**UNITED STATES DISTRICT COURT**
**FOR THE**
**DISTRICT OF MASSACHUSETTS**

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| UNITED STATES OF AMERICA;<br>STATE OF CALIFORNIA;<br>STATE OF DELAWARE;<br>STATE OF FLORIDA;<br>STATE OF GEORGIA;<br>STATE OF HAWAII;<br>STATE OF ILLINOIS;<br>STATE OF INDIANA;<br>STATE OF LOUISIANA;<br>COMMONWEALTH OF MASSACHUSETTS;<br>STATE OF MICHIGAN;<br>STATE OF MONTANA;<br>STATE OF NEVADA;<br>STATE OF NEW HAMPSHIRE:<br>STATE OF NEW JERSEY;<br>STATE OF NEW MEXICO;<br>STATE OF NEW YORK;<br>STATE OF OKLAHOMA;<br>STATE OF RHODE ISLAND;<br>STATE OF TENNESSEE;<br>STATE OF TEXAS;<br>COMMONWEALTH OF VIRGINIA;<br>STATE OF WISCONSIN;<br>and THE DISTRICT OF COLUMBIA;<br><br>*EX REL.* JOSEPH PIACENTILE,<br><br>PLAINTIFF,<br><br>*v.*<br><br>FOREST LABORATORIES, INC.,<br><br>DEFENDANT. | **THIRD AMENDED COMPLAINT FILED UNDER SEAL PURSUANT TO 31 U.S.C. § 3730(b)(2)**<br><br>Civil Action No. 05-10201 (NMG) |

On behalf of the United States of America, and on behalf of the State of California, the State of Delaware, the State of Florida, the State of Georgia, the State of Hawaii, the State of

Illinois, the State of Indiana, the State of Louisiana, the Commonwealth of Massachusetts, State of Michigan, the State of Montana, the State of Nevada, the State of New Hampshire, the State of New Jersey, the State of New Mexico, the State of New York, the State of Oklahoma, the State of Rhode Island, the State of Tennessee, the State of Texas, the Commonwealth of Virginia, the State of Wisconsin, and the District of Columbia (collectively the "States"), Plaintiff and Relator Joseph Piacentile, M.D. ("Dr. Piacentile" or "Relator") files this *qui tam* Third Amended Complaint against Defendant Forest Laboratories, Inc. ( "Forest" or "Defendant") and alleges as follows:

## I. INTRODUCTION.

### A. Federal Law Claims.

1. This is an action to recover damages and civil penalties on behalf of the United States of America arising from Forest's conduct, including: (a) knowingly presenting or causing to be presented to the Government a false or fraudulent claim for payment or approval; and/or (b) knowingly making, using, or causing to be made or used false records or statements to get a false or fraudulent claim paid or approved by the Government, all in violation of the False Claims Act, 31 U.S.C. §§ 3729 *et seq.* (the "False Claims Act" or "FCA").

2. The false or fraudulent claims, statements and/or records at issue involve payments for Forest prescription drugs made by federal government-funded health insurance programs, such as the Federal Employees Health Benefits Program ("FEHBP"), the United States Military's health care plan for military personnel ("TRICARE"), and the Civilian Health and Medical Program of the Veterans Administration ("CHAMPVA"), by the federal government-funded assistance program Medicare, and by the federal and state government-funded assistance program Medicaid.

**B. State Law Claims.**

3. This is also an action to recover double and treble damages and civil penalties on behalf of the named States arising from Forest's conduct, including: (a) knowingly presenting or causing to be presented to the States a false or fraudulent claim for payment or approval; and/or (b) knowingly making, using, or causing to be made or used false records or statements to get a false or fraudulent claim paid or approved by the States, all in violation of each State's respective false claims act or similar statute. The false or fraudulent claims, statements and records at issue involve payments made by health insurance programs funded by these State governments, including Medicaid.

4. The statutes of the States under which Relator brings these related actions are the:

a. California False Claims Act, Cal. Gov't Code §§ 12650 *et seq.*;

b. Delaware False Claims and Reporting Act, Del. Code Ann. §§ 1201 *et seq.*;

c. Florida False Claims Act, Fla. Stat. §§ 68.081 *et seq.*;

d. Georgia False Medicaid Claims Act, Ga. Code Ann. §§ 49-4-168.1 *et seq.*;

e. Hawaii False Claims Act, Haw. Rev. Stat. §§ 661-21 *et seq.*;

f. Illinois Whistleblower Reward and Protection Act, 740 Ill. Comp. Stat. §§ 175/1 *et seq.*;

g. Indiana False Claims and Whistleblower Protection Act, Ind. Code §§ 5-11-5.5-1 *et seq.*;

h. Louisiana False Claims Act/Medical Assistance Programs Integrity Law, La. Rev. Stat. §§ 46:437.1 *et seq.*;

i. Massachusetts False Claims Law, Mass. Gen. Laws ch. 12 §§ 5A *et seq.*;

j. Michigan Medicaid False Claims Act, Mich. Comp. Laws §§ 400.601 *et seq.*;

k. Montana False Claims Act, Mont. Code Ann. §§ 17-8-401 *et seq.*;

l. Nevada False Claims Act, Nev. Rev. Stat. §§ 357.010 *et seq.*;

m. New Hampshire False Claims Act, N.H. Rev. Stat. Ann. § 167:61-b;

n. New Jersey False Claims Act, N.J. Stat. Ann. §§ 2A:32C-1 *et seq.*;

o. New Mexico Medicaid False Claims Act, N.M. Stat. Ann. §§ 27-14-1 *et seq.*;

p. New York False Claims Act, N.Y. Fin. Law §§ 187 *et seq.*;

q. Oklahoma Medicaid False Claims Act, 63 Okla. Stat. Ann. §§ 5053 *et seq.*;

r. The State False Claims Act (Rhode Island), R.I. Gen. Laws §§ 9-1.1-1 *et seq.*;

s. Tennessee Medicaid False Claims Act, Tenn. Code §§ 71-5-181 *et seq.*;

t. Texas Medicaid Fraud Prevention Law, Tex. Hum. Res. Code §§ 36.001 *et seq.*;

u. Virginia Fraud Against Taxpayers Act, Va. Code Ann. §§ 8.01-216.1,*et seq.*;

v. Wisconsin False Claims for Medical Assistance Law, Wisc. Stat. § 20.931; and

w. District of Columbia False Claims Act, D.C. Code §§ 2-308.03 *et seq.*

## II. SUMMARY OF THE ALLEGATIONS.

5. Starting in or about at least 1998, Forest routinely entered into arrangements with, and/or paid kickbacks to, physicians in order to illegally influence their diagnoses, prescription decisions, and/or billing protocols. All of this misconduct was designed and intended to induce physicians to prescribe Forest drugs rather than competing drugs, and thereby increase Forest's prescription-drug market share and its profits.

6. Forest provided physicians with lavish perks, including cash payments, tickets to theatre and sporting events, expensive dinners, conferences at expensive resorts, and family

vacations, in order to influence physician prescriptions of Forest drugs such as its antidepressant drug Celexa. Specifically, Forest targeted high-prescribing physicians and physicians who potentially could prescribe significant amounts of its products.

7. Forest's actions illegally moved market share to specific Forest drugs by inducing physicians to prescribe medications they otherwise would not have prescribed but for the receipt of kickbacks. As a result, Forest recognized enormous profits.

8. If the Government had been aware that drugs were prescribed as a result of such prohibited conduct, the Government would not have paid the claims submitted as a result of Forest's wrongdoing. Thus, Forest facilitated and caused false, fraudulent and improper billings that induced Medicare, Medicaid and other government-funded programs to pay millions of dollars in unqualified and/or inflated reimbursements.

9. Furthermore, by paying illegal kickbacks, Forest caused and/or induced physicians who sought reimbursement for Forest drugs from federal government-funded health insurance and assistance programs to file false, and/or fraudulent certifications, either express or implied, regarding compliance with the Anti-Kickback Act of 1986, 41 U.S.C. §§ 51 *et seq.* (the "Anti-Kickback Act"), the Medicare/Medicaid Anti-Kickback Statute, 42 U.S.C. §§ 1320a-7a & 7b(b) (the "Anti-Kickback Statute") and the Stark Law, 42 U.S.C. § 1395nn (the "Stark Law"), and/or applicable state statutes.

10. Hence, by and through its conduct, Forest knowingly caused presentment to the Government and the States of false or fraudulent claims for payment or approval, and/or caused the making or using of false or fraudulent records or statements to get false or fraudulent claims paid or approved by the federal Government, all in violation of 31 U.S.C. §§ 3729(a)(1) and (2) and applicable state statutes.

## III. JURISDICTION, VENUE AND SPECIAL REQUIREMENTS.

11. Pursuant to 28 U.S.C. § 1331, this District Court has original jurisdiction over the subject matter of this civil action since it arises under the laws of the United States, in particular, the False Claims Act. In addition, the FCA specifically confers jurisdiction upon the United States District Court. 31 U.S.C. § 3732(b).

