Defendants admit that Defendant O'Neal distributed the E-ferol product to drug wholesalers, hospitals and doctors with the intention for it to be administered intravenously to premature infants.

23. Defendants are without sufficient information to admit or deny the truth of the allegations contained in Paragraph No. 23 of the complaint.

24. In response to Paragraph No. 24 of the complaint, Defendants deny that the common thread between Good Samaritan Hospital in Cincinnati, Ohio, and the University of Tennessee Hospital in Knoxville, Tennessee, was E-ferol. Defendants are without sufficient information to admit or deny the truth of the remaining allegations in Paragraph No. 24 of the complaint.

25. Defendants admit the allegations contained in Paragraph No. 25 of the complaint.

26. Defendants deny all allegations in Paragraph No. 26 of the complaint.

27. Defendants deny all allegations in Paragraph No. 27 of the complaint.

28. Defendants deny all allegations in Paragraph No. 28 of the complaint.

29. Defendants deny all allegations in Paragraph No. 29 of the complaint.

30. Defendants deny all allegations in Paragraph No. 30 of the complaint.

31. Defendants deny all allegations contained in Paragraph No. 31 of the complaint.

32. Defendants deny all allegations contained in Paragraph No. 32 of the complaint.

33. Defendants are without sufficient information to admit or deny the truth of the allegations contained in Paragraph No. 33 of the complaint, except Defendants deny that there is or should be any class or class members.

34. Defendants deny all allegations contained in Paragraph No. 34 of the complaint.

35. Defendants deny all allegations contained in Paragraph No. 35 of the complaint.

36. Defendants are without sufficient information to admit or deny the truth of the allegations contained in Paragraph No. 36 of the complaint.

37. In response to Paragraph No. 37 of the complaint, Defendants are without sufficient information to admit or deny the truth of the allegations regarding “(The death and illnesses described were of like causation and characteristic of the deaths and illnesses reported to the CDC in March, 1984).” Defendants admit that they manufactured and distributed E-ferol. Defendants deny all other allegations in Paragraph No. 37.

38. Defendants deny all allegations contained in Paragraph No. 38 of the complaint.

### **III.** **LEGAL ALLEGATIONS**

#### **A. First Claim for Relief – Negligence/of Negligence Per Se**

39. Defendants re-allege and re-state as though fully incorporated herein Paragraph Nos. 1-38 above.

40. Defendants deny all allegations contained in Paragraph No. 40 of the complaint.

41. Defendants deny all allegations contained in Paragraph No. 41 of the complaint.

42. Defendants deny all allegations contained in Paragraph No. 42 of the complaint.

43. Defendants deny all allegations contained in Paragraph No. 43 of the complaint.

44. Defendants deny all allegations contained in Paragraph No. 44 of the complaint.

**DEFENDANTS O’NEAL, INC. f/k/a O’NEAL, JONES & FELDMAN PHARMACEUTICALS,  
CVS REVCO D.S., INC. AND RETRAC, INC.’S ORIGINAL ANSWER – Page 5**

45. Defendants deny all allegations contained in Paragraph No. 45 of the complaint.

46. Defendants deny all allegations contained in Paragraph No. 46 of the complaint.

47. Defendants admit that they manufactured and distributed E-ferol; however, Defendants deny the truth of all remaining allegations contained in Paragraph No. 47 of the complaint.

48. Defendants deny all allegations contained in Paragraph No. 48 of the complaint.

49. Defendants admit that they supplied E-ferol; however, Defendants deny all remaining allegations contained in Paragraph No. 49 of the complaint.

50. Defendants deny all allegations contained in Paragraph No. 50 of the complaint.

51. Defendants deny all allegations contained in Paragraph No. 51 of the complaint.

**B. Second Claim for Relief – Breach of Express Warranties**

52. The Defendants re-allege and re-state as though fully incorporated herein Paragraph Nos. 1-51 above.

53. In response to Paragraph No. 53, the Defendants admit that they manufactured and marketed E-ferol. Defendants deny all remaining allegations contained in Paragraph No. 53 of the complaint.

