UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA *ex rel.* BERNARD LISITZA, STATE OF ILLINOIS *ex rel.* BERNARD LISITZA, STATE OF CALIFORNIA *ex rel.* BERNARD LISITZA, STATE OF DELAWARE *ex rel.* BERNARD LISITZA, DISTRICT OF COLUMBIA *ex rel.* BERNARD LISITZA, STATE OF FLORIDA *ex rel.* BERNARD LISITZA, STATE OF GEORGIA *ex rel.* BERNARD LISITZA, STATE OF HAWAII *ex rel.* BERNARD LISITZA, STATE OF INDIANA *ex rel.* BERNARD LISITZA, STATE OF LOUISIANA *ex rel.* BERNARD LISITZA, COMMONWEALTH OF MASSACHUSETTS *ex rel.* BERNARD LISITZA, STATE OF MICHIGAN *ex rel.* BERNARD LISITZA, STATE OF NEVADA *ex rel.* BERNARD LISITZA, STATE OF NEW HAMPSHIRE *ex rel.* BERNARD LISITZA, STATE OF NEW MEXICO *ex rel.* BERNARD LISITZA, STATE OF NEW YORK *ex rel.* BERNARD LISITZA, STATE OF TENNESSEE *ex rel.* BERNARD LISITZA, STATE OF TEXAS *ex rel.* BERNARD LISITZA, COMMONWEALTH OF VIRGINIA *ex rel.* BERNARD LISITZA, and BERNARD LISITZA, individually,

Plaintiffs,

v.

TAP PHARMACEUTICAL PRODUCTS, INC. and OMNICARE, INC.,

Defendants.

No. 07-10026-RGS

FILED UNDER SEAL

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT

The United States of America *ex rel.* Bernard Lisitza; the States of Illinois, California, Delaware, Florida, Georgia, Hawaii, Indiana, Louisiana, Michigan, Nevada, New Hampshire, New Mexico, New York, Tennessee, and Texas, the Commonwealths of Massachusetts and Virginia, and the District of Columbia *ex rel.* Bernard Lisitza, and Bernard Lisitza, individually (collectively "plaintiffs"), state as follows for their Complaint against TAP Pharmaceutical Products, Inc. ("TAP") and Omnicare, Inc. ("Omnicare"):

I. INTRODUCTION

1. This is a *qui tam* action by Plaintiff and Relator Bernard Lisitza ("Relator" or "Lisitza"), individually, and on behalf of several governmental and private insurance company entities. Lisitza is a former employee of defendant Omnicare, which claims to be the nation's largest provider of pharmacy services to long-term care facilities. As a nationwide pharmacy, Omnicare services thousands of elderly, poor and disabled individuals receiving health care covered by Medicaid and other government healthcare programs.

2. For more than five years Lisitza worked for Omnicare as a pharmacist and a pharmacist supervisor. In those roles, he witnessed firsthand the scheme described in this Complaint. The facts set forth are based on his personal observation, his investigation, and the investigation by his counsel.

3. Defendant TAP is a pharmaceutical company engaged in manufacturing, marketing, and selling prescription drugs nationwide.

4. Omnicare, TAP and other drug manufacturers conspired to illegally fill prescriptions with "preferred" drugs of their choice rather than the medication that the doctor had prescribed. TAP and other drug manufacturers paid off Omnicare and other pharmacies to increase usage of "preferred" drugs under "market share agreements." These agreements

provided that Omnicare would receive "rebates" for selling more of the manufacturers' "preferred" drugs; the greater the increase in sales, the bigger the payoff. In fact, TAP and other manufacturers were paying Omnicare kickbacks, to induce Omnicare to switch drugs from the prescribed medication to the drug that would garner a kickback from the manufacturer. Omnicare, TAP and other manufacturers promoted and made switches to increase profits without regard to medical considerations or taxpayer expense.

5. Omnicare created a system, with the assistance of TAP and other manufacturers, that would fill doctors' prescriptions for competing products with the "preferred" product, switching the "preferred" product for the medication that the doctor prescribed. Contrary to basic principles for medical care, Omnicare, TAP and other drug manufacturers made switches for elderly patients who had been stable on a particular medication for years. Defendants also made switches for patients on multiple medications, increasing the risk of adverse interactions. Thus, such switches unnecessarily put patients' health at risk. Defendants' switches also created the need for expensive collateral treatment – including testing and monitoring.

6. One example of this unlawful conduct involves TAP's product Prevacid (lanzoprazole), a medication in the therapeutic class of proton pump inhibitors. These drugs are used to treat ulcers and acid reflux disease. TAP sells Prevacid and other drugs to Omnicare and other pharmacies, directly and through wholesalers.

7. Omnicare and TAP entered into a "Market Share Agreement" providing that TAP's Prevacid would be an Omnicare "preferred" medication among competing proton pump inhibitors. In return for this "preferred" status, TAP agreed to pay ongoing kickbacks to Omnicare, which were disguised as "rebates" for obtaining "market share." TAP paid Omnicare

for every prescription switched from another medication to Prevacid. These payments were referred to as "market share" or "switching" payments.

8. Among other means, Omnicare, TAP and other manufacturers facilitated this fraud by improperly soliciting "Physician Authorization Letters" or "PAL letters" from physicians authorizing this switch. Omnicare solicited PAL letters from prescribing physicians by falsely informing physicians that the switch to Prevacid would save the patient, the client nursing home, and Medicaid money, when in fact this was not the case. Omnicare and TAP concealed their financial motivations and kickback agreements from the doctors. Omnicare also agreed to buttress their PAL requests to doctors with false "scientific evidence" that suggested Prevacid was clinically preferable to other proton pump inhibitors physicians could and did prescribe. Thus, even those switches premised on a PAL were unauthorized because the PALs were obtained under false pretenses.

9. Pursuant to the scheme, Omnicare also regularly made switches with no physician authorization at all.

10. Omnicare and TAP's Prevacid switching was but one drug in an overarching scheme perpetrated by Omnicare, TAP and other manufacturers while Relator worked at Omnicare. Such schemes were a nationwide practice for the defendants; a practice used for other drugs, pharmacies and manufacturers where switching was possible and profitable. Omnicare conspired with other pharmaceutical manufacturers to switch drugs within other therapeutic classes based on whichever manufacturer was willing to pay Omnicare the highest illegal kickback.

11. Omnicare's first switching scheme began no later than 1998 and involved collusion between Omnicare and Bristol Myers Squibb ("Bristol Myers"). This scheme

concerned the medication Monopril (fosinopril sodium), an angiotensin-converting enzyme inhibitor ("ACE inhibitor") for high blood pressure. Bristol Myers later entered into a Market Share Agreement with Omnicare for its medication Abilify (aripiprazole), an atypical antipsychotic. Omnicare also entered into illegal switching-for-kickbacks agreements with other pharmaceutical companies including: Ortho-McNeil Pharmaceutical, Inc. ("Ortho-McNeil"), for the medication Levaquin (levofloxacin), a quinolone-class antibiotic, and for the medication Ultram/Ultracet (tramadol), a pain reliever; Pfizer, Inc. ("Pfizer"), for the medications Lipitor (atorvastatin calcium), a "statin" medication that lowers cholesterol, and Accupril (quinapril), an ACE inhibitor that lowers blood pressure; and Janssen, LP ("Janssen") for the medication Risperdal (risperidone), an atypical antipsychotic.[1] With Prevacid, these medications will be referred to as "preferred" medications

12. Omnicare entered into separate market share agreements with each "preferred" medication manufacturer. Under the terms of these agreements, each "preferred" drug manufacturer would pay Omnicare illegal kickbacks for their representative product within a therapeutic class of medications. The manufacturer then worked with Omnicare to create a complex and illegal system of switching patients from the prescribed medication – a medication that the patient may have been successfully taking for years – to the "preferred" drug. This will be referred to throughout this complaint as the "kickbacks for switches" scheme.

[1] On October 28, 2003, Lisitza filed a related *qui tam* complaint in the United States District Court for the Eastern District of Pennsylvania, entitled U.S. ex rel. Lisitza et al. v. Pfizer et al., No. 03 C 5958 (E.D. Pa. 2003), against these manufacturers (and Johnson & Johnson, as Ortho McNeil and Janssen are wholly-owned subsidiaries of this company). In that complaint and amended complaint (to be filed), Lisitza detailed these other manufacturers' role in the kickbacks-for-switches conspiracy with Omnicare. The complaint in that case is attached as Exhibit A. The most current complaint is incorporated by reference as if each allegation were separated set forth herein.

13. Defendant Omnicare's unlawful actions in the kickbacks-for-switches schemes, both individually and in conspiracy with others, included the following:

- *Making false statements to physicians as to the reason for the switching.* To get physician authorization for the switches, Omnicare lied by telling them that the switch to the "preferred" medications would save Omnicare, the patient, and Medicaid money, when this was not the case.

- *Failing to disclose kickbacks and other financial interests to physicians in soliciting PALs.* Omnicare concealed its financial motivation from physicians, *i.e.* that it was receiving kickbacks from TAP and other manufacturers for switching to "preferred" medications.

- *Falsely representing that the "preferred" medications were scientifically and medically preferable to other available alternatives.* Omnicare published what they purported to be the results of clinical trials and other studies suggesting that "preferred" medications were now the medical "drugs of choice" within their respective medication classes. These purported scientific results were fraudulent, and represented a further effort on Omnicare's part to justify switching all "non-preferred" medication prescriptions to "preferred" medications so that Omnicare could maximize the amount of kickbacks it was receiving. In this way, Omnicare made prescription recommendations to the physicians that were intended to affect their prescribing behavior, *i.e.*, to cause them to prescribe Prevacid, and other "preferred" medications.

- *Forcing its pharmacist staff to solicit PAL letters based on fraudulent information and to switch drugs based on fraudulently-obtained PAL letters.* Omnicare monitored the progress of its consultant and dispensing pharmacists and used the solicitation of PALs as a part of their measured job performance.

- *Monitoring physicians who refused to sign PALs, or who requested that some patients not be switched.* These physicians were given a "hard sell" by TAP and Omnicare consultant pharmacists in the hopes that they could be convinced to execute PALs for all their patients on proton pump inhibitors.

- *Switching drugs without any physician authorization.* If Omnicare could not get physician authorization, it often switched drugs anyway.

14. Defendant TAP conspired and knowingly caused Omnicare and other pharmacies to submit of thousands of Medicaid claims for TAP products that were not eligible for Medicaid reimbursement.

15. Defendant TAP's unlawful actions in the kickbacks-for-switches schemes, both individually and in conspiracy with others, included the following:

- *Making false statements to Omnicare front line pharmacy personnel as to the reason for the switching.* TAP made false representations to Omnicare pharmacy staff, through materials prepared uniquely for Omnicare staff, through "kickoff" and other meetings designed to maximize the wholesale switching, and through making themselves available for technical consultations. These false representations included:
    - That the switch to its "preferred" medication was financially advantageous to the government and private insurers, when this was almost never the case.
    - That its "preferred" medication was clinically the most appropriate drug within the therapeutic class for every patient, when frequently this, too, was not the case.
- *Making false statements to physicians as to the reasons for the switching.* TAP made its marketing personnel available at Omnicare-serviced nursing homes to work with Omnicare consultant pharmacists to convince physicians to sign PALs authorizing wholesale switches.
- *Failing to disclose kickbacks and other financial interests to physicians in helping Omnicare solicit PALs.* TAP failed to disclose to physicians that it was providing kickbacks to Omnicare for switching certain types of medications to "preferred" medications.
- *Requiring Omnicare to develop the computerized electronic capability to accurately track levels of participation in the illegal PAL solicitation program by site and by prescribing clinician.*
- *Rewarding Omnicare for the proportion of patients switched to its preferred medication via illegal switching payments* based on the success of the switching scheme.

16. Defendant TAP also used the kickbacks-for-switches scheme to defraud the government by using its secret kickback pricing arrangement with Omnicare to conceal off-invoice price reductions that should have been reported to the government and then used to calculate government prices (Federal Supply Schedule, and PHS/340b) and rebates (Medicaid).

17. TAP as a drug manufacturer, as a precondition for participating in the Medicaid program, is obligated to report to the Government the lowest price they give any customer for every medication. This is known as the "best price."

18. Congress set up the Medicaid Rebate Program to reduce the cost of drugs to the states' Medicaid Programs. Participating pharmaceutical manufacturers are required by law to give the government a rebate on all drugs paid for by Medicaid. The "best price" is a key component of the formula manufacturers use to calculate this rebate (known as the "Medicaid Rebate").

19. The result of the kickbacks-for-switches scheme was that Defendant TAP was actually giving Omnicare a far better net price on its "preferred" medication than it gave any other entity – after the kickbacks were subtracted. This net price was TAP's true "best price." TAP did not disclose this actual best price to the government. As a result, TAP's Medicaid rebates were grossly understated.

20. Defendant TAP's failure to report the actual best price resulted in other submissions of false claims to the government. TAP uses its reported best price to calculate not only Medicaid rebates; best price also forms the basis of pricing for medications for federally funded "Public Health Service" or "PHS" or "Section 340b" entities – black lung clinics, state-operated AIDS drug purchasing assistance programs, hemophilia diagnostic treatment centers, urban Indian organizations, and disproportionate share programs, among others.

21. The reported best price calculations also set the price TAP charges the Federal Supply Schedule ("FSS") – prices charged to the Department of Defense, the Veterans' Administration, the Bureau of Prisons, and Bureau of Indian Affairs.

22. Using an artificially high best price made the prices on every invoice paid for TAP's pharmaceuticals by 340b or FSS entities fraudulently high – the Federal Government paid millions of dollars it did not have to pay. The kickbacks-for-switches scheme rendered the TAP's quarterly pricing submissions under the 340b program and their annual pricing

submissions under the FSS program false claims, and caused millions of dollars' worth of other false claims to be paid based on the fraudulent best price reports.

23. Furthermore, TAP's participation in the kickbacks-for-switches scheme with Omnicare, including its resulting failure to report actual best price, violated TAP's contractual agreements certifying compliance with all applicable regulations as a precondition for receiving payment for pharmaceuticals under the Medicaid, FSS and 340b programs. Additionally TAP failed to notify, as required, the National Acquisition Center's Contracting Officer of these "price reductions." Defendant TAP is therefore noncompliant with these programs and subject to exclusion from each of these governmental programs and other penalties.

24. The practice whereby Defendant TAP contracted to effect an illegal switching scheme leading to the knowing submission of millions of dollars worth of false claims to the government and private insurers is not limited solely to Omnicare. The specific circumstances alleged herein evidence a pattern of conduct designed to maximize profits at every opportunity through this scheme.

25. Defendants' unlawful activities also caused Omnicare to submit millions of dollars in false claims to private companies providing health insurance to Illinois residents, in violation of the Illinois Insurance Claims Fraud Prevention Act.

26. Relator Lisitza in his position as a pharmacist supervisor at an Omnicare distribution facility, raised concern with his bosses that the Market Share Agreement schemes were costing the government money. His Omnicare supervisors told him that the kickbacks-for-switches scheme was a company-wide policy designed to maximize profits.

27. The practice was not limited to the named "preferred" medications, but was undertaken by TAP, other "preferred" drug manufacturers, and Omnicare nationwide, for other

drugs wherever such wholesale switching was possible and profitable, costing the Government and private insurance companies tens of millions of dollars.

28. In this *qui tam* action, Lisitza alleges that each of the defendants knowingly and deliberately engaged in conduct they knew would lead to violations of numerous federal and state statutes. The first kickbacks-for-switches scheme at Omnicare was rolled out in the beginning of 1998, with several following subsequently. The violations and scheme continued at least into the year 2006.

II. PARTIES

29. Plaintiff and Relator Lisitza is a citizen and resident of the State of Illinois. Lisitza was employed by Jacobs HealthCare ("Jacobs") between 1992 and May 2001. Prior to 1992, Mr. Lisitza managed his own pharmacy practice. During most of his tenure with Jacobs, Lisitza was employed as a pharmacy supervisor, supervising several pharmacists filling orders for Jacobs' nursing home clients. In 1995, Jacobs was acquired by Omnicare and became part of Omnicare's nationwide pharmacy. Lisitza remained as a pharmacy supervisor, under Omnicare employment, until May 2001. Lisitza brings this action on his own behalf, on behalf of the federal government pursuant to 31 U.S.C. §3730(b)(1), on behalf of the government of the State of Illinois pursuant to 740 ILCS 175/4(b)(1) and 740 ILCS 92/1 *et seq.*, and on behalf of the states of California, Delaware, Florida, Georgia, Hawaii, Indiana, Louisiana, Michigan, Nevada, New Hampshire, New Mexico, New York, Tennessee, and Texas, the Commonwealths of Massachusetts and Virginia, and the District of Columbia pursuant to their False Claims Acts.

30. Defendant Omnicare is a Kentucky corporation with its principal place of business in Covington, Kentucky. Defendant transacts business in Illinois through at least three northern Illinois facilities, located in Des Plaines, Illinois (*d/b/a* Jacobs HealthCare Systems),

Elmhurst, Illinois (*d/b/a* Omnicare-Care Tech), and Skokie, Illinois (*d/b/a* Lawrence Weber Medical). Omnicare is a nationwide pharmacy for nursing homes and assisted living facilities. During the relevant period, upper level Omnicare and Jacobs HealthCare officers who knew of and participated in the scheme include Patrick Keefe, Vice President of Omnicare, Carl Skrabash, C.E.O. of Jacobs HealthCare, Arnie Shifrin, Director of Consultant Pharmacy for Jacobs HealthCare, and Marge Ford, Director of Pharmacy Operations at Jacobs HealthCare.

31. Defendant TAP is a wholly-owned joint venture between Abbott Laboratories, a pharmaceutical manufacturer located in north suburban Chicago, IL, and Takeda Chemical Industries, a Japanese pharmaceutical concern. TAP's principal place of business at 675 North Field Drive, Lake Forest, Illinois. TAP is in the business of developing and marketing pharmaceuticals for human consumption. Defendant transacts business in Illinois and nationwide through the sales of its pharmaceutical products. TAP executives at the time period of the development and implementation of the Prevacid scheme included but were not limited to, Alan Mackenzie, current President and former Vice President of Sales, H. Thomas Watkins, former President (1998-2004), and Art Rice, Vice President of Marketing.

III. JURISDICTION AND VENUE

32. This Court has jurisdiction over the subject matter of this civil action, arising under the laws of the United States, pursuant to: (i) 31 U.S.C. §3732, which specifically confers jurisdiction on this Court for actions brought pursuant to 31 U.S.C. §§3729 and 3730; (ii) 28 U.S.C. §1331, which confers federal subject matter jurisdiction; and (iii) 28 U.S.C. §1345, because the United States is a plaintiff.

33. Jurisdiction over all state law claims alleged herein is proper under 31 U.S.C. §3732(b). This Court has supplemental jurisdiction over all state law claims under 28 U.S.C. §1367.

34. This Court has jurisdiction under 31 U.S.C. §3732(a) over defendants Omnicare and TAP because they can be found in, are authorized to transact business in, and are now transacting business in this District.

35. This Court also has jurisdiction under 31 U.S.C. §3732(a) over the defendants because their fraudulent acts, proscribed by 31 U.S.C. §3729, occurred in this District.

36. Venue is proper in this District under 31 U.S.C. §3732(a) and 28 U.S.C. §1391.

37. This suit is not based upon prior public disclosures of allegations or transactions in a criminal, civil, or administrative hearing, lawsuit or investigation, or in a government Accounting Office or Auditor General's report, hearing, audit, or investigation, or from the news media. To the extent that there has been a public disclosure unknown to Lisitza, Lisitza is an original source under 31 U.S.C. §3730(e)(4), 740 ILCS 175/4(e)(4), and other state False Claims Acts. The facts and information set forth herein are based upon Lisitza's personal observation, investigation, and investigation of counsel. Lisitza has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the government before filing a *qui tam* action.

