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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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Scott Bartz, individually and
IN THE NAME OF THE UNITED
STATES GOVERNMENT PURSUANT
TO THE FALSE CLAIMS ACT, 31
U.S.C. SECTION 3730, as well in the name of the
State of Arkansas pursuant to code section 20-77-901
et seq; the State of California pursuant to California
Government Code Sec. 12650 et seq. (2000); the State
of Delaware pursuant to DEL. CODE ANN. tit. 6,
Sec 1201 et seq. (2000); the District of Columbia
pursuant to D.C. CODE ANN. Sec 1-1188.13 et
seq.(2000); the State of Florida pursuant to FLA.
STAT. 68.081 et seq. (2000); the State of Georgia
pursuant to the State False Medicaid Claims Act, Code
of Georgia, Chptr 4 of title 49; the State of Hawaii
pursuant to HAW. REV. STAT. Sec 661-22 et seq.
(2000); the State of Illinois pursuant to 740 ILL.
COMP. STAT. ANN. Sec 175/1 et seq. (2000); the
State of Indiana pursuant to Indiana Code 5-11-5.5,
that State of Louisiana pursuant to LA. REV. STAT.
ANN. Sec 46:439.1 et seq. (2000); the State of
Michigan pursuant to MI Public Act 337, Public Acts
of 2005; the State of Massachusetts pursuant to MASS
ANN. LAWS CH. 12, Sec. 5(A)-(O); the State of
Montana pursuant to 2005 Montana Code, CH 465; the
State of New Hampshire pursuant to Section 167:61-b;
the State of New York pursuant to the State Finance
Law, as amended under Article XIII New York False
Claims Act § 187 et seq.; the State of New Mexico;
that State of Nevada pursuant to NEV. REV. STAT.
Sec. 357.010 et seq. (1999); the State of Oklahoma
pursuant to the Oklahoma Medicaid False Claims Act
§ 5053 of Title 63; the State of Tennessee pursuant to
TENN. CODE ANN. Sec 71-5-181 et seq. (2000); the
State of Texas pursuant to TEX. HUM. RES. CODE
Sec. 36.001-36.117, the State of Utah pursuant to Utah
Code Annotated section 26-20-1 et seq; the State of
Virginia pursuant to VIRGINIA Fraud Against
Taxpayers Act; the City of New York pursuant to
Administrative Code §7-801 et seq. Commonly known
as the New York City False Claims Act and the City of
Chicago pursuant to the Chicago False Claims Act
ordained by the City Council of Chicago under
Chapter 1-21 et seq

Docket No. 05-6010

FILED UNDER SEAL

**Qui Tam Second Amended and
Restated Complaint pursuant to
Title 42 Section 132a-7a as well
as Section 31 U.S.C. Title 3729
and 3730, including Relator's
individual claims as well as the
State False Claims**

FILED

OCT 30 2007

MICHAEL E. KUNZ, Clerk

vs.

Ortho McNeil Pharmaceutical, Inc. and Johnson &
Johnson, Inc., Janssen Pharmaceutica, Inc. jointly and
severally with Janssen Pharmaceutica Products, L.P.,
Inc., McKesson Corporation jointly and severally with
McKesson Specialty Pharmaceutical, LLC and
OmniCare, Inc.

Plaintiff/Relator hereby files this Second Amended Complaint for the purpose of adding Counts XXIII through XXVIII in order to incorporate and include the States of Georgia, Montana, New York, Oklahoma and the City of Chicago, all pursuant to Title 42 Section 132a-7a as well as Section 31 U.S.C. Title 3729 and 3730 and the various State False Claims Statutes listed and identified herein above in the caption (collectively "State FCA Actions") and pursuant to Title 28 Section 1331 in that it is a civil action arising under the laws of the United States, including Relator's individual claims as well as the State False Claims, all being pendent claims of Relator.

I. PARTIES

A. Plaintiff/Relator

1. Plaintiff and Relator is Scott Bartz, an adult male, ("Plaintiff") at all times relevant hereto, resides at 115 Andrews Drive, Bordentown, New Jersey, Burlington County.

2. Plaintiff worked for J&J Defendants (herein defined) from 1999 to April 2007 when he was terminated. Plaintiff was originally hired by Defendant Janssen and through a reorganization of the J&J Defendants became an employee in the North American Center of Excellence ("NAPCOE") division of Defendant Ortho as a Sales Compensation Manager.

3. From 1999 up until 2005, all evaluations Plaintiff received for his job performance were favorable. Plaintiff received a "potential rating" of 3, on a scale of 1 to 4, meaning he was a candidate for future promotion. Plaintiff received a merit increase in March 2005 of 5.0%, well above the J&J targeted increase of 3.5%. In April 2005, Plaintiff received a Silver Encore Award for his high level of performance as a Sales Compensation Manager and in May 2005, Plaintiff received a Gold Encore Award for his high level of performance as a Sales Compensation Manager. Plaintiff's subsequent termination in April 2007 was the culmination of a pattern and practice of retaliating against Plaintiff that began in 2005 when he disclosed, reported and objected to supervisory management personnel his belief that the J&J Defendants (herein named) were engaging in unlawful and fraudulent activity in which he refused to participate.

B. Defendants

4. Defendant, Johnson & Johnson, Inc. ("J&J"), is a publicly traded corporation with its principal place of business located in New Brunswick, New Jersey. J&J, through its operating companies, is the one of the largest manufacturers of health care products, as well as a provider of related services, for the consumer, pharmaceutical, and medical devices and diagnostics markets, including prescription pharmaceutical products (the latter being referred to as "J&J Pharmaceutical Products").

5. Defendant Ortho McNeil Pharmaceutical, Inc. ("Ortho"), is wholly-owned subsidiary of J&J and is organized and exists under the laws of the State of New Jersey, with operations located in Titusville, New Jersey. Ortho-McNeil Pharmaceutical, Inc., provides prescription drugs in women's health, analgesics, anti-infectives, anti-epileptics and urology. Women's health products include ORTHO EVRA® (norelgestromin/ethinyl estradiol), the contraceptive patch, and ORTHO TRI-CYCLEN® LO (norgestimate/ethinyl estradiol), an oral contraceptive. Other J&J and/or Ortho products include ULTRACET® (tramadol HCl), a pain medication; AXERT® (almotriptan malate tablets), for migraine headaches; LEVAQUIN® (levofloxacin), an antibiotic; DITROPAN XL® (oxybutynin chloride) for overactive bladder; ELMIRON® (pentosan polysulfate sodium) for interstitial cystitis; and TOPAMAX® (topiramate), an anti-epileptic. Ultram ER, Ultram, Aciphex, Duragesic, Fentanyl, Levaquin IV, Razadyne ER and IR, Floxin, & other generics (collectively, "Ortho Products")

6. Defendants Janssen Pharmaceutica, Inc. and Janssen Pharmaceutica Products, LP, Inc. (collectively, "Janssen") are wholly-owned subsidiaries of J&J and are organized and exists under the laws of the State of New Jersey, with operations located in Titusville, New Jersey. Janssen Pharmaceutica, Inc. is the corporate general partner of Janssen Pharmaceutica Products, J.P., Inc. Janssen Pharmaceutica Products, L.P., produces and markets prescription medications that treat psychiatric disorders. Leading products include RISPERDAL® (risperidone) and RISPERDAL® CONSTA® (risperidone) long-acting injection, for psychiatric conditions (collectively, "Janssen Products").

Defendants J&J, Ortho and Janssen may collectively be referred to throughout this Complaint as the "J&J Defendants." The J&J Pharmaceutical Products, Ortho Products and Janssen Products are hereinafter collectively referred to as "J&J Products."

7. Defendant McKesson Corporation ("McKesson") and McKesson Specialty Pharmaceutical, LLC ("McKesson Specialty") are organized and exists under the laws of the State of California at 1 Post Street, San Fransisco, California, with operations located throughout the United States. McKesson Corporation is the one of the leading providers of supply, information and care management products and services of pharmaceutical products and has annual revenues of more than \$80 billion, McKesson ranks as the 16th largest industrial company in the United States.

8. Defendant Omnicare, Inc. ("Omnicare") is organized and exists under the laws of the State of Kentucky with offices located at 1600 River Center II, 100 East RiverCenter Boulevard, Covington, Kentucky, 41011, with operations located throughout the United States. Omnicare is a leading provider of pharmaceutical care for the elderly. Omnicare serves residents in long- term care facilities and other chronic care settings comprising approximately 1,441,000 beds in 47 States, the District of Columbia and Canada. Omnicare is one of the largest United States providers of professional pharmacy, consulting and data management services for skilled nursing, assisted living and other institutional healthcare providers.

II. JURISDICTION

9. This Court has jurisdiction pursuant to Title 42 Section 132a-7a as well as Section 31 U.S.C. Title 3729 and 3730 pursuant to Title 28 Section 1331 in that this is a civil action arising under the laws of the United States. The Court also has jurisdiction over the individual actions brought by Plaintiff and the various State FCA Actions in that they are pendent to the False Claims action.

III. VENUE

10. The venue is proper in this District by virtue of Title 28 Section 1391(b) in that all of the Defendants reside in the in that are subject to personal jurisdiction in the District as a result of

conducting substantial business in the District.

IV. FALSE CLAIMS ACT

A. The Obligations Of Defendants Under The Medicaid Drug Rebate Program and Best Price Reporting Requirements

11. The Medicaid Drug Rebate Program, originally created by the Omnibus Reconciliation Act of 1990 (OBRA '90) which added Section 1927 to the Social Security Act (the "Act"), became effective on January 1, 1991. The program, enacted out of concern for the costs the Medicaid program was paying for outpatient drugs, affords state Medicaid programs the opportunity to reimburse pharmacies for drugs at discounted prices similar to those offered by pharmaceutical Manufacturers to other large purchasers.

12. The Act requires that manufacturers, including the J&J Defendants, enter into an agreement ("Rebate Agreement(s)") with Center For Medicare and Medicaid Services ("CMS") to provide rebates for their drug products paid for by Medicaid. Manufacturers that do not sign an agreement with CMS are not eligible for Federal Medicaid coverage of their product(s). Except for statutory limitations, state Medicaid programs must provide coverage and reimbursement for all covered outpatient drug products manufactured by companies that have entered into a Rebate Agreement with CMS. Manufacturers who wish their products to be eligible for coverage by Medicaid must first sign a Rebate Agreement with CMS.

13. In addition to the signed Rebate Agreement, manufacturers such as J&J are required to calculate, submit and certify their Average Manufacturer Price (AMP) and their Best Price (BP) to CMS of all J&J Products that they want to be eligible for reimbursement under the Act. The AMP and BP are used to calculate the rebate amount.