54. Defendants are without sufficient information to admit or deny the truth of the allegations contained in Paragraph No. 54 of the complaint, except Defendants deny that there is or should be a class or class members.

55. Defendants deny all allegations contained in Paragraph No. 55 of the complaint.

56. Defendants deny all allegations contained in Paragraph No. 56 of the complaint.

**C. Third Claim – Breach of Implied Warranty**

57. The defendants re-allege and re-state as though fully incorporated herein Paragraph Nos. 1 through 56 above.

58. Defendants are without sufficient information to admit or deny the truth of the allegations contained in Paragraph No. 58 of the complaint, except that Defendants deny that there is or should be a class or class members.

59. Defendants are without sufficient information to admit or deny the truth of the allegations contained in Paragraph No. 59 of the complaint, except that Defendants deny that there is or should be a class or class members.

60. In response to Paragraph No. 60 of the complaint, Defendants admit that they manufactured, designed and processed E-ferol as a Vitamin E supplement. Defendants deny all other allegations contained in Paragraph No. 60 of the complaint.

61. Defendants deny all allegations contained in Paragraph No. 61 of the complaint.

62. Defendants deny all allegations contained in Paragraph No. 62 of the complaint.

63. Defendants deny all allegations contained in Paragraph No. 63 of the complaint.

**D. Fourth Claim for Relief -- Misrepresentation**

64. The Defendants re-allege and re-state as though fully incorporated herein Paragraph Nos. 1 through 63 above.

65. Defendants deny all allegations contained in Paragraph No. 65 of the complaint.

66. Defendants deny all allegations contained in Paragraph No. 66 of the complaint.

67. Defendants deny all allegations contained in Paragraph No. 67 of the complaint.

68. Defendants deny all allegations contained in Paragraph No. 68 of the complaint.

**E. Fifth Claim – Product Liability**

69. The Defendants re-allege and re-state as though fully incorporated herein, Paragraph Nos. 1 through 68 above.

70. Defendants admit that E-ferol was a product that was placed into the stream of commerce by Defendants to be intravenously administered as a vitamin E supplement to premature infants. Defendants deny all remaining allegations contained in Paragraph No. 70 of the complaint.

71. Defendants deny all allegations contained in Paragraph No. 71 of the complaint.

72. In response to Paragraph No. 72 of the complaint, Defendants admit that they designed, manufactured, and placed into the stream of commerce E-ferol. Defendants deny all further allegations contained in Paragraph No. 72 of the complaint.

73. Defendants deny all allegations contained in Paragraph No. 73 of the complaint.

**F. Sixth Claim – Punitive Damages**

74. The Defendants re-allege and re-state as though fully incorporated herein Paragraph Nos. 1 through 73 above.

75. Defendants deny all allegations contained in Paragraph No. 75 of the complaint.

76. Defendants deny all allegations contained in Paragraph No. 76 of the complaint.

77. Defendants deny all allegations contained in Paragraph No. 77 of the complaint.

**IV.  
CLASS ACTION ALLEGATIONS**

78. The Defendants re-allege and re-state as though fully incorporated herein Paragraph Nos. 1 through 77 above.

79. Defendants admit that Plaintiffs seek to bring an action pursuant to Fed. R. Civ. P. 23, but deny that this action may be brought as a class action under Fed. R. Civ. P. 23.



80. Defendants deny that there is or should be any class or class members. Defendants are otherwise without sufficient information to admit or deny the truth of the allegations contained in Paragraph No. 80 of the complaint.

81. Defendants deny that there is or should be any class or class members. Defendants are otherwise without sufficient information to admit or deny the truth of the allegations contained in Paragraph No. 81 of the complaint.