38. Relator Lisitza has provided to the Attorney General of the United States, the United States Attorney for the Northern District of Illinois, the Attorney General of Illinois, and other state Attorneys General a written disclosure statement of substantially all known material evidence in accordance with the provisions of 31 U.S.C. §3730(b)(2), 740 ILCS 175/4(b)(2), and other Plaintiff State False Claims Acts.

IV. THE REGULATORY ENVIRONMENT

39. Numerous state and federal statutes and regulations serve to prevent fraud and abuse in the Medicaid program. Defendants Omnicare and TAP, in collusion or individually, have violated these statutes and regulations and have thereby defrauded the government and private health insurance payors of tens of millions of dollars.

A. THE FEDERAL AND STATE FALSE CLAIMS ACTS

40. The federal False Claims Act imposes liability on any person who:

> 1. Knowingly presents, or causes to be presented, to an officer or employee of the United States government ... a false or fraudulent claim for payment or approval;
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> or,
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> 2. Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the government;
>
> or,
>
> 3. Conspires to defraud the government by getting a false or fraudulent claim allowed or paid.

31 U.S.C. §3729(a).

41. The Plaintiff States' False Claims Acts each have similar language detailing liability.

B. THE ANTI-KICKBACK STATUTE

42. Medicaid, a public assistance program funded by the state and federal governments, pays for the medical expenses of approximately 44 million individuals. It subsidizes the purchase of more prescription drugs than any other health program in the United States.

43. In response to fraudulent and abusive practices in Medicaid-funded programs, Congress added the Anti-Kickback Statute ("AKS") to the Social Security Act in 1977. The

AKS makes it a felony to offer kickbacks or other payments to affect decisions to order goods paid for by federally-funded health programs, including Medicaid. 42 U.S.C. §1320a-7b(b)(2)(A).

44. According to the AKS, a party engages in "illegal remuneration" when that party "knowingly and willfully pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind" to a second person to induce that second person:

> (a) to refer an individual to a person for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, or
>
> (b) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program.

42 U.S.C. §1320a-7b(b)(2).

45. Under the AKS, drug companies may not offer or pay any remuneration, in cash or in kind, to induce anyone to order or recommend drugs that may be paid for by Medicaid. These regulations prohibit outright bribes and rebate schemes as well as any payment by a drug company that has as one of its purposes inducing additional prescriptions for the company's pharmaceutical products.

46. The AKS reaches all fraudulent attempts to cause the government to pay claims it owes no obligation to pay, including claims that are the byproduct of the payment of illegal remuneration. Hence, the AKS creates liability for both sides of an impermissible "kickback" transaction.

C. THE MEDICAID REBATE STATUTE AND RELATED LEGISLATION

47. Congress enacted the Medicaid Rebate Program in an effort to control Medicaid costs. 42 U.S.C. §1396r-8. Under this program, drug manufacturers, including at all relevant times Defendant TAP, voluntarily enter into Rebate Agreements with the Center for Medicaid and Medicare Services ("CMS"), the federal agency that administers Medicaid.

48. In these Agreements, CMS agrees to make each manufacturer's products reimbursable through Medicaid. In exchange, each drug manufacturer is required to report to CMS on a quarterly basis the lowest price it makes available to any wholesaler, retailer, health maintenance organization, or nonprofit entity within the United States, determined inclusive of cash discounts, free goods, volume discounts, and other rebates. This is known as the manufacturer's "best price." 42 U.S.C. §1396r-8(c)(1)(C)(1) and (ii)(I).

49. The Rebate Agreements also require each drug manufacturer to pay each state's Medicaid plan a quarterly rebate. Manufacturers utilize the best price to calculate the amount of this rebate, which is paid to the state on a per-unit basis.

50. Other programs enacted by Congress to save the government money on prescription medications are tied to accurate compliance with the rebate and reporting requirements of the Medicaid Rebate Act. For example, Congress implemented the Drug Pricing Program ("DPP") in the Veterans' Health Care Act of 1992 providing price protections for federally-funded PHS or Section 340b entities including black lung clinics, state-operated AIDS drug purchasing assistance programs, hemophilia diagnostic treatment centers, urban Indian organizations, and disproportionate share programs, among others. 42 U.S.C. §256b(a)(4). Defendant TAP participates in the DPP. As a participant, TAP signs an agreement with the Department of Health and Human Services guaranteeing that PHS entities are charged no more

than a particular price for covered medications – a price calculated using a formula incorporating TAP's reported best price 42 U.S.C. §256b(a)(1) and (2).

51. Similarly, the best price calculations enter into the price Defendant TAP charges government entities under the Federal Supply Schedule, which covers the healthcare programs of the Department of Defense, the Veterans' Administration, the Bureau of Prisons, and federally-funded Indian healthcare programs.

D. STATE LAWS PROHIBITING SUBSTITUTION AND MANDATING COST SAVINGS

52. State Food and Drug Acts, Pharmacy Acts and Medicaid laws prohibit drug substitutions and institute safeguards for cost savings in their Medicaid programs. All states prohibit filling a prescription with any drug other than the one prescribed. For example, the Illinois Food and Drug Act prohibits: "[d]ispensing or causing to be dispensed a different drug in place of the drug or brand of drug ordered or prescribed without the express permission of the person ordering or prescribing." 410 ILCS 620/3 and 3.14.[2]

53. In addition, practically every state more broadly requires that Medicaid providers furnish services economically. The requirement that the provider be accountable for the economic effect of its conduct on the state Medicaid program can appear in the state Medicaid statutory sections, regulatory sections, or in the provider manuals. States generally require that the provider assert its compliance with these Medicaid rules as a condition of participation or payment.

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[2] *See also, e.g.*, Florida, Fla. Stat. §465.016(1)(g) (Prohibiting furnishing upon prescription, an ingredient or articled different in any manner from the ingredient or article prescribed); Delaware, Del. Code tit. 24 §2553(a) (Prohibiting substitution of anything "other or different from the drug, medicine, chemical or preparation for medicinal use, recognized or authorized by the latest edition of the United States Pharmacopoeia/National Formulary, or prepared according to the private formula of some individual or firm, ordered or called for by such person, or called for in a physician's prescription."); Pennsylvania, 55 Pa Code §1121.52(c) (Changes in the nature or brand, strength, directions, or quantity of a drug are acceptable only with prior prescriber consent).

54. In Florida, for example, to be covered by state Medicaid a good or service must be "medically necessary," *i.e.*, "[b]e reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available; statewide" Fla. Admin. Code 59G-1.010(166)(a)(4); *see also*, FL Prescribed Drug Services Coverage, Limitations and Reimbursement Handbook 9-2 and D-9. [3]

E. THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA)

55. The Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Pub.L. 104-191, 110 Stat. 1936, was enacted by Congress to protect the confidentiality of individually identifiable health information obtained and used by healthcare providers. To preserve the confidentiality of that personal health information, HIPAA imposes restrictions upon how such information is obtained, disclosed and used by healthcare providers and their business associates.

56. The U.S. Department of Health and Human Services ("HHS") issued regulations under HIPAA that include severe restrictions in the use of the personally identifiable health information for marketing purposes. On August 2, 2002, HHS promulgated a new marketing regulation at 45 C.F.R. §164.508(a)(3), which requires any healthcare provider to obtain the express authorization of individuals whose personally identifiable health information is to be used or disclosed by that healthcare provider for marketing purposes. For that express authorization to be legally valid it must be in writing, and the healthcare provider must fully disclose to the individual patient whether their information will be used for marketing purposes,

[3] *See also, e.g.,* Ohio, Ohio Admin. Code §5101:3-1-01(A) (5) (For a service to be medically necessary, as required for payment under Medicaid, it must be the lowest cost alternative that effectively addresses and treats the medical problem); Massachusetts, Mass. Regs. Code tit. 130, §450.204(A)(2) (A service is medically necessary if: "there is no other medical service or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more conservative or less costly to the Division.")

whether the marketing uses involves the direct or indirect remuneration to the provider from a third party and, if so, the terms of such an agreement and the remuneration involved.

F. THE ILLINOIS INSURANCE FRAUD CLAIMS PREVENTION ACT (ICFPA)

57. The Illinois Insurance Claims Fraud Prevention Act (ICFPA), 740 ILCS 92/1 *et seq.*, provides that "[a] person who violates any provision of this Act or Article 46 of the Criminal Code of 1961 [720 ILCS 5/46] shall be subject, in addition to any other penalties that may be prescribed by law, to a civil penalty of not less than $5,000 nor more than $10,000, plus an assessment of not more than 3 times the amount of each claim for compensation under a contract of insurance." 740 ILCS 92/5(b).

58. Article 46 of the Criminal Code of 1961 delineates insurance fraud as follows:

> A person commits the offense of insurance fraud when he or she knowingly obtains, attempts to obtain, or causes to be obtained, by deception, control over the property of an insurance company or self-insured entity by the making of a false claim or by causing a false claim to be made on any policy of insurance issued by an insurance company or by the making of a false claim to a self-insured entity permanently of the use and benefit of that property.

720 ILCS 5/46-1(d)(5).

59. Article 46 of the Criminal Code of 1961, 720 ILCS 5/46, also defines "false claim" broadly as:

> [A]ny statement made to any insurer purported insurer, servicing corporation, insurance broker, or insurance agent, or any agent or employee of the entities, and made as part of, or in support of, a claim for payment or other benefit under a policy of insurance ... when the statement contains any false, incomplete, or misleading information concerning any fact or thing material to the claim...

720 ILCS 5/46-1(d)(5).

60. The ICFPA's *qui tam* provision, 740 ILCS 92/15, provides that any interested person may bring a civil action, in the name of the State of Illinois, for violations of 740 ILCS 92/1 *et seq.*, and by incorporation, 720 ILCS 5/46-1.

V. DEFENDANTS' GOVERNMENT BUSINESS

61. Omnicare provides pharmaceuticals for thousands of elderly and disabled clients whose benefits are paid by the government. Omnicare receives millions of dollars annually as reimbursement from the government for services funded under Medicaid, Medicare, Tri-Care/CHAMPUS, VA-funded health insurance programs, and other government funded healthcare programs.

62. At all times relevant to this action, Omnicare has been primarily engaged in providing pharmacy services to nursing homes through regional centers. Many of Omnicare's pharmacy services are provided under contractual agreement with the states through each state's Medicaid provider licensure program.

63. For example, Omnicare provides services to the State of Illinois on a contractual basis through its Medicaid provider licensure program, whereby Omnicare agreed to provide pharmaceuticals to Illinois Medicaid patients in the nursing homes it serves, and the Illinois Department of Healthcare and Family Services agrees to reimburse Omnicare at a statutorily-defined rate, plus a fixed dispensing fee, meant to provide Omnicare with a profit for providing services to Illinois Medicaid clients.

64. Omnicare, which has facilities in 47 states, has similar arrangements with the agencies responsible for administering Medicaid in other states. Omnicare often operates through subsidiaries.

65. Defendant TAP's pharmaceuticals are used by thousands of low-income individuals and families, disabled persons, elderly persons, and military personnel and their families whose benefits are paid by the government. TAP knows that its products are paid for by the Medicaid program, as well as under other government programs. As a condition of Medicaid

payment for its products, TAP entered into a Master Rebate Agreements with the government pursuant to 42 U.S.C. 1396r-8, under which TAP agreed to give rebates to Medicaid based on its reported best price.

66. TAP receives millions of dollars annually as a result of reimbursements from the government for prescriptions provided to persons receiving benefits from Medicaid, Tri-Care/CHAMPUS, and state-operated prescription reimbursement programs (*e.g.*, Illinois SeniorCareRx and Circuit Breaker), as well as other government third-payor health insurance programs.

VI. THE KICKBACKS-FOR-SWITCHES SCHEMES

67. Drugs are grouped into therapeutic classes by disease treated and effect on the body. Most therapeutic classes are comprised of several drugs made by different manufacturers. Drugs within a therapeutic class are not identical or legally interchangeable. Drugs that treat the same disease often have different side effects. Some drugs are particularly effective within a certain patient population while less effective in others.

68. Drug selection is fundamentally a medical judgment. To be valid, a prescription must be based on a doctor's medical evaluation of a specific patient. Competition within a therapeutic class for market share among drug manufacturers is often fierce. Manufacturers vie for doctors' attention through numerous methods.

69. Defendant TAP developed a scheme whereby it conspired with large pharmacies like Omnicare and other pharmaceutical distributors to effect illegal kickbacks-for-switches schemes within therapeutic classes. Rather than needing to market its drug to individual doctors, TAP was able to pay off the pharmacy and market its drugs without needing to persuade doctors of their safety and efficacy.

70. Long term care facilities, including those serviced by Omnicare, tend to contain numerous elderly patients taking common types of medications including proton pump inhibitors for treatment of ulcers and acid reflux.

71. Where a particular therapeutic class of medications treating a chronic condition common to long term facilities contained a number of competing drugs, conditions were ripe for a kickbacks-for-switching scheme. These schemes, such as the one between TAP and Omnicare, entered into so that the "preferred" drug manufacturer could illegally boost its market share within a therapeutic class, were called "Market Share Agreements" or "Reimbursement Agreements."

72. As a pharmacy, Omnicare owes certain duties to the patients whose prescriptions it receives, fills, or arranges to fill. Among these duties is a duty to provide accurate, complete, and reliable information to patients and physicians when dispensing prescription medications. Omnicare has an affirmative duty to disclose all relevant information to both physicians and patients. This duty arises from the nature of the transactions and the expert services involved in the provision of prescription drugs, and the nature of the relationship between the parties – pharmacists, physicians, and patients – which is a special relationship of trust and confidence.

73. Notwithstanding Omnicare's obligation to disclose complete and accurate information to patients and physicians in order to ensure that prescription drug transactions among pharmacists, patients, and physicians are properly conducted, Omnicare undertook a program and course of conduct designed to prevent both its consultant and dispensing pharmacists from disclosing relevant, important information to physicians and patients, and to affirmatively compel them to present a false or misleading impression for the "preferred" drugs. This course of conduct was intended to, and did, interfere with the legitimate decision-making

authority of physicians and patients, and denied them material information upon which to make decisions concerning patient care.

74. Relator Lisitza was forced to participate in a number of these schemes during his tenure as a pharmacist and as a supervisor of other pharmacists at Omnicare.

75. Omnicare's highly-touted "Therapeutic Interchange" program is theoretically meant to facilitate legal, properly authorized switches between medications within a therapeutic class for the sole purpose of benefiting patient health and wellbeing. *See* Omnicare website, http://www.Omnicare.com/geriatric.asp (emphasizing patient wellbeing and payor savings as the reasons for Omnicare's use of therapeutic interchange.) But by entering into a Market Share Agreement with Omnicare, TAP and other "preferred" drug manufacturers co-opted this program and facilitated Omnicare's mass switching, often to drugs that are more expensive for payors or to drugs which have no benefit, and even jeopardize, patients' health. Effectively, TAP and other "preferred" drug manufacturers bought their way onto Omnicare's "preferred" medication list, purely focusing on maximizing profits with no thought to patient wellbeing or the impact the switches would have on government and private insurance payors.

A. LISITZA LEARNS OF THE FIRST ILLEGAL MARKET SHARE AGREEMENT BETWEEN BRISTOL MYERS AND OMNICARE

76. Relator Lisitza first became aware of the kickbacks-for-switches schemes during his employment as an Omnicare pharmacy supervisor when Bristol Myers entered into a Market Share Agreement with Omnicare for the promotion of Monopril. Monopril is classified as an ACE inhibitor, a therapeutic class of medications prescribed to treat high blood pressure and congestive heart failure.

77. Plaintiff Lisitza's Omnicare Supervisor was Carl Skrabash ("Skrabash"). Skrabash served as Chief Executive Officer of two Omnicare facilities in northern Illinois,

Jacobs and Lawrence Weber. In early 1998, Skrabash informed Lisitza that Omnicare and Bristol Myers had reached an agreement: Bristol Myers would pay Omnicare a $25 "market share payment" for every ACE inhibitor prescription Omnicare could switch from another manufacturer's ACE inhibitor to Monopril, Bristol Myers' ACE inhibitor. For every refill of the switched-to-Monopril prescription, Bristol Myers would pay $12. Since ACE inhibitors are generally prescribed for a long period of time, switching a patient from another manufacturer's ACE inhibitor to Monopril in exchange for ongoing kickbacks was a significant economic incentive for Omnicare.

78. Under the Bristol Myers Monopril Market Share Agreement, Bristol Myers gave Omnicare rebates, also known as "market share" or "switching" payments, specifically tied to Omnicare's ability to generate new sales and refills of Monopril. In exchange for these payments, Omnicare made Monopril a "preferred" medication.

79. While Bristol Myers and Omnicare may have attempted to disguise their bribes as "rebates" or "discounts," Omnicare communicated the unvarnished truth to the employees implementing the switches; manufacturers were paying a bounty for each switch.

80. Bristol Myers' representatives often visited Omnicare locations for the purpose of promoting the switches. Bristol Myers developed special materials targeted solely to Omnicare pharmacists and physicians in Omnicare-serviced nursing homes to "educate" these audiences on the importance of the switching program and on how to switch patients from other ACE inhibitors to Monopril.

81. Bristol Myers' marketing personnel met with Omnicare pharmacists before the commencement of mass switching to Monopril to educate pharmacists on how to make the switches. Relator Lisitza attended a meeting where Bristol Myers' marketing staff and Omnicare

senior management together informed Omnicare's front line pharmacists and pharmacy supervisors that the switches were not only going to be beneficial to patients in Omnicare-serviced long term care facilities, but would save the entities paying for medications – government programs such as Medicaid, as well as private insurers – money.

82. In order to facilitate the switches, Bristol Myers also made marketing and pharmacy technical agents available to Omnicare pharmacists who needed technical assistance to switch patients from other ACE inhibitors to Monopril.

83. In turn, Omnicare ordered consulting pharmacists to promote the switches to prescribing physicians. Omnicare provides consultant pharmacists to educate physicians writing orders in Omnicare-serviced long term care facilities about prescription alternatives. As licensed pharmacists, these consultants were required to put patient care above all other considerations. However, the kickbacks–for–switches scheme was designed so that profits would be the primary consideration.

84. Omnicare also required its dispensing pharmacists to support the switching by converting dosages from one drug to another (which caused undue risks to patients), assisting nurses in effectuating the switches, and encouraging physicians to comply with Omnicare's PAL program.

85. When a patient in an Omnicare-serviced nursing home requires a prescription medication, physicians typically give written or verbal prescription orders for their patients to nurses. The nurses transmit the prescription orders verbally or by facsimile to Omnicare clerical data entry personnel for entry into Omnicare's computerized order system. The verbal orders are also entered on "Physician Order Sheets," which should be verified monthly by nursing home physicians and Omnicare consultant pharmacists to make sure proper care is being given.

86. Once a prescription order is entered into Omnicare's order entry system, an Omnicare pharmacist fills the prescription based on the physician's request. The medication is then shipped to the nursing home facility where the patient resides. Once the prescription is filled, Omnicare prepares a claim to be submitted to the government or private insurance payor for reimbursement to Omnicare, the dispensing pharmacy.

87. It is illegal to switch a patient's prescription within a therapeutic class without express permission from the treating physician. Therefore, Bristol Myers and Omnicare facilitated the kickbacks-for-switches scheme through the illegal solicitation of what are referred to in the trade as "Physician Authorization Letters" or "PALs." A PAL grants a pharmacist blanket approval to switch a patient from one prescribed drug to another within a therapeutic class. When PALs are solicited for legitimate and truthful reasons, their use is legal in some states (including Illinois); others states do not allow "blanket" PALs. Bristol Myers helped Omnicare solicit PAL letters illegally.

