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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, THE STATE OF CALIFORNIA, THE STATE OF COLORADO, THE STATE OF CONNECTICUT, THE STATE OF DELAWARE, THE STATE OF FLORIDA, THE STATE OF GEORGIA, THE STATE OF HAWAII, THE STATE OF ILLINOIS, THE STATE OF INDIANA, THE STATE OF IOWA, THE STATE OF LOUISIANA, THE STATE OF MARYLAND, THE COMMONWEALTH OF MASSACHUSETTS, THE STATE OF MICHIGAN, THE STATE OF MINNESOTA, THE STATE OF MONTANA, THE STATE OF NEVADA, THE STATE OF NEW JERSEY, THE STATE OF NEW MEXICO, THE STATE OF NEW YORK, THE STATE OF NORTH CAROLINA, THE STATE OF OKLAHOMA, THE STATE OF RHODE ISLAND, THE STATE OF TENNESSEE, THE STATE OF TEXAS, THE COMMONWEALTH OF VIRGINIA, THE STATE OF WASHINGTON, THE STATE OF WISCONSIN, AND THE DISTRICT OF COLUMBIA, *ex rel.* RONALD J. STRECK Plaintiffs, v. BIOVAIL PHARMACEUTICALS, INC n/k/a VALEANT PHARMACEUTICALS INTERNATIONAL, INC., BRISTOL-MYERS SQUIBB COMPANY, SHIRE US, INC., TAP PHARMACEUTICALS, INC. n/k/a TAKEDA PHARMACEUTICAL COMPANY LIMITED. Defendants.	CIVIL ACTION NO. 13 7547 **RELATOR'S COMPLAINT PURSUANT TO THE FEDERAL FALSE CLAIMS ACT, 31 U.S.C. §§3729 *ET SEQ.* AND SUPPLEMENTAL STATE FALSE CLAIMS ACTS** **FILED UNDER SEAL** **JURY TRIAL DEMANDED** FILED DEC 23 2013 MICHAEL E. KUNZ, Clerk By _____ Dep. Clerk

1. Ronald Streck ("Relator") brings this action on behalf of the United States, the State of California, the State of Colorado, the State of Connecticut, the State of Delaware, the State of Florida, the State of Georgia, the State of Hawaii, the State of Illinois, the State of Iowa, the State of Indiana, the State of Louisiana, the State of Maryland, the Commonwealth of Massachusetts, the State of Michigan, the State of Minnesota, the State of Montana, the State of Nevada, the State of New Jersey, the State of New Mexico, the State of New York, the State of North Carolina, the State of Oklahoma, the State of Rhode Island, the State of Tennessee, the State of Texas, the Commonwealth of Virginia, the State of Washington, the State of Wisconsin and the District of Columbia (collectively "the States" or "the Plaintiff States"), for violations of the Federal False Claims Act, 31 U.S.C. §§3729 *et seq.*, as well as for violations of the following state false claims acts: The California False Claims Act, Cal. Gov't Code §§12650 *et seq.*; The Colorado Medicaid False Claims Act, § 25.5-4-304, *et seq.*; The Connecticut False Claims Act, Conn. Gen. Stat. § 17b-301b; The District of Columbia False Claims Act, D.C. Code Ann. §§2-308.03 *et seq.*; The Delaware False Claims and Reporting Act, Del. Code Ann. tit. 6, §§1201 *et seq.*; The Florida False Claims Act, Fla. Stat. §§ 68.081 *et seq.*; The Georgia False Medicaid Claims Act, Ga. Code Ann. §§49-4-168 *et seq.*; The Hawaii False Claims Act, Haw. Rev. Stat. §§661-21 *et seq.*; The Illinois Whistleblower Reward and Protection Act, 740 Ill. Comp. Stat. Ann. §§175/1 *et seq.*; The Indiana False Claims and Whistleblower Protection Act, Indiana Code §5-11-5.5; The Iowa False Claims Act, §685.1, *et seq.*; The Louisiana Medical Assistance Programs Integrity Law, La. R.S. 46:437.1 *et seq.*; The Maryland False Health Claims Act, § 2-601, *et seq.*; The Massachusetts False Claims Act, Mass. Ann. Laws. Ch. 12, §§5A *et seq.*; The Michigan Medicaid False Claims Act, MCLS §§400.601 *et seq.*; Minnesota False Claims Act, Minn. Stat. § 15C.01 *et seq.*; Montana False Claims Act, Mont. Code Anno. §§17-8-401 et *seq.*;

The Nevada False Claims Act, Nev. Rev. Stat. §§ 357.010 *et seq.*; The New Jersey False Claims Act, N.J. Stat. §2A:32C-1 *et seq.*; The New Mexico Medicaid False Claims Act, N.M. Stat. Ann. §§ 27-14-1 *et seq.*; The New York False Claims Act, NY CLS St. Fin. §§187 *et seq.*; The North Carolina False Claims Act, 2009-554 N.C. Sess. Laws §§1-605 *et seq.*; The Oklahoma Medicaid False Claims Act, Okla. Stat. tit. 63, §§5053 *et seq.*; The Rhode Island False Claims Act, R.I. Gen. Laws §§9-1.1-1 *et seq.*; The Tennessee Medicaid False Claims Act, Tenn. Code Ann. §§ 71-5-171 *et seq.*; The Texas Medicaid Fraud Prevention Act, Tex. Hum. Res. Code §§36.001 *et seq.*; The Virginia Fraud Against Taxpayers Act, Va. Code §§8.01-216.1 *et seq.*; The Washington Medicaid Fraud False Claims Act, RCW 74.09.201 *et seq.*; and the Wisconsin False Claims for Medical Assistance Act, Wis. Stats. §§20.931 (hereinafter referred to as the "State False Claims Acts") to recover all damages, civil penalties and all other recoveries provided for under the Federal False Claims Act and the State False Claims Acts against the following defendants, and their affiliates, subsidiaries, agents, successors and assigns: Biovail Pharmaceuticals, Inc n/k/a Valeant Pharmaceuticals International, Inc., Bristol-Myers Squibb Company, TAP Pharmaceuticals, Inc. n/k/a Takeda Pharmaceutical Company Limited (collectively, "Defendants").

I. PROCEDURAL HISTORY

2. Relator Ronald Streck previously filed an action, *United States et al. ex rel. Streck v. Allergan, Inc. et al.*, Civ. A. No. 08-5135, in this District on October 28, 2008 (referred to herein as the "Initial Action"). The pending complaint in that action is the Fourth Amended Complaint filed on September 7, 2011 against thirteen pharmaceutical manufacturers under the Federal and State False Claims Acts for underpaying Medicaid rebates owed to the government. For purposes of explaining the rebate fraud scheme, Relator classified the defendants as Discount

Defendants[1] and Service Fee Defendants.[2] After an initial investigation, the United States and various states declined to intervene. On July 3, 2012, the District Court for the Eastern District of Pennsylvania dismissed all claims against the Service Fee Defendants and dismissed the pre-2007 claims against the Discount Defendants, but permitted the case to proceed against the Discount Defendants for all fraudulent claims presented after January 1, 2007. The Defendants named in this complaint are executing the same fraud as the Service Fee and Discount Defendants named in the Fourth Amended Complaint filed in the Initial Action.

II. SUMMARY

3. Congress established the Medicaid Drug Rebate Program to ensure that Medicaid, the government health care program for the indigent, would enjoy the same discounts on the price of prescription drugs as other large public and private purchasers. Congress therefore decided to "establish a rebate mechanism in order to give Medicaid the benefit of the best price for which a manufacturer sells a prescription drug to any public or private purchaser." H.R. Rep. No. 101-881, at 96 (1990), *reprinted in* 1990 U.S.C.C.A.N., 2017, 2108.

4. To ensure that state Medicaid programs receive the best or lowest possible price for pharmaceuticals, the Social Security Act ("SSA") requires manufacturers whose products are sold to Medicaid beneficiaries to execute a rebate with the federal government. 42 U.S.C. § 1396r-8(a)(1). Under this agreement, manufacturers pay rebates to state Medicaid programs. *Id.* The amounts of the rebates are based on the Average Manufacturer's Price ("AMP"), which is self-reported and quantified by the manufacturers themselves.

[1] The Discount Defendants named in the Fourth Amended Complaint are: AstraZeneca Pharmaceuticals LP, Biogen Idec, Inc., Cephalon, Inc., and Genzyme Corporation.

[2] The Service Fee Defendants named in the Fourth Amended Complaint are: Allergan, Inc., Amgen, Inc., Bradley Pharmaceuticals, Inc., Eisai, Inc., Mallinckrodt, Inc., Novo Nordisk, Inc., Reliant Pharmaceuticals, Inc., Sepracor, Inc., and Upsher-Smith Laboratories, Inc.

5. AMPs are reported by manufacturers to the Centers for Medicaid and Medicare Services ("CMS"). Since Medicaid rebates depend entirely on pricing data that the pharmaceutical manufacturers self-report to CMS, the accuracy of the data is critical.

6. Generally, the higher the AMP reported by a manufacturer, the greater the rebate owed by the manufacturer to Medicaid. The necessity of paying rebates incentivizes unscrupulous manufacturers to underreport their reported AMPs.

7. The Defendants named in this Complaint knowingly reported materially inaccurate AMPs to CMS from January 1, 2004 through the present (the "Relevant Time Period"), and thereby defrauded the Government Plaintiffs.

8. Beginning no later than 2004, Defendants and the pharmaceutical industry's wholesalers began executing and implementing distribution services agreements ("Service Agreements"). Service Agreements provide for a new trade structure known as "fee-for-service." Service Agreements generally obligate manufacturers to pay a fee to wholesalers (also referred to herein as "distributors") in exchange for services the wholesalers provide (the "Service Fee"). The Service Fee is typically an amount equal to a set percentage of the wholesalers' gross purchases of the manufacturers' products. For example, if a wholesaler's Service Fee is 2% of gross purchases, and gross purchases for a given quarter are $100, the Service Fee owed by the manufacturer is $2.

