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17 UNITED STATES DISTRICT COURT

18 NORTHERN DISTRICT OF CALIFORNIA

19 SAN FRANCISCO DIVISION

20 BARTON SPINDLER, DEBORAH)	Case No. CV-10-1414-JSW
21 UNDERWOOD, VALERIE BURKS, and)	
22 PARVIS KAVEH, by and through his guardian)	Hon. Jeffrey S. White
23 ad litem MITRA KAVEH, individually and on)	
24 behalf of all others similarly situated)	DEFENDANTS' APPLICATION FOR
)	ENTRY OF ORDER OF DISMISSAL
)	PURSUANT TO THE COURT'S AUGUST
Plaintiffs,)	1, 2011 ORDER AND [PROPOSED]
v.)	ORDER
)	
25 JOHNSON & JOHNSON CORP.,)	
26 OMNICARE, INC., and DOES 1-10.,)	
Inclusive.)	
)	
27 Defendants.)	
)	

1 WHEREAS, the Court's August 1, 2011 Order (Dkt. No. 87) (the "Order") granted the
2 motions of Defendants Johnson & Johnson ("J & J") and Omnicare, Inc. ("Omnicare") (collectively,
3 "Defendants") to dismiss the Second Amended Complaint ("SAC") filed by Plaintiffs Barton
4 Spindler, Deborah Underwood, Valerie Burks, and Parvis Kaveh ("Plaintiffs").

5 WHEREAS, the Order granted Plaintiffs leave to amend, stating that "Plaintiffs shall file
6 their amended complaint, if any, within twenty days of the date of this Order."

7 WHEREAS, Plaintiffs did not file any amended complaint within twenty days of the date of
8 the Order (August 22, 2011).

9 NOW, THEREFORE, Defendants respectfully request that this action be dismissed with
10 prejudice. The Order (page 8, lines 14-15), states that "If the plaintiffs do not amend their
11 complaint, this action will be dismissed without prejudice." However, in context, the Court may
12 have meant "with prejudice." Thus, in the attached proposed Order, this issue is left for the Court.

13 Respectfully Submitted,

14 Dated: August 23, 2011

SIDLEY AUSTIN LLP

15 By: /s/ Samuel R. Miller

16 Samuel R. Miller

17 Attorneys for Defendant Johnson & Johnson

18 DEWEY & LEBOEUF LLP

19 By: /s/ Aldo A. Badini

20 Aldo A. Badini

21 Attorneys for Defendant Omnicare, Inc.

SIGNATURE ATTESTATION

Pursuant to General Order No. 45(X)(B), I hereby attest that I have on file written permission to sign this joint motion from all parties whose signatures are indicated by a conformed signature (/s/) within this e-filed document.

Dated: August 23, 2011

SIDLEY AUSTIN LLP

By: /s/ Samuel R. Miller

Samuel R. Miller

Attorneys for Defendant Johnson & Johnson

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Counsel for Defendant Omnicare, Inc.

[PROPOSED] ORDER

The Court hereby dismisses the action brought by Plaintiffs ~~[with prejudice]~~ ~~[without prejudice]~~.

IT IS SO ORDERED.

October 25
Dated: ~~August~~ ____, 2011



THE HONORABLE JEFFREY S. WHITE
United States District Judge