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.

PFIZER, INC., BRISTOL MYERS SQUIBB, CO., JOHNSON & JOHNSON, ORTHO-MCNEIL PHARMACEUTICALS, INC., and JANSSEN, LP,

Defendants.

No. 07-10288-RGS

FILED UNDER SEAL

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT

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 Omnicare, Inc. ("Omnicare"), the nation's largest dispensing pharmacy for nursing homes and other extended care facilities. Omnicare is a major provider of pharmaceuticals, notably for patients covered by governmental healthcare programs including Medicaid. Lisitza worked for Omnicare as a pharmacist and a pharmacist supervisor. In those roles, he was able to witness firsthand the scheme described in this Complaint. The facts set forth are based on his personal observation, his investigation, and the investigation of counsel.

2. Defendants Bristol Myers Squibb Co., Johnson & Johnson, Janssen LP, Ortho McNeil Pharmaceutical, Inc., and Pfizer, Inc. (collectively, "Defendant Manufacturers") are companies engaged in the manufacturing, marketing, and selling of prescription drugs nationwide.

3. Defendant Manufacturers conspired with Omnicare to illegally switch patients' medications. Physicians wrote prescriptions for particular medications that fight ailments common to nursing homes – infections, stomach issues, high cholesterol, acid reflux, etc. Omnicare would switch these medications to a similar medication made by the Defendant Manufacturer willing to pay the highest illegal kickback. In these "kickbacks-for-switches" schemes, the "switched-to" medications were often more expensive than the "switched-from" medications.

4. Sometimes, Omnicare would make these switches with the physician's purported permission – through the solicitation of a letter from the physician authorizing the switches. However, as set forth herein, these letters (referred to in the trade as "Physician Authorization Letters" or "PALs") were obtained under false pretenses.

5. Sometimes, however, Omnicare simply made the switch with no physician oversight whatsoever. These switches, made with no care or concern for patient wellbeing – many made for patients who had been stable on a particular medication for years – put patients' health at risk and created the need for expensive collateral treatment, including testing and monitoring. For Medicaid and other government-paid health care recipients, the cost of such collateral care was borne by the government.

6. As a result of the kickbacks-for-switches scheme, payors were being billed for medications different than those being prescribed.

7. The first kickbacks-for-switches scheme between Omnicare and a Defendant Manufacturer was implemented in early 1998, with several following subsequently. They may continue to this day.

8. Each Defendant Manufacturer took the following actions in furtherance of its conspiracy with Omnicare to illegally switch patients from the medication prescribed to the "bought and paid for" medication:

- *Making false statements to Omnicare front line pharmacy personnel as to the reason for the switching.* Each Defendant Manufacturer 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.* Each Defendant Manufacturer 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.* Each Defendant Manufacturer 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 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 in part on the success of the switching scheme.

9. Defendant Manufacturers could not provide medications directly to the Medicaid program or issue prescriptions for their medications. Instead, their unlawful conduct knowingly caused Omnicare and other pharmacies to submit thousands of Medicaid claims for defendants' medications that were not eligible for Medicaid reimbursement.

10. The Defendant Manufacturers knew that their actions in conspiring with Omnicare to illegally switch patients' medications would cause Omnicare to submit false claims to the federal and state governments. Relator, in the name of the United States and other plaintiff States as detailed herein, seeks to hold the Defendant Manufacturers liable for knowingly causing false claims to be presented for payment and for conspiring with Omnicare to present false claims.

11. Furthermore, Defendant Manufacturers, as a precondition for participating in the Medicaid program, are obligated to report to the government the lowest price they give any customer for every medication. This is known as the "best price."

12. 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").

13. The result of the kickbacks-for-switches scheme was that Defendant Manufacturers were 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 Defendant Manufacturers' true "best price." Defendant Manufacturers did not disclose this actual best price to the government. As a result, Defendant Manufacturers' Medicaid rebates were grossly understated.

14. Defendant Manufacturers' failure to report actual best price resulted in other submissions of false claims to the government. Defendant Manufacturers use their 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.

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

16. Using an artificially high best price made the prices on every invoice paid for Defendant Manufacturers' 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 Defendant Manufacturers' 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.

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

18. On October 27, 2003, Lisitza filed a related *qui tam* complaint in the United States District Court for the Northern District of Illinois, entitled U.S. ex rel. Lisitza et al. v. TAP Pharmaceuticals Products, Inc. and Omnicare, Inc., No. 03 C 7578 (N.D. Ill. 2003), against Omnicare and another manufacturer. In that complaint, Lisitza detailed Omnicare's role in the kickbacks-for-switches conspiracy, as well of the conduct of another Defendant Manufacturer, TAP Pharmaceutical Products, Inc.

19. Defendant Manufacturers' 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.

20. Defendant Manufacturers' unlawful activities were not limited solely to Omnicare. The specific circumstances alleged herein evidence a pattern of conduct designed to maximize profits at every opportunity at government and private insurers' expense. Defendant Manufacturers effected the kickbacks-for-switches scheme with other pharmacies wherever it was possible and profitable, costing the government and private insurance companies tens of millions of dollars.

II. PARTIES

21. Plaintiff and Relator Lisitza is a citizen and resident of the State of Illinois. For more than five years, Lisitza worked for Omnicare as a pharmacist and a pharmacy supervisor. 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, Texas, the Commonwealths of Massachusetts and Virginia, and the District of Columbia pursuant to their respective False Claims Acts. The listed States, Commonwealths, and the District of Columbia will be referred to throughout as "Plaintiff States." Plaintiff States, the federal government, and Lisitza individually will be collectively referred to as "Plaintiffs."

22. Defendant Bristol Myers Squibb, Inc. ("Bristol Myers") is a Delaware corporation with its headquarters in New York, NY, and a principal research facility in New Brunswick, NJ, within 100 miles of Philadelphia, PA. Bristol Myers sells its pharmaceutical products, including Monopril and Abilify, in this District and nationwide. Monopril is the brand name of fosinopril sodium, a member of a class of drugs known as angiotensin-converting enzyme inhibitors ("ACE

inhibitors") designed to lower high blood pressure. Abilify (aripiprazole) is a member of a class of drugs known as atypical antipsychotics, used to treat schizophrenia and other serious mental health problems. Bristol Myers manufactures, markets, and distributes Abilify in conjunction with its discoverer, Japanese pharmaceutical concern Otsuka Pharmaceuticals, Inc.

23. Defendant Pfizer, Inc. ("Pfizer") is a Delaware corporation with a manufacturing facility in Lititz, PA, in Lancaster County in this District. Pfizer sells its pharmaceutical products, including Lipitor (atorvastatin calcium, a "statin" medication designed to lower cholesterol) and Accupril (quinapril, an ACE inhibitor), in this District and nationwide.

24. Defendant Pfizer entered into a Corporate Integrity Agreement ("CIA") with the United States Department of Justice as part of a settlement in a case involving alleged False Claims Act liability concerning Pfizer's sale and distribution of Neurontin, an antiseizure medication. As part of this CIA, Pfizer's officers agreed that the company would maintain an enhanced ethical and legal posture with respect to government-funded health care programs. Pfizer also promised to certify on a regular basis that it has maintained compliance with the CIA. Pfizer's conspiracy with Omnicare is in direct violation of the terms of this Corporate Integrity Agreement.

25. Defendant Johnson & Johnson ("J&J") is a New Jersey corporation with its principal place of business in New Brunswick, NJ, within 100 miles of Philadelphia, PA. J&J sells its pharmaceutical products in this District and nationwide.

26. Defendant Ortho McNeil Pharmaceuticals, Inc. ("Ortho McNeil") is a Delaware corporation with a manufacturing facility in Spring House, PA, in Montgomery County in this District. Ortho McNeil is a wholly-owned subsidiary of J&J. In this Complaint, therefore, J&J and Ortho McNeil will be collectively referred to as "Ortho McNeil." Ortho McNeil sells its

pharmaceutical products, including Levaquin (levofloxacin, an antibiotic) and Ultram (tramadol, a pain reliever) in this District and nationwide. Ortho McNeil also manufactures tramadol in combination with acetaminophen – this combination is marketed as Ultracet. The Ortho McNeil tramadol kickbacks-for-switches scheme involved both Ultram and Ultracet, and the term "Ultram/Ultracet" will refer to both drugs collectively.

27. Defendant Janssen, LP ("Janssen") is a New Jersey limited partnership with a principal place of business in Titusville, NJ, within 100 miles of Philadelphia, PA. Janssen is a wholly-owned subsidiary of J&J. In this Complaint, therefore, J&J and Janssen will be collectively referred to as "Janssen." Janssen sells its pharmaceutical products, including Risperdal (risperidone, an atypical antipsychotic) in this District and nationwide.

III. JURISDICTION AND VENUE

28. 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.

29. 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.

30. This Court has jurisdiction under 31 U.S.C. §3732(a) over Defendant Manufacturers Bristol Myers, Pfizer, Ortho McNeil, J&J, and Janssen, because they can be found in, are authorized to transact business in, and are now transacting business in this District. This

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

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

32. 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 Plaintiff State False Claims Acts. The facts and information set forth herein are based upon Lisitza's personal observation, investigation with counsel, and documents produced in this case. 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.

33. On October 29, 2003, Lisitza provided to the Attorney General of the United States, the United States Attorney for the Eastern District of Pennsylvania, 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

34. Numerous state and federal statutes and regulations serve to prevent fraud and abuse in the Medicaid program. Defendant Manufacturers, in collusion with Omnicare, 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

35. 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;
>
> or,
>
> 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).

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

B. THE ANTI-KICKBACK STATUTE

37. 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.

38. 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).

39. 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).

40. 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 both 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.

41. 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

42. 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 all the Defendant Manufacturers, voluntarily enter into Rebate Agreements with the Center for Medicaid and Medicare Services ("CMS"), the federal agency that administers Medicaid.

43. 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).

44. 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.

45. 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). Each of the Defendant Manufacturers participates in the DPP. As participants, each Defendant Manufacturer 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 Defendant Manufacturers' reported best price 42 U.S.C. §256b(a)(1) and (2).

46. Similarly, the best price calculations enter into the price Defendant Manufacturers charge 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. STATES' PROHIBITION ON SUBSTITUTION AND MANDATED COST SAVINGS

47. 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.[1]

48. State laws also encourage, and often require, that drugs be provided economically to prevent providers from choosing drugs that are more expensive for payors when there are less costly alternatives. For example, in a narrow exception to the prohibition against substituting drugs, states allow generic drugs to be substituted for brand name equivalents when the generic drug is cheaper.

49. 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.

50. In Florida, for example, "medically necessary" goods or services must "[b]e reflective of the level of service that can be safely furnished, and for which no equally effective

[1] *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).

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. [2]

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

51. 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).

52. 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).

53. 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...

---

[2] *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.")

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

54. 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. THE KICKBACKS-FOR-SWITCHES SCHEMES

55. 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 without a prescription and often have different side effects or are particularly effective within a certain patient population while less effective in others. Competition within a therapeutic class for market share among drug manufacturers is often fierce.

56. Defendant Manufacturers have developed a scheme whereby they individually work with large dispensing pharmacies like Omnicare to effect illegal kickbacks-for-switches schemes within therapeutic classes.

57. Long-term care facilities, including those serviced by Omnicare, tend to contain numerous elderly patients taking common types of medications. These include medications to reduce blood pressure and cholesterol, as well as medications for the relief of pain and chronic stomach discomfort. Such facilities also tend to contain numerous patients with schizophrenia and other severe mental health diagnoses requiring antipsychotic medications.

58. 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 Defendant Manufacturer to enter into a kickbacks-for-switching scheme. These schemes between each Defendant Manufacturer and Omnicare, entered into so that the Defendant

Manufacturer could illegally boost its market share within a therapeutic class, were called "Market Share Agreements" or "Reimbursement Agreements."

59. 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.

60. 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.) However, by entering into a Market Share Agreement with Omnicare, each Defendant Manufacturer 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, Defendant 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. THE MARKET SHARE AGREEMENTS

61. Relator Lisitza first became aware of the kickbacks-for-switches schemes 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. Competing drugs in this therapeutic class include Capoten (captopril), Vasotec (enalapril), and Accupril (quinapril), among others.

62. Under the terms of the Bristol Myers Monopril Market Share Agreement, Bristol Myers gave Omnicare undisclosed rebates, also known as "market share" or "switching" payments. These price concessions and payments were 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.

63. Bristol Myers' executives during the time period of the Monopril scheme and conspiracy included Robert W. McBrier, then-Vice President for Institutional Sales, Thomas Libassi, Matthew Kryczko, Jackly Bryon, John E. Hanson, Maryann Giorgianni, Leslie T. Hirsch, Director of Managed Care Operations, Frances E. Hamer, John V. Mollica, and Sandra E. Pittman.

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

64. Lisitza was employed by Jacobs HealthCare ("Jacobs") between 1992 and 2001, mainly working as a pharmacy supervisor overseeing several pharmacists who filled orders for Jacobs' long-term care facility clients. In 1995, Jacobs was acquired by Omnicare. Lisitza remained a pharmacy supervisor at Omnicare until May 2001, during which time he gained direct, non-public, and independent knowledge of the frauds alleged herein.