82. In response to Paragraph No. 82 of the complaint, Defendants admit that they manufactured and distributed E-Ferol. Defendants further admit that the Second Court of Appeals in the State of Texas, located in Fort Worth, Texas, has ruled in Cause No. 236-181122-99 that a hospital such as Cook Children's Medical Center is not allowed to claim privileges in order to prevent disclosure to the recipients of E-ferol. Defendants are without sufficient information to admit or deny the truth of the allegation that two young children and one adult were also known to have received E-ferol. Defendants are without sufficient information to admit or deny the truth of the allegations that over one thousand premature infants were administered E-ferol during the first few days of their lives. Defendants deny all remaining allegations contained in Paragraph 82 of the complaint. Defendants specifically deny that there is or should be a class or class member.

83. Defendants deny all allegations contained in Paragraph No. 83 of the complaint.

84. Defendants deny all allegations contained in Paragraph No. 84 of the complaint, specifically denying that medical monitoring, testing or treatment is necessary.

85. Defendants deny all allegations contained in Paragraph No. 85 of the complaint.

86. Defendants are without sufficient information to admit or deny the truth of the allegations contained in Paragraph No. 86 of the complaint, except that it is denied that there is or should be any class or class members.

87. Defendants are without sufficient information to admit or deny the truth of the allegations contained in Paragraph No. 87 of the complaint, except that it is denied that there is or should be any class or class members.

88. Defendants deny all allegations contained in Paragraph No. 88 of the complaint.

89. Defendants deny all allegations contained in Paragraph No. 89 of the complaint.

90. Defendants deny all allegations contained in Paragraph No. 90 of the complaint.

91. For further answer, if such be necessary, Defendants deny that Plaintiffs are entitled to any of the relief requested in their prayer.

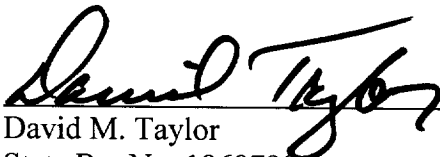
**Affirmative Defenses**

92. Defendants affirmatively plead laches as a defense to Plaintiffs' actions.

93. Defendants affirmatively plead that Plaintiffs have failed to bring their causes of action within the applicable statute of limitations.

WHEREFORE, PREMISES CONSIDERED, Defendants O'NEAL, INC. D/B/A O'NEAL JONES & FELDMAN PHARMACEUTICALS, CVS REVCO D.S. INC. AND RETRAC, INC. respectfully request that Plaintiffs take nothing by reason of this action, and that Defendants be awarded such other and further relief to which they are justly entitled.

Respectfully submitted,

By:   
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David A. McFarland  
State Bar No. 00791223  
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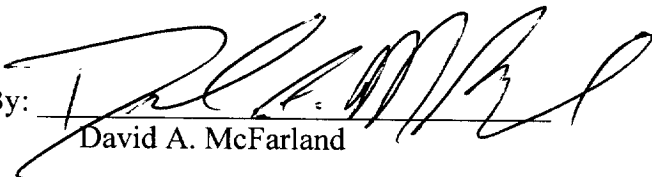
ATTORNEYS FOR O'NEAL, INC.  
D/B/A O'NEAL JONES & FELDMAN  
PHARMACEUTICALS, CVS REVCO D.S.  
INC. AND RETRAC, INC.

### CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document has been hand-delivered to counsel of record on this \_\_\_\_ day of August, 2003, as follows:

Art Brender  
Law Offices of Art Brender  
Pennsylvania at Eighth Avenue  
600 Eighth Avenue  
Fort Worth, Texas 76104

Mr. Dwain Dent  
The Dent Law Firm  
1120 Penn Street  
Ft. Worth, Texas 76102

By:   
David A. McFarland

**DEFENDANTS O'NEAL, INC. f/k/a O'NEAL, JONES & FELDMAN PHARMACEUTICALS,  
CVS REVCO D.S., INC. AND RETRAC, INC.'S ORIGINAL ANSWER - Page 11**