12. Pursuant to 28 U.S.C. § 1367, this District Court has supplemental jurisdiction over the subject matter of the claims brought pursuant to the false claims acts of the States on the ground that the claims are so related to the claims within this Court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

13. This court has personal jurisdiction over the Defendant pursuant to 31 U.S.C. § 3732(a) because the FCA authorizes nationwide service of process and the Defendant has sufficient minimum contacts with the United States of America.

14. Venue is proper in this District pursuant to 31 U.S.C. § 3732(a) because the acts complained of herein occurred in the Commonwealth of Massachusetts within this judicial district.

15. In accordance with 31 U.S.C. § 3730(b)(2), the original Complaint and amended complaints have been filed *in camera* and will remain under seal for a period of at least 60 days and shall not be served on the Defendant until the Court so orders.

16. Pursuant to 31 U.S.C. § 3730(b)(2), the Relator has provided the Government and the States with a copy of the original Complaint and amended complaints and/or a written disclosure of substantially all material evidence and material information in his possession contemporaneous with the filing of the Complaint. Relator has complied with this provision by

serving copies of this Third Amended Complaint on Michael J. Sullivan, United States Attorney for the District of Massachusetts, and on the Honorable Michael Mukasey, Attorney General for the United States of America.

## IV. THE PARTIES.

17. Dr. Piacentile resides in the state of New Jersey and is a licensed, non-practicing physician involved in the healthcare industry.

18. Dr. Piacentile has personal knowledge of the Defendant's practices as a result of an extensive undercover investigation he personally conducted in which he secured admissions from physicians and pharmaceutical sales representatives regarding the allegations set forth herein.

19. Relator is not aware of any "public disclosure" in connection with the false claims, as defined in 31 U.S.C. § 3730(e)(4)(A), alleged in this Complaint.. Even if any public disclosures are found to have occurred, this Court has jurisdiction because Relator is an "original source" under the FCA on the grounds that he has knowledge which is both direct and independent of any public disclosures to the extent they may exist. In particular, Relator's knowledge was acquired in the course of conducting an undercover investigation of Forest, including personal observation and private conversations with physicians and sales representatives. Relator voluntarily provided the federal government the information in his possession prior to the filing of this lawsuit.

20. Defendant Forest is a Delaware corporation and its principal executive offices are located in New York City, New York. Forest and its subsidiaries develop, manufacture and sell both branded and generic drug products which require a physician's prescription, as well as non-prescription pharmaceutical products sold over-the-counter. Forest reported that its most

important United States products consisted of branded ethical drug specialties marketed directly, or "detailed," to physicians by sales representatives for Forest Pharmaceuticals, Forest Therapeutics, and Forest Specialty Sales. The company reported that it emphasized increased detailing to physicians of the branded ethical drugs it believed had the most potential for growth, as well as the introduction of new products acquired from other companies or developed by Forest.

21. Forest recognized increasing financial success during the time period involved in this case. For the fiscal year ending March 31, 1999, Forest's U.S. net sales were $509,222,000, and then grew to $836,191,000 for the year ending March 31, 2000, $1,138,156,000 for the year ending March 31, 2001, $1,531,100,000 for the year ending March 31, 2002, and $2,167,021,000 for the year ending March 31, 2003.

22. Since its launch in 1998, Forest aggressively promoted Celexa, resulting in an enormously successful drug, which grew in U.S. net sales every year from 1998 through 2002. For the year ending March 31, 1999, Forest's U.S. net sales of Celexa were approximately $86,567,000, and then grew approximately 500% to $409,733,590 for the year ending March 31, 2000, $694,275,160 for the year ending March 31, 2001, and $1,056,459,000 for the year ending March 31, 2002. Over this time period, Celexa represented Forest's greatest source of income. For the years ending March 31, 1999, 2000, 2001, and 2002 Celexa represented 17%, 49%, 61%, and 69% of Forest's net sales, respectively.

## V. GOVERNING LAWS, REGULATIONS AND CODES OF CONDUCT.

### A. The False Claims Act.

23. Originally enacted in 1863, the FCA was substantially amended in 1986 by the False Claims Amendments Act. The 1986 amendments enhanced the Government's ability to

recover losses sustained as a result of fraud against the United States.

24. The False Claims Act imposes liability upon any person who, "knowingly presents, or causes to be presented [to the Government] a false or fraudulent claim for payment or approval," or "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." 31 U.S.C. § 3729(a)(1), (2). Any person found to have violated these provisions is liable for a civil penalty of up to $11,000 for each such false or fraudulent claim, plus three times the amount of the damages sustained by the Government.

25. In general, the FCA imposes liability where the conduct is merely "in reckless disregard of the truth or falsity of the information" and further clarifies that "no proof of specific intent to defraud is required." 31 U.S.C. § 3729(b).

26. The FCA also broadly defines a "claim" as one that "includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded." 31 U.S.C. § 3729(c).

27. The FCA empowers private persons having information regarding a false or fraudulent claim against the Government to bring an action on behalf of the Government and to share in any recovery. The complaint must be filed under seal without service on any defendant. The complaint remains under seal while the Government conducts an investigation of the allegations in the complaint and determines whether to intervene in the action. 31 U.S.C. § 3730(b).

28. In this action, the Defendant failed to comply with anti-kickback statutes and regulations material to its drugs' qualifications for federal and State reimbursements.

**B. Federal Government-Funded Health Assistance Programs.**

**1. Medicare.**

**a. Generally.**

29. Medicare is a federal government-funded medical assistance program, primarily benefiting the elderly, that was created in 1965 when Congress enacted Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395 *et seq.* Medicare is administered by the federal Centers for Medicare and Medicaid Services ("CMS"), known prior to 2001 as the Health Care Financing Administration, which is a division of the U.S. Department of Health and Human Services ("HHS").

**b. The Stark Law's Prohibition Against Certain Financial Relationships.**

30. Under the Stark Law section of Medicare, if a physician has a direct or indirect financial relationship with an entity (*e.g.*, a drug manufacturer), then "the physician may not make a referral to the entity for the furnishing of designated health services for which payment otherwise may be made under this subchapter." 42 U.S.C. § 1395nn(a) and 42 C.F.R. § 411.353. The implementing regulations specifically define "designated health services" ("DHS") to include "[o]utpatient prescription drugs." 42 C.F.R. § 411.351 ("Definitions"). Hence, if a physician has a direct or indirect financial relationship with a drug manufacturer, the physician may not prescribe that manufacturer's drugs to patients covered by federally-funded healthcare programs.

31. The Stark Law incorporates many of the same concepts and terminology set forth in the Anti-Kickback Statute, such as prohibiting compensation to a physician that takes into

account the "volume or value" of referrals to the entity.

32. The Stark Law also specifically incorporates portions of the Anti-Kickback Statute (*e.g.*, 42 U.S.C. § 1320a-7a concerning civil monetary penalties) and also imposes its own civil penalties of $15,000 for each false claim caused to be presented which is found to be the product of an improper financial arrangement. 42 U.S.C. § 1395nn(g)(3). In addition, the law heavily targets the entities (*e.g.*, drug manufacturers) dealing with physicians and imposes a $100,000 civil penalty upon the entity "for each such arrangement or scheme." 42 U.S.C. § 1395nn(g)(4).

33. The Government has deemed such misconduct to be material to its decision to pay healthcare claims, in part through its requirement that providers certify compliance with this law as a condition of payment under, and participation in, Government healthcare programs. If the Government had been aware that drugs were prescribed as a result of such prohibited conduct, the Government would not have paid the claims submitted as a result of Forest's wrongdoing.

**2. Medicaid.**

**a. Generally.**

34. The Medicaid program was also created in 1965 when Congress enacted Title XIX of the Social Security Act to expand the nation's medical assistance program to cover the medically needy aged, the blind, the disabled, and needy families with dependent children. 42 U.S.C. §§ 1396-1396v. The Medicaid program is funded by both federal and state monies, (collectively referred to as "Medicaid Funds"), with the federal contribution computed separately for each state. 42 U.S.C. §§ 1396b; 1396d(b). At the federal level, Medicaid is administered by CMS. Medicaid is used by 49 states, each of which has a state Medicaid agency to administer the program.

35. Each state is permitted, within certain parameters, to design its own medical assistance plan, subject to approval by the HHS. Among other forms of medical assistance, the states are permitted to provide medical assistance from the Medicaid Funds to eligible persons for inpatient and outpatient prescription drugs. 42 U.S.C. § 1396a(10)(A), 1396d(a)(12).

**b. "Medically Accepted Indication" Precondition for Reimbursement of Prescription Drugs.**

36. The Medicaid program reimburses only for "covered outpatient drugs" for which a rebate is paid by the drug's manufacturer. 42 U.S.C. § 1396b(i)(10). The term "covered outpatient drug" requires use for a "medically accepted indication." 42 U.S.C § 1396r-8(k)(3). A "medically accepted indication" includes only those indications approved by the FDA, and those "off-label" uses that are "supported by one or more citations included or approved for inclusion in any of the compendia" listed in the statute. 42 U.S.C. § 1396r-8(k)(6); *see also* 42 U.S.C. § 1396r-8(g)(1)(B)(i) (identifying the compendia to be consulted).