65. Plaintiff Lisitza's Omnicare Supervisor was Carl 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 whereby Bristol Myers would pay Omnicare a $25 "market share payment" for every patient's 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.

66. 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.

67. 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.

68. Bristol Myers' marketing personnel met with Omnicare pharmacists before the mass switching to Monopril, to educate pharmacists on how to make the switches. Relator Lisitza was at such a meeting. Bristol Myers' marketing staff and Omnicare senior management told Omnicare's front line pharmacists and supervisors that the switches were good for the patients and good for the payors. They claimed that the switches would be beneficial to patients in Omnicare-serviced long-term care facilities, and would save the payors money – government entities as well as private insurers.

69. Bristol Myers also made marketing and pharmacy technical agents available to Omnicare pharmacists who needed subsequent technical assistance to switch patients from other ACE inhibitors to Monopril.

C. BRISTOL MYERS AND OMNICARE DEVELOP A SCHEME TO ILLEGALLY SOLICIT PERMISSION FROM TREATING PHYSICIANS FOR WHOLESALE SWITCHING TO MONOPRIL

70. 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.

71. When a patient in an Omnicare-serviced nursing home requires a prescription medication, physicians 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 to be entered into Omnicare's computerized order entry system.

72. The verbal orders are also entered on "Physician Order Sheets," which should be verified monthly by nursing home physicians as well as Omnicare consultant pharmacists in order to make sure proper care is being given.

73. 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.

74. It is illegal to switch a patient's medication within a therapeutic class without express written 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 have stricter requirements, such as requiring that a letter refer to a specific individual patient and do not allow "blanket" PALs. Bristol Myers helped Omnicare solicit PAL letters illegally.

75. Bristol Myers took the following actions in furtherance of its conspiracy with Omnicare to illegally switch patients on ACE inhibitors to Monopril:

- *Making false statements to Omnicare front line pharmacy personnel as to the reason for the switching.* Bristol Myers 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 Monopril was financially advantageous to the government and private insurers, when this was almost never the case.
    - That Monopril was clinically the most appropriate ACE inhibitor, when frequently this, too, was not the case.
- *Making false statements to physicians as to the reasons for the switching.* Bristol Myers 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.* Bristol Myers 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 Monopril via illegal switching payments* based in part on the success of the switching scheme.

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

conspiracy with Bristol Myers 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 Defendant 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, and later other "preferred" medications.

- *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.

77. 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.

78. 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.

79. 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.

80. 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 its kickbacks. The PAL computer system also tracked physicians who refused to execute PALs.

81. 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.

82. Bristol Myers knew, intended, or reasonably should have known and foreseen that the Monopril Market Share Agreement would cause Omnicare to submit false claims by engaging in illegal and unauthorized medication substitution, 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 ACE inhibitors to Monopril.

83. Lisitza was concerned that drug switching done pursuant to Bristol Myers' Market Share Agreement would dramatically increase the monthly cost to the government of ACE inhibitor prescriptions. Switching a patient from captopril to Monopril resulted in an enormous price increase – five times as much - per patient per month. Norm Jacobson, Omnicare's Senior Manager in the Jacobs facility, also expressed similar concerns about the cost and ethics of a kickback-induced switching program.

84. 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.

D. BRISTOL MYERS' ILLEGAL MARKET SHARE AGREEMENTS ENDANGERED THE HEALTH AND WELFARE OF LONG-TERM CARE FACILITY PATIENTS RECEIVING PHARMACEUTICALS FROM OMNICARE

85. 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.

86. 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.

87. When Bristol Myers and Omnicare cooked up the Monopril kickbacks-for-switches Market Share Agreement, Omnicare's Clinical Pharmacists, in conjunction with advisors from Bristol Myers, 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

88. 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 (such as hypertension, high cholesterol, etc.) who are stabilized on a drug therapy regime. (AMA Policy H-125.911 "Drug Formularies and Therapeutic Interchange.")

89. The AMA's concerns are not theoretical. They affected thousands of Omnicare-serviced patients on a daily basis. Lisitza gained knowledge that Omnicare and Bristol Myers' scheme sought to lull nursing home physicians into a false sense of confidence by Omnicare pharmacists' constant reassurance 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 Bristol Myers, through their illegal PAL solicitation scheme, 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.

90. 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 he or she thought was appropriate, in spite of the PAL. Omnicare ignored the physician's prescription and switched the drugs anyway, without regard for whether the physician was writing the prescription for the original medication knowing that the medication would be switched via the PAL or was, by his or her conduct, indicating that the PAL switch was medically inappropriate for a particular patient.

91. 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.

92. 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, in the case of privately funded patients, the private insurance payor), not Omnicare, bore the burden of these additional collateral expenses.

93. For many of the nursing home patients for whom an ACE inhibitor was indicated because of their high blood pressure, Monopril/fosinopril 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. Monopril also has a very high pharmokinetic protein binding rate; therefore, if a patient was, for example, anemic, Monopril was not the "drug of choice." If a patient had certain heart conditions (such as a heart attack), and was suffering from congestive heart failure, other ACE inhibitors (specifically, ramipril and trandolapril) – not Monopril – were specifically indicated. If patients had had a heart attack and were suffering from left ventricular dysfunction, captopril and trandolapril, not Monopril, were specifically indicated.

94. 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 was not a preferred medication.

95. Omnicare compounded these serious complications by failing to monitor the care of the nursing home patients victimized by the switch. Hence, 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). Whether or not the switch caused any measurable impact, 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.

96. 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 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.

97. 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.

98. Bristol Myers worked with other large entities who dispensed pharmaceuticals, including dispensing pharmacies, pharmacy benefit managers, and hospitals, to illegally gain market share for Monopril in the ACE 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 Bristol Myers designed to maximize profits through this scheme at every opportunity, through various other drugs and other providers.

E. AFTER THE SUCCESS OF THE BRISTOL MYERS/MONOPRIL PAL PROGRAM, OTHER DEFENDANT MANUFACTURERS ENTER INTO SIMILAR SCHEMES WITH OMNICARE WITH SIMILAR RESULTS AND RISKS

99. The mechanics of the Bristol Myers/Omnicare scheme set the framework for subsequent schemes entered into by the other Defendant 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 Defendant Manufacturer paid bribes to make it so, notwithstanding the cost to the government or the impact on the patient's health.

100. "Rollouts" of new "preferred" medications came approximately every three months following the Bristol Myers/Monopril rollout. The preparation for each new rollout was similar. The Defendant 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 Defendant 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. The Defendant 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 Defendant Manufacturer and Omnicare, and sometimes switches were made even if the physician had not given permission.

F. DEFENDANT MANUFACTURER PFIZER AND OMNICARE ENTER INTO A MARKET SHARE AGREEMENT WITH RESPECT TO LIPITOR

101. After the Bristol Myers/Monopril switch, Defendant Manufacturer Pfizer entered into a Market Share Agreement with Omnicare with respect to its drug Lipitor (atorvastatin calcium), one of a class of medications known as "statins" (a therapeutic class of medications prescribed for people with high cholesterol – they assist the prevention of heart disease and heart attack). Competing drugs include Mevacor/Altocor (lovastatin), Pravachol (pravastatin), and Zocor (simvastatin). Pfizer and Omnicare conspired to switch all statin prescriptions for Omnicare-serviced patients to Lipitor.

102. Pfizer executives at the time period of the development and implementation of the Lipitor scheme included but were not limited to J. Patrick Kelly, Pfizer's then-current Vice President for Worldwide Marketing, Craig Hopkinson, a specialist in Lipitor marketing; Ken Solomon; and Chris Chapman.

103. Pfizer representatives often visited Omnicare locations for the purpose of promoting the switches. Pfizer 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 statins to Lipitor.

104. Pfizer's marketing personnel met with Omnicare pharmacists before the commencement of mass switching to Lipitor to educate pharmacists on how to make the switches. Meetings were held with Omnicare staff where Pfizer'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.

105. Pfizer also made marketing agents available to Omnicare pharmacists who needed subsequent technical assistance to switch patients from other statins to Lipitor.

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

- *Making false statements to Omnicare front line pharmacy personnel as to the reason for the switching.* Pfizer 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 Lipitor was financially advantageous to the government and private insurers, when this was almost never the case.

- That Lipitor was clinically the most appropriate statin, when frequently this, too, was not the case.

- *Making false statements to physicians as to the reasons for the switching.* Pfizer 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.* Pfizer 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 Lipitor via illegal switching payments* based in part on the success of the switching scheme.

107. Pfizer knew, intended, or reasonably should have known and foreseen that the Market Share Agreement would induce Omnicare to engage in unauthorized medication substitution, 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 statins to Lipitor.

108. In much the same way as the wholesale switching to Monopril was medically disadvantageous for many patients, wholesale switching to Lipitor placed patients at risk in many ways.

109. First, contrary to AMA policies, Pfizer and Omnicare effected switches for patients who had been stabilized on other statins for years.

110. Secondly, to responsibly change from one statin to Pfizer's Lipitor, the prescribing doctor often requires the patient to undergo potentially strenuous fasting

lipid/cholesterol tests after commencing with the new drug. The statin drug switch therefore may require the patient, and the federally-funded health plan or other payor, to incur costs associated with lab tests and doctor visits that they would not have incurred but for Defendant Pfizer's "rebate and switch" marketing plan.

111. For many of the nursing home patients for whom a statin drug was indicated because of their high cholesterol, Lipitor was not the "drug of choice." Other statins were primarily indicated for coronary heart disease prophylaxis, stroke reduction, and for patients who had suffered one or more heart attacks.

112. 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 Lipitor was not a preferred medication.

113. 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 Pfizer and Omnicare, Lisitza's superiors conceded the existence, implementation, and financial impact of the Lipitor Market Share Agreement to Lisitza and instructed him about what he was required to do to accomplish the financial objective of the Lipitor Market Share Agreement.

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

115. Pfizer worked with other large entities who dispensed pharmaceuticals, including dispensing pharmacies, pharmacy benefit managers, and hospitals, to illegally gain market share for Lipitor in the statin 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 Pfizer designed to maximize profits through this scheme at every opportunity, through various other drugs and other providers.

G. DEFENDANT MANUFACTURER PFIZER AND OMNICARE ENTER INTO A MARKET SHARE AGREEMENT WITH RESPECT TO ACCUPRIL

116. As the market for illegal switching schemes began to mature, Omnicare realized it had the opportunity to force Defendant Manufacturers to bid against one another to become the preferred drug within a particular therapeutic class. Hardball tactics in these negotiations were disguised as ongoing clinical research. While Omnicare might have a kickbacks-for-switches scheme with one Defendant Manufacturer, it would institute a research study with a drug in the same therapeutic class made by a second Defendant Manufacturer. These research studies were designed to force the first Defendant Manufacturer to provide greater rebates when it came time to renegotiate the Market Share Agreements.

117. Despite all the effort Omnicare had done at the behest of Bristol Myers to convince its front line staff, its consultant pharmacists, and physicians that Monopril was truly the best ACE inhibitor, it turned out upon the expiration of the Bristol Myers/Monopril Market Share Agreement that Pfizer had a better financial offer. Therefore, Pfizer bought its way onto the list as Omnicare's preferred ACE inhibitor, and the Omnicare-serviced patients who had all been switched from other ACE inhibitors to Monopril were now switched to Accupril, Pfizer's ACE inhibitor.

118. Pfizer executives at the time period of the development and implementation of the Accupril scheme included but were not limited to J. Patrick Kelly, Pfizer's then-current Vice President for Worldwide Marketing, Ken Solomon, and Chris Chapman.

119. Pfizer representatives often visited Omnicare locations for the purpose of promoting the switches. Pfizer 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 (including, by this time, mostly Monopril) to Accupril.

120. Pfizer's marketing personnel met with Omnicare pharmacists before the commencement of mass switching to Accupril to educate pharmacists on how to make the switches. Meetings were held with Omnicare staff where Pfizer's 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 payors money.

121. Pfizer also made marketing agents available to Omnicare pharmacists who needed subsequent technical assistance to switch patients from other ACE inhibitors to Accupril.

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

- *Making false statements to Omnicare front line pharmacy personnel as to the reason for the switching.* Pfizer 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 Accupril was financially advantageous to the government and private insurers, when this was almost never the case.
    - That Accupril was clinically the most appropriate ACE inhibitor, when frequently this, too, was not the case.
- *Making false statements to physicians as to the reasons for the switching.* Pfizer 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.* Pfizer 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 Accupril via illegal switching payments* based in part on the success of the switching scheme.

123. Pfizer knew, intended, or reasonably should have known and foreseen that the Market Share Agreement would induce Omnicare to engage in unauthorized medication substitution, 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 ACE inhibitors to Accupril.

124. In much the same way as the wholesale switching to Monopril was medically disadvantageous for many patients, wholesale switching to Accupril placed patients at risk in many ways.

125. First of all, contrary to AMA policies, Pfizer and Omnicare effected switches for patients who had been stabilized on other ACE inhibitors for years and for patients who had been switched once before from other ACE inhibitors to Monopril.

126. Furthermore, Accupril was often not the "drug of choice" for a given individual patient. For stable patients with congestive heart failure with a history of myocardial infarction, ramipril and trandolapril were indicated as preferable to Accupril. Captopril and trandolapril are preferentially indicated for stable patients who have had a heart attack and have sustained left ventricular dysfunction.