9. In exchange for the Service Fee, the wholesaler provides certain services to the manufacturer. While the Service Agreements at issue in this case differ in certain particulars, many of the primary services addressed in the various Service Agreements are similar and include distribution services (buying, storing, packing, and shipping drugs), inventory management services (maintaining an adequate supply of the manufacturer's drugs in inventory,

without "over-purchasing" drugs), and data reporting services (providing detailed daily, weekly or monthly reports of sales and inventory data). *See* Section V below for a more detailed discussion of the services provided under the Service Agreements.

10. Defendants use these Service Fees to artificially lower their reported AMPs, which enable them, in violation of law, to materially underpay rebates to the state Medicaid programs. Each of the Defendants executed this fraud through the "Discount Scheme."

11. The Discount Defendants – In calculating AMP, manufacturers must include all discounts they offer to wholesalers and other purchasers. 42 U.S.C. §1396r-8(k)(1); Medicaid Rebate Agreement, §1(a). The practical effect of including a discount in AMP is to *lower* AMP by the amount of the discount.

12. For reasons which are discussed in detail later in this Complaint, each of the services provided by a wholesaler has value to the manufacturer who purchases the service. That is to say, in the absence of a wholesaler to perform these services, the manufacturer would have to pay a third party to perform the services (or perform those services on its own at a substantial cost to the company). As such, the fees paid for the services are *bona fide*.

13. Notwithstanding the bona fide nature of the Service Fees they pay, the Discount Defendants fraudulently characterized their payments to wholesalers for these services as "discounts," "reductions, "credits," or "credit memos," as opposed to what they were: fees for valuable services actually rendered. Since discounts, by law, are included in the calculation of AMP, this knowing mischaracterization of the fees paid to wholesalers reduced the manufacturers' reported AMPs by the amount of the "discount," "reduction," "credit," or "credit memo." The fact that some Discount Defendants characterize "discounts" as "reductions," "credits," or "credit memos," does not change the analysis because the outcome is the same—an

illegal deflation of AMP. Consequently, the Discount and Service Fee Defendants fraudulently understated their rebate obligations to the Government Plaintiffs.

14. The Service Fee Defendant – As noted above, manufacturers *must include all price increases in AMP*. Price increases cause AMP to rise, resulting in higher rebate obligations for manufacturers. However, all *bona fide* service fees are *excluded* from AMP. Thus, to the extent a manufacturer can disguise a price increase by hiding it within its contractual definition of "Service Fee," the price increase will not cause the manufacturer's reported AMP – and its consequent rebate obligations to the Government Plaintiffs – to rise.

15. The Service Agreements at issue in this case contain so-called "price appreciation" clauses. These clauses provide that when a manufacturer *increases* its prices on a particular drug, the Service Fee owed by the manufacturer to the wholesaler is *lowered* by the amount of the wholesaler's units in inventory (of that drug), multiplied by the amount of the price increase. Thus, when a manufacturer raises the price of a drug, that price increase *applies retroactively to the wholesaler's inventory*, even though the wholesaler previously purchased that inventory at a lower price.

16. The effect of these "price appreciations" is that the wholesaler retroactively pays the manufacturer in the amount of the price increase, dollar for dollar. Price "appreciations," therefore, are retroactive price increases. However, no invoice is sent from the manufacturer to the wholesaler for these price increases. For purposes of this Complaint, "price appreciations on inventory" and "price appreciation credits" will be referred to as "off-invoice price increases."

17. Under the Medicaid Drug Rebate Program, manufacturers must include all price increases – including off-invoice price increases – in their calculations of AMP. In violation of this obligation, the Service Fee Defendant disguised these off-invoice price increases by

cramming them into the definition of Service Fee. This led to a reduction in the Service Fee by the amount of the off-invoice price increase, rather than an increase in AMP by the amount of the off-invoice price increase, thus providing Service Fee Defendant with a convenient but illegal method to exclude off-invoice price increases from its AMP calculations.

18. Through these two schemes, the Discount Defendants and the Service Fee Defendant knowingly reported, and continue to report, materially deflated AMPs for the drugs governed by the Service Agreements (the "Relevant Drugs"). By purposely and materially understating their AMPs, both the Discount Defendants and the Service Fee Defendant paid and continue to pay materially inadequate rebates to the Government Plaintiffs.

III. JURISDICTION AND VENUE

19. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331, 28 U.S.C. §1345, 28 U.S.C. §1367, and 31 U.S.C. §3732.

20. This Court has personal jurisdiction over the Defendants pursuant to 31 U.S.C. §3732(a).

21. Venue is proper in this District pursuant to 31 U.S.C. § 3732(a), because Defendants transact business in this District.

IV. PARTIES

22. Relator Ronald J. Streck is a lawyer and pharmacist. He has worked in the pharmaceutical industry for more than 40 years in various capacities, including sales, regulatory affairs and association management, including 11 years as the president and chief executive officer of the Healthcare Distribution Management Association. The active members of the Healthcare Distribution Management Association include prescription drug wholesalers. In his capacity as CEO of the Network, Relator has negotiated the terms of agreements between

pharmaceutical manufacturers and the wholesalers the Network represents, including the agreements at issue in this *qui tam* action.

23. Through his work as CEO of the Network, Relator became thoroughly familiar with the Service Agreements that manufacturers, including Defendants, execute with wholesalers. Relator discovered that Defendants, as a matter of contract, misreported and continue to misreport pricing data to government programs.

24. The United States is a plaintiff in this action. Throughout the Relevant Time Period, the United States Department of Health and Human Services ("HHS") and the Centers for Medicare & Medicaid Services ("CMS") were agencies of the United States and their activities, operations and contracts were paid from United States funds.

25. The above-named Plaintiff States are plaintiffs in this action. Throughout the Relevant Time Period, Defendants' Relevant Drugs were provided to Medicaid recipients in each of the Plaintiff States, and those prescriptions were paid for in part by the Plaintiff States' respective Medicaid programs.

26. Defendant Biovail Pharmaceuticals, Inc., now known as Valeant Pharmaceuticals International, Inc., is a Delaware corporation, headquartered at 700 Route 202/206 Bridgewater, New Jersey 08807. During the Relevant Time Period, the company's Relevant Drugs were paid for by the Government Plaintiffs, and the company materially and fraudulently underpaid its Medicaid rebate obligations to the Government Plaintiffs.

27. Defendant Bristol Myers Squibb Company ("Bristol") is a Delaware corporation, headquartered at 345 Park Avenue, New York, New York, 10145. Bristol Myer's drug products include those in the following therapeutic areas: cancer, cardiovascular and metabolic, hepatitis, HIV/AIDS and rheumatoid arthritis. During the Relevant Time Period, the company's Relevant

Drugs were paid for by the Government Plaintiffs, and the company materially and fraudulently underpaid its Medicaid rebate obligations to the Government Plaintiffs.

28. Defendant Shire US, Inc. is a New Jersey corporation, headquartered at 725 Chesterbrook Boulevard, Wayne, Pennsylvania 19087. Shire is a specialty biopharmaceutical company with drug products primarily focused on treating rare diseases or specialized conditions such as ADHD. During the Relevant Time Period, the company's Relevant Drugs were paid for by the Government Plaintiffs, and the company materially and fraudulently underpaid its Medicaid rebate obligations to the Government Plaintiffs.

29. Defendant TAP Pharmaceuticals, Inc. ("TAP"), now known as Takeda Pharmaceutical Company Limited, was a Delaware corporation, headquartered at 675 North Field Drive, Lake Forest, Illinois 60045. TAP was a joint venture between Abbott Laboratories and the Japanese Takeda Pharmaceuticals Company Limited which was dissolved in 2008. During the Relevant Time Period, the company's Relevant Drugs were paid for by the Government Plaintiffs, and the company materially and fraudulently underpaid its Medicaid rebate obligations to the Government Plaintiffs.

V. THE APPLICABLE LAW

A. The Federal and State False Claims Acts

30. The Federal False Claims Act ("FCA"), 31 U.S.C. §§ 3729-3733, provides, *inter alia*, that any person who knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval, or any person who knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim, is liable to the United States for treble damages and a civil monetary penalty. 31 U.S.C. § 3729(a)(1)(A)-(B).[3]

[3] Prior to the Fraud Enforcement and Recovery Act of 2009 ("FERA"), Public Law 111-21 (enacted May 20, 2009), Section 3729(a)(1)(A) was Section 3729(a)(1), which imposed liability

31. The FCA further provides that any person who knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government, is liable to the United States for treble damages and a civil penalty. 31 U.S.C. § 3729(a)(1)(G).[4]

32. The terms "knowing" and "knowingly" are defined to mean "that a person, with respect to information (1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information." 31 U.S.C. § 3729(b)(1)(A)(i)-(iii). Proof of specific intent to defraud is not required. 31 U.S.C. § 3729(b)(1)(B).

33. "[T]he term 'material' means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property." 31 U.S.C. § 3729(b)(4).

34. Each of the Plaintiff States has individually enacted a False Claims Act. Each of those Acts is modeled after the Federal FCA, and each contains provisions similar to those quoted above. Relator asserts claims under the State FCAs for the State portion of Medicaid false claims detailed in this complaint.

B. The Medicaid Drug Rebate Program

35. To curb mounting Medicaid program drug expenditures, Congress created the Medicaid Drug Rebate Program ("Medicaid Rebate Program" or "Rebate Program") under the Omnibus Budget Reconciliation Act of 1990. To receive Medicaid coverage for outpatient

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on any person who "knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval."

[4] Prior to FERA, Section 3729(a)(1)(G) was formerly Section 3729(a)(7), which imposed liability on any person who "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."

prescription drugs, drug manufacturers are required to enter into a Medicaid Rebate Agreement with the Secretary of Health and Human Services. *See* 42 U.S.C. §1396r-8(a)(1).

36. Under the Rebate Program, manufacturers pay a rebate to each individual state's Medicaid program for all outpatient pharmaceuticals paid for by that state's Medicaid program. That is, Medicaid reimburses retail pharmacies for the cost of prescriptions and then, under the terms of the Rebate Program, the state Medicaid programs receive rebates from manufacturers. This process is designed to give Medicaid the benefit of the lowest price at which a manufacturer sold a drug to any commercial customers.