37. Each state Medicaid program has the power to exclude any drug from coverage if the prescription is not issued for a "medically accepted indication." 42 U.S.C. § 1396r-8(d)(1)(B).

**3. General Provisions Applicable to Both Medicare and Medicaid.**

**a. Prohibitions Against Claims for Services that are Not Medically Necessary or are Otherwise False or Fraudulent.**

38. Federal law prohibits a person from knowingly presenting or causing to be presented to Medicare or Medicaid a claim for a medical or other item or service that the person knows or should know was "not provided as claimed," a claim for such items or services that is "false or fraudulent," or a claim that is "for a pattern of medical or other items or services that [the] person knows or should know are not medically necessary." 42 U.S.C. §§ 1320a-

7a(a)(1)(A), (B) & (E). Violation of this section is subject to a civil monetary penalty of $10,000 for each item or service, plus damages measured as three times the amount of each claim submitted, and exclusion from further participation in the programs.

**b. The Anti-Kickback Statute Ensures Integrity of Underlying Conduct.**

39. The Anti-Kickback Statute prohibits kickbacks by providing a civil monetary penalty of $50,000 for each act by an individual or entity that violates 42 U.S.C. § 1320a-7a(a)(7), which defines "[i]mproperly filed claims" as "[a]ny person (including an organization, agency, or other entity . . . that commits an act described in paragraph (1) or (2) of section 1320a-7b(b) of this title." The statute defines "illegal remuneration" (*i.e.*, kickbacks) as:

> (1) whoever knowingly and willfully *solicits or receives* any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind –
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> * * *
>
> (B) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program,
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> * * *
>
> (2) whoever knowingly and willfully *offers or pays* any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person –
>
> * * *
>
> (B) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program,

42 U.S.C. § 1320a-7b(b) (emphasis added). The offense is also a felony punishable by fines of up to $25,000 and imprisonment for up to five years. 42 U.S.C. § 1320a-7b(b).

40. In accordance with the Anti-Kickback Statute, Medicare and Medicaid regulations directly prohibit any provider from receiving remuneration paid with the intent to induce

referrals that take into account the "volume or value" of any referrals or business generated. *See* 42 C.F.R. § 1001.952(f). Such remuneration amounts to a kickback and can increase the expenditures paid by Government-funded health benefit programs by leading to overutilization of prescription drugs and inducing medically unnecessary and excessive reimbursements. Kickbacks also effectively reduce patients' healthcare choices, because unscrupulous (or unknowing) physicians steer their patients to various drug products based on the physicians' own financial interests rather than the patients' medical needs.

41. The Anti-Kickback Statute contains statutory exceptions and regulatory "safe harbors" excluding from liability certain types of conduct. *See* 42 U.S.C. § 1320a-7b(b)(3) and 42 C.F.R. § 1001.952. None of these statutory exceptions or regulatory safe harbors applies to Defendant's conduct in this matter.

42. The Medicare and Medicaid Patient and Program Protection Act of 1987 authorizes the exclusion of an individual or entity from participation in the Medicare and Medicaid programs if it is determined that the party has violated the Anti-Kickback Statute. In addition, the Balanced Budget Act of 1997 amended that Act to impose administrative civil monetary penalties for Anti-Kickback Statute violations: $50,000 for each act and an assessment of not more than three times the amount of remuneration offered, paid, solicited, or received, without regard to whether a portion of such remuneration was offered, paid, solicited, or received for a lawful purpose. *See* 42 U.S.C. § 1320a-7a(a)(7).

43. The Government has deemed such misconduct to be material to its decision to pay healthcare claims, in part through its requirement that providers certify compliance with this law as a condition of payment under, and participation in, Government healthcare programs. If the Government had been aware that drugs were prescribed as a result of such prohibited conduct,

the Government would not have paid the claims submitted as a result of Forest's wrongdoing.

### C. Direct Federal Health Insurance Plans and Drug Pricing Contracts.

#### 1. Direct Federal Health Insurance Plans.

##### a. TRICARE/CHAMPVA.

44. TRICARE, administered by the Department of Defense ("DoD"), is the United States military's health care system, designed to maintain the health of active duty service personnel, provide health care during military operations, and offer health care to non-active duty beneficiaries, including dependents of active duty personnel and military retirees and their dependents. TRICARE is a triple-option benefit program designed to give beneficiaries a choice between health maintenance organizations, preferred provider organizations and fee-for-service benefits. Five managed care support contractors create networks of civilian health care providers. Military prescription drug benefits are provided through three programs: military treatment facility outpatient pharmacies, TRICARE contractor retail pharmacies, and a national contractor's mail-order service.

45. Similarly, CHAMPVA, administered by the Department of Veterans Affairs (the "VA"), provides healthcare coverage to qualified families of deceased or 100% disabled veterans.

##### b. Federal Employees Health Benefits Plan ("FEHBP").

46. The FEHBP provides health insurance coverage for nearly 8.7 million federal employees, retirees, and their dependents. The FEHBP is a collection of individual health care plans, including the Blue Cross and Blue Shield Association, Government Employees Hospital Association, and Rural Carrier Benefit Plan. FEHBP plans are managed by the Office of Personnel Management and collectively pay more than $2 billion annually in prescription drug

benefits.

**2. Federal Agencies Directly Purchasing Drugs.**

**a. The Department of Veterans Affairs.**

47. The VA maintains a system of medical facilities that contracts for the purchase of prescription drugs, which are then administered and/or dispensed to beneficiaries directly by VA facilities, or through mail order or retail pharmacies.

48. The DoD negotiates independent contracts with drug manufacturers, including Forest, for the purchase of prescription drugs, which are provided to approximately 8 million active and retired military personnel and their families via TRICARE managed care contractor retail pharmacies, mail order pharmacies, military treatment facility outpatient pharmacies, and DoD-operated medical care facilities.

**3. The Anti-Kickback Act.**

49. Parties who contract or subcontract with the federal government are subject to the provisions of the Anti-Kickback Act. That law renders it impermissible for any person "to provide, attempt to provide, or offer to provide any kickback," and defines 'kickback' to mean "any money, fee, commission, credit, gift, gratuity, *thing of value*, or compensation of any kind which is provided, directly or indirectly, to any prime contractor, prime contractor employee, subcontractor, or subcontractor employee *for the purpose of improperly obtaining or rewarding favorable treatment* in connection with a prime contract or in connection with a subcontract relating to a prime contract." 41 U.S.C. §§ 52-53 (emphasis added). This broad language reflects Congress's intent to prohibit even *attempts* to offer or provide a kickback, and to include a wide array of benefits and activities within its scope.

50. The Government has deemed such misconduct to be material to its decision to pay

healthcare claims, in part through its requirement that providers certify compliance with this law as a condition of payment under, and participation in, Government healthcare programs. If the Government had been aware that drugs were prescribed as a result of such prohibited conduct, the Government would not have paid the claims submitted as a result of Forest's wrongdoing.

**D. American Medical Association and American College of Physicians Ethics Policies.**

51. In or about December 1990, responding to drug companies' providing "increasingly lavish" gifts and payments to doctors in connection with seminars, conferences, and sales representative visits, the American Medical Association ("AMA") adopted an Ethical Opinion regarding "Gifts to Physicians from Industry." The policy stated that "[t]o avoid the acceptance of inappropriate gifts, physicians should observe the following guidelines:

> (1) Any gifts accepted by physicians individually should primarily entail a benefit to patients and should not be of substantial value. . . Cash payments should not be accepted.
>
> (2) Individual gifts of minimal value are permissible as long as the gifts are related to the physician's work (*e.g.*, pens and notepads).
>
> * * *
>
> (7) No gifts should be accepted if there are strings attached. For example, physicians should not accept gifts if they are given in relation to the physician's prescribing practices. In addition, when companies underwrite medical conferences or lectures other than their own, responsibility for and control over the selection of content, faculty, educational methods, and materials should belong to the organizers of the conferences or lectures.

52. The AMA's Ethical Opinion regarding "Prescribing and Dispensing Drugs and Devices" required doctors to "prescribe drugs . . . solely upon medical considerations and patient need and reasonable expectation, of the effectiveness of the drug . . . or the particular patient." The Opinion expressly prohibited physicians from accepting "any kind of payment or compensation from a drug company . . . for prescribing its products."

53. Similarly, the American College of Physicians' Ethics Manual ("Ethics Manual") recognized "drug industry gifts" as having potentially negative influence on clinical judgment and noted that it was "unethical for a physician to receive a commission or a kickback from anyone, including a company that manufactures or sells . . . medications that are used in the care of the physician's patients."

## VI. SPECIFIC ALLEGATIONS.

### A. The Pharmaceutical Industry Spends Huge Sums to Persuade Doctors to Prescribe Their Products.

54. Spending for prescription drugs tripled during the decade immediately preceding the filing of the original complaint in this action, increasing from $37.7 billion in 1990 to $121.6 billion in 1999.