127. 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 Accupril was not a preferred medication.

128. 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 Pfizer and Omnicare, Lisitza's superiors conceded the existence, implementation, and financial impact of the Accupril Market Share Agreement to Lisitza and instructed him about what he was required to do to accomplish the financial objective of the Accupril Market Share Agreement.

129. Accordingly, before his termination, Lisitza personally filled hundreds of "switched" prescriptions for Accupril while employed by Omnicare. He also witnessed thousands of prescriptions switched pursuant to the Accupril Market Share Agreement. Omnicare and Pfizer were able to switch a substantial majority of Omnicare-serviced patients from Monopril and other ACE inhibitors (for which physicians continued to write prescriptions) to Accupril.

130. Pfizer worked with other entities who dispensed pharmaceuticals, including dispensing pharmacies, pharmacy benefit managers, and hospitals, to illegally gain market share for Accupril in the ACE inhibitor market through illegal kickbacks-for-switches schemes similar to the one effected with Omnicare. The specific circumstances alleged herein further evidence a pattern of conduct designed to maximize profits through this scheme at every opportunity, through various other drugs and other providers.

H. DEFENDANT MANUFACTURER ORTHO MCNEIL AND OMNICARE ENTER INTO A MARKET SHARE AGREEMENT WITH RESPECT TO LEVAQUIN

131. After the completion of the Pfizer/Accupril rollout, Defendant Manufacturer

Ortho McNeil entered into a Market Share Agreement with Omnicare with respect to its antibiotic Levaquin (levofloxacin), which is prescribed for serious infections common to long-term care facilities. Competing drugs include Cipro (ciprofloxacin) and Floxin (ofloxacin). Ortho McNeil and Omnicare conspired to switch many antibiotic prescriptions for Omnicare-serviced patients to Levaquin.

132. Ortho McNeil executives at the time period of the development and implementation of the Lipitor scheme included but were not limited to, John H. Johnson, Bob Spurr, Nawaz Merchant, Eneetra P. Livings, Paul Kim, Tom Petro, and Marty Murray.

133. Because Ortho McNeil is a wholly-owned subsidiary of J&J, all activities alleged with respect to Ortho McNeil are also alleged with respect to J&J. See Johnson & Johnson 10-Q, filed May 5, 2004, with the Securities and Exchange Commission at page 24, http://www.sec.gov/Archives/edgar/data/200406/000020040604000081/firstquarterteng.txt.

134. Ortho McNeil representatives often visited Omnicare locations for the purpose of promoting the switches. Ortho McNeil 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 antibiotics to Levaquin.

135. Ortho McNeil marketing personnel met with Omnicare pharmacists before the commencement of mass switching to Levaquin to educate pharmacists on how to make the switches. Meetings were held with Omnicare staff where Ortho McNeil's 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 payors money.

136. Ortho McNeil also made marketing agents available to Omnicare pharmacists who needed subsequent technical assistance to switch patients from other antibiotics to Levaquin.

137. Ortho McNeil also worked with Omnicare to illegally solicit PALs from physicians authorizing blanket switches to Levaquin. Ortho McNeil's actions in furtherance of this conspiracy included:

- *Making false statements to Omnicare front line pharmacy personnel as to the reason for the switching.* Ortho McNeil 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 Levaquin was financially advantageous to the government and private insurers, when this was almost never the case.
    - That Levaquin was clinically the most appropriate antibiotic, when frequently this, too, was not the case.
- *Making false statements to physicians as to the reasons for the switching.* Ortho McNeil 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.* Ortho McNeil 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 Levaquin* via illegal switching payments based in part on the success of the switching scheme.

138. Ortho McNeil knew, intended, or reasonably should have known and foreseen that the Market Share Agreement would induce Omnicare to engage in unauthorized medication substitution, 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 antibiotics to Levaquin.

139. Wholesale switching to Levaquin was often detrimental to patient care. There is a myriad of medications within the same antibiotic drug class; however, certain types of antibiotics are indicated for particular types of infections. Indeed, Levaquin is not indicated for many types of infections very common to long-term care facilities. For example, nosocomial pneumonia is a common problem in long-term care facilities. Ciprofloxacin, not Levaquin, is the preferred medication for this condition because it will resolve this condition much more quickly. Nevertheless, pursuant to the PAL, Omnicare patients were treated with Levaquin regardless of the antibiotic their physicians prescribed. Levaquin might ultimately cure the infection, but it is not the most efficacious antibiotic available to heal the infection quickly. Meanwhile, the patient is forced to suffer from pneumonia for a longer period of time, which is not only painful, but dangerous. The lengthened treatment also means more associated costs to the governmental or private payor.

140. 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 Levaquin was not a preferred medication.

141. 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 Ortho McNeil and Omnicare, Lisitza's superiors conceded the existence, implementation, and financial impact of the Levaquin Market Share Agreement to Lisitza and instructed him about what he was required to do to accomplish the financial objective of the Levaquin Market Share Agreement.

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

143. Ortho McNeil worked with other entities who dispensed pharmaceuticals, including dispensing pharmacies, pharmacy benefit managers, and hospitals, to illegally gain market share for Levaquin in the antibiotic 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 Ortho McNeil designed to maximize profits through this scheme at every opportunity, through various other drugs and other providers.

I. DEFENDANT MANUFACTURER JANSSEN AND OMNICARE ENTER INTO A MARKET SHARE AGREEMENT WITH RESPECT TO RISPERDAL

144. After the completion of the Ortho McNeil/Levaquin rollout, Defendant Manufacturer Janssen entered into a Market Share Agreement with Omnicare with respect to its atypical antipsychotic Risperdal (risperidone), which is prescribed for serious mental health issues including schizophrenia. Other competing drugs include Haldol (haloperidol decanoate), Zyprexa (olanzapine), and Seroquel (quetiapine fumarate). Jannsen and Omnicare conspired to switch many atypical antipsychotic prescriptions for Omnicare-serviced patients to Risperdal.

145. Janssen executives at the time period of the development and implementation of the Risperdal scheme included but were not limited to, Alex Gorsky, Bruce Given, and Norman Finestine.

146. Because Janssen is a wholly-owned subsidiary of J&J, all activities alleged with respect to Janssen are also alleged with respect to J&J. See Johnson & Johnson 10-Q, filed May 5, 2004, with the Securities and Exchange Commission at page 29, http://www.sec.gov/Archives/edgar/data/200406/000020040604000081/firstquarterteng.txt.

147. While Lisitza was working at Omnicare and witnessing the various rollouts of new Defendant Manufacturer/Omnicare illegal PAL solicitation/switching schemes, the Janssen/Risperdal rollout stood out. A PAL rollout was planned to replace atypical antipsychotics, including Haldol, an inexpensive antipsychotic, as well as Zyprexa and Seroquel, with Janssen's "preferred" Risperdal, a dramatically more expensive medication than Haldol for payors. However, the Jacobs pharmacists balked because of the inherent difficulty of converting dosages of drugs within this therapeutic class to functionally equivalent dosages of Risperdal.

148. Omnicare's clinical pharmacists outside the Jacobs facility ultimately resolved this problem and a Market Share Agreement between Janssen and Omnicare was implemented at other Omnicare facilities nationwide whereby all prescriptions written for atypical antipsychotics were switched to Risperdal.

149. Janssen representatives often visited Omnicare locations for the purpose of promoting the switches. Janssen 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 atypical antipsychotics to Risperdal.

150. Janssen marketing personnel met with Omnicare pharmacists repeatedly before and during the attempted mass switching to Risperdal to educate pharmacists on how to make the switches. Meetings were held with Omnicare staff where Janssen'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.

151. Janssen also made marketing agents available to Omnicare pharmacists who

needed subsequent technical assistance to switch patients from other atypical antipsychotics to Risperdal.

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

- *Making false statements to Omnicare front line pharmacy personnel as to the reason for the switching.* Janssen 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 Risperdal was financially advantageous to the government and private insurers, when this was almost never the case.
    - That Risperdal was clinically the most appropriate antipsychotic, when frequently this, too, was not the case.
- *Making false statements to physicians as to the reasons for the switching.* Janssen 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.* Janssen 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 Risperdal* via illegal switching payments based in part on the success of the switching scheme.

153. Janssen knew, intended, or reasonably should have known and foreseen that the Market Share Agreement would induce Omnicare to engage in unauthorized medication substitution, replacing the independent medical judgment of a patient's physician or psychiatrist with that of Omnicare pharmacists, consulting pharmacists, and other Omnicare employees, by

changing physicians' orders for specific atypical antipsychotics to Risperdal.

154. Defendant Janssen's illegal market share kickbacks caused dangerous across-the-board switching without regard to the patients' track record with their currently prescribed antipsychotic. It is medically inappropriate to switch antipsychotic therapy if the patient has had a productive response to a conventional agent, if the patient has recently recovered from an acute psychotic episode and is on the same medication successfully used to treat that episode, or if the patient was recently noncompliant with oral medication and is now compliant with a non-orally-administered antipsychotic. Switching such patients to a different medication can result in loss of control of the condition, hospitalization, and other adverse outcomes.

155. Switching antipsychotics is, to some extent, even more dangerous than switching medications within other therapeutic classes, because sudden switches can be extremely detrimental to patient wellbeing. Janssen implemented this automatic switching scheme despite the fact that no medically-recognized method to suddenly interchange antipsychotic drugs exists – a fact Janssen acknowledges:

> There is no systematically collected data to specifically address switching schizophrenic patients from other antipsychotics to RISPERDAL or concomitant administration with other antipsychotics. While immediate discontinuation of the previous antipsychotic may be acceptable for some schizophrenic patients, more gradual discontinuation may be most appropriate for others.

Risperdal package insert.

156. The latter approach of gradual discontinuation, known as "drug tapering," has emerged as the preferred switching method. Yet there is no "equation" for drug tapering. Rather, it is a complex process requiring patient-specific analysis to maintain the delicate balance of gradual tapering of the current medication while the new medication is ramped up until the patient is completely weaned off the original medication. By incentivizing Omnicare with

unlawful payments of financial kickbacks, Janssen successfully conspired with Omnicare to switch stabilized patients without any precise medical know-how to complete the switch, opening the door for side effects such as withdraw and relapse. In addition, this confusing, complex and ill-defined drug tapering process is likely to confuse the elderly and infirm patients targeted for the switch about how much of each medication should be taken and when, creating the risk of dangerous medication errors.

157. Risperdal contains a number of risk factors associated with its prescription, many of which were not present in the switched-from medications:

- An increased risk of stroke or stroke-like events in elderly patients prescribed Risperdal. *See* Risperdal Package Insert. The existence of this deadly side effect of Risperdal therapy was not disclosed by Defendant Janssen until, at the earliest, April 2003.

- Janssen has also admitted that the elderly exhibit a tendency to orthostatic hypotension during treatment with Risperdal. "Because of its potential for inducing hypotension, RISPERDAL® may enhance the hypotensive effects of other therapeutic agents with this potential. "RISPERDAL® may antagonize the effects of levodopa and dopamine agonists." *Id.* (emphasis added).

- Janssen further endangered the health and welfare of the elderly because "**[t]he interactions of RISPERDAL® and other drugs have not been systematically evaluated.**" Residents in long-term care facilities usually are older, in poorer health, and in need of greater care and typically are prescribed several different types of medications. Patients' health was jeopardized by forcing switches to Risperdal without this critical medical data by exposing the elderly patients to adverse drug interactions with the litany of other medications which they had been prescribed.

- Janssen also notes in the Risperdal package insert that clinical studies of Risperdal in treatment of schizophrenic patients did not include sufficient numbers of patients aged 65 and older to determine whether they respond differently than younger patients. This is significant because it is widely known that the elderly are more susceptible to suffering adverse reactions to medications. As a person ages, his or her body processes drugs differently due to changing metabolism and typical decreases in kidney function. Medications within a particular therapeutic category may be considered generally comparable in studies comparing two different

groups of patients who are young and healthy; however, these medications often differ substantially on one or more critical factors relevant to selecting appropriate medications for the frail elderly. Thus, the information derived from studies on the benefits and the risks of drugs taken from trials of younger adults did not contribute quality clinical evidence supporting the safe and effective use of Risperdal for an unstudied patient population.

- In April 2003, Janssen sent out a "Dear Healthcare Provider" letter indicating that Risperdal (1) enhanced the risk of cerebrovascular events such as strokes and (2) was neither safe nor effective when prescribed for dementia-related psychosis.

158. 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 Risperdal was not a preferred medication. This was one of the reasons that the Risperdal switch was not implemented at Jacobs. However, the switch was implemented at other Omnicare facilities.

159. 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 Janssen and Omnicare, Lisitza's superiors conceded the existence, implementation, and financial impact of the Risperdal Market Share Agreement to Lisitza and instructed him about what he was required to do to accomplish the financial objective of the Risperdal Market Share Agreement.

160. While the Risperdal rollout was unsuccessful at Jacobs, Lisitza was aware of thousands of prescriptions switched at other Omnicare facilities pursuant to the Risperdal Market Share Agreement.

161. Janssen worked with other entities who dispensed pharmaceuticals, including dispensing pharmacies, pharmacy benefit managers, and hospitals, to illegally gain market share for Risperdal in the atypical antipsychotic 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 Janssen designed to maximize profits through this scheme at every opportunity, through various other drugs and other providers.