88. Working in close coordination with Bristol Myers' marketing staff, Omnicare's consultant pharmacists became a front line army pressuring physicians into signing PALs that allowed Omnicare to switch all ACE inhibitor prescriptions to Monopril from other manufacturers' drugs within the same therapeutic class.

89. Omnicare's actions in furtherance of the conspiracy with Bristol Myers, and later with other "preferred" drug manufacturers such as Defendant TAP, included the following:

- *Making false statements to physicians as to the reason for the switching.* Omnicare represented to the physicians that the switch to "preferred" medications would save Omnicare, the patient, and Medicaid money, when this was not the case.

- *Failing to disclose kickbacks and other financial interests to physicians.* Omnicare did not disclose to physicians when soliciting PALs that it was receiving kickbacks from drug manufacturers such as Bristol Myers for switching certain types of medications to "preferred" medications.

- *Falsely representing that the "preferred" medications were scientifically and medically preferable to other available alternatives.* Omnicare also published what they purported to be the results of clinical trials and other studies suggesting that "preferred" medications were now the medical "drugs of choice" within their respective medication classes. These purported scientific results were fraudulent, and represented a further effort on Omnicare's part to justify switching all "non-preferred" medication prescriptions to "preferred" medications so that Omnicare could maximize the amount of kickbacks it was receiving. In this way, Omnicare made prescription recommendations to the physicians that were intended to affect their prescribing behavior, i.e., to cause them to prescribe Monopril.

- *Forcing their pharmacist staff to solicit PAL letters based on fraudulent information and to apply fraudulently-obtained PAL letters wherever possible.* Omnicare monitored the progress of their consultant and dispensing pharmacists and used the solicitation of PALs as a part of their measured job performance.

- *Monitoring physicians who refused to sign PALs, or who requested that some patients not be switched.* These physicians were given a "hard sell" by Bristol Myers and Omnicare consultant pharmacist staff in the hopes that they could be convinced to execute PALs for all their patients on ACE inhibitors.

90. Bristol Myers paid kickbacks to Omnicare on the basis of specific sales and performance goals set forth in the Market Share Agreement. The amount of a kickback increased on a sliding scale proportionate with Omnicare's successful increase of Monopril's market share through the PAL-based kickbacks-for-switches program.

91. With the PAL letters signed, Omnicare staff made system changes to ensure Omnicare would reap its reward from Bristol Myers. Omnicare reconfigured its computer system so that any physician order for a "nonpreferred" medication would be automatically switched to a "preferred" medication. Once a PAL was in place, Omnicare pharmacists instructed the nursing home personnel to switch the order to the "preferred" medication – even retroactively.

92. Pursuant to the PAL, if a physician prescribed a medication that appeared on the PAL substitution list (Omnicare's list of non-preferred drugs that fell within the class of its

kickback-sponsored preferred drugs), a special printer at Omnicare produced a letter explaining to the facility that the physician had authorized Omnicare to switch the prescribed medicine. An Omnicare pharmacist would then fax the letter to the nursing home so the nurse could change the order.

93. Omnicare's PAL computer system had a mechanism for tracking and producing receivables to demonstrate the effectiveness of the PAL letters and for the purpose of generating a report akin to an invoice detailing successful switches. Omnicare could then use these reports to invoice Bristol Myers for their kickbacks. The PAL computer system also tracked physicians who refused to execute PALs.

94. Lisitza witnessed the switching of ACE inhibitors to Monopril even in patients whose physicians had not executed PALs, had refused to execute PALs, or who specifically instructed that their patient was to receive an ACE inhibitor other than Monopril.

95. To effect the Monopril Market Share Agreement Omnicare engaged in unauthorized medication substitution, replacing the independent medical judgment of a patient's physician with that of the "preferred" drug manufacturer, Omnicare pharmacists, consulting pharmacists, and other Omnicare employees, by changing physicians' orders for specific ACE inhibitors to Monopril.

96. Omnicare knew, intended, or reasonably should have known and foreseen that the Market Share Agreement would result in the government paying more for ACE inhibitor reimbursement.

97. Lisitza was concerned that the drug switching done pursuant to Bristol Myers' Market Share Agreement would dramatically increase the monthly cost of ACE inhibitor prescriptions to the government. For example, switching a patient from Captopril to Monopril

resulted in an enormous price increase of five times the cost per patient per month.

98. Norm Jacobson, Omnicare's corporate Vice President (and former owner) of the Jacobs facility, expressed similar concerns about the cost and ethics of a kickback-induced switching program.

99. Lisitza was rebuffed when he confronted CEO Skrabash with his concerns about the PAL program. Upon implementation of the Monopril kickbacks-for-switches scheme, Skrabash emphasized to Lisitza that the PAL program was "very important" to Omnicare's profitability and told him to expect numerous Market Share Agreement/PAL programs in the near future. A. Samuel Enloe, an Omnicare regional vice president, echoed Skrabash's enthusiasm, once telling Lisitza that the PAL program was "a stroke of genius." Despite Lisitza's good faith efforts, Skrabash could not be persuaded to cease Omnicare's unlawful switching practices. Lisitza was ultimately retaliated against for his ethical stance – he was shunned by management and eventually terminated by Omnicare.

100. While the confidential information and documentation that would reveal additional names, dates, times, and places relating to the negotiation and implementation of Omnicare's first illegal Market Share Agreement is solely within the possession of Bristol Myers and Omnicare, Lisitza's superiors conceded the existence, implementation, and financial impact of the Monopril Market Share Agreement to Lisitza and instructed him about what he was required to do to accomplish the financial objective of the Monopril Market Share Agreement. Accordingly, before his termination, Lisitza personally filled hundreds of "switched" prescriptions for Monopril while employed by Omnicare. He also witnessed thousands of prescriptions switched pursuant to the Monopril Market Share Agreement.

B. ILLEGAL MARKET SHARE AGREEMENTS ENDANGERED THE HEALTH AND WELFARE OF LONG TERM CARE FACILITY PATIENTS RECEIVING PHARMACEUTICALS FROM OMNICARE

101. Medications within a therapeutic class are not interchangeable cogs. Each has its strengths and weaknesses depending on the patient's condition, other conditions the patient may have, and the other medications a patient is taking. These medications also have different concentrations and levels of effectiveness.

102. Drug switching based on undisclosed financial reasons, when there is no valid medical reason to do so, endangers the health or even the life of a patient. The efficacy and safety of the prescription drug system relies upon the honesty and proper motivation of drug companies and pharmacists to benefit patients.

103. Whenever a "preferred" drug manufacturer, such as TAP, and Omnicare cooked up a kickbacks-for-switches Market Share Agreement, Omnicare's Clinical Pharmacists, in conjunction with advisors from the manufacturer, were charged with developing the appropriate formula to equate the dosage of the switched-to "preferred" medication with the dosage of the "switched from" medication. This is not an exact science.

104. The American Medical Association ("AMA") has specifically condemned such switching practices as bad medicine. It is unethical – in their adopted Policies, the AMA opposes kickbacks-for-switches, denouncing the practice of pharmacists recommending medication switches based on incentive payments before or after such switches. It is also unsafe – the AMA also disfavors switching therapeutic alternatives in patients with chronic disease who are stabilized on a drug therapy regime. AMA Policy H-125.911 "Drug Formularies and Therapeutic Interchange."

105. The AMA's concerns are not theoretical. They affected thousands of Omnicare-

serviced patients on a daily basis. Defendants through the kickbacks-for-switches schemes sought to lull nursing home physicians into a false sense of confidence by directing Omnicare pharmacists to give constant reassurances that a "preferred" "drug of choice" would be as effective as the medication a patient was initially prescribed within the same therapeutic class. Such equivalence representations created two great risks. First, as the AMA notes, switching a patient from one medication to another when the patient is stabilized on the first medication, absent a clear medical indication that a switch is warranted, puts patients at risk. Omnicare and TAP, and other "preferred" drug manufacturers, through their illegal PAL solicitation schemes, switched wholesale thousands of patients who had been stabilized on a particular medication. Second, because of the unique nature of each different medication within a particular therapeutic class, for any given patient the "preferred" drug was often not the drug of choice from a medical standpoint.

106. For example, for many of the nursing home patients for whom an ACE inhibitor was indicated because of their high blood pressure, Monopril was not the "drug of choice." Among its many adverse side effects, Monopril tends to increase liver function impairment when compared to other ACE inhibitors. If a patient was anemic, Monopril was not the "drug of choice." If a patient had certain heart conditions and was suffering from congestive heart failure, or if a patient had had a heart attack and was suffering from left ventricular dysfunction, other ACE inhibitors – not Monopril – were specifically indicated. Similarly, other Omnicare "preferred" switched-to drugs were medically inappropriate for at least some of the patients affected by the kickback-induced switches. However, during Lisitza's tenure at Omnicare, the Omnicare computer-based pharmacy system was designed in such a way that it was unable to flag patients with a medical history indicating that Monopril, and the other switched-to drugs,

were not preferred medications.

107. Once a "switch" happened, the nursing home physicians, who make hundreds of prescribing decisions daily, were unlikely to notice or comment on subsequent refill orders that the prescription had been switched. Lisitza also has knowledge that often the nursing home physicians, with responsibility for an incredibly high number of patients daily, would often continue to write the prescription for the medication they thought were appropriate, in spite of the PAL. Omnicare ignored the physicians' prescription and switched the drugs anyway, without regard for whether the physicians were writing the prescription for the original medication knowing that the medication would be switched via the PAL or was, by his conduct, indicating that the PAL switch was medically inappropriate for a particular patient.

108. The Omnicare computer system created a "hard block" whereby pharmacists attempting to dispense the medication actually prescribed were precluded from doing so. Omnicare pharmacists were supposed to ensure that a PAL was in place in order to switch to the preferred medication. However, often there was no PAL in place, and Omnicare pharmacists were pressured to switch the prescription with no physician authorization.

109. Not only was the switching scheme potentially threatening to a patient's health, it created ancillary expenses increasing health care costs. For example, commencing and sustaining drug therapies with the "preferred" medications can require a beneficiary to undergo new tests to monitor the patient's response to the new drug therapy. The government or the private insurance payor, not Omnicare, bore the burden of these additional collateral expenses.

110. Omnicare compounded these serious complications by failing to monitor the care of the nursing home patients victimized by the switches. Hence, for example, an Omnicare pharmacist would not know that a patient was anemic and for his or her health and safety should

be switched from Monopril to another more effective or appropriate ACE inhibitor (or maintained on the originally prescribed, appropriate ACE inhibitor).

111. The unlawful Market Share Agreements resulted in such patients failing to receive the best medication for their individual conditions. Omnicare used its pharmacist staff to lull physicians, ostensibly the gatekeepers when it comes to prescribing medications, into signing PALs thinking Omnicare would exercise due diligence to "catch" those instances where a switch was medically problematic. This did not happen, and elderly patients were put at risk.

C. AFTER OMNICARE'S SUCCESS WITH THE MONOPRIL PAL PROGRAM, OMNICARE ENTERED INTO SIMILAR KICKBACK-FOR-SWITCHES SCHEMES WITH OTHER DRUG MANUFACTURERS WITH SIMILAR RESULTS AND RISKS

112. The mechanics of the Bristol Myers/Omnicare scheme set the framework for subsequent schemes entered into by the other "preferred" drug manufacturers and Omnicare. In each case, a drug within a commonly prescribed therapeutic class – antibiotics for bedsores and other infections, blood pressure and cholesterol medications, antipsychotics for dementia – became a "preferred" medication because a manufacturer paid bribes to make it so, notwithstanding the cost to the government and private payors or the impact on patient health.

113. In addition to the Market Share Agreement with "preferred" drug manufacturer Defendant TAP detailed in this complaint, Omnicare conspired with several other manufacturers including, Bristol Myers, Ortho-McNeil, Pfizer, and Janssen, for switches to numerous other "preferred" drugs including, Monopril, Abilify, Levaquin, Ultram/Ultracet, Lipitor, Accupril, and Risperdal.[4]

114. "Rollouts" of new "preferred" medications came approximately every three

[4] *See*, Related action U.S. ex rel. Lisitza et al. v. Pfizer et al., No. 03 C 5958 (E.D. Pa. 2003) (detailing the allegations regarding these manufacturers' role in the kickback-for-switches scheme and conspiracy with Omnicare.) Complaint attached as Exhibit A.

months following the Bristol Myers/Monopril rollout. The preparation for each new rollout was similar. The "preferred" drug manufacturer, four to six weeks before the rollout, would prepare special materials for Omnicare pharmacist staff articulating the mechanics of switching medications to the new "preferred" medication. A lavish kickoff meeting would be held, either in the Omnicare facility or in a local posh hotel, where Omnicare pharmacist staff would be treated to a meal while the drug manufacturer marketing staff and Omnicare senior management would begin the drumbeat about how this latest "therapeutic interchange" would benefit patients and save the government and private payors money. Relator's Omnicare supervisor Carl Skrabash always attended these meetings.

115. The "preferred" drug manufacturer and Omnicare would join forces to strong-arm as many physicians as possible into signing PALs to effect the switch, which was often to a drug that was more expensive for payors. Patients who had been stable on a particular medication for years would be switched to a new one, with little follow-up as to potential health risks or impacts. Wayward physicians who did not enter PALs received further pressure from the drug manufacturer and Omnicare, and sometimes switches were made even if the physician had not given permission.

VII. DEFENDANTS TAP AND OMNICARE ENTER INTO A MARKET SHARE AGREEMENT WITH RESPECT TO PREVACID

116. Shortly after the Bristol Myers/Monopril switch, in or about 1998, Defendant Manufacturer TAP entered into a Market Share Agreement with Omnicare with respect to its drug Prevacid (lansoprazole), one of a therapeutic class of medications known as "proton pump inhibitors." Nursing home residents are large consumers of proton pump inhibits, whose major function is to reduce the amount of gastric acid produced in the stomach, reducing stomach discomfort and heartburn. Commonly prescribed proton pump inhibitors include: Prilosec/Losec

(omeprazole), Nexium (esomeprazole), Protonix (pantoprazole), and Aciphex (rabeprazole). Nationwide, Omnicare fills thousands of proton pump inhibitor prescriptions daily. TAP and Omnicare conspired to switch all proton pump inhibitor prescriptions for Omnicare-serviced patients to Prevacid.

117. Both Omnicare and TAP, for the periods relevant to this Complaint, had Corporate Integrity Agreements with the United States government which purported to preclude improper and illegal marketing and billing practices, set forth a code of conduct for each company to follow, and required extra efforts to ensure compliance with all applicable marketing and billing laws and regulation.

118. Yet, in exchange for TAP's payment of illegal kickbacks for every proton pump inhibitor prescription switched to Prevacid, Omnicare agreed to solicit, based upon fraudulent information, letters from physicians – PALs – authorizing the switch.

119. Defendants charged Omnicare pharmacists with developing the appropriate methodology to make sure a "switched" dose of Prevacid had the same therapeutic dosage as whatever disfavored proton pump inhibitor had actually been prescribed. Different proton pump inhibitors have different concentrations and levels of effectiveness. However, Prevacid was only available in limited dosages including the 15 mg and a 30 mg tablet. Therefore, Omnicare clinical pharmacy management often forced switches to a therapeutically non-equivalent dose in order to maximize revenue. Ms Nora Flint, the Omnicare pharmacist primarily responsible for developing conversion methodologies and coming up with medical "justifications" for the switches, encouraged PALs authorizing switches to the 30 mg dose for every proton pump inhibitor prescription, rather than the often more precisely functionally equivalent 15 mg dose (which Relator believed to be clinically preferred).

120. Omnicare's primary reason for switching drugs is to enhance its revenue regardless of costs to the government, private payors, or of any potential adverse or life-threatening outcomes to patients associated with the switch.

121. Omnicare does not specifically follow up with patients who have been switched to a different drug, and fails to monitor the outcome of these drug switches, relying instead on frontline clinical staff at its client nursing homes to do so.

122. Drug switching based on undisclosed financial reasons may endanger the health or life of the patient whose drug was switched at the initiation of Omnicare and TAP and results in increased health care costs to the government and other payors.

123. TAP's primary reason for engaging in this conspiracy is to increase profits, and to enhance its market share, and therefore its share price.

124. Each of the practices referred to above occurred as a result of a conscious policy and specific corporate direction.

125. Once a PAL was in place authorizing switches from other proton pump inhibitors to Prevacid, Omnicare reconfigured its computer system so that any physician order for a different proton pump inhibitor was automatically switched to Prevacid. Nurses at the nursing homes were instructed by Omnicare pharmacists to switch the order to Prevacid, and were also instructed to retroactively switch previously-filled proton pump inhibitor prescription orders to Prevacid.

126. TAP representatives often visited Omnicare locations for the purpose of promoting the switches. TAP developed special materials targeted to Omnicare pharmacists and physicians in Omnicare-serviced nursing homes to "educate" these audiences on the importance of the switching program and on how to switch patients from other proton pump inhibitors to

Prevacid.

127. TAP's marketing personnel met with Omnicare pharmacists and pharmacy distributors before the commencement of mass switching to Prevacid to educate pharmacists on how to make the switches. Meetings were held with Omnicare staff where TAP's marketing staff informed Omnicare's front line pharmacists and pharmacy supervisors that the switches were not only going to be beneficial to patients in Omnicare-serviced long term care facilities, but would save payors money.

128. TAP also made marketing agents available to Omnicare pharmacists who needed subsequent technical assistance to switch patients from other proton pump inhibitors to Prevacid.

129. TAP also worked with Omnicare to illegally solicit PALs from physicians authorizing blanket switches to Prevacid. TAP's actions in furtherance of this conspiracy included:

- *Making false statements to Omnicare front line pharmacy personnel as to the reason for the switching.* TAP made false representations to Omnicare pharmacy staff, through materials prepared uniquely for Omnicare staff, through "kickoff" and other meetings designed to maximize the wholesale switching, and through making themselves available for technical consultations. These false representations included:
    - That the switch to its "preferred" medication was financially advantageous to the government and private insurers, when this was almost never the case.
    - That its "preferred" medication was clinically the most appropriate drug within the therapeutic class for every patient, when frequently this, too, was not the case.
- *Making false statements to physicians as to the reasons for the switching.* TAP made its marketing personnel available at Omnicare-serviced nursing homes to work with Omnicare consultant pharmacists to convince physicians to sign PALs authorizing wholesale switches.
- *Failing to disclose kickbacks and other financial interests to physicians in helping Omnicare solicit PALs.* TAP did not disclose to physicians that it was providing kickbacks to Omnicare for switching certain types of medications to "preferred" medications.

- *Requiring Omnicare to develop computerized electronic capability to accurately track levels of participation in the illegal PAL solicitation program by site and by prescribing clinician.*

- *Rewarding Omnicare for the proportion of patients switched to Prevacid via illegal switching payments* based in part on the success of the switching scheme.

130. TAP knew, intended, or reasonably should have known and foreseen that the Market Share Agreement would induce Omnicare to engage in unauthorized drug switching, replacing the independent medical judgment of a patient's physician with that of Omnicare pharmacists, consulting pharmacists, and other Omnicare employees, by changing physicians' orders for specific proton pump inhibitors to Prevacid.

131. In much the same way as the wholesale switching to Monopril was medically disadvantageous for many patients, wholesale switching to Prevacid placed patients at risk in many ways. First, contrary to AMA policies, TAP and Omnicare effected switches for patients who had been stabilized on other proton pump inhibitors for years. Secondly, for many of the nursing home patients for whom a proton pump inhibitor was indicated, Prevacid was not medically the "drug of choice" that the doctor had prescribed.

132. During Lisitza's tenure at Omnicare, the Omnicare computer-based pharmacy system was unable to flag patients with a medical history indicating that Prevacid was not a preferred medication.