14. As of January 1, 1996, the rebate for innovator drugs was the larger of 15.1 percent of AMP per unit or the difference between AMP and best price per unit, adjusted by the CPI-U based on

market date and current quarter AMP.

15. The rebate amount for non-innovator drugs is currently 11 percent of AMP per unit and there is no consumer price index (CPI-U) adjustment.

16. Manufacturers, including J&J, who sign the Rebate Agreement must report their pricing data for each product as required under the Act to CMS within 30 days of the end of each quarter.

17. CMS compiles the manufacturer pricing information and the Unit Rebate Amount (URA) which is then sent to state Medicaid drug programs. In order to receive rebates from Manufacturers, States must submit utilization data on a quarterly basis to each manufacturer (and CMS).

18. The data submitted and certified to by the manufacturers, including the J&J Defendants, must identify, by National Drug Code (NDC) number, and the number of units paid for by the State of each covered outpatient drug. States prepare rebate invoices each quarter. States use the CMS URA tape or data cartridge, along with drug claims they have processed, to generate their invoices. States also submit their utilization data to CMS, where it is used to update utilization databases and annual reports to Congress. A Manufacturer has 30 days from the receipt of an State invoice to pay the rebate.

19. The Act at § 1396r-8(c)(1)(C)(ii), provides an express definition of "Best Price." After excluding the prices given to certain drug purchasers from the definition and including others explicitly, the Act states:

..... the term "Best Price" -

(I) shall be inclusive of cash discounts, free goods that are contingent on any purchase requirement, volume discounts, and rebates (other than rebates under this section);

(II) shall be determined without regard to special packaging, labeling, or identifiers on the dosage form or product or package; and (III) shall not take into account prices that are merely nominal in amount.

20. Pursuant to the Rebate Agreement at § I(dd) and § 1396r-8(b)(1)(A) of the Act, the

Federal Government acts as a go-between, collecting data from States and manufacturers to enable manufacturers to pay rebates directly to the States. The manufacturers are required to report their Best Prices and Average Manufacturer Prices for drugs to the Federal Government, who is required to keep the information confidential.

21. The Federal Government then processes this information according to the formulae contained in the Act and in the Rebate Agreements and reports to each State a Unit Rebate Amount ("URA"), which is the amount calculated by CMS to which the Medicaid utilization information may be applied by states in invoicing the Manufacturer for the rebate payment due.⁷ States are also required to keep information disclosed by the manufacturers confidential. §1396r-8(b)(3)(D). As for invoicing, the Rebate Agreements specify that the manufacturers have ultimate responsibility for the calculation.

22. The Federal Government makes no determination as to what a "Best Price" is and does not negotiate with manufacturers. Rather, the manufacturers, including the J&J Defendants, are required to report the data, certify to its accuracy and calculate the Best Price and AMP.

23. Pursuant to Section 447.534(I) of the Act, CMS has established a three year time limitation for a manufacturer to submit drug pricing changes. This three year period is defined as 12 quarters. Therefore, CMS requires that the manufacturer report to it changes to AMP or BP for a period not to exceed 12 quarters from the quarter in which the data was billed.

24. The terms of the Rebate Agreement require manufacturers to submit pricing data for each calendar quarter no later than 30 days after the end of that quarter. For purposes of implementing this three year time frame for reporting pricing changes to CMS, the three years is defined as 12 quarters from the quarter in which the data was billed.

25. Under the Medicaid drug rebate program, if CMS, the office of inspector general or any other authorized government agency reviews a manufacturer's pricing data and determines that adjustments or revisions are necessary, irrespective of the quarter, the manufacturer is bound under the Rebate Agreement to comply with that determination.

B. Exceptions or "Safe Harbors" From Best Price Determination

26. There are certain exceptions or safe harbors regarding exclusion from best price. These permitted exclusions or safe harbors can be found in 42 CFR § 1001.952 and include such permissive exclusions or safe harbors as investment interest, space rental, equipment rental, personal service, management contracts, sale of a practice, referral services, warranties, discounts, amounts paid to employees, group purchasing organizations, waiver of beneficiary co- insurance and deductible amounts, increased coverage reduced cost sharing amounts or reduced premium amounts offered by health plans, price reductions offered to health plans, practitioner recruitment, obstetrical malpractice insurance subsidies, investment in group practices, cooperative hospital organizations, and ambulatory surgical centers.

27. Pursuant 42 CFR § 1001.952(h) the term remuneration does not include a "discount" if it complies with the following:

A discount as defined in safe harbor means a reduction in the amount a buyer (who buys either directly or through a wholesaler or a group purchasing organization) is charged for an item or service based on an arms length transaction. The term discount does not include any of the following:

(i) Cash payment or cash equivalent, except the rebates as defined Paragraph (h)(4) of the safe harbor section may be in the form of a check;

(ii) Supplying one good or service without charge or at a reduced charge to induce the purchase of a different good or service, unless the goods and/or services are reimbursed by the same federal health care program using the same methodology and the reduced charge is fully disclosed to the federal health care program and accurately reflected where appropriate, and as appropriate, to the reimbursement methodology;

(iii) A reduction in price applicable to one payor but not to Medicare, Medicaid or other federal health care programs;

(iv) A routine reduction or waiver of any coinsurance or deductible amount owed by a program beneficiary;

(v) Warranties;

(vi) Services provided in accordance with a personal or management services contract, or

(vii) Other remuneration, in cash or kind, not explicitly described in this paragraph.

28. Notwithstanding the foregoing, any remuneration as described above will not be considered a discount as long as the seller meets the criteria in 42 CFR § 1001.952(h)(2), meaning that the seller is an individual or entity that supplies an item or service for which payment may be made, in whole or in part, under Medicare, Medicaid or other federal health care programs to the buyer and who permits a discount to be taken off the buyer's purchase price. The seller must comply with all of the applicable standards within one of the following three categories:

(A) If the buyer is an entity which is an IIMO or CMP acting in accordance with a risk contract under Section 1876(g) or 1903(m) of the Act, or under another state health care program, the seller need not report the discount to the buyer for the purposes of this provision; OR

(B) If the buyer is an entity that reports its costs on a cost report required by the department or state agency, the seller must comply with either of the following two standards:

(I) Where a discount is required to be reported to Medicare or a state health care program under (h)(1) of the safe harbor section, the seller must fully and accurately report such discount on the invoice, coupon, or statement submitted to the buyer; inform the buyer in a manner that is reasonably calculated to give notice to the buyer of its obligations to report such discount and to

provide information upon request under Paragraph (h)(1) of this section; and refrain from doing anything that would impede the buyer from meeting its obligations under this paragraph; or

(II) Where the value of the discount is not known at the time of sale, the seller must fully and accurately report the existence of a discount program on the invoice, coupon, or statement submitted to the buyer; inform the buyer in a manner reasonably calculated to give notice to the buyer of its obligations to report such discount and to provide information upon request under Paragraph (h)(1) of the safe harbor section, when the value of the discount becomes known, provide the buyer with documentation of the calculation of the discount identifying the specific goods or services purchased to which the discount will be applied; and refrain from doing anything which would impede the buyer from meeting its obligations under this paragraph; or

(iii) If the buyer is an individual entity not included in the above two subsections, the seller must comply with either of the following two standards:

(A) Where the seller submits a claim or a request for payment on behalf of the buyer and the item or service is separately claimed, the seller must provide, upon request by the secretary or state agency, information provided by the offerer as specified in (h)(3)(iii)(A) of this section; or

(B) Where the buyer submits a claim, the seller must fully and accurately report such discount on the invoice, coupon, or statement submitted to the buyer; inform the buyer in a manner reasonably calculated to give notice to the buyer of its obligation to report such discount, and to provide information upon request under Paragraph (h)(1) of this section; and refrain from doing anything that would impede the buyer from meeting its obligations under this paragraph.

None of the J&J Defendants meet the criteria established hereunder as a "seller" specified in the "safe harbor" regulations.

29. For purposes of the safe harbor exclusions, a rebate is any discount the terms of which are fixed and disclosed in writing to the buyer at the time of the initial purchase to which the discount applies but which is not given at the time of sale. In addition, the term discount means a reduction in the amount a buyer.

V. How Defendants Have Conspired, Caused, and/or Violated the Rebate Agreement and Best Price Reporting Requirement

30. The J&J Defendants recklessly and wilfully corrupt "Best Price" calculations and reporting on the J&J Products through a variety of fraudulent schemes, which upper management executives were and are aware of by, inter alia, (i) providing discounts in the form of cash payments or reductions in price that constitute remuneration which they do not submit, report or certify to CMS, (ii) providing free goods that are conditional on the purchase of other products that constitute remuneration which they do not submit, report or certify to CMS, (iii) make payment of fees to distributors and customers such as McKesson and Omnicare requiring no services that act as discounts, (iv) fraudulently manipulate J&J finance databases, (v) fraudulent manipulation of data used to calculate prices, (vi) wilfully, recklessly and fraudulently conspires with business partners via contracts, off the book agreements, payments, and joint ventures which fall outside Anti-kickback Safe Harbor provisions, all of which are designed to hide true prices & discounts, and to report false prices to the Government.

McKesson and Omnicare both assist, cause and/or conspire with the J&J Defendants in all of the foregoing actions.

A. Residual Constituents

31. At all times relevant hereto, the J&J Defendants' business, inter alia, through Janssen, involved the manufacturing and sale of RISPERDAL CONSTA. RISPERDAL CONSTA is a long acting injectable anti-psychotic drug for intra muscular injection.

32. J&J Defendants sell RISPERDAL CONSTA to U.S. wholesalers, Cardinal, McKesson and AmeriSource Bergen, all who are licensed to distribute pharmaceutical and biological products in the United States. RISPERDAL CONSTA is the injectable form of RISPERDAL, which comes in pill, liquid and dissolvable form. The injectable technology was developed for Janssen by Alkermes, Inc. ("ALK") and there is a separate patent for RISPERDAL CONSTA because of the unique technology involved in the delivery system.

33. At all times relevant hereto, J&J filed periodic reports with the United States Securities and Exchange Commission (the "Commission"), pursuant to Section 13(a) of the Exchange Act and the rules promulgated hereunder, which contained financial statements of J&J and its subsidiaries, including Ortho and Janssen.