J. DEFENDANT MANUFACTURER ORTHO MCNEIL AND OMNICARE ENTER INTO A MARKET SHARE AGREEMENT WITH RESPECT TO ULTRAM/ULTRACET

162. Defendant Manufacturer Ortho McNeil entered into a Market Share Agreement with Omnicare with respect to its pain medication Ultram/Ultracet (tramadol). Competing drugs include Tylenol #3, Tylenol #4, Darvocet, and vicodin. Ortho McNeil and Omnicare conspired to switch many pain medication prescriptions for Omnicare-serviced patients to Ultram/Ultracet.

163. Ortho McNeil executives at the time period of the development and implementation of the Ultram/Ultracet scheme included but were not limited to, John H. Johnson, Bob Spurr, Nawaz Merchant, Eneetra P. Livings, Paul Kim, Tom Petro, and Marty Murray.

164. Because Ortho McNeil is a wholly-owned subsidiaries of J&J, all activities alleged with respect to Ortho McNeil are also alleged with respect to J&J.

165. Ortho McNeil representatives often visited Omnicare locations for the purpose of promoting the switches. Ortho McNeil 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 Tylenol #3, Tylenol #4, Darvocet, and vicodin to Ultram/Ultracet.

166. Ortho McNeil marketing personnel met with Omnicare pharmacists before the commencement of mass switching to Ultram/Ultracet to educate pharmacists on how to make the switches. Meetings were held with Omnicare staff where Ortho McNeil'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.

167. Ortho McNeil also made marketing agents available to Omnicare pharmacists who needed subsequent technical assistance to switch patients from Tylenol #3, Tylenol #4, Darvocet, and vicodin to Ultram/Ultracet.

168. Ortho McNeil also worked with Omnicare to illegally solicit PALs from physicians authorizing blanket switches to Ultram/Ultracet. Ortho McNeil's actions in furtherance of this conspiracy included:

- *Making false statements to Omnicare front line pharmacy personnel as to the reason for the switching.* Ortho McNeil 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 Ultram/Ultracet was financially advantageous to the government and private insurers, when this was almost never the case.
    - That Ultram/Ultracet was clinically the most appropriate pain medication, when frequently this, too, was not the case.
- *Making false statements to physicians as to the reasons for the switching.* Ortho McNeil 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.* Ortho McNeil 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 Ultram/Ultracet* via illegal switching payments based in part on the success of the switching scheme.

169. Ortho McNeil knew, intended, or reasonably should have known and foreseen

that the Market Share Agreement would induce Omnicare to engage in unauthorized medication substitution, 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 painkillers to Ultram/Ultracet.

170. Wholesale switching to Ultram/Ultracet was often detrimental to patient care. Ortho McNeil marketed Ultram/Ultracet as nonaddictive, and thus ideal for patients with chronic pain. However, Ultram/Ultracet was in fact addictive, leading to potentially severe withdrawal symptoms.

171. 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 Ortho McNeil and Omnicare, documents produced by Ortho McNeil indicate the existence, implementation, and financial impact of the Ultram/Ultracet Market Share Agreement

172. Ortho McNeil worked with other entities who dispensed pharmaceuticals, including dispensing pharmacies, pharmacy benefit managers, and hospitals, to illegally gain market share for Ultram/Ultracet in the painkiller 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 Ortho McNeil designed to maximize profits through this scheme at every opportunity, through various other drugs and other providers.

K. DEFENDANT MANUFACTURER BRISTOL MYERS AND OMNICARE ENTER INTO A MARKET SHARE AGREEMENT WITH RESPECT TO ABILIFY

173. At the end of Omnicare's contract with Janssen with respect to Risperdal, Defendant Manufacturer Bristol Myers entered into a Market Share Agreement with Omnicare with respect to its atypical antipsychotic Abilify (aripiprazole), which is prescribed for

schizophrenia and other severe mental health conditions. Competing drugs include Risperdal and Zyprexa. Bristol Myers and Omnicare conspired to switch many atypical antipsychotic prescriptions for Omnicare-serviced patients from Risperdal and other atypical antipsychotics to Abilify.

174. Bristol Myers' executives at the time period of the development and implementation of the Abilify scheme included but were not limited to, Robert W. McBrier, Thomas Libassi, Matthew Kryczko, Jackly Bryon, John E. Hanson, Maryann Giorgianni, Leslie T. Hirsch, Director of Managed Care Operations, Frances E. Hamer, John V. Mollica, and Sandra E. Pittman.

175. 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 Risperdal and other atypical antipsychotics to Abilify – including, potentially – many patients who had previously been switched from atypical antipsychotics to Risperdal previously.

176. Bristol Myers' marketing personnel met with Omnicare pharmacists before the commencement of mass switching to Abilify to educate pharmacists on how to make the switches. Meetings were held with Omnicare front line staff where Bristol Myers' 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.

177. Bristol Myers also made marketing agents available to Omnicare pharmacists who needed subsequent technical assistance to switch patients from Risperdal and other atypical

antipsychotics to Abilify.

178. Bristol Myers also worked with Omnicare to illegally solicit PALs from physicians authorizing blanket switches to Abilify. Bristol Myers' actions in furtherance of this conspiracy included:

- *Making false statements to Omnicare front line pharmacy personnel as to the reason for the switching.* Bristol Myers 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 Abilify was financially advantageous to the government and private insurers, when this was almost never the case.
    - That Abilify was clinically the most appropriate antipsychotic, when frequently this, too, was not the case.
- *Making false statements to physicians as to the reasons for the switching.* Bristol Myers 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.* Bristol Myers 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 Abilify* via illegal switching payments based in part on the success of the switching scheme.

179. Bristol Myers knew, intended, or reasonably should have known and foreseen that the Market Share Agreement would induce Omnicare to engage in unauthorized medication substitution, replacing the independent medical judgment of a patient's physician or psychiatrist with that of Omnicare pharmacists, consulting pharmacists, and other Omnicare employees, by changing physicians' orders for specific atypical antipsychotics to Abilify.

180. Wholesale switching to Abilify was often detrimental to patient care. As noted in the previous discussion of the Risperdal/Omnicare Market Share Agreement, it can be even more difficult and more threatening to patient care and wellbeing to switch stable patients from one atypical antipsychotic to another than to effect switches within other therapeutic classes. Like Risperdal, the efficacy and safety of Abilify in older patients suffering from schizophrenia is unclear. Additionally, the Abilify package insert contains a black box warning stating that Abilify increases risks of stroke and death to elderly patients compared to younger patients.

181. 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 Bristol Myers and Omnicare, documents produced by Bristol Myers indicate the existence, implementation, and financial impact of the Abilify Market Share Agreement

182. Bristol Myers worked with other entities who dispensed pharmaceuticals, including dispensing pharmacies, pharmacy benefit managers, and hospitals, to illegally gain market share for Abilify in the atypical antipsychotic 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 Bristol Myers designed to maximize profits through this scheme at every opportunity, through various other drugs and other providers.

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

183. 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 the prescription drugs it purchases and distributes through its

regional pharmacies.

184. 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 the Illinois Department of Public Aid), the Illinois state agency that administers Medicaid, reimburses Omnicare at a statutorily-defined rate[3], plus a small dispensing fee, which is meant to provide Omnicare with a profit for providing services to Illinois Medicaid clients.

185. 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.
>
> * * *

[3] 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
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).

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.

186. 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 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.

187. 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. In 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.

188. 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.

189. 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.

190. 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, which 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.

191. 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.

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

193. 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 as a condition of payment. Omnicare's compliance with all relevant state and federal statutes and regulations, including the AKS, is a condition that determines whether Omnicare's claims to Medicaid are eligible for reimbursement as a matter of

law.

194. 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.

195. As a result of, and in reliance on, these certified claims, state Medicaid programs pay for Defendant Manufacturers' drugs.

VII. THE DEFENDANT MANUFACTURERS CAUSED FALSE CLAIMS TO BE SUBMITTED FOR THEIR PREFERRED MEDICATIONS IN VIOLATION OF THE FEDERAL AND STATE FALSE CLAIMS ACTS

196. The Defendant Manufacturers have caused the submission of false claims, records, and statements to the Medicaid program for their preferred medications pursuant to unlawful Market Share Agreements with Omnicare. The kickbacks-for-switches scheme gives rise to Defendant Manufacturers' 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 ACCOMPANYING PAL SOLICITATIONS CREATED FALSE CLAIMS

197. The Defendant Manufacturers caused the submission of false and fraudulent claims by paying illegal kickbacks to Omnicare to induce Omnicare to fill prescriptions and

request reimbursements for preferred medications that had not been prescribed.

198. 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.

199. The Defendant Manufacturers, in concert with Omnicare, 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 Defendant Manufacturers with the largest profit.

200. Valid "consent" cannot be obtained through fraud. The Defendant Manufacturers, through the payment of kickbacks, improperly induced Omnicare to fraudulently solicit PALs. Omnicare's solicitations for PALs routinely provide false, misleading, and incomplete information to physicians. Moreover, the Defendant Manufacturers work 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.

201. As is alleged in detail herein, when the Defendant Manufacturers 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.

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

203. Moreover, the Defendant Manufacturers and Omnicare also 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, the prescribing physicians were induced to execute PALs. Accordingly, the Defendant Manufacturers got what they paid for – a huge boost in market share due to thousands of switches to the drugs that were often more expensive for payors, creating a ready pool of additional revenues the Defendant Manufacturers used to fund the kickbacks to Omnicare.

204. 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 the Defendant Manufacturers. Thus the Defendant Manufacturers' 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 the Defendant Manufacturers developed in concert with Omnicare to maximize the number of switches.

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

206. The prescribing physicians reasonably and justifiably relied upon the 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.

207. Accordingly, the conspirators' false and fraudulent statements and material omissions nullified the consent set forth in the PALs.

208. 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 the preferred medications to fill prescriptions for ACE inhibitors, statins, antibiotics, pain medications, and atypical antipsychotics, the 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.

209. 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 Defendant Manufacturers could obtain larger market share for their pricier drugs. The switches violated state laws, contrary to the certifications Defendant Manufacturers made as a condition of obtaining payment from the states.

210. Each and every claim for the switched medications and refills caused to be made by the Defendant 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

211. The payments made by Defendant Manufacturers to Omnicare (and other dispensing pharmacies) fit squarely within the AKS's definition of illegal remuneration. In direct violation of the AKS, Defendant Manufacturers 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" medications. Specifically, the kickbacks were based on the percentage of market share Omnicare achieved through its wholesale switching of prescriptions within each drug class. The larger the percentage of the market share achieved, the higher the kickback. Thus, the precise amount of the money to be paid to Omnicare was not known at the time the parties entered into the Market Share Agreement.

212. The Defendant Manufacturers induced Omnicare to submit false claims when there was a kickbacks-for-switches scheme in place. Omnicare rarely did wholesale switches within a therapeutic drug class in the absence of a Market Share Agreement.

213. All of the conspirators were profiting from the illegal switches that increased market share, and all of the conspirators knew that the government would pay for the improperly-provided "preferred" medications. It was the direct, intended, and foreseeable result of the Defendant Manufacturers' kickback payments that Omnicare would submit claims to the government for "preferred" medications. Each of the "preferred" medications Omnicare dispensed to Medicaid beneficiaries under the Market Share Agreements was procured in violation of the AKS.

214. 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.

215. Defendant Manufacturers violated 42 U.S.C. §§1320(a)-7(a) and 7(b) when they willfully entered into a conspiracy/kickback scheme and paid kickbacks in exchange for

Omnicare's switching prescriptions within therapeutic classes.

216. Omnicare certified in its applications for enrollment, various agreements to participate in state medical assistance programs and routinely certified in its thousands of Medicaid claim submissions for the Defendant Manufacturers' "preferred" 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.

217. The Defendant Manufacturers 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.

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

219. Although "safe harbor" regulations exist to protect certain relatively innocuous and even beneficial commercial arrangements, no such provision protects the payments made by Defendant Manufacturers. One reason for these payments not being protected activity is that the benefits of the unlawful payments were not passed on to the government (*e.g.* through reported best prices), nor was the existence of those payments disclosed.

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

220. 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.

221. Defendant Manufacturers, through the bribes paid under the Market Share Agreements, have conspired with Omnicare 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 had the government known they were a byproduct of the Defendant Manufacturers' illegal kickback payments pursuant to the Market Share Agreements. The Defendant Manufacturers' liability under §§ 3729(a)(1) and (a)(2) of the False Claims Act arises from their participation in causing the basis for false claims to be made through the establishment of illegal contractual relationships with Omnicare.

222. 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.

223. But for the illegal kickbacks paid by the Defendant Manufacturers, 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.

224. The Defendant Manufacturers acted with the requisite scienter. The payment of kickbacks hidden "off-invoice" is conduct which is by its nature fraudulent and designed to deceive.

225. 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). The Defendant

Manufacturers 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.

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

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

228. 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 Plaintiffs' States False Claims Acts, as alleged in detail in the Counts below.

VIII. THE DEFENDANT MANUFACTURERS ARE ALSO IN VIOLATION OF THE "REVERSE FALSE CLAIMS" PROVISIONS OF THE FEDERAL AND STATE FALSE CLAIMS ACTS

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

229. At all relevant times, the Defendant Manufacturers employed a range of strategies to gain and maintain the lion's share of drugs sold by Omnicare to Medicaid beneficiaries within their "preferred" medications' respective therapeutic classes.