37. Medicaid is a jointly-funded federal-state program. 42 U.S.C. §1396b(a)(1); 42 U.S.C. §1396r-8(b)(1)(B). The amount paid by the federal government is known as the Federal Matching Assistance Percentage ("FMAP").

38. Each state's request for money from the federal government and the corresponding FMAP is submitted to CMS on Form CMS-64. This form includes exact dollar figures reflecting the "Drug Rebate Offset" as well as a "Medicaid Drug Rebate Schedule." The amount received by a state in Medicaid rebates is considered a reduction in the total amount expended under the state's Medicaid plan. Therefore, the less any individual state receives in Medicaid rebates, the greater the total amount expended by the state, and the more the federal government must correspondingly pay to the state to meet the federal government's share of the joint costs.

39. More specifically, each quarter, state Medicaid programs report to CMS their utilization data – the quantity of each drug paid for by each state Medicaid program during that quarter. 42 U.S.C. §1396r-8(b)(2). At or about the same time, manufacturers report to CMS the AMPs of their drugs for that quarter. *Id.* §1396r-8(b)(3). Relying on the accuracy of the data

provided by manufacturers, CMS calculates the unit rebate amount ("URA"), which the states then use to invoice each manufacturer for the rebate it owes.

40. The amount of the rebate on a generic drug is calculated as the product of: (1) the total number of each dosage form and strength paid for during the rebate period and (2) 11% of the AMP for the rebate period (or, from Jan.1, 2010 to present, 13% of the AMP for the rebate period. *See* The Patient Protection and Affordable Care Act, Pub. Law No. 111-148, §2501(a) and (b); 42 U.S.C. §1396r-8(c)(3).

41. For a brand-name drug, the total amount owed by a manufacturer in rebates is the sum of its two principal components: (1) the Basic Unit Rebate Amount ("Basic Rebate") and (2) the Additional Unit Rebate ("Additional Rebate"). 42 U.S.C. §1396r-8(c)(1).

42. The Basic Rebate for brand drugs is equal to the product of: (1) the total number of each dosage form and strength paid for during the rebate period and (2) the greater of (a) the difference between AMP and the Best Price ("BP")[5] for the dosage form and strength of the drug, or (b) 15.1% of the AMP for the rebate period (or, from Jan. 1, 2010 to the present, 23.1% of the AMP for the rebate period). *See* The Patient Protection and Affordable Care Act, Pub. Law No. 111-148, §2501(a) and (b); 42 U.S.C. §1396r-8(c)(1).

43. When the percentage increase in AMP for a dosage form and strength of a drug exceeds the percentage increase in the Urban Consumer Price Index ("CPI") since the initial sale

[5] Specifically, Best Price is "the lowest price available from the manufacturer during the rebate period to any wholesaler, retailer, provider, health maintenance organization, nonprofit entity, or governmental entity within the United States." *See* 42 U.S.C. §1396r-8(c)(1)(C)(i). Best Price includes all discounts, rebates, or other price concessions. *See* 42 U.S.C. §1396r-8(c)(1)(C)(ii).

of the drug, the manufacturer owes an Additional Rebate.[6] This additional rebate has the potential to equal or, prior to 2009, exceed AMP.

44. During the Relevant Time Period, pharmaceutical prices for brand name drugs have risen annually at a pace which far exceeds increases in the CPI. Consequently, nearly every one of Defendants' price increases during the same period exceeded the growth in the CPI. Appended hereto as Exhibit A is a chart, hereby incorporated by reference as if fully set forth herein, showing the increase in the CPI during the Relevant Period.

(i) The Definition of AMP

45. From the beginning of the Relevant Time Period until November 2010, the SSA defined AMP as the "average price paid to the manufacturer for the drug in the United States by wholesalers for drugs distributed to the retail pharmacy class of trade." 42 U.S.C. §1396r-8(k)(1) Feb. 2010). That definition confirms that: 1) discounts are included in AMP (because they lower the price "paid to the manufacturer") and 2) fees paid in exchange for services should be excluded from AMP, because such fees are payment for legitimate services rendered by wholesalers (and thus are not related to drug prices).

46. Through the rulemaking process, CMS promulgated a regulation effective July 2007 which stated what was already obvious: *bona fide* Service Fees are excluded from the calculation of AMP. 72 Fed. Reg. 39142 (July 17, 2007) (codified at 42 C.F.R. Part 447) ("2007 AMP Regulation")("AMP excludes … [b]ona fide service fees"). 42 C.F.R. § 447.504(h)(19).

47. The 2007 AMP Regulation defined *bona fide* service fees as:

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[6] *See* 42 U.S.C. §1396r-8(c)(2) (describing the calculation of additional rebate as the amount by which the AMP "for the dosage form and strength of the drug for the period exceeds the [AMP] for … the calendar quarter beginning July 1, 1990 … increased by the percentage by which the consumer price index for all urban consumers for the month in which the rebate period begins exceeds such index for September 1990").

> Fees paid by a manufacturer to an entity, that represent fair market value for a *bona fide*, itemized service actually performed on behalf of the manufacturer that the manufacturer would otherwise perform (or contract for) in the absence of the service arrangement; and that are not passed on in whole or in part to a client or customer of an entity, whether or not the entity takes title to the drug.

42 C.F.R. § 447.502.

48. This definition encompasses the following four elements:

> 1) The fee paid must be for a *bona fide*, itemized service that is actually performed on behalf of the manufacturer;
>
> 2) The manufacturer would otherwise perform or contract for the services in the absence of the service arrangement
>
> 3) The fee represents fair market value; and
>
> 4) The fee is not passed on in whole or in part to a client or customer of an entity.

See 71 Fed. Reg. 69624, 69667-9 (Dec. 1, 2006) (ASP regulations' definition of *bona fide* service fees); 72 Fed. Reg. 39142, 39182 (2007 AMP Regulation expressly adopts the interpretation of the definition of *bona fide* service fees as set forth in the ASP regulations). CMS interprets the first two elements "to encompass any reasonably necessary or useful services of value to the manufacturer that are associated with the efficient distribution of drugs." 71 Fed. Reg. at 69667-9. With respect to the third element that the fee must represent fair market value, CMS recognizes that it is appropriate to either calculate fair market value for a set of itemized services, or to calculate fair market value on a per-service basis. *Id.* As to the fourth element that the fee is "not passed on," if the fee meets the first three requirements, the manufacturer may presume it was not passed on to a client or customer of an entity. *Id.*

49. In November 2010, the definition of AMP was re-codified to specifically state what was already obvious, i.e., that *bona fide* service fees are excluded from AMP:

> (i) In general. – The average manufacturer price for a covered outpatient drug shall exclude –

> (II) *bona fide* service fees paid by manufacturers to wholesalers or retail community pharmacies, including (but not limited to) distribution service fees, inventory management fees, product stocking allowances, and fees associated with administrative service agreements and patient care programs (such as medication compliance programs and patient education programs);

42 U.S.C. § 1396r-8(k)(1).

50. Further, as to the Discount Defendants, the Medicaid Rebate Statute again expressly states that discounts must be included in AMP: "any discounts, rebate payments, or other financial transactions that are received by, paid by, or passed through to, retail community pharmacies shall be included in the [AMP] for a covered outpatient drug." *Id.*

(ii) The Medicaid Rebate Agreement

51. The Medicaid Rebate Agreement entered into by all manufacturers participating in Medicaid – which includes all of the Manufacturer Defendants in this lawsuit – states that AMP is "the average unit price paid to the Manufacturer for the drug … by wholesalers." Medicaid Rebate Agrmt, § I(a). The Rebate Agreement further clarifies that "AMP includes cash discounts allowed and all other price reductions … which reduce the actual price paid." *Id.* Also, the Rebate Agreement requires manufacturers to revise AMP for previous quarters if "discounts or other arrangements subsequently adjust the prices actually realized." *Id.*

(iii) The Medicaid Rebate Operation Training Guide

52. The Medicaid Rebate Operational Training Guide, F11 (2001), states that AMP should be reduced by discounts:

> Basically, AMP is calculated as NET quarterly sales divided by the number of units sold.
>
> "Net quarterly sales" are derived after all required adjustments are made (e.g., discounts, rebate for state-only programs, breakage, etc.).

(iv) Conclusion: AMP Includes Discounts and Excludes Service Fees

Throughout the Relevant Time Period

53. Although the AMP statute, the AMP regulation, the Rebate Agreement, and the Medicaid Rebate Operational Training Guide have been amended over time, three obligations have remained consistent. First, discounts are included in AMP because they affect prices actually realized by manufacturers. Second, fees paid in exchange for services rendered are not discounts. Third, off-invoice price increases cannot be excluded from AMP by cramming those price increases into a self-serving definition of Service Fees or by offsetting Services Fees by off-invoice price increases.

54. In addition, there is a parallel statutory drug pricing benchmark – average sales price ("ASP") – which directly corroborates Relator's statement of the law.

55. ASP is a pricing benchmark which applies to Medicare Part B, while AMP is a pricing benchmark which applies to Medicaid. Bother serve a similar function to: limit or "cap" the government's prescription drug costs.

56. ASP expressly states that discounts should be included in the ASP calculation. 42 U.S.C. § 1395w-3a(c)(1), (c)(3). Further, in 2006, CMS enacted ASP regulations defining *bona fide* Service Fees. The regulations expressly re-affirmed that Service Fees are payments for legitimate services rendered (and thus are not related to the price of the drug), and thus manufacturers must exclude *bona fide* Services Fees from ASP. *See* Fed. Reg. 69624, 69668 (Dec. 1, 2006) (relevant sections codified at 42 C.F.R. § 414.802, 414.804).

57. All else being equal, the higher the AMP, the larger the Medicaid rebate a drug manufacturer must pay. Conversely, the lower the AMP, the less a drug company must pay in Medicaid rebates.