55. The Office of Technology Assessment reported that promotion and physician kickbacks constituted 22.5% of all pharmaceutical sales. Based on this figure, the pharmaceutical industry spent over $27 billion on promotional activities in 1999. While such significant costs undoubtedly fueled the rising cost of prescription drugs, the pharmaceutical industry ignored the effect of such marketing expenses. Amounts spent on kickbacks and marketing activities and their significant contribution to the high cost of prescription drugs were the "dirty little secret" of the pharmaceutical industry.

56. While ignoring marketing costs, the pharmaceutical industry, through the Pharmaceutical Research and Manufacturers of America ("PhRMA"), pointed to the high cost of research and development ("R&D") as one of the primary reasons for the high cost of prescription drugs. PhRMA estimated that the pharmaceutical industry spent 20.8% of sales, or $20.1 billion, on pharmaceutical R&D in 1999.

57. PhRMA stated:

> Just as the cost of a textbook is not determined by the cost of the paper of its pages and the cost of surgery has little to do with the price of the surgeon's scalpel, the cost of a medicine is not simply the cost of its ingredients. Like other products that result from research and creativity, medicines are really made of knowledge — knowledge that prevents and cures disease and relieves suffering.
>
> The knowledge needed to discover and develop new medicines does not come cheap. Discovering, developing, testing, and gaining regulatory approval for new medicines is expensive, time consuming and risky.

58. Although pharmaceutical manufacturers' marketing and promotion activities exceeded their R&D costs, neither PhRMA nor the Defendant identified the high cost of marketing as one of the reasons for the high cost of prescription drugs.

59. At the time of the original complaint's filing, pharmaceutical companies employed almost 60,000 sales representatives or more than one for every eleven physicians. In 1998, drug representatives made 59 million visits — or "details" — to physician offices. Forty-six percent of physicians were reporting that drug representatives were "moderately to very important" in influencing their prescribing habits.

60. American Medical Association ("AMA") policy states that "[t]o avoid the acceptance of inappropriate gifts," physicians should observe the following guidelines:

> (1) Any gifts accepted by physicians individually should primarily entail a benefit to patients and should not be of substantial value. . . . Cash payments should not be accepted.
>
> (2) Individual gifts of minimal value are permissible as long as the gifts are related to the physician's work (e.g., pens and notepads).
>
> (3) The Council on Ethical and Judicial Affairs defines a legitimate "conference" or "meeting" as any activity, held at an appropriate location where, (a) the gathering is primarily dedicated, in both time and effort, to promoting objective scientific and educational activities and discourse (one or more educational presentation(s) should be the highlight of the gathering, and (b) the main incentive for bringing attendees together is to further their knowledge on the topic(s) being presented. An appropriate

disclosure of financial support or conflict of interest should be made.

* * *

(5) Subsidies from industry should not be accepted directly or indirectly to pay for the costs of travel, lodging, or other personal expenses of physicians attending conferences or meetings, nor should subsidies be accepted to compensate for the physicians' time. Subsidies for hospitality should not be accepted outside of modest meals or social events held as a part of a conference or meeting. It is appropriate for faculty at conferences or meetings to accept reasonable honoraria and to accept reimbursement for reasonable travel, lodging, and meal expenses. It is also appropriate for consultants who provide genuine services to receive reasonable compensation and to accept reimbursement for reasonable travel, lodging, and meal expenses. Token consulting or advisory arrangements cannot be used to justify the compensation of physicians for their time or their travel, lodging, and other out-of-pocket expenses.

(6) Scholarship or other special funds to permit medical students, residents, and fellows to attend carefully selected educational conferences may be permissible as long as the selection of students, residents, or fellows who will receive the funds is made by the academic or training institution. Carefully selected educational conferences are generally defined as the major educational, scientific or policymaking meetings of national, regional or specialty medical associations.

(7) No gifts should be accepted if there are strings attached. For example, physicians should not accept gifts if they are given in relation to the physician's prescribing practices. In addition, when companies underwrite medical conferences or lectures other than their own, responsibility for and control over the selection of content, faculty, educational methods, and materials should belong to the organizers of the conferences or lectures.

American Medical Association, Council on Ethical and Judicial Affairs, "Gifts to Physicians from Industry," AMA Ethical Opinion § 8.061.

61. AMA policy also sets ethical guidelines for physicians attending continuing medical education ("CME") conferences. AMA policy states that "[t]he educational value of the CME conference or activity must be the primary consideration in the physician's decision to attend or participate. Though amenities unrelated to the educational purpose of the activity may

play a role in the physician's decision to participate, this role should be secondary to the educational content of the conference." American Medical Association, Council on Ethical and Judicial Affairs, "Continuing Medical Education," AMA Ethical Opinion § 9.011(2). "Attending promotional activities put on by industry or their designees is not unethical as long as the conference conforms to Opinion 8.061: Gifts to Physicians from Industry and is clearly identified as promotional to all participants." *Id.* § 9.011(4).

62. The Council on Ethical and Judicial Affairs explained that, "[w]hen companies schedule their own conferences at resorts and pay for physicians and their spouses to attend for a weekend that includes only a few hours of lectures and many hours of recreation, lavish meals, and expensive entertainment, it is difficult to view the conference as service a legitimate educational purpose." Report of the Council on Ethical and Judicial Affairs (Dec. 3, 1990) (explaining AMA Ethical Opinion § 8.061).

63. AMA policy also prohibits physicians from accepting "any kind of payment or compensation from a drug company . . . for prescribing its products." AMA Ethical Opinions § 6.04 (Fee Splitting); *see also* AMA Ethical Opinion § 6.02 (Fee Splitting).

64. The American College of Physicians' Ethics Manual recognizes "drug industry gifts" as having potentially negative influence on clinical judgment and notes that it is "unethical for a physician to receive a commission or a kickback from anyone, including a company that manufactures or sells . . . medications that are used in the care of the physician's patients." Ethics Manual, Financial Conflicts of Interest.

65. These ethical guidelines are well intended, attempting to avoid the conflicts of interest that invariably result when kickbacks are paid by drug companies to doctors who have the power to prescribe their products. In fact, studies have found that physicians who accept all-

expense paid trips to resorts to attend pharmaceutical symposia alter their prescribing patterns significantly in the period after the symposium, often tripling the number of prescriptions they write for the drug that was the subject of the symposium.

**B. Forest Engaged in Aggressive Kickback Schemes To "Buy" Physician Loyalty.**

66. In addition to his personal experience with Defendant's practices, Relator Piacentile conducted a significant amount of independent investigation prior to filing this action. He met with numerous people, including physicians who have received kickbacks.

67. Dr. Piacentile uncovered information showing that Forest developed a scheme to promote its antidepressant drug Celexa, which consisted of numerous components intended to improperly influence physicians to prescribe the drug. For example, Forest required a minimum number of weekly meals with physicians and a minimum amount of money to be spent by its sales representatives entertaining high-prescribing physicians, and rewarded high-prescribing physicians with lavish perks, including cash, dinners, conferences at expensive resorts -- often dubbed as "consultants' meetings," "lunch & learns," speaker programs, or CME conferences-- and family vacations. The following are some representative examples of such kickbacks:

68. Forest took a group of 20-30 physicians and their guests to a dinner and then to a George Carlin concert to promote Celexa.

69. In February 1999, Forest hosted an all-expense paid conference in Atlanta to promote Celexa.

70. In February 2000, Forest hosted a Celexa dinner and conference at the Doral Park Country Club in Miami, Florida. About 70 physicians attended and received an additional $1,000 honoraria for their participation.

71. On June 17, 2000, Forest planned a getaway for physicians and their families to

Lake George, New York, including a trip to the Great Escape Amusement Park.

72. In or about September of 2000, Forest provided select physicians with a number of perks to promote Celexa, including a $300 "Book & Dash" honorarium, Summit bookstore gift certificates, and an all-expense paid Manhattan fishing trip.

73. On December 16, 2000, Forest reserved the entire second floor of the Carriage House restaurant, and hosted a "lecture" dinner for a group of 10 to 12 physicians and their guests. After dinner, Forest brought its guests to a production of "The Nutcracker" at the Paper Mill Playhouse in Millburn, New Jersey. Some of the doctors skipped the "lecture" and met the group at the playhouse. After the show, Forest treated the participants to dessert and provided them with Celexa umbrellas.

74. Forest knowingly paid these kickbacks to physicians in order to increase its market share and enrich itself. By paying kickbacks to physicians, Forest violated applicable statutes and regulations, including, but not limited to, the Anti-Kickback Act, the Anti-Kickback Statute, the Stark Law, and the False Claims Act. In violating the law, Forest encouraged over-utilization of potentially unnecessary prescription drugs by doctors, induced excessive payments from government-funded health insurance programs, and undermined physicians' and patients' freedom to exercise judgment and choose appropriate drug therapies, which created the potential for patient harm, but generated additional income for Forest.

75. The Government has deemed such misconduct to be material to its decision to pay healthcare claims, in part through its requirement that providers certify compliance with those laws as a condition of payment under, and participation in, Government healthcare programs. If the Government had been aware that drugs were prescribed as a result of such prohibited conduct, the Government would not have paid the claims submitted as a result of Forest's

wrongdoing.