34. In 2004, Janssen Pharmaceutica recorded sales from Risperdal of approximately 3.1 billion dollars of which approximately 2 billion is in the United States. Approximately 70 to 80 percent of the United States sales are reimbursed through Medicaid/Medicare. A small but growing portion of the Risperdal sales comes from Risperdal Consta, the long acting injectable drug that was launched in December 2004. Janssen reported Risperdal Consta sales of 130 million in 2004 and has reported sales of 285 million through June 2005. The formal Commission reports stated the following:

<p>2003 10-K</p>	<p>"Risperdal (r)(risperidone), a medication that treats the symptoms of schizophrenia, accounted for \$2.5 billion in sales in 2003, fueled by the successful launch of RISPERDAL CONSTA [(risperidone) long-acting</p>
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	injection] in the markets outside of the United States.”
2004 Q1 10-Q	“Strong product growth drivers in the Pharmaceutical segment included RISPERSDAL (r)(risperidone), a medication that treats the symptoms of schizophrenia, fueled by the successful launch of RISPERSDAL (r) CONSTA(tm) and REMICADE(r) (infliximab)”
2004 Q2 10-Q	“RISPERSDAL (r) (risperidone), a medication that treats the symptoms of schizophrenia, fueled by RISPERSDAL (r) CONSTA (tm) grew by 10.9% in the fiscal second quarter 2004”
2004 Q3 10-Q	“RISPERSDAL (r) (risperidone), a medication that treats the symptoms of schizophrenia, fueled by RISPERSDAL (r) CONSTA (tm) grew by 24.6% in the fiscal third quarter 2004”
2004 10-K	“A strong growth driver in the Pharmaceutical segment was RISPERSDAL (risperidone), a medication that treats the symptoms of schizophrenia. RISPERSDAL accounted for \$3.1 billion in sales in 2004, with continued success of RISPERSDAL CONSTA (risperidone) long-acting injection.”
2005 Q1 10-Q	“Pharmaceutical segment sales growth in the first quarter of 2005 was lead by strong performances from various products. Growth was fueled by the continued success of RISPERSDAL (R) (risperidone), a medication that treats the symptoms of schizophrenia, and RISPERSDAL CONSTA (R) (risperidone) long acting injection, with operational growth of 13.0%.”
2005 Q2 10-Q	Growth was fueled by the continued success of RISPERSDAL (r) (risperidone), and RISPERSDAL CONSTA (r) (risperidone), a long acting injection medication that treats the symptoms of schizophrenia, with operational growth of 20.8%.”

B. Sales Data Acquisition

35. The J&J Defendants, similar to all other major drug manufacturers, purchase “point of sale” data from Information Management Systems, Inc. (“IMS”), which is an independent company that acts as a data warehouse firm and acquires data on sales from pharmacies and other sources throughout the United States. The J&J Defendants purchase data from IMS that includes (i) sales outlets as well as (ii) exponent or prescription data which is essentially what prescriptions

specific physicians are prescribing for their patients (collectively, "IMS Data").

36. Plaintiff's focus and job responsibilities were, inter alia, to provide financial and analytical services for each of the J&J Defendants of the IMS Data.

37. J&J Defendants began purchasing in or about January 2004 or prior, three separate data feeds in addition to the IMS Data which consisted of the following:

a. "*VA Cares Data*" which consisted of mail order data relating to Respidal and Respidal Consta from the Veterans Administration ("VA") which was accumulated by Tri-Care and was purchased from McKesson through its one of its subsidiaries, Health Care Systems, Inc. ("HCS") and was received on a monthly basis by the J&J Defendants.

b. "*Prime Vendor Data*" which was data acquired from the same source as the VA Cares data but was RESPIDAL CONSTA sales data only.

c. "*Omnicare Data*" This data was purchased from Omnicare through J&J subsidiary HCS and consisted of all of J&J's drugs and pharmaceutical products.

38. The Va Cares Data and Prime Vendor Data was information and sales data that the J&J Defendants were already purchasing as part of the IMS Data and was never used by the J&J Defendants, who were aware at the time that the VA Cares Data and Prime Vendor Data that it was purchasing was data which was duplicative of the IMS Data.

***C. J&J Defendant's Earnings Inflation Scheme
As A Means Of Hiding Best Price Calculations***

1. Channel Stuffing Scheme

39. Janssen had reported sales of Risperdal Consta of 130 million in 2004 and had total reported sales of 285 million of Respidal Consta through June 2005. This is the amount invoiced to

wholesalers, primarily McKesson, Cardinal and AmeriSource Bergen.

40. Of the 285 million dollars reported sales as set forth above, these wholesalers have actually sold only approximately 145 million dollars to institutions, specialty pharmacy outlets and retail pharmacies. The 2004 sales database showed 2004 Risperdal Consta annual sales of 75 million dollars. The current database reports historical 2004 Risperdal Consta sales of 130 million.

41. In or around January, 2005, Plaintiff disclosed to management of the J&J Defendants that he believed that the J&J Defendants were inflating earnings through a "channel stuffing" scheme. Plaintiff has also discovered that the practice of channel stuffing was used in all or most of the J&J Products as a means to increase profit margins of distributors such as McKesson, Cardinal and AmeriSource Bergen. This essentially acts as an "discount" or remuneration that must be reported as part of a manufacturer's obligations under the Rebate Agreement.

42. Plaintiff was thereafter demoted for reporting J&J Defendants' illegal and unethical behavior.

43. The term "channel stuffing" occurs when a company makes misleading and illegal representations about its performance by stuffing the distribution channels with large quantities of product ahead of demand. This allowed distributors to increase profit margins by purchasing large quantities at a lower price and gain the benefit as the retail price of such products rose.

44. RISPERDAL CONSTA and other J&J Products sales are tracked by the Information Management Department of Janssen ("IM") who consolidate product sales information as reported by distributors and the IMS Data. The reports and analysis generated by IM have a direct impact on the J&J Defendants' reported financial earnings.

45. The Sales Information Department determines what sales information to purchase, and orders the data that IM uses to track RISPERDAL CONSTA and other J&J Products sales.

46. As Sales Compensation Manager, Relator was in charge of calculating and

delivering sales results and incentive bonuses to field sales representatives based on data delivered by IM.

47. On or about January 2005, Relator told Sales Compensation Director, Randy David, and IM Manager, Marion Culp, about the inaccurate RISPERDAL CONSTA sales figures.

48. During the following months, Plaintiff researched, documented, and reported to management, errors in the sales data reported and generated by IM.

49. Plaintiff reported numerous errors in the data delivered by the Ortho IM department, and in the data purchased from McKesson and Omnicare and delivered to Ortho by J&J subsidiary, Health Care Services.

50. Plaintiff's research of the inaccurate sales data revealed that Defendants were involved in illegal channel stuffing.

51. Immediately upon discovering the channel stuffing scheme, Plaintiff reported it to management which he believed and advised his supervisors what fraudulent and illegal.

2. Defendants' Attempt To Hide Channel Stuffing

52. J&J Defendants hid their channel stuffing through a series of accounting and reporting manipulations, which included counting and reporting the sales of RISPERDAL CONSTA and some of the other J&J Product sales to pharmacies as an "institutional sale." This was also an attempt to hide the true Best Price as alleged in subsequent counts herein.

53. J&J Defendants reported inflated sales to pharmacies as described herein by reporting sales once as an "Institutional sale," and a second time as a "Retail sale."

54. By doubling actual sales to these pharmacies, J&J Defendants overstated sales volume, and hid the excess inventory levels that continued to grow.

55. As described above, Janssen changed their method of reporting Risperdal Consta sales from a model or system where sales were recorded at the point of sale only when the

wholesaler, either McKesson, Cardinal or AmeriSource Bergen sold the drug to their current model where sales are recorded as soon as the product is sold to the wholesaler. This was being done to cover up the channel stuffing in order to meet sales goals and to provide wholesalers an opportunity to buy large volumes of drugs to take advantage of future price markups.

56. The sales data, both institutional and retail that Janssen purchases from IMS and other sources is being manipulated by the Information Management Department in Janssen to match invoice sales to wholesalers, which is being done by double counting sales made by wholesalers to approximately 3,322 outlets which are primarily specialty and long term care pharmacies that operate as both re-packagers and retailers.

57. When these pharmacies purchase Risperdal Consta from a wholesaler Janssen records the sale as an institutional sale. The sale is then recorded a second time but as a retail sale. The sales show up in the institutional database aligned to an outlet and also show up in the retail database aligned to a zip code. These databases are combined to get the total gross sales.

58. Janssen obtained and purchases the IMS retail sales data. This data source captures 100 percent of all sales to retail pharmacies and will ensure that all retail prescriptions are credited to sales representatives. Unlike other types of sales data, the information management does not track or link the retail sales data to any other data source.

59. This practice allows Janssen to report inflated sales to outlets so that they are consistent with sales reported to distributors and will allow them to report an artificially strong performance while the wholesalers are building up large inventory levels so they can take advantage of the price spread when prices are marked up.

60. Plaintiff attempted to investigate with IMS the cause of discrepancy in the Risperdal Consta sales and emailed on March 29, 2005 IMS representative Chris Billings who reported that Janssen had delivered a large amount of Risperdal Consta to a particular wholesaler's warehouse owned by McKesson Specialty in the amount of 6.75 million dollars which IMS has reported seeing

very little sales from. The financial records show that McKesson warehouse purchased a total of approximately 29 million dollar of Risperdal Consta from January 2004 through June 2005.

61. In addition to the foregoing Plaintiff has discovered that Janssen has been purchasing sales data that was not being used. Janssen purchases unused and duplicative sales data from key customers as a way of providing them a discount while fraudulently hiding the best price.

62. The sales data from Risperdal Consta shows that Aklermes records manufacturing revenues upon shipment of products by Aklermes to Janssen based on a percentage of Janssen's net selling price.

63. Data provided in Aklermes' financial reports shows that through June 2005 the world wide net sales value of Risperdal Consta shipped from Aklermes to Janssen is one billion dollars and the net sales value of Risperdal Consta sold by Janssen and reported to Aklermes is 664 million. The 664 million net sales represents total value of shipments to US distributors of 275 million and sales from US distributors to US outlets of 115 million. This supports the channel stuffing by showing that wholesalers are loading up with inventory levels that greatly exceed actual demand. Meanwhile they are reporting net sales of Risperdal Consta to J and J based on the volume shipped from Aklermes and their reported net sales to Aklermes based on the much lower product volume sold by the distributors.

64. Janssen inflates actual sales of Risperdal Consta by recording revenue based on the net sales data of products shipped to wholesalers rather than the amount of product actually sold. Janssen reports the inflated Risperdal sales through J&J which has resulted in material misstatements in J&J financial reports.

65. McKesson, Cardinal and AmeriSource Bergen have been allowed to purchase Risperdal Consta at a rate that far outpaces demand. This strategy allows the distributors to take advantage of future pricing increases and allows Janssen to hit sales targets. This channel stuffing is also a method to allow McKesson and other distributors to gain an unfair advantage in the

Medicare Part B bidding guidelines in that by allowing a inventory by the large distributors they can gain an unfair advantage in the bidding process and overcharge Medicaid. This essentially acts as an "discount" or remuneration that must be reported as part of a manufacturers obligations under the Rebate Agreement.