VI. The Streck Opinion in the Initial Action

58. In ruling on defendants' motion to dismiss in the related action, the July 3, 2012 opinion by Judge Robreno ("*Streck Opinion*") held in part that Relator's case should proceed against the Discount Defendants for all false claims presented after January 1, 2007. The Court's holding with regard to the Discount Defendants was based on the contractual language in the Service Agreements for the Discount Defendants. The contractual language found in the Service Agreements for the Defendants named in this complaint is almost identical to the language in the Service Agreements for the Discount Defendants.

59. Specifically, the District Court for the Eastern District of Pennsylvania found that Relator pled sufficient evidence to show that Discount Defendants were "at least reckless" for classifying statutorily-defined *bona fide* service fees as discounts. *Streck Opinion*, p. 29. The *bona fide* services that the Discount Defendants fraudulently mischaracterized include:

1. Data reporting;
2. Maintenance of target inventory levels;
3. Pick, pack, and ship services;
4. Accounts receivable management;
5. Contract and chargeback administration;
6. Returns processing;
7. Customer service support;
8. Inventory management;
9. Submitting 852 data Inventory Reports; and
10. Submitting 867 data Inventory Reports.

60. Further with regard to the Service Fee Defendants, the Streck Opinion dismissed those claims and rejected Plaintiff's argument that these Defendants had knowingly underreported the AMPs for their drugs by failing to factor in retroactive price appreciation credits or retroactive price increases, which caused the government to receive less in Medicaid rebates. Plaintiff subsequently filed a motion to alter the judgment on July 30, 2012, arguing that AMPs must be calculated based on the price paid to the manufacturer, not the profit obtained by

the wholesaler and also that the statutory and regulatory framework established that AMP is not limited to initial payments. On November 16, 2012, the Court denied the motion as procedurally untimely. On December 10, 2012, Plaintiff moved for the Court to certify as a partial final judgment it Order dated July 3, 2012 dismissing the claims against the Service Fee Defendants which the Court denied on August 2, 2013.

VII. DEFENDANTS' SCHEMES TO DEFRAUD GOVERNMENT PAYERS

61. Starting no later than 2004, manufacturers and wholesalers developed a new trade structure which involved the use of Service Agreements. Under Service Agreements, manufacturers periodically pay wholesalers Service Fees. Service Fees are calculated by multiplying a wholesaler's gross purchases of a manufacturer's product by a certain percentage.

62. The Service Agreements at issue in this case differ in certain particulars, many of the primary services provided by wholesalers pursuant to Service Agreements are as follows:

- **Distribution Services** – buying, storing, packing, and shipping drugs from the manufacturer to customers. This includes emergency delivery services – delivering the manufacturer's products on an emergency 24/7/365 basis.

- **Data Reporting Services** – generating daily, weekly, or monthly inventory reports (EDI 852 data) and sales reports (EDI 867 data).

  The inventory reports (852 data) provides the manufacturer with aggregate sales, the wholesaler's inventory levels (on-hand and on-order), demand forecasts, "morgue inventory" (returned goods), special needs forecast by the distributor for particular events, units ordered by customers, and orders filled by the wholesaler.

  The sales reports (867 data) provides the manufacturer with specific information regarding the distributors' customers, including the identity and location of the customer, and the amounts ordered and amounts returned by the customer.

- **Inventory Management** – maintaining an adequate supply of the manufacturer's drugs in inventory without "over-purchasing" drugs in anticipation of a price increase (also known as "speculative buying" or "spec buying"), including using automated inventory balancing systems, and maintaining environmentally controlled storage facilities.

63. Other categories of services, described more fully below, include:

- Chargeback and returns processing services
- Customer service support
- New product launch services
- Consolidated deliveries to providers
- Consolidated account receivable management
- The provision of sophisticated ordering technology

A. The Discount Defendants' Scheme

64. Under the law defining AMP during the Relevant Time Period, all discounts are included in AMP. The practical effect of including a discount in AMP is to *lower* AMP by the amount of the discount.

65. As noted above, each of the services provided for in the Service Agreements has real value to the manufacturer/purchaser. That is to say, in the absence of wholesalers to perform these services, the manufacturer would have to pay third parties to perform the services (or perform those services on its own at a substantial internal cost).

66. Distribution services, including emergency delivery services, are valuable to Defendants. If wholesalers did not provide distribution services to the manufacturers, the manufacturers would be required to pay a third party logistics company – e.g., FedEx – to pick up, pack, and ship its products. These costs can be particularly high when emergency delivery is needed on a 24/7/365 basis.

67. The 852 inventory data service is valuable to Defendants – among other things, it permits Defendant to use a series of numeric metrics to make critical decisions regarding when and how much of their products need to be manufactured. If the wholesalers did not provide 852 data services to the manufacturers, the manufacturers would be required to pay a third party for this information, including aggregate sales data, inventory levels (on-hand and on-order),

demand forecasts, "morgue inventory" (returned goods), special needs forecasts for particular events, units ordered by customers, and orders filled.

68. The 867 sales data service is valuable to Defendants – among other things, it permits Defendants to understand who their customers are (including their "problem" customers who return an undue amount of products), and, conversely, to see which potential customers are *not* buying from the manufacturer (and, this, who the manufacturer should target for marketing/sales). If the wholesalers did not provide 867 data services to the manufacturers, the manufacturers would be required to pay a third party for this information.

69. Inventory management services are valuable to Defendants. By requiring wholesalers to maintain an adequate supply of the manufacturer's drugs in inventory, without "over-purchasing" drugs in anticipation of a price increase (also known as "speculative buying"), manufacturers are able to retain profits which would otherwise inure to wholesalers. Additionally, by requiring wholesalers to use and maintain environmentally-controlled storage facilities for inventory, manufacturers avoid the cost and expense of paying a third party to store its products in such an environment.

70. Based on the Service Agreements themselves, the Discount Defendants fraudulently characterized their payments to wholesalers as "discounts," "reductions," "credits," or "credit memos," as opposed to what they were: payments for *bona fide* services rendered. Since discounts, by law, are included in AMP, this artificial device created by the Discount Defendants worked: it served to *reduce* AMP by the amount of the "discount," "reduction," "credit," or "credit memo." Consequently, the Discount Defendants knowingly and fraudulently understated their rebate obligations to the Government Plaintiffs.

B. The Service Fee Defendant's Scheme

71. As noted above, *bona fide* service fees are *excluded* from AMP. Thus, to the extent a manufacturer can disguise a price increase by offsetting it against a Service Fee which it excludes from its AMP calculations, the price increase will not cause the manufacturer's AMP – and its rebate obligations to the Government Plaintiffs – to rise as it should.

72. Also as noted above, the Service Agreement executed by the Service Fee Defendant contains "price appreciation" clauses. These clauses provide that when a manufacturer increases its prices, the Service Fee owed by the manufacturer to the wholesaler is *lowered* by the amount of the wholesaler's units in inventory, multiplied by the amount of the price increase. No invoice is sent from the manufacturer to the wholesaler for these price increases. Instead, the Service Fee Defendant simply reduces the Service Fees it owes to the wholesaler by the amount of the price increase on inventory. Thus, when a manufacturer raises the price of a drug, that price increase applies to the wholesaler's inventory, even though the wholesaler previously purchased that inventory at a lower price. The Service Fee Defendant thereby buries these off-invoice price increases in their accounting for Service Fees.[7]

73. "Price appreciation" on inventory a wholesaler has previously purchased at a lower price, therefore, is a retroactive price increase that manufacturers must include in their AMP calculations. The effect of the offset against the Service Fee, however, is to disguise the price increase and to illegally exclude it from the calculation of AMP.

[7] It should be noted that during the Relevant Time Period, the Relator has attended numerous industry conferences which addressed Service Agreements. The issue of appreciation clauses as they relate to and affect service fees, rebates and reimbursements was not disclosed or discussed to the Relator's knowledge. Nor did comments by the industry regarding the proposed CMS Rule on AMP ever mention or discuss the presence of price appreciation clauses. *See* Federal Register, Vo. 72, No. 136 (July 17, 2007), 42 C.F.R. Part 447 [CMS-2238-FC].

74. The Service Fee Defendant's definition of Service Fee has enormous evidentiary and legal impact:

- The legal definition of AMP excludes *bona fide* Service Fees.
- As a matter of contract, the Service Fee Defendant defined Service Fees in a manner which "absorbed" off-invoice price increases on inventory.
- The Service Agreement provides direct written evidence that the Service Fee Defendant crammed off-invoice price increases into their respective definitions of Service Fees.
- Since Service Fees are excluded from AMP, and the Service Fee Defendant included off-invoice price increases in their calculation of Service Fees, *a priori*, the Service Fee Defendant knowingly *did not* factor off-invoice price increases into their AMP calculations.
- This knowing failure violated the Medicaid Rebate Statute and the Medicaid Rebate Agreement, and caused substantial financial harm to the Government Plaintiffs.

75. In sum, the law requires manufacturers to factor all price increases into AMP. Defendant knowingly failed to include off-invoice prices increases on inventory into their AMP calculations, thereby fraudulently reducing their rebate obligations to the Government Plaintiffs.

VIII. Specific Allegations Against Each Defendant

A. Discount Defendants

1. Biovail Pharmaceuticals, Inc.

76. Biovail Pharmaceuticals, Inc. ("Biovail") is a Discount Defendant. See attached Exhibit B.

77. Biovail and a national wholesaler executed a "Distribution and Inventory Management Services Agreement" ("Biovail Agreement"), effective December 7, 2004 for a term of three and one quarter years, and will automatically renew for subsequent one year periods. *Id.* § 3.1.

78. According to the Biovail Agreement, the purpose of the agreement is for the national wholesaler to provide certain services to Biovail, including, but not limited to logistics and inventory management services, administrative services, and financial services.

79. Section 2.1 details the "Base Services" the national wholesaler provided to Biovail:

- Sophisticated ordering technology;
- Daily consolidated deliveries to providers;
- Emergency shipments to providers 24/7/364;
- Consolidated accounts receivable management;
- Contract and chargeback administration;
- Returns and recall processing; and
- Customer service support.

Biovail Agreement § 2.1.