76. Furthermore, Forest did not report these payments or benefits to Medicare, Medicaid, or other government-funded programs. Thus, Forest facilitated and caused each recipient health care provider to falsely certify, either expressly or impliedly, that it had complied with the aforesaid laws and was qualified to participate in Medicare, Medicaid, and other government-funded programs and, in particular, qualified to receive reimbursements thereunder, in violation of law.

77. As a result, Government-funded health insurance programs paid millions of dollars in reimbursements for Forest prescription drugs that were prescribed by physicians, in part, because of the payment of unlawful kickbacks by Forest.

## VII. CLAIMS FOR RELIEF.

### FIRST CAUSE OF ACTION

**(False Claims Act: Presentation of False Claims)**
**(31 U.S.C. § 3729(a)(1))**

78. Relator repeats and incorporates by reference the allegations contained in Paragraphs 1 through 77 of this Amended Complaint as if fully set forth herein.

79. As more particularly set forth in the foregoing paragraphs, by virtue of the acts alleged herein the Defendant knowingly presented or caused to be presented to officers or employees of the United States Government false or fraudulent claims for payment or approval in violation of 31 U.S.C. § 3729(a)(1).

### SECOND CAUSE OF ACTION

**(False Claims Act: Making or Using False Record or Statement to Cause Claim to be Paid)**
**(31 U.S.C. § 3729(a)(2))**

80. Relator repeats and incorporates by reference the allegations contained in

Paragraphs 1 through 79 of this Amended Complaint as if fully set forth herein.

81. As more particularly set forth in the foregoing paragraphs, by virtue of the acts alleged herein the Defendant knowingly made, used, or caused to be made or used false records or statements to get false or fraudulent claims paid or approved by the government in violation of 31 U.S.C. § 3729(a)(2).

## THIRD CAUSE OF ACTION

### (False or Fraudulent Claims That were the Product of Violations of the Anti-Kickback Act)

82. Relator repeats and incorporates by reference the allegations contained in Paragraphs 1 through 81 of this Amended Complaint as if fully set forth herein.

83. By engaging in the conduct described in the foregoing paragraphs, Defendant violated 41 U.S.C. §§ 52-53.

84. Defendant knowingly caused physicians, other healthcare providers and/or beneficiaries to present claims to the United States Government and to Medicaid that were the product of the payment of the above-described kickbacks. The payment of a kickback to induce a prescription constitutes a "thing of value . . . for the purpose of improperly obtaining or rewarding favorable treatment," which was designed to and in fact did increase the level of business in violation of the Anti-Kickback Act. 41 U.S.C. § 52.

85. Forest did not report these payments to Medicare, Medicaid or other government-funded programs. Thus, Forest facilitated and caused each recipient health care provider to falsely certify, either expressly or impliedly, that it had complied with the aforesaid laws and was qualified to participate in Medicare, Medicaid, and other government-funded programs and, in particular, qualified to receive reimbursements thereunder.

86. As a result of the conduct set forth in this cause of action, the Government

suffered harm as a result of paying and reimbursing for pharmaceuticals which, had the Government known such pharmaceuticals were prescribed as a result of kickbacks, the Government would not otherwise have paid for and/or reimbursed.

## FOURTH CAUSE OF ACTION

**(False or Fraudulent Claims That were the Product of Violations of the Anti-Kickback Statute)**

87. Relator repeats and incorporates by reference the allegations contained in Paragraphs 1 through 86 of this Amended Complaint as if fully set forth herein.

88. By engaging in the conduct described in the foregoing paragraphs, Defendant violated 42 U.S.C. §§ 1320a-7a.

89. Defendant knowingly caused physicians and other healthcare providers and beneficiaries to present claims to the United States Government and to Medicaid that were the product of the payment of the above-described kickbacks, which constitute remuneration to increase the level of business in violation of 42 U.S.C. § 1320a-7a(a)(7) which incorporates by reference 42 U.S.C. § 1320a-7b(b)(1)&(2), and for which Defendant is liable for a civil penalty of $50,000 for each act that violated 42 U.S.C. § 1320a-7a(a)(7), pursuant to 42 U.S.C. § 1320a-7a(a).

90. Forest did not report these payments to Medicare, Medicaid or other government-funded programs. Thus, Forest facilitated and caused each recipient health care provider to falsely certify, either expressly or impliedly, that it had complied with the aforesaid laws and was qualified to participate in Medicare, Medicaid and other government-funded programs and, in particular, qualified to receive reimbursements thereunder.

91. As a result of the conduct set forth in this cause of action, the Government suffered harm as a result of paying and reimbursing for pharmaceuticals which, had the

Government known such pharmaceuticals were prescribed as a result of kickbacks or other prohibited forms of remuneration, the Government would not otherwise have paid for and/or reimbursed.

**FIFTH CAUSE OF ACTION**

**(False or Fraudulent Claims That Were the Product of Violations of the Stark Law)**

92. Relator repeats and incorporates by reference the allegations contained in Paragraphs 1 through 91 of this Amended Complaint as if fully set forth herein.

93. By engaging in the conduct described in the foregoing paragraphs, Defendant violated the Stark Law, codified at 42 U.S.C. § 1395nn and further implemented at 42 C.F.R. §§ 411.350 *et seq.*

94. Defendant had a "compensation arrangement" with physicians and knowingly caused the physicians to "make a referral to [Defendant] for the furnishing of designated health services for which payment otherwise may be made under this subchapter," in violation of 42 U.S.C. § 1395nn(a) and 42 C.F.R. § 411.353, and for which Defendant is liable for a civil penalty of $15,000 for each such claim, pursuant to 42 U.S.C. § 1395nn(g)(3).

95. Defendant knowingly entered into improper arrangements or schemes with physicians in violation of 42 U.S.C. § 1395nn(a) and 42 C.F.R. § 411.353, and for which Defendant is liable for a civil penalty of $100,000 "for each such arrangement or scheme," pursuant to 42 U.S.C. § 1395nn(g)(4).

96. Forest did not report these payments to Medicare, Medicaid or other government-funded programs. Thus, Forest facilitated and caused each recipient health care provider to falsely certify, either expressly or impliedly, that it had complied with the aforesaid laws and was qualified to participate in Medicare, Medicaid and other government-funded programs and, in

particular, qualified to receive reimbursements thereunder.

97. As a result of the conduct set forth in this cause of action, the Government suffered harm as a result of paying and reimbursing for pharmaceuticals which, had the Government known such pharmaceuticals were prescribed as a result of kickbacks or other prohibited forms of remuneration, the Government would not otherwise have paid for and/or reimbursed.

## SIXTH CAUSE OF ACTION

**(California False Claims Act)**
**(Cal. Gov't Code §§ 12650 *et seq.*)**

98. Relator repeats and incorporates by referenee the allegations contained in Paragraphs 1 through 97 of this Amended Complaint as if fully set forth herein.

99. By virtue of the acts described above, Defendant "[k]nowingly present[ed] or cause[d] to be presented to an officer or employee of the state or of any political subdivision thereof, a false claim for payment or approval," in violation of Cal. Gov't Code § 12651(a)(1).

100. By virtue of the acts described above, Defendant "[k]nowingly ma[de], use[d], or cause[d] to be made or used a false record or statement to get a false claim paid or approved by the state or by any political subdivision," in violation of Cal. Gov't Code § 12651(a)(2).

101. The California State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendant, paid and continues to pay claims that would not have been paid but for the acts and/or conduct of Defendant as alleged herein.

102. By reason of the Defendant's acts, the State of California has been damaged, and continues to be damaged, in a substantial amount to be determined at trial.

103. Pursuant to Cal. Gov't Code § 12651(a), the State of California is entitled to three

times the amount of actual damages plus the maximum penalty of $10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendant.

## SEVENTH CAUSE OF ACTION

**(Delaware False Claims And Reporting Act)**
**(Del. Code Ann. §§ 1201 *et seq.*)**

104. Relator repeats and incorporates by reference the allegations contained in Paragraphs 1 through 97 of this Amended Complaint as if fully set forth herein.

105. By virtue of the acts described above, Defendant "[k]nowingly present[ed], or cause[d] to be presented, directly or indirectly, to an officer or employee of the Government a false or fraudulent claim for payment or approval," in violation of Del. Code Ann. § 1201(a)(1).

106. By virtue of the acts described above, Defendant "[k]nowingly ma[de], use[d], or cause[d] to be made or used, directly or indirectly, a false record or statement to get a false or fraudulent claim paid or approved," in violation of Del. Code Ann. § 1201(a)(2).

107. The Delaware State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendant, paid and continues to pay claims that would not have been paid but for the acts and/or conduct of Defendant as alleged herein.

108. By reason of the Defendant's acts, the State of Delaware has been damaged, and continues to be damaged, in a substantial amount to be determined at trial.

109. Pursuant to Del. Code Ann. § 1201(a), the State of Delaware is entitled to three times the amount of actual damages plus the maximum penalty of $11,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendant.