230. The Defendant Manufacturers 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 government agencies to believe Medicaid, FSS, and PHS/340b entites were receiving their appropriate rebates and contract prices. Omnicare was in reality receiving a lower "best price" than the price reported by the Defendant Manufacturers.

231. At all relevant times, the Defendant Manufacturers 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."

232. Nevertheless, the Defendant Manufacturers failed to submit accurate best price reports to the CMS on a quarterly basis since their Market Share Agreements with Omnicare went into effect. Defendant Manufacturers' best price reports routinely submitted to the government were materially false in that they purposefully excluded the net prices charged to Omnicare for the Defendant Manufacturers' "preferred" medications.

233. Defendant Manufacturers are required by law to use their best price calculations

to determine a rebate to the government. By reporting an artificially high best price, the Defendant Manufacturers were able to report and pay artificially low rebates, costing the government millions of dollars.

234. At all relevant times, the Defendant Manufacturers knew providing kickbacks to Omnicare that dramatically lowered the prices of their "preferred" medications required the Defendant Manufacturers to report these lower best prices paid by Omnicare for their preferred medications to the government, which would have resulted in the Defendant Manufacturers paying greater rebates to all states' Medicaid Programs.

235. The artificially high best price reported by the Defendant Manufacturers through their 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 the Defendant Manufacturers reported an artificially high best price, these entities ended up paying millions more for these medications than they would have had the Defendant Manufacturers reported the proper best price information.

236. The pricing records the Defendant Manufacturers were required to submit under federal law on a regular basis were therefore material to the determination of prices on thousands of different transactions between Defendant Manufacturers and the government.

237. The CMS has 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).

238. Defendant Manufacturers were 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.

239. Accordingly, the Defendant Manufacturers 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."

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

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

241. 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).

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

243. The Defendant Manufacturers knew that their reported pricing data was relied upon by the government to compute the amount of the rebates the Defendant Manufacturers

would have to pay to the Plaintiff States for their preferred medications.

244. The Defendant Manufacturers know, and have known at all times relevant to the complaint, that the price it has charged Omnicare, inclusive of their kickback payments made pursuant to the Market Share Agreements, must be disclosed in their mandatory quarterly price reports submitted directly to the CMS.

245. In violation of the Medicaid Rebate Act, the Defendant Manufacturers purposefully did not report the off-invoice kickback price Omnicare was afforded under the Market Share Agreements. Instead, the Defendant Manufacturers knowingly and deliberately concealed the price they charged Omnicare when they calculated best prices for their preferred medications.

246. Had the Defendant Manufacturers truthfully reported to the CMS the best prices for their preferred medications, the Defendant Manufacturers would have owed the government rebates of a much higher amount.

247. By submitting false claims reports to the government for the purpose of avoiding their obligation to make higher rebate payments to the government, the Defendant Manufacturers violated the federal and Plaintiff States' False Claims Acts.

248. Each false best price report the Defendant Manufacturers submitted to the government constitutes a violation of 31 U.S.C. §3729(a)(7). The Defendant Manufacturers have failed to accurately report their best prices for their preferred medications for each quarter of the last several years.

249. Each of the Defendant Manufacturers' 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 the Defendant Manufacturer.

250. Each of the Defendant Manufacturers' 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 the Defendant Manufacturer.

251. 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 Counts 5 through 40 of the Amended Complaint.

IX. THE DEFENDANT MANUFACTURERS ARE IN VIOLATION OF THE ILLINOIS INSURANCE FRAUD CLAIMS PREVENTION ACT

252. Through their Market Share Agreements, Defendant Manufacturers encouraged Omnicare to enter 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.

253. Insurers reimbursed Omnicare for services using a contracted kickback on covered charges for each insured patient. Insurers' reimbursement includes the cost of prescription drugs.

254. 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.

255. 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.

256. Omnicare submitted electronic claims or bills to insurers for the prescription drugs, including but not limited to Monopril, Lipitor, Accupril, Levaquin, Risperdal, Ultram/Ultracet, and Abilify. As a result of their conspiracy with Defendant 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 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.

257. Omnicare never informed insurers that they were paying 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.

258. By causing the concealment of these policies and practices, while knowing that Omnicare was then submitting claims to insurers for payment, Defendant Manufacturers

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 Defendant Manufactuers' "preferred" drug market share. Insurers, unaware of the falsity of the claims because Defendant Manufacturers conspired with Omnicare to fail to disclose the material facts, paid the claims submitted by Omnicare in connection with the drug prescriptions.

259. Defendant Manufacturers knowingly and intentionally conspired to, and caused false claims for payment to be submitted for prescription drugs: from the implementation of each individual scheme (the earliest was 1998, with rollouts of subsequent schemes every few months) to date in violation of the Illinois Insurance Claims Fraud Prevention Act.

X. CONCLUSION

260. Co-conspirators the Defendant Manufacturers 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: the Defendant Manufacturers Quarterly reports for their preferred medications, the Market Share Agreements, PAL letter solicitations, the PAL letters themselves, agreements documenting the conspiracy between Omnicare and Defendant Manufacturers, electronic and other media used to calculate and tabulate kickbacks given by Defendant Manufacturers 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 of the Defendant Manufacturers' "preferred" medications, quarterly PHS pricing submissions, annual

FSS pricing submissions, and daily "batched" submissions that Omnicare made to the government as requests for payment.

261. 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)

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

263. 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 Defendant Manufacturers' violations of 31 U.S.C. §3729 (a)(1).

264. At all times relevant and material to this Amended Complaint, the Defendant Manufacturers Bristol Myers, Ortho McNeil, Janssen, and Pfizer knowingly 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 submitted for the Defendant Manufacturers' drugs by Omnicare and other Medicaid provider pharmacies, resulting in great financial loss to the federal and state governments.

265. By virtue of the above-described acts, among others, Bristol Myers 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 Monopril, Abilify, and other drugs.

266. By virtue of the above-described acts, among others, Pfizer 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 Lipitor, Accupril, and other drugs.

267. Defendant Manufacturers knowingly and intentionally conspired to, and caused false claims for payment to be submitted for prescription drugs from the implementation of each individual scheme to date in violation of the Illinois Insurance Claims Fraud Prevention Act. The earliest scheme was the Monopril switching in 1998, and the scheme continued with subsequent rollouts every few months.

268. By virtue of the above-described acts, among others, Ortho McNeil 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 Levaquin, Ultram/Ultracet, and other drugs.

269. The amounts of the false or fraudulent claims to the United States were material.

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

271. 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 the Defendant Manufacturers' fraudulent practices extend throughout the company in states where government reimbursement rates make such fraud lucrative for the Defendant Manufacturers; 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)

272. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

273. 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 Defendant Manufacturers' violation of 31 U.S.C. §3729 (a)(2).

274. The False Claims Act has been violated by the Defendant Manufacturers 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 statutes.

275. By virtue of the above-described acts, among others, Bristol Myers 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 Monopril, Abilify, and other drugs.

276. By virtue of the above-described acts, among others, Janssen 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 Risperdal and other drugs.

277. By virtue of the above-described acts, among others, Pfizer 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 Lipitor, Accupril, and other drugs.

278. By virtue of the above-described acts, among others, Ortho McNeil 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 Levaquin, Ultram/Ultracet, and other drugs.

279. The amounts of the false or fraudulent claims to the United States were material.

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

281. 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 the Defendant Manufacturers' fraudulent practices extend throughout the country in states where government reimbursement rates make such fraud lucrative for the Defendant Manufacturers; 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 All Defendants)

282. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

283. Each of the Defendant Manufacturers 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."

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

285. In keeping with their scheme to defraud the government, the Defendant Manufacturers, with respect to their preferred medications – Monopril, Abilify, Accupril, Lipitor, Levaquin, Ultram/Ultacet, and Risperdal - submitted fraudulent quarterly price reports which intentionally misrepresented the best prices for their 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.

286. The Defendant Manufacturers intentionally submitted these false reports to avoid paying higher rebates as required by federal law and their Rebate Agreements.

287. The Defendant Manufacturers 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.* their mandatory Medicaid rebate payments.

288. The Defendant Manufacturers had the authority and responsibility to make such reports, improperly abused the exercise of such authority, and as a direct and proximate result,

the false records and statement were made to the government, and the jointly-funded Medicaid Program was deprived of the much-needed appropriate Rebate payments result of the Defendant Manufacturers' intentionally inaccurate quarterly reporting of best price.

289. Other federally funded healthcare such as FSS and PHS entities were also harmed by Defendant Manufacturers' concealment of their true best prices.

290. By virtue of the false records or statements made or used by the Defendant Manufacturers, 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 Defendant Manufacturers.

291. 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 the Defendant Manufacturers' fraudulent practices extend throughout the country in states where government reimbursement rates make such fraud lucrative for the Defendant Manufacturers; 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)

292. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

293. By effectuating the PAL letter solicitation-for-kickback scheme detailed herein, Bristol Myers and Omnicare conspired to defraud the government by submitting false claims and causing the submission of false claims for Monopril, Abilify, and other drugs.

294. By effectuating a similar PAL letter solicitation-for-kickback scheme, Pfizer and Omnicare conspired to defraud the government by submitting false claims and causing the

submission of false claims for Lipitor, Accupril and other drugs.

295. By effectuating a similar PAL letter solicitation-for-kickback scheme, Ortho McNeil and Omnicare conspired to defraud the government by submitting false claims and causing the submission of false claims for Levaquin, Ultram/Ultracet, and other drugs.

296. By effectuating a similar PAL letter solicitation-for-kickback scheme, Janssen and Omnicare conspired to defraud the government by submitting false claims and causing the submission of false claims for Risperdal and other drugs.

297. As a result of the claims for reimbursement defendants caused to be submitted to Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by co-conspirator pharmacies, the government regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

299. Plaintiff United States, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. All unlawful conduct described above may have continued after Lisitza's termination with Omnicare.

300. 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 the Defendant Manufacturers' and Omnicare's fraudulent practices extend throughout the country to states where government reimbursement rates make such fraud lucrative for the Defendant Manufacturers; 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)

301. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

302. 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 Defendant Manufacturers' violation of 740 ILCS 175/3.

303. At all times relevant and material to this Amended Complaint, the Defendant Manufacturers Bristol Myers, Ortho McNeil, Janssen, and Pfizer knowingly caused false claims for payment or approval, in the form of false cost information for their "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 federal and state governments paid reimbursements for the Defendant Manufacturers' drugs to Omnicare and other Medicaid provider pharmacies sums of money grossly in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

304. 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.

305. Bristol Myers, Janssen, Ortho McNeil, and Pfizer, at all times relevant to this action, sold and continue to sell pharmaceuticals in the State of Illinois.

306. By virtue of the above-described acts, among others, Defendant Bristol Myers 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 Monopril,

Abilify, and other drugs.

307. By virtue of the above-described acts, among others, Defendant Janssen 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 Risperdal and other drugs.

308. By virtue of the above-described acts, among others, Defendant Pfizer 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 Lipitor, Accupril, and other drugs.

309. By virtue of the above-described acts, among others, Defendant Ortho McNeil 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 Levaquin, Ultram/Ultracet, and other drugs.

310. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, Illinois regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

312. Plaintiff State of Illinois, being unaware of the falsity of the claims and/or

statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' "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)

313. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

314. By effectuating the PAL letter solicitation-for-kickback scheme detailed herein, Bristol Myers and Omnicare conspired to defraud the State of Illinois by submitting false claims and causing the submission of false claims for Monopril, Abilify, and other drugs.

315. By effectuating a similar PAL letter solicitation-for-kickback scheme, Pfizer and Omnicare conspired to defraud the government by submitting false claims and causing the submission of false claims for Lipitor, Accupril and other drugs.

316. By effectuating a similar PAL letter solicitation-for-kickback scheme, Ortho McNeil and Omnicare conspired to defraud the government by submitting false claims and causing the submission of false claims for Levaquin, Ultram/Ultracet, and other drugs.

317. By effectuating a similar PAL letter solicitation-for-kickback scheme, Janssen and Omnicare conspired to defraud the government by submitting false claims and causing the submission of false claims for Risperdal and other drugs.

318. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, Illinois regularly made

payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

319. The amounts of the false or fraudulent claims to the government were material.

320. Plaintiff State of Illinois, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. 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)

321. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

322. 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).

323. 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.

324. Bristol Myers, Janssen, Ortho McNeil, and Pfizer, at all times relevant to this action, sold and continue to sell pharmaceuticals in the State of California.

325. At all times relevant and material to this Amended Complaint, the Defendant Manufacturers Bristol Myers, Ortho McNeil, Janssen, and Pfizer knowingly caused false claims for payment or approval, in the form of false cost information for their "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 federal and state governments paid reimbursements for the Defendant Manufacturers' drugs to Omnicare and

other Medicaid provider pharmacies sums of money grossly in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

326. By virtue of the above-described acts, among others, Defendant Bristol Myers 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 Monopril, Abilify, and other drugs.

327. By virtue of the above-described acts, among others, Defendant Janssen 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 Risperdal and other drugs.

328. By virtue of the above-described acts, among others, Defendant Pfizer 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 Lipitor, Accupril, and other drugs.