66. Plaintiff discovered and disclosed several IM errors that allowed J&J Defendants to unilaterally double sales figures for a large portion of RISPERDAL CONSTA sales, while hiding excess shipments to distributors, McKesson, Cardinal, and AmeriSource Bergen.

67. In March 2005, Plaintiff initiated an inquiry regarding a discrepancy in "Mail Order" sales data from IMS. In a March 25, 2005 email, IMS representative, Chris Billings, confirmed Plaintiff's belief that J&J Defendants were engaging in channel stuffing wherein he wrote that as of February 2005, Janssen direct sales reported shipments to a McKesson warehouse of 6.75 million dollars in RISPERDAL CONSTA, but IMS was seeing very little sell-out from this supplier.

D. Failure To Report "Best Price" On Razadyne IR & Razadyne ER

68. In May 2005, RAZADYNE ER was launched by J&J. Razadyne was formerly called Reminyl, The ER (extended release) formulation is a significant improvement that allows once a day dosing vs. the RAZADYNE IR (Immediate Release) formerly Reminyl, which formulation required twice a day dosing. Both IR and ER formulations are currently available and the daily cost has been reported as identical.

69. RAZADYNE is used to treat Alzheimer's disease, which makes the once a day dosing especially significant since this patient population is likely to forget to take their medication.

70. The wholesale acquisition cost (WAC) is being reported by J&J as the same between the ER and IR version to CMS, even though discounts on the IR version have been provided to long term care facilities and distributors under certain contracts, which is not being reported to CMS in the Best Price calculation for Government reimbursement purposes. This discount on the IR version

has been reflected in a different cost to the consumers even though the WAC has been reported as the same.

71. Prior to February 2006 all Razadyne ER & Razadyne IR sales in the J&J Finance "ISIS" cube¹ matched the Finance "Combined" cube. In February approximately \$13,000,000 of Razadyne IR and in March approximately \$15,000,000 of Razadyne IR was sold and recorded in the "Combined" cube was not recorded in the "ISIS" cube. The Finance cube is responsible for contracting and price calculations, reporting and submission to CMS.

72. J&J acknowledged to Plaintiff through the group production director, finance manager and national trade manager that Razadyne ER and Razadyne IR should be the same price. J&J has contract prices that are much lower for Razadyne IR than Razadyne ER.

73. J&J's removal of Razadyne free goods contingent on Omnicare sales, from the Finance database, allowed J&J to report a drastically inflated "Best Price", and defraud Medicaid.

74. Razadyne discounts to Omnicare, in the form of free goods, represents approximately 30% to 35% of Razadyne sales to Omnicare, and 25% of all Razadyne Invoiced to the entire long term channel.

E. J&J excludes free goods, provided as discounts contingent on sales, from their AMP, ASP and Best Price on calculations for the J&J Products

75. J&J accounting policies, AMP, Best Price & Rebate calculation methodologies recklessly and/or wilfully violate regulatory guidance for reporting free goods in that they were contrary to GAAP and CMS reporting guidelines. Policy changes that discussed proper treatment of free goods were recklessly and/or wilfully ignored.

76. Free Goods of many J&J products were provided as discounts to Omnicare and

¹A cube is a term used by J&J to describe a department or section

other long term care pharmacy service providers, but were not disclosed and/or reported to CMS as discounts, in a scheme whereby J&J credited Free Goods to non-existent outlet numbers assigned to actual Pharmacies. These included, inter alia, (i) Razadyne purchases which were credited to Pharmacy IMS outlet numbers, while free goods to these same pharmacies were assigned to non-existent outlet numbers; (ii) Risperdal purchases which were assigned to Pharmacy IMS outlet numbers, while free goods to these same pharmacies were assigned to phony outlet numbers; (iii) Risperdal Consta purchases were assigned to Pharmacy IMS outlet numbers, while free goods to these same pharmacies were assigned to non-existent outlet numbers.

77. J&J gives discounts to Hospitals in the form of bulk free goods, but fails to include them when reporting and calculating AMP, ASP, and Best Price. These discounts include bulk shipments of Free Goods to Hospitals are used in outpatient clinics owned by the Hospitals.

F. J&J excludes discounts from AMP, ASP, and Best Price calculations.

78. J&J's removal of Risperdal Free Goods contingent on Omnicare sales, from the Finance database, allowed J&J to report a drastically reduced "Best Price" and defraud Medicaid of Millions of Dollars.

79. J&J manipulated their financial and pricing data in January 2006 by removing free goods from their databases, so the AMP calculated in their new GPS (Government Pricing System) database would match the AMP they previously reported, and planned to report in 2006.

80. After Plaintiff exposed this Fraud, J&J added the free goods back into the database, but in addition they assigned a value equal to their reported AMP's. This allowed J&J to report

the inflated AMP's they desired, but also caused discrepancies between historical Net Trade Sales in the altered databases, and Net Trades sales that J&J reported in past financial reports.

81. The J&J Defendants hid and continue to hide discounts by wilfully and recklessly failing to report free goods contingent on sales, discounts, payment of fees requiring no services, and manipulate finance databases used to calculate prices; conspire with business partners via contracts, off the book agreements, payments, and joint ventures which fall outside Anti-kickback Safe Harbor provisions, and which are designed to hide true prices & discounts, and to report false prices to the Government.

G Contractual fees paid by J&J Defendants to distributors are outside Safe Harbor provisions and represent discounts in the form of Kickbacks.

82. As part of its normal and routine services, McKesson Corporation, Cardinal and AmeriSource Bergen would routinely provide at no additional cost certain services which included, inter alia, the receipt and storage of the pharmaceutical products, taking receipt of individual customer orders, picking, packing and overnight shipping of the product, implementation of compliance programs as well as direct physician or customer billing, processing of emergency orders, maintaining the capability to ship the product upon request of a physician via next-day delivery, providing copies of the distributor's catalog or sales sheets and other marketing services.

83. Commencing in or about 2004 McKesson, Cardinal and AmeriSource Bergen have imposed a service fee to pharmaceutical manufacturers, including the J&J

Defendants on all J&J Products, including Respidol Consta. The imposition of this fee is allegedly for the aforesaid marketing services which were being provided prior to 2004 at no additional cost. The true purpose of the service fee is to provide a discount to account for the prohibition against channel stuffing and compensate the distributors for the lost profit due to the prohibition from channel stuffing and is, in essence a discount which is not being passed along to the Medicare/Medicaid beneficiaries or the payors, including but not limited to Medicaid and Medicare. Notwithstanding the foregoing, channel stuffing is still occurring as set forth and described.

84. J&J wilfully and recklessly fails to report certain payments as cash discounts and excludes them from AMP & Best Price calculations, including, inter alia, (i) "Prompt pay" cash discounts of 2% are paid monthly to Distributors for all J&J pharmaceutical purchases even when the prompt pay period is missed, (ii) payments to Distributors under various Distributor Performance Agreements ("DPA") that are referred to as price protection payments (iii) payment of fees that require no services, including, inter alia, payments by Janssen to Group Purchasing Organizations ("GPO's") from 1998 through Q2 2006, (iv) payment of rebates, including, inter alia, rebates and various fees are paid to LTC Pharmacy Service Providers², via one or more GPO's, based on performance. The average of Fees + Rebates paid, equals 7.07% of sales.

85. In violation of Anti-Kickback laws J&J pays McKesson Specialty Mail Order Pharmacy a "prompt pay" discount of 2%, plus additional discounts of 3-3 ½% for Risperdal Consta, but these discounts are not passed on to the payer and are not included in AMP & Best

² This includes Omnicare's Rebate payment of \$12,000,000 for the first Quarter of 2006. These Rebates were excluded from AMP and Best Price calculations

Price.

86. Janssen Pharmaceutica's Fee for Service Agreement with McKesson Specialty already determined a 3-3 ½% discount would be paid to McKesson, dependant on "services", before services to be provided had been determined.

87. The "Fee for Service agreements" referred to herein are actually hidden discounts designed to increase margins for both J&J and their Distributors as a way of replacing "channel stuffing". In a letter dated August 10, 2004 to Janssen president regarding McKesson's move to a "fee for service" model, Omnicare Vice President Timothy Bein stated:

"The diminishment of McKesson's role in the supply chain would substantially impact our business." "As one of J&J's largest customers, we ask you carefully consider McKesson's proposal for ensuring fair and appropriate compensation as we face these new dynamics in our industry. Please help ensure that our mutual business continues moving by preserving the relationship with our valued distributor."

In a letter dated August 27, 2004 to Janssen president regarding Cardinal's move to a "fee for service" model, Group President Mark Parrish stated:

"However as our agreement stands today compensation is still contingent on inventory gains made as prices increase, which is unacceptable." "Please know that Cardinal Health has extensive experience in structuring these non-contingent predictable agreements with pharmaceutical manufacturers. Through the negotiations and research we have done, we have extensive information around the accounting and legal questions you will be considering as you design your agreement with us." "I am confident that by working together, Cardinal Health and Janssen can forge an agreement to preserve the integrity of the system that has served the U.S. pharmaceutical industry so well for so long."

88. J&J entered into Joint Ventures outside safe harbors provisions which are designed

to defraud the Government as follows:

- a. AmerisourceBergen – The LASH Group. J&J pays the LASH group for various reimbursement and consulting training services relating to Risperdal Consta sales, in violation of Safe Harbor provisions. LASH provides J&J with training material which show state Risperdal Consta reimbursement rates that are grossly inflated above actual ASP.
- b. Cardinal Health – Alaris. J&J buys Injection component kits, from Alaris, for each dose of Risperdal Consta. This Joint venture is not in compliance with Safe Harbor provisions, and is a kickback/discount.
- c. McKesson Specialty Distribution. J&J Area Business Specialists employees act as Agents for McKesson Specialty, by promoting Risperdal Consta sales through McKesson only, and by aggressively pursuing Direct Buy & Bill account set-up only through McKesson.
- d. J&J excludes fees and discounts paid to McKesson Specialty Pharmacy Service Provider for Direct Buy & Bill Physicians.

***H. J&J Classifies Certain Retail Sales As “Institutional Sales”
To Avoid Inclusion In “Best Price”***

89. J&J Defendants invoices 50% of certain drugs, including Risperdal, Risperdal Consta, and Razadyne, as Bulk sales to Repackagers. They classify these bulk sales as Institutional sales, even though the vast majority of these sales are destined for the Retail Class of Trade. J&J wilfully and recklessly does this because (i) Institutional Class of Trade is excluded from AMP and Best Price calculations and (ii) Medicaid Rebates are not paid on units sold to the Institutional Class of Trade.