## EIGHTH CAUSE OF ACTION

**(Florida False Claims Act)**
**(Fla. Stat. §§ 68.081 *et seq.*)**

110. Relator repeats and incorporates by reference the allegations contained in Paragraphs 1 through 97 of this Amended Complaint as if fully set forth herein.

111. By virtue of the acts described above, Defendant "[k]nowingly present[ed] or cause[d] to be presented to an officer or employee of an agency a false or fraudulent claim for payment or approval," in violation of Fla. Stat. § 68.082(2)(a).

112. By virtue of the acts described above, Defendant "[k]nowingly ma[de], use[d], or cause[d] to be made or used a false record or statement to get a false or fraudulent claim paid or approved by an agency," in violation of Fla. Stat. § 68.082(2)(b).

113. The Florida State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendant, paid and continues to pay claims that would not have been paid but for the acts and/or conduct of Defendant as alleged herein.

114. By reason of the Defendant's acts, the State of Florida has been damaged, and continues to be damaged, in a substantial amount to be determined at trial.

115. Pursuant to Fla. Stat. § 68.082(2), the State of Florida is entitled to three times the amount of actual damages plus the maximum penalty of $11,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendant.

## NINTH CAUSE OF ACTION

**(Georgia False Medicaid Claims Act)**
**(Ga. Code Ann. §§ 49-4-168.1, *et seq.*)**

116. Relator repeats and incorporates by reference the allegations contained in Paragraphs 1 through 97 of this Amended Complaint as if fully set forth herein.

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

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

119. The Georgia State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendant, paid and continues to pay claims that would not have been paid but for the acts and/or conduct of Defendant as alleged herein.

120. By reason of the Defendant's acts, the State of Georgia has been damaged, and continues to be damaged, in a substantial amount to be determined at trial.

121. Pursuant to Ga. Code Ann. § 49-4-168.1(a), the State of Georgia is entitled to three times the amount of actual damages plus the maximum penalty of $10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendant.

## TENTH CAUSE OF ACTION

**(Hawaii False Claims Act)**
**(Haw. Rev. Stat. §§ 661-21 *et seq.*)**

122. Realtor repeats and incorporates by reference the allegations contained in Paragraphs 1 through 97 of this Amended Complaint as if fully set forth herein.

123. By virtue of the acts described above, Defendant "[k]nowingly present[ed], or cause[d] to be presented, to an officer or employee of the State a false or fraudulent claim for payment or approval," in violation of Haw. Rev. Stat. § 661-21(a)(1).

124. By virtue of the acts described above, Defendant "[k]nowingly ma[de], use[d], or cause[d] to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the State," in violation of Haw. Rev. Stat. § 661-21(a)(2).

125. The Hawaii State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendant, paid and continues to pay claims that would not have been paid but for the acts and/or conduct of Defendant as alleged herein.

126. By reason of the Defendant's acts, the State of Hawaii has been damaged, and continues to be damaged, in a substantial amount to be determined at trial.

127. Pursuant to Haw. Rev. Stat. § 661-21(a), the State of Hawaii is entitled to three times the amount of actual damages plus the maximum penalty of $10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendant.

## ELEVENTH CAUSE OF ACTION

**(Illinois Whistleblower Reward And Protection Act)**
**(740 Ill. Comp. Stat. §§ 175/1 *et seq.*)**

128. Realtor repeats and incorporates by reference the allegations contained in Paragraphs 1 through 97 of this Amended Complaint as if fully set forth herein.

129. By virtue of the acts described above, Defendant "knowingly present[ed], or cause[d] to be presented, to an officer or employee of the State or a member of the Guard a false or fraudulent claim for payment or approval," in violation of 740 Ill. Comp. Stat. § 175/3(a)(1).

130. By virtue of the acts described above, Defendant "knowingly ma[de], use[d], or cause[d] to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the State," in violation of 740 Ill. Comp. Stat. § 175/3(a)(2).

131. The Illinois State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendant, paid and continues to pay claims that would not have been paid but for the acts and/or conduct of Defendant as alleged herein.

132. By reason of the Defendant's acts, the State of Illinois has been damaged, and continues to be damaged, in a substantial amount to be determined at trial.

133. Pursuant to 740 Ill. Comp. Stat. § 175/3(a), the State of Illinois is entitled to three times the amount of actual damages plus the maximum penalty of $10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendant.

## TWELFTH CAUSE OF ACTION

**(Indiana False Claims and Whistleblower Protection Act)**
**(Ind. Code §§ 5-11-5.5-1 *et seq.*)**

134. Relator repeats and incorporates by reference the allegations contained in Paragraphs 1 through 97 of this Amended Complaint as if fully set forth herein.

135. By virtue of the acts described above, Defendant knowingly presented or caused to be presented, false or fraudulent claims to the Indiana State Government for payment or approval.

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

137. The Indiana State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendant, paid and continues to pay claims that would not have been paid but for the acts and/or conduct of Defendant as alleged herein.

138. By reason of the Defendant's acts, the State of Indiana has been damaged, and continues to be damaged, in a substantial amount to be determined at trial.

139. Pursuant to Ind. Code § 5-11-5.5-2(b), the State of Indiana is entitled to three times the amount of actual damages plus at least $5,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendant.

## THIRTEENTH CAUSE OF ACTION

**(Louisiana False Claims Act/Medical Assistance Programs Integrity Law)**
**(46 La. Rev. Stat. ch. 3 §§ 437.1 *et seq.*)**

140. Relator repeats and incorporates by reference the allegations contained in Paragraphs 1 through 97 of this Amended Complaint as if fully set forth herein.

141. By virtue of the acts described above, Defendant "offer[ed], or pa[id] . . . remuneration, including but not limited to kickbacks . . . , directly or indirectly, overtly or covertly, in cash or in kind, for . . . [a] good, supply, or service for which payment may be made, in whole or in part, under the medical assistance programs," in violation of 46 La. Rev. Stat. ch. 3 § 438.2(A)(1).

142. By virtue of the acts described above, Defendant "knowingly present[ed] or cause[d] to be presented a false or fraudulent claim," in violation of 46 La. Rev. Stat. ch. 3 § 438.3(A).

143. By virtue of the acts described above, Defendant "knowingly engage[d] in misrepresentation to obtain, or attempt to obtain, payment from medical assistance programs funds," in violation of 46 La. Rev. Stat. ch. 3 § 438.3(B).

144. The Louisiana State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendant, paid and continues to pay claims that would not have been paid but for the acts and/or conduct of Defendant as alleged herein.

145. By reason of the Defendant's acts, the State of Louisiana has been damaged, and continues to be damaged, in a substantial amount to be determined at trial.

146. Pursuant to 46 La. Rev. Stat. ch. 3 § 438.6, the State of Louisiana is entitled to three times the amount of actual damages plus the maximum penalty of $10,000 for each and

every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendant.

**FOURTEENTH CAUSE OF ACTION**

**(Massachusetts False Claims Law)**
**(Mass. Gen. Laws ch. 12, §§ 5A *et seq.*)**

147. Relator repeats and incorporates by reference the allegations contained in Paragraphs 1 through 97 of this Amended Complaint as if fully set forth herein.

148. By virtue of the acts described above, Defendant "knowingly present[ed], or cause[d] to be presented, a false or fraudulent claim for payment or approval," in violation of Mass. Gen. Laws ch. 12, § 5B(1).

149. By virtue of the acts described above, Defendant "knowingly ma[de], use[d], or cause[d] to be made or used, a false record or statement to obtain payment or approval of a claim by the commonwealth or any political subdivision thereof," in violation of Mass. Gen. Laws ch. 12, § 5B(2).

150. The Massachusetts Commonwealth Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendant, paid and continues to pay claims that would not have been paid but for the acts and/or conduct of Defendant as alleged herein.

151. By reason of the Defendant's acts, the Commonwealth of Massachusetts has been damaged, and continues to be damaged, in a substantial amount to be determined at trial.

152. Pursuant to Mass. Gen. Laws ch. 12, § 5B, the Commonwealth of Massachusetts is entitled to three times the amount of actual damages plus the maximum penalty of $10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendant.

## FIFTEENTH CAUSE OF ACTION

**(Michigan Medicaid False Claims Act)**
**(Mich. Comp. Laws §§ 400.601, *et seq.*)**

153. Relator repeats and incorporates by reference the allegations contained in Paragraphs 1 through 97 of this Amended Complaint as if fully set forth herein.

154. By virtue of the acts described above, Defendant knowingly presented or caused to be presented, false or fraudulent claims to the State of Michigan for payment or approval.

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

156. The Michigan State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendant, paid and continues to pay claims that would not have been paid but for the acts and/or conduct of Defendant as alleged herein.

157. By reason of the Defendant's acts, the State of Michigan has been damaged, and continues to be damaged, in a substantial amount to be determined at trial.

158. Pursuant to Mich. Comp. Laws § 400.612, the State of Michigan is entitled to a civil penalty equal to the full amount received by the person benefiting from the fraud plus triple the amount of damages suffered by the state as a result of the person's conduct.