329. By virtue of the above-described acts, among others, Defendant Ortho McNeil 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 Levaquin, Ultram/Ultracet, and other drugs.

330. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, California regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

332. Plaintiff State of California, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' "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)

333. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

334. By effectuating the PAL letter solicitation-for-kickback scheme detailed herein, Bristol Myers and Omnicare conspired to defraud the State of California by submitting false claims and causing the submission of false claims for Monopril, Abilify, and other drugs.

335. By effectuating a similar PAL letter solicitation-for-kickback scheme, Pfizer and Omnicare conspired to defraud the State of California by submitting false claims and causing the submission of false claims for Lipitor, Accupril and other drugs.

336. By effectuating a similar PAL letter solicitation-for-kickback scheme, Ortho McNeil and Omnicare conspired to defraud the State of California by submitting false claims and causing the submission of false claims for Levaquin, Ultram/Ultracet, and other drugs.

337. By effectuating a similar PAL letter solicitation-for-kickback scheme, Janssen and Omnicare conspired to defraud the State of California by submitting false claims and causing the submission of false claims for Risperdal and other drugs.

338. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, California regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

340. Plaintiff State of California, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. 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)

341. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

342. 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.

343. 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.

344. Bristol Myers, Janssen, Ortho McNeil, and Pfizer, at all times relevant to this action, sold and continue to sell pharmaceuticals in the State of Delaware.

345. At all times relevant and material to this Amended Complaint, the Defendant Manufacturers Bristol Myers, Ortho McNeil, Janssen, and Pfizer knowingly caused false claims for payment or approval, in the form of false cost information for their "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 federal and state governments paid reimbursements for the Defendant Manufacturers' drugs to Omnicare and other Medicaid provider pharmacies sums of money grossly in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

346. By virtue of the above-described acts, among others, Defendant Bristol Myers 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 Monopril, Abilify, and other drugs.

347. By virtue of the above-described acts, among others, Defendant Janssen 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 Risperdal and other drugs.

348. By virtue of the above-described acts, among others, Defendant Pfizer 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 Lipitor, Accupril, and other drugs.

349. By virtue of the above-described acts, among others, Defendant Ortho McNeil 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 Levaquin, Ultram/Ultracet, and other drugs.

350. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, Delaware regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

352. Plaintiff State of Delaware, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' "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)

353. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

354. By effectuating the PAL letter solicitation-for-kickback scheme detailed herein,

Bristol Myers and Omnicare conspired to defraud the State of Delaware by submitting false claims and causing the submission of false claims for Monopril, Abilify, and other drugs.

355. By effectuating a similar PAL letter solicitation-for-kickback scheme, Pfizer and Omnicare conspired to defraud the State of Delaware by submitting false claims and causing the submission of false claims for Lipitor, Accupril and other drugs.

356. By effectuating a similar PAL letter solicitation-for-kickback scheme, Ortho McNeil and Omnicare conspired to defraud the State of Delaware by submitting false claims and causing the submission of false claims for Levaquin, Ultram/Ultracet, and other drugs.

357. By effectuating a similar PAL letter solicitation-for-kickback scheme, Janssen and Omnicare conspired to defraud the State of Delaware by submitting false claims and causing the submission of false claims for Risperdal and other drugs.

358. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, Delaware regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

360. Plaintiff State of Delaware, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. 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)

361. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

362. 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.*

363. 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.

364. Bristol Myers, Janssen, Ortho McNeil, and Pfizer, at all times relevant to this action, sold and continue to sell pharmaceuticals in the District of Columbia.

365. At all times relevant and material to this Amended Complaint, the Defendant Manufacturers Bristol Myers, Janssen, Ortho McNeil and Pfizer knowingly caused false claims for payment or approval, in the form of false cost information for their "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 federal and state governments paid reimbursements for the Defendant Manufacturers' drugs to Omnicare and other Medicaid provider pharmacies sums of money grossly in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

366. By virtue of the above-described acts, among others, Defendant Bristol Myers 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 Monopril, Abilify, and other drugs.

367. By virtue of the above-described acts, among others, Defendant Janssen 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 Risperdal and other drugs.

368. By virtue of the above-described acts, among others, Defendant Pfizer 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 Lipitor, Accupril, and other drugs.

369. By virtue of the above-described acts, among others, Defendant Ortho McNeil 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 Levaquin, Ultram/Ultracet, and other drugs.

370. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, District of Columbia regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

372. Plaintiff District of Columbia, being unaware of the falsity of the claims and/or statements made by defendant, and in reliance on the accuracy thereof paid and may continue to

pay for Defendant Manufacturers' "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)

373. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

374. By effectuating the PAL letter solicitation-for-kickback scheme detailed herein, Bristol Myers and Omnicare conspired to defraud the District of Columbia by submitting false claims and causing the submission of false claims for Monopril, Abilify, and other drugs.

375. By effectuating a similar PAL letter solicitation-for-kickback scheme, Pfizer and Omnicare conspired to defraud the District of Columbia by submitting false claims and causing the submission of false claims for Lipitor, Accupril and other drugs.

376. By effectuating a similar PAL letter solicitation-for-kickback scheme, Ortho McNeil and Omnicare conspired to defraud the District of Columbia by submitting false claims and causing the submission of false claims for Levaquin, Ultram/Ultracet, and other drugs.

377. By effectuating a similar PAL letter solicitation-for-kickback scheme, Janssen and Omnicare conspired to defraud the District of Columbia by submitting false claims and causing the submission of false claims for Risperdal and other drugs.

378. As a result of the claims for reimbursement defendants caused to be submitted to the District of Columbia Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by co-conspirator pharmacies, the District of Columbia regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

material.

380. Plaintiff District of Columbia, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. 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)

381. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

382. 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.

383. 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.

384. Bristol Myers, Janssen, Ortho McNeil, and Pfizer, at all times relevant to this action, sold and continue to sell pharmaceuticals in the State of Florida.

385. At all times relevant and material to this Amended Complaint, the Defendant Manufacturers Bristol Myers, Ortho McNeil, Janssen, and Pfizer knowingly caused false claims for payment or approval, in the form of false cost information for their "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 federal and state governments paid reimbursements for the Defendant Manufacturers' drugs to Omnicare and

other Medicaid provider pharmacies sums of money grossly in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

386. By virtue of the above-described acts, among others, Defendant Bristol Myers 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 Monopril, Abilify, and other drugs.

387. By virtue of the above-described acts, among others, Defendant Janssen 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 Risperdal and other drugs.

388. By virtue of the above-described acts, among others, Defendant Pfizer 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 Lipitor, Accupril, and other drugs.

389. By virtue of the above-described acts, among others, defendant Ortho McNeil 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 Levaquin, Ultram/Ultracet, and other drugs.

390. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, Florida regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

392. Plaintiff State of Florida, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' "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)

393. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

394. By effectuating the PAL letter solicitation-for-kickback scheme detailed herein, Bristol Myers and Omnicare conspired to defraud the State of Florida by submitting false claims and causing the submission of false claims for Monopril, Abilify, and other drugs.

395. By effectuating a similar PAL letter solicitation-for-kickback scheme, Pfizer and Omnicare conspired to defraud the State of Florida by submitting false claims and causing the submission of false claims for Lipitor, Accupril and other drugs.

396. By effectuating a similar PAL letter solicitation-for-kickback scheme, Ortho McNeil and Omnicare conspired to defraud the State of Florida by submitting false claims and causing the submission of false claims for Levaquin, Ultram/Ultracet, and other drugs.

397. By effectuating a similar PAL letter solicitation-for-kickback scheme, Janssen and Omnicare conspired to defraud the State of Florida by submitting false claims and causing the submission of false claims for Risperdal and other drugs.

398. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, Florida regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

400. Plaintiff State of Florida, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. 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)

401. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

402. 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.*

403. 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.

404. Bristol Myers, Janssen, Ortho McNeil, and Pfizer, at all times relevant to this

action, sold and continue to sell pharmaceuticals in the State of Georgia.

405. At all times relevant and material to this Amended Complaint, the Defendant Manufacturers Bristol Myers, Ortho McNeil, Janssen, and Pfizer knowingly caused false claims for payment or approval, in the form of false cost information for their "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 federal and state governments paid reimbursements for the Defendant Manufacturers' drugs to Omnicare and other Medicaid provider pharmacies sums of money grossly in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

406. By virtue of the above-described acts, among others, Defendant Bristol Myers 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 Monopril, Abilify, and other drugs.

407. By virtue of the above-described acts, among others, Defendant Pfizer 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 Lipitor, Accupril, and other drugs.

408. By virtue of the above-described acts, among others, Defendant Janssen 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 Risperdal and

other drugs.

409. By virtue of the above-described acts, among others, Defendant Ortho McNeil 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 Levaquin, Ultram/Ultracet, and other drugs.

410. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, Georgia regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

412. Plaintiff State of Georgia, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. 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)

413. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

414. By effectuating the PAL letter solicitation-for-kickback scheme detailed herein, Bristol Myers and Omnicare conspired to defraud the State of Georgia by submitting false claims

and causing the submission of false claims for Monopril, Abilify, and other drugs.

415. By effectuating a similar PAL letter solicitation-for-kickback scheme, Pfizer and Omnicare conspired to defraud the State of Georgia by submitting false claims and causing the submission of false claims for Lipitor, Accupril and other drugs.

416. By effectuating a similar PAL letter solicitation-for-kickback scheme, Ortho McNeil and Omnicare conspired to defraud the State of Georgia by submitting false claims and causing the submission of false claims for Levaquin, Ultram/Ultracet, and other drugs.

417. By effectuating a similar PAL letter solicitation-for-kickback scheme, Janssen and Omnicare conspired to defraud the State of Georgia by submitting false claims and causing the submission of false claims for Risperdal and other drugs.

418. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, Georgia regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

420. Plaintiff State of Georgia, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. 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)

421. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

422. 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.*

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

424. Bristol Myers, Janssen, Ortho McNeil, and Pfizer, at all times relevant to this action, sold and continue to sell pharmaceuticals in the State of Hawaii.

425. At all times relevant and material to this Amended Complaint, the Defendant Manufacturers Bristol Myers, Ortho McNeil, Janssen, and Pfizer knowingly caused false claims for payment or approval, in the form of false cost information for their "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 federal and state governments paid reimbursements for the Defendant Manufacturers' drugs to Omnicare and other Medicaid provider pharmacies sums of money grossly in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

426. By virtue of the above-described acts, among others, Defendant Bristol Myers 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 Monopril, Abilify, and other drugs.

427. By virtue of the above-described acts, among others, Defendant Janssen 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 Risperdal and other drugs.

428. By virtue of the above-described acts, among others, Defendant Pfizer 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 Lipitor, Accupril, and other drugs.

429. By virtue of the above described acts, among others, Defendant Ortho McNeil 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 Levaquin, Ultram/Ultracet, and other drugs.

430. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, Hawaii regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

432. Plaintiff State of Hawaii, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy

thereof paid and may continue to pay for the Defendant Manufacturers' "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)

433. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

434. By effectuating the PAL letter solicitation-for-kickback scheme detailed herein, Bristol Myers and Omnicare conspired to defraud the State of Hawaii by submitting false claims and causing the submission of false claims for Monopril, Abilify, and other drugs.

435. By effectuating a similar PAL letter solicitation-for-kickback scheme, Pfizer and Omnicare conspired to defraud the State of Hawaii by submitting false claims and causing the submission of false claims for Lipitor, Accupril, and other drugs.

436. By effectuating a similar PAL letter solicitation-for-kickback scheme, Janssen and Omnicare conspired to defraud the State of Hawaii by submitting false claims and causing the submission of false claims for Risperdal and other drugs.

437. By effectuating a similar PAL letter solicitation-for-kickback scheme, Ortho McNeil and Omnicare conspired to defraud the State of Hawaii by submitting false claims and causing the submission of false claims for Levaquin, Ultram/Ultracet, and other drugs.

438. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, Hawaii regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

440. Plaintiff State of Hawaii, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. 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)

441. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

442. This Count is brought by Lisitza in the name of the State of Indiana under the *qui tam* provisions of Ind. Code §5-11-5.5-4, for the Defendant Manufacturers' violations of Ind. Code §5-11-5.5-2.

443. 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.

444. Bristol Myers, Janssen, Ortho McNeil, and Pfizer, at all times relevant to this action, sold and continue to sell pharmaceuticals in the State of Indiana.

445. At all times relevant and material to this Amended Complaint, the Defendant Manufacturers Bristol Myers, Ortho McNeil, Janssen, and Pfizer knowingly caused false claims for payment or approval, in the form of false cost information for their "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 federal and state

governments paid reimbursements for the Defendant Manufacturers' drugs to Omnicare and other Medicaid provider pharmacies sums of money grossly in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

446. By virtue of the above-described acts, among others, Defendant Bristol Myers 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 Monopril, Abilify, and other drugs.

447. By virtue of the above-described acts, among others, Defendant Pfizer 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 Lipitor, Accupril, and other drugs.

448. By virtue of the above-described acts, among others, Defendant Ortho McNeil 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 Levaquin, Ultram/Ultracet, and other drugs.

449. By virtue of the above-described acts, among others, Defendant Janssen 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 Risperdal and other drugs.

450. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, Indiana regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

452. Plaintiff State of Indiana, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. 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)

453. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

454. By effectuating the PAL letter solicitation-for-kickback scheme detailed herein, Bristol Myers and Omnicare conspired to defraud the State of Indiana by submitting false claims and causing the submission of false claims for Monopril, Abilify, and other drugs.

455. By effectuating a similar PAL letter solicitation-for-kickback scheme, Pfizer and Omnicare conspired to defraud the State of Indiana by submitting false claims and causing the submission of false claims for Lipitor, Accupril, and other drugs.

456. By effectuating a similar PAL letter solicitation-for-kickback scheme, Janssen and Omnicare conspired to defraud the State of Indiana by submitting false claims and causing the

submission of false claims for Risperdal and other drugs.

457. By effectuating a similar PAL letter solicitation-for-kickback scheme, Ortho McNeil and Omnicare conspired to defraud the State of Indiana by submitting false claims and causing the submission of false claims for Levaquin, Ultram/Ultracet, and other drugs.

458. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, Indiana regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

460. Plaintiff State of Indiana, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. 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)

461. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

462. 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.*

463. 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.

464. Bristol Myers, Janssen, Ortho McNeil, and Pfizer, at all times relevant to this action, sold and continue to sell pharmaceuticals in the State of Louisiana.

465. At all times relevant and material to this Amended Complaint, the Defendant Manufacturers Bristol Myers, Ortho McNeil, Janssen, and Pfizer knowingly caused false claims for payment or approval, in the form of false cost information for their "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 federal and state governments paid reimbursements for the Defendant Manufacturers' drugs to Omnicare and other Medicaid provider pharmacies sums of money grossly in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

466. By virtue of the above-described acts, among others, Defendant Bristol Myers 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 Monopril, Abilify, and other drugs.

467. By virtue of the above-described acts, among others, Defendant Pfizer 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 Lipitor, Accupril, and other drugs.

468. By virtue of the above-described acts, among others, Defendant Janssen 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 Risperdal and other drugs.

469. By virtue of the above-described acts, among others, Defendant Ortho McNeil 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 Levaquin, Ultram/Ultracet, and other drugs.

470. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, Louisiana regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

472. Plaintiff State of Louisiana, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. 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)

473. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

474. By effectuating the PAL letter solicitation-for-kickback scheme detailed herein, Bristol Myers and Omnicare conspired to defraud the State of Louisiana by submitting false claims and causing the submission of false claims for Monopril, Abilify, and other drugs.

475. By effectuating a similar PAL letter solicitation-for-kickback scheme, Pfizer and Omnicare conspired to defraud the State of Louisiana by submitting false claims and causing the submission of false claims for Lipitor, Accupril, and other drugs.

476. By effectuating a similar PAL letter solicitation-for-kickback scheme, Janssen and Omnicare conspired to defraud the State of Louisiana by submitting false claims and causing the submission of false claims for Risperdal and other drugs.

477. By effectuating a similar PAL letter solicitation-for-kickback scheme, Ortho McNeil and Omnicare conspired to defraud the State of Louisiana by submitting false claims and causing the submission of false claims for Levaquin, Ultram/Ultracet, and other drugs.

478. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, Louisiana regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

480. Plaintiff State of Louisiana, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. 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)

481. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

482. 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).

483. 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.

484. Bristol Myers, Janssen, Ortho McNeil, and Pfizer, at all times relevant to this action, sold and continue to sell pharmaceuticals in the Commonwealth of Massachusetts.

485. At all times relevant and material to this Amended Complaint, the Defendant Manufacturers Bristol Myers, Ortho McNeil, Janssen, and Pfizer knowingly caused false claims for payment or approval, in the form of false cost information for their "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 federal and state governments paid reimbursements for the Defendant Manufacturers' drugs to Omnicare and other Medicaid provider pharmacies sums of money grossly in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

486. By virtue of the above-described acts, among others, Defendant Bristol Myers 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 Monopril, Abilify, and other drugs.

487. By virtue of the above-described acts, among others, Defendant Pfizer 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 Lipitor, Accupril, and other drugs.

488. By virtue of the above-described acts, among others, Defendant Janssen 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 Risperdal and other drugs.

489. By virtue of the above-described acts, among others, Defendant Ortho McNeil 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 Levaquin, Ultram/Ultracet, and other drugs.

490. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, Massachusetts regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

492. Plaintiff State of Massachusetts, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. 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)

493. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

494. By effectuating the PAL letter solicitation-for-kickback scheme detailed herein, Bristol Myers and Omnicare conspired to defraud the Commonwealth of Massachusetts by submitting false claims and causing the submission of false claims for Monopril, Abilify, and other drugs.

495. By effectuating a similar PAL letter solicitation-for-kickback scheme, Pfizer and Omnicare conspired to defraud the Commonwealth of Massachusetts by submitting false claims and causing the submission of false claims for Lipitor, Accupril, and other drugs.

496. By effectuating a similar PAL letter solicitation-for-kickback scheme, Ortho McNeil and Omnicare conspired to defraud the Commonwealth of Massachusetts by submitting false claims and causing the submission of false claims for Levaquin, Ultram/Ultracet, and other drugs.

497. By effectuating a similar PAL letter solicitation-for-kickback scheme, Janssen and Omnicare conspired to defraud the Commonwealth of Massachusetts by submitting false claims and causing the submission of false claims for Risperdal and other drugs.

498. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, Massachusetts regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

500. Plaintiff Commonwealth of Massachusetts, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. 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)

501. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

502. 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 §400.601 *et seq.*

503. 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.

504. Bristol Myers, Janssen, Ortho McNeil, and Pfizer, at all times relevant to this action, sold and continue to sell pharmaceuticals in the State of Michigan.

505. At all times relevant and material to this Amended Complaint, the Defendant

Manufacturers Bristol Myers, Ortho McNeil, Janssen, and Pfizer knowingly caused false claims for payment or approval, in the form of false cost information for their "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 federal and state governments paid reimbursements for the Defendant Manufacturers' drugs to Omnicare and other Medicaid provider pharmacies sums of money grossly in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

506. By virtue of the above-described acts, among others, Defendant Bristol Myers 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 Monopril, Abilify, and other drugs.

507. By virtue of the above-described acts, among others, Defendant Pfizer 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 Lipitor, Accupril, and other drugs.

508. By virtue of the above-described acts, among others, Defendant Janssen 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 Risperdal and other drugs.

509. By virtue of the above-described acts, among others, Defendant Ortho McNeil

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 Levaquin, Ultram/Ultracet, and other drugs.

510. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, Michigan regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

512. Plaintiff State of Michigan, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. 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 §400.606
(Against All Defendants)

513. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

514. By effectuating the PAL letter solicitation-for-kickback scheme detailed herein, Bristol Myers and Omnicare conspired to defraud the State of Michigan by submitting false claims and causing the submission of false claims for Monopril, Abilify, and other drugs.

515. By effectuating a similar PAL letter solicitation-for-kickback scheme, Pfizer and

Omnicare conspired to defraud the State of Michigan by submitting false claims and causing the submission of false claims for Lipitor, Accupril, and other drugs.

516. By effectuating a similar PAL letter solicitation-for-kickback scheme, Ortho McNeil and Omnicare conspired to defraud the State of Michigan by submitting false claims and causing the submission of false claims for Levaquin, Ultram/Ultracet, and other drugs.

517. By effectuating a similar PAL letter solicitation-for-kickback scheme, Janssen and Omnicare conspired to defraud the State of Michigan by submitting false claims and causing the submission of false claims for Risperdal and other drugs.

518. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, Michigan regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

520. Plaintiff State of Michigan, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. 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)

521. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

522. 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."

523. 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.

524. Bristol Myers, Ortho McNeil, Janssen, and Pfizer, at all times relevant to this action, sold and continue to sell pharmaceuticals in the State of Nevada.

525. At all times relevant and material to this Amended Complaint, the Defendant Manufacturers Bristol Myers, Ortho McNeil, Janssen, and Pfizer knowingly caused false claims for payment or approval, in the form of false cost information for their "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 federal and state governments paid reimbursements for the Defendant Manufacturers' drugs to Omnicare and other Medicaid provider pharmacies sums of money grossly in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

526. By virtue of the above-described acts, among others, Defendant Bristol Myers 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 Monopril, Abilify, and other drugs.

527. By virtue of the above-described acts, among others, Defendant Pfizer 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 Lipitor, Accupril, and other drugs.

528. By virtue of the above-described acts, among others, Defendant Ortho McNeil 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 Levaquin, Ultram/Ultracet, and other drugs.

529. By virtue of the above-described acts, among others, Defendant Janssen 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 Risperdal and other drugs.

530. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, Nevada regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

532. Plaintiff State of Nevada, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. 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)

533. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

534. By effectuating the PAL letter solicitation-for-kickback scheme detailed herein, Bristol Myers and Omnicare conspired to defraud the State of Nevada by submitting false claims and causing the submission of false claims for Monopril, Abilify, and other drugs.

535. By effectuating a similar PAL letter solicitation-for-kickback scheme, Pfizer and Omnicare conspired to defraud the State of Nevada by submitting false claims and causing the submission of false claims for Lipitor, Accupril and other drugs.

536. By effectuating a similar PAL letter solicitation-for-kickback scheme, Janssen and Omnicare conspired to defraud the State of Nevada by submitting false claims and causing the submission of false claims for Risperdal and other drugs.

537. By effectuating a similar PAL letter solicitation-for-kickback scheme, Ortho McNeil and Omnicare conspired to defraud the State of Nevada by submitting false claims and causing the submission of false claims for Levaquin, Ultram/Ultracet, and other drugs.

538. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, Nevada regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

540. Plaintiff State of Nevada, being unaware of the falsity of the claims and/or

statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. 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)

541. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

542. 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.*

543. 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 New Hampshire.

544. Bristol Myers, Ortho McNeil, Janssen, and Pfizer, at all times relevant to this action, sold and continue to sell pharmaceuticals in the State of New Hampshire.

545. At all times relevant and material to this Amended Complaint, the Defendant Manufacturers Bristol Myers, Ortho McNeil, Janssen, and Pfizer knowingly caused false claims for payment or approval, in the form of false cost information for their "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 federal and state governments paid reimbursements for the Defendant Manufacturers' drugs to Omnicare and other Medicaid provider pharmacies sums of money grossly in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

546. By virtue of the above-described acts, among others, Defendant Bristol Myers 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 Monopril, Abilify, and other drugs.

547. By virtue of the above-described acts, among others, Defendant Pfizer 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 Lipitor, Accupril, and other drugs.

548. By virtue of the above-described acts, among others, Defendant Ortho McNeil 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 Levaquin, Ultram/Ultracet, and other drugs.

549. By virtue of the above-described acts, among others, Defendant Janssen 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 Risperdal and other drugs.

550. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, New Hampshire

regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

552. Plaintiff State of New Hampshire, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. 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 (1)(c).
(Against All Defendants)

553. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

554. By effectuating the PAL letter solicitation-for-kickback scheme detailed herein, Bristol Myers and Omnicare conspired to defraud the State of New Hampshire by submitting false claims and causing the submission of false claims for Monopril, Abilify, and other drugs.

555. By effectuating a similar PAL letter solicitation-for-kickback scheme, Pfizer and Omnicare conspired to defraud the State of New Hampshire by submitting false claims and causing the submission of false claims for Lipitor, Accupril and other drugs.

556. By effectuating a similar PAL letter solicitation-for-kickback scheme, Janssen and Omnicare conspired to defraud the State of New Hampshire by submitting false claims and causing the submission of false claims for Risperdal and other drugs.

557. By effectuating a similar PAL letter solicitation-for-kickback scheme, Ortho McNeil and Omnicare conspired to defraud the State of New Hampshire by submitting false

claims and causing the submission of false claims for Levaquin, Ultram/Ultracet, and other drugs.

558. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, New Hampshire regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

560. Plaintiff State of New Hampshire, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. 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)

561. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

562. 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.*

563. 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 New Mexico.

564. Bristol Myers, Ortho McNeil, Janssen, and Pfizer, at all times relevant to this action, sold and continue to sell pharmaceuticals in the State of New Mexico.

565. At all times relevant and material to this Amended Complaint, the Defendant Manufacturers Bristol Myers, Ortho McNeil, Janssen, and Pfizer knowingly caused false claims for payment or approval, in the form of false cost information for their "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 federal and state governments paid reimbursements for the Defendant Manufacturers' drugs to Omnicare and other Medicaid provider pharmacies sums of money grossly in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

566. By virtue of the above-described acts, among others, Defendant Bristol Myers 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 Monopril, Abilify, and other drugs.

567. By virtue of the above-described acts, among others, Defendant Pfizer 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 Lipitor, Accupril, and other drugs.

568. By virtue of the above-described acts, among others, Defendant Ortho McNeil 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 Levaquin, Ultram/Ultracet, and other drugs.

569. By virtue of the above-described acts, among others, Defendant Janssen 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 Risperdal and other drugs.

570. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, New Mexico regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

572. Plaintiff State of New Mexico, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. 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. §27-14-4D
(Against All Defendants)

573. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

574. By effectuating the PAL letter solicitation-for-kickback scheme detailed herein,

Bristol Myers and Omnicare conspired to defraud the State of New Mexico by submitting false claims and causing the submission of false claims for Monopril, Abilify, and other drugs.