133. While the confidential information and documentation that would reveal additional names, dates, times, and places relating to the negotiation and implementation of the illegal Market Share Agreement is solely within the possession of TAP and Omnicare, Lisitza's superiors revealed the existence, implementation, and financial impact of the Prevacid Market Share Agreement to Lisitza and instructed him about what he was required to do to accomplish the financial objective of the Prevacid Market Share Agreement.

134. Accordingly, before his termination, Lisitza personally filled hundreds of "switched" prescriptions for Prevacid while employed by Omnicare. He also witnessed thousands of prescriptions switched pursuant to the Prevacid Market Share Agreement.

135. TAP worked with other large pharmaceutical distributors, including pharmacy benefit managers, and hospitals, to illegally gain market share for Prevacid in the proton pump inhibitor market through illegal kickbacks-for-switches schemes similar to the one effected with Omnicare. The specific circumstances alleged herein evidence a pattern of conduct by TAP designed to maximize profits through this scheme at every opportunity, through various other drugs and other providers.

VIII. OMNICARE'S ELIGIBILITY FOR MEDICAID REIMBURSEMENT IS CONTINGENT UPON ITS ACTUAL AND CERTIFIED COMPLIANCE WITH ALL APPLICABLE FEDERAL AND STATE REGULATIONS

136. Omnicare-serviced facilities contain thousands of Medicaid beneficiaries. Therefore, Omnicare facilities make millions of claims to the government, for at least tens of millions of dollars annually, for prescription drugs it purchases and distributes through its regional pharmacies.

137. Omnicare's Medicaid-reimbursed services are provided under contractual agreement through each state's Medicaid provider licensure program. In Illinois, for example, Omnicare contractually agrees to provide pharmaceuticals to Illinois Medicaid patients in the long term care facilities it serves. In return, the Illinois Department of Healthcare and Family Services ("IDHFS," formerly, Illinois Department of Public Aid) reimburses Omnicare at a statutorily-defined rate[5], plus a small dispensing fee, which is meant to provide Omnicare with a

[5] Medicaid reimbursement rates are the lowest of the following five possible prices:
A. The average wholesale price minus 12 percent
B. The federal upper limit price
C. The state upper limit price in the Illinois Formulary for the Drug Selection Program

profit for providing services to Illinois Medicaid clients.

138. In order to be eligible for Medicaid reimbursement, Illinois pharmacies (including Omnicare's dispensing pharmacies) must complete an IDHFS application process and obtain a provider number. Providers completing this application process must attest to their professional licensure, their Drug Enforcement Administration identification numbers, and must agree to the following provisions stated in the application, entitled "Agreement for Participation in the Illinois Medical Assistance Program":

> 2. The provider agrees, on a continuing basis, to comply with applicable licensing standards as contained in the State laws or regulations.
>
> * * *
>
> 4. The Provider agrees, on a continuing basis, to comply with Federal standards specified in Title XIX of the Social Security Act, and also with all applicable Federal and State laws and regulations
>
> 5. The Provider agrees to be fully liable for the truth, accuracy, and completeness of all claims submitted electronically or on hard copy to the Department for Payment. Any submittals of false or fraudulent claims or any concealment of a material fact may be prosecuted under applicable Federal and State laws.

139. Plaintiff Louisiana has similar requirements for pharmacies seeking to become eligible to receive Medicaid reimbursement for pharmaceuticals. In 1997, Louisiana enacted the Medical Assistance Program Integrity Law (MAPIL) cited as La. Rev. Stat. Ann. §§46:437.1-46:440.3. Louisiana pharmacies, including Omnicare dispensing pharmacies in that state, are subject to MAPIL. The retroactive provisions of MAPIL statutorily establish that: (1) the

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D. The average wholesale price where price is based on actual market wholesale price or
E. The wholesale acquisition cost plus 12 percent.

See, 89 Il. Adm. Code 140.445 (1). The state calculates the average wholesale price and wholesale acquisition costs based on its estimates of the price generally and currently paid by providers or as sold by a particular manufacturer. *See* 42 C.F.R. 442.301 (2001). *See also*, Rite Aid of Pennsylvania v. Houstoun, 171 F.3d 842, 846 (3rd Cir. 1999) (Explanation of state Medicaid prescription pricing systems under federal regulations).

Medicaid provider agreement is a contract between the Department and the provider, (2) the provider voluntarily entered into that contract, and (3) providers are certifying by entering into the provider agreement that they will comply with all federal and state laws and regulations. *Id.* at §§46:437.11-46:437:14.

140. Furthermore, to enroll as a Medicaid Provider, each pharmacy benefits provider in Louisiana must complete a Louisiana Medicaid PE-50 Provider Enrollment Form and a PE-50 Addendum – Provider Agreement. The PE-50 Provider Agreement, drafted pursuant to MAPIL, contains the following provisions:

> 5. I agree to abide by Federal and State Medicaid laws, regulations and program instructions that are applicable to the provider type for which I am enrolled. I understand that the payment of a claim by Medicaid is conditioned upon the claim and the underlying transaction complying with such laws, regulations and program instructions.
>
> 13. I agree to adhere to the published regulations of the DHH Secretary and the Bureau of Health Services Financing, including, but not limited to, those rules regarding recoupment and disclosure requirements as specified in 42 CFR 455, Subpart B.
>
> 16. I/We understand that payment and satisfaction of any claims will be from Federal and State Funds and any false claims, statements or documents, or concealment of a material fact, may be prosecuted under applicable Federal and State law.
>
> 17. I certify that all claims provided to Louisiana Medicaid recipients will be necessary, medically needed and will be rendered by me or under my supervision.
>
> 18. I understand that all claims submitted to Louisiana Medicaid will be paid and satisfied from federal and state funds, and that any falsification or concealment of a material fact may be prosecuted under federal and State Laws.
>
> 19. I attest that all claims submitted under the conditions of this Agreement are certified to be true, accurate and complete.

PE-50 Addendum – Provider Agreement; *see also*, La. Rev. Stat. Ann. §§46:437.11-46:437:14.

141. With some variation in language, Omnicare has entered into participating provider agreements with the agencies that administer Medicaid in all the other states in which it serves as a dispensing pharmacy. The agreements typically all require the Medicaid provider to agree that it will comply with all Medicaid regulations, including the AKS, as a condition of payment.

142. Most states provide reimbursement for Medicaid providers via an electronic or paper-based claims process. In most states, the Medicaid claim form Omnicare submits on a regular basis for reimbursement contains a mandatory certification that the provider has complied with all laws and regulations pertaining to Medicaid, including the AKS.

143. For example, in New Jersey, the agency responsible for administering Medicaid is the Division of Medical Assistance and Health Services ("DMAHS"). Provider agreements between DMAHS and pharmacy service providers like Omnicare require that providers submit claim forms for reimbursement. The relevant Medicaid provider manual promulgated by DMAHS directs pharmacies to submit claims to DMAHS using the MC-6 claim form. Every time Omnicare submits a claim for reimbursement to Medicaid for a prescription it provides to a Medicaid-funded patient, it uses the MC-6 form. This form contains a "Provider Certification" requiring signature, it states:

> I certify that the services covered by this claim were personally rendered by me or under my direct supervision and that the services covered by this claim and the amount charged thereof are in accordance with the regulations of the New Jersey Health Services Program; and that no part of the net amount payable under this claim has been paid; and that payment of such amount will be accepted as payment in full without additional charge to the patient or to others on his behalf. I understand that any false claims, statements or documents, or concealment of a material fact, may be prosecuted under applicable federal or State law, or both.

New Jersey Medicaid Pharmacy Services Fiscal Agent Billing Supplement.

144. Likewise, in Illinois, at least once per day, when each Omnicare facility batches

its Medicaid claims and submits them electronically to IDHFS, as part of each electronic claim, Omnicare affixes its unique Medicaid provider identification number, which serves as an electronic stamp indicating that, as an Illinois Medicaid provider subject to the Provider Agreement, Omnicare is in compliance with all applicable federal and state regulations. Claims are adjudicated instantaneously; Omnicare receives reimbursement on a monthly basis by IDHFS for all approved claims.

145. Similar electronic or "batched" billing systems are in place in all states participating in the Medicaid program.

146. Omnicare certifies its compliance with all relevant statutes and regulations, state and federal, upon application for a provider number, by using that provider number in submitting a claim, and upon claim forms. It cannot obtain payments without these certifications. Omnicare's compliance with all relevant state and federal statutes and regulations, including the AKS, is a prerequisite and condition under state Medicaid programs. For payment such compliance is also a prerequisite to, and condition of, eligibility for reimbursement.

147. Omnicare therefore makes certified representations and claims to the government seeking Medicaid reimbursement for pharmaceuticals on a daily basis. One of the certified representations Omnicare makes in each of its claims submitted to the government is that the claim is submitted in compliance with the AKS.

148. As a result of, and in reliance on, these certified claims, state Medicaid programs pay for Defendant TAP's drugs and other Omnicare "preferred" drugs.

IX. DEFENDANTS SUBMITTED FALSE CLAIMS AND CAUSED FALSE CLAIMS TO BE SUBMITTED FOR "PREFERRED" MEDICATION IN VIOLATION OF THE FEDERAL AND STATE FALSE CLAIMS ACTS

149. Defendant Omnicare submitted and caused false claims, records, and statements

to the Medicaid program for "preferred" medications pursuant to unlawful Market Share Agreements with TAP and other drug manufacturers involved in the kickbacks-for-switches schemes. The kickbacks-for-switches schemes give rise to Defendant Omnicare's liability under the Federal and State False Claims Acts.

150. Defendant TAP caused the submission of false claims, records, and statements to the Medicaid program for its "preferred" medication pursuant to unlawful Market Share Agreements with Omnicare. The kickbacks-for-switches scheme gives rise to Defendant TAP's liability under the Federal and State False Claims Acts by:

(a) causing the submission of claims requesting reimbursements for drugs that had not been validly prescribed, on the basis of prescriptions that could not be validly filled;

(b) causing the submission of claims requesting reimbursements for drugs that were selected on the basis of maximum profit, without any medical basis;

and,

(c) causing the submission of claims that contained a false certification that they had been submitted in compliance with the law. The government conditioned payment of these claims upon this certification.

A. THE KICKBACKS-FOR-SWITCHES SCHEME AND PAL SOLICITATIONS CREATED FALSE CLAIMS

151. Defendant Omnicare submitted, and Defendant TAP caused the submission of, false and fraudulent claims by engaging in an illegal kickbacks-for-switches scheme wherein TAP paid kickbacks to Omnicare to induce Omnicare to fill prescriptions and request reimbursements for its "preferred" medication that had not been prescribed.

152. Medicaid only pays for the prescribed drugs. Any claim submitted or caused to be submitted certifying entitlement to payment for a prescription drug dispensed without specific physician authorization is a false claim.

153. Omnicare in concert with Defendant TAP and other "preferred" drug manufacturers used, and may continue to use, PALs to fraudulently obtain from the prescribing physicians blanket authority to switch prescriptions from the originally prescribed medication to a medication that provides the largest profit.

154. Valid "consent" cannot be obtained through fraud. Defendant TAP, through the payment of kickbacks, improperly conspired and caused Omnicare to fraudulently solicit PALs. Omnicare's solicitations for PALs routinely provide false, misleading, and incomplete information to physicians. Moreover, TAP acted in concert with Omnicare to develop business plans, provide "educational" sales materials, and provide further pressure via onsite sales staff designed to maximize the number of switches that Omnicare can obtain through the fraudulent PAL solicitation schemes.

155. As is alleged in detail herein, when TAP and Omnicare solicited PALs, the prescribing physicians were told that the preferred medications were more efficacious and that the switches would result in cost savings to the government health programs. These statements were lies.

156. In fact, TAP and Omnicare had no medical basis for soliciting authorization for the switches. Defendants intentionally and materially failed to tell physicians that the switches were done to create a larger profit for TAP and thereby generate a kickback to Omnicare.

157. Moreover, TAP and Omnicare intentionally and materially omitted from their pitch to physicians that in many instances the switches caused substantial health risks to the elderly population. As a direct and proximate result of these material misrepresentations and omissions, physicians were induced to execute PALs. Accordingly, TAP got what they paid for – a huge boost in market share due to thousands of switches to its expensive medication, creating

a ready pool of additional revenues TAP used to fund the kickbacks to Omnicare.

158. The end result of the PAL scheme dramatically increased the number of claims submitted to the government for the higher priced, "preferred" medications, which led to dramatically higher revenue for TAP. Thus TAP's increased revenues, and the correspondingly-increased cost to the government healthcare programs, were the direct, intended, and foreseeable result of the unlawful kickbacks to Omnicare and the business plans that defendants developed to maximize the number of switches.

159. Had the prescribing physicians known the truth – that Omnicare advocated switches to TAP's preferred medications purely for financial gain and without medical justification – the prescribing physicians would not have executed the PALs.

160. The prescribing physicians reasonably and justifiably relied upon Omnicare's consulting pharmacists' misrepresentations. The law and ethical rules impose upon pharmacists the duty to disclose all material facts relating to drug switching in order for physicians to make fully informed decisions and to recommend drug switching based solely upon their independent medical judgment that the switch would be in the particular patient's best interest.

161. Accordingly, defendants' false and fraudulent statements and material omissions, made in furtherance of the kickbacks-for-switches conspiracy, nullified any purported consent set forth in the PALs.

162. Drug selection is fundamentally a medical judgment. To be valid, a prescription must be based upon a doctor's medical evaluation of a specific patient. By choosing Omnicare's "preferred" medications to fill prescriptions for ACE inhibitors, statins, antibiotics, pain medications, atypical antipsychotics, and proton pump inhibitors, the "preferred" drug manufacturers and kickback-for-switches conspirators made a medical judgment for a large

vulnerable population for financial gain rather than based on appropriate individualized patient evaluation – unlawfully usurping the role of both the treating physician and the FDA.

163. All state laws broadly prohibit filling a prescription with any drug other than the one prescribed, and narrowly restrict the circumstances under which a pharmacist can choose among different drugs. The switching that occurred pursuant to the PAL scheme took place outside of circumstances in which a pharmacist might have legally made a switch and took place for purely monetary reasons – so that the "preferred" drug manufacturers could obtain larger market share for their pricier drugs. The switches violated state laws, contrary to the certifications defendants Omnicare and TAP made as a condition of obtaining payment from the states.

164. Each and every claim for the switched medications and refills caused to be made by the "preferred" drug manufacturers lacked valid physician authorization and therefore constitutes a false claim.

B. THE KICKBACKS-FOR-SWITCHES SCHEME VIOLATED THE ANTI-KICKBACK STATUTE, RENDING ALL CLAIMS SUBMITTED TO THE GOVERNMENT FOR DRUGS COVERED BY THE MARKET SHARE AGREEMENTS FALSE CLAIMS

165. The payments made by Defendant TAP to Omnicare (and other pharmacies) fit squarely within the AKS's definition of illegal remuneration. In direct violation of the AKS, TAP paid substantial sums of money to Omnicare on a graduated basis. In exchange, Omnicare caused prescriptions to be switched to, filled with, and refilled with the "preferred" medication. Specifically, the kickbacks were based on the percentage of market share Omnicare achieved through its wholesale switching of prescriptions within the drug class. The larger the percentage of the market share achieved, the higher the kickback.

166. Defendants Omnicare and TAP profited from the illegal switches that increased

market share. Defendants knew that the government would pay for the improperly-provided "preferred" medications. It was the direct, intended, and foreseeable result of TAP's kickback payments that Omnicare would submit claims to the government for TAP's "preferred" medication. Each of the "preferred" medications Omnicare dispensed to beneficiaries of federally funded programs, including Medicaid, under the Market Share Agreements was procured in violation of the AKS.

167. Compliance with the AKS, as well as all other relevant laws and regulations, is a condition precedent for a Medicaid service provider to lawfully seek reimbursement from the Medicaid program for goods and services provided to Medicaid beneficiaries. 42 U.S.C. §1320a-7b(b). Thus, as a matter of law, products purchased in violation of the AKS are ineligible for government reimbursement.

168. Defendant TAP violated 42 U.S.C. §§1320(a)-7(a) and 7(b) when it willfully entered into a conspiracy/kickback scheme and paid kickbacks in exchange for Omnicare's switching prescriptions within a therapeutic class.

169. Omnicare certified in its applications for enrollment, various agreements to participate in state medical assistance medical programs and routinely certified in its thousands of Medicaid claim submissions for "preferred" drug manufacturers' medications that such claims complied with all relevant laws and regulations, including the AKS. Such certifications were knowingly false when made; Omnicare knew at the time that each such claim was ineligible for reimbursement.

170. Defendant TAP conspired with and caused Omnicare to explicitly and implicitly falsely certify that it was acting in compliance with all applicable laws and regulations, including the AKS, for each and every claim Omnicare submitted for a switched prescription by (1)

conspiring to defraud the government and (2) paying Omnicare kickbacks pursuant to the conspiratorial Market Share Agreements.

171. Accordingly, Defendant TAP knowingly caused to be submitted ineligible claims for reimbursement to the government that it knew the government did not owe for the purpose of defrauding the government into paying these improper claims.

172. Although "safe harbor" regulations exist to protect certain relatively innocuous and even beneficial commercial arrangements, no such provision protects the payments made by TAP and the payments received by Omnicare under its various Market Share Agreements. One reason that such payments are not protected is that the benefits of the payments were not passed on to the government (*e.g.* through reported best prices), nor was the existence of the kickbacks-for-switches payments disclosed.

C. THE KICKBACKS-FOR-SWITCHES SCHEME VIOLATED FEDERAL AND STATE FALSE CLAIMS ACTS

173. The government would not knowingly pay a claim for a medication purchase resulting from an illegal kickback arrangement. Liability under the False Claims Act and state whistleblower acts exists to the extent that a claim is caused to be submitted to the government with the knowledge that the claim is ineligible for reimbursement and is made for the purposes of defrauding the government into paying out monies it does not owe.

174. Defendants TAP and Omnicare conspired through their Market Share Agreement to cause thousands of false claims to be submitted to the government on a daily basis. The government would not have paid Omnicare's claims for "preferred" medications had the government known they were a byproduct of manufacturers' illegal kickback payments pursuant to the Market Share Agreements. Defendant TAP's liability under §§ 3729(a)(1) and (a)(2) of the False Claims Act arises from its participation in causing the basis for false claims to be made

through the establishment of illegal contractual relationships with Omnicare.

175. False Claims Act liability under §3729(a)(1) reaches all fraudulent attempts to cause the government to pay out sums of money; liability is not limited to statements or claims made directly by a defendant to the government.

176. But for the illegal kickbacks paid by Defendant TAP, Omnicare would not have submitted claims to the government for reimbursement for the preferred medications based on illegal switching from patients' prescribed non-preferred drugs in the same therapeutic class.

177. TAP acted with the requisite knowledge. The payment of kickbacks hidden "off-invoice" is conduct which is by its nature fraudulent and designed to deceive.

178. The False Claims Act defines "knowing" or "knowingly" expansively; no proof of specific intent to defraud is required. 31 U.S.C. §§3729(b)(1)-(3). TAP knew and intended that "preferred" medication prescriptions for long term care facility residents serviced by Omnicare would be submitted as false claims by Omnicare and reimbursed by Medicaid or other government programs.

179. Because TAP and Omnicare conspired to submit false claims the defendants are also liable under 31 U.S.C. §3729(a)(3).

180. Defendants' illegal scheme, rife with false statements and fraudulent conduct, had one intended purpose and result – increasing sales and profits – and therefore claims for "preferred" drugs instead of cheaper alternatives were submitted for payment from the government.

