

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA *ex rel.*) No. 06 C 6131
BERNARD LISITZA, STATE OF CALIFORNIA)
ex rel. BERNARD LISITZA, STATE OF) **CHIEF JUDGE HOLDERMAN**
DELAWARE *ex rel.* BERNARD LISITZA,)
DISTRICT OF COLUMBIA *ex rel.* BERNARD) **MAGISTRATE JUDGE KEYS**
LISITZA, STATE OF FLORIDA *ex rel.*)
BERNARD LISITZA, STATE OF GEORGIA *ex*) **FILED UNDER SEAL**
rel. BERNARD LISITZA, BERNARD LISITZA,)
STATE OF ILLINOIS *ex rel.* BERNARD LISITZA,) **JURY TRIAL DEMANDED**
STATE OF INDIANA *ex rel.* BERNARD LISITZA,)
STATE OF LOUISIANA *ex rel.* BERNARD)
LISITZA, COMMONWEALTH OF)
MASSACHUSETTS *ex rel.* BERNARD LISITZA,)
STATE OF MICHIGAN *ex rel.* BERNARD)
LISITZA, STATE OF NEVADA *ex rel.* BERNARD)
LISITZA, STATE OF NEW HAMPSHIRE *ex rel.*)
BERNARD LISITZA, STATE OF NEW JERSEY)
ex rel. BERNARD LISITZA, STATE OF NEW)
MEXICO *ex rel.* BERNARD LISITZA, STATE OF)
NEW YORK *ex rel.* BERNARD LISITZA, STATE) **AMENDED COMPLAINT**
OF OKLAHOMA *ex rel.* BERNARD LISITZA,)
STATE OF RHODE ISLAND *ex rel.* BERNARD)
LISITZA, STATE OF TENNESSEE *ex rel.*)
BERNARD LISITZA, STATE OF TEXAS *ex rel.*)
BERNARD LISITZA, COMMONWEALTH OF)
VIRGINIA *ex rel.* BERNARD LISITZA, STATE)
OF WISCONSIN *ex rel.* BERNARD LISITZA, and)
BERNARD LISITZA, individually,)
Plaintiffs,)
v.)
PAR PHARMACEUTICAL COMPANIES, INC.,) Leave to File Granted
ALPHAPHARM PTY LTD., and) July 7, 2011
GENPHARM ULC.)
Defendants.)

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The United States of America *ex rel.* Bernard Lisitza, the States of California, Delaware, Florida, Georgia, Illinois, Indiana, Louisiana, Michigan, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oklahoma, Rhode Island, Tennessee, Texas, and Wisconsin, the Commonwealths of Massachusetts and Virginia, and the District of Columbia *ex rel.* Bernard Lisitza (collectively “plaintiff States”), and Bernard Lisitza, individually (collectively “plaintiffs”), state as follows for their Complaint against Par Pharmaceutical Companies, Inc., Alphapharm Pty Ltd., and Genpharm ULC (“defendants”):

I. INTRODUCTION

1. The United States of America and the plaintiff States, through the Relator Bernard Lisitza (“Relator Lisitza” or “Lisitza”), seek to recover treble damages and civil penalties arising from false statements and claims made, used, or caused to be made by defendants Par Pharmaceutical Companies, Inc. (“Par”), Alphapharm Pty Ltd. (“Alphapharm”), and Genpharm ULC (“Genpharm”) to the United States and the individual states (collectively the “government”), in violation of the federal False Claims Act, 31 U.S.C. §§3729-33, and the false claims acts of the plaintiff States, as detailed below. Additionally, Relator Lisitza brings this action in the name of the State of Illinois to recover treble damages and civil penalties arising from false statements and claims made or caused to be made by defendants to private-payor insurance companies under the Illinois Insurance Claims Fraud Prevention Act, 740 ILCS 92/1-45.

2. Defendant Par markets and sells generic drugs. As detailed below, Par increased its sales through an illegal switching scheme to fill prescriptions with Par’s higher-priced products rather than the specific drug that the doctor had prescribed. Par’s scheme was designed to evade government price limits on generic drugs, so that Par could profit at taxpayer expense.

3. Par markets generic versions of some of the most highly prescribed drugs in the United States, including the antidepressant Prozac, the antacid Zantac, and the anti-anxiety medication Buspar.

4. Defendants Alphapharm and Genpharm develop and manufacture generic versions of some of the most highly prescribed drugs in the United States, including the generic form of Prozac. As detailed below, these defendants controlled Par's sales and marketing, knew and approved of the illegal switching scheme, benefitted from the illegal scheme, and conspired with Par to increase their sales through this illegal scheme to fill prescriptions with their own higher-priced medications, rather than the specific drug that the doctor had prescribed. A Genpharm executive referred to the scheme as the "tablet capsule dodge."

5. Generic medications, like most drugs, come in various dosage strengths and forms, such as tablets, capsules, syrups, and suspensions. Under federal and state law, each dosage form or strength is a different drug, even if it contains the identical active ingredient. For example, a Prozac 20mg capsule is a different drug than a Prozac 20mg tablet. Different dosage forms and strengths have distinctions concerning potential effectiveness and safety that are significant to physicians, patients, and the United States Food and Drug Administration ("FDA"). Different dosage forms and strengths – being different drugs – require different prescriptions.

6. Different dosage forms and strengths can also have very different prices. For popular generic drugs, federal and state governments set maximum prices that apply only to a drug in a particular dosage form and strength. The price limits are set by federal and state laws

governing the Medicaid program, which provides taxpayer-funded health care for low income individuals and families.

7. Defendants developed and marketed drugs that had the same active ingredient as drugs subject to Medicaid's price limits. But defendants made and marketed these drugs in a different dosage form or strength, so that their drugs were not covered by Medicaid price limits and thus could be sold at higher prices.

8. Par aggressively marketed these schemes to various pharmacies throughout the United States. This marketing was controlled by Alphapharm and Genpharm, who knew of these illegal schemes and benefitted from them.

9. One example of defendants' scheme to switch dosage forms and evade the Medicaid price limits involved fluoxetine, the generic form of Prozac. In its most frequently prescribed 20mg dosage strength, Prozac was only available in capsules.

10. Due to the popularity of the drug, federal and state governments set maximum prices that they would pay for generic fluoxetine capsules under the Medicaid program.

11. While doctors only prescribed Prozac 20mg *capsules*, defendants developed and marketed fluoxetine 20mg *tablets* because the tablets would not be subject to Medicaid price limits.

12. Par conspired with certain pharmacies to fill all Prozac and fluoxetine prescriptions with their own fluoxetine tablets. Thus, when a doctor prescribed Prozac or fluoxetine capsules, the patient was given defendants' higher-priced fluoxetine tablets. When the pharmacies sought reimbursement, Medicaid paid much more for fluoxetine tablets than they would have for the commonly-prescribed, and price-limited, fluoxetine capsules.

13. Par similarly conspired with its pharmacy customers to switch Par's higher-priced form of the antacid ranitidine (generic Zantac). Par touted switching to its ranitidine *capsules* because ranitidine typically came in *tablets*, which were subject to Medicaid price limits.

14. Walgreens, the national pharmacy chain, was one of Par's biggest customers and the largest participant in the fluoxetine capsules-for-tablets and the ranitidine tablets-for-capsules switching schemes. As George Riedl, Walgreens Executive Vice President of Marketing testified, Par "came to Walgreens with this idea of dosage form switching." See, [Exhibit 1](#) at p. 16, lines 15-17.

15. Walgreens' chief purchaser of generic drugs, John Ziebell, further explained the scheme:

They were programs brought to my attention by the executives at Par Pharmaceuticals regarding ranitidine capsules and fluoxetine tablets, for which they had both received FDA approval.

And the program regarding ranitidine capsules was ... – when a prescription was written for ... Zantac, to dispense ranitidine capsules manufactured by Par. And when a prescription was written for ... Prozac capsules, to dispense fluoxetine tablets manufactured by Par Pharmaceutical.

[Exhibit 2](#) at p. 16, lines 9-21.

16. Par enticed Walgreens and other pharmacies to implement switching programs. Par sold its higher-priced products by touting the profits that could be made from the higher Medicaid reimbursements. By illegally switching Par's drugs for the drugs that were actually prescribed, Walgreens and other pharmacies obtained higher reimbursements from state Medicaid programs and evaded the government's price limits, to profit at taxpayer expense.

17. Walgreens' Ziebell explained Par's marketing pitch:

Q. What sort of information was given to you to try and convince Walgreens to buy the ranitidine capsules from Par?

A. There was a – primarily, just a discussion of the fact that the – when Walgreens would dispense a ranitidine capsule prescription, the profit would be higher than when dispensing a ranitidine tablet prescription.

Q. Were there any discussions as to how the profits would increase, what would make the profits go up for Walgreens?

A. Reimbursement was higher for the capsules than for the tablets.

[Exhibit 2](#) at p. 19 line 23 – p. 20 line 11.

18. In June 2008, Walgreens paid \$35 million to the United States and 42 states to settle Relator Lisitza's complaint alleging that the pharmacy violated False Claims Acts by illegally switching ranitidine and fluoxetine drugs. The settlement was reached as the result of a joint state and federal government investigation. Walgreens denied liability and the settlement itself is not evidence of wrongdoing.

19. Finally, Par developed another switching scheme to replace commonly-prescribed, government-price-limited 15mg tablets of generic Buspar (buspirone) with two 7.5mg tablets, which did not have a government price limit. This scheme was aggressively marketed by Par.

20. Alphapharm and Genpharm wielded significant power over the marketing and business decision-making at Par. During the timeframe leading up to the launch of Alphapharm's fluoxetine tablets, Genpharm's chairman, Neil Tabatznik, was appointed to Par's Board of Directors. Similarly, Genpharm's Executive Vice President, Ian Jacobson, occupied Par's Office of the President. In this capacity, Jacobson oversaw much of Par's day-to-day operations, including the sales and marketing department.

21. Alphapharm and Genpharm also intertwined their business with Par. For example, Alphapharm and Genpharm played integral roles in the fluoxetine switching scheme, were critical to its implementation, and benefitted greatly from its success. Alphapharm was the company that developed fluoxetine tablets and worked to secure their FDA approval. Alphapharm had devoted significant time and money as part of the research and development process for fluoxetine and looked to see a return on its investment.

22. Genpharm acted as Alphapharm's agent, and entered into two supply and development contracts with Par. Under the terms of these agreements, Par paid Genpharm nearly half of the profits earned from Par's sales of fluoxetine tablets. In return, Par received the exclusive distribution rights for Alphapharm's fluoxetine in the United States. Accordingly, both Alphapharm and Genpharm had a major stake in the switching scheme and stood to profit from Par's successfully selling fluoxetine.

23. By initiating the switching scheme with Walgreens and through other activities detailed below, defendants violated federal and state False Claims Acts in at least three distinct ways, each of which is an independent basis for liability:

- Defendants knowingly caused and conspired to submit prescription reimbursement claims to Medicaid for higher priced drugs that had not been prescribed;
- Defendants knowingly caused and conspired to submit prescription reimbursement claims that violated federal and state laws requiring pharmacies to provide drugs economically, by designing a scheme to charge Medicaid significantly higher prices for drugs in different dosage forms and strengths; and,

- Defendants knowingly designed a fraudulent scheme causing the submission and payment of prescription reimbursement claims that evaded federal and state Medicaid price limits on generic drugs.

The intended result of defendants' actions and conspiracies was that the government paid more for drugs that had not even been prescribed – reaping millions in profits at taxpayer expense.

II. JURISDICTION AND VENUE

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

25. This Court has jurisdiction over plaintiffs' state law claims under 31 U.S.C. §3732(b). This Court also has supplemental jurisdiction over plaintiffs' state law claims under 28 U.S.C. §1367.

26. This suit is not based upon prior public disclosures of allegations or transactions in a criminal, civil, or administrative hearing, lawsuit, or investigation, or in a Government Accounting Office or Auditor General's report, hearing, audit, or investigation, or from the news media.

27. To the extent that there has been a public disclosure unknown to Lisitza, Lisitza is an original source under 31 U.S.C. §3730(e)(4) and all relevant state statutes.¹ He has direct and

¹Lisitza is an "original source" under all "original source" requirements found in plaintiff State qui tam statutes: Illinois (740 ILCS 175/4(e)(4)); California (Cal. Gov't Code §12652 (a)(d)(3)(B));

independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the government before filing an action under this section, which is based on the information.

28. Relator Lisitza has been providing to the Attorney General of the United States, to the United States Attorney for the Northern District of Illinois, and to the Attorneys General of the named plaintiff States, statements summarizing known material evidence and information related to the Complaint, in accordance with the provisions of 31 U.S.C. §3730(b)(2) and relevant state statutes.² These disclosure statements are supported by material evidence.

29. This Court has personal jurisdiction over the defendants under 31 U.S.C. §3732(a) because defendants can be found, reside, or transact business in this District, and because an act proscribed by 31 U.S.C. §3729 occurred in this District. For example, defendants caused the presentment of false or fraudulent claims directly or indirectly to the United States, the State of

Delaware (Del. Code Ann. Tit. VI., §1206(c)); District of Columbia (D.C. Code Ann. §2-308.15(c)(2)(A)); Florida (Fl. Stat. Ann. §68.087(3)); Georgia (Ga. Code Ann. §49-4-168.2(j)(2)); Indiana (Ind. Code §5-11-5.5-7(f)); Louisiana (La. Rev. Stat. Ann. §46:439.1(B)(1) and (2)); Massachusetts (Mass. Gen. Laws ch.12, §§5(A), 5(G)(3)); Michigan (Mich. Comp. Laws Ann. §400.610a(13)); Nevada (Nev. Rev. Stat. §357.100); New Hampshire (N.H. Rev. Stat. Ann. §167:61-e(3)); New Jersey, (N.J. Stat. Ann. §2A:32C-9(c)); New Mexico (N.M. Stat. Ann. §27-14-10); New York (N.Y. State Fin. Law §190(9)(b)); Oklahoma (Okla. Stat. Tit. 63 §5053.5(B)); Rhode Island (R.I. General Laws §9-1.1-4(e)(4)); Tennessee (Tenn. Code Ann. §71-5-183(d)(2)(A) and (B)); Texas (Tx. Hum. Res. Code §36.113); Virginia (Va. Code §8.01-216.8); and Wisconsin (Wis. Stat. §20-931(11)(b)).

²State qui tam “disclosure statement” requirements are found at: Illinois (740 ILCS 175/4(b)(2)); California (Cal. Gov’t Code §12652(c)(3)), Delaware (Del. Code Ann. Tit. VI, §1203(b)(2)); District of Columbia (D.C. Code Ann. §2-308.15(b)(3)); Florida (Fl. Stat. Ann. §68.083(3)); Georgia (Ga. Code Ann. §49-4-168.2(c)(1)); Indiana (Ind. Code §5-11-5.5-4(c)); Louisiana (La. Rev. Stat. Ann. §46:439.2(A)(2)(a) and (b)); Massachusetts (Mass. Gen. Laws ch.12, §5(c)(3)); Michigan (Mich. Comp. Laws Ann. §400.610a(2)); Nevada (Nev. Rev. Stat. §357.080(5)); New Hampshire (N.H. Rev. Stat. Ann. §167:61-c(2)(c)); New Jersey, (N.J. Stat. Ann. §2A:32C-5(d)); New Mexico (N.M. Stat. Ann. §27-14-7(c)); New York (N.Y. State Fin. Law §190(2)(b)); Oklahoma (Okla. Stat. Tit. 63 §5053.2(B)(2)); Rhode Island (R.I. General Laws §9-1.1-4(a)(2)); Tennessee (Tenn. Code Ann. §75-1-183(2)); Texas (Tx. Hum. Res. Code §36.102(a)); Virginia (Va. Code §8.01-216.5(B)); and Wisconsin (Wis. Stat. §20-931(5)(b)).

Illinois and other States through communications, agreements, and/or transactions with Walgreens Company at Walgreens' corporate headquarters in Deerfield, Illinois, and through Walgreens' multiple pharmacies in this District. Defendants have also made, used, or caused to be made or used, false or fraudulent records in this District to get false or fraudulent claims paid or approved by the government. Venue is proper in this District under 31 U.S.C. §3732(a) and 28 U.S.C. §1391.

III. PARTIES

30. Relator Bernard Lisitza is a citizen and resident of the State of Illinois. He brings this action on his own behalf and on behalf of the government pursuant to 31 U.S.C. §3730(b)(1) and the analogous plaintiff state *qui tam* statutes. Relator Lisitza also brings this action in the name of the State of Illinois on behalf of private insurance payors harmed by defendants' conduct in causing the presentation of false claims for illegally-switched prescription drugs, pursuant to the *qui tam* provision of the Illinois Insurance Claims Fraud Prevention Act, 740 ILCS 92/15.

31. Defendant Par Pharmaceutical Companies, Inc. ("Par") is a Delaware corporation with its principal place of business in New Jersey. Par's annual sales exceed \$425 million, for over 110 generic drugs. Defendant's executive officers during the relevant period have included: Ronald M. Nordmann, Director and Chairman of Nominating and Corporate Governance Committee ("Nordmann"); John D. Abernathy, Non-executive Chairman of the Board and Chairman of the Audit Committee ("Abernathy"); and Scott Tarriff, President and Chief Executive Officer ("Tarriff") (who resigned in September 2006).

32. Nordmann, Abernathy, Tarriff, and other members of Par's Board of Directors had oversight responsibility for compliance with state and federal laws.

33. Defendant Alphapharm Pty Ltd. (“Alphapharm”) is an Australian manufacturer of generic pharmaceutical products. Alphapharm’s principal place of business is located in Glebe, New South Wales. Defendant’s executive officers include: John Montgomery, Chief Executive Officer (“Montgomery”); Brett Mooney, Head of Research and Development (“Mooney”); Brian Wood, Head of Quality (“Wood”); and Russell Lock, Operations Manager (“Lock”).

34. Defendant Genpharm ULC (“Genpharm”) is a Canadian manufacturer of generic pharmaceutical products. Genpharm’s six facilities and principal place of business are located in Etobicoke, Ontario. Defendant’s executive officers include: Ian Jacobson, Executive Vice President (“Jacobson”); Steve D’Alessandro, Director of Finance (“D’Alessandro”); Ian Hilley, Vice President Business Development (“Hilley”); Dr. Richard Pike, Senior Vice President of R&D (“Pike”); Henry Koziarski, Chief Financial Officer (“Koziarski”); Hank Klakurka, Chief Executive Officer (“Klakurka”); and Neil Tabatznik, Chairman and CEO.

35. At all times relevant to the present action, Alphapharm and Genpharm were affiliates under common ownership of Merck KGaA (“Merck”). Alphapharm and Genpharm maintained extremely close business ties.

36. On May 12, 2007, Mylan Laboratories Inc. (“Mylan”), entered into a share purchase agreement with Merck through which Mylan acquired Alphapharm, Genpharm, and other companies that were part of the Merck Generics Holding GmbH. Beginning in October 2007, Mylan controlled Alphapharm and Genpharm as wholly-owned subsidiaries.

37. While Alphapharm kept its name following the Mylan acquisition, Genpharm was rebranded and became Mylan Canada.

IV. MEDICAID'S PRICING OF GENERIC DRUGS

38. The Medicaid program was created in 1965 under Title XIX of the federal Social Security Act. Each state administers its own Medicaid program, which must comply with certain minimum federal requirements.

39. Medicaid covers only outpatient drugs that are prescribed by a physician. 42 U.S.C. §1396r-8(k)(2). Typically, this includes only drugs approved for safety and effectiveness as prescription drugs under the federal Food, Drug, and Cosmetic Act.

40. State and federal Medicaid agencies price reimbursements for drugs according to specific dosage forms and strengths, as required by state and federal laws and regulations. *See, e.g.,* Transmittal 37- Federal Upper Limit Drug List, November 10, 2001, attached as [Exhibit 3](#). The federal statute governing Medicaid's "payment for covered outpatient drugs" recognizes that drugs will be priced according to specific dosage forms and strengths. 42 U.S.C. §1396r-8(c).

A. Drugs With Different Dosage Forms and Strengths Are Different Drugs

41. Under the federal and state Food, Drug, and Cosmetics Acts, medications with different dosage forms and strengths are distinct drugs, even if they have identical active ingredients. The FDA requires each specific dosage form and strength to gain approval as a new drug, regardless of whether the drug's active ingredient was approved in a different dosage form or strength. The United States Pharmacopeia ("USP") is a primary basis for defining and listing different drugs under federal and state law. The USP also establishes that different dosage forms and strengths with the same active ingredient are different drugs under federal and state law.

42. Shortly before defendants' drug switching scheme was implemented, the FDA specifically upheld the distinction between tablets and capsules and rejected the notion that

tablets and capsules are interchangeable. In December 2000, after public notice and comment, the FDA denied a proposal from pharmaceutical manufacturers requesting that the FDA consider tablets and capsules as equivalents. In finding that the proposal “would not be in the public interest,” the FDA concluded:

As the American Medical Association has stated, while capsules are easier for some people to swallow, tablets are easier for others, and substitution of a non-preferred dosage form could have a negative therapeutic outcome for those patients who are only able to swallow a specific dosage form.

As stated above, FDA distinguishes dosage forms on the basis of the physical appearance of the drug and the way it is administered, and the Agency has sound medical reasons for making such distinctions.

FDA has carefully considered the policy changes suggested in your petitions and has concluded that they would not be in the public interest. In sum, the FDA has concluded that patients and healthcare practitioners have a significant interest in, and legitimate concerns regarding, the *form* of oral drug products, and that tablets and capsules, while similar in many respects, have special properties that may make one or the other more advantageous in the treatment of certain patients. Tablets and capsules, therefore, should not be regarded as the same form.

Letter from Janet Woodcock, M.D., FDA Center for Drug Evaluation and Research, December 1, 2000 (emphasis original). Attached as [*Exhibit 4*](#).

43. State laws require pharmacies to provide the patient with the drug in the dosage form that a medical provider prescribed. Pharmacies may not dispense a capsule when a medical provider prescribed a tablet. Pharmacies may not dispense a tablet when a medical provider prescribed a capsule.

44. State laws typically allow a pharmacist to substitute a generic drug for a therapeutically equivalent brand-name drug – but only if the generic drug is less expensive and

has the same dosage form and strength. State laws often adopt the FDA's determination of whether the drugs are "therapeutically equivalent," also known as "AB rated." The FDA has established that drugs with different dosage forms or strengths are not therapeutically equivalent or "AB rated," even if they have the identical active ingredient.

45. The federal Medicaid law governing pricing for covered outpatient drugs also incorporates FDA determinations of therapeutic equivalence in setting price limits for generic drugs. 42 U.S.C. §1396r-8 (k)(7)(C)(i).

B. Medicaid Pays Different Prices for Different Drugs

46. One of the ways in which the Medicaid program contains taxpayer-funded healthcare costs is by setting a price ceiling on certain generic drugs. For popular generic drugs that are widely prescribed and supplied by multiple manufacturers, federal and state governments set maximum prices that they will pay for a drug. The U.S. Secretary of Health and Human Services implemented this program in 1987 to allow "the Federal and State governments to take advantage of savings that are currently available in the marketplace for multiple source drugs [*i.e.* generics]." 52 Fed. Reg. 28, 648 (July 31, 1987). The program was statutorily required by Congress in 1990. 42 U.S.C. §1396r-8(e)(4).

47. By law, popular generic drugs are subject to a Federal Upper Limit ("FUL"). FULs are set by the federal Centers for Medicare & Medicaid Services ("CMS") when: (1) at least three versions of the drug are rated therapeutically equivalent by the FDA, and (2) the drug has at least three suppliers (listed in national compendia). 42 U.S.C. §1396r-8.

48. FULs apply only to specific dosage forms and strengths, as each is a distinct drug. This is illustrated by CMS Transmittal 37 which was circulated on November 20, 2001. In

Transmittal 37, a FUL of 34 cents was established for ranitidine 150mg tablets. By contrast, no such FUL was set for ranitidine 150mg capsules. *See, Exhibit 3* at page 18.