575. By effectuating a similar PAL letter solicitation-for-kickback scheme, Pfizer and Omnicare conspired to defraud the State of New Mexico by submitting false claims and causing the submission of false claims for Lipitor, Accupril and other drugs.

576. By effectuating a similar PAL letter solicitation-for-kickback scheme, Janssen and Omnicare conspired to defraud the State of New Mexico by submitting false claims and causing the submission of false claims for Risperdal and other drugs.

577. By effectuating a similar PAL letter solicitation-for-kickback scheme, Ortho McNeil and Omnicare conspired to defraud the State of New Mexico by submitting false claims and causing the submission of false claims for Levaquin, Ultram/Ultracet, and other drugs.

578. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, New Mexico regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

580. Plaintiff State of New Mexico, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof, paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. 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)

581. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

582. 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.*

583. 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.

584. Bristol Myers, Janssen, Ortho McNeil, and Pfizer, at all times relevant to this action, sold and continue to sell pharmaceuticals in the State of New York.

585. At all times relevant and material to this Amended Complaint, the Defendant Manufacturers Bristol Myers, Ortho McNeil, Janssen, and Pfizer knowingly caused false claims for payment or approval, in the form of false cost information for their "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 federal and state governments paid reimbursements for the Defendant Manufacturers' drugs to Omnicare and other Medicaid provider pharmacies sums of money grossly in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

586. By virtue of the above-described acts, among others, Defendant Bristol Myers 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 Monopril, Abilify, and other drugs.

587. By virtue of the above-described acts, among others, Defendant Pfizer 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 Lipitor, Accupril, and other drugs.

588. By virtue of the above-described acts, among others, Defendant Janssen 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 Risperdal and other drugs.

589. By virtue of the above-described acts, among others, Defendant Ortho McNeil 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 Levaquin, Ultram/Ultracet, and other drugs.

590. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, New York regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

592. Plaintiff State of New York, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy

thereof paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. 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)

593. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

594. By effectuating the PAL letter solicitation-for-kickback scheme detailed herein, Bristol Myers and Omnicare conspired to defraud the State of New York by submitting false claims and causing the submission of false claims for Monopril, Abilify, and other drugs.

595. By effectuating a similar PAL letter solicitation-for-kickback scheme, Pfizer and Omnicare conspired to defraud the State of New York by submitting false claims and causing the submission of false claims for Lipitor, Accupril and other drugs.

596. By effectuating a similar PAL letter solicitation-for-kickback scheme, Ortho McNeil and Omnicare conspired to defraud the State of New York by submitting false claims and causing the submission of false claims for Levaquin, Ultram/Ultracet, and other drugs.

597. By effectuating a similar PAL letter solicitation-for-kickback scheme, Janssen and Omnicare conspired to defraud the State of New York by submitting false claims and causing the submission of false claims for Risperdal and other drugs.

598. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, New York regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

material.

600. Plaintiff State of New York, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. 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)

601. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

602. 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.*

603. 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.

604. Bristol Myers, Janssen, Ortho McNeil, and Pfizer, at all times relevant to this action, sold and continue to sell pharmaceuticals in the State of Tennessee.

605. At all times relevant and material to this Amended Complaint, the Defendant Manufacturers Bristol Myers, Ortho McNeil, Janssen, and Pfizer knowingly caused false claims for payment or approval, in the form of false cost information for their "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 federal and state governments paid reimbursements for the Defendant Manufacturers' drugs to Omnicare and other Medicaid provider pharmacies .sums of money grossly in excess of the amounts

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

606. By virtue of the above-described acts, among others, Defendant Bristol Myers 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 Monopril, Abilify, and other drugs.

607. By virtue of the above-described acts, among others, Defendant Pfizer 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 Lipitor, Accupril, and other drugs.

608. By virtue of the above-described acts, among others, Defendant Janssen 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 Risperdal and other drugs.

609. By virtue of the above-described acts, among others, Defendant Ortho McNeil 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 Levaquin, Ultram/Ultracet, and other drugs.

610. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, Tennessee regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

612. Plaintiff State of Tennessee, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. 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)

613. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

614. By effectuating the PAL letter solicitation-for-kickback scheme detailed herein, Bristol Myers and Omnicare conspired to defraud the State of Tennessee by submitting false claims and causing the submission of false claims for Monopril, Abilify, and other drugs.

615. By effectuating a similar PAL letter solicitation-for-kickback scheme, Pfizer and Omnicare conspired to defraud the State of Tennessee by submitting false claims and causing the submission of false claims for Lipitor, Accupril and other drugs.

616. By effectuating a similar PAL letter solicitation-for-kickback scheme, Janssen and Omnicare conspired to defraud the State of Tennessee by submitting false claims and causing the submission of false claims for Risperdal and other drugs.

617. By effectuating a similar PAL letter solicitation-for-kickback scheme, Ortho

McNeil and Omnicare conspired to defraud the State of Tennessee by submitting false claims and causing the submission of false claims for Levaquin, Ultram/Ultracet, and other drugs.

618. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, Tennessee regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

620. Plaintiff State of Tennessee, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. 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)

621. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

622. 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.*

623. 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.

624. Bristol Myers, Janssen, Ortho McNeil, and Pfizer, at all times relevant to this

action, sold and continue to sell pharmaceuticals in the State of Texas.

625. At all times relevant and material to this Amended Complaint, the Defendant Manufacturers Bristol Myers, Ortho McNeil, Janssen, and Pfizer knowingly caused false claims for payment or approval, in the form of false cost information for their "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 federal and state governments paid reimbursements for the Defendant Manufacturers' drugs to Omnicare and other Medicaid provider pharmacies sums of money grossly in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

626. By virtue of the above-described acts, among others, Defendant Bristol Myers 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 Monopril, Abilify, and other drugs.

627. By virtue of the above-described acts, among others, Defendant Pfizer 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 Lipitor, Accupril, and other drugs.

628. By virtue of the above-described acts, among others, Defendant Ortho McNeil 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 Levaquin,

Ultram/Ultracet, and other drugs.

629. By virtue of the above-described acts, among others, Defendant Janssen 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 Risperdal and other drugs.

630. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, Texas regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

632. Plaintiff State of Texas, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. 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)

633. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

634. By effectuating the PAL letter solicitation-for-kickback scheme detailed herein, Bristol Myers and Omnicare conspired to defraud the State of Texas by submitting false claims and causing the submission of false claims for Monopril, Abilify, and other drugs.

635. By effectuating a similar PAL letter solicitation-for-kickback scheme, Pfizer and Omnicare conspired to defraud the State of Texas by submitting false claims and causing the submission of false claims for Lipitor, Accupril and other drugs.

636. By effectuating a similar PAL letter solicitation-for-kickback scheme, Janssen and Omnicare conspired to defraud the State of Texas by submitting false claims and causing the submission of false claims for Risperdal and other drugs.

637. By effectuating a similar PAL letter solicitation-for-kickback scheme, Ortho McNeil and Omnicare conspired to defraud the State of Texas by submitting false claims and causing the submission of false claims for Levaquin, Ultram/Ultracet, and other drugs.

638. As a result of the claims for reimbursement defendants 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 co-conspirator pharmacies, Texas regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

640. Plaintiff State of Texas, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. 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)

641. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

642. 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.*

643. 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.

644. Bristol Myers, Janssen, Ortho McNeil, and Pfizer, at all times relevant to this action, sold and continue to sell pharmaceuticals in the Commonwealth of Virginia.

645. At all times relevant and material to this Amended Complaint, the Defendant Manufacturers Bristol Myers, Ortho McNeil, Janssen, and Pfizer knowingly caused false claims for payment or approval, in the form of false cost information for their "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 federal and state governments paid reimbursements for the Defendant Manufacturers' drugs to Omnicare and other Medicaid provider pharmacies sums of money grossly in excess of the amounts contemplated by law, resulting in great financial loss to the federal and state governments.

646. By virtue of the above-described acts, among others, Defendant Bristol Myers 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 Monopril, Abilify, and other drugs.

647. By virtue of the above-described acts, among others, Defendant Pfizer 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 Lipitor, Accupril, and other drugs.

648. By virtue of the above-described acts, among others, Defendant Janssen 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 Risperdal and other drugs.

649. By virtue of the above-described acts, among others, Defendant Ortho McNeil 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 Levaquin, Ultram/Ultracet, and other drugs.

650. As a result of the claims for reimbursement defendants caused to be submitted to Virginia Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by co-conspirator pharmacies, Virginia regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

652. Plaintiff State of Virginia, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. 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)

653. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

654. By effectuating the PAL letter solicitation-for-kickback scheme detailed herein, Bristol Myers and Omnicare conspired to defraud the Commonwealth of Virginia by submitting false claims and causing the submission of false claims for Monopril, Abilify, and other drugs.

655. By effectuating a similar PAL letter solicitation-for-kickback scheme, Pfizer and Omnicare conspired to defraud the Commonwealth of Virginia by submitting false claims and causing the submission of false claims for Lipitor, Accupril and other drugs.

656. By effectuating a similar PAL letter solicitation-for-kickback scheme, Ortho McNeil and Omnicare conspired to defraud the Commonwealth of Virginia by submitting false claims and causing the submission of false claims for Levaquin, Ultram/Ultracet, and other drugs.

657. By effectuating a similar PAL letter solicitation-for-kickback scheme, Janssen and Omnicare conspired to defraud the Commonwealth of Virginia by submitting false claims and causing the submission of false claims for Risperdal and other drugs.

658. As a result of the claims for reimbursement defendants caused to be submitted to Virginia Medicaid, which were certified compliant with federal and state Medicaid law and regulation as a condition of payment by co-conspirator pharmacies, Virginia regularly made payments to pharmacies for Defendant Manufacturers' illegally switched drugs.

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

660. Plaintiff State of Virginia, being unaware of the falsity of the claims and/or statements caused to be made by the Defendant Manufacturers, and in reliance on the accuracy thereof paid and may continue to pay for the Defendant Manufacturers' improperly switched prescriptions. 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)

661. Plaintiffs reallege and incorporate by reference Paragraphs 1-261 set forth above.

662. 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.

663. By committing the acts alleged above, Defendant Manufacturers violated 740 ILCS 92/1 et seq. by repeatedly, willfully and intentionally 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.

664. 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 the Defendant Manufacturers made and/or caused to be made a false statement or record.

665. 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 the

Defendant Manufacturers 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 the Defendant Manufacturers were not complying with state insurance, prescription drug switching, and consumer fraud laws.

666. Insurers were unaware of the falsity of the records, statements and claims made or caused to be made by the Defendant Manufacturers involving the Defendant Manufacturers' illegal prescription drug provision at the time the insurers reimbursed the co-conspirator pharmacies.

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

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

JURY DEMAND

669. Plaintiffs demand trial by jury on all claims.

PRAYER

WHEREFORE, Plaintiffs pray for judgment against the Defendant Manufacturers as follows:

i. That Defendant Manufacturers 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.*

ii. That Defendant Manufacturers 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 § 5-11-5.5-2(b)(7), 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 §400.606, the Nevada False Claims Act, Nev. Rev. Stat. §357.040(c), the New Hampshire Medicaid Fraud and False Claims Act, N.H. Rev. Stat. §167:61-b(1)(c), the New Mexico Medicaid False Claims Act, N.M. Stat. §27-14-4D, the New York False Claims Act, N.Y. St. Finance Law §187 *et seq.,* the Tennessee Medicaid False Claims Act, Tenn. Stat. §71-5-182(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).

iii. That this Court enter judgment against Defendant Manufacturers 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 Defendant Manufacturers, plus the maximum civil penalty for each violation of 31 U.S.C. §3729.

iv. That this Court enter judgment against Defendant Manufacturers 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 Defendant Manufacturers caused to be made, plus the maximum civil penalty for each violation of 31 U.S.C. §3729.

v. 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.

vi. That this Court enter judgment against Defendant Manufacturers 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 Defendant Manufacturers, 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.*

vii. That this Court enter judgment against Defendant Manufacturers 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 Defendant Manufacturers, 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 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.

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

x. 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.

xi. 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: _____

Howard Friedman, BBO #180080
Law Offices of Howard Friedman, P.C.
90 Canal Street, 5th floor
Boston, MA 02114-2022
(617) 742-4100
HFriedman@civil-rights-law.com

Date: November 1, 2007

Michael I. Behn
BEHN & WYETZNER, CHARTERED
500 N. Michigan Ave.
Suite 850
Chicago, Illinois 60611
(312) 629-0000 Phone
(312) 327-0266 Facsimile
MBehn@BehnWyetzner.com

Brian P. Kenney
KENNEY LENNON & EGAN
3031C Walton Road
Suite 202
Plymouth Meeting, PA 19462
(610) 940-9099 Phone
(610) 940-0284 Facsimile
BrianKenney@kle-law.com

William Thomas
FUTTERMAN HOWARD WATKINS
WYLIE & ASHLEY, CHARTERED
122 S. Michigan Ave.
Suite 1850
Chicago, Illinois 60603
(312) 427-3600 Phone
(312) 427-1850 Facsimile
Wthomas@FuttermanHoward.com

CERTIFICATE OF SERVICE

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

Date: November 1, 2007

Howard Friedman