80. In addition to these Base Distribution Services, the national wholesaler agreed to provide "Additional Distribution and Inventory Management Services" ("Additional Services"). *Id.* at § 2.3. These Additional Services include inventory management, data reporting services, and customer monitoring.

81. In exchange for providing these Base Services and Additional Services, Biovail agreed to compensate the national wholesaler with a Service fee from 5 – 7% depending on the year. *Id.* at Attachment A. For Year 1 (October 1, 2004 – December 31, 2005), the yearly total fee is 5% (3% Base Service Fee plus 2% Additional Fee); for Year 2 (January 1, 2006 – December 31, 2006), the yearly total fee is 6% (4% Base Service Fee plus 2% Additional Fee); and for Year 3 (January 1, 2007 – December 31, 2007), the yearly total fee is 7% (5% Base Service Fee plus 2% Additional Fee). In accord with the Biovail Agreement, the Base Service Fee will be "based on the total volume of all net Products purchased by [the national

wholesaler]." *Id.* Whereas the Additional 2% Service Fee is simply paid "as an off invoice discount at [the] time of purchase." *Id.*

82. The services for which Biovail pays the Service Fee are strikingly similar to the *bona fide* services the Service Fee Defendants receive from wholesalers. Under the Biovail Agreement, the wholesaler agrees to provide inventory management services, administrative services, distribution services, and data services, such as weekly and inventory sales reports. These services, according to CMS, are *bona fide* services because they provide "value to the manufacturer that [is] associated with the efficient distribution of drugs" and represent fair market value. 71 Fed. Reg. at 69667-9.

83. Despite the clear regulatory and statutory guidance directing Biovail to classify these services as *bona fide* services, Biovail fraudulently elected to classify these services as "discounts" and applied these "discounts" to its AMP calculations. Biovail Agreement at p. 7.

84. As discussed in detail above, *bona fide* service fees are excluded from AMP by statute, regulation, the Medicaid Rebate Agreement, and the Medicaid Rebate Operational Training Guide. In blatant defiance of the law, Biovail improperly classifies *bona fide* service fees as "discounts," which causes it to understate its AMP, and, as a result, underpay Medicaid rebates it owes to the Government Plaintiffs.

85. During the Relevant Time Period, Defendant Biovail participated in the Medicaid Program and Biovail's Relevant Drugs were paid for by all of the Government Plaintiffs.

86. The Biovail Agreement, discussed in detail above, improperly characterizes *bona fide* service fees as discounts and, thereby, illegally understates its AMP calculations.

87. By understating its AMP calculations, Biovail: (1) caused CMS to underreport the unit rebate amounts to the states, (2) underpaid its Basic and Additional Medicaid rebates, (3)

caused the states to receive less in rebates than they were entitled to, and (4) caused the federal government to pay more than it should have in FMAP funds to the states. As a result of this fraudulent conduct, Biovail violated Section 3729(a)(1)(A), (B) and (G) of the Federal False Claims Act and comparable sections of the State False Claims Acts.

2. Bristol-Myers

88. Bristol-Myers Squibb ("Bristol-Myers") is a Discount Defendant. See attached Exhibit C.

89. Bristol-Myers Squibb and a national wholesaler executed a "Services Agreement" ("Bristol-Myers Agreement"), effective January 1, 2006 through December 31, 2007.

90. According to the Bristol-Myers Agreement, the purpose of the agreement is for Bristol-Myers to purchase certain services from the national wholesaler, including, but not limited to inventory management in order to minimize speculative buying.

91. Sections 2.1, 2.2, 3.1, and 3.2 of the Bristol-Myers Agreement detail the services the national wholesaler must provide or the activities the national wholesaler must discontinue. Specifically, the national wholesaler and Bristol-Myers agreed that:

- National wholesaler will not "engage in Anticipatory Speculative Buying of any products." Bristol-Myers Agreement § 2.1.
- National wholesaler will "maintain an actual Inventory level that does not exceed the Maximum Inventory Level for any Product." *Id.* at § 2.2.
- National wholesaler will "submit to [Bristol-Myers] its HDMA-defined 867 transaction set Product inventory reports ("867 Inventory Reports") on a weekly basis reflecting transactions occurring over the previous week." *Id.* at § 3.1
- National wholesaler will "submit to [Bristol-Myers] its HDMA-defined 852 transaction set Product inventory reports ("852 Inventory Reports") on a weekly basis reflecting transactions occurring over the previous week." *Id.* at § 3.2.

92. The Bristol-Myers Agreement also incorporates by reference, *inter alia*, the "Promotion and Service Agreement for Drug Wholesalers" which requires the wholesaler, among other services, to "stock and sell BMS product regularly[,]" to purchase all products directly from Bristol-Myers, "[t]o distribute BMS products to affiliates only within these United States and District of Columbia."

93. In return for these services, Bristol-Myers agreed to pay the national wholesaler a Service Fee in the form of a discount off "the invoice price" for "each Product purchased by [the national wholesaler]." *Id.* at § 2.3. This Service Fee equals a "1.33% reduction of the invoice price" for the total volume of all products purchased by the national wholesaler. *Id.* The Bristol-Myers Agreement covers all pharmaceutical drug products sold by Bristol-Myers, excluding the drug Erbitux (cetuximab). *Id.* at § 1.

94. These Service Fees are characterized as discounts in Section 5.4 which discusses regulatory disclosures. It states:

> Distributor agrees to report and provide . . . complete and accurate information concerning the fees provided by Manufacturer hereunder . . .If any public or private payor for the Products . . . requests information about the purchase price for any Products covered hereunder, Distributor agrees to report and provide complete and accurate information concerning the net purchase price for all units of Product, including the reduction in payment applicable as a result of any fees provided by Manufacturer hereunder.

95. The services for which Bristol-Myers pays the Service Fee are strikingly similar to the *bona fide* services the Service Fee Defendants receive from the national wholesalers. Under the Bristol-Myers Agreement, the national wholesaler agrees to provide inventory management, distribution and data services. These services, according to CMS, are *bona fide* services because they provide "value to the manufacturer that [is] associated with the efficient distribution of drugs" and represent fair market value. 71 Fed. Reg. at 69667-9.

96. As discussed in detail above, *bona fide* service fees are excluded from AMP by statute, regulation, the Medicaid Rebate Agreement, and the Medicaid Rebate Operational Training Guide. Bristol-Myers improperly classifies *bona fide* service fees as reductions or discounts and reduces its AMP calculations, which causes it to understate its AMP, and, as a result, underpay Medicaid rebates it owes to Government Plaintiffs.

97. During the Relevant Time Period, Defendant Bristol-Myers participated in the Medicaid Program and Bristol-Myer's Relevant Drugs were paid for by all of the Government Plaintiffs.

98. The Bristol-Myers Service Agreement, discussed in detail above, improperly characterizes *bona fide* service fees as "reductions" and, thereby, illegally understates its AMP calculations.

99. By understating its AMP calculations, Bristol-Myers: (1) caused CMS to underreport the unit rebate amounts to the states, (2) underpaid its Basic and Additional Medicaid rebates, (3) caused the states to receive less in rebates than they were entitled to, and (4) caused the federal government to pay more than it should have in FMAP funds to the states. As a result of this fraudulent conduct, Bristol-Myers violated Section 3729(a)(1)(A), (B) and (G) of the Federal False Claims Act and comparable sections of the State False Claims Acts.

3. TAP

100. TAP is a Discount Defendant. See attached Exhibit D.

101. TAP and a national wholesaler executed a "Distribution Services Agreement" ("TAP Agreement"), effective July 1, 2005 for a term of three years until July 1, 2008.

102. According to the TAP Agreement, the purpose of the agreement is for the national wholesaler to provide certain services to TAP, including, but not limited to logistics and inventory management services, administrative services, and financial services.

103. Section 2.1 details the "Base Distribution Services" the national wholesaler provided to TAP:

- Sophisticated ordering technology;
- Daily consolidated deliveries to providers;
- Emergency shipments to providers 24/7/364;
- Consolidated accounts receivable management;
- Contract and chargeback administration;
- Returns and recall processing; and
- Customer service support.

TAP Agreement § 2.1.

104. In addition to these Base Distribution Services, the national wholesaler agrees to provide "Data/Reporting Services." *Id.* at § 2.3. The Data/Reporting Services include inventory management, data reporting services, and customer monitoring.

105. In exchange for providing these Base Distribution Services and Data/Reporting Services, TAP agreed to compensate the national wholesaler with a Service Fee of 1.15% of gross product purchases. *Id.* at Schedule A. The Agreement covers all of TAP's products. *Id.* § 1.8.

106. TAP clearly recognizes these Service Fees as a discount. The TAP Agreement states the following:

> Disclosure of Discount: The Service Fees paid hereunder (credit or discount) will be applied against Service Supplier's [wholesaler] invoices for Product purchased from Customer [TAP]. [TAP] has fully and accurately disclosed the existence of such credit or discount in this Agreement and Service Supplier is hereby informed that it may have an obligation to report the credit or discount to the Department of Health and Human Services or applicable state agencies.

Id. at Schedule A.

107. The services for which TAP pays the Service Fee are strikingly similar to the *bona fide* services the Service Fee Defendants receive from wholesalers. Under the TAP Agreement, the wholesaler agrees to provide inventory management services, administrative

services, distribution services, and data services, such as weekly and inventory sales reports. These services, according to CMS, are *bona fide* services because they provide "value to the manufacturer that [is] associated with the efficient distribution of drugs" and represent fair market value. 71 Fed. Reg. at 69667-9.

108. Despite the clear regulatory and statutory guidance directing TAP to classify these services as *bona fide* services, TAP fraudulently elected to classify these services as "discounts" and applied these "discounts" to its calculation of AMP.

109. As discussed in detail above, *bona fide* service fees are excluded from AMP by statute, regulation, the Medicaid Rebate Agreement, and the Medicaid Rebate Operational Training Guide. In defiance of the law, TAP improperly includes these "discounts" in its AMP calculations, which causes it to understate its AMP, and, as a result, underpay Medicaid rebates it owes to the Government Plaintiffs.