49. Each state also sets its own Medicaid reimbursement ceiling through state specific maximum allowable costs (“MACs”). States must follow the federal upper price limits, but are free to set lower prices. *See, e.g.,* Ill. Admin. Code Tit. 89, §140.445(b)(1)(B), Fla. Stat. ch. 409.908(14). Like FULs, MACs apply to specific dosage forms and strengths.

50. Medicaid price limits for popular generic drugs are generally known as “MACs,” regardless of whether the limit was set by the state or federal government.

51. For prescription drugs without a MAC, states typically reimburse on the basis of average wholesale price, or similar measures, without the same limits that are set on popular generic drugs. *See, e.g.,* 89 Ill. Adm. Code §140.445(b)(1)(A) and (D).

52. Frequently-prescribed generic drugs tend to have lower reimbursements under federal and state maximum prices. Infrequently-prescribed generic drugs tend to be reimbursed at a higher level according to a rate established by the manufacturers’ pricing. Thus, if one dosage form of drug has a MAC and another dosage form does not, there may be a large reimbursement disparity between them, even if both dosage forms have the identical active ingredient.

53. Reimbursement disparities among dosage forms and strengths are particularly prevalent when brand-name drugs lose patent protection and become subject to generic competition. After the patent on a popular brand-name drug expires, many companies make a generic form of the drug in the same dosage form and strength as the brand-name drug. This is done because only the generic drug in the same dosage form and strength can be legally

substituted for the brand-name drug. Many states even require such substitutions of equivalent, less expensive, generic drugs for Medicaid reimbursement. Through FULs and MACs, the government correspondingly sets a maximum price for the generic drug in the same dosage form and strength as the brand-name drug.

54. Since doctors and patients become familiar with brand-name drugs in a certain dosage form, generic drugs are typically prescribed in the same form as the brand-name drug. If the brand-name drug is a tablet, doctors typically prescribe generic tablets; if the brand-name is a capsule, doctors prescribe generic capsules.

55. Drugs with the same active ingredient, but in a rarely-prescribed dosage form or strength, are not subject to the government FULs or MACs. The government reimbursement rate for these rarely-prescribed drugs could be much greater than for the commonly-prescribed form and strength of drug. Thus, large disparities often exist between the price Medicaid pays for generic equivalents for popular dosage forms or strengths of brand-name drugs, and other dosage forms and strengths with the identical active ingredient. It is under these circumstances that a tablet and a capsule could have the same active ingredient, but very different reimbursement levels for the government.

V. DEFENDANTS KNOWINGLY CAUSED THE PRESENTATION OF FALSE CLAIMS

A. Defendants' Government Business

56. Par, Alphapharm, and Genpharm are primarily in the business of manufacturing, marketing, and selling generic forms of prescription drugs. Generic drugs are marketed after the patent expiration of a brand-name drug, and are less expensive than the brand-name drug. The generic drug industry is highly regulated. The defendants paid close attention to the regulatory

scheme, particularly to those regulations that affected pricing and profits. Defendants knew the laws applicable to prescriptions and reimbursements for generic drugs.

57. As part of its core business, Par markets generic drugs made by foreign manufacturers for consumers in the United States. Par regularly enters into marketing and distribution agreements with foreign manufacturers, such as defendants Alphapharm and Genpharm, under which Par receives a substantial share of the profits for selling the drugs made by the foreign manufacturers.

58. Defendants' pharmaceuticals are used by millions of low-income individuals and families, disabled persons, elderly persons, and military personnel whose benefits are paid by the government. Defendants knew that their products were paid for under the federal and state Medicaid programs, as well as under other government programs.

59. Par, Alphapharm, and Genpharm knew and intended that millions of dollars of its sales result from government reimbursements for prescriptions provided to persons receiving benefits from Medicaid, the Federal Employee Health Benefit Program, Tri-Care/CHAMPUS, and state-operated prescription reimbursement programs (*e.g.*, Illinois SeniorCareRx and Circuit Breaker), as well as other government third-party payor health insurance programs.

B. Defendants' Schemes to Defraud the Government

60. In order to sell more of their drugs, Par, Alphapharm, and Genpharm caused the unlawful filling of prescriptions with defendants' products that were not the specific drug that the doctor had prescribed. Defendants caused these drug switches solely for the purpose of profiting through the increased government reimbursements paid to pharmacies for defendants' products, through Medicaid and other taxpayer-funded programs.

61. Alphapharm and Genpharm controlled the marketing of Par's switching schemes, knew of and participated in these illegal schemes, and benefitted from them. Alphapharm and Genpharm had an ongoing business relationship with Par. Alphapharm and Genpharm knew of the false claims, yet did not cease doing business with Par or disclose the false claims to the United States or the plaintiff States. This course of conduct allowed fraudulent claims to be presented to the federal and state governments.

62. Defendants knew of the price disparities that occurred when a popular and widely used brand-name drug had price limits for its generic form. With their industry expertise, defendants knew when such disparities were going to occur before they happened. Defendants sought to take advantage of these disparities by making and marketing generic drugs with the same active ingredient as popular brand-name drugs – but in a different dosage form or strength that would not have a Medicaid price limitation.

63. Defendants caused, conspired with, enabled, and aided Walgreens and other pharmacy providers to make false and fraudulent claims and statements for the higher priced drugs to the government and knowingly caused evasion of federal and state price limits.

64. The intended consequence of defendants' actions and conspiracy with Walgreens and others was the filing of false and fraudulent claims by these drug providers, resulting in the government paying substantially more for drugs that had not been prescribed.

65. Alphapharm and Genpharm sold Par the U.S. marketing rights for their foreign-made drugs that were in different dosage forms or strengths than frequently prescribed prescription drugs and that were not subject to government maximum prices. Then, defendants marketed and supplied the different dosage forms or strengths to effectuate illegal drug

switching. Alphapharm and Genpharm, under their agreements with Par, knowingly participated in Par's activities.

66. Defendants created a market for drugs in a dosage form or strength that had no Medicaid price limits to facilitate unlawful switching. Brand-name drugs came in well-established dosage forms and strengths, and were known to both doctors and patients in those particular forms and strengths. Defendants marketed their generic products in a different form or strength specifically for the purpose of obtaining the higher reimbursements that could be achieved by illegal switching.

i. Defendants Caused Illegal Switching to their Ranitidine Capsules

67. Par implemented a fraudulent scheme to evade Medicaid reimbursement limits for *tablets* of ranitidine, the generic form of the brand-name antacid Zantac. Doses of 150 and 300 milligrams of ranitidine require a prescription, the cost of which is commonly covered by Medicaid. Par caused Walgreens and other pharmacies to fill prescriptions for Zantac and ranitidine *tablets* with Par's *capsules*. Par convinced its customers to buy its capsules because of the huge profits to be made by participating in Par's illegal drug switching scheme.

68. Brand-name Zantac and generic ranitidine are prescribed almost exclusively in tablet form. For example, for Medicaid beneficiaries using ranitidine or Zantac in the State of Louisiana, more than 98% of their prescriptions were filled with tablets during the months of March, April, and May in the year 2000 (before Par had begun to sell its ranitidine capsules). During the same timeframe, more than 93% of Medicaid beneficiaries using ranitidine or Zantac in the States of Florida and Tennessee were receiving tablets.

69. Par knew that ranitidine tablets were becoming subject to federal and state maximum Medicaid price limits. On April 6, 2000, the U.S. Center for Medicare and Medicaid Services (“CMS”) announced that it was setting a Federal Upper Limit for ranitidine tablets. Par saw the opportunity to profit by evading this limit through marketing a scheme to fill ranitidine tablet prescriptions with a different drug -- Par’s ranitidine capsules.

70. After the CMS announcement, Par marketed its ranitidine capsules to entice Walgreens and other pharmacies to fill all Zantac and ranitidine prescriptions with Par’s ranitidine capsules. Par made presentations, distributed flyers, and used other methods for the purpose of convincing pharmacies to participate in the switching scheme to evade the upcoming Medicaid price limits.

a. Defendants initiated the switching scheme by touting the huge profits to be made by evading Medicaid price limits

71. Par’s marketing presentation to Walgreens explains the scheme for switching to Par’s ranitidine capsules. The presentation was created and distributed in November 2000 by Par’s top executive in charge of marketing, Nick DiMaio, who was then Par’s Executive Vice-President of Sales & Marketing. Par’s President at that time, Scott Tarriff, was also directly involved in marketing the scheme to Walgreens. Par’s presentation, called “Walgreens Ranitidine Analysis (tablets vs. gelcaps),” is attached as [Exhibit 5](#) and reproduced below:

Walgreens Ranitidine Analysis (tablets vs. gelcaps)

product	acquisition cost per tablet	AWP per tablet	Proposed HCFA MAC per tablet
<u>150mg tablet</u>	\$0.019	\$1.588	\$0.078
<u>Par 150mg gel cap</u>	\$0.095	\$1.521	n.a

Walgreens dispenses 73,375,000 150mg tablets & gelcaps per year

Third party prescription reimbursement 150mg (tablets vs. gelcaps)

	150mg gelcaps	150mg tablets	
total dispensed	73,375,000	73,375,000	
# per prescription	60	60	
# of prescriptions	1,222,917	1,222,917	
acq. cost per prescription	\$5.70	\$1.14	
awp per prescription	\$91.26	\$95.28	
HCFA MAC per prescripion	n.a	\$2.35	
sell price per prescription			
(awp - 25% + \$3.00)	\$71.45	\$5.35	(MAC + \$3.00 dispensing fee)
profit per prescription	\$65.75	\$4.21	
# of prescriptions	1,222,917	1,222,917	
Total annual profit	\$80,400,656	\$5,143,588	

72. Through this analysis, Par showed Walgreens how it could make over \$75 million dollars in additional profits by filling prescriptions for Zantac and ranitidine tablets with Par's ranitidine capsules, even though Par's capsules would cost Walgreens considerably more than the competing tablets. Par explained that Walgreens could charge more, and be paid more, for Par's ranitidine capsules because of the huge profits that Walgreens could make by evading

Medicaid's price limits – at taxpayer expense.

73. Specifically, Par's "Walgreens Ranitidine Analysis" shows that Par was going to charge Walgreens five times more for its ranitidine capsules than competitors were charging for ranitidine tablets. Walgreens' acquisition cost would be 9.5 cents for each Par capsule but only 1.9 cents for a competitor's tablet, for a per-prescription acquisition cost of \$5.70 for Par's capsule prescription versus only \$1.14 for a tablet prescription. *See, [Exhibit 5](#).*

74. At the top of Par's "Walgreens Ranitidine Analysis," Par highlighted the upcoming Medicaid price limits for ranitidine tablets, known as the "Proposed HCFA MAC." "HCFA" was the federal Health Care Finance Administration of the United States Department of Health and Human Services (now known as the Centers for Medicaid and Medicare Services or "CMS"). The "MAC" is a Maximum Allowable Cost, a Medicaid price limit set for generic drugs reimbursed by the state Medicaid programs.

75. Par explained to Walgreens that, while Par's capsules would cost more, there would be a MAC price limit for tablet reimbursements, but there would be no such reimbursement limit for Par's capsules. Medicaid would pay Walgreens \$71.45 per prescription for Par's capsules, but only \$5.35 for a tablet prescription.

76. Par's analysis showed that, by evading the MAC on ranitidine tablets, Walgreens could make a profit of \$65.75 for each Par capsule prescription. This compared to a profit of only \$4.21 for each tablet prescription – 15 times more profit, even while paying Par five times as much.

77. Par's Walgreens Ranitidine Analysis was so detailed that it calculated Walgreens annual ranitidine prescriptions to be 1,222,917. Applying simple math, Par projected that

Walgreens would make \$80,400,656 in profits through instituting Par's illegal capsule switching scheme, but only \$5,143,588 by legally dispensing the prescribed tablets. See, [Exhibit 5](#).

78. Nick DiMaio, Par's top marketing executive, was often assisted at these presentations by Julie Trendowicz, Par's Vice President of Sales & Marketing. In an interview with the Federal Bureau of Investigation, Trendowicz confirmed Par's marketing plan for evading Medicaid price limits:

Q. Well, when you go in and offer the product, you market it on the basis of there being a MAC on the competition, as opposed to the product that Par wishes to sell, don't you?

A. If we offer that program to [Walgreens], yes, that's what we would have.

[Exhibit 6](#) at Day 2, p. 456 line 20 – p. 457 line 6.

79. Par's message was received loud and clear by Walgreens. On, May 15, 2001, Bill Groth, Walgreens' Divisional Manager for Pharmacy Purchasing, wrote in an email regarding ranitidine that stated:

[S]ince these items are highly competitive 3rd party payors and the government have created MAC (maximum allowable cost) pricing which limits our reimbursement.... By switching to a capsule dosage form we have discovered that there are not currently constraints on MAC... At a 50% conversion rate increased GP [gross profit] dollars could achieve approximately \$1.66MM per month...

Attached as [Exhibit 7](#).

80. Groth later testified about this email and specifically how he came to know about the lack of a MAC on Par's ranitidine capsules:

Q. Further down in that e-mail, you wrote: "Since these items are highly competitive, third-party payers and governments have created MAC's which limits our reimbursement." And then you stated that by switching to the capsule, you've discovered there are no constraints on the MAC. How did you discover that there were no constraints on the MAC?

A. I believe that, again, was presented by Par Pharmaceutical.

[Exhibit 8](#) at p. 34, lines 5-15.

b. Defendants conspired with Walgreens and others to effectuate the switching program

81. Par specifically targeted Walgreens and other pharmacies that could use nationwide computer systems to automatically implement unlawful switching of prescriptions to Par's drugs, regardless of what the doctor prescribed. Par's Vice President Trendowicz testified that Par targeted Walgreens for that specific reason, and that Par met with Walgreens' operational supervisor Tom Lawlor for the purpose of effectuating the switching scheme through Walgreens' computer systems.

82. As Par intended, Walgreens agreed to buy Par's ranitidine capsules for the purpose of engaging in the switching scheme. In a company-wide email sent by Tom Lawlor on July 12, 2001, the Walgreens' ranitidine switching program was officially rolled out:

On Tuesday, July 16, 2001 we will begin **automatically switching all prescriptions for Ranitidine 150mg and 300mg tablets (Mylan) to Ranitidine 150mg and 300mg capsules by Par Labs**. Brand name prescriptions for Zantac tablets will also be converted to the new dosage form when the respective generic is dispensed.

Attached as [Exhibit 9](#) (emphasis supplied).

83. In July 2001 or earlier, pursuant to Par's switching scheme, Walgreens set up its pharmaceutical distribution system so that all prescriptions for Zantac and generic ranitidine medications were automatically filled with ranitidine capsules. Walgreens made ranitidine capsules the only form of generic ranitidine readily available to its retail customers, despite the fact that it was dispensing an entirely different drug.

84. Upon receiving tablet prescriptions, Walgreens' pharmacy personnel could not

process the orders as written, but instead had to fill the prescriptions with Par's ranitidine capsules. In furtherance of Par's scheme, Walgreens required its pharmaceutical staff to fill all Zantac or ranitidine prescriptions with Par's capsules regardless of what the physician had prescribed, in violation of state and federal law. Even refills of prescriptions previously filled with Zantac and ranitidine tablets were filled with Par's capsules.

85. Walgreens did not have any system to obtain doctor or patient authorization for the drug switching, or even a system to notify the doctor or patient that the prescribed drug had been switched. Walgreens did not obtain legitimate doctor or patient authorization for the drug switching.

86. Due to Par's scheme, the Medicaid program paid much more for Par's ranitidine drugs. For example, during the first year of Par's conspiracy with Walgreens, from July 2001 to July 2002, the average Tennessee Medicaid reimbursement for ranitidine tablets was 32 cents. Par's ranitidine capsules were reimbursed at a rate nearly three times as much -- 87 cents. These overcharges continued through the scheme. For example, from July 2003 to July 2004, the average Florida Medicaid reimbursement for ranitidine tablets was 28 cents. Par's ranitidine capsules were reimbursed at a rate three times greater -- 91 cents.

87. The conspiracy to switch drugs that Par created and implemented, with the eager participation of some key customers such as Walgreens, resulted in the submission and payment of numerous false claims by state and federal Medicaid programs. Examples of these false claims are attached as [Exhibit 10](#), which shows numerous claims submitted by Walgreens to the Florida, Illinois, and Tennessee Medicaid programs for Par's ranitidine capsules, despite the prescriptions having been written by the physician provider for Zantac or ranitidine tablets.

These false claims were the result of Par's and Walgreens' nationwide conspiracy to switch ranitidine prescriptions.

88. Defendant Par supplied enormous quantities of ranitidine capsules in order to effectuate the switching scheme. The quantity of government reimbursements for Par's capsules after the switching scheme was implemented dwarfed the number of reimbursements for capsules processed before the scheme was initiated.

89. To help facilitate the ranitidine switching scheme, Walgreens and Par created a "Health Resources Partnership." As part of this partnership, Par marketed ranitidine capsules as if they were therapeutically equivalent to, and thus legally interchangeable with, ranitidine tablets, when in fact they were not. *See, [Exhibit 11](#)*.

90. Drugs that are therapeutically equivalent and legally interchangeable are known as "AB rated products." Par used various means to convince pharmacists that Par's ranitidine capsules were therapeutically equivalent and AB rated to ranitidine or Zantac tablets, when this was not true.

91. As Par intended, Walgreens used Par's lies to market Par's ranitidine capsules. Tom Lawlor, Walgreens' Director of Pharmacy Marketing, conveyed Par's misrepresentation to Walgreens pharmacists that "Ranitidine capsules by Par are AB rated generic products." He told pharmacists that "[the conversion program] will provide a unique opportunity to have meaningful conversation with your patients and assure them their medication is exactly the same and that the only change is to a capsule dosage form." *[Exhibit 9](#)*.

92. In July 2001, Lawlor's false and misleading assertions about the equivalency of Par's ranitidine capsules came to the attention of the Illinois Department of Public Health. On

July 25, 2001, the Department of Public Health issued a written rebuke of Walgreens' ranitidine substitution program, concluding that:

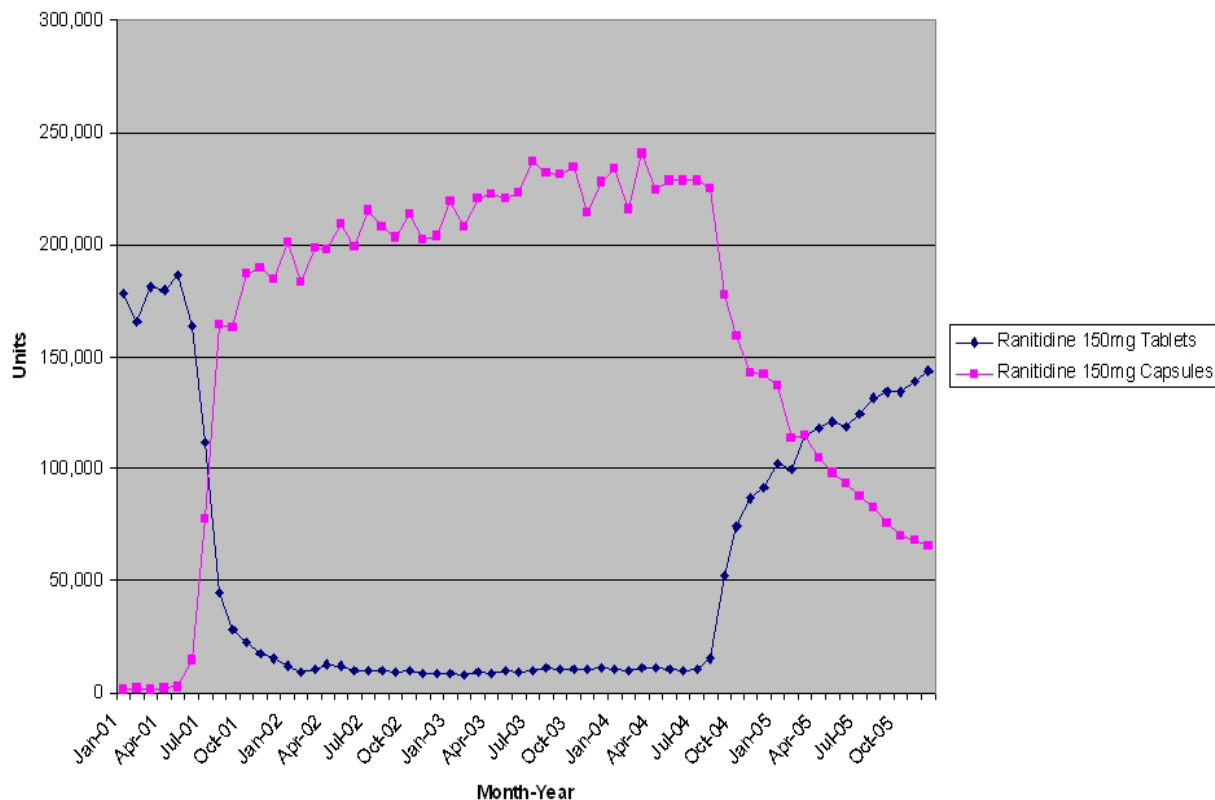
Your communication to Walgreen pharmacists indicated that the *ranitidine 150mg and 300mg capsules* intended to be dispensed by Walgreen pharmacists were "AB rated generic products." Please note that the Par ranitidine 150mg and 300rag capsules are only rated equivalent to other manufacturers' ranitidine capsules listed in the current edition of the FDA's publication, *Approved Drug Products with Therapeutic Equivalence Evaluations*."...

To infer that Par ranitidine capsules are "AB rated generic products" with any manufacturer's ranitidine tablets is false and deceptive. (Emphasis in original).

Attached as [Exhibit 12](#).

93. The success of Par's switching scheme is best revealed by the graph below, which shows the State of Florida's reimbursements for ranitidine 150mg tablets and capsules for the period from January 1, 2001 through December 31, 2005.

Florida Walgreens Ranitidine Utilization



94. The graph dramatically shows that Par’s scheme worked. Florida paid Walgreens for over 99% 150mg *tablets* in the first quarter of 2001, but paid for 95% *capsules* in the first quarter of 2002. Those capsules came at a considerably higher cost to taxpayers. The scheme cost Florida Medicaid over \$1.2 million during its first year.

c. Par secretly contributed millions to Walgreens to reimburse Walgreens’ costs for switching back to tablets in response to a government investigation.

95. The fact that Par initiated the scheme is further demonstrated by Walgreens’ and Par’s actions after the government began investigating drug switching at Walgreens. The graph above shows, beginning in September 2004, Walgreens systemically switched new ranitidine

prescriptions back to tablets in response to a government investigation.

96. But since this “switch-back” cost Walgreens substantial profits, Walgreens went back to Par to recoup losses suffered from reversing the Par-initiated scheme. As part of the conspiracy, Par repaid Walgreens millions of dollars for its losses.

97. Internal Walgreens documents show that after Walgreens learned the corporation was being investigated by the government for the illegal switching scheme, it decided to rollback the switching. On August 20, 2004, Bill Groth, Walgreens’ Divisional Manager for Pharmacy Purchasing, explained via email to George Riedl, Walgreen’s Senior Vice-President of the Drug Store Marketing Division, that:

FYI...John Ziebell and myself, along with Tom Lawlor had a second meeting today with [Walgreens in-house counsel] Bryan Schneider in regard to questions and concerns from government agencies on Ranitidine and Fluoxetine dosage form conversions. These agencies suggest we are actively switching dosage forms and thus the states are paying higher reimbursement which they view as overcharges to the public. Additionally, they suggest our pharmacists are not calling for physician approval. Today’s meeting was as a result of discussions Bryan has had with others within our company and outside counsel and ultimately that groups recommendation to adjust our policy.

[Exhibit 13](#) at 05218-19.

98. The primary change that came as a result of Groth, Lawlor, Ziebell, and Schneider’s meeting was that, beginning in September 2004, Walgreens began to “quietly” undo the switching program it had put into effect with Par. Walgreens moved all its customers’ new ranitidine prescriptions from Par’s ranitidine capsules back to ranitidine tablets.