181. The Plaintiff States have enacted their own False Claims Acts, modeled after these provisions of Federal False Claims Act as the federal False Claims Act applies to fraud against the federal government, and, therefore, does not cover the States' share of Medicaid

spending. The Plaintiff States' False Claims Acts contain language that mirrors the prohibitions set forth in §§3729 (a)(1), (2), and (3) of the federal False Claims Act. *See e.g.*, Illinois Whistleblower Reward and Protection Act, §3(a)(1), (2), and (3); Virginia Fraud Against Taxpayers Act, §8.01-216.3 A(1), (2), and (3); Indiana False Claims and Whistleblower Protection, §5-11-5.5-2B (7) and (8); Nevada Submission of False Claims to State or Local government, §357.040 (1)(a), (b) and (c). Hence, each and every violation of the Federal False Claims Act alleged herein likewise give rise to actionable claims under each of the Plaintiff States' False Claims Acts, as alleged in detail in the Counts below.

D. THE KICKBACKS-FOR-SWTICHES SCHEME CREATED HIPPA VIOLATIONS

182. Defendant Omnicare is a "healthcare provider" within the meaning of HIPAA, whereas the "preferred" drug manufacturers, including Defendant TAP, are also subject to the statutory restrictions imposed by HIPAA to the extent that they use or obtain, directly or indirectly, the protected confidential health information of those who use the "preferred" and "non-preferred" drug products.

183. At no time did defendant Omnicare obtain the express authorization required under 45 C.F.R. §164.508(a)(3) from the individuals whose personally identifiable HIPAA protected information was used in the kickbacks-for-switches scheme. In fact, when individuals' personally identifiable information was illegally accessed and used by the defendants (and the other "preferred" drug manufacturers) those individuals were completely unaware of the scheme and the motivation behind the switches to their prescriptions.

184. The prescription switching scheme and the promotion by Omnicare of "preferred" drug manufacturers' drug products constitute "marketing" within the meaning of the HIPAA regulations. 45 C.F.R. §164.501.

185. By paying Omnicare to promote their "preferred" drug products, the "preferred" drug manufacturers, including defendant TAP, effectively made Omnicare their marketing agent. By gaining improper access to and use of the individually identifiable protected health information of the patients who were prescribed certain drug products in order to promote larger market share for the "preferred" drugs, defendants violated the HIPAA marketing regulations because Omnicare failed to obtain the express authorization of the patients whose information was being used for marketing purposes. The "preferred" drug manufacturers, including defendant TAP, indirectly obtained the benefit of Omnicare's improper and unauthorized use of this individually identifiable protected health information and therefore also violated HIPAA in concert with Omnicare.

X. DEFENDANT TAP IS ALSO IN VIOLATION OF THE "REVERSE FALSE CLAIMS" PROVISIONS OF THE FEDERAL AND STATE FALSE CLAIMS ACTS

A. DEFENDANT TAP INTENTIONALLY MISREPORTED THE BEST PRICE FOR ITS PREFERRED MEDICATIONS BY CONCEALING THE OFF-INVOICE PRICE CUTS PROVIDED TO OMNICARE

186. At all relevant times, Defendant TAP employed a range of strategies to gain and maintain the lion's share of drugs sold by Omnicare within its "preferred" medication's therapeutic classes.

187. The "preferred" drug manufacturers, such as defendant TAP, knowingly misrepresented, by overstatement, the lowest price ("best price") paid by Omnicare for their preferred medications in their mandatory quarterly and annual reports submitted to the government, thereby intentionally misleading the governmental agencies to believe Medicaid, Federal Supply Schedule, and PHS/340b entities were receiving their appropriate rebates and contract prices. Omnicare was in reality receiving a lower "best price" than the price reported by

TAP.

188. At all relevant times, the Defendant TAP knew and understood that the net prices charged to Omnicare (the actual cost of the medications to Omnicare after the illegal rebates) and other such private sector long term care facilities were expressly required to be included in the determination of "best price."

189. Nevertheless, defendant TAP failed to submit accurate best price reports to the CMS on a quarterly basis since its Market Share Agreements with Omnicare went into effect. TAP's best price reports routinely submitted to the Government were materially false in that they purposefully excluded the net prices charged to Omnicare for TAP's "preferred" medication.

190. Defendant TAP is required by law to use its best price calculations to determine a rebate to the government. By reporting an artificially high best price, TAP was able to report and pay artificially low rebates, costing the government millions of dollars.

191. At all relevant times, TAP knew providing kickbacks to Omnicare that dramatically lowered the prices of its "preferred" medication required it to report these lower best prices paid by Omnicare for its preferred medications to the Government, which would have resulted in TAP paying greater rebates to all states' Medicaid Programs.

192. The artificially high best price reported by TAP through its suppression of the kickbacks-for-switches scheme and resulting actual best price afforded to Omnicare resulted in false claims to many other federal agencies that buy drugs. The federal government utilizes best price reporting to set prices for PHS/340b entities and the Federal Supply Schedule. Because TAP reported an artificially high best price, these entities ended up paying millions more for these medications than they would have had the TAP reported the proper best price information.

193. The pricing records Defendant TAP was required to submit under federal law on a

regular basis were therefore material to the determination of prices on thousands of different transactions between TAP and the government.

194. The CMS advised in a document created on November 28, 2005 and last updated on February 6, 2006, that under the Medicare Modernization Act, rebates paid to long term care pharmacies that participate in Medicare Part D "would affect the best price calculation" under Section 1860D-2(d)(1)(C). Kickbacks TAP paid to Omnicare should have affected the reported best price and resulted in lower payments for the government.

195. Defendant TAP was trying to avoid the obligation to pay increased Medicaid rebates by camouflaging what are indisputably reductions on the price of drugs masquerading as a "rebate" paid after the purchase of the drug.

196. Accordingly, TAP violated federal law that requires drug makers who have agreed to participate in the Medicaid Program to include all discounts, cash terms, rebates, and free goods in their calculation of "best price."

197. Defendant TAP has intentionally and routinely failed to report accurate best price information as required by federal Medicaid law, and thereby deprived the Plaintiff States of their proper rebates as provided by 42 U.S.C. §1396r-8.

B. DEFENDANT TAP'S FRAUDULENT PRICE REPORTING GIVES RISE TO A CAUSE OF ACTION UNDER THE REVERSE FALSE CLAIMS ACT PROVISIONS

198. What is commonly known as the reverse false claims provision of the federal False Claims Act provides in pertinent part:

> (a) Liability for certain acts. Any person who--
>
> (7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the government, is liable to the United States government for a civil penalty of not less than $5,000 and not more than $11,000, plus 3 times the amount of damages which the government sustains because of the act of that person

31 U.S.C. §3727(a)(7).

199. As set forth above, the Medicaid Rebate Act mandated that TAP comply with its Rebate Agreements with the government and to truthfully calculate and report its average monthly prices and best prices to the Secretary on a quarterly basis. 42 U.S.C. §1396r-8(b)(3)(A)(i).

200. Defendant TAP knew that its reported pricing data was relied upon by the government to determine the Medicaid rebates TAP would have to pay to the Plaintiff States for its medications.

201. TAP knows, and has known at all times relevant to the complaint, that the price it has charged Omnicare, inclusive of the kickback payments made pursuant to the Market Share Agreements, must be disclosed in the mandatory quarterly price reports submitted directly to the CMS.

202. In violation of the Medicaid Rebate Act, Defendant TAP purposefully did not report the off-invoice kickback price Omnicare was afforded under the Market Share Agreements. Instead, TAP knowingly and deliberately concealed the price it charged Omnicare when it calculated best prices for its preferred medication.

203. Had Defendant TAP truthfully reported to the CMS the best prices for its preferred medication, TAP would have owed the government rebates of a much higher amount.

204. By submitting false claims reports to the government for the purpose of avoiding its obligation to make higher rebates payments to the government, TAP violated the federal and Plaintiff States' False Claims Acts.

205. Each false best price report TAP submitted to the government constitutes a violation of 31 U.S.C. §3729(a)(7). TAP failed to accurately report their best prices for their

preferred medications for each quarter during its kickback-for-switches scheme with Omnicare.

206. Each of Defendant TAP's intentional and fraudulent failures to report accurate best price information meant that the prices charged the federal government for medications paid for by PHS entities were artificially high. Every PHS entity invoice therefore constitutes a false claim upon the government caused by TAP.

207. Each of TAP's intentional and fraudulent failures to report accurate best price information meant that the prices charged the federal government for medications paid for by Federal Supply Schedule entities were artificially high. Every FSS entity invoice therefore constitutes a false claim upon the government caused by TAP.

208. The Plaintiff States have enacted their own False Claims Acts, modeled after these provisions of Federal False Claims Act as the federal False Claims Act applies to fraud against the federal government, and therefore does not cover the States' share of Medicaid spending. The Plaintiff States' False Claims Acts contain language that mirrors the prohibitions set forth in §3729(a)(7) of the federal False Claims Act. Hence, each and every violation of §3729(a)(7) of the Federal False Claims Act alleged herein likewise gives rise to actionable claims under each of the Plaintiffs' States False Claims Acts, as alleged in detail in Counts V through XXVIII of the Amended Complaint.

XI. DEFENDANTS ARE IN VIOLATION OF THE ILLINOIS INSURANCE FRAUD CLAIMS PREVENTION ACT

209. Omnicare entered into contracts or other agreements with private insurers and self-insured entities (collectively referred to hereinafter as "insurers"), under which Omnicare agreed to provide health care services to insured members in the state of Illinois and the insurers agreed to reimburse Omnicare for covered charges.

210. Insurers reimbursed Omnicare for services using a contracted kickback on

covered charges for each insured patient. Insurers' reimbursement includes the cost of prescription drugs.

211. Insurers which reimbursed Omnicare for drugs during the time of this complaint include, but are not limited to: United Healthcare, Blue Cross/Blue Shield, Health Alliance, Humana, Aetna, and HMO Illinois.

212. In order to obtain reimbursement from insurers for services provided, Omnicare typically would submit electronically a form describing the services, the service date, the total charges and non-covered charges, if any. Omnicare would typically submit these bills for reimbursement on a daily basis. These bills would contain various certifications and/or verifications, including that the claim for reimbursement is correct and complete, and a warning that anyone who misrepresents or falsifies material information requested by the form may be subject to fine or imprisonment under state law.

213. Omnicare submitted electronic claims or bills to insurers for the prescription drugs, including "preferred" drugs such as TAP's Prevacid and others including Monopril, Lipitor, Accupril, Levaquin, Risperdal, Ultram/Ultracet, and Abilify. As a result of Omnicare's conspiracy with TAP and other "preferred" drug manufacturers, Omnicare billed insurers for such drugs even though claims for the drugs were based on kickbacks, the drugs were unilaterally switched without a properly authorized physician's prescription, and despite other material misrepresentations and omissions. Such claims for drugs dispensed as a result of the kickbacks-for-switches schemes contained false, incomplete, or misleading information concerning facts material to the claims.

214. Omnicare never informed insurers that they were paid kickbacks as part of a conspiracy to evade best price obligations, or that they conspired to and did switch drugs without

a physician's informed authorization.

215. By causing the concealment of these policies and practices, while knowing that Omnicare was then submitting claims to insurers for payment, Defendant TAP intentionally conspired to deceive and make false, incomplete, and/or misleading statements of material facts to insurers in order to obtain reimbursement for Omnicare from insurers for which Omnicare was not entitled in exchange for Omnicare fraudulently increasing TAP's "preferred" drug market share.

216. Insurers, unaware of the falsity of the claims because TAP and other "preferred" drug manufacturers conspired with Omnicare to fail to disclose the material facts, paid the claims submitted by Omnicare in connection with the "preferred" drug prescriptions.

217. Defendants TAP and Omnicare knowingly and intentionally conspired to submit false claims, and caused false claims for payment to be submitted, for prescription drugs. Defendants intended increase their own profits without regard to furnishing a benefit the insured. Omnicare submitted false claims for "preferred" drugs to private insurance payors from at least 1998 to date in violation of the Illinois Insurance Claims Fraud Prevention Act.

XII. CONCLUSION

218. Co-conspirators defendants TAP and Omnicare have within their exclusive possession and control documents that would allow plaintiffs to plead this fraud with greater specificity. Documents that would reflect the fraud include: TAP's quarterly reports for its "preferred" medication, the Market Share Agreements, PAL letter solicitations, the PAL letters themselves, agreements documenting the conspiracy between Omnicare and TAP and the other "preferred" drug manufacturers, electronic and other media used to calculate and tabulate kickbacks given by TAP and received by Omnicare, wholesale orders for the medications for

which PAL/kickback schemes were implemented, "Physician Order Sheets" for clients whose medication was switched to medications covered by PAL schemes, computer databases written specifically for Omnicare that tracked the PAL program switches, documents relating to the actual best price charged to private sector purchasers for TAP's "preferred" medications, quarterly PHS pricing submissions, annual FSS pricing submissions, and daily "batched" submissions that Omnicare made to the government as requests for payment.

219. Federal and state privacy laws, such as the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), also restrict plaintiff relator's ability to obtain information about specific prescriptions.

COUNT I
False Claims Act
31 U.S.C. §3729 (a)(1)
(Against All Defendants)

220. Plaintiffs reallege and incorporate by reference each and every of the foregoing paragraphs as if fully set forth herein.

221. This Count is brought by Lisitza in the name of the United States under the *qui tam* provisions of 31 U.S.C. §3730 for the defendants' violations of 31 U.S.C. §3729 (a)(1).

222. At all times relevant and material to this Amended Complaint, defendants knowingly made and caused false claims for payment or approval that they knew to be ineligible for reimbursement, to be presented to officers and employees of the federal and state governments. As a result, the government paid the false claims for switched kickback-related "preferred" drugs submitted by Omnicare and other Medicaid provider pharmacies, resulting in great financial loss to the federal and state governments.

223. By virtue of the above-described acts, among others, Defendant Omnicare knowingly presented false or fraudulent claims for payment or approval, and possibly continues

to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the United States, for illegally switched "preferred" drugs including, Prevacid, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

224. By virtue of the above-described acts, among others, Defendant TAP knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the United States, for Prevacid and other drugs.

225. The false or fraudulent claims to the government were material.

226. Plaintiff United States, being unaware of the falsity of the claims made and caused to be made by the defendants, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

227. From 1998 to date, by reason of the conduct described above, the government has been damaged in an amount that is believed to be in excess of $3.5 million from Omnicare's northern Illinois facilities alone. As the defendants' fraudulent practices extend throughout the country in states where government reimbursement rates make such fraud lucrative for the defendants, the amount of total damages to the government exceeds $10 million.

COUNT II
False Claims Act
31 U.S.C. §3729 (a)(2)
(Against All Defendants)

228. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

229. This Count is brought by Lisitza in the name of the United States under the *qui tam* provisions of 31 U.S.C. §3730 for the defendants' violation of 31 U.S.C. §3729 (a)(2).

230. The False Claims Act has been violated by the defendants through the fact that the Market Share Agreements resulted in claims being made under Medicaid and other health insurance programs that violated the Anti-Kickback Statute, and that such claims were submitted to the government being certified as not having violated this and/or other federal and state laws.

231. By virtue of the above-described acts, among others, Defendant Omnicare knowingly made or used false records or statements to get false or fraudulent claims paid or approved by the government, and possibly continues to cause false records or statements to get false or fraudulent claims paid or approved, directly or indirectly, to officers, employees or agents of the United States, for illegally switched "preferred" drugs including, Prevacid, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

232. By virtue of the above-described acts, among others, Defendant TAP knowingly caused to be made or used false records or statements to get false or fraudulent claims paid or approved by the government, and possibly continues to cause false records or statements to get false or fraudulent claims paid or approved, directly or indirectly, to officers, employees or agents of the United States, for Prevacid and other drugs.

233. The false or fraudulent claims to the government were material.

234. Plaintiff United States, being unaware of the falsity of records or statements made and caused to be made by the defendants, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

235. From 1998 to date, by reason of the conduct described above, the government has been damaged in an amount that is believed to be in excess of $3.5 million from Omnicare's northern Illinois facilities alone. As the defendants' fraudulent practices extend throughout the

country in states where government reimbursement rates make such fraud lucrative for the defendants, the amount of total damages to the government exceeds $10 million.

COUNT III
False Claims Act
31 U.S.C. §3729(a)(7)
Knowingly Making or Using a False Statement to Avoid or Conceal Obligations
(Against Defendant TAP)

236. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

237. Defendant TAP entered into Rebate Agreements with the Medicaid Program under which the Medicaid Program would receive rebates determined in part by "best price" which is defined as "the lowest price available from the manufacturer."

238. After execution of the Rebate Agreements, TAP submitted quarterly price reports directly to the government purportedly reflecting "best price" in each quarter to the Medicaid program for its "preferred" medications.

239. In keeping with its scheme to defraud the government, Defendant TAP, with respect to its preferred medication, Prevacid, submitted fraudulent quarterly price reports which intentionally misrepresented the best price for its preferred medications by willfully 1) reporting higher prices and 2) excluding price cuts and other inducements offered to Omnicare that resulted in lower prices than the prices reported to the Medicaid program.

240. Defendant TAP intentionally submitted these false reports to avoid paying higher rebates as required by federal law and its Rebate Agreements.

241. Defendant TAP knowingly made and used these false price reports and other false records and statements with the intent to conceal, avoid, or decrease an obligation to pay or transmit money to the government, *e.g.* its mandatory Medicaid rebate payments.

242. TAP had the authority and responsibility to make accurate best price reports.

However, TAP improperly abused the exercise of such authority, and as a direct and proximate result, false records and statements were made to the government, and the jointly-funded Medicaid Program was deprived of the much-needed appropriate Rebate payments as result of TAP's intentionally inaccurate quarterly reporting of best price.

243. Other federally funded healthcare such as FSS and PHS entities were also harmed by TAP's concealment of its true best price.

244. By virtue of the false records or statements made or used by TAP, the United States has suffered damages and therefore is entitled to multiple damages under the False Claims Act, to be determined at trial, plus a civil penalty of $5,500 to $11,000 for each such false statement made or used by the TAP. From 1998 to the date of this Complaint, by reason of the conduct described above, the government has been damaged in an amount that is believed to be in excess of $3.5 million from Omnicare's northern Illinois facilities alone. As TAP's fraudulent practices extend throughout the country in states where government reimbursement rates make such fraud lucrative for TAP, the amount of total damages to the government exceeds $10 million.

COUNT IV
Conspiracy to Submit False Claims
31 U.S.C. §3729(a)(3)
(Against All Defendants)

245. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

246. By entering the Market Share Agreement detailed herein, defendants TAP and Omnicare conspired to defraud the government by submitting false claims and causing the submission of false claims for Prevacid and other drugs.

247. Omnicare further conspired with other "preferred" drug manufacturers by entering the Market Share Agreements and submitting false claims for illegally switched drugs including, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

248. Defendants conspired to defraud the government through causing the government to accept and pay false claims for the "preferred" drugs. Defendant TAP and Omnicare committed overt acts in furtherance of the conspiracy as alleged *supra*, including TAP's payments of kickbacks and submission of false pricing records to CMS, and the fraudulent solicitation of PALs.

249. The amounts of the false or fraudulent claims the government was misled by the conspiracy to pay were material.

250. Plaintiff United States, being unaware of the falsity of the claims and/or statements made by the conspirators, and in reliance on the accuracy thereof, paid and may continue to pay for the "preferred" medications. All unlawful conduct described above may have continued after Lisitza's employment with Omnicare was terminated.

251. From 1998 to date, by reason of the conduct described above, the government has been damaged in an amount that is believed to be in excess of $3.5 million from Omnicare's northern Illinois facilities alone. As the defendants' fraudulent practices extend throughout the country to states where government reimbursement rates make such fraud lucrative for the defendants, the amount of total damages to the government exceeds $10 million.

COUNT V
Illinois Whistleblower Reward and Protection Act
740 ILCS 175/1 *et seq.*
(Against All Defendants)

252. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

253. This Count is brought by Lisitza in the name of the State of Illinois under the *qui tam* provisions of 740 ILCS 175/4 for the defendants' violation of 740 ILCS 175/3.