I. J&J Defendants manipulate their financial database, to hide discounts and to

report false revenue in quarterly financial statements

90. J&J wilfully and recklessly removed Risperdal Consta sales from their Invoice Ledger and manipulated their financial database in order to hide or avoid reporting to CMS discounts by reporting false sales and price data.

91. On Friday December 16, 2005, J&J removed 60,000 units of nominally priced Risperdal Consta from their Finance Invoice database.

92. On Sunday December 18, 2005, J&J closed their year-end books.

93. On Monday December 19, 2005, after J&J had recorded their 2005 financials, J&J added the 60,000 units back to their Finance Invoice database.

94. J&J removed Razadyne sales data from the J&J Finance AMP/Best Price calculation database in order to hide discounts.

95. In the first Quarter of 2006, J&J removed invoiced Razadyne sales from the February and March Finance Care/ISIS database to include only sales that would allow them to calculate the AMP they wanted to report to the Government.

96. J&J pays Repackager's discounts on unique NDC put-ups, but hides the discounts within the "cost of goods sold" ("COGS"), rather than reporting these discounts correctly, as a reduction in revenue.

97. Risperdal Consta sales to the retail class of trade were classified as Institutional sales, and then in an attempt to hide the fraud, J&J altered historical sales data.

98. Retail Class of Trade sales improperly classified as Hosp/Inst sales.

99. J&J provided discounts to Hospitals, in the form of Bulk shipments of free

Risperdal for use in Outpatient pharmacies, but did not pay the Medicaid Rebates they owed on these "hidden" sales.

J. J&J disguises discounts on improperly bundled sales, and falsifies discounts and Net Trade Sales data.

100. J&J Bundles sales and then assigns discounts to those products that have little or no Medicaid rebate implications.

101. Discounts in these "bundled sales" are intentionally and wilfully aligned to products with little or no exposure to Medicaid rebates, such as Ultram ER, Ultram, Aciphex, Duragesic, Fentanyl, Levaquin IV, Ditropan, Ditropan XL, Razadyne IR, Floxin, Tramadol, & other generics.

102. J&J manipulates Gross to Net percentages and individual product discounts by shifting discounts among product ledgers.

103. In a scheme to hide across the board discounts of 25%, J&J wilfully and recklessly reports and certifies AMP's and Best Price to CMS and the Government based on Invoiced sales rather than Gross Orders Processed. GOPS are 75% of Invoiced sales, and represent sales revenues reported on J&J 10Q and 10K financial statements.

104. Janssen's Risperdal Gross Orders Processed (GOPS) are booked in J&J Financials at a 25% discount to Invoiced Sales. J&J reports AMP and ASP to the Government based on Invoiced sales that do not include discounts.

K. J&J excludes rebate eligible units and associated payments from Medicaid, TriCare, DOD, VA, and 340B entity rebates.

105. The J&J Defendants wilfully and recklessly excluded mail order sales improperly

from the retail class of trade and failed to report the same to CMS.

106. J&J categorizes 50% of all mail order sales as Institutional Class of Trade, and thereby fails to pay Medicaid the rebates owed on 50% of all Mail order prescriptions.

107. J&J changed historical sales data to cover up their fraud.

L. J&J submitted and received Medicaid Rebate Refunds by knowingly submitting false data to Federal and State Medicaid programs.

108. Sales to Long Term Care Pharmacy Service Providers are improperly categorized as Institutional sales.

109. J&J manipulated sales data by categorizing free goods given as a discount to Omnicare (& other LTC Outlets) for the Retail Class of Trade as Institutional Class of Trade sales. J&J did not pay rebates on these Free Goods provided as a discount that were eligible for Medicaid Rebates.

110. Razadyne LTC Omnicare Pharmacy sales before and after J&J added a WAC equal to list price to Free Goods previously reported with a WAC of \$0.00. IMS only captures 25% of the Razadyne sales to the Retail Class of Trade.

111. J&J failed to report to CMS Risperdal Consta sales eligible for Government rebates that were distributed through McKessons' Specialty Distribution centers.

112. J&J manufactured non-existent outlets, for McKesson Physician Buy & Bill accounts, in a scheme to disguise Risperdal Consta claims data as Institutional Class of Trade sales.

113. J&J excluded Rebate eligible sales to Galloway Pharmacy from Rebate calculations.

114. Mail order claims data are not provided to TriCare, DOD, VA, and 340B entities, eliminating their ability to collect Rebates.

115. IMS captures VA prescription data, but J&J required IMS to replace the data with VA utilization data supplied by J&J.

116. J&J fails to report claims data, needed by Government entities to collect rebates, for Mail order sales.

117. J&J receives VA Cares and Prime Vendor prescription data, but does not provide this information to the Government as is required, effectively eliminating the Governments ability to collect rebates Owed them by J&J.

118. J&J hid retail and mail order sales that were eligible for rebates as provided by Government contracts , causing a drop in reported Government contract sales of 65%, while sales to the Government actually continued to grow.

119. Risperdal Consta Retail sales reported in the actual VA cares data file is many times greater than the amount J&J reported in their databases.

120. Risperdal Consta from Prime Vendor data vs. J&J reported sales through Prime Vendor.

121. In Q1 2006 J&J submitted and received \$90,000,000 in Medicaid Rebate refunds for the years 2004 & 2005. This claim was based on a fraudulent scheme in which J&J removed the Omnicare Free Goods units when they transitioned to a new Government Pricing System database (GPS).

122. In an scheme to hide discounts provided to Omnicare in the form of Free Goods, J&J removed the Free Goods units with a WAC of \$0.00, from their databases. Then, after Relator exposed this fraud J&J put the Free Goods back into their databases, but assigned a WAC price equal to J&J's List price to the free goods

123. Medicaid Drug Program release #140, regarding the \$90MM J&J rebate refund.

124. Risperdal \$35MM Medicaid Rebate refund reported in J&J 10K matches relators' extrapolated rebate refund amount, which is based on Omnicare Free Goods removed from J&J Finance and Sales databases.

125. After Relator exposed the Medicaid Rebate refund fraud, J&J put the free goods back into the data, but with a fraudulent WAC, and then attempted to balance their books by falsifying transactions related to their purchase of Vascular Control Systems.

126. Instead of discounting the price of the drugs sold to McKesson, Ortho and J&J Defendants unnecessarily purchased data from McKesson to hide the best price. Discounts for Drugs purchased by McKesson were disguised as payments from Ortho to McKesson for the unnecessary data. As an example, the VA Cares Data purchased at a premium from McKesson, went unused for 7 months. Although Ortho continues to purchase the VA Cares Data, the purchase is unnecessary because it does not match sales from the actual VA Cares data feed or true mail orders that are even available to the public from the Department of Defense. In addition, the Prime Vendor Data feed, also purchased from McKesson at a premium, was purchased for 15 months and was never needed or used by J&J Defendants.

127. In addition to the above, J&J Defendants provided Omnicare with free Drugs to avoid reporting the actual discounted price to State and Federal governments, as required by Medicaid and Medicare. Sales data for all products on the Omni Care feed are reported only as units. This is unique. Every other data source reports both units and warehouse acquisition costs (WAC). The absence of WAC dollars in the Omni Care sales data is suspicious. It appears the drug may be provided at no charge to Omni Care as a method of providing a discount and again

avoiding a full rebate due to Medicaid. As an example, 14,602 Units of Respidal Consta with a value of \$4.4 million in 2004 and 232,142 Units of Respidal at a value of 125 million in 2004 where shipped through McKesson to Omnicare at no cost. In addition Defendants paid Omnicare for a sales data feed that shows which Outlets received the free products.

128. By hiding the discounted/best price through purchases of unneeded data and shipments of free Drugs, J&J Defendants were able to avoid paying larger Medicaid rebates.

***M. McKesson Specialty Acting As A Direct Purchaser
Through A "Captive" Mail Order and Still Charging An Administrative Fee***

129. In addition to the above, McKesson Specialty is acting as a mail order for a captive group of clinics, physicians and their pharmacy partners for delivery of the Respidol Consta and is, notwithstanding any other claim to an administrative fee, not eligible because it takes and has possession of the product and is therefore a "direct purchaser" and not a "purchasing agent".

130. Specifically, through McKesson Specialty they have shipped approximately 32,387 Units of Respidal Consta at a sales value of \$9,959,329.00 that they purchased from Janssen and had possession of in their Ohio warehouse, which were shipped to physicians and mental health clinics from the launch of the product in December 2003 through June 2005. These sales are a part of the overall sales reported by McKesson.

131. Captive mail order utilization is not eligible for administrative fees because it violates eligibility requirements when possession is taken of the product.

VI. DEFENDANTS' RETALIATION AGAINST PLAINTIFF

A. Plaintiff's Demotion

132. At all times relevant hereto, Plaintiff objected to, disclosed to supervisors, and refused to partake in J&J Defendants' illegal, fraudulent, criminal and unethical conduct.

133. As a result of Plaintiff's objecting, disclosing J&J Defendants' and refusing to participate in the fraudulent and illegal conduct, Plaintiff was demoted from his position as Sales Compensation Manager to Senior Sales Compensation Analyst. Field Sales Directors, Lynda Benton and Jeff Hoover, as well as National Sales Manager Jeff Bailey knew about the channel stuffing and Medicaid fraud. After Plaintiff uncovered the violations, these individual pushed for Plaintiff's demotion. Plaintiff's demotion occurred, having just received a merit pay increase above the recommended target and two Encore Awards. In fact, in Plaintiff's evaluation prior to the demotion, he was given a "5" for performance and a "3" for promotion potential.

B. Defendants' Refusal to Investigate Sarbanes Oxley Violations Raised by Plaintiff

134. J&J Defendants further retaliated against Plaintiff by refusing to investigate the illegal conduct that Plaintiff reported to management.

135. Pursuant to its obligation under The Sarbanes-Oxley Act of 2002 ("SOX") and J&J's company policy, J&J Defendants must immediately initiate an investigation when an employee reports a SOX violation.

136. During the five months prior to his demotion, in addition to disclosing channel stuffing and Medicaid fraud, Plaintiff disclosed what he believed to be company violations of SOX.

137. Sales Compensation Director; Randy David ("David"), Sales Measurement & Compensation Senior Director; Joseph Estephan ("Estaphan"), Sales and Marketing Services Vice President; Nick Bartone ("Bartone"), and Janssen Pharmaceutica President;

Janet Vergis ("Vergis") knew about the SOX violations, the Channel Stuffing, and the Medicaid Fraud and demoted Plaintiff because he disclosed these violations.

138. Plaintiff raised issues with Information Management ("IM"), Sales Information, Synergy (the Sales Compensation software vendor) and Sales Compensation Payroll.