99. As Lawlor later explained in an email sent on November 17, 2004:

On the advice of in-house and outside counsel due to 3 state Attorneys General and the US AG suing us – we were advised to quietly convert to the same dosage forms. There is an estimated \$5 million hit to the company per year in GP. This decision did not come easily or lightly and was made in FY 2005 – not ‘04.

[Exhibit 14](#) at 09542.

100. Because switching back cost Walgreens significant profits, Walgreens approached Par for a price reduction on several drugs, including ranitidine, to recoup its lost profits.

101. Frank DeStefano, Walgreens’ General Merchandise Manager, explained in a September 21, 2004 email that:

FYI....as discussed in the Divisional Review, the impact of the tab-to-tab and cap-to-cap cross reference on ranitidine and fluoxetine is estimated at a gross profit loss of about \$9.94M for FY2005. In anticipation of this and in order to defray the loss, John Ziebell has gone to Par and Teva to obtain lower costs on both capsules AND tablets for both entities.

[Exhibit 15](#) at 05260.

102. Consequently, Walgreens contacted Julie Trendowicz, Par’s Vice President of Sales & Marketing, to obtain a price reduction. Trendowicz was responsible for the Walgreens account and participated in the initial drug switching pitch to Walgreens, as well as in implementing the scheme over the years. Trendowicz successfully obtained Par’s price reductions mentioned in DeStefano’s email.

103. The effect of Par’s assistance in defraying Walgreens’ profit losses was significant. After the price reductions were secured, DeStefano stated in an email to Walgreens’ John Ziebell and Heather Zenk:

Your work on getting price reductions on fluoxetine and ranitidine in response to the 8/27 change in the cross reference on Intercom Plus helped us recover approximately \$2.2M annually (defrayed the estimated annual profit loss of

\$9.94M down to \$6.73M) for the company. OUTSTANDING JOB... THANK YOU!!!!

[Exhibit 15](#) at 11048.

104. Thus, Par not only enticed Walgreens into the illegal switching programs, it also paid millions to help get them out once the government began to stop the scheme.

105. As Par knew, however, Walgreens did not completely stop the switching in 2004, and refills for current customers remained switched to Par's capsules.

106. Par's activities in marketing (and later helping pay for ending) this scheme were controlled by Alphapharm and Genpharm. Alphapharm and Genpharm controlled the marketing of Par's switching schemes, knew of and participated in these illegal schemes, and benefitted from them. Alphapharm and Genpharm had an ongoing business relationship with Par. Alphapharm and Genpharm knew of the false claims, yet did not cease doing business with Par or disclose the false claims to the United States or the plaintiff States. This course of conduct allowed fraudulent claims to be presented to the federal and state governments.

ii. Defendants Caused Illegal Switching to their Fluoxetine Tablets

a. Defendants initiated the switching scheme by touting the huge profits to be made by evading Medicaid price limits

107. Defendants also implemented a fraudulent scheme to evade Medicaid reimbursement limits for fluoxetine capsules, the generic form of the brand-name antidepressant Prozac. Doses of 10 and 20 milligrams required a prescription and were covered by Medicaid. Defendants caused Walgreens and other pharmacies to fill prescriptions for Prozac and fluoxetine *capsules* with Par's *tablets*. Par convinced its customers to buy tablets by promoting the huge profits to be made by participating in defendants' illegal drug switching scheme.

108. Both brand-name Prozac and generic fluoxetine were prescribed almost exclusively as in a capsule form. Prozac, in its 20mg strength, came *only* as capsules. Prior to Prozac losing patent protection on August 1, 2001, all prescriptions for Prozac 20mg were filled with capsules. Prescriptions for Prozac 10mg were typically filled with capsules.

109. While Eli Lilly, the manufacturer of Prozac, made a 10 milligram tablet, it never marketed a 20 milligram tablet.

110. Accordingly, with the expiration of Eli Lilly's patent on Prozac looming, numerous generic manufacturers submitted applications to the FDA in order to sell fluoxetine capsules.

111. By contrast, Alphapharm and Genpharm began to develop and test fluoxetine 10 and 20 milligram *tablets*. Under an Agreement between Genpharm and Par (called the "Par 8 Agreement"), Genpharm gave Par the exclusive sales and distribution rights for fluoxetine tablets in the United States.

112. Alphapharm was the company that developed fluoxetine tablets and worked to secure their FDA approval. Both Alphapharm and Genpharm had devoted significant time and money as part of the research and development process for fluoxetine and looked to see a return on their investment.

113. The decision to manufacture and sell fluoxetine tablets was driven by Alphapharm and Genpharm. Alphapharm and Genpharm's control of the board and Par operations ensured that fluoxetine would be a top priority.

114. In sworn testimony, Scott Tarriff, Par's CEO at the time, described the development process for fluoxetine tablets and Alphapharm and Genpharm's role in pushing the project through:

We might discuss [from] time to time some drugs that maybe we didn't want or shouldn't have been in the line, but for the most part the products that came out of Genpharm were predetermined and just happened.

See, [Exhibit 16](#) at p. 77, lines 14-18.

Tarriff also stated that:

[Fluoxetine tablets were] developed by Genpharm who really was our owner at the time. They developed it and gave it to us. We did have some sales. We made some money selling it. So they already developed this. They already paid the R and D money for it. They delivered to us an approved ANDA and took it to market. I don't think we had much of a choice."

See, [Exhibit 16](#) at p. 189, lines 17-24 (emphasis supplied).

115. From the outset, defendants realized that marketing and selling a new and unused dosage form would pose significant challenges, but also offered positive opportunities. For example in an email sent on May 9, 2000, Brett Mooney, Alphapharm's head of research and development stated:

Just to clarify. The 10mg is marketed. My concern is that with the 20mg that I believe we have exclusivity for, Lilly does not market this strength. If we receive approval, there is a real opportunity to create a market for the 20mg tablet in light of the 20mg capsule demand.

See, [Exhibit 17](#).

116. Alphapharm and Genpharm knew that, because Prozac was a capsule market, they would be the only company making and marketing a fluoxetine 20mg tablet. See, [Exhibit 18](#). Just as with the switching scheme for Zantac/ranitidine, the lack of competition in the fluoxetine tablet market was a significant factor because it affected drug pricing and prevented the

implementation of a FUL, leading to greater Medicaid reimbursement.

117. Despite the potential upside of marketing and selling fluoxetine 20mg tablets, Alphapharm and Genpharm also realized that dosage form would pose a marketing challenge. Specifically, there was a major concern that Par did not have a sufficiently powerful marketing team to create a market for the tablet dosage form.

118. From the outset, Alphapharm and Genpharm evidenced their need to control Par's marketing. An email dated May 9, 2000, documented Alphapharm and Genpharm's concerns about Par's capacity to market fluoxetine, as expressed by Brett Mooney, head of Research and Development for Alphapharm:

Brett recently raised the issue of what happens if Lilly do not market the tablets, Ivan quite rightly commented that PAR certainly does not have the marketing muscle to establish a new market for the tablet the question is what do we do?

See, [Exhibit 17](#).

119. Alphapharm and Genpharm actively considered whether to use Par or another company to market fluoxetine and other drugs, evidencing the ability to "hire or fire" Par for sales and marketing. See, [Exhibit 19](#), [Exhibit 20](#).

120. Par was able to overcome Alphapharm and Genpharm's concerns about fluoxetine 20mg tablets by designing and implementing a robust marketing campaign for fluoxetine tablets that cost more than a million dollars and targeted patients, doctors, pharmacists, and pharmacies. Some of the marketing tactics used by Par, with Alphapharm and Genpharm's knowledge, assistance, and encouragement, are described in greater detail below.

121. Alphapharm and Genpharm approved Par's switching scheme. In a November 27, 2001 email from Ian Hilley, Genpharm's Vice President for Business Development and

Government Relations, Hilley extolled Par CEO Tarriff's use of the "capsule tablet dodge" for fluoxetine and other drugs. The email was distributed to Alphapharm CEO John Montgomery and numerous other Alphapharm and Genpharm executives.

122. Alphapharm and Genpharm sold Par the exclusive rights to market fluoxetine tablets in the United States. Defendants shared the profits from selling fluoxetine tablets under a distribution agreement dated November 20, 2000 between Genpharm and Par.

123. As Alphapharm and Genpharm had fronted all research and development costs for fluoxetine tablets, the companies were keenly in tune with the steps Par would take so that their investment would pay off in the form of Genpharm's profit share from its agreement with Par and in Alphapharm's sales of its drug.

124. To this end, Par's Sales & Marketing department, headed by Scott Tarriff and later Nick DiMaio, reported directly to Ian Jacobson, who at the time was Genpharm's executive vice-president. Alphapharm and Genpharm were intimately aware of Par's general marketing strategy and the specific tactics and collaterals that Par used to sell fluoxetine tablets.

125. Through Alphapharm and Genpharm's control of Par's board of directors, their interest in the company occupation of The Office of the President and domination of Par as a corporation, Alphapharm and Genpharm were complicit in Par's fluoxetine switching scheme and reaped substantial profits earned through its implementation.

126. Thus, given these directives, Par marketed the rarely prescribed form of the drug, fluoxetine tablets, as it had with ranitidine capsules, as a means for pharmacies to profit at taxpayer expense by illegally filling prescriptions for Prozac and fluoxetine capsules with defendants' higher priced tablets. Walgreens executives again confirmed that it was Par that

brought them the idea of switching fluoxetine tablets for fluoxetine or Prozac capsules.

Walgreens' Bill Groth, the Divisional Manager for Pharmacy Purchasing, testified that:

Par presented ... that they were coming out with a [fluoxetine] tablet and would we be interested in making that conversion from a [Prozac] capsule in this case back to a tablet on the Fluoxetine tablets.

[Exhibit 8](#) at p. 40 line 23 – p. 41 line 3.

127. Notably, Par claimed that fluoxetine tablets were easier to swallow than capsules, despite contrary sales programs for ranitidine emphasizing that capsules were easier to swallow. For example, in advertisements for fluoxetine and in a launch presentation to pharmacy customers for fluoxetine tablets, Par claimed that “[fluoxetine tablets’] small size makes tablets easy to swallow” and that “patients prefer tablets over capsules when they have a preference between the two dosage forms.” See, [Exhibit 21](#). At the same time, when promoting ranitidine capsules as part of the Health Resources Partnership, Par claimed that capsules were “easier to swallow.” See, [Exhibit 11](#) at 00068.

128. Par Vice-President Trendowicz also confirmed, in sworn testimony, that fluoxetine tablets were marketed by comparing “a Par product that was not subject to a MAC versus a comparison of a non-Par product that was subject to a MAC.” [Exhibit 6](#) at Day 1, p. 128, lines 13-20.

129. Customers received Par's message loud and clear. Some of Par's commonly used phrasing made its way to the pharmacies and their pharmacists. For example, Dan Maloney was head of generic purchasing for Omnicare, Inc., the nation's largest pharmacy for nursing homes³

³ In November 2006, Omnicare paid \$49.5 million to the United States and 43 states to settle relator Lisitza's complaint alleging that the pharmacy violated False Claims Acts by illegally switching ranitidine, fluoxetine and bupirone drugs. The settlement was reached as the result of a joint state and federal government investigation. Omnicare denied liability and the settlement itself is not evidence of

and similar facilities, and one of Par's large customers. Maloney stated in a December 2, 2001 email that:

Remember on average every buspirone switch is worth about 38 dollars and Fluoxetine 18 dollars. [W]hen additional generic companies enter the market on fluoxetine early Feb. the prices will drop and Par will follow the price down on Bus 7.5mg and Fluox 20mg tab. No one else will have these products so there will be minimal or no mac's. Hopefully profits will soar even more.

Attached as [Exhibit 22](#).

130. In December 2002, a Federal Upper Limit price of \$0.58 was established for fluoxetine 10mg capsules and \$0.60 for 20mg capsules. See, [Exhibit 23](#). States also established Maximum Allowable Costs for fluoxetine capsules that were at or below the FUL, as required by federal law and in compliance with federal regulations.

131. Before the patent expired, defendants knew that there would be competition in the fluoxetine capsule market which would lead to the imposition of federal and state maximum prices. On the other hand, defendants knew that there would be little or no competition in the fluoxetine tablet market. Accordingly, no such price ceilings would be put in place.

132. Walgreens, Omnicare, and the rest of defendants' customers who participated in the switching scheme reaped the anticipated benefits of their illegal switching. The switching cost taxpayers millions in unnecessary reimbursements paid to Par's customers and, ultimately, to Par for purchase of the fluoxetine tablets used during the illegal drug switching.

133. For example, in Florida, during the month of January 2003, the Medicaid reimbursement for one 20mg fluoxetine capsule was \$0.57, while the reimbursement for one of Par's fluoxetine 20mg tablets was \$1.77 -- more than three times as much. During the same month, the Indiana Medicaid program was reimbursing one 20mg fluoxetine capsule at \$0.69,

wrongdoing.

while it paid \$1.91 for Par's fluoxetine 20mg tablet -- an inflated rate over two and a half times greater.

134. Par's effort to market the lack of a MAC on defendants' fluoxetine tablets was not limited to Walgreens and Omnicare. Par paid wholesalers and distributors with free products or other incentives to engage in a fluoxetine telemarketing program to pharmacies on Par's behalf. Par gave the wholesalers scripts to use when making phone calls. Not surprisingly, these scripts contained Par's key selling point: Medicaid reimbursement on its fluoxetine tablets allowed pharmacies to make huge profits at the government's expense, all made possible because the single-source Par tablets were not subject to Medicaid price limits.

135. For example, on October 16, 2001, Nick DiMaio, Par's Executive Vice-President of Sales & Marketing, sent one of the above mentioned telemarketing scripts to Amerisource, a drug wholesaler. The script requested that the caller state:

Many third party plans and state agencies are issuing MACs or upper limits on reimbursement on fluoxetine. Par's 20mg fluoxetine tablets are priced to allow you to continue to make acceptable profits when filling prescriptions for fluoxetine 20mg.

Attached as [Exhibit 24](#).

136. The Medicaid reimbursement system was central to the success of defendants' fluoxetine switching scheme. Par not only touted the profits that Walgreens, Omnicare, and others could earn by switching to evade the MAC, but continually provided support and assistance to its customers in dealing with Medicaid reimbursement issues.

137. For example, on May 23, 2002, Omnicare's Maloney, sent Renee Kenney, Par's Senior Director of National Accounts, an email in which he explained:

I need your help...to get Fluoxetine 20mg tablets reimbursement increased or I

will have to instruct them to switch back to caps until such time as the tablets are to my advantage.... I will call the pharmacies and tell them to turn of[f] the switch program.

Attached as [Exhibit 25](#).

138. Maloney's email went on to specifically list the states where fluoxetine reimbursement was problematic, stating: "according to my calculations, I'm getting killed in these states." In his conclusion, Maloney gave Par an ultimatum: "if I hear nothing by next Wednesday, I will call the pharmacies and tell them to turn off the switch program."

139. Given the importance of Omnicare as a client and specifically with respect to the fluoxetine switching scheme, Par passed Omnicare's problem along to its internal contracted reimbursement consultant Pamela Cieplak. *See*, [Exhibit 26](#).

b. Defendants knew that state substitution laws made switching illegal, so they misrepresented them

140. From the outset, Par knew that filling prescriptions for Prozac capsules with fluoxetine tablets would be illegal under state laws.

141. Par was well aware that individual pharmacists were the key to a successful fluoxetine switching program. Because pharmacists are licensed professionals, responsible for the decisions made with respect to dispensing drugs, Par had to convince pharmacies like Walgreens and Omnicare that their pharmacists would be willing to switch a fluoxetine tablet for a fluoxetine or Prozac capsule. *See*, [Exhibit 27](#).

142. Par intended to mislead pharmacists into believing that they could legally fill Prozac prescriptions with Par's fluoxetine tablets. In furtherance of this goal, Nick DiMaio, Par's Executive Vice-President of Sales & Marketing, contacted Pamela Cieplak, a consulting pharmacist with whom DiMaio had a longstanding business relationship, to enlist her help in

conducting a 50 state survey of the laws regarding dosage form substitution. *See, Exhibit 28.* Par's central purpose was to create a product that could be used as a marketing piece to convince pharmacies and pharmacists to switch.

143. While Cieplak was providing legal advice that both she and Par knew would be disseminated to Par's customers, she had no legal training. Par did not have any of its inside or outside counsel review her work. Cieplak spent only about 40 hours completing her survey of the laws of 50 states.

144. Cieplak contacted many states' pharmacy boards, purportedly to get information on their laws governing drug substitution. But during testimony under oath, Cieplak admitted that the questioning that she used when conducting her survey "doesn't make any sense," and that her questions were "probably incorrect" and "confusing." Cieplak's goal was to obtain Par's desired result, a survey that would sanction illegal switching.

145. Cieplak also reviewed and interpreted some of the state pharmacy statutes. Notably, Cieplak did not review applicable Medicaid laws or other applicable laws concerning drug costs and pricing.

146. Throughout the process, Cieplak consulted with and received feedback from DiMaio. The resulting report gave Par what it paid for – a purported justification for pharmacists to conduct illegal drug switching.

147. For example, after Cieplak informed DiMaio that Texas law did not support Par's message to pharmacists, Cieplak resorted to misrepresenting Texas state law in her final report to support Par's position. On February 18, 2001, Cieplak sent DiMaio an email which explained

that Texas and many other states prohibited pharmacists from choosing the dosage form without at least notifying the doctor:

In many states, it looks like the states want pharmacists to notify the prescribing physician if they dispense a dosage form different from that prescribed (see Texas)... So it may be that, at least initially, pharmacists would have to notify prescribers that they were dispensing a tablet instead of a capsule in those states.

Attached as [Exhibit 29](#). A draft of the state survey was also attached to Cieplak's email.

148. In her draft of the 50 state survey, Cieplak correctly cites the provision of Texas law dealing with dosage form substitution. Specifically she wrote:

The Texas Administrative Code, Chapter 309 states: "With the patient's consent and notification to the practitioner, a pharmacist may dispense a dosage form of a drug product different from that prescribed, such as a tablet instead of a capsule..."

[Exhibit 30](#) at 0923842. Cieplak's summary of the law accurately conveys Texas law. If a patient consents and the pharmacist notifies the prescribing physician, that pharmacist can dispense a different dosage form.

149. In the final version of Cieplak's state survey, however, the correct Texas law is mysteriously absent. In fact, Cieplak makes the following false statement about Texas' law in the "effect on Fluoxetine Substitution" column:

The law is silent on the issue of generic substitution of different dosage forms. It is the professional responsibility of the pharmacist to determine the drug product to be selected.

[Exhibit 28](#) at 0001489. Cieplak's conclusion is false because the Texas Administrative Code, Section 309, specifically sets forth the conditions that allow a pharmacist to dispense a different dosage form. Cieplak knew about this Texas regulation, as she had included it in her earlier draft.

150. During testimony under oath, both Cieplak and DiMaio offered no explanation of why the correctly-cited law found in Cieplak's draft was removed from the final survey.

151. The fact that Cieplak's survey contained misrepresentations and reached incorrect conclusions about a pharmacist's ability to engage in dosage form substitution is not surprising. By her own admission the questions posed were "probably incorrect" and "confusing":

Q: This question that you raised here doesn't make any sense because you are asking whether there can be a dosage form switching of a therapeutically-equivalent product, but there is no way to know what the therapeutically-equivalent product is unless you know what the prescription was intended.

A: Exactly.

Q: Then why do you have that in your question: Can he or she dispense a therapeutically-equivalent tablet or capsule?

A: Yeah, it's probably incorrect.

Q: It is a confusing question.

A: It is confusing the way I have that written, yes.

Attached as [Exhibit 31](#).

c. Defendants misrepresented FDA statements

152. In addition to misrepresenting state substitution laws, Par misrepresented FDA statements in order to convince pharmacies to participate in its fluoxetine switching scheme.

153. For example, in a fluoxetine launch presentation created by Par for Caremark, dated June 11, 2001, Par represented that:

The FDA is stating that our 20mg tablet is safe, effective, and has the same bioavailability and therapeutic effect as Prozac 20mg capsule.

[Exhibit 32](#) at 0006059 (emphasis in original).

154. Par's representation was false. The FDA compared tablets with tablets, not with capsules. As the FDA's approval letter for Par's fluoxetine tablets makes no mention of capsules:

We have completed the review of this abbreviated application and have concluded that the drug is safe and effective for use as recommended in the submitted labeling. Accordingly, the application is approved. The Division of Bioequivalence has determined *your Fluoxetine Hydrochloride Tablets*, 10mg and 20mg to be bioequivalent and, therefore, therapeutically equivalent to the listed drug (*Prozac Tablets*, 10mg and 20mg of Eli Lilly and Company).

Attached as [Exhibit 33](#) (emphasis supplied). And as noted earlier, the FDA had publicly and explicitly rejected the notion that capsules and tablets were bioequivalent and thus interchangeable, several months before Par's presentation. See, [Exhibit 4](#).

d. Par paid pharmacies to switch to its products

155. In addition to marketing the reimbursement differential on defendants' fluoxetine tablets, Par offered its customers significant financial incentives to induce participation in the illegal drug switching.

156. Par's agreements with large pharmacy customers such as Walgreens, Omnicare, and others had several key components. First, Par gave its customers free products or "stocking rebates" to ensure a certain minimum order size. For example, Par gave Omnicare \$100,000 worth of "stocking credit" on fluoxetine tablets. See, [Exhibit 34](#) and [Exhibit 35](#).

157. Second, Par created what it referred to as "Market Share Conversion Programs," which it offered to all of its major customers, including Walgreens and Omnicare. Par's objective was to increase the volume of defendants' fluoxetine tablets dispensed by inducing pharmacies to "convert" prescriptions for fluoxetine or Prozac capsules to fluoxetine tablets.

(“Convert” was Par’s euphemism for switching.) The higher the percentage of fluoxetine tablets dispensed versus fluoxetine capsules, the greater the additional rebate that Par’s customers would earn. For example, if Omnicare was able to switch 80% of Prozac and fluoxetine prescriptions to tablets they would be entitled to an “additional rebate” of 20% from Par. *See, Exhibit 34.*

158. Par conditioned the cash payments on illegal switching. As part of defendants’ fluoxetine switching program, customers agreed that they would “utilize Par’s fluoxetine as the preferred product for all generic 10mg, 20mg and 40mg Prozac prescriptions.” *Exhibit 34* and *Exhibit 35*. In practice, this meant that whenever a prescription came in for fluoxetine or Prozac, regardless of the drug actually prescribed by the practitioner, defendants’ fluoxetine tablets would be dispensed.

159. Par’s payments to pharmacies to switch greatly contributed to the success of its fluoxetine switching scheme. In Omnicare’s case, by March 2002, it had nearly achieved the 80% conversion rate Par required. As a result, Omnicare received a rebate of 16% from Par. *See, Exhibit 36* at 0003971. Omnicare’s payment amounted to nearly \$400,000 and was paid by Par on or about March 29, 2002. *See, Exhibit 36* at 0003968.

e. Defendants conspired with Walgreens and Omnicare to ensure the success of the fluoxetine program

160. As a result of the marketing tactics described above, Walgreens and Omnicare agreed to buy fluoxetine tablets from Par for the purpose of engaging in a dosage form switching scheme.

161. In an email from Omnicare’s Dan Maloney of Omnicare to Sam Enloe, an Omnicare Regional Vice-President, Maloney explained:

As you all are aware, there is a[n] initiative to switch... Fluoxetine 20mg capsules

to 20mg tablets. I shared at the management meeting with each of you an [sic] financial analysis on the two drugs [fluoxetine and buspirone] and the opportunity to Omnicare. Both combined were worth well over half a million per month in profits.

Attached as [Exhibit 22](#).

162. Walgreens also stressed to its pharmacists that the fluoxetine switching initiative was of the utmost importance. As Tom Lawlor of Walgreens stated in an August 3, 2001 email to all pharmacy district managers:

We need to focus on making an immediate conversion from Prozac (Lilly/Dista) to FLUOXETINE on every allowable prescription - refills and new. Please be sure all of your staff is aware of this and that they know the procedures to make these immediate conversions to the generic. Have a plan in place in your store for all of your staff, but especially for the in-window technicians, to make sure your store captures every opportunity the very first time one presents itself.