254. At all times relevant and material to this Amended Complaint, the Defendant TAP knowingly caused false claims for payment or approval, in the form of false cost information for

its "preferred" medications specified herein, as well as other medications manufactured by them, to be presented to officers and employees of the federal and state governments. As a result, the government paid reimbursements for TAP's drugs to Omnicare and other Medicaid provider pharmacies in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

255. Omnicare, at all times relevant to this action, sold and continues to sell pharmaceuticals in the State of Illinois. Omnicare, at all times relevant to this action, has operated and continues to operate pharmacies in the State of Illinois.

256. TAP, at all times relevant to this action, sold and continues to sell pharmaceuticals in the State of Illinois.

257. By virtue of the above-described acts, among others, Defendant Omnicare knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the State of Illinois, for illegally switched "preferred" drugs including, Prevacid, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

258. By virtue of the above-described acts, among others, Defendant TAP knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the State of Illinois, for Prevacid and other drugs.

259. As a result of the claims for reimbursement defendants submitted and caused to be submitted to Illinois Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator

pharmacies, Illinois regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

260. The amounts of the false or fraudulent claims to the State of Illinois were material.

261. Plaintiff State of Illinois, being unaware of the falsity of the claims and/or statements made and caused to be made by the defendants, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT VI
Conspiracy to Submit False Claims in Violation of the Illinois Whistleblower Reward and Protection Act
740 ILCS 175/3(3)
(Against All Defendants)

262. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

263. By entering the Market Share Agreement detailed herein, defendants TAP and Omnicare conspired to defraud the State of Illinois by submitting false claims and causing the submission of false claims for Prevacid and other drugs.

264. Omnicare further conspired to defraud the State of Illinois with other "preferred" drug manufacturers by entering the Market Share Agreements and submitting false claims for illegally switched drugs including, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

265. As a result of the claims for reimbursement defendants submitted and caused to be submitted to Illinois Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, Illinois regularly made payments to pharmacies for TAP's and other "preferred"

drug manufacturers' illegally switched drugs.

266. The amounts of the false or fraudulent claims to the State of Illinois were material.

267. Plaintiff State of Illinois, being unaware of the falsity of the claims and/or statements made by the conspirators, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT VII
California False Claims Act
Ca. Gov't Code §12650 *et seq.*
(Against All Defendants)

268. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

269. This Count is brought by Lisitza in the name of the State of California under the *qui tam* provisions of the California False Claims Act, California government Code §12651(a).

270. At all times relevant and material to this Amended Complaint, the Defendant TAP knowingly caused false claims for payment or approval, in the form of false cost information for its "preferred" medications specified herein, as well as other medications manufactured by them, to be presented to officers and employees of the federal and state governments. As a result, the government paid reimbursements for TAP's drugs to Omnicare and other Medicaid provider pharmacies in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

271. Omnicare, at all times relevant to this action, sold and continues to sell pharmaceuticals in the State of California. Omnicare, at all times relevant to this action, has operated and continues to operate pharmacies in the State of California.

272. TAP, at all times relevant to this action, sold and continues to sell pharmaceuticals in the State of California.

273. By virtue of the above-described acts, among others, Defendant Omnicare knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the State of California, for illegally switched "preferred" drugs including, Prevacid, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

274. By virtue of the above-described acts, among others, Defendant TAP knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the State of California, for Prevacid and other drugs.

275. As a result of the claims for reimbursement defendants submitted and caused to be submitted to California Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, California regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

276. The amounts of the false or fraudulent claims to the State of California were material.

277. Plaintiff State of California, being unaware of the falsity of the claims and/or statements made and caused to be made by the defendants, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful

conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT VIII
Conspiracy to Submit False Claims in Violation of the California False Claims Act
Ca. Gov't Code §12651(a)(3)
(Against All Defendants)

278. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

279. By entering the Market Share Agreement detailed herein, defendants TAP and Omnicare conspired to defraud the State of California by submitting false claims and causing the submission of false claims for Prevacid and other drugs.

280. Omnicare further conspired to defraud the State of California with other "preferred" drug manufacturers by entering the Market Share Agreements and submitting false claims for illegally switched drugs including, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

281. As a result of the claims for reimbursement defendants submitted and caused to be submitted to California Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, California regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

282. The amounts of the false or fraudulent claims to the State of California were material.

283. Plaintiff State of California, being unaware of the falsity of the claims and/or statements made by the conspirators, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT IX
Delaware False Claims Act
Del. Code Tit. VI. §1201
(Against All Defendants)

284. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

285. This Count is brought by Lisitza in the name of the State of Delaware under the *qui tam* provisions of the Delaware False Claims and Reporting Act, Delaware Statute Title VI, §1201.

286. At all times relevant and material to this Amended Complaint, the Defendant TAP knowingly caused false claims for payment or approval, in the form of false cost information for its "preferred" medications specified herein, as well as other medications manufactured by them, to be presented to officers and employees of the federal and state governments. As a result, the government paid reimbursements for TAP's drugs to Omnicare and other Medicaid provider pharmacies in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

287. Omnicare, at all times relevant to this action, sold and continues to sell pharmaceuticals in the State of Delaware. Omnicare, at all times relevant to this action, has operated and continues to operate pharmacies in the State of Delaware.

288. TAP, at all times relevant to this action, sold and continues to sell pharmaceuticals in the State of Delaware.

289. By virtue of the above-described acts, among others, Defendant Omnicare knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the State of Delaware, for illegally switched "preferred" drugs including, Prevacid, Monopril, Abilify, Lipitor, Accupril, Risperdal,

Levaquin, and Ultram/Ultracet.

290. By virtue of the above-described acts, among others, Defendant TAP knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the State of Delaware, for Prevacid and other drugs.

291. As a result of the claims for reimbursement defendants submitted and caused to be submitted to Delaware Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, Delaware regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

292. The amounts of the false or fraudulent claims to the State of Delaware were material.

293. Plaintiff State of Delaware, being unaware of the falsity of the claims and/or statements made and caused to be made by the defendants, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT X
Conspiracy to Submit False Claims in Violation of the Delaware False Claims Act
Del. Code Tit. VI. §1201(a)(3)
(Against All Defendants)

294. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

295. By entering the Market Share Agreement detailed herein, defendants TAP and Omnicare conspired to defraud the State of Delaware by submitting false claims and causing the

submission of false claims for Prevacid and other drugs.

296. Omnicare further conspired to defraud the State of Delaware with other "preferred" drug manufacturers by entering the Market Share Agreements and submitting false claims for illegally switched drugs including, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

297. As a result of the claims for reimbursement defendants submitted and caused to be submitted to Delaware Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, Delaware regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

298. The amounts of the false or fraudulent claims to the State of Delaware were material.

299. Plaintiff State of Delaware, being unaware of the falsity of the claims and/or statements made by the conspirators, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XI
District of Columbia False Claims Act
D.C. Code §2-308.03 *et seq.*
(Against All Defendants)

300. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

301. This Count is brought by Lisitza in the name of the District of Columbia under the *qui tam* provisions of D.C. Code §2-308.03 *et seq.*

302. At all times relevant and material to this Amended Complaint, the Defendant TAP knowingly caused false claims for payment or approval, in the form of false cost information for

its "preferred" medications specified herein, as well as other medications manufactured by them, to be presented to officers and employees of the federal and state governments. As a result, the government paid reimbursements for TAP's drugs to Omnicare and other Medicaid provider pharmacies in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

303. Omnicare, at all times relevant to this action, sold and continues to sell pharmaceuticals in the District of Columbia. Omnicare, at all times relevant to this action, has operated and continues to operate pharmacies in the District of Columbia.

304. TAP, at all times relevant to this action, sold and continues to sell pharmaceuticals in the District of Columbia.

305. By virtue of the above-described acts, among others, Defendant Omnicare knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the District of Columbia, for illegally switched "preferred" drugs including, Prevacid, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

306. By virtue of the above-described acts, among others, Defendant TAP knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the District of Columbia, for Prevacid and other drugs.

307. As a result of the claims for reimbursement defendants submitted and caused to be submitted to District of Columbia Medicaid, which were certified compliant with federal and

state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, the District of Columbia regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

308. The amounts of the false or fraudulent claims to the District of Columbia were material.

309. Plaintiff District of Columbia, being unaware of the falsity of the claims and/or statements made and caused to be made by the defendants, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XII
Conspiracy to Submit False Claims in Violation of the District of Columbia False Claims Act
D.C. Code §2-308.14(3)

310. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

311. By entering the Market Share Agreement detailed herein, defendants TAP and Omnicare conspired to defraud the District of Columbia by submitting false claims and causing the submission of false claims for Prevacid and other drugs.

312. Omnicare further conspired to defraud the District of Columbia with other "preferred" drug manufacturers by entering the Market Share Agreements and submitting false claims for illegally switched drugs including, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

313. As a result of the claims for reimbursement defendants submitted and caused to be submitted to District of Columbia Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, the District of Columbia regularly made payments to pharmacies for

TAP's and other "preferred" drug manufacturers' illegally switched drugs.

314. The amounts of the false or fraudulent claims to the District of Columbia were material.

315. Plaintiff District of Columbia, being unaware of the falsity of the claims and/or statements made by the conspirators, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XIII
Florida False Claims Act
Fl. Stat. §§68.081-68.09
(Against All Defendants)

316. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

317. This Count is brought by Lisitza in the name of the State of Florida under the *qui tam* provisions of Florida False Claims Act, Fl. Stat. §§68.081-68.09.

318. At all times relevant and material to this Amended Complaint, the Defendant TAP knowingly caused false claims for payment or approval, in the form of false cost information for its "preferred" medications specified herein, as well as other medications manufactured by them, to be presented to officers and employees of the federal and state governments. As a result, the government paid reimbursements for TAP's drugs to Omnicare and other Medicaid provider pharmacies in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

319. Omnicare, at all times relevant to this action, sold and continues to sell pharmaceuticals in the State of Florida. Omnicare, at all times relevant to this action, has operated and continues to operate pharmacies in the State of Florida.

320. TAP, at all times relevant to this action, sold and continues to sell

pharmaceuticals in the State of Florida.

321. By virtue of the above-described acts, among others, Defendant Omnicare knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the State of Florida, for illegally switched "preferred" drugs including, Prevacid, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

322. By virtue of the above-described acts, among others, Defendant TAP knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the State of Florida, for Prevacid and other drugs.

323. As a result of the claims for reimbursement defendants submitted and caused to be submitted to Florida Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, Florida regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

324. The amounts of the false or fraudulent claims to the State of Florida were material.

325. Plaintiff State of Florida, being unaware of the falsity of the claims and/or statements made and caused to be made by the defendants, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XIV
Conspiracy to Submit False Claims in Violation of the Florida False Claims Act
Fl. Stat. §68.082(2)(C)
(Against All Defendants)

326. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

327. By entering the Market Share Agreement detailed herein, defendants TAP and Omnicare conspired to defraud the State of Florida by submitting false claims and causing the submission of false claims for Prevacid and other drugs.

328. Omnicare further conspired to defraud the State of Florida with other "preferred" drug manufacturers by entering the Market Share Agreements and submitting false claims for illegally switched drugs including, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

329. As a result of the claims for reimbursement defendants submitted and caused to be submitted to Florida Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, Florida regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

330. The amounts of the false or fraudulent claims to the State of Florida were material.

331. Plaintiff State of Florida, being unaware of the falsity of the claims and/or statements made by the conspirators, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XV
Georgia State False Medicaid Claims Act
Ga. Code 49-4-168 *et seq.*
(Against All Defendants)

332. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

333. This Count is brought by Lisitza in the name of the State of Georgia under the *qui tam* provisions of the Georgia State False Medicaid Claims Act, Ga. Code 49-4-168 *et seq.*

334. At all times relevant and material to this Amended Complaint, the Defendant TAP knowingly caused false claims for payment or approval, in the form of false cost information for its "preferred" medications specified herein, as well as other medications manufactured by them, to be presented to officers and employees of the federal and state governments. As a result, the government paid reimbursements for TAP's drugs to Omnicare and other Medicaid provider pharmacies in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

335. Omnicare, at all times relevant to this action, sold and continues to sell pharmaceuticals in the State of Georgia. Omnicare, at all times relevant to this action, has operated and continues to operate pharmacies in the State of Georgia.

336. TAP, at all times relevant to this action, sold and continues to sell pharmaceuticals in the State of Georgia.

337. By virtue of the above-described acts, among others, Defendant Omnicare knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the State of Georgia, for illegally switched "preferred" drugs including, Prevacid, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

338. By virtue of the above-described acts, among others, Defendant TAP knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the State of Georgia, for Prevacid and other drugs.

339. As a result of the claims for reimbursement defendants submitted and caused to be submitted to Georgia Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, Georgia regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

340. The amounts of the false or fraudulent claims to the State of Georgia were material.

341. Plaintiff State of Georgia, being unaware of the falsity of the claims and/or statements made and caused to be made by the defendants, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XVI
Conspiracy to Submit False Claims in Violation of the Georgia State False Medicaid Act
Ga. Code 49-4-168 *et seq.*
(Against All Defendants)

342. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

343. By entering the Market Share Agreement detailed herein, defendants TAP and Omnicare conspired to defraud the State of Georgia by submitting false claims and causing the submission of false claims for Prevacid and other drugs.

344. Omnicare further conspired to defraud the State of Georgia with other "preferred"

drug manufacturers by entering the Market Share Agreements and submitting false claims for illegally switched drugs including, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

345. As a result of the claims for reimbursement defendants submitted and caused to be submitted to Georgia Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, Georgia regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

346. The amounts of the false or fraudulent claims to the State of Georgia were material.

347. Plaintiff State of Georgia, being unaware of the falsity of the claims and/or statements made by the conspirators, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XVII
Hawaii False Claims Act
Haw. Rev. Stat. §661-21 *et seq.*
(Against All Defendants)

348. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

349. This Count is brought by Lisitza in the name of the State of Hawaii under the *qui tam* provisions of Hawaii False Claims Act, Haw. Rev. Stat. §661-21 *et seq.*

350. At all times relevant and material to this Amended Complaint, the Defendant TAP knowingly caused false claims for payment or approval, in the form of false cost information for its "preferred" medications specified herein, as well as other medications manufactured by them, to be presented to officers and employees of the federal and state governments. As a result, the

government paid reimbursements for TAP's drugs to Omnicare and other Medicaid provider pharmacies in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

351. Omnicare, at all times relevant to this action, sold and continues to sell pharmaceuticals in the State of Hawaii. Omnicare, at all times relevant to this action, has operated and continues to operate pharmacies in the State of Hawaii.

352. TAP, at all times relevant to this action, sold and continues to sell pharmaceuticals in the State of Hawaii.

353. By virtue of the above-described acts, among others, Defendant Omnicare knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the State of Hawaii, for illegally switched "preferred" drugs including, Prevacid, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

354. By virtue of the above-described acts, among others, Defendant TAP knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the State of Hawaii, for Prevacid and other drugs.

355. As a result of the claims for reimbursement defendants submitted and caused to be submitted to Hawaii Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, Hawaii regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

356. The amounts of the false or fraudulent claims to the State of Hawaii were material.

357. Plaintiff State of Hawaii, being unaware of the falsity of the claims and/or statements made and caused to be made by the defendants, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XVIII
Conspiracy to Submit False Claims in Violation of the Hawaii False Claims Act
Haw. Rev. Stat. §661-21(C)
(Against All Defendants)

358. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

359. By entering the Market Share Agreement detailed herein, defendants TAP and Omnicare conspired to defraud the State of Hawaii by submitting false claims and causing the submission of false claims for Prevacid and other drugs.

360. Omnicare further conspired to defraud the State of Hawaii with other "preferred" drug manufacturers by entering the Market Share Agreements and submitting false claims for illegally switched drugs including, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

361. The amounts of the false or fraudulent claims to the State of Hawaii were material.

362. As a result of the claims for reimbursement defendants submitted and caused to be submitted to Hawaii Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, Hawaii regularly made payments to pharmacies for TAP's and other "preferred"

drug manufacturers' illegally switched drugs.

363. Plaintiff State of Hawaii, being unaware of the falsity of the claims and/or statements made by the conspirators, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XIX
Indiana False Claims and Whistleblower Act
Ind. Code §5-11-5.5 *et seq.*
(Against All Defendants)

364. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

365. This Count is brought by Lisitza in the name of the State of Indiana under the *qui tam* provisions of the Indiana False Claims and Whistleblower Act, Ind. Code §5-11-5.5-4, for the defendants' violations of Ind. Code §5-11-5.5-2.

366. At all times relevant and material to this Amended Complaint, the Defendant TAP knowingly caused false claims for payment or approval, in the form of false cost information for its "preferred" medications specified herein, as well as other medications manufactured by them, to be presented to officers and employees of the federal and state governments. As a result, the government paid reimbursements for TAP's drugs to Omnicare and other Medicaid provider pharmacies in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

367. Omnicare, at all times relevant to this action, sold and continues to sell pharmaceuticals in the State of Indiana. Omnicare, at all times relevant to this action, has operated and continues to operate pharmacies in the State of Indiana.

368. TAP, at all times relevant to this action, sold and continues to sell pharmaceuticals in the State of Indiana.

369. By virtue of the above-described acts, among others, Defendant Omnicare knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the State of Indiana, for illegally switched "preferred" drugs including, Prevacid, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

370. By virtue of the above-described acts, among others, Defendant TAP knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the State of Indiana, for Prevacid and other drugs.

371. As a result of the claims for reimbursement defendants submitted and caused to be submitted to Indiana Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, Indiana regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

372. The amounts of the false or fraudulent claims to the State of Indiana were material.

373. Plaintiff State of Indiana, being unaware of the falsity of the claims and/or statements made and caused to be made by the defendants, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XX
Conspiracy to Submit False Claims in Violation of the Indiana False Claims and Whistleblower Act Ind. Code §5-11-5.5-2(b)(7) (Against All Defendants)

374. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

375. By entering the Market Share Agreement detailed herein, defendants TAP and Omnicare conspired to defraud the State of Indiana by submitting false claims and causing the submission of false claims for Prevacid and other drugs.

376. Omnicare further conspired to defraud the State of Indiana with other "preferred" drug manufacturers by entering the Market Share Agreements and submitting false claims for illegally switched drugs including, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

377. As a result of the claims for reimbursement defendants submitted and caused to be submitted to Indiana Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, Indiana regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

378. The amounts of the false or fraudulent claims to the State of Indiana were material.

379. Plaintiff State of Indiana, being unaware of the falsity of the claims and/or statements made by the conspirators, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XXI
Louisiana Medical Assistance Programs Integrity Law
La. Rev. Stat. §437 *et seq.*
(Against All Defendants)

380. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

381. This Count is brought by Lisitza in the name of the State of Louisiana under the *qui tam* provisions of the Louisiana Medical Assistance Programs Integrity Law, La. Rev. Stat. §437 *et seq.*

382. At all times relevant and material to this Amended Complaint, the Defendant TAP knowingly caused false claims for payment or approval, in the form of false cost information for its "preferred" medications specified herein, as well as other medications manufactured by them, to be presented to officers and employees of the federal and state governments. As a result, the government paid reimbursements for TAP's drugs to Omnicare and other Medicaid provider pharmacies in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

383. Omnicare, at all times relevant to this action, sold and continues to sell pharmaceuticals in the State of Louisiana. Omnicare, at all times relevant to this action, has operated and continues to operate pharmacies in the State of Louisiana.

384. TAP, at all times relevant to this action, sold and continues to sell pharmaceuticals in the State of Louisiana.

385. By virtue of the above-described acts, among others, Defendant Omnicare knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the State of Louisiana, for illegally switched "preferred" drugs including, Prevacid, Monopril, Abilify, Lipitor, Accupril, Risperdal,

Levaquin, and Ultram/Ultracet.