139. Plaintiff disclosed that these departments required implementation of an automated validation processes, that these departments did not have an effective process in place to detect and/or avoid errors and did not have the adequate capability to manage change as required under SOX.

140. Plaintiff first disclosed Defendants' SOX violations to management in February 2005. Plaintiff reported SOX violations to Ortho's Human Resource department on June 23, 2005, and asked that they investigate. The HR Department refused to investigate Plaintiff's report.

141. Defendants refused to investigate Plaintiff's report until August 2005, when counsel for Plaintiff sent a letter to J&J's audit committee detailing Plaintiff's SOX concerns. The J&J Internal Audit Committee began their investigation on September 4, 2005; five months after Plaintiff's initial report.

C. Defendants' Harassment of Plaintiff

142. Immediately upon disclosing J&J Defendants' illegal conduct and its SOX violations, the individuals identified above engaged in a pattern of conduct intended to inflict emotional distress upon Plaintiff.

143. In addition to demoting Plaintiff and refusing to investigate his reports of illegal company activity, company representatives sent several harassing emails to Plaintiff.

144. On May 24, 2005, Human Resources Director at the time, Anne Connery-

Lee sent an email falsely stating that Plaintiff failed to deliver numerous data items needed for the field conference reports. Despite the fact that David knew this to be untrue, he did nothing to correct this false accusations from the defamatory email, even after Plaintiff asked him to do so.

145. On January 24, 2005, Plaintiff was given 90 minutes to do a presentation in front of J&J employees. When it came time for Plaintiff to do the presentation, Field Sales Director Lynda Benton advised Plaintiff that he could only have 15 minutes to do a 90 minute presentation.

146. Immediately after the presentation, Benton sent an email to David and National Sales Manager, Jeff Bailey, stating that Plaintiff rushed his presentation and that there was a lack of clarity. She neglected to tell David and National Sales manager, Jim Bailey, that she only gave Plaintiff 15 minutes to deliver a 90 minute presentation.

147. Plaintiff asked David to reply to the e-mail to correct the false information that Benton included. David refused to comment on Plaintiff's request and refused to reply to Benton or Bailey to correct the false information.

148. After March 29, 2005, when Billings confirmed that J&J Defendants were channel stuffing, Defendants' harassment of Plaintiff increased in frequency and severity. Plaintiff was continuously berated by David and threatened with respect to his employment with J&J.

149. On or about April 5, 2005, Plaintiff was on the phone with David, and the project manager of Synygy. When Plaintiff began to voice his concern about the problems with the Synygy software, David yelled, berated, and belittled Plaintiff, causing irreparable harm in Plaintiff's relationship with the Synygy Manager. Plaintiff called David back within one minute of the call to discuss the David's behavior. David made no mention of his outburst and agreed with Plaintiff that Synygy was not meeting expectations, made too

many errors, and unable to process sales data in a timely manner.

150. Plaintiff met with David on a weekly basis from April through May, 2005. In the majority of these meetings David continuously told Plaintiff that the customer (senior management) was not happy, and that Plaintiff was to blame. Despite being requested to do so, Defendant never explained why the customer was upset with Plaintiff. On May 18, 2005, Field Sales Director, Jeff Hoover sent an email to Plaintiff and copied senior management, falsely accusing that Plaintiff twice delivered the incorrect sales contest data. J&J Defendants' harassment of Plaintiff did not occur until Plaintiff disclosed Defendants' illegal conduct.

D. Plaintiff's Heart Attack

151. On August 30, 2005, Plaintiff suffered a heart attack as a result of J&J Defendants' harassment. An angioplasty revealed that Plaintiff's heart was in good condition and that his heart attack was the result of stress at work. Even when Plaintiff returned to work after his heart attack, the J&J Defendants continued to harass him.

152. While Plaintiff was out of work for his heart attack, the J&J Defendants failed to make sure that Plaintiff's work was reassigned and refused to inform key customers and vendors that Plaintiff was on leave, leaving them to conclude that Plaintiff was negligent in the performance of his duties. When he returned from his heart attack, David told Plaintiff that he had failed to deliver current contest results, and that he must complete them all on the next workday. However, these tasks were on hold because Plaintiff was waiting for an analyst to validate the data and there was nothing Plaintiff could do until it was validated.

153. After disclosing J&J Defendants' illegal conduct, David routinely subjected Plaintiff to unrealistic deadlines for projects. David did not ask for specific deadlines on equally important tasks that other analysts were working on. Plaintiff was also excluded

from meetings on issues that he was directly involved. For example, even though Plaintiff was in charge of the Neurology Group, meetings were held without Plaintiff and developed a sales contest for the Neurology Group. Plaintiff first learned of the contest after it started during a meeting with Ortho employees.

154. J&J Defendants completely alienated Plaintiff and refuse to include him in meetings critical to Plaintiff's duties.

V. CAUSE OF ACTION

Count I

Bartz, ex rel. United States Of America v. J&J Defendants

False Claims Act, 31 USC 3729(a)

155. The allegations of paragraph 1 through 154 are incorporated herein by reference as if set forth at length.

156. Title 31 of the United States Code, section 3729(a) provides that any person who:

- (1) 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;
- (2) knowingly makes, uses or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;
- (3) conspires to defraud the Government by getting a false or fraudulent claim allowed or paid;
- (4) authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

- (5) 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,

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- (7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than \$5,500.00 and not more than \$11,000.00, plus 3 times the amount of damages which the Government sustains because of the act of that person.

157. The J&J Defendants actions of recklessly and wilfully corrupting "Best Price" calculations and reporting on the J&J Products, which upper management executives were and are aware of by, inter alia, (i) providing discounts in the form of cash payments or reductions in price that constitute remuneration which they do not submit, report or certify to CMS, (ii) providing free goods that are conditional on the purchase of other products, (iii) make payment of fees to distributors and customers such as, inter alia, McKesson and Omnicare requiring no services, (iv) fraudulent manipulation J&J finance databases, (v) fraudulent manipulation of data used to calculate prices, (vi) wilfully, recklessly and fraudulently conspires with business partners via contracts, off the book agreements, payments, and joint ventures which fall outside Anti-kickback Safe Harbor provisions, all of which are designed to hide true prices & discounts, and to report false data to CMS and the Government, J&J Defendants were able to avoid paying larger Medicaid rebates which constitutes the making of false claims to the United States Government and a violation of 31 U.S.C. 3729(a)(1)(2),(3), (5) and (7).

158. Pursuant to 31 U.S.C. 3729(a), any person who violates the provisions set forth herein, is liable for a civil penalty of not less than \$5,500 and not more than \$11,000, plus three times the amount of damages which the U.S. Government sustains as a result of

Defendant's making of false claims as herein above set forth.

WHEREFORE, Plaintiff requests that the Court enter an award in favor of Plaintiff and against the Defendant for all sums authorized under and pursuant to 31 U.S.C. 3729(a).

Count II

Bariz, ex rel. United States Of America v. J&J Defendants, McKesson and Omnicare

False Claims Act, 31 USC 3729(a)

159. The allegations of paragraph 1 through 158 are incorporated herein by reference as if set forth at length.

160. McKesson and OmniCare's actions of conspiring with J&J Defendants by arranging and/or assisting with, inter alia, (i) discounts in the form of cash payments or reductions in price that constitute remuneration which they do not submit, report or certify to CMS, (ii) providing free goods that are conditional on the purchase of other products, (iii) make payment of fees to distributors and customers such as, inter alia, McKesson and Omnicare requiring no services, (iv) fraudulent manipulation J&J finance databases, (v) fraudulent manipulation of data used to calculate prices, (vii) wilfully, recklessly and fraudulently conspires with business partners via contracts, off the book agreements, payments, and joint ventures which fall outside Anti-kickback Safe Harbor provisions, all of which are designed to hide true prices & discounts, and to report false data to CMS and the Government, J&J Defendants were able to avoid paying larger Medicaid rebates which constitutes the making of false claims to the United States Government and a violation of 31 U.S.C. 3729(a)(1)(2),(3), (5) and (7).

161. Pursuant to 31 U.S.C. 3729(a), any person who violates the provisions set forth herein, is liable for a civil penalty of not less than \$5,500 and not more than \$11,000, plus three times the amount of damages which the U.S. Government sustains as a result of

Defendant's making of false claims as herein above set forth.

WHEREFORE, Plaintiff requests that the Court enter an award in favor of Plaintiff and against the Defendant for all sums authorized under and pursuant to 31 U.S.C. 3729(a).

Count III

Plaintiff v. J&J and Ortho **Violation of N.J.S.A. 34:19-3 of CEPA**

161. Plaintiff re-alleges and incorporates Paragraphs 1 through 160 above as if fully set forth herein.

162. The Conscientious Employee Protection Act ("CEPA") declares that an employer shall not take retaliatory action against an employee because the employee disclosed an activity, policy or practice of the employer that the employee "reasonably believes to be in violation of a law." N.J.S.A. 34:19-3.

163. The clear purpose behind CEPA is to protect employees who protest illegal or unethical employer conduct that is potentially harmful to public interest.

164. To establish a claim under CEPA, a plaintiff must show: (1) that he reasonably believed that his employer's conduct was violating either law or a rule promulgated pursuant to law; (2) that he disclosed or threatened to disclose the activity to a supervisory or public body; (3) that adverse employment action was taken against him; and, (4) a casual connection between the whistle-blowing activity and the adverse employment action.

165. For reasons stated above, defendants, Johnson & Johnson, Inc. and Ortho McNeil Pharmaceutical, Inc. violated section 34:19-3 of CEPA by retaliating, including, the demotion, harassment and termination of Plaintiff.

WHEREFORE, plaintiff, Scott Bartz, requests judgment in his favor and

against defendants, Johnson & Johnson, Inc. and Ortho McNeil Pharmaceutical, Inc., as to Count I of the Complaint, awarding damages including compensatory damages, punitive damages, attorney's fees, interest and costs, as well as injunctive relief as is deemed appropriate by the Court.

Count IV

Plaintiff v. J&J and Ortho **Intentional Infliction of Emotional Distress**

166. Plaintiff re-alleges and incorporates Paragraphs 1 through 165 above as if fully set forth herein

167. To recover on a claim for either intentional or negligent infliction of emotional distress a plaintiff is required to show that he suffered emotional distress so severe that no reasonable man could be expected to endure it.

168. J&J and Ortho by and through its agents and employees, engaged in a pattern of outrageous conduct intended to harass and annoy Plaintiff.

169. To establish a claim for intentional infliction of emotional distress, a plaintiff must establish the following: (1) defendant intended to inflict emotional distress upon plaintiff; (2) defendant's conduct was extreme and outrageous; (3) defendant's conduct was the proximate cause of plaintiff's emotional distress; and (4) plaintiff's emotional distress was so severe that no reasonable person could expect to endure it.