Attached as [Exhibit 37](#).

163. At the highest levels of its management, Par was well aware of the role Walgreens played with respect to Par's fluoxetine switching scheme. In fact, Par's CEO at the time, Scott Tarriff, wrote a letter to Walgreens' top management commending them for their participation in the fluoxetine program. Tarriff explained that: "Par elected to provide the fluoxetine opportunity to a very select group of customers. Walgreens was selected for its progressive, forward thinking approach to pharmacy." See, [Exhibit 38](#).

164. Tarriff's letter went on to state that:

In fact, we believe that John Ziebell is perhaps the most creative and visionary purchasing executive in the industry. This is evidenced by Walgreen's [sic] participation in the ranitidine and fluoxetine programs. Par's decision to approach Walgreens with this opportunity was largely influenced by our belief that John had the vision to embrace this concept.

[Exhibit 38](#).

165. In August 2001 or earlier, pursuant to Walgreens' discussions and agreements with Par, Walgreens programmed its pharmaceutical distribution system so that all prescriptions for Prozac or generic fluoxetine medications were filled with fluoxetine tablets. Walgreens made defendants' fluoxetine tablets the only form of generic fluoxetine readily available to its retail customers.

166. Upon receiving capsule prescriptions, Walgreens' pharmacy personnel could not process the prescriptions as written, but instead filled the prescriptions with defendants' tablets. Thus, even though capsules were prescribed, the prescription was unlawfully filled with defendants' tablets. A similar switching system was implemented at Omnicare pharmacies.

167. Walgreens and Omnicare required their pharmaceutical staff to fill all Prozac and fluoxetine prescriptions with defendants' tablets regardless of what the physician prescribed, in violation of state and federal law. Even refills of Prozac and fluoxetine capsules previously filled with capsules were filled with tablets.

168. Walgreens and Omnicare did not have any system to obtain doctor or patient authorization for the drug switching, or even a system to notify the doctor and patient that the prescribed drug had been switched. Walgreens and Omnicare did not obtain legitimate doctor or patient authorization for the drug switching.

169. Defendants supplied enormous quantities of fluoxetine tablets in order to effectuate the switching scheme. The quantity of government reimbursements for defendants' tablets after the fluoxetine switching scheme was implemented dwarfed the number of tablet reimbursements before the scheme.

170. Walgreens and Omnicare made defendants' fluoxetine switching scheme a huge success. In a September 21, 2001 email, George Riedl, Walgreens' Divisional Manager for Pharmacy Purchasing boasted that:

All generic [fluoxetine] sku's combined produced \$8.3 million in gross profit for August 2001 with store substitution reaching 85%. The 20mg tablet alone produced \$6.4 million in profit making it the #1 Rx profit item in the company.

Attached as [Exhibit 37](#) at 04618.

171. Similarly, while relaying some of the items discussed during an April 2002, regional managers meeting, Greg Primuth, a Walgreens District Pharmacy Supervisor, stated: "Are you 90% on generic Prozac? Profit difference w/20mg tablets is \$64. This should be an automatic." See, [Exhibit 39](#).

172. This conspiracy that defendants created and implemented resulted in the submission and payment of numerous false claims to state and federal Medicaid programs. Example of these false claims are attached as [Exhibit 40](#), which shows numerous claims submitted by Walgreens' to the Florida, Tennessee, and Virginia Medicaid programs for defendants' fluoxetine tablets, despite the prescriptions being written by the physician-provider for Prozac or fluoxetine capsules. These false claims were the result of Par and Walgreens' nationwide conspiracy to switch fluoxetine prescriptions.

173. As with ranitidine capsules, Walgreens followed Par's lead to create the impression that fluoxetine tablets were interchangeable with fluoxetine capsules. Fluoxetine tablets and capsules are two distinct drugs and thus not interchangeable.

174. As Par intended, Walgreens executives misrepresented that Par's fluoxetine tablet was "AB rated" to Prozac or fluoxetine capsules in numerous emails to its pharmacy staff. For example, in an August 3, 2001 email sent to all pharmacies, Tom Lawlor claimed that:

FLUOXETINE tablets, capsules (10 & 20mg strengths) 40mg capsules... are all AB rated generic equivalents to Prozac (Lilly/Dista)... These very high profile, high volume AB rated generic equivalent represents a significant opportunity for all of us in several areas.

Attached as [*Exhibit 37*](#).

175. And as with ranitidine, once the government exposed the illegal activity, Par also furthered its conspiracy with Walgreens by secretly helping to cover the costs of Walgreens' "switch-back" from defendants' fluoxetine tablets to the capsule drug, in response to the government investigation.

176. Par's activities in marketing (and later helping pay for ending) this scheme were controlled by Alphapharm and Genpharm, who knew of the illegal scheme and benefitted from it.

iii. Defendants Caused Illegal Switching to their Bupirone Tablets

a. Defendants initiated the switching scheme by touting the huge profits to be made by evading Medicaid price limits

177. The final example of defendants' unlawful conduct involved bupirone, the generic form of the popular anti-anxiety medication Buspar. In this case, Par switched the dosage strength of the drug, rather than the form. Par implemented a fraudulent scheme to evade Medicaid reimbursement limits for bupirone 15mg tablets by marketing a 7.5mg tablet, so that two of Par's tablets could be switched for the popular and widely used 15mg dosage. Par caused Omnicare and other pharmacies to fill prescriptions for Buspar and bupirone 15mg tablets with

Par's 7.5mg tablets, which unlike the 15mg tablets had no federal price upper limit. Par convinced its customers to buy its tablets because of the huge profits to be made by the customers, and ultimately by Par, from the customers participating in Par's illegal drug switching scheme.

178. Par's scheme was under the control of Alphapharm and Genpharm, and done with the knowledge and participation of Alphapharm and Genpharm. Alphapharm and Genpharm were active participants in the switching scheme and gained financially from the sale of Par's buspirone tablets.

179. Before Par entered the market, Buspar was only available in dosage strengths of 5mg, 10mg, and 15mg. Buspar and buspirone required a prescription and were covered by Medicaid. Buspirone became available generically in April 2001, when Buspar lost patent protection. Prior to April 2001, all prescriptions for Buspar tablets were filled with a dosage strength of 5mg, 10mg, or 15mg.

180. As with ranitidine and fluoxetine, Par marketed its 7.5mg buspirone tablets as a means for pharmacies to profit at taxpayer expense by illegally filling prescriptions for Buspar and buspirone 15mg tablets with two of Par's 7.5mg tablets. At Omnicare and other pharmacies, Par's scheme for selling buspirone 7.5mg tablets worked the same way as its scheme for ranitidine capsules and fluoxetine tablets. Here, Par marketed a means to evade MACs by switching dosage strength rather than dosage form. However, filling a prescription for a 15mg tablet with two 7.5mg tablets is just as illegal as switching dosage forms, because every strength of a medication is a distinct drug and prescriptions specifying a particular strength must only be filled using the drug specified.

181. Par actively promoted its 7.5mg buspirone tablet as a means to evade Medicaid price limits, even though federal price limits were not going to be implemented until at least six months after the 7.5mg tablets became available. Before launch, in an internal email from DiMaio to the Par sales force, DiMaio explained:

Short term there is a significant financial advantage in dispensing 7.5mg tablets, and long term we believe that reimbursement rates will be much more favorable on the 7.5mg versus all the other strengths of buspirone.

Attached as [Exhibit 41](#).

182. Par's initiative for evading Medicaid reimbursement limits was clearly communicated to Par's pharmacy customers. For example, Par's DiMaio sent a memo through Trendowicz for John Ziebell of Walgreens. In this memo, DiMaio begins by stating that a "MAC will be set on buspirone 5, 10 and 15mg when multiple manufacturers enter the market" and concludes that "since there will not be multiple manufacturers on the 7.5mg, no HCFA MAC will be set for the 7.5mg tablet." See, [Exhibit 42](#).

183. This theme was used time and again when Par pitched its switching scheme to a host of pharmacy customers. Par created individualized financial analyses for pharmacies that broke down in clear terms the incentives to be provided short term, and the profits to be earned though MAC evasion over the long term.

184. For example, in its launch presentation to Omnicare, during the first 180 days before any Medicaid price limits could take effect, Par explained that it would provide a "conversion incentive rebate" to Omnicare worth more than \$50,000. Given Par's aggressive pricing to induce switching, Omnicare would save significant money by using Par's 7.5mg

bupirone over using Buspar 15mg or Mylan's generic 15mg tablet, even before Medicaid limits were implemented. [Exhibit 43](#) at 0004531.

185. Par's bupirone profit analysis for Omnicare then shifted dramatically after Medicaid price limitations were implemented. Par used its standard financial analysis to show Omnicare how evading Medicaid price limits on bupirone 15mg tablets created enormous profits – in a presentation virtually identical to the “Walgreens Ranitidine Analysis” used to sell ranitidine capsules. Just as with ranitidine, the purpose of Par's bupirone analysis was to explain how the Medicaid price ceiling (“HFCA MAC”) on bupirone 15mg tablets created significantly higher Medicaid reimbursements on Par's bupirone 7.5mg tablet – and to emphasize profits to be made at taxpayer expense. [Exhibit 43](#) at 0004533.

186. Par's analysis shows that, by dispensing two of Par's bupirone 7.5mg tablets rather than one bupirone 15mg tablet from another manufacturer, Omnicare could increase its annual yearly profit by \$1 million.

187. Par sold the opportunity for profit, even though it would cost Omnicare the same amount of money to acquire sixty of Par's bupirone 7.5mg tablets as opposed to thirty bupirone 15mg tablets (\$5.32). As with ranitidine, the profits were not made through lower costs, but through higher Medicaid reimbursements.

188. Par's “HFCA MAC per prescription” shows the significant difference between Par's bupirone 7.5mg tablets and the other manufacturers' bupirone 15mg tablets. While there is a HFCA MAC of \$12.83 per prescription for 30 days' worth of bupirone 15mg tablets, the chart shows that there is no such price limit on Par's bupirone 7.5mg tablets. Because there was no HFCA MAC on Par's bupirone 7.5mg tablets, the sell price per prescription was nearly three

times greater for Par's product (\$46.30 for 30 days' worth of two buspirone 7.5mg tablets versus \$15.83 for 30 days' worth of one buspirone 15mg tablet, including a \$3.00 dispensing fee). The profit per 30 day prescription was four times as much as for the buspirone 7.5mg tablet (\$40.98) versus the profit for the 15mg tablet (\$10.51). Julie Trendowicz, Par's Vice-President of Sales and Marketing, testified that selling the favorable Medicaid reimbursement on Par's buspirone 7.5mg tablets "was part of the promotional plan of the company." [Exhibit 6](#) at Day 2, p. 481-482.

189. Par's message was received, loud and clear, by Omnicare. Some of Par's commonly-used phrasing made its way to the pharmacies and their pharmacists. For example, as cited in the fluoxetine section above, Dan Maloney of Omnicare stated in a December 2, 2001 email that:

Remember on average every buspirone switch is worth about 38 dollars and Fluoxetine 18 dollars. Third when additional generic companies enter the market on fluoxetine early Feb. the prices will drop and Par will follow the price down on Bus 7.5mg and Fluox 20mg tab. No one else will have these products so there will be minimal or no mac's. Hopefully profits will soar even more.

Attached as [Exhibit 22](#).

190. In December 2002, at the end of the buspirone 15mg tablet exclusivity period, a Federal Upper Limit price of \$0.44 was established. See, [Exhibit 23](#). Similarly, states began to establish Maximum Allowable Costs for buspirone 15mg tablets shortly after the exclusivity period expired.

191. When these government price limits came into effect, Omnicare and other Par customers who participated in the switching scheme reaped the expected benefits of their illegal

switching. The switching cost the government millions in unnecessary and illegally obtained reimbursements paid to Omnicare and other Par customers.

192. For example, in Michigan, during the month of March 2003, the Medicaid reimbursement for one buspirone 15mg tablet was \$0.28, while the reimbursement for two of Par's buspirone 7.5mg tablets was more than six times as much, at \$1.70. During the same time, the Tennessee Medicaid program reimbursement for one buspirone 15mg tablet was \$0.49, while the reimbursement for two of Par's buspirone 7.5mg tablets was four times as much, at \$1.93.

193. What occurred in Michigan and Tennessee was typical and in most states pharmacies received favorable reimbursement for Par's buspirone 7.5mg tablets. Beginning in March 2003, in Florida, Indiana, Louisiana, and Virginia, the reimbursement for two of Par's buspirone 7.5mg tablets was at least three times higher than for one buspirone 15mg tablet.

b. Defendants paid pharmacies to switch

194. In addition to marketing the reimbursement differential between one 15mg tablet and two of its 7.5mg tablets, Par offered its customers significant incentives to induce switching.

195. As with fluoxetine, Par's agreements with large pharmacy customers such as Omnicare and others had two key components. First, Par gave its customers free products or "conversion incentive rebates" to help the pharmacy start switching. For example, Par offered Omnicare \$52,000 worth of buspirone 7.5mg tablets as a "conversion incentive rebate" and an additional "customer rebate" worth \$30,000. [Exhibit 43](#) at 0004531.

196. Second, Par created a "Market Share Conversion Program" to pay all of its major customers, including Omnicare, for successfully switching buspirone 15mg prescriptions to Par's 7.5mg tablets. The more that those customers switched prescriptions to buspirone 7.5mg tablets,

the more Par would pay. *See, [Exhibit 44](#)*. Par's payments greatly contributed to the success of its buspirone switching scheme.

c. Defendants conspired with Omnicare and others to ensure the success of the buspirone program

197. Based on the marketing tactics described above, Omnicare and others agreed to buy buspirone 7.5mg tablets from Par for the purpose of engaging in a dosage strength switching scheme. *See, [Exhibit 44](#)*.

198. Again, in an email from Omnicare's Maloney, to Sam Enloe, an Omnicare Regional Vice-President, Maloney explained:

As you all are aware, there is a[n] initiative to switch Buspirone 15mg to 7.5mg... I shared at the management meeting with each of you an [sic] financial analysis on the two drugs [fluoxetine and buspirone] and the opportunity to Omnicare. Both combined were worth well over half a million per month in profits.

Attached as [Exhibit 22](#).

199. Omnicare also got the message out to its pharmacists that the buspirone switching initiative was of the utmost importance. Omnicare required its pharmaceutical staff to fill all buspirone 15mg prescriptions with Par's buspirone 7.5mg tablets regardless of what the physician prescribed, in violation of state and federal law. As Maloney stated in a December 2001 email: "to date buspirone is not doing to[o] bad but that has been mainly because I have been hounding the pharmacies to do the switch." *See, [Exhibit 22](#)*.

200. The conspiracy to switch drugs that Par created and implemented resulted in the submission and payment of numerous false claims by state and federal Medicaid programs. Examples of these false claims are attached at [Exhibit 45](#), which shows numerous claims submitted by Omnicare to the Florida Medicaid program for Par's buspirone 7.5mg tablets

despite being written by the physician for buspirone 15mg tablets. These false claims were the result of Par and Omnicare's nationwide conspiracy to switch buspirone prescriptions.

201. Par's activities in marketing (and later helping pay for ending) this scheme were controlled by Alphapharm and Genpharm. Alphapharm and Genpharm controlled the marketing of Par's switching schemes, knew of and participated in these illegal schemes, and benefitted from them. Alphapharm and Genpharm had an ongoing business relationship with Par. Alphapharm and Genpharm knew of the false claims, yet did not cease doing business with Par or disclose the false claims to the United States and the plaintiff States. This course of conduct allowed fraudulent claims to be presented to the federal and state governments.

C. Alphapharm and Genpharm Controlled Par

202. In late 1997, Par was struggling as a company. Par's stock was trading at a historical low of around \$2.00 per share and it lacked a steady pipeline of new drugs to bring into the generic market.

203. Sensing an opportunity, in March 1998, Alphapharm, Genpharm, Merck and Generics UK (another Merck subsidiary) acquired a 42% stake in Par with an option to purchase an additional 4% of Par's stock.

204. Through these purchases of Par stock, Alphapharm and Genpharm, along with other Merck entities, obtained and exercised significant control over Par, including drug development and marketing decisions. Merck was contractually able to appoint a majority of the members of Par's Board of Directors. Merck exercised this option and appointed four of Par's seven board members, including: Anthony Tabatznik, Neil Tabatznik, Stephen Ollendorff, and

Michael Urwin. These appointments enabled Alphapharm and Genpharm to control important decisions made by Par.

205. Between 1983 and 1999, Anthony Tabaznik served in a variety of executive level positions with Merck's generic drug business units, including time as chairman and director of Generics UK. Anthony's brother, Neil Tabatznik, who also sat on Par's board, was the chairman of Genpharm from 1993 to 2000. Director Mike Urwin served as the group financial director for Merck's generics operations from 1991 to 1999 and CEO from 1999 to 2004.

206. Alphapharm, Genpharm, and their corporate family also installed two of their trusted executives to oversee Par's management and day-to-day operations. In April 1999, Merck created "The Office of the President," which had direct oversight responsibilities for all Par employees and reported only to Kenneth Sawyer, Par's President, CEO, and Chairman of the Board. Merck selected Genpharm's Ian Jacobson and Anna Power (from another Genpharm affiliate) to occupy The Office of the President.

207. Much like the newly-appointed board members, both Jacobson and Power had dual roles, serving Alphapharm and Genpharm by controlling Par. Jacobson was responsible for overseeing Par's finance, human resources, and sales & marketing functions. To this end, Scott Tarriff, Nick DiMaio, and Julie Trendowicz reported directly to Jacobson. Tarriff, DiMaio, and Trendowicz were the principal architects of the switching scheme and fluoxetine marketing program. At the same time, Jacobson also served as the Executive Vice-President of Genpharm. Power oversaw Par's manufacturing & engineering operations, scientific & regulatory affairs, and quality & compliance functions. Meanwhile, Power was group operations director for Gerard Laboratories, which was an Irish unit of Merck. *See, [Exhibit 46](#).*

208. Based on its 42% ownership of Par's stock, control of Par's Board of Directors, and occupation of The Office of the President, Alphapharm, Genpharm, and their corporate family were clearly in charge of Par's direction as a company and its major business decisions, including which generic drugs would be developed and launched.

209. This complete control over Par was affirmed by Par's former President and CEO, Scott Tarriff, who testified that Genpharm "was really our owner at the time." See, [Exhibit 16](#) at p. 189, lines 17-18.

210. Par also benefitted significantly from the Merck acquisition, receiving the exclusive United States distribution rights for Genpharm's portfolio of drugs. These drugs were covered under a series of agreements between Par and Genpharm, including the Par 40 Agreement ("Par 40"), which was executed on March 25, 1998, and the Par 8 Agreement ("Par 8"), which was signed on November 27, 2000. See, [Exhibit 47](#) and [Exhibit 48](#).

211. Under the Par 40 and Par 8 agreements, Genpharm was to pay all research and development costs for the drugs launched, and in turn Par would give Genpharm 42.5% of all gross profits for drugs sold in the United States. See, [Exhibit 48](#). During the course of the scheme, Genpharm received monthly checks from Par for its share of the profits.

212. Alphapharm and Genpharm actively considered whether to use Par or another company to market fluoxetine and other drugs, evidencing the ability to "hire or fire" Par for sales and marketing. See, [Exhibit 19](#), [Exhibsit 20](#).

213. In light of the above-mentioned agreements and the anticipated surge of generic drugs that it would bring into the market during the 1998 fiscal year, Par took steps to strengthen

its internal sales force by hiring a number of experienced personnel in order to help Par distribute the products generated by Par's relationship with Alphapharm and Genpharm.

214. Alphapharm and Genpharm controlled the marketing of Par's switching schemes, knew of and participated in these illegal schemes, and benefitted from them. Alphapharm and Genpharm had an ongoing business relationship with Par. Alphapharm and Genpharm knew of the false claims, yet did not cease doing business with Par or disclose the false claims to the United States and plaintiff States. This course of conduct allowed fraudulent claims to be presented to the federal and state governments.

D. Defendants Caused False and Fraudulent Claims and Statements, and Conspired to Get False and Fraudulent Claims Paid

215. The intended consequence of the defendants' switching schemes was for Walgreens, Omnicare, and others to present false or fraudulent claims for payment or approval. Since at least May 2001, the defendants caused Walgreens, Omnicare, and other pharmacy providers to regularly overcharge the amount of money billed to the government for prescriptions illegally-switched to the defendants' products, including ranitidine 150mg and 300mg capsules, fluoxetine 10mg and 20mg tablets, and buspirone 7.5mg tablets. The defendants also conspired and were complicit in the fraudulent switching scheme with Walgreens, Omnicare, and others to get false or fraudulent claims paid.

216. Pursuant to defendants' schemes, Walgreens, Omnicare, and other pharmacy providers who bought defendants' drugs submitted certified claims to the government as true, accurate, and complete, when in fact the drugs charged to the government were not the drugs prescribed and were intentionally and illegally-switched from the prescribed drugs in order to obtain higher government reimbursements and evade Medicaid price limits.

217. Pursuant to defendants' schemes, Walgreens, Omnicare, and others submitted claims to the government that represented that there was no concealment of material fact, while these pharmacies concealed the fact that the drugs charged to the government were not the drugs prescribed, and were intentionally switched from the prescribed drugs in order to obtain higher government reimbursements and evade Medicaid price limits.

218. Pursuant to defendants' schemes, Walgreens, Omnicare, and others submitted claims to the government that certified compliance with federal and state Medicaid laws, regulations and other requirements, when in fact these providers violated laws and regulations prohibiting drug substitutions and requiring that Medicaid benefits be provided economically and only as medically necessary. These certifications are conditions of payment, participation, and eligibility.

219. Through the conduct described above in detail, defendants knowingly and intentionally caused false or fraudulent claims to be submitted by Walgreens, Omnicare, and their other customers, pursuant to a drug switching conspiracy that defendants initiated with those customers.

i. Walgreens, Omnicare and Other Pharmacy Providers' Representations and Certifications in Submitting Claims for Payment for Defendants' Drugs

220. When a Medicaid beneficiary or insured patient presents a prescription to be filled by their pharmacist, the pharmacy bills the government or other third-party payor. When a customer's prescription coverage is paid for in part or in whole by the United States or state Medicaid programs, the pharmacies collect any required co-pay and seek reimbursement for the remainder of the cost from the government.

221. To submit Medicaid claims and obtain Medicaid reimbursements for prescription drugs, Walgreens, Omnicare, and other pharmacy providers must be enrolled in state Medicaid programs. The pharmacies must submit provider applications, have those applications approved by the state, and execute enrollment agreements.

222. When enrolling in state Medicaid programs, pharmacies make a variety of certifications or promises on their provider applications. States require pharmacies to: (1) comply with state and federal laws, regulations, and state Medicaid provider handbooks; (2) attest to the truthfulness and accuracy of the claims submitted; and (3) acknowledge that submitting false claims or concealing material facts regarding claims may be prosecuted under applicable Federal and State laws.

223. This list is by no means exhaustive; many states' provider agreements require additional or more detailed certifications, including that the services rendered are medically necessary and that reimbursements will not exceed state price limits. Each state has the authority to require a provider to make the certifications that it deems appropriate.

224. For example, in Texas, as part of the contract between the Texas Department of Health and providers such as Walgreens and Omnicare, pharmacies must agree:

D. To comply with all state and federal laws and regulations relating to fraud and abuse in health care and the Medicaid program...

M. To submit claims for payment in accordance with billing guidelines and procedures promulgated by the Department, including electronic claims. Provider certifies that information submitted regarding claims will be true and accurate, complete, and that such information can be verified by source documents from which data entry is made by the Pharmacy. Further Pharmacy understands that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.

225. Similarly, Florida’s “Non-Institutional Medicaid Provider Agreement” includes the following certifications:

(2) Quality of Service. The provider agrees that services or goods billed to the Medicaid program must be medically necessary, of a quality comparable to those furnished by the provider’s peers, and within the parameters permitted by the provider’s license or certification.

(3) Compliance. The provider agrees to comply with local, state, and federal laws, as well as rules, regulations, and statements of policy applicable to the Medicaid program, including the Medicaid Provider Handbooks issued by AHCA [Florida Agency for Healthcare Administration].