386. By virtue of the above-described acts, among others, Defendant TAP knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the State of Louisiana, for Prevacid and other drugs.

387. As a result of the claims for reimbursement defendants submitted and caused to be submitted to Louisiana Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, Louisiana regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

388. The amounts of the false or fraudulent claims to the State of Louisiana were material.

389. Plaintiff State of Louisiana, being unaware of the falsity of the claims and/or statements made and caused to be made by the defendants, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XXII
Conspiracy to Submit False Claims in Violation of the Louisiana Medical Assistance Programs Integrity Law La. Rev. Stat. §438.3C
(Against All Defendants)

390. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

391. By entering the Market Share Agreement detailed herein, defendants TAP and Omnicare conspired to defraud the State of Louisiana by submitting false claims and causing the

submission of false claims for Prevacid and other drugs.

392. Omnicare further conspired to defraud the State of Louisiana with other "preferred" drug manufacturers by entering the Market Share Agreements and submitting false claims for illegally switched drugs including, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

393. As a result of the claims for reimbursement defendants submitted and caused to be submitted to Louisiana Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, Louisiana regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

394. The amounts of the false or fraudulent claims to the State of Louisiana were material.

395. Plaintiff State of Louisiana, being unaware of the falsity of the claims and/or statements made by the conspirators, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XXIII
Massachusetts False Claims Act
Mass. Gen. Laws ch. 12 §5(A)
(Against All Defendants)

396. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

397. This Count is brought by Lisitza in the name of the Commonwealth of Massachusetts under the *qui tam* provisions of the Massachusetts False Claims Act, Mass. Gen. Laws ch.12 §5(A).

398. At all times relevant and material to this Amended Complaint, the Defendant TAP knowingly caused false claims for payment or approval, in the form of false cost information for its "preferred" medications specified herein, as well as other medications manufactured by them, to be presented to officers and employees of the federal and commonwealth governments. As a result, the government paid reimbursements for TAP's drugs to Omnicare and other Medicaid provider pharmacies in excess of the amounts contemplated by law, resulting in great financial loss to the federal and commonwealth governments.

399. Omnicare, at all times relevant to this action, sold and continues to sell pharmaceuticals in the Commonwealth of Massachusetts. Omnicare, at all times relevant to this action, has operated and continues to operate pharmacies in the Commonwealth of Massachusetts.

400. TAP, at all times relevant to this action, sold and continues to sell pharmaceuticals in the Commonwealth of Massachusetts.

401. By virtue of the above-described acts, among others, Defendant Omnicare knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the Commonwealth of Massachusetts, for illegally switched "preferred" drugs including, Prevacid, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

402. By virtue of the above-described acts, among others, Defendant TAP knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the Commonwealth of Massachusetts, for Prevacid

and other drugs.

403. As a result of the claims for reimbursement defendants submitted and caused to be submitted to Massachusetts Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, Massachusetts regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

404. The amounts of the false or fraudulent claims to the Commonwealth of Massachusetts were material.

405. Plaintiff Commonwealth of Massachusetts, being unaware of the falsity of the claims and/or statements made and caused to be made by the defendants, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XXIV
Conspiracy to Submit False Claims in Violation of the Massachusetts False Claims Act
Mass. Gen. Laws ch. 12 §5(B)(3)
(Against All Defendants)

406. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

407. By entering the Market Share Agreement detailed herein, defendants TAP and Omnicare conspired to defraud the Commonwealth of Massachusetts by submitting false claims and causing the submission of false claims for Prevacid and other drugs.

408. Omnicare further conspired to defraud the Commonwealth of Massachusetts with other "preferred" drug manufacturers by entering the Market Share Agreements and submitting false claims for illegally switched drugs including, Monopril, Abilify, Lipitor, Accupril,

Risperdal, Levaquin, and Ultram/Ultracet.

409. As a result of the claims for reimbursement defendants submitted and caused to be submitted to Massachusetts Medicaid, which were certified compliant with federal and commonwealth Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, Massachusetts regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

410. The amounts of the false or fraudulent claims to the Commonwealth of Massachusetts were material.

411. Plaintiff Commonwealth of Massachusetts, being unaware of the falsity of the claims and/or statements made by the conspirators, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XXV
Michigan Medicaid False Claims Act
Mich. Comp. Laws §400.601 *et seq.*
(Against All Defendants)

412. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

413. This Count is brought by Plaintiff Lisitza individually and in the name of the State of Michigan under the *qui tam* provisions of the Michigan False Claims Act, Mich. Comp. Laws §4000.601 *et seq.*

414. At all times relevant and material to this Amended Complaint, the Defendant TAP knowingly caused false claims for payment or approval, in the form of false cost information for its "preferred" medications specified herein, as well as other medications manufactured by them, to be presented to officers and employees of the federal and state governments. As a result, the government paid reimbursements for TAP's drugs to Omnicare and other Medicaid provider

pharmacies in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

415. Omnicare, at all times relevant to this action, sold and continues to sell pharmaceuticals in the State of Michigan. Omnicare, at all times relevant to this action, has operated and continues to operate pharmacies in the State of Michigan.

416. TAP, at all times relevant to this action, sold and continues to sell pharmaceuticals in the State of Michigan.

417. By virtue of the above-described acts, among others, Defendant Omnicare knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the State of Michigan, for illegally switched "preferred" drugs including, Prevacid, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

418. By virtue of the above-described acts, among others, Defendant TAP knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the State of Michigan, for Prevacid and other drugs.

419. As a result of the claims for reimbursement defendants submitted and caused to be submitted to Michigan Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, Michigan regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

420. The amounts of the false or fraudulent claims to the State of Michigan were material.

421. Plaintiff State of Michigan, being unaware of the falsity of the claims and/or statements made and caused to be made by the defendants, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XXVI
Conspiracy to Submit False Claims in Violation of the Michigan Medicaid False Claims Act
Mich. Comp. Laws §400.601 *et seq.*
(Against All Defendants)

422. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

423. By entering the Market Share Agreement detailed herein, defendants TAP and Omnicare conspired to defraud the State of Michigan by submitting false claims and causing the submission of false claims for Prevacid and other drugs.

424. Omnicare further conspired to defraud the State of Michigan with other "preferred" drug manufacturers by entering the Market Share Agreements and submitting false claims for illegally switched drugs including, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

425. As a result of the claims for reimbursement defendants submitted and caused to be submitted to Michigan Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, Michigan regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

426. The amounts of the false or fraudulent claims to the State of Michigan were

material.

427. Plaintiff State of Michigan, being unaware of the falsity of the claims and/or statements made by the conspirators, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XXVII
Nevada False Claims Act
Nev. Rev. Stat. §357.010 *et seq.*,
(Against All Defendants)

428. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

429. This Count is brought by Lisitza in the name of the State of Nevada under the *qui tam* provisions of Nev. Rev. Stat. §357.010 *et seq.*, "Submission of False Claims to State or Local government."

430. At all times relevant and material to this Amended Complaint, the Defendant TAP knowingly caused false claims for payment or approval, in the form of false cost information for its "preferred" medications specified herein, as well as other medications manufactured by them, to be presented to officers and employees of the federal and state governments. As a result, the government paid reimbursements for TAP's drugs to Omnicare and other Medicaid provider pharmacies in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

431. Omnicare, at all times relevant to this action, sold and continues to sell pharmaceuticals in the State of Nevada. Omnicare, at all times relevant to this action, has operated and continues to operate pharmacies in the State of Nevada.

432. TAP, at all times relevant to this action, sold and continues to sell pharmaceuticals in the State of Nevada.

433. By virtue of the above-described acts, among others, Defendant Omnicare knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the State of Nevada, for illegally switched "preferred" drugs including, Prevacid, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

434. By virtue of the above-described acts, among others, Defendant TAP knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the State of Nevada, for Prevacid and other drugs.

435. As a result of the claims for reimbursement defendants submitted and caused to be submitted to Nevada Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, Nevada regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

436. The amounts of the false or fraudulent claims to the State of Nevada were material.

437. Plaintiff State of Nevada, being unaware of the falsity of the claims and/or statements made and caused to be made by the defendants, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XXVIII
Conspiracy to Submit False Claims in Violation of the Nevada False Claims Act
Nev. Rev. Stat. §357.040(C)
(Against All Defendants)

438. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

439. By entering the Market Share Agreement detailed herein, defendants TAP and Omnicare conspired to defraud the State of Nevada by submitting false claims and causing the submission of false claims for Prevacid and other drugs.

440. Omnicare further conspired to defraud the State of Nevada with other "preferred" drug manufacturers by entering the Market Share Agreements and submitting false claims for illegally switched drugs including, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

441. As a result of the claims for reimbursement defendants submitted and caused to be submitted to Nevada Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, Nevada regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

442. The amounts of the false or fraudulent claims to the State of Nevada were material.

443. Plaintiff State of Nevada, being unaware of the falsity of the claims and/or statements made by the conspirators, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XXIX
New Hampshire Medicaid Fraud and False Claims Act
N.H. Rev. Stat. §167:61-b *et seq.*
(Against All Defendants)

444. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

445. This Count is brought by Plaintiff Lisitza individually and in the name of the State of New Hampshire under the *qui tam* provisions of New Hampshire Medicaid Fraud and False Claims Act, N.H. Rev. Stat. §167:61-b *et. seq.*

446. At all times relevant and material to this Amended Complaint, the Defendant TAP knowingly caused false claims for payment or approval, in the form of false cost information for its "preferred" medications specified herein, as well as other medications manufactured by them, to be presented to officers and employees of the federal and state governments. As a result, the government paid reimbursements for TAP's drugs to Omnicare and other Medicaid provider pharmacies in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

447. Omnicare, at all times relevant to this action, sold and continues to sell pharmaceuticals in the State of New Hampshire. Omnicare, at all times relevant to this action, has operated and continues to operate pharmacies in the State of New Hampshire.

448. TAP, at all times relevant to this action, sold and continues to sell pharmaceuticals in the State of New Hampshire.

449. By virtue of the above-described acts, among others, Defendant Omnicare knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the State of New Hampshire, for

illegally switched "preferred" drugs including, Prevacid, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

450. By virtue of the above-described acts, among others, Defendant TAP knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the State of New Hampshire, for Prevacid and other drugs.

451. As a result of the claims for reimbursement defendants submitted and caused to be submitted to New Hampshire Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, New Hampshire regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

452. The amounts of the false or fraudulent claims to the State of New Hampshire were material.

453. Plaintiff State of New Hampshire, being unaware of the falsity of the claims and/or statements made and caused to be made by the defendants, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XXX
Conspiracy to Submit False Claims in Violation of
the New Hampshire Medicaid Fraud and False Claims Act
N.H. Rev. Stat. §167:61-b(c)
(Against All Defendants)

454. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

455. By entering the Market Share Agreement detailed herein, defendants TAP and

Omnicare conspired to defraud the State of New Hampshire by submitting false claims and causing the submission of false claims for Prevacid and other drugs.

456. Omnicare further conspired to defraud the State of New Hampshire with other "preferred" drug manufacturers by entering the Market Share Agreements and submitting false claims for illegally switched drugs including, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

457. As a result of the claims for reimbursement defendants submitted and caused to be submitted to New Hampshire Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, New Hampshire regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

458. The amounts of the false or fraudulent claims to the State of New Hampshire were material.

459. Plaintiff State of New Hampshire, being unaware of the falsity of the claims and/or statements made by the conspirators, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XXXI
New Mexico Medicaid False Claims Act
N.M. Stat. §27-14-1 *et seq.*
(Against All Defendants)

460. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

461. This Count is brought by Plaintiff Lisitza individually and in the name of the State of New Mexico under the *qui tam* provisions of the New Mexico Medicaid False Claims Act,

N.M. Stat. §27-14-1 *et seq.*

462. At all times relevant and material to this Amended Complaint, the Defendant TAP knowingly caused false claims for payment or approval, in the form of false cost information for its "preferred" medications specified herein, as well as other medications manufactured by them, to be presented to officers and employees of the federal and state governments. As a result, the government paid reimbursements for TAP's drugs to Omnicare and other Medicaid provider pharmacies in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

463. Omnicare, at all times relevant to this action, sold and continues to sell pharmaceuticals in the State of New Mexico. Omnicare, at all times relevant to this action, has operated and continues to operate pharmacies in the State of New Mexico.

464. TAP, at all times relevant to this action, sold and continues to sell pharmaceuticals in the State of New Mexico.

465. By virtue of the above-described acts, among others, Defendant Omnicare knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the State of New Mexico, for illegally switched "preferred" drugs including, Prevacid, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

466. By virtue of the above-described acts, among others, Defendant TAP knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the State of New Mexico, for Prevacid and other

drugs.

467. As a result of the claims for reimbursement defendants submitted and caused to be submitted to New Mexico Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, New Mexico regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

468. The amounts of the false or fraudulent claims to the State of New Mexico were material.

469. Plaintiff State of New Mexico, being unaware of the falsity of the claims and/or statements made and caused to be made by the defendants, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XXXII
Conspiracy to Submit False Claims in Violation of
the New Mexico Medicaid False Claims Act
N.M. Stat. §27-14-4(D)
(Against All Defendants)

470. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

471. By entering the Market Share Agreement detailed herein, defendants TAP and Omnicare conspired to defraud the State of New Mexico by submitting false claims and causing the submission of false claims for Prevacid and other drugs.

472. Omnicare further conspired to defraud the State of New Mexico with other "preferred" drug manufacturers by entering the Market Share Agreements and submitting false claims for illegally switched drugs including, Monopril, Abilify, Lipitor, Accupril, Risperdal,

Levaquin, and Ultram/Ultracet.

473. As a result of the claims for reimbursement defendants submitted and caused to be submitted to New Mexico Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, New Mexico regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

474. The amounts of the false or fraudulent claims to the State of New Mexico were material.

475. Plaintiff State of New Mexico, being unaware of the falsity of the claims and/or statements made by the conspirators, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XXXIII
New York False Claims Act
N.Y. St. Finance Law §187 *et seq.*
(Against All Defendants)

476. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

477. This Count is brought by Lisitza in the name of the State of New York under the *qui tam* provisions of the New York False Claims Act, N.Y. St. Finance Law §187 *et seq.*

478. At all times relevant and material to this Amended Complaint, the Defendant TAP knowingly caused false claims for payment or approval, in the form of false cost information for its "preferred" medications specified herein, as well as other medications manufactured by them, to be presented to officers and employees of the federal and state governments. As a result, the government paid reimbursements for TAP's drugs to Omnicare and other Medicaid provider

pharmacies in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

479. Omnicare, at all times relevant to this action, sold and continues to sell pharmaceuticals in the State of New York. Omnicare, at all times relevant to this action, has operated and continues to operate pharmacies in the State of New York.

480. TAP, at all times relevant to this action, sold and continues to sell pharmaceuticals in the State of New York.

481. By virtue of the above-described acts, among others, Defendant Omnicare knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the State of New York, for illegally switched "preferred" drugs including, Prevacid, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

482. By virtue of the above-described acts, among others, Defendant TAP knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the State of New York, for Prevacid and other drugs.

483. As a result of the claims for reimbursement defendants submitted and caused to be submitted to New York Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, New York regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

484. The amounts of the false or fraudulent claims to the State of New York were material.

485. Plaintiff State of New York, being unaware of the falsity of the claims and/or statements made and caused to be made by the defendants, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XXXIV
Conspiracy to Submit False Claims in Violation of the New York False Claims Act
N.Y. St. Finance Law §187 *et seq.*
(Against All Defendants)

486. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

487. By entering the Market Share Agreement detailed herein, defendants TAP and Omnicare conspired to defraud the State of New York by submitting false claims and causing the submission of false claims for Prevacid and other drugs.

488. Omnicare further conspired to defraud the State of New York with other "preferred" drug manufacturers by entering the Market Share Agreements and submitting false claims for illegally switched drugs including, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

489. As a result of the claims for reimbursement defendants submitted and caused to be submitted to New York Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, New York regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

490. The amounts of the false or fraudulent claims to the State of New York were

material.

491. Plaintiff State of New York, being unaware of the falsity of the claims and/or statements made by the conspirators, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XXXV
Tennessee Medicaid False Claims Act
Tenn. Code. §71- 5-181 *et seq.*
(Against All Defendants)

492. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

493. This Count is brought by Lisitza in the name of the State of Tennessee under the *qui tam* provisions of the Tennessee Medicaid False Claims Act, Tenn. Code. §71- 5-181 *et seq.*

494. At all times relevant and material to this Amended Complaint, the Defendant TAP knowingly caused false claims for payment or approval, in the form of false cost information for its "preferred" medications specified herein, as well as other medications manufactured by them, to be presented to officers and employees of the federal and state governments. As a result, the government paid reimbursements for TAP's drugs to Omnicare and other Medicaid provider pharmacies in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

495. Omnicare, at all times relevant to this action, sold and continues to sell pharmaceuticals in the State of Tennessee. Omnicare, at all times relevant to this action, has operated and continues to operate pharmacies in the State of Tennessee.

496. TAP, at all times relevant to this action, sold and continues to sell pharmaceuticals in the State of Tennessee.

497. By virtue of the above-described acts, among others, Defendant Omnicare

knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the State of Tennessee, for illegally switched "preferred" drugs including, Prevacid, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

498. By virtue of the above-described acts, among others, Defendant TAP knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the State of Tennessee, for Prevacid and other drugs.

499. As a result of the claims for reimbursement defendants submitted and caused to be submitted to Tennessee Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, Tennessee regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

500. The amounts of the false or fraudulent claims to the State of Tennessee were material.

501. Plaintiff State of Tennessee, being unaware of the falsity of the claims and/or statements made and caused to be made by the defendants, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XXXVI
Conspiracy to Submit False Claims in Violation of the Tennessee Medicaid False Claims Act
Tenn. Stat. §71-5-182(C)
(Against All Defendants)

502. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

503. By entering the Market Share Agreement detailed herein, defendants TAP and Omnicare conspired to defraud the State of Tennessee by submitting false claims and causing the submission of false claims for Prevacid and other drugs.

504. Omnicare further conspired to defraud the State of Tennessee with other "preferred" drug manufacturers by entering the Market Share Agreements and submitting false claims for illegally switched drugs including, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

505. As a result of the claims for reimbursement defendants submitted and caused to be submitted to Tennessee Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, Tennessee regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

506. The amounts of the false or fraudulent claims to the State of Tennessee were material.

507. Plaintiff State of Tennessee, being unaware of the falsity of the claims and/or statements made by the conspirators, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XXXVII
Texas Medicaid Fraud Prevention Act
Tx. Hum. Res. Code §36.101 *et seq.*
(Against All Defendants)

508. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

509. This Count is brought by Lisitza in the name of the State of Texas under the *qui tam* provisions of the Texas Medicaid Fraud Prevention Act, Tx. Hum. Res. Code §36.101 *et seq.*

510. At all times relevant and material to this Amended Complaint, the Defendant TAP knowingly caused false claims for payment or approval, in the form of false cost information for its "preferred" medications specified herein, as well as other medications manufactured by them, to be presented to officers and employees of the federal and state governments. As a result, the government paid reimbursements for TAP's drugs to Omnicare and other Medicaid provider pharmacies in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

511. Omnicare, at all times relevant to this action, sold and continues to sell pharmaceuticals in the State of Texas. Omnicare, at all times relevant to this action, has operated and continues to operate pharmacies in the State of Texas.

512. TAP, at all times relevant to this action, sold and continues to sell pharmaceuticals in the State of Texas.

513. By virtue of the above-described acts, among others, Defendant Omnicare knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the State of Texas, for illegally switched "preferred" drugs including, Prevacid, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin,

and Ultram/Ultracet.

514. By virtue of the above-described acts, among others, Defendant TAP knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the State of Texas, for Prevacid and other drugs.