170. As stated and alleged above, J&J and Ortho, engaged in a pattern of outrageous conduct intended to inflict emotional distress upon Plaintiff.

171. Plaintiff's emotional distress manifested its in the form of a heart attack on August 30, 2005.

172. Defendants' outrageous conduct continued even after Plaintiff returned to work after his heart attack.

173. As a direct proximate result of the improper and illegal conduct of J&J and Ortho, Plaintiff has sustained severe emotional distress, bodily injury, has undergone and will continue to undergo great pain and suffering, has been unable to attend to his usual and customary activities, has experienced a loss of self esteem, has experienced a loss of the enjoyments of life, has lost his income and ability to care for his family and other personal financial needs and has suffered numerous other economic and non-economic damages and injuries;

WHEREFORE, plaintiff demands judgment against the above Defendant for compensatory damages, punitive damages, attorney's fees, costs of suit and such other relief as this Court may deem equitable and just.

Count V

Plaintiff v. J&J and Ortho

Violation of 31 USC 3730(H)

174. Plaintiff re-alleges and incorporates Paragraphs 1 through 116 above as if fully set forth herein.

175. 31 USC 3730(H) provides as follows:

h) Any employee who is discharged, *demoted*, suspended, *threatened*, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate district court of the United States for the relief provided in this subsection.

176. For reasons stated above, defendants, Johnson & Johnson, Inc. and Ortho McNeil Pharmaceutical, Inc. violated section 31 USC 3730(H) by retaliating against Plaintiff by demoting him and creating a hostile work environment because of his actions, including investigation of violation of or committing a false claim in an action filed or to be filed under this section. shall be entitled to all relief necessary to make the employee whole.

WHEREFORE, plaintiff, Scott Bartz, requests judgment in his favor and against defendants, Johnson & Johnson, Inc. and Ortho McNeil Pharmaceutical, Inc., as to Count V of the Complaint, awarding damages including compensatory damages, punitive damages, emotional distress, attorney's fees, interest and costs, as well as injunctive relief as is deemed appropriate by the Court.

Count VI

Bartz, ex rel. the State of Arkansas pursuant to Code 20-77-901

177. The allegations of paragraph 1 through 176 are incorporated herein by reference as if set forth at length.

178. Defendants actions of conspiring with J&J Defendants to hide the discounted/best price through purchases of unneeded data and shipments of free Drugs, J&J Defendants were able to avoid paying larger Medicaid rebates which constitutes the making of false claims to the State of Arkansas and a violation of Arkansas Code 20-77-901.

WHEREFORE, Plaintiff requests that the Court enter an award in favor of Plaintiff and against the Defendant for all sums authorized under and pursuant to Arkansas Code 20-77-901.

Count VII

Bartz, ex rel. the State of California pursuant to California Government Code Sec. 12650 et seq. (2000) v. J&J Defendants, McKesson and Omnicare

179. The allegations of paragraph 1 through 178 are incorporated herein by reference as if set forth at length.

180. Defendants actions of conspiring with J&J Defendants to hide the discounted/best price through purchases of unneeded data and shipments of free Drugs, J&J Defendants were able to avoid paying larger Medicaid rebates which constitutes the making of false claims to the State of California and a violation of California Government Code Sec. 12650 et seq. (2000)

WHEREFORE, Plaintiff requests that the Court enter an award in favor of Plaintiff and against the Defendant for all sums authorized under and pursuant to California Government Code Sec. 12650 et seq. (2000) .

Count VIII

Bartz, ex rel. the State of Delaware pursuant to DEL. CODE. ANN. tit. 6, Sec 1201 et seq. (2000) v. J&J Defendants, McKesson and Omnicare

181. The allegations of paragraph 1 through 180 are incorporated herein by reference as if set forth at length.

182. Defendants actions of conspiring with J&J Defendants to hide the discounted/best price through purchases of unneeded data and shipments of free Drugs, J&J Defendants were able to avoid paying larger Medicaid rebates which constitutes the making of false claims to the State of Delaware and a violation of DEL. CODE. ANN. tit. 6, Sec 1201 et seq. (2000)

WHEREFORE, Plaintiff requests that the Court enter an award in favor of Plaintiff and against the Defendant for all sums authorized under and pursuant to DEL. CODE. ANN. tit. 6, Sec 1201 et seq. (2000).

Count IX

Bartz, ex rel. the District of Columbia pursuant to D.C. CODE ANN. Sec 1-1188.13 et seq.(2000) v. J&J Defendants, McKesson and Omnicare

183. The allegations of paragraph 1 through 182 are incorporated herein by reference as if set forth at length.

184. Defendants actions of conspiring with J&J Defendants to hide the discounted/best price through purchases of unneeded data and shipments of free Drugs, J&J Defendants were able to avoid paying larger Medicaid rebates which constitutes the making of false claims to the District of Columbia and a violation of the District of Columbia pursuant to D.C. CODE ANN. Sec 1-1188.13 et seq.(2000)

WHEREFORE, Plaintiff requests that the Court enter an award in favor of Plaintiff and against the Defendant for all sums authorized under and pursuant to the District of Columbia pursuant to D.C. CODE ANN. Sec 1-1188.13 et seq.(2000)

Count X

Bartz, ex rel. the State of Florida pursuant to FLA. STAT. 68.081 et seq. (2000) v. J&J Defendants, McKesson and Omnicare

185. The allegations of paragraph 1 through 184 are incorporated herein by reference as if set forth at length.

186. Defendants actions of conspiring with J&J Defendants to hide the discounted/best price through purchases of unneeded data and shipments of free Drugs, J&J Defendants were able to avoid paying larger Medicaid rebates which constitutes the making of false claims to the State of Florida and a violation of the State of Florida pursuant to FLA. STAT. 68.081 et seq. (2000).

WHEREFORE, Plaintiff requests that the Court enter an award in favor of Plaintiff and against the Defendant for all sums authorized under and pursuant to the State of Florida pursuant to FLA. STAT. 68.081 et seq. (2000).

Count XI

Bartz, ex rel. the State of Hawaii pursuant to HAW. REV. STAT. Sec 661-22 et seq. (2000) v. J&J Defendants, McKesson and Omnicare

187. The allegations of paragraph 1 through 186 are incorporated herein by reference as if set forth at length.

188. Defendants actions of conspiring with J&J Defendants to hide the discounted/best price through purchases of unneeded data and shipments of free Drugs, J&J Defendants were able to avoid paying larger Medicaid rebates which constitutes the making of false claims to the State of Hawaii as and a violation of the State of Hawaii pursuant to HAW. REV. STAT. Sec 661-22 et seq. (2000).

WHEREFORE, Plaintiff requests that the Court enter an award in favor of Plaintiff and against the Defendant for all sums authorized under and pursuant to HAW. REV. STAT. Sec 661-22 et seq. (2000).

Count XII

Bartz, ex rel. the State of Illinois pursuant to 740 ILL. COMP. STAT. ANN. Sec 175/1 et seq. (2000) v. J&J Defendants, McKesson and Omnicare

189. The allegations of paragraph 1 through 188 are incorporated herein by reference as if set forth at length.

190. Defendants actions of conspiring with J&J Defendants to hide the discounted/best price through purchases of unneeded data and shipments of free Drugs, J&J Defendants were able to avoid paying larger Medicaid rebates which constitutes the making of false claims to the the State of Illinois pursuant to 740 ILL. COMP. STAT. ANN. Sec 175/1 et seq. (2000)

WHEREFORE, Plaintiff requests that the Court enter an award in favor of Plaintiff and against the Defendant for all sums authorized under and pursuant to the State of

Illinois pursuant to 740 ILL. COMP. STAT. ANN. Sec 175/1 et seq. (2000).

Count XIII

**Bartz, ex rel. the State of Indiana pursuant to Indiana Code 5-11-5.5,
v. J&J Defendants, McKesson and Omnicare**

191. The allegations of paragraph 1 through 190 are incorporated herein by reference as if set forth at length.

192. Defendants actions of conspiring with J&J Defendants to hide the discounted/best price through purchases of unneeded data and shipments of free Drugs, J&J Defendants were able to avoid paying larger Medicaid rebates which constitutes the making of false claims to the State of Indiana and a violation of the State of Indiana pursuant to Indiana Code 5-11-5.5,

WHEREFORE, Plaintiff requests that the Court enter an award in favor of Plaintiff and against the Defendant for all sums authorized under and pursuant to the State of Indiana pursuant to Indiana Code 5-11-5.5,

Count XIV

**Bartz, ex rel. that State of Louisiana pursuant to LA. REV. STAT. ANN. Sec 46:439.1
et seq. (2000) v. J&J Defendants, McKesson and Omnicare**

193. The allegations of paragraph 1 through 192 are incorporated herein by reference as if set forth at length.

194. Defendants actions of conspiring with J&J Defendants to hide the discounted/best price through purchases of unneeded data and shipments of free Drugs, J&J Defendants were able to avoid paying larger Medicaid rebates which constitutes the making of false claims to the State of Louisiana and a violation of that State of Louisiana pursuant to LA. REV. STAT. ANN. Sec 46:439.1 et seq. (2000) .

WHEREFORE, Plaintiff requests that the Court enter an award in favor of Plaintiff and against the Defendant for all sums authorized under and pursuant to that State of Louisiana pursuant to LA. REV. STAT. ANN. Sec 46:439.1 et seq. (2000).

Count XIV

Bartz, ex rel. the State of Massachusetts pursuant to MASS ANN. LAWS CH. 12, Sec. 5(A)-(O) v. J&J Defendants, McKesson and Omnicare

195. The allegations of paragraph 1 through 194 are incorporated herein by reference as if set forth at length.

196. Defendants actions of conspiring with J&J Defendants to hide the discounted/best price through purchases of unneeded data and shipments of free Drugs, J&J Defendants were able to avoid paying larger Medicaid rebates which constitutes the making of false claims to the State of Massachusetts and a violation of the State of Massachusetts pursuant to MASS ANN. LAWS CH. 12, Sec. 5(A)-(O) .

WHEREFORE, Plaintiff requests that the Court enter an award in favor of Plaintiff and against the Defendant for all sums authorized under and pursuant to the State of Massachusetts pursuant to MASS ANN. LAWS CH. 12, Sec. 5(A)-(O).