226. On December 5, 2002, Omnicare executed a Florida provider agreement with the above-mentioned language. On December 25, 2002, Walgreens executed a Florida provider agreement with the above-mentioned language. The Florida provider agreements are attached as [Exhibit 49](#). Additional representative agreements from Michigan, Tennessee, and Virginia are attached as [Exhibit 50](#), [Exhibit 51](#), and [Exhibit 52](#), respectively. Also included with the representative Michigan agreement is a copy of the reverse side of the agreement containing the conditions for participation in Michigan referenced immediately above the signature block. *See*, [Exhibit 50](#).

227. Beyond the standard provider participation or enrollment agreements, many states also require pharmacies to sign a Point of Service Certification Agreement or Electronic Claims Submission Agreement. These agreements contain additional certifications and guidelines that a provider is required to abide by.

228. For example, as part of Florida’s “Point of Service Provider Certification Agreement,” providers must certify that:

3. The Provider shall safeguard the Medicaid program against abuse in its utilization of claims entry through the POS [Point-of-Service] system.

4. The Provider shall correctly enter claims data, monitor the data and certify that the data is correct.

8. The Provider shall abide by all Federal and State statutes, rules, regulations and manuals governing the Florida Medicaid program and those conditions as set out in the State of Florida, Agency for Health Care Administration Medicaid Provider Agreement entered into previously.

On December 4, 2001, Omnicare executed a “Point of Service Agreement” with the state of Florida. A copy of the agreement is attached at [Exhibit 53](#).

229. Along these lines, in Florida, pharmacies that plan to submit claims for reimbursement electronically rather than in paper form are also required to complete an AHCA Electronic Claims Submission Agreement which states that:

1. Payment of claims will be from federal and state funds and that any falsification or concealment of material fact may be prosecuted under Federal and State laws.

2. Providers must safeguard the Medicaid program against abuse in the use of electronic claims submission.

7. Providers must abide by all Federal and State statutes, rules, regulations, and manuals governing the Florida Medicaid program.

On April 26, 1999, Walgreens executed an Electronic Claims Agreement with the state of Florida. A copy of the agreement is attached as [Exhibit 54](#).

230. After enrolling in state Medicaid plans, pharmacies submit claims for drugs prescribed to Medicaid beneficiaries. Under federal law, as a prerequisite to or condition of payment and participation, Walgreens, Omnicare, and every other Medicaid provider must make the following certifications on claims for reimbursement to state Medicaid:

(1) This is to certify that the foregoing information is true, accurate, and complete.

(2) I understand that payment of this claim will be from Federal and State funds, and that any falsification, or concealment of a material fact, may be prosecuted under Federal and State laws.

42 C.F.R. §455.18.

231. States may slightly vary the language in 42 C.F.R. §455.18, but the substance of the certification remains the same for all states. For example in Florida, providers must use the “Pharmacy 061 Claim Form” for the submission of all paper claims. When completing the form, providers certify that:

[T]he foregoing information is true, accurate, and complete... I understand that payment and satisfaction of this claim will be from federal and state funds, and that any false claims, statements, or documents, or concealment of a material fact may be prosecuted under applicable federal and state laws.

Attached as [*Exhibit 55*](#).

232. While some claims are submitted in paper form, Walgreens, Omnicare, and other retail pharmacies’ reimbursement claims are typically batched and submitted electronically through one or more state contractors, who are responsible for processing prescription claims. The pharmacy is in turn paid by the states for approved claims.

233. On these electronic claims, the federally-mandated billing certification is typically made when the provider signs the remittance check or remittance advice. As 42 C.F.R. §455.19 sets forth:

As an alternative to the statements required in §455.18, the agency may print the following wording above the claimant’s endorsement on the reverse of checks or warrants payable to each provider: “I understand in endorsing or depositing this check that payment will be from Federal and State funds and that any falsification, or concealment of a material fact, may be prosecuted under Federal and State laws.”

234. Walgreens, Omnicare, and other pharmacies made these same certifications, in words or in substance, to all states when they sought government reimbursement for defendants' drugs. Because electronic claims are submitted and adjudicated instantaneously, Walgreens, Omnicare, and other pharmacies have made representations and claims to the government concerning Medicaid reimbursement on a daily basis.

235. Beyond the federally-required billing certification that providers make when submitting individual claims, many states require additional certifications. For example, as part of each electronic submission to the Illinois Department of Healthcare and Family Services ("HFS," formerly "Illinois Department of Public Aid"), Walgreens, Omnicare, and other pharmacies affix their unique Medicaid provider identification number. This number serves as an electronic stamp indicating that, as a Medicaid provider, the pharmacy is in compliance with all applicable federal and state regulations.

236. The Illinois Medical Assistance Handbook, referred to in the Billing Certification, expressly conditions reimbursement on the provider's "full compliance with applicable federal and state laws, Department Administrative Rules (89 Ill. Adm. Code Chapter 101), the general provisions contained in Chapter 100, General Policies and Procedures, and the policy and procedures contained in Chapter A-200 in the Handbook that applies specifically to medical providers."

ii. In Accordance With Defendants' Scheme, Pharmacies Made False and Fraudulent Claims and Statements to Receive Reimbursement for Defendants' Drugs

237. Federal and state laws serve to ensure that prescription drugs are distributed only upon the basis of doctor-patient relationship, pursuant to individualized treatment for a legitimate medical purpose, and on valid prescriptions.

238. State food and drug acts, pharmacy acts, and Medicaid laws prohibit filling a prescription with any drug other than the one prescribed. For example, the Illinois Food and Drug Act prohibits: “[d]ispensing or causing to be dispensed a different drug in place of the drug or brand of drug ordered or prescribed without the express permission of the person ordering or prescribing.” 410 ILCS 620/3 and 3.14; *see also, e.g.*, Fla. Stat. §465.016(1)(g) (prohibiting furnishing upon prescription, an ingredient or article different in any manner from the ingredient or article prescribed).

239. As detailed above, pharmacy providers certify in their provider agreements and on claims for payment that they comply with all applicable state and federal laws, that the information on the claims is true, accurate, and complete, and that no material facts are omitted.

240. Through the defendants’ conduct and conspiracy with Walgreens, Omnicare, and other providers, defendants knowingly caused pharmacies to fill prescriptions with dosage forms or dosage strengths of drugs other than the dosage forms or dosage strengths prescribed, thus violating numerous state laws, administrative regulations, and guidelines. Walgreens, Omnicare, and other pharmacies omitted that they were actually seeking reimbursement for drugs other than those prescribed. Accordingly, the claims that the defendants caused to be submitted by Walgreens, Omnicare, and other customers for defendants’ drugs ranitidine, fluoxetine, and buspirone were false.

241. Further, under federal law, Walgreens, Omnicare, and other Medicaid providers must ensure that prescription drugs and other items “will be provided economically and only when, and to the extent, medically necessary.” 42 U.S.C. §1320c-5(a). Defendants’ drugs were not.

242. In addition, practically every state broadly requires that Medicaid providers furnish services economically and only to the extent medically necessary. The requirement that the provider be accountable for the economic effect of its conduct on state Medicaid programs appears in the state Medicaid statutory sections, regulatory sections, or provider manuals. States require that the provider assert its compliance with these Medicaid rules as a condition of participation or payment.

243. In Florida, for example, to be covered by Medicaid a good or service must be “medically necessary,” *i.e.*, “[b]e reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available; statewide.” Fla. Admin. Code 59G-1.010(166)(a)(4); *see also* Fl. Prescribed Drug Service Coverage, Limitations and Reimbursement Handbook 9-2 and D-9. *See also, e.g.*, Ohio, Ohio Admin Code 5101:3-1-01(A)(5) (for a service to be medically necessary, as required for payment under Medicaid, it must be the lowest cost alternative that effectively address and treats the medical problem); Massachusetts, 130 Code Mass. Regs. 450.204(A)(2) (a service is medically necessary if: “there is no other medical service or site of service, comparable in effect, available, and suitable for the member requesting the service, that is more conservative or less costly to the Division”).

244. Reimbursement rates for Medicaid prescriptions are determined on a state-by-state basis. In Florida, for example, providers are “reimbursed the least of the amount billed by the provider, the provider’s usual and customary charge, or the Medicaid maximum allowable fee established by the agency, plus a dispensing fee.” Fl. Stat. §409.908(14). Florida calculates its Medicaid maximum allowable fee “based on the lower of: average wholesale price (AWP)

minus 15.4 percent, wholesaler acquisition cost (WAC) plus 5.75 percent, the federal upper limit (FUL), the state maximum allowable cost (SMAC), or the usual and customary (UAC) charge billed by the provider.” Fla. Stat. §409.908(14).

245. In Illinois, Medicaid prescription claims are paid at the lower of two rates: (1) the pharmacy’s prevailing charge to the general public or (2) the Illinois Department of Healthcare and Family Services’ maximum price (MAC) plus an established dispensing fee. 89 Ill. Adm. Code 140.445. Generally, pharmacies make higher profits on medications for which HFS has not set a MAC.

246. Illinois sets maximum prices different than a pharmacy’s prevailing charge to the general public for several frequently-prescribed medications in order to control Medicaid pharmacy program costs. When HFS intends to set a maximum price for a frequently prescribed medication, it sets the price according to federal and state guidelines at a rate that allows the pharmacy a small distribution fee.

247. Through the defendants’ conduct and conspiracy with Walgreens, Omnicare, and other providers, the defendants caused pharmacies to fill prescriptions with dosage forms or dosage strengths of drugs other than the dosage forms or dosage strengths prescribed, and the substituted drugs cost state Medicaid programs significantly more money. The submission of these claims, caused by defendants, violated state and federal laws and administrative guidelines requiring Medicaid services to be provided “economically” and only to the extent medically necessary.

VI. DAMAGES TO THE GOVERNMENT

248. The government sustained damages because of defendants' actions. This fraud was instigated by Par, under the control of Alphapharm and Genpharm, through the marketing of its drug products to Walgreens, Omnicare, and other customers nationwide. Therefore, false claims were made to and paid by, and may continue to be currently made to and paid by, all states' Medicaid programs where defendants' products detailed herein were sold. The fraud involved multiple drugs.

249. The scheme described above also defrauds the government through any reimbursements for defendants' illegally-switched to drugs made by the Federal Employee Health Benefit Program, CHAMPUS, and other government programs.

VII. DAMAGES UNDER THE ILLINOIS INSURANCE CLAIMS FRAUD AND PREVENTION ACT

250. The Insurance Claims Fraud Prevention Act ("ICFPA"), 740 ILCS 92/1-45, provides that "[a] person who violates any provision of this Act or Article 46 of the Criminal Code of 1961 [720 ILCS 5/46] shall be subject, in addition to any other penalties that may be prescribed by law, to a civil penalty of not less than \$5,000 nor more than \$10,000, plus an assessment of not more than 3 times the amount of each claim for compensation under a contract of insurance." 740 ILCS 92/5(b).

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

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

issued by an insurance company or by the making of a false claim to a self-insured entity permanently of the use and benefit of that property.

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

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

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

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

253. The ICFPA’s *qui tam* provision, 740 ILCS 92/15, provides that any interested person may bring a civil action, in the name of the State of Illinois, for violations of ILCS 92/1-45, and by incorporation, 720 ILCS 5/46-1.

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

255. Pharmacies submitted electronic claims or bills to insurers for the prescription drugs, including but not limited to ranitidine capsules, fluoxetine tablets, and 7.5mg buspirone tablets. Defendants caused pharmacies through their conspiracy to bill insurers for such drugs even though the drugs were unilaterally switched without a properly authorized physician’s

prescription. Private insurers billed by pharmacies for defendants' medications during the time of this complaint include, but are not limited to, United Healthcare, Blue Cross and Blue Shield, Health Alliance, and Humana.

256. Private insurers typically set maximum prices for prescription drugs that are based on governmental limits. Insurers were never informed that they were paying for drugs as part of a conspiracy to evade FULs, state MACs, and other price obligations set by insurance companies or that defendants conspired to switch drugs without a physician's informed authorization. By concealing these policies and practices, but then causing claims to be submitted to insurers for payment, Par, Alphapharm, and Genpharm intentionally conspired to deceive and caused to be made false, incomplete, and/or misleading statements of material facts to insurers in order to obtain reimbursement for illegally-switched drugs from insurers; payment for which pharmacies were not entitled. Insurers, unaware of the falsity of the claims because Par and its conspirators failed to disclose the material facts, paid the claims submitted by pharmacies, including Walgreens, in connection with the drug prescriptions.

257. Par, under the control of Alphapharm and Genpharm, knowingly and intentionally conspired to, and caused false claims for payment to be submitted for prescription drugs in violation of the Illinois Insurance Claims Fraud Prevention Act.

VIII. RELATOR LISITZA'S DISCOVERY OF THE FRAUD

258. Plaintiff and Relator Lisitza is a licensed Illinois pharmacist practicing since 1961. Relator worked at Omnicare for nine years. While there, he discovered the switching scheme described above and was fired after internally reporting his concerns about this and other potential health care frauds at Omnicare. After his termination, Lisitza worked, through a

placement agency, for a variety of pharmacies across Illinois on a temporary basis. Typically, Lisitza was placed in a pharmacy somewhere in Illinois to substitute for vacationing pharmacists or where a pharmacy is temporarily short-staffed.

259. While working in these temporary positions, Lisitza discovered that the same switching fraud for Par's drugs was being employed at a few nationwide pharmacies, such as Walgreens. Other pharmacies refused to engage in the practice, and viewed it as improper.

260. Lisitza was the first person to bring this fraudulent scheme to the government's attention. Prior to filing this case, he informed the government of his basis for believing that the manufacturer of ranitidine capsules and similar products was actively involved in promoting the switching scheme.

261. Since his initial disclosures, Lisitza has worked actively with the government to investigate and prosecute the fraud – devoting both his expertise and countless hours of his time to these efforts.

COUNT I False Claims Act

262. Plaintiffs incorporate by reference and re-allege Paragraphs 1-261 as if fully set forth herein. This Count is brought by Lisitza in the name of the United States under the *qui tam* provisions of 31 U.S.C. §3730 for defendants' violations of 31 U.S.C. §3729.

263. By virtue of the above-described acts, among others, defendants Par, Alphapharm, and Genpharm knowingly caused to be presented, and possibly continue to cause to be presented, directly or indirectly to officers, employees, or agents of the United States, false or fraudulent claims for payment or approval for defendants' illegally-switched drugs.

264. By virtue of the above-described acts, among others, defendants Par, Alphapharm, and Genpharm knowingly made, used, or caused to be made or used, and may continue to make, use, or cause to be made or used, false records and statements to obtain payment from the United States for false or fraudulent claims for defendants' illegally-switched drugs.

265. By virtue of the above-described acts, defendants Par, Alphapharm, and Genpharm conspired to defraud the United States by getting a false or fraudulent claim allowed or paid.

266. The false or fraudulent claims to the United States were material.

267. Plaintiff United States, being unaware of the falsity of the claims and/or statements made or caused by defendants Par, Alphapharm, and Genpharm and in reliance on the accuracy thereof, paid and may continue to pay for defendants' illegally-switched drugs.

268. The United States sustained damages because of the defendants' actions.

COUNT II
California False Claims Act

269. Plaintiffs incorporate by reference and re-allege Paragraphs 1-261 as if fully set forth herein. This Count is brought by Lisitza in the name of the State of California under the *qui tam* provisions of the California False Claims Act, California Government Code §12651(a).

270. Defendants, at all times relevant to this action, sold and continue to sell pharmaceuticals in California that were and will be paid for by the State. Defendants, at all times relevant to this action, sold their pharmaceuticals to Walgreens, Omnicare, and other pharmacies in California for distribution to California residents. Through defendants' marketing and sale of certain pharmaceutical products, including ranitidine capsules, fluoxetine tablets, and buspirone tablets to Walgreens, Omnicare, and other pharmacies in the State of California, Par,

Alphapharm, and Genpharm knowingly caused, and conspired in, the presentation of false claims to California Medicaid.

271. In order to be eligible to receive Medicaid reimbursement for defendants' products and other prescription drugs, pharmacies in California must submit an enrollment form and execute an application agreement to obtain a provider number. In agreeing to become a Medicaid provider and receive a unique provider number, pharmacies specifically represent that they will comply with all applicable federal and state laws and regulations governing California Medicaid.

272. On a daily basis, Walgreens and other California pharmacies batch Medicaid claims and submit them electronically to the State. As part of each electronic claim, a pharmacy affixes its unique Medicaid provider identification number. In making such reimbursement submissions, Walgreens, Omnicare, and other pharmacies represent to the State: (1) that the submissions comply with all applicable federal and state laws and regulations governing the California Medicaid program; (2) that the information submitted is true, accurate, and complete; and (3) that there is no concealment or falsification of material facts.

273. By submitting requests for reimbursements, Walgreens, Omnicare, and other pharmacies represent that they are seeking reimbursement for the drug prescribed. On each electronic reimbursement claim to the State of California, each prescription drug is identified by a unique NDC number. The NDC number reflects the specific manufacturer, dosage form, and dosage strength of the drug on the claim form. For example, Par's unique NDC numbers include the following for the Par products and pack sizes as listed: Ranitidine capsules 150mg (60 units),

#49884-647-02; Ranitidine capsules 300mg (30 units), #49884-648-11; Fluoxetine tablets 20mg (30 units), #49884-735-11; and Buspirone tablets 7.5mg (100 units), #49884-725-01.

274. On the basis of Walgreens', Omnicare's, and other pharmacies' reimbursement claim submissions and compliance representations, the State of California regularly reimbursed pharmacies for sales of defendants' products that had been illegally substituted, including ranitidine capsules, fluoxetine tablets, and buspirone tablets. Defendants Par, Alphapharm, and Genpharm profited from sale of these products and the resulting reimbursements, knowing that the reimbursement claims were to be made in accordance with state and federal laws. Walgreens', Omnicare's, and other pharmacies' reimbursement requests for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets were false and/or fraudulent.

275. Walgreens, Omnicare, and other pharmacies sold, and may continue to sell, defendants' pharmaceuticals in violation of State pharmacy and Medicaid law. Walgreens, Omnicare, and other pharmacies regularly dispensed improper drugs marketed and manufactured by defendants on the basis of invalid or altered prescriptions or with total disregard for the terms of valid prescriptions. Walgreens, Omnicare, and other pharmacies in dispensing defendants' products did not comply with California's pharmacy requirement that drugs must be validly prescribed and that the same dosage form and strength is necessary for substitution and/or drug equivalency. *See, e.g.*, Cal. Bus. & Prof. Code §4073.

276. As a result of the pharmacies' certified claims for payment in its reimbursement submissions to the state Medicaid agency, California Medicaid routinely made payments to the co-conspirator pharmacies for defendants' illegally-switched drugs.

277. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to make false claims and statements in violation of the terms of their California Medicaid provider agreements and individual billing certifications by making claims for payment to the State of California for defendants' illegally-switched drugs that violated California and/or Federal law and omitted material facts.

278. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to falsely assert compliance with their California Medicaid provider agreement and State and Federal law.

279. By virtue of the above-described acts, among others, defendants knowingly caused Walgreens, Omnicare, and other pharmacies to submit, and possibly continue to submit, directly or indirectly to officers, employees, or agents of the State of California, false or fraudulent claims for payment or approval for defendants' products.

280. By virtue of the above-described acts, among others, defendants with and through Walgreens, Omnicare, and other pharmacies knowingly made, used, or caused to be made or used, and may continue to make, use, or cause to be made or used, false records and statements to obtain payment from the State of California for false or fraudulent claims for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

281. By virtue of the above-described acts, defendants conspired with Walgreens, Omnicare, and other pharmacies to defraud the State of California by submitting false claims and causing the presentation of false claims for defendants' illegally-switched drugs including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

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

283. Plaintiff State of California, being unaware of the falsity of the claims and/or statements made, or caused to be made, by defendants, and in reliance on the accuracy thereof, paid and may continue to pay for illegally-switched prescriptions.

284. The State of California sustained damages because of the defendants' actions.

COUNT III
Delaware False Claims and Reporting Act

285. Plaintiffs incorporate by reference and re-allege Paragraphs 1-261 as if fully set forth herein. This Count is brought by Lisitza in the name of the State of Delaware under the *qui tam* provisions of the Delaware False Claims and Reporting Act, Del. Code Title VI, §1201.

286. Defendants, at all times relevant to this action, sold and continue to sell pharmaceuticals in Delaware that were and will be paid for by the State. Defendants, at all times relevant to this action, sold their pharmaceuticals to Walgreens, Omnicare, and other pharmacies in Delaware for distribution to Delaware residents. Through defendants' marketing and sale of certain pharmaceutical products, including ranitidine capsules, fluoxetine tablets, and buspirone tablets, to Walgreens, Omnicare, and other pharmacies in the State of Delaware, Par, Alphapharm, and Genpharm knowingly caused, and conspired in, the presentation of false claims to Delaware Medicaid.

287. In order to be eligible to receive Medicaid reimbursement for defendants' products and other prescription drugs, pharmacies in Delaware must submit an enrollment form and execute an application agreement to obtain a provider number. In agreeing to become a Medicaid provider and receive a unique provider number, pharmacies specifically represent that they will comply with all applicable federal and state laws and regulations governing Delaware Medicaid.

288. On a daily basis, Walgreens and other Delaware pharmacies batch Medicaid claims and submit them electronically to the State. As part of each electronic claim, a pharmacy affixes its unique Medicaid provider identification number. In making such reimbursement submissions, Walgreens, Omnicare, and other pharmacies represent to the State: (1) that the submissions comply with all applicable federal and state laws and regulations governing the Delaware Medicaid program; (2) that the information submitted is true, accurate, and complete; and (3) that there is no concealment or falsification of material facts.

289. By submitting requests for reimbursements, Walgreens, Omnicare, and other pharmacies represent that they are seeking reimbursement for the drug prescribed. On each electronic reimbursement claim to the State of Delaware, each prescription drug is identified by a unique NDC number. The NDC number reflects the specific manufacturer, dosage form and dosage strength of the drug on the claim form. For example, Par's unique NDC numbers include the following for the Par products and pack sizes as listed: Ranitidine capsules 150mg (60 units), #49884-647-02; Ranitidine capsules 300mg (30 units), #49884-648-11; Fluoxetine tablets 20mg (30 units), #49884-735-11; and Buspirone tablets 7.5mg (100 units), #49884-725-01.

290. On the basis of Walgreens', Omnicare's, and other pharmacies' reimbursement claim submissions and compliance representations, the State of Delaware regularly reimbursed pharmacies for sales of defendants' products that had been illegally substituted, including ranitidine capsules, fluoxetine tablets, and buspirone tablets. Defendants Par, Alphapharm, and Genpharm profited from sale of these products and the resulting reimbursements, knowing that the reimbursement claims were to be made in accordance with state and federal laws. Walgreens', Omnicare's, and other pharmacies' reimbursement requests for defendants' products

including ranitidine capsules, fluoxetine tablets, and buspirone tablets were false and/or fraudulent.

291. Walgreens, Omnicare, and other pharmacies sold, and may continue to sell, defendants' pharmaceuticals in violation of State pharmacy and Medicaid law. Walgreens, Omnicare, and other pharmacies regularly dispensed improper drugs marketed and manufactured by defendants on the basis of invalid or altered prescriptions or with total disregard for the terms of valid prescriptions. Walgreens, Omnicare, and other pharmacies in dispensing defendants' products did not comply with Delaware's pharmacy requirement that drugs must be validly prescribed and that the same dosage form and strength is necessary for substitution and/or drug equivalency. *See, e.g.*, 24 Del. Code §2502.

292. As a result of the pharmacies' certified claims for payment in its reimbursement submissions to the state Medicaid agency, Delaware Medicaid routinely made payments to the co-conspirator pharmacies for defendants' illegally-switched drugs.

293. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to make false claims and statements in violation of the terms of their Delaware Medicaid provider agreements and individual billing certifications by making claims for payment to the State of Delaware for defendants' illegally-switched drugs that violated Delaware and/or Federal law and omitted material facts.

294. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to falsely assert compliance with their Delaware Medicaid provider agreement and State and Federal law.