110. During the Relevant Time Period, Defendant TAP participated in the Medicaid Program and TAP's Relevant Drugs were paid for by all of the Government Plaintiffs.

111. The TAP Service Agreement, discussed in detail above, improperly characterizes *bona fide* service fees as discounts and, thereby, illegally understates its AMP calculations.

112. By understating its AMP calculations, TAP: (1) caused CMS to underreport the unit rebate amounts to the states, (2) underpaid its Basic and Additional Medicaid rebates, (3) caused the states to receive less in rebates than they were entitled to, and (4) caused the federal government to pay more than it should have in FMAP funds to the states. As a result of this fraudulent conduct, TAP violated Section 3729(a)(1)(A), (B) and (G) of the Federal False Claims Act and comparable sections of the State False Claims Acts.

B. Service Fee Defendant

1. Shire

113. Shire U.S., Inc. ("Shire") is a Service Fee Defendant. See attached Exhibit E.

114. Shire and a national wholesaler executed a "Distribution and Inventory Management Services Agreement" ("Shire Agreement"), effective March 2005.

115. According to the Shire Agreement, the purpose of the agreement is for the national wholesaler to provide certain services to Shire, including, but not limited to logistics and inventory management services, administrative services, and financial services.

116. Section 2.1 details the "Base Distribution Services" the national wholesaler provided to Shire:

- Sophisticated ordering technology;
- Daily consolidated deliveries to providers;
- Emergency shipments to providers 24/7/364;
- Consolidated accounts receivable management;
- Contract and chargeback administration;
- Returns and recall processing; and
- Customer service support.

Shire Agreement § 2.1.

117. In addition to these Base Distribution Services, the national wholesaler agreed to provide "Data/Reporting Services." *Id.* at § 2.3. The Data/Reporting Services include inventory management, data reporting services, and customer monitoring.

118. In exchange for providing these Base Services and Data/Reporting Services, Shire agreed to compensate the national wholesaler with a Service Fee of "3.25%." *Id.* at p. 8. In accord with the Shire Agreement, the Service Fee "will be calculated and paid quarterly based on the total volume of all Products billed to [the national wholesaler]." *Id.*

119. Section 2.9 describes the service fee as a "Bona Fide Service Fee" and states that the services provided are "beyond those that [the wholesaler] would provide in the absence of the payments of the Service Fees."

120. Further, Schedule A to the Shire Agreement defines "Service Fee Credits" as credits towards the Service Fee resulting from "price appreciation on inventory on hand after all Customer pricing actions" and "[m]argin earned on quarterly promotions, deals, off-invoice allowances, or any other method, excluding those that [Shire] intends for [wholesaler's] Providers."

121. By virtue of the *bona fide* nature of the services the wholesaler provides to Bradley, the express terms of the Shire Agreement indicate that Shire treats the Service Fees it pays as *bona fide*, thus "allowing" Shire to exclude those fees from its calculations of AMP. By netting off-invoice price increases against the Service Fees, Shire improperly excludes price increases from its AMP calculations, in turn understates its AMP, and consequently underpays the rebates it owes to the Government Plaintiffs.

122. During the Relevant Time Period, Defendant Shire participated in the Medicaid Program and Shire's Relevant Drugs were paid for by all of the Government Plaintiffs. Further, the prices on Shire's drugs increased during the Relevant Time Period, often at a greater percentage than the CPI-U.

123. By understating its AMP calculations, Shire: (1) caused CMS to underreport the unit rebate amounts to the states, (2) underpaid its Basic and Additional Medicaid rebates, (3) caused the states to receive less in rebates than they were entitled to, and (4) caused the federal government to pay more than it should have in FMAP funds to the states. As a result of this

fraudulent conduct, Shire violated Section 3729(a)(1)(A), (B) and (G) of the Federal False Claims Act and comparable sections of the State False Claims Acts.

IX. CONCLUSION

124. As fully detailed above, Defendants knowingly reported falsely deflated AMPs for their Relevant Drugs. This caused CMS to inaccurately calculate URAs. The States then used inaccurate URAs to invoice Defendants for the rebates Defendants owed. Defendants thus unlawfully underpaid their rebates as a consequence of their own false reporting, the States expended more of their own funds, and the States sought more in federal matching funds through their quarterly requests for Medicaid payments on CMS Form-64.[8] Consequently, the Defendants defrauded the Government Plaintiffs.

COUNT I

False Claims Act
31 U.S.C. §§3729(a)(1)(A) and (a)(1)(B)
(Against All Defendants)

125. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

126. This is a claim for treble damages and penalties under the False Claims Act, 31 U.S.C. §3729, et seq., as amended.

127. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to officers, employees or agents of the United States Government for payment or approval, within the meaning of 31 U.S.C. §3729(a)(1)(A).

[8] An exemplar of such a claim is attached as Exhibit F and is incorporated by reference as if fully set forth herein.

128. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used a false record or statement material to a false or fraudulent claim, within the meaning of 31 U.S.C. §3729(a)(1)(B).

129. The United States, unaware of the falsity of the records, statements and claims made or caused to be made by the Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

130. By reason of the Defendants' acts, the United States has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

131. Additionally, the United States is entitled to the maximum penalty of $11,000 for each and every false and fraudulent claim made and caused to be made by Defendants arising from their unlawful conduct as described herein.

COUNT II

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

132. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

133. This is a claim for penalties and treble damages under the Federal False Claims Act.

134. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly concealed or knowingly and improperly avoided or decreased an obligation to pay or transmit money to the Government, within the meaning of 31 U.S.C. §3729(a)(1)(G).

135. As a result, monies were lost to the United States through the non-payment or non-transmittal of money or property owed to the United States by the Defendants, and other costs were sustained by the United States.

136. By reason of the Defendants' acts, the United States has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

137. Additionally, the United States is entitled to the maximum penalty of up to $11,000 for each and every false record or statement knowingly made, used, or caused to be made or used to conceal, avoid, or decrease an obligation to pay or transmit money or property to the United States.

COUNT III

California False Claims Act
Cal Gov't. Code §12651(a)(1)-(2), (7)
(Against All Defendants)

138. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

139. This is a claim for treble damages and penalties under the California False Claims Act.

140. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the California State Government for payment or approval.

141. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, to get the California State Government to approve and pay such false and fraudulent claims.

142. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the California State Government.

143. The California State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

144. By reason of the Defendants' acts, the State of California has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

145. Additionally, the California State Government is entitled to the maximum penalty of $10,000 for each and every violation alleged herein.

COUNT IV

Colorado Medicaid False Claims Act
C.R.S. §25.5-4-303.5 et seq.

146. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

147. This is a claim for treble damages and penalties under the Colorado Medicaid False Claims Act.

148. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the Colorado State Government for payment or approval.

149. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, to get the Colorado State Government to approve and pay such false and fraudulent claims.

150. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Colorado State Government.

151. The Colorado State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

152. By reason of the Defendants' acts, the State of Colorado has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

153. Additionally, the Colorado State Government is entitled to the maximum penalty of $11,000 for each and every violation alleged herein.

COUNT V

Connecticut False Claims Act
Conn. Gen. Stat. § 17b-301b
(Against All Defendants)

154. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

155. This is a claim for treble damages and penalties under the Connecticut False Claims Act.

156. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the Connecticut State Government for payment or approval.

157. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, to get the Connecticut State Government to approve and pay such false and fraudulent claims.

158. The Connecticut State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

159. By reason of the Defendants' acts, the State of Connecticut has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

160. Additionally, the Connecticut State Government is entitled to the maximum penalty of $10,000 for each and every violation alleged herein.

COUNT VI

Delaware False Claims And Reporting Act
6 Del C. §1201(a)(1)-(2), (7)
(Against All Defendants)

161. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

162. This is a claim for treble damages and penalties under the Delaware False Claims And Reporting Act.

163. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the Delaware State Government for payment or approval.

164. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, to get the Delaware State Government to approve and pay such false and fraudulent claims.

165. By virtue of the acts described above, Defendant knowingly made, used, or caused to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Delaware State Government.

166. The Delaware State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

167. By reason of the Defendants' acts, the State of Delaware has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

168. Additionally, the Delaware State Government is entitled to the maximum penalty of $11,000 for each and every violation alleged herein.

COUNT VII

Florida False Claims Act
Fla. Stat. Ann. §68.082(2)(a)-(b), (g)
(Against All Defendants)

169. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

170. This is a claim for treble damages and penalties under the Florida False Claims Act.

171. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the Florida State Government for payment or approval.

172. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, to induce the Florida State Government to approve and pay such false and fraudulent claims.

173. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Florida State Government.

174. The Florida State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

175. By reason of the Defendants' acts, the State of Florida has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

176. Additionally, the Florida State Government is entitled to the maximum penalty of $11,000 for each and every violation alleged herein.

COUNT VIII

Georgia False Medicaid Claims Act
Ga. Code Ann. §49-4-168.1(1)-(2), (7)
(Against All Defendants)

177. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

178. This is a claim for treble damages and penalties under the Georgia False Medicaid Claims Act.

179. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the Georgia State Government for payment or approval.

180. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to get the Georgia State Government to approve and pay such false and fraudulent claims.

181. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Georgia State Government.

182. The Georgia State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

183. By reason of the Defendants' acts, the State of Georgia has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

184. Additionally, the Georgia State Government is entitled to the maximum penalty of $11,000 for each and every violation alleged herein.

COUNT IX

Hawaii False Claims Act
Haw. Rev. Stat. §661-21(a)(1)-(2), (7)
(Against All Defendants)

185. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

186. This is a claim for treble damages and penalties under the Hawaii False Claims Act.

187. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the Hawaii State Government for payment or approval.

188. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, to get the Hawaii State Government to approve and pay such false and fraudulent claims.

189. By virtue of the acts described above, Defendant knowingly made, used, or caused to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Hawaii State Government.

190. The Hawaii State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

191. By reason of the Defendants' acts, the State of Hawaii has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

192. Additionally, the Hawaii State Government is entitled to the maximum penalty of $10,000 for each and every violation alleged herein.