## SIXTEENTH CAUSE OF ACTION

**(Montana False Claims Act)**
**(Mont. Code Ann. §§ 17-8-401, *et seq.*)**

159. Relator repeats and incorporates by reference the allegations contained in Paragraphs 1 through 97 of this Amended Complaint as if fully set forth herein.

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

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

162. The Montana State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendant, paid and continues to pay claims that would not have been paid but for the acts and/or conduct of Defendant as alleged herein.

163. By reason of the Defendant's acts, the State of Montana has been damaged, and continues to be damaged, in a substantial amount to be determined at trial.

164. Pursuant to Mont. Code Ann. § 17-8-403, the State of Montana is entitled to three times the amount of actual damages plus the maximum penalty of $10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendant.

## SEVENTEENTH CAUSE OF ACTION

**(Nevada False Claims Act)**
**(Nev. Rev. Stat. §§ 357.010 *et seq.*)**

165. Relator repeats and incorporates by reference the allegations contained in Paragraphs 1 through 97 of this Amended Complaint as if fully set forth herein.

166. By virtue of the acts described above, Defendant "[k]nowingly present[ed] or cause[d] to be presented a false claim for payment or approval," in violation of Nev. Rev. Stat. § 357.040(1)(a).

167. By virtue of the acts described above, Defendant "[k]nowingly ma[de] or use[d],

or cause[d] to be made or used, a false record or statement to obtain payment or approval of a false claim," in violation of Nev. Rev. Stat. § 357.040(1)(b).

168. The Nevada State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendant, paid and continues to pay claims that would not have been paid but for the acts and/or conduct of Defendant as alleged herein.

169. By reason of the Defendant's acts, the State of Nevada has been damaged, and continues to be damaged, in a substantial amount to be determined at trial.

170. Pursuant to Nev. Rev. Stat. § 357.040(1), the State of Nevada is entitled to three times the amount of actual damages plus the maximum penalty of $10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendant.

## EIGHTEENTH CAUSE OF ACTION

**(New Hampshire False Claims Act)**
**(N.H. Rev. Stat. Ann. § 167:61-b)**

171. Relator repeats and incorporates by reference the allegations contained in Paragraphs 1 through 97 of this Amended Complaint as if fully set forth herein.

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

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

174. The New Hampshire State Government, unaware of the falsity of the records,

statements and claims made, used, presented or caused to be made, used or presented by Defendant, paid and continues to pay claims that would not have been paid but for the acts and/or conduct of Defendant as alleged herein.

175. By reason of the Defendant's acts, the State of New Hampshire has been damaged, and continues to be damaged, in a substantial amount to be determined at trial.

176. Pursuant to § 167:61-b, the State of New Hampshire is entitled to three times the amount of actual damages plus the maximum penalty of $10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendant.

## NINETEENTH CAUSE OF ACTION

**(New Jersey False Claims Act)**
**(N.J. Stat. Ann. §§ 2A:32C-1, *et seq.*)**

177. Relator repeats and incorporates by reference the allegations contained in Paragraphs 1 through 97 of this Amended Complaint as if fully set forth herein.

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

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

180. The New Jersey State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendant, paid and continues to pay claims that would not have been paid but for the acts and/or conduct of Defendant as alleged herein.

181. By reason of the Defendant's acts, the State of New Jersey has been damaged, and continues to be damaged, in a substantial amount to be determined at trial.

182. Pursuant to N.J. Stat. Ann. § 2A:32C-3, the State of New Jersey is entitled to three times the amount of actual damages plus the maximum penalty of $11,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendant.

## TWENTIETH CAUSE OF ACTION

**(New Mexico False Claims Act)**
**(N.M. Stat. Ann. §§ 27-14-1, *et seq.*)**

183. Relator repeats and incorporates by reference the allegations contained in Paragraphs 1 through 97 of this Amended Complaint as if fully set forth herein.

184. By virtue of the acts described above, the Defendant "present[ed], or cause[d] to be presented, to the state a claim for payment under the Medicaid program knowing that such claim is false or fraudulent," in violation of N.M. Stat. Ann. § 27-14-4(A).

185. By virtue of the acts described above, the Defendant "ma[de], use[d] or cause[d] to be made or used a record or statement to obtain a false or fraudulent claim under the Medicaid program paid for or approved by the state knowing such record or statement is false," in violation of N.M. Stat. Ann. § 27-14-4(C).

186. The New Mexico State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by the Defendant, paid and continues to pay claims that would not have been paid but for the acts and/or conduct of Defendant as alleged herein.

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

188. Pursuant to N.M. Stat. Ann. § 27-14-4, the State of New Mexico is entitled to three times the amount of actual damages plus the maximum penalty which may be applicable for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by the Defendant.

## TWENTY-FIRST CAUSE OF ACTION

**(New York False Claims Act)**
**(N.Y. Fin. Law §§ 187, *et seq.*)**

189. Relator repeats and incorporates by reference the allegations contained in Paragraphs 1 through 97 of this Amended Complaint as if fully set forth herein.

190. By virtue of the acts described above, Defendant "knowingly present[ed], or cause[d] to be presented, to any employee, officer or agent of the state or a local government, a false or fraudulent claim for payment or approval," in violation of N.Y. Fin. Law § 189.1(a).

191. By virtue of the acts described above, Defendant "knowingly ma[de], use[d], or cause[d] to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the state or a local government," in violation of N.Y. Fin. Law § 189.1(b).

192. The New York State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by the Defendant, paid and continues to pay claims that would not have been paid but for the acts and/or conduct of Defendant as alleged herein.

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

194. Pursuant to N.Y. Fin. Law § 189.1(g), the State of New York is entitled to three times the amount of actual damages plus the maximum penalty of $12,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used

or presented by Defendant.

**TWENTY-SECOND CAUSE OF ACTION**

**(Oklahoma Medicaid False Claims Act)**
**(63 Okla. Stat. Ann. §§ 5053, *et seq.*)**

195. Relator repeats and incorporates by reference the allegations contained in Paragraphs 1 through 97 of this Amended Complaint as if fully set forth herein.

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

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

198. The Oklahoma State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendant, paid and continues to pay claims that would not have been paid but for the acts and/or conduct of Defendant as alleged herein.

199. By reason of Defendant's acts, the State of Oklahoma has been damaged, and continues to be damaged, in a substantial amount to be determined at trial.

200. Pursuant to 63 Okla. Stat. Ann. § 5053.1(B), the State of Oklahoma is entitled to three times the amount of actual damages plus the maximum penalty of $10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendant.

## TWENTY-THIRD CAUSE OF ACTION

**(The State False Claims Act (Rhode Island))**
**(R.I. Gen. Laws §§ 9-1.1-1, *et seq.*)**

201. Relator repeats and incorporates by reference the allegations contained in Paragraphs 1 through 97 of this Amended Complaint as if fully set forth herein.

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

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

204. The Rhode Island State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendant, paid and continues to pay claims that would not have been paid but for the acts and/or conduct of Defendant as alleged herein.

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

206. Pursuant to R.I. Gen. Laws § 9-1.1-3, the State of Rhode Island is entitled to three times the amount of actual damages plus the maximum penalty of $10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendant.

## TWENTH-FOURTH CAUSE OF ACTION

**(Tennessee Medicaid False Claims Act)**
**(Tenn. Code §§ 71-5-181 *et seq.*)**

207. Relator repeats and incorporates by reference the allegations contained in Paragraphs 1 through 97 of this Amended Complaint as if fully set forth herein.

208. By virtue of the acts described above, Defendant "[p]resent[ed], or cause[d] to be presented, to the state a claim for payment under the Medicaid program knowing such claim is false or fraudulent," in violation of Tenn. Code § 71-5-182(a)(1)(A).

209. By virtue of the acts described above, Defendant "[m]a[de], use[d], or cause[d] to be made or used, a record or statement to get a false or fraudulent claim under the Medicaid program paid for or approved by the state knowing such record or statement is false," in violation of Tenn. Code § 71-5-182(a)(1)(B).

210. The Tennessee State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendant, paid and continues to pay claims that would not have been paid but for the acts and/or conduct of Defendant as alleged herein.

211. By reason of the Defendant's acts, the State of Tennessee has been damaged, and continues to be damaged, in a substantial amount to be determined at trial.

Pursuant to Tenn. Code § 71-5-182(a)(1), the State of Tennessee is entitled to three times the amount of actual damages plus the maximum penalty of $10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendant.

## TWENTY-FIFTH CAUSE OF ACTION

**(Texas Medicaid Fraud Prevention Law)**
**(Tex. Hum. Res. Code §§ 36.001 *et seq.*)**

212. Relator repeats and incorporates by reference the allegations contained in Paragraphs 1 through 97 of this Amended Complaint as if fully set forth herein.

213. By virtue of the acts described above, Defendant knowingly presented or caused to be presented, false or fraudulent claims to the Texas State Government for payment or approval, in violation of Tex. Hum. Res. Code § 36.002(6).

214. By virtue of the acts described above, Defendant knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the Texas State Government to approve and pay such false and fraudulent claims, in violation of Tex. Hum. Res. Code § 36.002.