295. By virtue of the above-described acts, among others, defendants knowingly caused Walgreens, Omnicare, and other pharmacies to submit, and possibly continue to submit, directly or indirectly to officers, employees, or agents of the State of Delaware, false or fraudulent claims for payment or approval for defendants' products.

296. By virtue of the above-described acts, among others, defendants with and through Walgreens, Omnicare, and other pharmacies knowingly made, used, or caused to be made or used, and may continue to make, use, or cause to be made or used, false records and statements to obtain payment from the State of Delaware for false or fraudulent claims for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

297. By virtue of the above-described acts, defendants conspired with Walgreens, Omnicare, and other pharmacies to defraud the State of Delaware by submitting false claims and causing the presentation of false claims for defendants' illegally-switched drugs including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

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

299. Plaintiff State of Delaware, being unaware of the falsity of the claims and/or statements made, or caused to be made, by defendants, and in reliance on the accuracy thereof, paid and may continue to pay for illegally-switched prescriptions.

300. The State of Delaware sustained damages because of the defendants' actions.

COUNT IV
District of Columbia False Claims Act

301. Plaintiffs incorporate by reference and re-allege Paragraphs 1-261 as if fully set forth herein. This Count is brought by Lisitza in the name of the District of Columbia under the *qui tam* provisions of D.C. Code. §2-308.

302. Defendants, at all times relevant to this action, sold and continue to sell pharmaceuticals in the District of Columbia that were and will be paid for by the District of Columbia. Defendants, at all times relevant to this action, sold their pharmaceuticals to Walgreens, Omnicare, and other pharmacies in the District of Columbia for distribution to the District of Columbia residents. Through defendants' marketing and sale of certain pharmaceutical products, including ranitidine capsules, fluoxetine tablets, and buspirone tablets, to Walgreens, Omnicare, and other pharmacies in the District of Columbia, defendants Par, Alphapharm, and Genpharm knowingly caused, and conspired in, the presentation of false claims to the District of Columbia Medicaid program.

303. In order to be eligible to receive Medicaid reimbursement for defendants' products and other prescription drugs, pharmacies in the District of Columbia must submit an enrollment form and execute an application agreement to obtain a provider number. In agreeing to become a Medicaid provider and receive a unique provider number, pharmacies specifically represent that they will comply with all applicable federal and state laws and regulations governing the District of Columbia Medicaid program.

304. On a daily basis, Walgreens and other District of Columbia pharmacies batch Medicaid claims and submit them electronically to the District of Columbia. As part of each electronic claim, a pharmacy affixes its unique Medicaid provider identification number. In making such reimbursement submissions, Walgreens, Omnicare, and other pharmacies represent to the District of Columbia: (1) that the submissions comply with all applicable federal and District of Columbia laws and regulations governing the District of Columbia Medicaid program;

(2) that the information submitted is true, accurate, and complete; and (3) that there is no concealment or falsification of material facts.

305. By submitting requests for reimbursements, Walgreens, Omnicare, and other pharmacies represent that they are seeking reimbursement for the drug prescribed. On each electronic reimbursement claim to the District of Columbia, each prescription drug is identified by a unique NDC number. The NDC number reflects the specific manufacturer, dosage form and dosage strength of the drug on the claim form. For example, Par's unique NDC numbers include the following for the Par products and pack sizes as listed: Ranitidine capsules 150mg (60 units), #49884-647-02; Ranitidine capsules 300mg (30 units), #49884-648-11; Fluoxetine tablets 20mg (30 units), #49884-735-11; and Buspirone tablets 7.5mg (100 units), #49884-725-01.

306. On the basis of Walgreens', Omnicare's, and other pharmacies' reimbursement claim submissions and compliance representations, the District of Columbia regularly reimbursed pharmacies for sales of defendants' products that had been illegally substituted, including ranitidine capsules, fluoxetine tablets, and buspirone tablets. Defendants Par, Alphapharm, and Genpharm profited from sale of these products and the resulting reimbursements, knowing that the reimbursement claims were to be made in accordance with District of Columbia and federal laws. Walgreens', Omnicare's, and other pharmacies' reimbursement requests for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets were false and/or fraudulent.

307. Walgreens, Omnicare, and other pharmacies sold, and may continue to sell, defendants' pharmaceuticals in violation of the District of Columbia pharmacy and Medicaid

law. Walgreens, Omnicare, and other pharmacies regularly dispensed improper drugs marketed and manufactured by defendants on the basis of invalid or altered prescriptions or with total disregard for the terms of valid prescriptions. Walgreens, Omnicare, and other pharmacies in dispensing defendants' products did not comply with the District of Columbia's pharmacy requirement that drugs must be validly prescribed and that the same dosage form and strength is necessary for substitution and/or drug equivalency. *See, e.g.*, D.C. Code. §48-803.

308. As a result of the pharmacies' certified claims for payment in its reimbursement submissions to the District of Columbia Medicaid agency, District of Columbia Medicaid routinely made payments to the co-conspirator pharmacies for defendants' illegally-switched drugs.

309. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to make false claims and statements in violation of the terms of their District of Columbia Medicaid provider agreements and individual billing certifications by making claims for payment to the District of Columbia for defendants' illegally-switched drugs that violated the District of Columbia and/or Federal law and omitted material facts.

310. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to falsely assert compliance with their District of Columbia Medicaid provider agreement, D.C. law, and Federal law.

311. By virtue of the above-described acts, among others, defendants knowingly caused Walgreens, Omnicare, and other pharmacies to submit, and possibly continue to submit, directly or indirectly to officers, employees, or agents of the District of Columbia, false or fraudulent claims for payment or approval for defendants' products.

312. By virtue of the above-described acts, among others, defendants with and through Walgreens, Omnicare, and other pharmacies knowingly made, used, or caused to be made or used, and may continue to make, use, or cause to be made or used, false records and statements to obtain payment from the District of Columbia for false or fraudulent claims for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

313. By virtue of the above-described acts, defendants conspired with Walgreens, Omnicare, and other pharmacies to defraud the District of Columbia by submitting false claims and causing the presentation of false claims for defendants' illegally-switched drugs including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

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

315. Plaintiff District of Columbia, being unaware of the falsity of the claims and/or statements made, or caused to be made, by defendants, and in reliance on the accuracy thereof, paid and may continue to pay for illegally-switched prescriptions.

316. The District of Columbia sustained damages because of the defendants' actions.

COUNT V
Florida False Claims Act

317. Plaintiff incorporates by reference and re-alleges Paragraphs 1-261 as if fully set forth herein. This Count is brought on behalf of the State of Florida under the *qui tam* provisions of the Florida False Claims Act, Fl. Stat. §§ 68.081-68.089.

318. Defendants, at all times relevant to this action, sold and continue to sell pharmaceuticals in the State of Florida that were and will be paid for by the State of Florida. Defendants, at all times relevant to this action, sold their pharmaceuticals to Walgreens, Omnicare, and other pharmacies in the State of Florida for distribution to Florida residents.

Through defendants' sale of certain pharmaceutical products, including ranitidine capsules, fluoxetine tablets, and buspirone tablets, to Walgreens, Omnicare, and other pharmacies in the State of Florida, defendants Par, Alphapharm, and Genpharm knowingly caused, and conspired in, the presentation of false claims to Florida Medicaid.

319. In order to be eligible to receive Medicaid reimbursement for defendants' products and other prescription drugs, pharmacies in Florida must submit an enrollment form and execute an application agreement to obtain a provider number. In agreeing to become a Medicaid provider and receive a unique provider number, pharmacies specifically represent that they will comply with all applicable federal and state laws, regulations, and manuals governing Florida Medicaid.

320. On a daily basis, Walgreens and other Florida pharmacies batch Medicaid claims and submit them electronically to the State. As part of each electronic claim, a pharmacy affixes its unique Medicaid provider identification number. In making such reimbursement submissions, Walgreens, Omnicare, and other pharmacies represent to the State of Florida: (1) that the submissions comply with all applicable federal and state laws, regulations, and manuals governing the Florida Medicaid program; (2) that the information submitted is true, accurate, and complete; and (3) that there is no concealment or falsification of material facts. Further, Florida Medicaid providers must agree to safeguard the Medicaid program against abuse, *e.g.*, unnecessary costs, resulting from use of the electronic claims submission system.

321. By submitting requests for reimbursements, Walgreens, Omnicare, and other pharmacies represent that they are seeking reimbursement for the drug prescribed. On each electronic reimbursement claim to the State of Florida, each prescription drug is identified by a

unique NDC number. The NDC number reflects the specific manufacturer, dosage form and dosage strength of the drug on the claim form. For example, Par's unique NDC numbers include the following for the Par products and pack sizes as listed: Ranitidine capsules 150mg (60 units), #49884-647-02; Ranitidine capsules 300mg (30 units), #49884-648-11; Fluoxetine tablets 20mg (30 units), #49884-735-11; and Buspirone tablets 7.5mg (100 units), #49884-725-01.

322. On the basis of Walgreens', Omnicare's, and other pharmacies' reimbursement claim submissions and compliance representations, the State of Florida regularly reimbursed pharmacies for sales of defendants' products that had been illegally substituted, including ranitidine capsules, fluoxetine tablets, and buspirone tablets. Defendants Par, Alphapharm, and Genpharm profited from sale of these products and the resulting reimbursements, knowing that the reimbursement claims were to be made in accordance with state and federal laws. Walgreens', Omnicare's, and other pharmacies' reimbursement requests for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets were false and/or fraudulent.

323. Walgreens, Omnicare, and other pharmacies sold, and may continue to sell, defendants' pharmaceuticals in violation of State pharmacy and Medicaid law. Walgreens, Omnicare, and other pharmacies regularly dispensed improper drugs marketed and manufactured by defendants on the basis of invalid or altered prescriptions or with total disregard for the terms of valid prescriptions. Walgreens, Omnicare, and other pharmacies in dispensing defendants' products did not comply with Florida's pharmacy requirement that drugs must be validly prescribed and that the same dosage form and strength is necessary for substitution and/or drug equivalency. *See, e.g.*, Fl. Stat. § 465.025. Walgreens, Omnicare, and other pharmacies

additionally did not comply with State Medicaid requirements for pharmaceutical cost-savings and pharmaceutical medical necessity where they illegally filled prescriptions with defendants' products in a switched dosage form. *See, e.g.*, Fl. Admin. Code 59G-1.010(166)(a)(4).

324. As a result of the pharmacies' certified claims for payment in its reimbursement submissions to the state Medicaid agency, Florida Medicaid routinely made payments to the co-conspirator pharmacies for defendants' illegally-switched drugs.

325. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to make false claims and statements in violation of the terms of their Florida Medicaid provider agreements and individual billing certifications by making claims for payment to the State of Florida for defendants' illegally-switched drugs that violated Florida and/or Federal law and omitted material facts.

326. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to falsely assert compliance with their Florida Medicaid provider agreement and State and Federal law.

327. By virtue of the above-described acts, among others, defendants knowingly caused Walgreens, Omnicare, and other pharmacies to submit, and possibly continue to submit, directly or indirectly to officers, employees, or agents of the State of Florida, false or fraudulent claims for payment or approval for defendants' products.

328. By virtue of the above-described acts, among others, defendants with and through Walgreens, Omnicare, and other pharmacies knowingly made, used, or caused to be made or used, and may continue to make, use, or cause to be made or used, false records and statements

to obtain payment from the State of Florida for false or fraudulent claims for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

329. By virtue of the above-described acts, defendants conspired with Walgreens, Omnicare, and other pharmacies to defraud the State of Florida by submitting false claims and causing the presentation of false claims for defendants' illegally-switched drugs including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

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

331. Plaintiff State of Florida, being unaware of the falsity of the claims and/or statements caused, or caused to be made, by defendants, and in reliance on the accuracy thereof, paid and may continue to pay for illegally-switched drugs.

332. The State of Florida sustained damages because of the defendants' actions.

COUNT VI
Georgia False Medicaid Claims Act

333. Plaintiff incorporates by reference and re-alleges Paragraphs 1-261 as if fully set forth herein. This Count is brought on behalf of the State of Georgia under the *qui tam* provisions of the Georgia False Medicaid Claims Act, Ga. Code Ann. § 49-4-168.

334. Defendants, at all times relevant to this action, sold and continue to sell pharmaceuticals in the State of Georgia that were and will be paid for by the State of Georgia. Defendants, at all times relevant to this action, sold their pharmaceuticals to Walgreens, Omnicare, and other pharmacies in the State of Georgia for distribution to Georgia residents. Through defendants' sale of certain pharmaceutical products, including ranitidine capsules, fluoxetine tablets, and buspirone tablets, to Walgreens, Omnicare, and other pharmacies in the

State of Georgia, defendants Par, Alphapharm, and Genpharm knowingly caused, and conspired in, the presentation of false claims to Georgia Medicaid.

335. In order to be eligible to receive Medicaid reimbursement for defendants' products and other prescription drugs, pharmacies in Georgia must submit an enrollment form and execute an application agreement to obtain a provider number. In agreeing to become a Medicaid provider and receive a unique provider number, pharmacies specifically represent that they will comply with all applicable federal and state laws, regulations, and manuals governing Georgia Medicaid.

336. On a daily basis, Walgreens and other Georgia pharmacies batch Medicaid claims and submit them electronically to the State. As part of each electronic claim, a pharmacy affixes its unique Medicaid provider identification number. In making such reimbursement submissions, Walgreens, Omnicare, and other pharmacies represent to the State of Georgia: (1) that the submissions comply with all applicable federal and state laws, regulations, and manuals governing the Georgia Medicaid program; (2) that the information submitted is true, accurate, and complete; and (3) that there is no concealment or falsification of material facts. Further, Georgia Medicaid providers must agree to safeguard the Medicaid program against abuse, *e.g.*, unnecessary costs, resulting from use of the electronic claims submission system.

337. By submitting requests for reimbursements, Walgreens, Omnicare, and other pharmacies represent that they are seeking reimbursement for the drug prescribed. On each electronic reimbursement claim to the State of Georgia, each prescription drug is identified by a unique NDC number. The NDC number reflects the specific manufacturer, dosage form and dosage strength of the drug on the claim form. For example, Par's unique NDC numbers include

the following for the Par products and pack sizes as listed: Ranitidine capsules 150mg (60 units), #49884-647-02; Ranitidine capsules 300mg (30 units), #49884-648-11; Fluoxetine tablets 20mg (30 units), #49884-735-11 #49884-735-11; and Bupirone tablets 7.5mg (100 units), #49884-725-01.

338. On the basis of Walgreens', Omnicare's, and other pharmacies' reimbursement claim submissions and compliance representations, the State of Georgia regularly reimbursed pharmacies for sales of defendants' products that had been illegally substituted, including ranitidine capsules, fluoxetine tablets, and bupirone tablets. Defendants Par, Alphapharm, and Genpharm profited from sale of these products and the resulting reimbursements, knowing that the reimbursement claims were to be made in accordance with state and federal laws. Walgreens', Omnicare's, and other pharmacies' reimbursement requests for defendants' products including ranitidine capsules, fluoxetine tablets, and bupirone tablets were false and/or fraudulent.

339. Walgreens, Omnicare, and other pharmacies sold, and may continue to sell, defendants' pharmaceuticals in violation of State pharmacy and Medicaid law. Walgreens, Omnicare, and other pharmacies regularly dispensed improper drugs marketed and manufactured by defendants on the basis of invalid or altered prescriptions or with total disregard for the terms of valid prescriptions. Walgreens, Omnicare, and other pharmacies in dispensing defendants' products did not comply with Georgia's pharmacy requirement that drugs must be validly prescribed and that the same dosage form and strength is necessary for substitution and/or drug equivalency. *See, e.g.*, Ga. Code Ann. § 26-4-81. Walgreens, Omnicare, and other pharmacies additionally did not comply with State Medicaid requirements for pharmaceutical cost-savings

and pharmaceutical medical necessity where they illegal filled prescriptions with defendants' products in a switched dosage form. *See, e.g.*, GA Medicaid Provider Manual, 16(f).

340. As a result of the pharmacies' certified claims for payment in its reimbursement submissions to the state Medicaid agency, Georgia Medicaid routinely made payments to the co-conspirator pharmacies for defendants' illegally-switched drugs.

341. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to make false claims and statements in violation of the terms of their Georgia Medicaid provider agreements and individual billing certifications by making claims for payment to the State of Georgia for defendants' illegally-switched drugs that violated Georgia and/or Federal law and omitted material facts.

342. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to falsely assert compliance with their Georgia Medicaid provider agreement and State and Federal law.

343. By virtue of the above-described acts, among others, defendants knowingly caused Walgreens, Omnicare, and other pharmacies to submit, and possibly continue to submit, directly or indirectly to officers, employees, or agents of the State of Georgia, false or fraudulent claims for payment or approval for defendants' products.

344. By virtue of the above-described acts, among others, defendants with and through Walgreens, Omnicare, and other pharmacies knowingly made, used, or caused to be made or used, and may continue to make, use, or cause to be made or used, false records and statements to obtain payment from the State of Georgia for false or fraudulent claims for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

345. By virtue of the above-described acts, defendants conspired with Walgreens, Omnicare, and other pharmacies to defraud the State of Georgia by submitting false claims and causing the presentation of false claims for defendants' illegally-switched drugs including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

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

347. Plaintiff State of Georgia, being unaware of the falsity of the claims and/or statements caused, or caused to be made, by defendants, and in reliance on the accuracy thereof, paid and may continue to pay for illegally-switched drugs.

348. The State of Georgia sustained damages because of the defendants' actions.

COUNT VII
Illinois Whistleblower Reward and Protection Act

349. Plaintiffs incorporate by reference and re-allege Paragraphs 1-261 as if fully set forth herein. This Count is brought by Lisitza in the name of the Illinois under the *qui tam* provisions of Illinois Whistleblower Reward and Protection Act, 740 ILCS 175/1-8.

350. Defendants Par, Alphapharm, and Genpharm at all times relevant to this action, sold and continue to sell pharmaceuticals in Illinois that were and will be paid for by the State. Par, Alphapharm, and Genpharm, at all times relevant to this action, sold their pharmaceuticals to Walgreens, Omnicare, and other pharmacies in Illinois for distribution to Illinois residents. Through defendants' marketing and sale of certain pharmaceutical products, including ranitidine capsules, fluoxetine tablets, and buspirone tablets to Walgreens, Omnicare, and other pharmacies in the State of Illinois, defendants Par, Alphapharm, and Genpharm knowingly caused, and conspired in, the presentation of false claims to Illinois Medicaid.

351. In order to be eligible to receive Medicaid reimbursement for defendants' products and other prescription drugs, pharmacies in Illinois must submit an enrollment form and execute an application agreement to obtain a provider number. In agreeing to become a Medicaid provider and receive a unique provider number, pharmacies specifically represent that they will comply with all applicable federal and state laws and regulations governing Illinois Medicaid.

352. On a daily basis, Walgreens, Omnicare, and other Illinois pharmacies batch Medicaid claims and submit them electronically to the State. As part of each electronic claim, a pharmacy affixes its unique Medicaid provider identification number. In making such reimbursement submissions, Walgreens, Omnicare, and other pharmacies represent to the State: (1) that the submissions comply with all applicable federal and state laws and regulations, governing the Illinois Medicaid program; (2) that the information submitted is true, accurate and complete; and (3) that there is no concealment or falsification of material facts.

353. By submitting requests for reimbursements, Walgreens, Omnicare, and other pharmacies represent that they are seeking reimbursement for the drug prescribed. On each electronic reimbursement claim to the State of Illinois each prescription drug is identified by a unique National Drug Code ("NDC") number. The NDC number reflects the specific manufacturer, dosage form and dosage strength of the drug on the claim form. For example, Par's unique NDC numbers include the following for the products and pack sizes as listed: Ranitidine capsules 150mg (60 units), #49884-647-02; Ranitidine capsules 300mg (30 units), #49884-648-11; Fluoxetine tablets 20mg (30 units), #49884-735-11; and Buspirone tablets 7.5mg (100 units), #49884-725-01.

354. On the basis of Walgreens', Omnicare's, and other pharmacies' reimbursement claim submissions and compliance representations, the State of Illinois regularly reimbursed pharmacies for sales of defendants' products that had been illegally substituted, including ranitidine capsules, fluoxetine tablets, and buspirone tablets. Defendants Par, Alphapharm, and Genpharm profited from sale of these products and the resulting reimbursements, knowing that the reimbursement claims were to be made in accordance with state and federal laws. Walgreens', Omnicare's, and other pharmacies' reimbursement requests for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets were false and/or fraudulent.

355. Walgreens, Omnicare, and other pharmacies sold, and may continue to sell, defendants' pharmaceuticals in violation of State pharmacy and Medicaid law. Walgreens, Omnicare, and other pharmacies regularly dispensed improper drugs marketed and manufactured by Par on the basis of invalid or altered prescriptions or with total disregard for the terms of valid prescriptions. Walgreens, Omnicare, and other pharmacies in dispensing defendants' products did not comply with Illinois' pharmacy requirement that drugs must be validly prescribed and that the same dosage form and strength is necessary for substitution and/or drug equivalency. *See, e.g.*, 410 ILCS 620/3 and 3.14.

356. As a result of the pharmacies' certified claims for payment in their reimbursement submissions to the state Medicaid agency, Illinois Medicaid routinely made payments to the co-conspirator pharmacies for defendants' illegally-switched drugs.

357. Defendants Par, Alphapharm, and Genpharm conspired with and caused Walgreens, Omnicare, and other pharmacies to make false claims and statements in violation of

the terms of their Illinois Medicaid provider agreements and individual billing certifications by making claims for payment to the State of Illinois for defendants' illegally-switched drugs that violated Illinois and/or Federal law and omitted material facts.

358. Defendants Par, Alphapharm, and Genpharm conspired with and caused Walgreens, Omnicare, and other pharmacies to falsely assert compliance with their Illinois Medicaid provider agreement and State and Federal law.

359. By virtue of the above-described acts, among others, defendants Par, Alphapharm, and Genpharm knowingly caused Walgreens, Omnicare, and other pharmacies to submit, and possibly continue to submit, directly or indirectly to officers, employees, or agents of the State of Illinois, false or fraudulent claims for payment or approval for defendants' products.

360. By virtue of the above-described acts, among others, defendants with and through Walgreens, Omnicare, and other pharmacies knowingly made, used, or caused to be made or used, and may continue to make, use, or cause to be made or used, false records and statements to obtain payment from the State of Illinois for false or fraudulent claims for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

361. By virtue of the above-described acts, defendants conspired with Walgreens, Omnicare, and other pharmacies to defraud the State of Illinois by submitting false claims and causing the presentation of false claims for defendants' illegally-switched drugs including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

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

363. Plaintiff State of Illinois, being unaware of the falsity of the claims and/or statements made, or caused to be made, by defendants, and in reliance on the accuracy thereof, paid and may continue to pay defendants for illegally-switched prescriptions.

364. The State of Illinois sustained damages because of defendants' actions.

COUNT VIII
Illinois Insurance Claims Fraud Prevention Act

365. Plaintiffs incorporate by reference and re-allege Paragraphs 1-261 as if fully set forth herein. This Count is brought by Lisitza in the name of the State of Illinois under the *qui tam* provisions of the Illinois Insurance Claims Fraud Prevention Act, 740 ILCS 92/15.

366. Relator is an interested person with direct, personal knowledge of the allegations of this complaint, who has brought this action pursuant to 740 ILCS 92/1-45 on behalf of himself and the State of Illinois.

367. By committing the acts alleged above, defendants Par, Alphapharm, and Genpharm violated 740 ILCS 92/1-45 by repeatedly, willfully, and intentionally causing to be obtained, by deception, control over the property of insurance companies by causing a false claim to be made on insurance policies.

368. By committing the acts alleged above, defendants Par, Alphapharm, and Genpharm violated 740 ILCS 92/1-45 by repeatedly, willfully and intentionally conspiring to and causing false claims for reimbursement to insurers to be submitted for prescription drugs that were provided to patients in evasion of contractual agreements with insurers and through illegal switching of drugs without informed physician authorization from 2001 to date.