COUNT X

Illinois Whistleblower Reward And Protection Act
740 Ill. Comp. Stat. §175/3(a)(1)-(2), (7)
(Against All Defendants)

193. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

194. This is a claim for treble damages and penalties under the Illinois Whistleblower Reward And Protection Act.

195. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the Illinois State Government for payment or approval.

196. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, to induce the Illinois State Government to approve and pay such false and fraudulent claims.

197. By virtue of the acts described above, Defendant knowingly made, used, or caused to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Illinois State Government.

198. The Illinois State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

199. By reason of the Defendants' acts, the State of Illinois has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

200. Additionally, the Illinois State Government is entitled to the maximum penalty of $11,000 for each and every violation alleged herein.

COUNT XI

Indiana False Claims and Whistleblower Protection Act
IC 5-11-5.5-2(b)(2), (6)
(Against All Defendants)

201. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

202. This is a claim for treble damages and penalties under the Indiana False Claims and Whistleblower Protection Act.

203. By virtue of the acts described above, Defendants knowingly made or used false records and statements to obtain payment or approval of a false claim from the Indiana State Government.

204. By virtue of the acts described above, Defendants knowingly made or used false records or statements to avoid an obligation to pay or transmit property to the Indiana State Government.

205. The Indiana State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

206. By reason of the Defendants' acts, the State of Indiana has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

207. Additionally, the Indiana State Government is entitled to a penalty of at least $5,000 for each and every violation alleged herein.

COUNT XII
Iowa False Claims Act
Iowa Code Ann. § 685.2(1)(A), (B), (G)

208. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

209. This is a claim for treble damages and penalties under the Iowa False Claims Act.

210. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the Iowa State Government for payment or approval.

211. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, to induce the Iowa State Government to approve and pay such false and fraudulent claims.

212. By virtue of the acts described above, Defendant knowingly made, used, or caused to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Iowa State Government.

213. The Iowa State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

214. By reason of the Defendants' acts, the State of Iowa has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

215. Additionally, the Iowa State Government is entitled to the maximum penalty of $10,000 for each and every violation alleged herein.

COUNT XIII

Louisiana Medical Assistance Programs Integrity Law
La. Rev. Stat. § 46:438.3(A)-(C)
(Against All Defendants)

216. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

217. This is a claim for treble damages and penalties under the Louisiana Medical Assistance Programs Integrity Law.

218. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the Louisiana State Government.

219. By virtue of the acts described above, Defendants knowingly engaged in misrepresentation or made, used, or caused to be made or used false records and statements, to obtain payment for false and fraudulent claims from the Louisiana State Government.

220. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Louisiana State Government.

221. The Louisiana State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

222. By reason of the Defendants' acts, the State of Louisiana has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

223. Additionally, the Louisiana State Government is entitled to the maximum penalty of $10,000 for each and every violation alleged herein.

COUNT XIV
The Maryland False Health Claims Act
Md. Code Ann., Health-Gen. §§ 2-602(A)(1), (2)

224. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

225. This is a claim for treble damages and penalties under the Maryland False Health Claims Act.

226. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the Maryland State Government for payment or approval.

227. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, to induce the Maryland State Government to approve and pay such false and fraudulent claims.

228. By virtue of the acts described above, Defendant knowingly made, used, or caused to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Maryland State Government.

229. The Maryland State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

230. By reason of the Defendants' acts, the State of Maryland has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

231. Additionally, the Maryland State Government is entitled to the maximum penalty of $10,000 for each and every violation alleged herein.

COUNT XV

Massachusetts False Claims Law
Mass. Gen. Laws ch. 12 §5B(1)-(2), (8)
(Against All Defendants)

232. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

233. This is a claim for treble damages and penalties under the Massachusetts False Claims Law.

234. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the Massachusetts State Government for payment or approval.

235. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, to induce the Massachusetts State Government to approve and pay such false and fraudulent claims.

236. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Massachusetts State Government.

237. The Massachusetts State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

238. By reason of the Defendants' acts, the State of Massachusetts has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

239. Additionally, the Massachusetts State Government is entitled to the maximum penalty of $10,000 for each and every violation alleged herein.

COUNT XVI

Michigan Medicaid False Claims Act §400.603(1)-(2) (Against All Defendants)

240. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

241. This is a claim for treble damages and penalties under the Michigan Medicaid False Claims Act.

242. By virtue of the acts described above, Defendants knowingly made or caused to be made a false statement or false representation of material fact in an application for Medicaid benefits to the Michigan State Government.

243. By virtue of the acts described above, Defendants knowingly made or caused to be made a false statement or false representation of material fact for use in determining rights to a Medicaid benefit.

244. The Michigan State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

245. By reason of the Defendants' acts, the State of Michigan has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

246. Additionally, the Michigan State Government is entitled to the maximum penalty of $10,000 for each and every violation alleged herein.

COUNT XVII

Minnesota False Claims Act
Minn. Stat. §15c.02 et seq.

247. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

248. This is a claim for treble damages and penalties under the Minnesota False Claims Act.

249. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the Minnesota State Government for payment or approval.

250. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, to get the Minnesota State Government to approve and pay such false and fraudulent claims.

251. By virtue of the acts described above, Defendant knowingly made, used, or caused to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Minnesota State Government.

252. The Minnesota State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

253. By reason of the Defendants' acts, the State of Minnesota has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

254. Additionally, the Minnesota State Government is entitled to the maximum penalty of $11,000 for each and every violation alleged herein.

COUNT XVIII

Montana False Claims Act
Mont. Code Ann. 17-8-403(1)(a)-(b), (g)
(Against All Defendants)

255. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

256. This is a claim for treble damages and penalties under the Montana False Claims Act.

257. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the Montana State Government for payment or approval.

258. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, to get the Montana State Government to approve and pay such false and fraudulent claims.

259. By virtue of the acts described above, Defendant knowingly made, used, or caused to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Montana State Government.

260. The Montana State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

261. By reason of the Defendants' acts, the State of Montana has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

262. Additionally, the Montana State Government is entitled to the maximum penalty of $10,000 for each and every violation alleged herein.

COUNT XIX

Nevada Submission of False Claims to State or Local Government Act
Nev. Rev. Stat. Ann. §357.040(1)(a)-(b), (g)
(Against All Defendants)

263. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

264. This is a claim for treble damages and penalties under the Nevada Submission of False Claims to State or Local Government Act.

265. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the Nevada State Government for payment or approval.

266. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the Nevada State Government to approve and pay such false and fraudulent claims.

267. By virtue of the acts described above, Defendant knowingly made, used, or caused to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Nevada State Government.

268. The Nevada State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

269. By reason of the Defendants' acts, the State of Nevada has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

270. Additionally, the Nevada State Government is entitled to the maximum penalty of $10,000 for each and every violation alleged herein.

COUNT XX

New Jersey False Claims Act
N.J. Stat. §2A:32C-3(a)-(b), (g)
(Against All Defendants)

271. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

272. This is a claim for treble damages and penalties under the New Jersey False Claims Act.

273. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the New Jersey State Government for payment or approval.

274. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, to get the New Jersey State Government to approve and pay such false and fraudulent claims.

275. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the New Jersey State Government.

276. The New Jersey State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

277. By reason of the Defendants' acts, the New Jersey has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

278. Additionally, the New Jersey State Government is entitled to the maximum penalty of $11,000 for each and every violation alleged herein.

COUNT XXI

New Mexico Medicaid False Claims Act
N.M. Stat. Ann. § 27-14-3(a)(1)-(2), (7)
(Against All Defendants)

279. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

280. This is a claim for treble damages and penalties under the New Mexico Medicaid False Claims Act.

281. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the New Mexico State Government for payment or approval.

282. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, to induce the New Mexico State Government to approve and pay such false and fraudulent claims.

283. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the New Mexico State Government.

284. The New Mexico State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

285. By reason of the Defendants' acts, the State of New Mexico has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

286. Additionally, the New Mexico State Government is entitled to the maximum penalty of $10,000 for each and every violation alleged herein.

COUNT XXII

New York False Claims Act
NY CLS St. Fin. §189(a)-(b), (g)
(Against All Defendants)

287. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

288. This is a claim for treble damages and penalties under the New York False Claims Act.

289. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the New York State Government for payment or approval.

290. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, to get the New York State Government to approve and pay such false and fraudulent claims.

291. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the New York State Government.

292. The New York State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

293. By reason of the Defendants' acts, the State of New York has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

294. Additionally, the New York State Government is entitled to the maximum penalty of $12,000 for each and every violation alleged herein.

COUNT XXIII

North Carolina False Claims Act
2009-554 N.C. Sess. Laws §1-607(a)(1)-(2), (7)
(Against All Defendants)

295. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

296. This is a claim for treble damages and penalties under the North Carolina False Claims Act.

297. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the North Carolina State Government for payment or approval.

298. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, to get the North Carolina State Government to approve and pay such false and fraudulent claims.

299. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the North Carolina State Government.

300. The North Carolina State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

301. By reason of the Defendants' acts, the State of North Carolina has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

302. Additionally, the North Carolina State Government is entitled to the maximum penalty of $11,000 for each and every violation alleged herein.

COUNT XXIV

Oklahoma Medicaid False Claims Act
Okla. Stat. tit. 63, §5053.1B (1)-(2), (7)
(Against All Defendants)

303. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

304. This is a claim for treble damages and penalties under the Oklahoma Medicaid False Claims Act.

305. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the Oklahoma State Government for payment or approval.

306. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, to get the Oklahoma State Government to approve and pay such false and fraudulent claims.

307. By virtue of the acts described above, Defendant knowingly made, used, or caused to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Oklahoma State Government.

308. The Oklahoma State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by

Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

309. By reason of the Defendants' acts, the State of Oklahoma has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

310. Additionally, the Oklahoma State Government is entitled to the maximum penalty of $10,000 for each and every violation alleged herein.

COUNT XXV

Rhode Island State False Claims Act
R.I. Gen. Laws §9-1.1-3(1)-(2), (7)
(Against All Defendants)

311. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

312. This is a claim for treble damages and penalties under the Rhode Island State False Claims Act.

313. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the Rhode Island State Government for payment or approval.

314. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, to get the Rhode Island State Government to approve and pay such false and fraudulent claims.

315. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Rhode Island State Government.

316. The Rhode Island State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

317. By reason of the Defendants' acts, the State of Rhode Island has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

318. Additionally, the Rhode Island State Government is entitled to the maximum penalty of $10,000 for each and every violation alleged herein.

COUNT XXVI

Tennessee False Claims Act and Medicaid False Claims Act
Tenn. Code Ann. §§ 4-18-103(a)(1)-(2), (7)
and 71-5-181(a)(1)(A), (B) and (D)
(Against All Defendants)

319. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

320. This is a claim for treble damages and penalties under the Tennessee Medicaid False Claims Law.

321. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the Tennessee State Government for payment or approval.

322. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, to induce the Tennessee State Government to approve and pay such false and fraudulent claims.

323. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Tennessee State Government.

324. The Tennessee State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

325. By reason of the Defendants' acts, the State of Tennessee has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

326. Additionally, the Tennessee State Government is entitled to the maximum penalty of $10,000 for each and every violation alleged herein.

COUNT XXVII

Texas Medicaid Fraud Prevention Act
Tex. Hum. Res. Code Ann. §36.002(4)(B), (12)
(Against All Defendants)

327. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

328. This is a claim for treble damages and penalties under the Texas Medicaid Fraud Prevention Act.

329. By virtue of the acts described above, Defendants knowingly made, caused to be made, induced or sought to induce the making of a false statement or misrepresentation of material fact concerning information required to be provided by a federal or state law, rule, regulation or provider agreement pertaining to the Medicaid program.

330. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Texas State Government.

331. The Texas State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

332. By reason of the Defendants' acts, the State of Texas has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

333. Additionally, the Texas State Government is entitled to the maximum penalty of $10,000 for each and every violation alleged herein.

COUNT XXVIII

Virginia Fraud Against Taxpayers Act
Va. Code Ann. §8.01-216.3(a)(1)-(2), (7)
(Against All Defendants)

334. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

335. This is a claim for treble damages and penalties under the Virginia Fraud Against Taxpayers Act.

336. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the Virginia State Government for payment or approval.

337. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, to induce the Virginia State Government to approve and pay such false and fraudulent claims.

338. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Virginia State Government.

339. The Virginia State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

340. By reason of the Defendants' acts, the State of Virginia has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

341. Additionally, the Virginia State Government is entitled to the maximum penalty $11,000 for each and every violation alleged herein.

COUNT XXIX

Washington Health Care False Claim Act
Wash. Rev. Code §§ 48.80.030(1), (2), (3)

342. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

343. This is a claim for treble damages and penalties under the Washington Health Care False Claims Act.

344. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the Washington State Government for payment or approval.

345. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, to get the Washington State Government to approve and pay such false and fraudulent claims.

346. By virtue of the acts described above, Defendant knowingly made, used, or caused to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Washington State Government.

347. The Washington State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

348. By reason of the Defendants' acts, the State of Washington has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

349. Additionally, the Washington State Government is entitled to the maximum penalty of $11,000 for each and every violation alleged herein.

COUNT XXX

Wisconsin False Claims For Medical Assistance Act
Wis. Stat. §20.931(2)(a)-(b), (g)
(Against All Defendants)

350. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

351. This is a claim for treble damages and penalties under the Wisconsin False Claims for Medical Assistance Act.

352. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the Wisconsin State Government for payment or approval.

353. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, to get the Wisconsin State Government to approve and pay such false and fraudulent claims.

354. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Wisconsin State Government.

355. The Wisconsin State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

356. By reason of the Defendants' acts, the State of Wisconsin has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

357. Additionally, the Wisconsin State Government is entitled to the maximum penalty of $10,000 for each and every violation alleged herein.

COUNT XXXI

District of Columbia False Claims Act
D.C. Code Ann. §2-308.14(a)(1)-(2), (7)
(Against All Defendants)

358. Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as though fully set forth herein.

359. This is a claim for treble damages and penalties under the District of Columbia False Claims Act.

360. By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the District of Columbia Government for payment or approval.

361. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used false records and statements, to get the District of Columbia Government to approve and pay such false and fraudulent claims.

362. By virtue of the acts described above, Defendants knowingly made, used, or caused to be made or used, false records or statements to conceal, avoid, or decrease an obligation to pay or transmit money or property to the District of Columbia Government.

363. The District of Columbia Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendants, paid and continues to pay the claims that would not be paid but for Defendants' unlawful conduct.

364. By reason of the Defendants' acts, the District of Columbia has been damaged, and continues to be damaged, in substantial amount to be determined at trial.

365. Additionally, the District of Columbia Government is entitled to the maximum penalty of $10,000 for each and every violation alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Relator prays for judgment against the Defendants as follows:

A. that Defendants cease and desist from violating 31 U.S.C. §3729 *et seq.*, and the counterpart provisions of the state statutes set forth above;

B. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the United States has sustained because of Defendants' actions,

plus a civil penalty of not less than $5,000 and not more than $11,000 for each violation of 31 U.S.C. §3729;

C. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of California has sustained because of Defendants' actions, plus a civil penalty of $10,000 for each violation of Cal. Govt. Code §1651(a);

D. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Colorado has sustained because of Defendants' actions, plus a civil penalty of $11,000 for each violation of the Act;

E. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Connecticut has sustained because of Defendants' actions, plus a civil penalty of $10,000 for each violation of Conn. Gen. Stat. § 17b-301b;

F. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Delaware has sustained because of Defendants' actions, plus a civil penalty of $11,000 for each violation of 6 Del. C. §1201(a);

G. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Florida has sustained because of Defendants' actions, plus a civil penalty of $11,000 for each violation of Fla. Stat. Ann. §68.082(2);

H. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Georgia has sustained because of Defendants' actions, plus a civil penalty of $11,000 for each violation of Ga. Code Ann. §49-4-168.1.

I. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Hawaii has sustained because of Defendants' actions, plus a civil penalty of $10,000 for each violation of Haw. Rev. Stat. §661-21(a);

J. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Illinois has sustained because of Defendants' actions, plus a civil penalty of $11,000 for each violation of 740 Ill. Comp. Stat. §175/3(a);

K. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Indiana has sustained because of Defendants' actions, plus a civil penalty of at least $5,000 for each violation of IC 5-11-55;

L. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Iowa has sustained because of Defendants' actions, plus a civil penalty of $10,000 for each violation of the Act;

M. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Louisiana has sustained because of Defendants' actions, plus a civil penalty of $10,000 for each violation of La. Rev. Stat. §437 et. seq.;

N. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Maryland has sustained because of Defendants' actions, plus a civil penalty of $10,000 for each violation of the Act;

O. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Massachusetts has sustained because of Defendants' actions, plus a civil penalty of $10,000 for each violation of Mass. Gen. L. Ch. 12 §5B;

P. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Michigan has sustained because of Defendants' actions, plus a civil penalty of $10,000 for each violation of MI Public Act 337;

Q. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Minnesota has sustained because of Defendants' actions, plus a civil penalty of $11,000 for each violation of the Act;

R. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Montana has sustained because of Defendants' actions, plus a civil penalty of $10,000 for each violation of Mont. Stat. Ann. 17-8-401;

S. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Nevada has sustained because of Defendants' actions, plus a civil penalty of $10,000 for each violation of Nev. Rev. Stat. Ann. §357.040(1);

T. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of New Jersey has sustained because of Defendants' actions, plus a civil penalty of $11, 000 for each violation of N.J. Stat. §2A:32C-3;

U. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of New Mexico has sustained because of Defendants' actions, plus a civil penalty of $10,000 for each violation of N.M. Stat. Ann. §27-2F-4;

V. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of New York has sustained because of Defendants' actions, plus a civil penalty of $12,000 for each violation of NY CLS St. Fin. §189;

W. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of North Carolina has sustained because of Defendants' actions, plus a civil penalty or $11,000 for each violation of 2009-554 N.C. Sess. Laws §1-607(a);

X. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Oklahoma has sustained because of Defendants' actions, plus a civil penalty of $10,000 for each violation of Okla. Stat. tit. 63, §5053.1B;

Y. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Rhode Island has sustained because of Defendants' actions, plus a civil penalty of $10,000 for each violation of R.I. Gen. Laws §9-1.1-3;

Z. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Tennessee has sustained because of Defendants' actions, plus a civil penalty of $10,000 for each violation of Tenn. Code Ann. §§4-18-103(a) and 71-5-182(a)(1);

AA. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Texas has sustained because of Defendants' actions, plus a civil penalty of $10,000 for each violation of Tex. Hum. Res. Code Ann. §36.002;

BB. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Virginia has sustained because of Defendants' actions, plus a civil penalty of $11,000 for each violation of Va. Code Ann. §8.01-216.3(a);

CC. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Washington has sustained because of Defendants' actions, plus a civil penalty of $11,000 for each violation of the Act;

DD. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the State of Wisconsin has sustained because of Defendants' actions, plus a civil penalty of $10,000 for each violation of Wis. Stat. §20.931(2);

EE. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the District of Columbia has sustained because of Defendants' actions, plus a civil penalty of $10,000 for each violation of D.C. Code Ann. §2-308.14(a);

FF. that Relator be awarded the maximum amount allowed pursuant to§3730(d) of the False Claims Act, and the equivalent provisions of the state statutes set forth above;

GG. that Relator be awarded all costs of this action, including attorneys' fees and expenses; and

HH. that Relator recovers such other relief as the Court deems just and proper.

II. that Relator recovers such other relief as the Court deems just and proper.

JURY DEMAND

Plaintiff Relator demands a trial by jury.

Dated: December 23, 2013

Respectfully submitted,

BERGER & MONTAGUE, P.C.

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2013 a true and correct copy of the Relator's Complaint Pursuant to the Federal False Claims Act, 31 U.S.C. §§3729 et seq. and Supplemental State False Claims Acts was served on the following via certified mail.

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