515. As a result of the claims for reimbursement defendants submitted and caused to be submitted to Texas Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, Texas regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

516. The amounts of the false or fraudulent claims to the State of Texas were material.

517. Plaintiff State of Texas, being unaware of the falsity of the claims and/or statements made and caused to be made by the defendants, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XXXVIII
Conspiracy to Submit False Claims in Violation of the Texas Medicaid False Claims Act
Tx. Hum. Res. Code §36.002(9)
(Against All Defendants)

518. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

519. By entering the Market Share Agreement detailed herein, defendants TAP and Omnicare conspired to defraud the State of Texas by submitting false claims and causing the submission of false claims for Prevacid and other drugs.

520. Omnicare further conspired to defraud the State of Texas with other "preferred"

drug manufacturers by entering the Market Share Agreements and submitting false claims for illegally switched drugs including, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

521. As a result of the claims for reimbursement defendants submitted and caused to be submitted to Texas Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, Texas regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

522. The amounts of the false or fraudulent claims to the State of Texas were material.

523. Plaintiff State of Texas, being unaware of the falsity of the claims and/or statements made by the conspirators, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XXXIX
Virginia Fraud Against Taxpayers Act
Va. Code §8.01-216.1 *et seq.*
(Against All Defendants)

524. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

525. This Count is brought by Lisitza in the name of the Commonwealth of Virginia under the *qui tam* provisions of the Virginia Fraud Against Taxpayers Act, Va. Code §8.01-216.1 *et seq.*

526. At all times relevant and material to this Amended Complaint, the Defendant TAP knowingly caused false claims for payment or approval, in the form of false cost information for its "preferred" medications specified herein, as well as other medications manufactured by them, to be presented to officers and employees of the federal and commonwealth governments. As a

result, the government paid reimbursements for TAP's drugs to Omnicare and other Medicaid provider pharmacies in excess of the amounts contemplated by law, resulting in great financial loss to the federal and commonwealth governments.

527. Omnicare, at all times relevant to this action, sold and continues to sell pharmaceuticals in the Commonwealth of Virginia. Omnicare, at all times relevant to this action, has operated and continues to operate pharmacies in the Commonwealth of Virginia.

528. TAP, at all times relevant to this action, sold and continues to sell pharmaceuticals in the Commonwealth of Virginia.

529. By virtue of the above-described acts, among others, Defendant Omnicare knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the Commonwealth of Virginia, for illegally switched "preferred" drugs including, Prevacid, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

530. By virtue of the above-described acts, among others, Defendant TAP knowingly caused to be presented false or fraudulent claims for payment or approval, and possibly continues to cause to be submitted false or fraudulent claims for payment or approval, directly or indirectly, to officers, employees or agents of the Commonwealth of Virginia, for Prevacid and other drugs.

531. As a result of the claims for reimbursement defendants submitted and caused to be submitted to Virginia Medicaid, which were certified compliant with federal and commonwealth Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, Virginia regularly made payments to pharmacies for TAP's and other

"preferred" drug manufacturers' illegally switched drugs.

532. The amounts of the false or fraudulent claims to the Commonwealth of Virginia were material.

533. Plaintiff Commonwealth of Virginia, being unaware of the falsity of the claims and/or statements made and caused to be made by the defendants, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XL
Conspiracy to Submit False Claims in Violation of the Virginia Fraud Against Taxpayers Act
Va. Code §8.01-216.3(3)
(Against All Defendants)

534. Plaintiffs reallege and incorporate by reference Paragraphs 1-219 set forth above.

535. By entering the Market Share Agreement detailed herein, defendants TAP and Omnicare conspired to defraud the Commonwealth of Virginia by submitting false claims and causing the submission of false claims for Prevacid and other drugs.

536. Omnicare further conspired to defraud the Commonwealth of Virginia with other "preferred" drug manufacturers by entering the Market Share Agreements and submitting false claims for illegally switched drugs including, Monopril, Abilify, Lipitor, Accupril, Risperdal, Levaquin, and Ultram/Ultracet.

537. As a result of the claims for reimbursement defendants submitted and caused to be submitted to Virginia Medicaid, which were certified compliant with federal and commonwealth Medicaid law and regulation as a condition of payment by Omnicare and other co-conspirator pharmacies, Virginia regularly made payments to pharmacies for TAP's and other "preferred" drug manufacturers' illegally switched drugs.

538. The amounts of the false or fraudulent claims to the Commonwealth of Virginia were material.

539. Plaintiff Commonwealth of Virginia, being unaware of the falsity of the claims and/or statements made by the conspirators, and in reliance on the accuracy thereof paid and may continue to pay for the illegally switched "preferred" drugs. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

COUNT XLI
Illinois Insurance Claims Fraud Prevention Act
740 ILCS 92/1 *et seq.*
(Against All Defendants)

540. Plaintiffs repeat and reallege paragraphs 1 – 219 above as if fully set forth herein.

541. Relator is an interested person with direct, personal knowledge of the allegations of this complaint, who has brought this action pursuant to 740 ILCS 92/1 *et seq.* on behalf of himself and the State of Illinois.

542. By committing the acts alleged above, defendants violated 740 ILCS 92/1 et seq. by repeatedly, willfully and intentionally submitting, conspiring to submit, and causing false claims for reimbursement to be submitted to insurers for prescription drugs that were provided to patients as the result of kickbacks, switching drugs without informed physician authorization, and other misrepresentations and omissions from 1998 to date.

543. By concealing and/or by failing to disclose the fact that the claims to be submitted to insurers were for prescription drugs provided to patients as a result of kickbacks, switching drugs without informed physician authorization, and other misrepresentations and omissions defendants made and/or caused to be made a false statement or record.

544. By failing to disclose and actively concealing that claims submitted to insurers were for prescription drugs provided to patients as a result of kickbacks, switching drugs without

informed physician authorization, and other misrepresentations and omissions the claims defendants conspired to submit, and caused to be submitted to insurers contained false, incomplete and misleading information that was material to the claims. The information was material because insurers would have wanted to know that defendants were not complying with state insurance, prescription drug switching, and consumer fraud laws.

545. Insurers were unaware of the falsity of the records, statements and claims made or caused to be made by defendants involving illegal prescription drug switching and provision at the time the insurers reimbursed defendant Omnicare.

546. Each claim for reimbursement from an insurer that defendants conspired to submit, or caused to be submitted for providing illegally switched "preferred" drugs represents a false claim. Each claim for reimbursement for illegally switched "preferred" drug prescriptions also represents an unlawful claim and/or a false or fraudulent claim for payment.

547. Plaintiffs cannot at this time identify all of the false claims for payment that were made and caused by defendants' conduct. This information is solely within the possession of defendants TAP and Omnicare.

JURY DEMAND

548. Plaintiffs demand trial by jury on all claims.

PRAYER

WHEREFORE, Plaintiffs pray for judgment against the defendants TAP and Omnicare as follows:

i. That defendants TAP and Omnicare be found to have violated and be enjoined from future violations of the federal False Claims Act, 31 U.S.C. §3729-32, the Illinois Whistleblower Reward and Protection Act, 740 ILCS 175, the California False Claims Act, Cal. Gov. Code §12651(a), the Delaware False Claims and Reporting Act, Del. Code Tit. VI. §1201, the District of Columbia False Claims Act, D.C. Code §2-308.03 *et seq.*,

the Florida False Claims Act, Fl. Stat. §§68.081-68.09, the Georgia State False Medicaid Claims Act, Ga. Code 49-4-168 *et seq.,* the Hawaii False Claims Act, Haw. Rev. Stat. §661-21 *et seq.*, the Indiana False Claims and Whistleblower Act, Ind. Code § 5-11-5.5 et seq., the Louisiana Medical Assistance Programs Integrity Law, La. Rev. Stat. §46:439.1 et seq., the Massachusetts False Claims Act, Mass. Gen. Laws c.12 §5(A), the Michigan Medicaid False Claims Act, Mich. Comp. Laws §400.601 *et seq.*, the Nevada False Claims Act, Nev. Rev. Stat. §357.010 *et seq.*, the New Hampshire Medicaid Fraud and False Claims Act, N.H. Rev. Stat. §167:61-b *et seq.*, the New Mexico Medicaid False Claims Act, the New York False Claims Act, N.Y. St. Finance Law §187 *et seq.,* the Tennessee Medicaid False Claims Act, Tenn. Code. §71- 5-181 *et seq.*, the Texas Medicaid Fraud Prevention Act, Tx. Hum. Res. Code, §36.101 *et seq.*, and the Virginia Fraud Against Taxpayers Act, Va. Code §8.01-216.1 *et seq.*

ii. That defendants TAP and Omnicare be found to have violated and be enjoined from future violations of the federal False Claims Act, 31 U.S.C. §3729-32, the Illinois Whistleblower Reward and Protection Act, 740 ILCS 175, the California False Claims Act, Cal. Gov. Code §12651(a), the Delaware False Claims and Reporting Act, Del. Code Tit. VI. §1201, the District of Columbia False Claims Act, D.C. Code §2-308.03 *et seq.*, the Florida False Claims Act, Fl. Stat. §§68.081-68.09, the Georgia State False Medicaid Claims Act, Ga. Code 49-4-168 *et seq.,* the Hawaii False Claims Act, Haw. Rev. Stat. §661-21 *et seq.*, the Indiana False Claims and Whistleblower Act, Ind. Code § 5-11-5.5 et seq., the Louisiana Medical Assistance Programs Integrity Law, La. Rev. Stat. §46:439.1 et seq., the Massachusetts False Claims Act, Mass. Gen. Laws c.12 §5(A), the Michigan Medicaid False Claims Act, Mich. Comp. Laws §400.601 *et seq.*, the Nevada False Claims Act, Nev. Rev. Stat. §357.010 *et seq.*, the New Hampshire Medicaid Fraud and False Claims Act, N.H. Rev. Stat. §167:61-b *et seq.*, the New Mexico Medicaid False Claims Act, N.M. Stat. §27-14-1 *et seq.*, the New York False Claims Act, N.Y. St. Finance Law §187 *et seq.,* the Tennessee Medicaid False Claims Act, Tenn. Code. §71-5-181 *et seq.*, the Texas Medicaid Fraud Prevention Act, Tx. Hum. Res. Code, §36.101 *et seq.*, and the Virginia Fraud Against Taxpayers Act, Va. Code §8.01-216.1 *et seq.*

iii. That defendants TAP and Omnicare be found to have violated and enjoined from future violations of the provisions against conspiracy to defraud the government as found in the federal False Claims Act, 31 U.S.C. §3729(a)(3), the Illinois Whistleblower Reward and Protection Act, 740 ILCS 175/3(a)(3), the California False Claims Act, Cal. Gov. Code §12651(a)(3), the Delaware False Claims and Reporting Act, Del. Code Tit. VI. §1201(a)(3), the District of Columbia False Claims Act, D.C. Code §2-308.14(a)(3), the Florida False Claims Act, Fl. Stat. §68.082(2)(C), the Georgia State False Medicaid Claims Act, Ga. Code 49-4-168 *et seq.,* the Hawaii False Claims Act, Haw. Rev. Stat. §661-21(a)(3), the Indiana False Claims and Whistleblower Act, Ind. Code § 5-11-5.5 et seq., the Louisiana Medical Assistance Programs Integrity Law, La. Rev. Stat. §438.3(C), the Massachusetts False Claims Act, Mass. Gen. Laws c.12 §5(B)(3), the Michigan Medicaid False Claims Act, Mich. Comp. Laws §400.601 *et seq.*, the Nevada False Claims Act, Nev. Rev. Stat. §357.010 *et seq.*, the New Hampshire Medicaid Fraud and False Claims Act, N.H. Rev. Stat. §167:61-b *et seq.*, the New Mexico Medicaid False Claims Act, N.M. Stat. §27-14-1 *et seq.*, the New York False Claims Act, N.Y. St.

Finance Law §187 *et seq.*, the Tennessee Medicaid False Claims Act, Tenn. Stat. §75-1-182(a)(1)(C), the Texas Medicaid Fraud Prevention Act, Tx. Hum. Res. Code, §36.002(9), and the Virginia Fraud Against Taxpayers Act, Va. Code §8.01-216.3(A)(3).

iv. That this Court enter judgment against defendants TAP and Omnicare in an amount equal to three times the amount of damages the United States government has sustained because of the false or fraudulent claims caused to be made by the defendants TAP and Omnicare, plus the maximum civil penalty for each violation of 31 U.S.C. §3729.

v. That this Court enter judgment against defendants TAP and Omnicare in an amount equal to three times the amount of damages the United States government has sustained because of the false or fraudulent records and/or statements the defendants TAP and Omnicare caused to be made, plus the maximum civil penalty for each violation of 31 U.S.C. §3729.

vi. That Plaintiffs be awarded the maximum amount allowed pursuant to §3730(d), and all relief to which they are entitled pursuant to §3730(h) of the False Claims Act.

vii. That this Court enter judgment against defendants TAP and Omnicare for the maximum amount of damages sustained by each State or District because of the false or fraudulent claims caused to be made by the defendants TAP and Omnicare, plus the maximum civil penalty for each violation of the Illinois Whistleblower Reward and Protection Act, 740 ILCS 175, the California False Claims Act, Cal. Gov. Code §12651(a), the Delaware False Claims and Reporting Act, Del. Code Tit. VI. §1201, the District of Columbia False Claims Act, D.C. Code §2-308.03 *et seq.*, the Florida False Claims Act, Fl. Stat. §§68.081-68.09, the Georgia State False Medicaid Claims Act, Ga. Code 49-4-168 *et seq.*, the Hawaii False Claims Act, Haw. Rev. Stat. §661-21 *et seq.*, the Indiana False Claims and Whistleblower Act, Ind. Code § 5-11-5.5 et seq., the Louisiana Medical Assistance Programs Integrity Law, La. Rev. Stat. §46:439.1 et seq., the Massachusetts False Claims Act, Mass. Gen. Laws c.12 §5(A), the Michigan Medicaid False Claims Act, Mich. Comp. Laws §400.601 *et seq.*, the Nevada False Claims Act, Nev. Rev. Stat. §357.010 *et seq.*, the New Hampshire Medicaid Fraud and False Claims Act, N.H. Rev. Stat. §167:61-b *et seq.*, the New Mexico Medicaid False Claims Act, N.M. Stat. §27-14-1 *et seq.*, the New York False Claims Act, N.Y. St. Finance Law §187 *et seq.*, the Tennessee Medicaid False Claims Act, Tenn. Code. §71- 5-181 *et seq.*, the Texas Medicaid Fraud Prevention Act, Tx. Hum. Res. Code, §36.101 *et seq.*, and the Virginia Fraud Against Taxpayers Act, Va. Code §8.01-216.1 *et seq.*

viii. That this Court enter judgment against defendants TAP and Omnicare for the maximum amount of damages sustained by each State or District because of the false or fraudulent statements or records caused to be made by the defendants TAP and Omnicare, plus the maximum civil penalty for each violation of the Illinois Whistleblower Reward and Protection Act, 740 ILCS 175, the California False Claims Act, Cal. Gov. Code §12651(a), the Delaware False Claims and Reporting Act, Del. Code Tit. VI. §1201, the District of Columbia False Claims Act, D.C. Code §2-308.03 *et seq.*, the Florida False Claims Act, Fl. Stat. §§68.081-68.09, the Georgia State False Medicaid Claims Act, Ga.

Code 49-4-168 *et seq.,* the Hawaii False Claims Act, Haw. Rev. Stat. §661-21 *et seq.*, the Indiana False Claims and Whistleblower Act, Ind. Code § 5-11-5.5 *et seq.*, the Louisiana Medical Assistance Programs Integrity Law, La. Rev. Stat. §46:439.1 *et seq.*, the Massachusetts False Claims Act, Mass. Gen. Laws c.12 §5(A), the Michigan Medicaid False Claims Act, Mich. Comp. Laws §400.601 *et seq.*, the Nevada False Claims Act, Nev. Rev. Stat. §357.010 *et seq.*, the New Hampshire Medicaid Fraud and False Claims Act, N.H. Rev. Stat. §167:61-b *et seq.*, the New Mexico Medicaid False Claims Act, N.M. Stat. §27-14-1 *et seq.*, the New York False Claims Act, N.Y. St. Finance Law §187 *et seq.,* the Tennessee Medicaid False Claims Act, Tenn. Code. §71- 5-181 *et seq.*, the Texas Medicaid Fraud Prevention Act, Tx. Hum. Res. Code, §36.101 *et seq.*, and the Virginia Fraud Against Taxpayers Act, Va. Code §8.01-216.1 *et seq.*

ix. That Plaintiffs be awarded the maximum amount allowed pursuant to 740 ILCS 175/4(d) of the Illinois Whistleblower Reward and Protection Act, the California False Claims Act, Cal. Gov. Code §12651(a), the Delaware False Claims and Reporting Act, Del. Code Tit. VI. §1201, the District of Columbia False Claims Act, D.C. Code §2-308.03 *et seq.*, the Florida False Claims Act, Fl. Stat. §§68.081-68.09, the Georgia State False Medicaid Claims Act, Ga. Code 49-4-168 *et seq.,* the Hawaii False Claims Act, Haw. Rev. Stat. §661-21 *et seq.*, the Indiana False Claims and Whistleblower Act, Ind. Code § 5-11-5.5 et seq., the Louisiana Medical Assistance Programs Integrity Law, La. Rev. Stat. §46:439.1 *et seq.*, the Massachusetts False Claims Act, Mass. Gen. Laws c.12 §5(A), the Michigan Medicaid False Claims Act, Mich. Comp. Laws §400.601 *et seq.*, the Nevada False Claims Act, Nev. Rev. Stat. §357.010 *et seq.*, the New Hampshire Medicaid Fraud and False Claims Act, N.H. Rev. Stat. §167:61-b *et seq.*, the New Mexico Medicaid False Claims Act, N.M. Stat. §27-14-1 *et seq.*, the New York False Claims Act, N.Y. St. Finance Law §187 *et seq.,* the Tennessee Medicaid False Claims Act, Tenn. Code. §71-5-181 *et seq.*, the Texas Medicaid Fraud Prevention Act, Tx. Hum. Res. Code, §36.101 *et seq.*, and the Virginia Fraud Against Taxpayers Act, Va. Code §8.01-216.1 *et seq.*, and all relief to which they are entitled pursuant to said laws.

x. That Plaintiffs be awarded all costs of this action, including expert witness fees, attorneys' fees, and court costs.

xi. Pursuant to the Illinois Insurance Claims Fraud Prevention Act, 740 ILCS 92/1 *et seq.*, that Relator and the State of Illinois be given the following additional relief:

To the STATE OF ILLINOIS:

(1) An assessment of three times the amount of each claim for reimbursement under and insurance contract;
(2) A civil penalty of not less than $5,000 and not more than $10,000 for each false claim submitted pursuant to 740 ILCS 92/5;
(3) Prejudgment interest; and
(4) All costs of this action, including reasonable attorneys' fees; and,
(5) All further relief as this Court deems just and proper.

To the RELATOR:

(1) The maximum amount allowed pursuant to 740 ILCS 92/5;
(2) Reimbursement of the expenses Relator incurred in connection with this action;
(3) An award of reasonable attorneys' fees;
(4) All costs of this action; and
(5) All further relief as this Court deems just and proper.

xii. That Plaintiffs recover such other relief as the Court deems just and proper.

Respectfully submitted,

UNITED STATES OF AMERICA *ex rel.*
BERNARD LISITZA, et al.

Attorney for Relator Bernard Lisitza

By: _____

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CERTIFICATE OF SERVICE

I certify that on this day I caused a true copy of the above document to be served upon Gregg Shapiro, AUSA, U.S. Attorney's Office, One Courthouse Way, Boston, MA 02210 via hand delivery.

Date: November 1, 2007

Howard Friedman