369. By concealing and/or by failing to disclose the fact that the claims to be submitted to insurers were for prescription drugs provided to patients that were the result of evading

governmental pricing limitations and switching drugs without informed physician authorization, defendants made and/or caused to be made a false statement or record.

370. By failing to disclose and actively concealing that claims submitted to insurers were for prescription drugs provided to patients that were the result of evading governmental pricing limitations and switching drugs without informed physician authorization, the claims defendants conspired to, and caused to be submitted to insurers contained false, incomplete, and misleading information that was material to the claim. The information was material because insurers would have wanted to know that defendants were not complying with pharmacy laws and were inflating drug prices.

371. Insurers were unaware of the falsity of the records, statements, and claims made or caused to be made by defendants involving defendants' illegal prescription drug provision at the time the insurers reimbursed defendants and pharmacies for defendants' illegally-switched drugs.

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

373. As a result of the pharmacies' certified claims for payment in its reimbursement submissions to the private insurers, private insurers routinely made payments to the co-conspirator pharmacies for defendants' illegally-switched drugs.

374. Plaintiffs cannot at this time identify all of the false claims to private insurers for payment that were caused by defendants' conduct. This information is solely within the possession of defendants and their co-conspirator pharmacy partners.

COUNT IX
Indiana False Claims Act

375. Plaintiffs incorporate by reference and re-allege Paragraphs 1-261 as if fully set forth herein. This Count is brought by Lisitza in the name of the State of Indiana under the *qui tam* provisions of Indiana False Claims Act, Ind. Code. §5-11-5.5.

376. Defendants, at all times relevant to this action, sold and continue to sell pharmaceuticals in the State of Indiana that were and will be paid for by the State. Defendants, at all times relevant to this action, sold their pharmaceuticals to Walgreens, Omnicare, and other pharmacies in the State of Indiana for distribution to Indiana residents. Through defendants' sale of certain pharmaceutical products, including ranitidine capsules, fluoxetine tablets, and buspirone tablets, to Walgreens, Omnicare, and other pharmacies in the State of Indiana, defendants Par, Alphapharm, and Genpharm knowingly caused, and conspired in, the presentation of false claims to Indiana Medicaid.

377. In order to be eligible to receive Medicaid reimbursement for defendants' products and other prescription drugs, pharmacies in Indiana must complete a Provider agreement to obtain a provider number. In agreeing to become a Medicaid provider and receive a unique provider number, pharmacies specifically represent that they will comply with all applicable federal and state laws and regulations governing Indiana Medicaid.

378. On a daily basis, Walgreens and other Indiana pharmacies submit Medicaid claims to the State. As part of each claim, a pharmacy affixes its unique Medicaid provider

identification number or its NPI. In making such reimbursement submissions, Walgreens, Omnicare, and other pharmacies represent to the State: (1) that the submissions comply with all applicable federal and state laws and regulations governing the Indiana Medicaid program; (2) that the information submitted is true, accurate, and complete; and (3) that there is no concealment or falsification of material facts.

379. By submitting requests for reimbursements, Walgreens, Omnicare, and other pharmacies represent that they are seeking reimbursement for the drug prescribed. On each electronic reimbursement claim to the State of Indiana, each prescription drug is identified by a unique NDC number. The NDC number reflects the specific manufacturer, dosage form, and dosage strength of the drug on the claim form. For example, Par's unique NDC numbers include the following for the Par products and pack sizes as listed: Ranitidine capsules 150mg (60 units), #49884-647-02; Ranitidine capsules 300mg (30 units), #49884-648-11; Fluoxetine tablets 20mg (30 units), #49884-735-11; and Buspirone tablets 7.5mg (100 units), #49884-725-01.

380. On the basis of Walgreens', Omnicare's, and other pharmacies' reimbursement claim submissions and compliance representations, the State of Indiana regularly reimbursed pharmacies for sales of defendants' products that had been illegally substituted, including ranitidine capsules, fluoxetine tablets, and buspirone tablets. Defendants Par, Alphapharm, and Genpharm profited from sale of these products and the resulting reimbursements, knowing that the reimbursement claims were to be made in accordance with state and federal laws. Walgreens', Omnicare's, and other pharmacies' reimbursement requests for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets were false and/or fraudulent.

381. Walgreens, Omnicare, and other pharmacies sold, and may continue to sell, defendants' pharmaceuticals in violation of State pharmacy and Medicaid law. Walgreens, Omnicare, and other pharmacies regularly dispensed improper drugs marketed and manufactured by defendants on the basis of invalid or altered prescriptions or with total disregard for the terms of valid prescriptions. Walgreens, Omnicare, and other pharmacies in dispensing defendants' products did not comply with Indiana's pharmacy requirement that drugs must be validly prescribed and that the same dosage form and strength is necessary for substitution and/or drug equivalency. *See, e.g.*, Ind. Code §16-42-22-4.

382. As a result of the pharmacies' certified claims for payment in its reimbursement submissions to the state Medicaid agency, Indiana Medicaid routinely made payments to the co-conspirator pharmacies for defendants' illegally-switched drugs.

383. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to make false claims and statements in violation of the terms of their Indiana Medicaid provider agreements and individual billing certifications by making claims for payment to the State of Indiana for defendants' illegally-switched drugs that violated Indiana and/or Federal law and omitted material facts.

384. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to falsely assert compliance with their Indiana Medicaid provider agreement and State and Federal law.

385. By virtue of the above-described acts, among others, defendants knowingly caused Walgreens, Omnicare, and other pharmacies to submit, and possibly continue to submit,

directly or indirectly to officers, employees, or agents of the State of Indiana, false or fraudulent claims for payment or approval for defendants' products.

386. By virtue of the above-described acts, among others, defendants with and through Walgreens, Omnicare, and other pharmacies knowingly made, used, or caused to be made or used, and may continue to make, use, or cause to be made or used, false records and statements to obtain payment from the State of Indiana for false or fraudulent claims for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

387. By virtue of the above-described acts, defendants conspired with Walgreens, Omnicare, and other pharmacies to defraud the State of Indiana by submitting false claims and causing the presentation of false claims for defendants' illegally-switched drugs including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

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

389. Plaintiff State of Indiana, being unaware of the falsity of the claims and/or statements made, or caused to be made, by defendants, and in reliance on the accuracy thereof, paid and may continue to pay for illegally-switched prescriptions.

390. The State of Indiana sustained damages because of the defendants' actions.

COUNT X
Louisiana Medical Assistance Programs Integrity Law

391. Plaintiffs incorporate by reference and re-allege Paragraphs 1-261 as if fully set forth herein. This Count is brought by Lisitza in the name of the State of Louisiana under the *qui tam* provisions of the Louisiana Medical Assistance Programs Integrity Law, La. Rev. Stat. §46:439.

392. Defendants, at all times relevant to this action, sold and continue to sell pharmaceuticals in the State of Louisiana that were and will be paid for by the State. Defendants, at all times relevant to this action, sold their pharmaceuticals to Walgreens, Omnicare, and other pharmacies in the State of Louisiana for distribution to Louisiana residents. Through defendants' sale of certain pharmaceutical products, including ranitidine capsules, fluoxetine tablets, and buspirone tablets, to Walgreens, Omnicare, and other pharmacies in Louisiana, defendants Par, Alphapharm, and Genpharm knowingly caused, and conspired in, the presentation of false claims to Louisiana Medicaid.

393. In order to be eligible to receive Medicaid reimbursement for defendants' products and other prescription drugs, pharmacies in Louisiana must submit an enrollment form and execute an application agreement to obtain a provider number. In agreeing to become a Medicaid provider and receive a unique provider number, pharmacies specifically represent that they will comply with all applicable federal and state laws and regulations governing Louisiana Medicaid.

394. On a daily basis, Walgreens and other Louisiana pharmacies batch Medicaid claims and submit them electronically to the State. As part of each electronic claim, a pharmacy affixes its unique Medicaid provider identification number. In making such reimbursement submissions, Walgreens, Omnicare, and other pharmacies represent to the State: (1) that the submissions comply with all applicable federal and state laws and regulations governing the Louisiana Medicaid program; (2) that the information submitted is true, accurate, and complete; and (3) that there is no concealment or falsification of material facts.

395. By submitting requests for reimbursements, Walgreens, Omnicare, and other pharmacies represent that they are seeking reimbursement for the drug prescribed. On each electronic reimbursement claim to the State of Louisiana, each prescription drug is identified by a unique NDC number. The NDC number reflects the specific manufacturer, dosage form and dosage strength of the drug on the claim form. For example, Par's unique NDC numbers include the following for the Par products and pack sizes as listed: Ranitidine capsules 150mg (60 units), #49884-647-02; Ranitidine capsules 300mg (30 units), #49884-648-11; Fluoxetine tablets 20mg (30 units), #49884-735-11; and Buspirone tablets 7.5mg (100 units), #49884-725-01.

396. On the basis of Walgreens', Omnicare's, and other pharmacies' reimbursement claim submissions and compliance representations, the State of Louisiana regularly reimbursed pharmacies for sales of defendants' products that had been illegally substituted, including ranitidine capsules, fluoxetine tablets, and buspirone tablets. Defendants Par, Alphapharm, and Genpharm profited from sale of these products and the resulting reimbursements, knowing that the reimbursement claims were to be made in accordance with state and federal laws. Walgreens', Omnicare's, and other pharmacies' reimbursement requests for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets were false and/or fraudulent.

397. Walgreens, Omnicare, and other pharmacies sold, and may continue to sell, defendants' pharmaceuticals in violation of State pharmacy and Medicaid law. Walgreens, Omnicare, and other pharmacies regularly dispensed improper drugs marketed and manufactured by defendants on the basis of invalid or altered prescriptions or with total disregard for the terms of valid prescriptions. Walgreens, Omnicare, and other pharmacies in dispensing defendants'

products did not comply with Louisiana's pharmacy requirement that drugs must be validly prescribed and that the same dosage form and strength is necessary for substitution and/or drug equivalency. *See, e.g.*, La. Rev. Stat. 36:1163.

398. As a result of the pharmacies' certified claims for payment in its reimbursement submissions to the state Medicaid agency, Louisiana Medicaid routinely made payments to the co-conspirator pharmacies for defendants' illegally-switched drugs.

399. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to make false claims and statements in violation of the terms of their Louisiana Medicaid provider agreements and individual billing certifications by making claims for payment to the State of Louisiana for defendants' illegally-switched drugs that violated Louisiana and/or Federal law and omitted material facts.

400. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to falsely assert compliance with their Louisiana Medicaid provider agreement and State and Federal law.

401. By virtue of the above-described acts, among others, defendants knowingly caused Walgreens, Omnicare, and other pharmacies to submit, and possibly continue to submit, directly or indirectly to officers, employees, or agents of the State of Louisiana, false or fraudulent claims for payment or approval for defendants' products.

402. By virtue of the above-described acts, among others, defendants with and through Walgreens, Omnicare, and other pharmacies knowingly made, used, or caused to be made or used, and may continue to make, use, or cause to be made or used, false records and statements

to obtain payment from the State of Louisiana for false or fraudulent claims for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

403. By virtue of the above-described acts, defendants conspired with Walgreens, Omnicare, and other pharmacies to defraud the State of Louisiana by submitting false claims and causing the presentation of false claims for defendants' illegally-switched drugs including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

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

405. Plaintiff State of Louisiana, being unaware of the falsity of the claims and/or statements made, or caused to be made, by defendants, and in reliance on the accuracy thereof, paid and may continue to pay for illegally-switched prescriptions.

406. The State of Louisiana sustained damages because of the defendants' actions.

COUNT XI
Massachusetts False Claims Act

407. Plaintiffs incorporate by reference and re-allege Paragraphs 1-261 as if fully set forth herein. This Count is brought by Lisitza in the name of the Commonwealth of Massachusetts under the *qui tam* provisions of the Massachusetts False Claims Act, Mass. Gen. Laws c.12 §5.

408. Defendants, at all times relevant to this action, sold and continue to sell pharmaceuticals in the Commonwealth of Massachusetts that were and will be paid for by the Commonwealth. Defendants, at all times relevant to this action, sold their pharmaceuticals to Walgreens, Omnicare, and other pharmacies in Massachusetts for distribution to Massachusetts residents. Through defendants' sale of certain pharmaceutical products, including ranitidine capsules, fluoxetine tablets, and buspirone tablets, to Walgreens, Omnicare, and other

pharmacies in Massachusetts, defendants Par, Alphapharm, and Genpharm knowingly caused, and conspired in, the presentation of false claims to Massachusetts Medicaid.

409. In order to be eligible to receive Medicaid reimbursement for defendants' products and other prescription drugs, pharmacies in Massachusetts must submit an enrollment form and execute an application agreement to obtain a provider number. In agreeing to become a Medicaid provider and receive a unique provider number, pharmacies specifically represent that they will comply with all applicable federal and Commonwealth laws and regulations governing Massachusetts Medicaid.

410. On a daily basis, Walgreens and other Massachusetts pharmacies batch Medicaid claims and submit them electronically to the Commonwealth. As part of each electronic claim, a pharmacy affixes its unique Medicaid provider identification number. In making such reimbursement submissions, Walgreens, Omnicare, and other pharmacies represent to the Commonwealth: (1) that the submissions comply with all applicable federal and Commonwealth laws and regulations governing the Massachusetts Medicaid program; (2) that the information submitted is true, accurate, and complete; and (3) that there is no concealment or falsification of material facts.

411. By submitting requests for reimbursements, Walgreens, Omnicare, and other pharmacies represent that they are seeking reimbursement for the drug prescribed. On each electronic reimbursement claim to the Commonwealth of Massachusetts, each prescription drug is identified by a unique NDC number. The NDC number reflects the specific manufacturer, dosage form, and dosage strength of the drug on the claim form. For example, Par's unique NDC numbers include the following for the Par products and pack sizes as listed: Ranitidine

capsules 150mg (60 units), #49884-647-02; Ranitidine capsules 300mg (30 units), #49884-648-11; Fluoxetine tablets 20mg (30 units), #49884-735-11; and Buspirone tablets 7.5mg (100 units), #49884-725-01.

412. On the basis of Walgreens', Omnicare's, and other pharmacies' reimbursement claim submissions and compliance representations, the Commonwealth of Massachusetts regularly reimbursed pharmacies for sales of defendants' products that had been illegally substituted, including ranitidine capsules, fluoxetine tablets, and buspirone tablets. Defendants Par, Alphapharm, and Genpharm profited from sale of these products and the resulting reimbursements, knowing that the reimbursement claims were to be made in accordance with Commonwealth and federal laws. Walgreens', Omnicare's, and other pharmacies' reimbursement requests for defendants' products including Ranitidine capsules and Fluoxetine tablets were false and/or fraudulent.

413. Walgreens, Omnicare, and other pharmacies sold, and may continue to sell, defendants' pharmaceuticals in violation of Commonwealth pharmacy and Medicaid laws. Walgreens, Omnicare, and other pharmacies regularly dispensed improper drugs marketed and manufactured by defendants on the basis of invalid or altered prescriptions or with total disregard for the terms of valid prescriptions. Walgreens, Omnicare, and other pharmacies in dispensing defendants' products did not comply with Massachusetts's pharmacy requirement that drugs must be validly prescribed and that the same dosage form and strength is necessary for substitution and/or drug equivalency. *See, e.g.*, 130 CMR 406.402. Walgreens, Omnicare, and other pharmacies additionally did not comply with the Commonwealth of Massachusetts Medicaid requirements for pharmaceutical cost-savings and pharmaceutical medical necessity

where they illegal filled prescriptions with defendants' products in a switched dosage form. *See, e.g.*, 130 CMR 450.204(A)(2).

414. As a result of the pharmacies' certified claims for payment in its reimbursement submissions to the Commonwealth Medicaid agency, Massachusetts Medicaid routinely made payments to the co-conspirator pharmacies for defendants' illegally-switched drugs.

415. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to make false claims and statements in violation of the terms of their Massachusetts Medicaid provider agreements and individual billing certifications by making claims for payment to the Commonwealth of Massachusetts for defendants' illegally-switched drugs that violated Massachusetts and/or Federal law and omitted material facts.

416. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to falsely assert compliance with their Massachusetts Medicaid provider agreement and Commonwealth and Federal law.

417. By virtue of the above-described acts, among others, defendants knowingly caused Walgreens, Omnicare, and other pharmacies to submit, and possibly continue to submit, directly or indirectly to officers, employees, or agents of the Commonwealth of Massachusetts, false or fraudulent claims for payment or approval for defendants' products.

418. By virtue of the above-described acts, among others, defendants with and through Walgreens, Omnicare, and other pharmacies knowingly made, used, or caused to be made or used, and may continue to make, use, or cause to be made or used, false records and statements to obtain payment from the Commonwealth of Massachusetts for false or fraudulent claims for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

419. By virtue of the above-described acts, defendants conspired with Walgreens, Omnicare, and other pharmacies to defraud the Commonwealth of Massachusetts by submitting false claims and causing the presentation of false claims for defendants' illegally-switched drugs including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

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

421. Plaintiff Commonwealth of Massachusetts, being unaware of the falsity of the claims and/or statements made, or caused to be made, by defendants, and in reliance on the accuracy thereof, paid and may continue to pay for illegally-switched prescriptions.

422. The Commonwealth of Massachusetts sustained damages because of the defendants' actions.

COUNT XII
Michigan Medicaid False Claims Act

423. Plaintiffs incorporate by reference and re-allege Paragraphs 1-261 as if fully set forth herein. This Count is brought by Lisitza in the name of the State of Michigan under the *qui tam* provisions of Michigan Medicaid False Claims Act, Mich. Comp. Laws §400.601-13.

424. Defendants, at all times relevant to this action, sold and continue to sell pharmaceuticals in the State of Michigan that were and will be paid for by the State. Defendants, at all times relevant to this action, sold their pharmaceuticals to Walgreens, Omnicare, and other pharmacies in the State of Michigan for distribution to Michigan residents. Through defendants' sale of certain pharmaceutical products, including ranitidine capsules, fluoxetine tablets, and buspirone tablets, to Walgreens, Omnicare, and other pharmacies in the State of Michigan,

defendants Par, Alphapharm, and Genpharm knowingly caused, and conspired in, the presentation of false claims to Michigan Medicaid.

425. In order to be eligible to receive Medicaid reimbursement for defendants' products and other prescription drugs, pharmacies in Michigan must submit an enrollment form and execute an application agreement to obtain a provider number. In agreeing to become a Medicaid provider and receive a unique provider number, pharmacies specifically represent that they will comply with all applicable federal and state laws and regulations governing Michigan Medicaid.

426. On a daily basis, Walgreens and other Michigan pharmacies batch Medicaid claims and submit them electronically to the State. As part of each electronic claim, a pharmacy affixes its unique Medicaid provider identification number. In making such reimbursement submissions, Walgreens, Omnicare, and other pharmacies represent to the State: (1) that the submissions comply with all applicable federal and state laws and regulations governing the Michigan Medicaid program; (2) that the information submitted is true, accurate, and complete; and (3) that there is no concealment or falsification of material facts.

427. By submitting requests for reimbursements, Walgreens, Omnicare, and other pharmacies represent that they are seeking reimbursement for the drug prescribed. On each electronic reimbursement claim to the State of Michigan, each prescription drug is identified by a unique NDC number. The NDC number reflects the specific manufacturer, dosage form and dosage strength of the drug on the claim form. For example, Par's unique NDC numbers include the following for the Par products and pack sizes as listed: Ranitidine capsules 150mg (60 units),

#49884-647-02; Ranitidine capsules 300mg (30 units), #49884-648-11; Fluoxetine tablets 20mg (30 units), #49884-735-11; and Buspirone tablets 7.5mg (100 units), #49884-725-01.

428. On the basis of Walgreens', Omnicare's, and other pharmacies' reimbursement claim submissions and compliance representations, the State of Michigan regularly reimbursed pharmacies for sales of defendants' products that had been illegally substituted, including ranitidine capsules, fluoxetine tablets, and buspirone tablets. Defendants Par, Alphapharm, and Genpharm profited from sale of these products and the resulting reimbursements, knowing that the reimbursement claims were to be made in accordance with state and federal laws. Walgreens', Omnicare's, and other pharmacies' reimbursement requests for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets were false and/or fraudulent.

429. Walgreens, Omnicare, and other pharmacies sold, and may continue to sell, defendants' pharmaceuticals in violation of State pharmacy and Medicaid law. Walgreens, Omnicare, and other pharmacies regularly dispensed improper drugs marketed and manufactured by defendants on the basis of invalid or altered prescriptions or with total disregard for the terms of valid prescriptions. Walgreens, Omnicare, and other pharmacies in dispensing defendants' products did not comply with Michigan's pharmacy requirement that drugs must be validly prescribed and that the same dosage form and strength is necessary for substitution and/or drug equivalency. *See, e.g., Mich. Comp. Laws §333.17755.*

430. As a result of the pharmacies' certified claims for payment in its reimbursement submissions to the state Medicaid agency, Michigan Medicaid routinely made payments to the co-conspirator pharmacies for defendants' illegally-switched drugs.

431. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to make false claims and statements in violation of the terms of their Michigan Medicaid provider agreements and individual billing certifications by making claims for payment to the State of Michigan for defendants' illegally-switched drugs that violated Michigan and/or Federal law and omitted material facts.

432. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to falsely assert compliance with their Michigan Medicaid provider agreement and State and Federal law.

433. By virtue of the above-described acts, among others, defendants knowingly caused Walgreens, Omnicare, and other pharmacies to submit, and possibly continue to submit, directly or indirectly to officers, employees, or agents of the State of Michigan, false or fraudulent claims for payment or approval for defendants' products.

434. By virtue of the above-described acts, among others, defendants with and through Walgreens, Omnicare, and other pharmacies knowingly made, used, or caused to be made or used, and may continue to make, use, or cause to be made or used, false records and statements to obtain payment from the State of Michigan for false or fraudulent claims for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

435. By virtue of the above-described acts, defendants conspired with Walgreens, Omnicare, and other pharmacies to defraud the State of Michigan by submitting false claims and causing the presentation of false claims for defendants' illegally-switched drugs including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

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

437. Plaintiff State of Michigan, being unaware of the falsity of the claims and/or statements made, or caused to be made by defendants, and in reliance on the accuracy thereof, paid and may continue to pay for illegally-switched prescriptions.

438. The State of Michigan sustained damages because of the defendants' actions.

COUNT XIII
Nevada False Claims Act

439. Plaintiffs incorporate by reference and re-allege Paragraphs 1-261 as if fully set forth herein. This Count is brought by Lisitza in the name of the State of Nevada under the *qui tam* provisions of Nev. Rev. Stat. §357.010-250, "Submissions of False Claims to State or Local Government."

440. Defendants, at all times relevant to this action, sold and continue to sell pharmaceuticals in the State of Nevada that were and will be paid for by the State. Defendants, at all times relevant to this action, sold their pharmaceuticals to Walgreens, Omnicare, and other pharmacies in Nevada for distribution to Nevada residents. Through defendants' sale of certain pharmaceutical products, including ranitidine capsules, fluoxetine tablets, and buspirone tablets, to Walgreens, Omnicare, and other pharmacies in Nevada, defendants Par, Alphapharm, and Genpharm knowingly caused, and conspired in, the presentation of false claims to Nevada Medicaid.

441. In order to be eligible to receive Medicaid reimbursement for defendants' products and other prescription drugs, pharmacies in Nevada must submit an enrollment form and execute an application agreement to obtain a provider number. In agreeing to become a Medicaid provider and receive a unique provider number, pharmacies specifically represent that

they will comply with all applicable federal and state laws and regulations governing Nevada Medicaid.

442. On a daily basis, Walgreens and other Nevada pharmacies batch Medicaid claims and submit them electronically to the State. As part of each electronic claim, a pharmacy affixes its unique Medicaid provider identification number. In making such reimbursement submissions, Walgreens, Omnicare, and other pharmacies represent to the State: (1) that the submissions comply with all applicable federal and state laws and regulations governing the Nevada Medicaid program; (2) that the information submitted is true, accurate, and complete; and (3) that there is no concealment or falsification of material facts.