Count XV

Bartz, ex rel. the State of Michigan pursuant to MI Public Act 337, Public Acts of 2005 v. J&J Defendants, McKesson and Omnicare

197. The allegations of paragraph 1 through 196 are incorporated herein by reference as if set forth at length.

198. Defendants actions of conspiring with J&J Defendants to hide the discounted/best price through purchases of unneeded data and shipments of free Drugs, J&J Defendants were able to avoid paying larger Medicaid rebates which constitutes the making of false claims to the pursuant to MI Public Act 337, Public Acts of 2005

WHEREFORE, Plaintiff requests that the Court enter an award in favor of Plaintiff and against the Defendant for all sums authorized under and pursuant to the State of Michigan pursuant to MI Public Act 337, Public Acts of 2005

Count XVI

**Bartz, ex rel. the State of New Hampshire pursuant to Section 167:61-b;
v. J&J Defendants, McKesson and Omnicare**

199. The allegations of paragraph 1 through 198 are incorporated herein by reference as if set forth at length.

201. Defendants actions of conspiring with J&J Defendants to hide the discounted/best price through purchases of unneeded data and shipments of free Drugs. J&J Defendants were able to avoid paying larger Medicaid rebates which constitutes the making of false claims to the State of New Hampshire and a violation of the State of New Hampshire pursuant to Section 167:61-b; Title 20-77-901.

WHEREFORE, Plaintiff requests that the Court enter an award in favor of Plaintiff and against the Defendant for all sums authorized under and pursuant to the State of New Hampshire pursuant to Section 167:61-b.

Count XVII

**Bartz, ex rel. State of New Mexico
v. J&J Defendants, McKesson and Omnicare**

202. The allegations of paragraph 1 through 201 are incorporated herein by reference as if set forth at length.

203. Defendants actions of conspiring with J&J Defendants to hide the discounted/best price through purchases of unneeded data and shipments of free Drugs, J&J Defendants were able to avoid paying larger Medicaid rebates which constitutes the making of false claims to the State of New Mexico.

WHEREFORE, Plaintiff requests that the Court enter an award in favor of Plaintiff and against the Defendant for all sums authorized under and pursuant to laws of New Mexico.

Count XVIII

**Bartz, ex rel. that State of Nevada pursuant to NEV. REV. STAT. Sec. 357.010 et seq.
v. J&J Defendants, McKesson and Omnicare**

204. The allegations of paragraph 1 through 203 are incorporated herein by reference as if set forth at length.

205. Defendants actions of conspiring with J&J Defendants to hide the discounted/best price through purchases of unneeded data and shipments of free Drugs, J&J Defendants were able to avoid paying larger Medicaid rebates which constitutes the making of false claims to the State of Nevada and a violation of that State of Nevada pursuant to NEV. REV. STAT. Sec. 357.010 et seq. (1999)

WHEREFORE, Plaintiff requests that the Court enter an award in favor of Plaintiff and against the Defendant for all sums authorized under and pursuant to State of Nevada pursuant to NEV. REV. STAT. Sec. 357.010 et seq. (1999).

Count XIX

**Bartz, ex rel. State of Tennessee pursuant to TENN. CODE. ANN. Sec 71-5-181 et seq.
v. J&J Defendants, McKesson and Omnicare**

206. The allegations of paragraph 1 through 205 are incorporated herein by reference as if set forth at length.

207. Defendants actions of conspiring with J&J Defendants to hide the discounted/best price through purchases of unneeded data and shipments of free Drugs, J&J Defendants were able to avoid paying larger Medicaid rebates which constitutes the making of false claims to the State of Tennessee and a violation of State of Tennessee pursuant to TENN. CODE. ANN. Sec 71-5-181 et seq.

WHEREFORE, Plaintiff requests that the Court enter an award in favor of Plaintiff and against the Defendant for all sums authorized under and pursuant to State of Tennessee pursuant to TENN. CODE. ANN. Sec 71-5-181 et seq.

Count XX

Bartz, ex rel. the State of Texas pursuant to TEX. HUM. RES. CODE Sec. 36.001-

36.117
v. J&J Defendants, McKesson and Omnicare

209. The allegations of paragraph 1 through 208 are incorporated herein by reference as if set forth at length.

210. Defendants actions of conspiring with J&J Defendants to hide the discounted/best price through purchases of unneeded data and shipments of free Drugs, J&J Defendants were able to avoid paying larger Medicaid rebates which constitutes the making of false claims to the State of Texas and a violation of the State of Texas pursuant to TEX. HUM. RES. CODE Sec. 36.001-36.117

WHEREFORE, Plaintiff requests that the Court enter an award in favor of Plaintiff and against the Defendant for all sums authorized under and pursuant to TEX. HUM. RES. CODE Sec. 36.001-36.117.

Count XXI

Bartz, ex rel. the State of Utah pursuant to Utah Code Ann
v. J&J Defendants, McKesson and Omnicare

211. The allegations of paragraph 1 through 210 are incorporated herein by reference as if set forth at length.

212. Defendants actions of conspiring with J&J Defendants to hide the discounted/best price through purchases of unneeded data and shipments of free Drugs, J&J Defendants were able to avoid paying larger Medicaid rebates which constitutes the making of false claims to the State of Utah and a violation of the State of Utah pursuant to Utah Code.

WHEREFORE, Plaintiff requests that the Court enter an award in favor of Plaintiff and against the Defendant for all sums authorized under and pursuant to the State of Utah pursuant to Utah Code Ann.

Count XXII

Bartz, ex rel. the State of Virginia pursuant to VIRGINIA Fraud Against Taxpayers
Act v. J&J Defendants, McKesson and Omnicare

213. The allegations of paragraph 1 through 212 are incorporated herein by reference as if set forth at length.

214. Defendants actions of conspiring with J&J Defendants to hide the discounted/best price through purchases of unneeded data and shipments of free Drugs, J&J Defendants were able to avoid paying larger Medicaid rebates which constitutes the making of false claims to the State of Virginia and a violation of the State of Virginia pursuant to VIRGINIA Fraud Against Taxpayers Act.

WHEREFORE, Plaintiff requests that the Court enter an award in favor of Plaintiff and against the Defendant for all sums authorized under and pursuant to the State of Virginia pursuant to VIRGINIA Fraud Against Taxpayers Act.

Count XXIII

Bartz, ex rel. the State of Georgia pursuant to Georgia State False Medicaid Claims Act v. J&J Defendants, McKesson and Omnicare

215. The allegations of paragraph 1 through 214 are incorporated herein by reference as if set forth at length.

216. Defendants actions of conspiring with J&J Defendants to hide the discounted/best price through purchases of unneeded data and shipments of free Drugs, J&J Defendants were able to avoid paying larger Medicaid rebates which constitutes the making of false claims to the State of Georgia and a violation of the State of Georgia pursuant to Georgia State False Medicaid Claims Act, Code of Georgia, Chptr. 4 of Title 49

WHEREFORE, Plaintiff requests that the Court enter an award in favor of Plaintiff and against the Defendant for all sums authorized under and pursuant to the State of Georgia pursuant to Georgia State False Medicaid Claims Act.

Count XXIV

Bartz, ex rel. the State of Montana pursuant to Montana State False Claims Act v. J&J Defendants, McKesson and Omnicare

217. The allegations of paragraph 1 through 214 are incorporated herein by

reference as if set forth at length.

218. Defendants actions of conspiring with J&J Defendants to hide the discounted/best price through purchases of unneeded data and shipments of free Drugs, J&J Defendants were able to avoid paying larger Medicaid rebates which constitutes the making of false claims to the State of Montana and a violation of the State of Montana pursuant to Mont. Code, CII. 465.

WHEREFORE, Plaintiff requests that the Court enter an award in favor of Plaintiff and against the Defendant for all sums authorized under and pursuant to the State of Montana pursuant to Montana False Claims Act.

Count XXV

Bartz, ex rel. the State of New York pursuant to New York False Claims Act v. J&J Defendants, McKesson and Omnicare

219. The allegations of paragraph 1 through 218 are incorporated herein by reference as if set forth at length.

220. Defendants actions of conspiring with J&J Defendants to hide the discounted/best price through purchases of unneeded data and shipments of free Drugs, J&J Defendants were able to avoid paying larger Medicaid rebates which constitutes the making of false claims to the State of New York and a violation of the State of New York pursuant to New York False Claims Act § 187 et seq.

WHEREFORE, Plaintiff requests that the Court enter an award in favor of Plaintiff and against the Defendant for all sums authorized under and pursuant to the State of New York pursuant to New York False Claims Act § 187 et seq..

Count XXVI

Bartz, ex rel. the State of Oklahoma pursuant to Oklahoma Medicaid False Claims Act v. J&J Defendants, McKesson and Omnicare

221. The allegations of paragraph 1 through 220 are incorporated herein by reference as if set forth at length.

222. Defendants actions of conspiring with J&J Defendants to hide the discounted/best price through purchases of unneeded data and shipments of free Drugs, J&J Defendants were able to avoid paying larger Medicaid rebates which constitutes the making of false claims to the State of Oklahoma and a violation of the State of Oklahoma pursuant to Oklahoma Medicaid False Claims Act effective November 1, 2007.

WHEREFORE, Plaintiff requests that the Court enter an award in favor of Plaintiff and against the Defendant for all sums authorized under and pursuant to the State of Oklahoma pursuant to Oklahoma Medicaid False Claims Act.

Count XXVII

Bartz, ex rel. the City of Chicago pursuant to Chicago False Claims Act v. J&J Defendants, McKesson and Omnicare

223. The allegations of paragraph 1 through 224 are incorporated herein by reference as if set forth at length.

224. Defendants actions of conspiring with J&J Defendants to hide the discounted/best price through purchases of unneeded data and shipments of free Drugs, J&J Defendants were able to avoid paying larger Medicaid rebates which constitutes the making of false claims to the City of Chicago and a violation of the City of Chicago False Claims Act pursuant to Chapter 1-21 et seq False Statement.

WHEREFORE, Plaintiff requests that the Court enter an award in favor of Plaintiff and against the Defendant for all sums authorized under and pursuant to the City of Chicago pursuant to the Chicago False Claims Act.

Count XVIII

Bartz, ex rel. the City of New York pursuant to Administrative Code §7-801 et eq v. J&J Defendants, McKesson and Omnicare

225. The allegations of paragraph 1 through 224 are incorporated herein by reference as if set forth at length.

226. Defendants actions of conspiring with J&J Defendants to hide the

discounted/best price through purchases of unneeded data and shipments of free Drugs. J&J Defendants were able to avoid paying larger Medicaid rebates which constitutes the making of false claims to the pursuant to Administrative Code §7-801 et eq

WHEREFORE, Plaintiff requests that the Court enter an award in favor of Plaintiff and against the Defendant for all sums authorized under and pursuant to the State of Michigan pursuant to Administrative Code §7-801 et eq

BEGELMAN & ORLOW, P.C.

DATED:

10-24-07

BY:


ROSS BEGELMAN, ESQUIRE
MARC M. ORLOW, ESQUIRE
Attorneys for Plaintiff