215. The Texas State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendant, paid and continues to pay claims that would not have been paid but for the acts and/or conduct of Defendant as alleged herein.

216. By reason of the Defendant's acts, the State of Texas has been damaged, and continues to be damaged, in a substantial amount to be determined at trial.

217. Pursuant to Tex. Hum. Res. Code § 36.052, the State of Texas is entitled to two times the amount of actual damages plus the maximum penalty of $15,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendant.

## TWENTY-SIXTH CAUSE OF ACTION

**(Virginia Fraud Against Taxpayers Act)**
**(Va. Code Ann. §§ 8.01-216.1, *et seq.*)**

218. Relator repeats and incorporates by reference the allegations contained in Paragraphs 1 through 97 of this Amended Complaint as if fully set forth herein.

219. By virtue of the acts described above, Defendant "[k]nowingly present[ed], or cause[d] to be presented, to an officer or employee of the Commonwealth a false or fraudulent claim for payment or approval," in violation of Va. Code Ann. § 8.01-216.3(A)(1).

220. By virtue of the acts described above, Defendant "[k]nowingly ma[de], use[d], or cause[d] to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Commonwealth," in violation of Va. Code Ann. § 8.01-216.3(A)(2).

221. The Virginia Commonwealth Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by the Defendant, paid and continues to pay claims that would not have been paid but for the acts and/or conduct of Defendant as alleged herein.

222. By reason of the Defendant's acts, the Commonwealth of Virginia has been damaged, and continues to be damaged, in a substantial amount to be determined at trial.

223. Pursuant to Va. Code Ann. § 8.01-216.3(A), the Commonwealth of Virginia is entitled to three times the amount of actual damages plus the maximum penalty of $10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendant.

## TWENTY-SEVENTH CAUSE OF ACTION

**(Wisconsin False Claims for Medical Assistance Law)**
**(Wis. Stat. § 20.931)**

224. Relator repeats and incorporates by reference the allegations contained in Paragraphs 1 through 97 of this Amended Complaint as if fully set forth herein.

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

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

227. The Wisconsin State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendant, paid and continues to pay claims that would not have been paid but for the acts and/or conduct of Defendant as alleged herein.

228. By reason of the Defendant's acts, the State of Wisconsin has been damaged, and continues to be damaged, in a substantial amount to be determined at trial.

229. Pursuant to Wis. Stat. § 20.931(2), the State of Wisconsin is entitled to three times the amount of actual damages plus the maximum penalty of $10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendant.

## TWENTY-EIGHTH CAUSE OF ACTION

**(District of Columbia False Claims Act)**
**(D.C. Code §§ 2-308.03 *et seq.*)**

230. Relator repeats and incorporates by reference the allegations contained in Paragraphs 1 through 97 of this Amended Complaint as if fully set forth herein.

231. By virtue of the acts described above, Defendant "[k]nowingly present[ed], or cause[d] to be presented, to an officer or employee of the District a false claim for payment or approval," in violation of D.C. Code § 2-308.14(a)(1).

232. By virtue of the acts described above, Defendant "[k]nowingly ma[de], use[d], or cause[d] to be made or used, a false record or statement to get a false claim paid or approved by the District," in violation of D.C. Code § 2-308.14(a)(2).

233. The District of Columbia Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by Defendant, paid and continues to pay claims that would not have been paid but for the acts and/or conduct of Defendant as alleged herein.

234. By reason of the Defendant's acts, the District of Columbia has been damaged, and continues to be damaged, in a substantial amount to be determined at trial.

235. Pursuant to D.C. Code § 2-308.14(a), the District of Columbia is entitled to three times the amount of actual damages plus the maximum penalty of $10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendant.

## VIII. DEMANDS FOR RELIEF.

**WHEREFORE**, Relator, on behalf of the United States of America and the named States, demands judgment against the Defendant, ordering:

**As to the Federal Claims:**

a. Pursuant to 31 U.S.C. § 3729(a), Defendant pays an amount equal to three times the amount of damages the United States Government has sustained as a result of Defendant's actions, plus a civil penalty of not less than $6,500 and not more than $11,000 for each violation of 31 U.S.C. §§ 3729(a) or such other penalty as the law may permit and/or require for each violation of other laws which governed Defendant's conduct, *i.e.*, $50,000 for each violation of 42 U.S.C. § 1320a-7a(7) of the Anti-Kickback Statute;

b. Relator be awarded his relator's share of the judgment to the maximum amount provided pursuant to 31 U.S.C. § 3730(d) of the False Claims Act and/or any other applicable provision of law;

c. Relator be awarded all costs and expenses of this action, including attorney's fees as provided by 31 U.S.C. § 3730(d) and any other applicable provision of the law; and

d. Relator and the United States of America be awarded such other and further relief as the Court may deem to be just and proper.

**As to the State Claims:**

e. Relator and each named State Plaintiff be awarded statutory damages in an amount equal to three times the amount of actual damages sustained by each State as a result of Defendant's actions, as well as the maximum statutory civil penalty for each violation by Defendant within each State, all as provided by:

Cal. Gov't Code § 12651;
Del. Code Ann. § 1201;

Fla. Stat. § 68.082;
Ga. Code Ann. § 49-4-168.1(a);
Haw. Rev. Stat. § 661-21;
740 Ill. Comp. Stat. § 175/3;
Ind. Code § 5-11-5.5-2(b);
La. Rev. Stat. § 46:439.6 ;
Mass. Gen. Laws ch. 12, § 5B.;
Mich. Comp. Laws § 400.612;
Mont. Code Ann. § 17-8-403;
Nev. Rev. Stat. § 357.040;
N.H. Rev. Stat. Ann. § 167:61-b;
N.J. Stat. Ann. § 2A:32C-3;
N.M. Stat. Ann. § 27-14-4;
N.Y. Fin. Law § 189.1(g);
63 Okla. Stat. Ann. § 5053.1(B);
R.I. Gen. Laws § 9-1.1-3;
Tenn. Code § 71-5-182;
Va. Code Ann. § 8.01-216.3;
Wis. Stat. § 20.931(2); and
D.C. Code § 2-308.14;

f. Relator and Plaintiff State of Texas be awarded statutory damages in an amount equal to two times the amount of actual damages that Texas has sustained as a result of the Defendant's actions, as well as the maximum statutory civil penalty for each violation of Tex. Hum. Res. Code § 36.052;

g. Relator be awarded his relator's share of any judgment to the maximum amount provided pursuant to:

Cal. Gov't Code § 12652(g);
Del. Code Ann. § 1205;
Fla. Stat. § 68.085;
Ga. Code Ann. § 49-4-168.2(h);
Haw. Rev. Stat. § 661-27;
740 Ill. Comp. Stat. § 175/4(d);
Ind. Code § 5-11-5.5-6;
La. Rev. Stat. § 46:439.4;
Mass. Gen. Laws ch. 12, § 5F.;
Mich. Comp. Laws § 400.610a;
Mont. Code Ann. § 17-8-410;
Nev. Rev. Stat. § 357.210;
N.H. Rev. Stat. Ann. § 167:61-e;

N.J. Stat. Ann. § 2A:32C-7;
N.M. Stat. Ann. § 27-14-9;
N.Y. Fin. Law § 190.6;
63 Okla. Stat. Ann. § 5053.4;
R.I. Gen. Laws § 9-1.1-4;
Tenn. Code § 71-5-183(c);
Tex. Hum. Res. Code § 36.110;
Va. Code Ann. § 8.01-216.7;
Wis. Stat. § 20.931(11); and
D.C. Code § 2-308.15;

h. Relator be awarded all costs and expenses associated with each of the pendent State claims, plus attorney's fees, as provided pursuant to:

Cal. Gov't Code § 12652(g)(8);
Del. Code Ann. § 1205;
Fla. Stat. § 68.086;
Ga. Code Ann. § 49-4-168.2(h);
Haw. Rev. Stat. § 661-27;
740 Ill. Comp. Stat. § 175/4(d);
Ind. Code § 5-11-5.5-6;
La. Rev. Stat. § 46:439.6;
Mass. Gen. Laws ch. 12, § 5F.;
Mich. Comp. Laws § 400.610a;
Mont. Code Ann. § 17-8-410;
Nev. Rev. Stat. § 357.180;
N.H. Rev. Stat. Ann. § 167:61-e;
N.J. Stat. Ann. § 2A:32C-7;
N.M. Stat. Ann. § 27-14-9;
N.Y. Fin. Law § 190.7;
63 Okla. Stat. Ann. § 5053.4;
R.I. Gen. Laws § 9-1.1-4
Tenn. Code § 71-5-183(c);
Tex. Hum. Res. Code § 36.110;
Va. Code Ann. § 8.01-216.7;
Wis. Stat. § 20.931(11); and
D.C. Code § 2-308.15; and

i. Relator and the State Plaintiffs be awarded such other and further relief as the Court may deem to be just and proper.

**TRIAL BY JURY**

Relator hereby demands a trial by jury as to all issues.

BOIES, SCHILLER & FLEXNER LLP

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Dated: January 9, 2009