443. By submitting requests for reimbursements, Walgreens, Omnicare, and other pharmacies represent that they are seeking reimbursement for the drug prescribed. On each electronic reimbursement claim to the State of Nevada, each prescription drug is identified by a unique NDC number. The NDC number reflects the specific manufacturer, dosage form and dosage strength of the drug on the claim form. For example, Par's unique NDC numbers include the following for the Par products and pack sizes as listed: Ranitidine capsules 150mg (60 units), #49884-647-02; Ranitidine capsules 300mg (30 units), #49884-648-11; Fluoxetine tablets 20mg (30 units), #49884-735-11; and Buspirone tablets 7.5mg (100 units), #49884-725-01.

444. On the basis of Walgreens', Omnicare's, and other pharmacies' reimbursement claim submissions and compliance representations, the State of Nevada regularly reimbursed pharmacies for sales of defendants' products that had been illegally substituted, including ranitidine capsules, fluoxetine tablets, and buspirone tablets. Defendants Par, Alphapharm, and Genpharm profited from sale of these products and the resulting reimbursements, knowing that

the reimbursement claims were to be made in accordance with state and federal laws. Walgreens', Omnicare's, and other pharmacies' reimbursement requests for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets were false and/or fraudulent.

445. Walgreens, Omnicare, and other pharmacies sold, and may continue to sell, defendants' pharmaceuticals in violation of State pharmacy and Medicaid law. Walgreens, Omnicare, and other pharmacies regularly dispensed improper drugs marketed and manufactured by defendants on the basis of invalid or altered prescriptions or with total disregard for the terms of valid prescriptions. Walgreens, Omnicare, and other pharmacies in dispensing defendants' products did not comply with Nevada's pharmacy requirement that drugs must be validly prescribed and that the same dosage form and strength is necessary for substitution and/or drug equivalency. *See, e.g., Nev. Rev. Stat. §639.2583.*

446. As a result of the pharmacies' certified claims for payment in its reimbursement submissions to the state Medicaid agency, Nevada Medicaid routinely made payments to the co-conspirator pharmacies for defendants' illegally-switched drugs.

447. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to make false claims and statements in violation of the terms of their Nevada Medicaid provider agreements and individual billing certifications by making claims for payment to the State of Nevada for defendants' illegally-switched drugs that violated Nevada and/or Federal law and omitted material facts.

448. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to falsely assert compliance with their Nevada Medicaid provider agreement and State and Federal law.

449. By virtue of the above-described acts, among others, defendants knowingly caused Walgreens, Omnicare, and other pharmacies to submit, and possibly continue to submit, directly or indirectly to officers, employees, or agents of the State of Nevada, false or fraudulent claims for payment or approval for defendants' products.

450. By virtue of the above-described acts, among others, defendants with and through Walgreens, Omnicare, and other pharmacies knowingly made, used, or caused to be made or used, and may continue to make, use, or cause to be made or used, false records and statements to obtain payment from the State of Nevada for false or fraudulent claims for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

451. By virtue of the above-described acts, defendants conspired with Walgreens, Omnicare, and other pharmacies to defraud the State of Nevada by submitting false claims and causing the presentation of false claims for defendants' illegally-switched drugs including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

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

453. Plaintiff State of Nevada, being unaware of the falsity of the claims and/or statements made, or caused to be made, by defendants, and in reliance on the accuracy thereof, paid and may continue to pay defendants for illegally-switched prescriptions.

454. The State of Nevada sustained damages because of the defendants' actions.

COUNT XIV
New Hampshire Medicaid Fraud and False Claims Act

455. Plaintiffs incorporate by reference and re-allege Paragraphs 1-261 as if fully set forth herein. This Count is brought by Lisitza in the name of the State of New Hampshire under the *qui tam* provisions of New Hampshire Medicaid Fraud and False Claims Act, N.H. Rev. Stat. §167:61.

456. Defendants, at all times relevant to this action, sold and continue to sell pharmaceuticals in the State of New Hampshire that were and will be paid for by the State. Defendants, at all times relevant to this action, sold their pharmaceuticals to Walgreens, Omnicare, and other pharmacies in the State of New Hampshire for distribution to New Hampshire residents. Through defendants' sale of certain pharmaceutical products, including ranitidine capsules, fluoxetine tablets, and buspirone tablets, to Walgreens, Omnicare, and other pharmacies in the State of New Hampshire, defendants Par, Alphapharm, and Genpharm knowingly caused, and conspired in, the presentation of false claims to New Hampshire Medicaid.

457. In order to be eligible to receive Medicaid reimbursement for defendants' products and other prescription drugs, pharmacies in New Hampshire must submit an enrollment form and execute an application agreement to obtain a provider number. In agreeing to become a Medicaid provider and receive a unique provider number, pharmacies specifically represent that they will comply with all applicable federal and state laws and regulations governing New Hampshire Medicaid.

458. On a daily basis, Walgreens and other New Hampshire pharmacies batch Medicaid claims and submit them electronically to the State. As part of each electronic claim, a

pharmacy affixes its unique Medicaid provider identification number. In making such reimbursement submissions, Walgreens, Omnicare, and other pharmacies represent to the State: (1) that the submissions comply with all applicable federal and state laws and regulations governing the New Hampshire Medicaid program; (2) that the information submitted is true, accurate, and complete; and (3) that there is no concealment or falsification of material facts.

459. By submitting requests for reimbursements, Walgreens, Omnicare, and other pharmacies represent that they are seeking reimbursement for the drug prescribed. On each electronic reimbursement claim to the State of New Hampshire, each prescription drug is identified by a unique NDC number. The NDC number reflects the specific manufacturer, dosage form and dosage strength of the drug on the claim form. For example, Par's unique NDC numbers include the following for the Par products and pack sizes as listed: Ranitidine capsules 150mg (60 units), #49884-647-02; Ranitidine capsules 300mg (30 units), #49884-648-11; Fluoxetine tablets 20mg (30 units), #49884-735-11; and Buspirone tablets 7.5mg (100 units), #49884-725-01.

460. On the basis of Walgreens', Omnicare's, and other pharmacies' reimbursement claim submissions and compliance representations, the State of New Hampshire regularly reimbursed pharmacies for sales of defendants' products that had been illegally substituted, including ranitidine capsules, fluoxetine tablets, and buspirone tablets. Defendants Par, Alphapharm, and Genpharm profited from sale of these products and the resulting reimbursements, knowing that the reimbursement claims were to be made in accordance with state and federal laws. Walgreens', Omnicare's, and other pharmacies' reimbursement requests

for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets were false and/or fraudulent.

461. Walgreens, Omnicare, and other pharmacies sold, and may continue to sell, defendants' pharmaceuticals in violation of State pharmacy and Medicaid law. Walgreens, Omnicare, and other pharmacies regularly dispensed improper drugs marketed and manufactured by defendants on the basis of invalid or altered prescriptions or with total disregard for the terms of valid prescriptions. Walgreens, Omnicare, and other pharmacies in dispensing defendants' products did not comply with New Hampshire's pharmacy requirement that drugs must be validly prescribed and that the same dosage form and strength is necessary for substitution and/or drug equivalency. *See, e.g.*, N.H. Rev. Stat. §164:B:1.

462. As a result of the pharmacies' certified claims for payment in its reimbursement submissions to the state Medicaid agency, New Hampshire Medicaid routinely made payments to the co-conspirator pharmacies for defendants' illegally-switched drugs.

463. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to make false claims and statements in violation of the terms of their New Hampshire Medicaid provider agreements and individual billing certifications by making claims for payment to the State of New Hampshire for defendants' illegally-switched drugs that violated New Hampshire and/or Federal law and omitted material facts.

464. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to falsely assert compliance with their New Hampshire Medicaid provider agreement and State and Federal law.

465. By virtue of the above-described acts, among others, defendants knowingly caused Walgreens, Omnicare, and other pharmacies to submit, and possibly continue to submit, directly or indirectly to officers, employees, or agents of the State of New Hampshire, false or fraudulent claims for payment or approval for defendants' products.

466. By virtue of the above-described acts, among others, defendants with and through Walgreens, Omnicare, and other pharmacies knowingly made, used, or caused to be made or used, and may continue to make, use, or cause to be made or used, false records and statements to obtain payment from the State of New Hampshire for false or fraudulent claims for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

467. By virtue of the above-described acts, defendants conspired with Walgreens, Omnicare, and other pharmacies to defraud the State of New Hampshire by submitting false claims and causing the presentation of false claims for defendants' illegally-switched drugs including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

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

469. Plaintiff State of New Hampshire, being unaware of the falsity of the claims and/or statements made, or caused to be made, by defendants, and in reliance on the accuracy thereof, paid and may continue to pay for illegally-switched prescriptions.

470. The State of New Hampshire sustained damages because of the defendants' actions.

COUNT XV
New Jersey False Claims Act

471. Plaintiffs incorporate by reference and re-allege Paragraphs 1-261 as if fully set forth herein. This Count is brought by Lisitza in the name of the State of New Jersey under the *qui tam* provisions of New Jersey False Claims Act, N.J. Stat. Ann. §2A:32C.

472. Defendants, at all times relevant to this action, sold and continue to sell pharmaceuticals in the State of New Jersey that were and will be paid for by the State. Defendants, at all times relevant to this action, sold their pharmaceuticals to Walgreens, Omnicare, and other pharmacies in the State of New Jersey for distribution to New Jersey residents. Through defendants' sale of certain pharmaceutical products, including ranitidine capsules, fluoxetine tablets, and buspirone tablets, to Walgreens, Omnicare, and other pharmacies in the State of New Jersey, defendants Par, Alphapharm, and Genpharm knowingly caused, and conspired in, the presentation of false claims to New Jersey Medicaid.

473. In order to be eligible to receive Medicaid reimbursement for defendants' products and other prescription drugs, pharmacies in New Jersey must submit an enrollment form and execute an application agreement to obtain a provider number. In agreeing to become a Medicaid provider and receive a unique provider number, pharmacies specifically represent that they will comply with all applicable federal and state laws and regulations governing New Jersey Medicaid.

474. On a daily basis, Walgreens and other New Jersey pharmacies batch Medicaid claims and submit them electronically to the State. As part of each electronic claim, a pharmacy affixes its unique Medicaid provider identification number. In making such reimbursement submissions, Walgreens, Omnicare, and other pharmacies represent to the State: (1) that the

submissions comply with all applicable federal and state laws and regulations governing the New Jersey Medicaid program; (2) that the information submitted is true, accurate, and complete; and (3) that there is no concealment or falsification of material facts.

475. By submitting requests for reimbursements, Walgreens, Omnicare, and other pharmacies represent that they are seeking reimbursement for the drug prescribed. On each electronic reimbursement claim to the State of New Jersey, each prescription drug is identified by a unique NDC number. The NDC number reflects the specific manufacturer, dosage form, and dosage strength of the drug on the claim form. For example, Par's unique NDC numbers include the following for the Par products and pack sizes as listed: Ranitidine capsules 150mg (60 units), #49884-647-02; Ranitidine capsules 300mg (30 units), #49884-648-11; Fluoxetine tablets 20mg (30 units), #49884-735-11; and Buspirone tablets 7.5mg (100 units), #49884-725-01.

476. On the basis of Walgreens', Omnicare's, and other pharmacies' reimbursement claim submissions and compliance representations, the State of New Jersey regularly reimbursed pharmacies for sales of defendants' products that had been illegally substituted, including ranitidine capsules, fluoxetine tablets, and buspirone tablets. Defendants Par, Alphapharm, and Genpharm profited from sale of these products and the resulting reimbursements, knowing that the reimbursement claims were to be made in accordance with state and federal laws. Walgreens', Omnicare's, and other pharmacies' reimbursement requests for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets were false and/or fraudulent.

477. Walgreens, Omnicare, and other pharmacies sold, and may continue to sell, defendants' pharmaceuticals in violation of State pharmacy and Medicaid law. Walgreens, Omnicare, and other pharmacies regularly dispensed improper drugs marketed and manufactured by defendants on the basis of invalid or altered prescriptions or with total disregard for the terms of valid prescriptions. Walgreens, Omnicare, and other pharmacies in dispensing defendants' products did not comply with New Jersey's pharmacy requirement that drugs must be validly prescribed and that the same dosage form and strength is necessary for substitution and/or drug equivalency. *See, e.g.*, N.J. Stat. Ann. §24:6E-6.

478. As a result of the pharmacies' certified claims for payment in its reimbursement submissions to the state Medicaid agency, New Jersey Medicaid routinely made payments to the co-conspirator pharmacies for defendants' illegally-switched drugs.

479. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to make false claims and statements in violation of the terms of their New Jersey Medicaid provider agreements and individual billing certifications by making claims for payment to the State of New Jersey for defendants' illegally-switched drugs that violated New Jersey and/or Federal law and omitted material facts.

480. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to falsely assert compliance with their New Jersey Medicaid provider agreement and State and Federal law.

481. By virtue of the above-described acts, among others, defendants knowingly caused Walgreens, Omnicare, and other pharmacies to submit, and possibly continue to submit,

directly or indirectly to officers, employees, or agents of the State of New Jersey, false or fraudulent claims for payment or approval for defendants' products.

482. By virtue of the above-described acts, among others, defendants with and through Walgreens, Omnicare, and other pharmacies knowingly made, used, or caused to be made or used, and may continue to make, use, or cause to be made or used, false records and statements to obtain payment from the State of New Jersey for false or fraudulent claims for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

483. By virtue of the above-described acts, defendants conspired with Walgreens, Omnicare, and other pharmacies to defraud the State of New Jersey by submitting false claims and causing the presentation of false claims for defendants' illegally-switched drugs including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

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

485. Plaintiff State of New Jersey, being unaware of the falsity of the claims and/or statements made, or caused to be made by defendants, and in reliance on the accuracy thereof, paid and may continue to pay for illegally-switched prescriptions.

486. The State of New Jersey sustained damages because of the defendants' actions.

COUNT XVI
New Mexico Medicaid False Claims Act

487. Plaintiffs incorporate by reference and re-allege Paragraphs 1-261 as if fully set forth herein. This Count is brought by Lisitza in the name of the State of New Mexico under the *qui tam* provisions of the New Mexico Medicaid False Claims Act, N.M. Stat. §27-14-1 to 15.

488. Defendants, at all times relevant to this action, sold and continue to sell pharmaceuticals in the State of New Mexico that were and will be paid for by the State.

Defendants, at all times relevant to this action, sold their pharmaceuticals to Walgreens, Omnicare, and other pharmacies in the State of New Mexico for distribution to New Mexico residents. Through defendants' sale of certain pharmaceutical products, including ranitidine capsules, fluoxetine tablets, and buspirone tablets, to Walgreens, Omnicare, and other pharmacies in the State of New Mexico, defendants Par, Alphapharm, and Genpharm knowingly caused, and conspired in, the presentation of false claims to New Mexico Medicaid.

489. In order to be eligible to receive Medicaid reimbursement for defendants' products and other prescription drugs, pharmacies in New Mexico must submit an enrollment form and execute an application agreement to obtain a provider number. In agreeing to become a Medicaid provider and receive a unique provider number, pharmacies specifically represent that they will comply with all applicable federal and state laws and regulations governing New Mexico Medicaid.

490. On a daily basis, Walgreens and other New Mexico pharmacies batch Medicaid claims and submit them electronically to the State. As part of each electronic claim, a pharmacy affixes its unique Medicaid provider identification number. In making such reimbursement submissions, Walgreens, Omnicare, and other pharmacies represent to the State: (1) that the submissions comply with all applicable federal and state laws and regulations governing the New Mexico Medicaid program; (2) that the information submitted is true, accurate, and complete; and (3) that there is no concealment or falsification of material facts.

491. By submitting requests for reimbursements, Walgreens, Omnicare, and other pharmacies represent that they are seeking reimbursement for the drug prescribed. On each electronic reimbursement claim to the State of New Mexico, each prescription drug is identified

by a unique NDC number. The NDC number reflects the specific manufacturer, dosage form, and dosage strength of the drug on the claim form. For example, Par's unique NDC numbers include the following for the Par products and pack sizes as listed: Ranitidine capsules 150mg (60 units), #49884-647-02; Ranitidine capsules 300mg (30 units), #49884-648-11; Fluoxetine tablets 20mg (30 units), #49884-735-11; and Buspirone tablets 7.5mg (100 units), #49884-725-01.

492. On the basis of Walgreens', Omnicare's, and other pharmacies' reimbursement claim submissions and compliance representations, the State of New Mexico regularly reimbursed pharmacies for sales of defendants' products that had been illegally substituted, including ranitidine capsules, fluoxetine tablets, and buspirone tablets. Defendants Par, Alphapharm, and Genpharm profited from sale of these products and the resulting reimbursements, knowing that the reimbursement claims were to be made in accordance with state and federal laws. Walgreens', Omnicare's, and other pharmacies' reimbursement requests for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets were false and/or fraudulent.

493. Walgreens, Omnicare, and other pharmacies sold, and may continue to sell, defendants' pharmaceuticals in violation of State pharmacy and Medicaid law. Walgreens, Omnicare, and other pharmacies regularly dispensed improper drugs marketed and manufactured by defendants on the basis of invalid or altered prescriptions or with total disregard for the terms of valid prescriptions. Walgreens, Omnicare, and other pharmacies in dispensing defendants' products did not comply with New Mexico's pharmacy requirement that drugs must be validly

prescribed and that the same dosage form and strength is necessary for substitution and/or drug equivalency. *See, e.g.*, N.M. Stat. §26-3-3.

494. As a result of the pharmacies' certified claims for payment in its reimbursement submissions to the state Medicaid agency, New Mexico Medicaid routinely made payments to the co-conspirator pharmacies for defendants' illegally-switched drugs.

495. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to make false claims and statements in violation of the terms of their New Mexico Medicaid provider agreements and individual billing certifications by making claims for payment to the State of New Mexico for defendants' illegally-switched drugs that violated New Mexico and/or Federal law and omitted material facts.

496. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to falsely assert compliance with their New Mexico Medicaid provider agreement and State and Federal law.

497. By virtue of the above-described acts, among others, defendants knowingly caused Walgreens, Omnicare, and other pharmacies to submit, and possibly continue to submit, directly or indirectly to officers, employees, or agents of the State of New Mexico, false or fraudulent claims for payment or approval for defendants' products.

498. By virtue of the above-described acts, among others, defendants with and through Walgreens, Omnicare, and other pharmacies knowingly made, used, or caused to be made or used, and may continue to make, use, or cause to be made or used, false records and statements to obtain payment from the State of New Mexico for false or fraudulent claims for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

499. By virtue of the above-described acts, defendants conspired with Walgreens, Omnicare, and other pharmacies to defraud the State of New Mexico by submitting false claims and causing the presentation of false claims for defendants' illegally-switched drugs including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

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

501. Plaintiff State of New Mexico, being unaware of the falsity of the claims and/or statements made, or caused to be made, by defendants, and in reliance on the accuracy thereof, paid and may continue to pay for illegally-switched prescriptions.

502. The State of New Mexico sustained damages because of the defendants' actions.

COUNT XVII
New York False Claims Act

503. Plaintiffs incorporate by reference and re-allege Paragraphs 1-261 as if fully set forth herein. This Count is brought by Lisitza in the name of the State of New York under the *qui tam* provisions of the New York False Claims Act, N.Y. State Fin. Law §§187-194.

504. Defendants, at all times relevant to this action, sold and continue to sell pharmaceuticals in the State of New York that were and will be paid for by the State. Defendants, at all times relevant to this action, sold their pharmaceuticals to Walgreens, Omnicare, and other pharmacies in the State of New York for distribution to New York residents. Through defendants' sale of certain pharmaceutical products, including ranitidine capsules, fluoxetine tablets, and buspirone tablets, to Walgreens, Omnicare, and other pharmacies in the State of New York, defendants Par, Alphapharm, and Genpharm knowingly caused, and conspired in, the presentation of false claims to New York Medicaid.

505. In order to be eligible to receive Medicaid reimbursement for defendants' products and other prescription drugs, pharmacies in New York must submit an enrollment form and execute an application agreement to obtain a provider number. In agreeing to become a Medicaid provider and receive a unique provider number, pharmacies specifically represent that they will comply with all applicable federal and state laws and regulations governing New York Medicaid.

506. On a daily basis, Walgreens and other New York pharmacies batch Medicaid claims and submit them electronically to the State. As part of each electronic claim, a pharmacy affixes its unique Medicaid provider identification number. In making such reimbursement submissions, Walgreens, Omnicare, and other pharmacies represent to the State: (1) that the submissions comply with all applicable federal and state laws and regulations governing the New York Medicaid program; (2) that the information submitted is true, accurate, and complete; and (3) that there is no concealment or falsification of material facts.

507. By submitting requests for reimbursements, Walgreens, Omnicare, and other pharmacies represent that they are seeking reimbursement for the drug prescribed. On each electronic reimbursement claim to the State of New York, each prescription drug is identified by a unique NDC number. The NDC number reflects the specific manufacturer, dosage form and dosage strength of the drug on the claim form. For example, Par's unique NDC numbers include the following for the Par products and pack sizes as listed: Ranitidine capsules 150mg (60 units), #49884-647-02; Ranitidine capsules 300mg (30 units), #49884-648-11; Fluoxetine tablets 20mg (30 units), #49884-735-11; and Buspirone tablets 7.5mg (100 units), #49884-725-01.

508. On the basis of Walgreens', Omnicare's, and other pharmacies' reimbursement claim submissions and compliance representations, the State of New York regularly reimbursed pharmacies for sales of defendants' products that had been illegally substituted, including ranitidine capsules, fluoxetine tablets, and buspirone tablets. Defendants Par, Alphapharm, and Genpharm profited from sale of these products and the resulting reimbursements, knowing that the reimbursement claims were to be made in accordance with state and federal laws. Walgreens', Omnicare's, and other pharmacies' reimbursement requests for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets were false and/or fraudulent.

509. Walgreens, Omnicare, and other pharmacies sold, and may continue to sell, defendants' pharmaceuticals in violation of State pharmacy and Medicaid law. Walgreens, Omnicare, and other pharmacies regularly dispensed improper drugs marketed and manufactured by defendants on the basis of invalid or altered prescriptions or with total disregard for the terms of valid prescriptions. Walgreens, Omnicare, and other pharmacies in dispensing defendants' products did not comply with New York's pharmacy requirement that drugs must be validly prescribed and that the same dosage form and strength is necessary for substitution and/or drug equivalency. *See, e.g.*, N.Y. Educ. Law §6816-a.

510. As a result of the pharmacies' certified claims for payment in its reimbursement submissions to the state Medicaid agency, New York Medicaid routinely made payments to the co-conspirator pharmacies for defendants' illegally-switched drugs.

511. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to make false claims and statements in violation of the terms of their New York

Medicaid provider agreements and individual billing certifications by making claims for payment to the State of New York for defendants' illegally-switched drugs that violated New York and/or Federal law and omitted material facts.

512. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to falsely assert compliance with their New York Medicaid provider agreement and State and Federal law.

513. By virtue of the above-described acts, among others, defendants knowingly caused Walgreens, Omnicare, and other pharmacies to submit, and possibly continue to submit, directly or indirectly to officers, employees, or agents of the State of New York, false or fraudulent claims for payment or approval for defendants' products.

514. By virtue of the above-described acts, among others, defendants with and through Walgreens, Omnicare, and other pharmacies knowingly made, used, or caused to be made or used, and may continue to make, use, or cause to be made or used, false records and statements to obtain payment from the State of New York for false or fraudulent claims for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

515. By virtue of the above-described acts, defendants conspired with Walgreens, Omnicare, and other pharmacies to defraud the State of New York by submitting false claims and causing the presentation of false claims for defendants' illegally-switched drugs including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

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

517. Plaintiff State of New York, being unaware of the falsity of the claims and/or statements made, or caused to be made, by defendants, and in reliance on the accuracy thereof, paid and may continue to pay for illegally-switched prescriptions.

518. The State of New York sustained damages because of the defendants' actions.

COUNT XVIII
Oklahoma Medicaid False Claims Act

519. Plaintiffs incorporate by reference and re-allege Paragraphs 1-261 as if fully set forth herein. This Count is brought by Lisitza in the name of the State of Oklahoma under the *qui tam* provisions of the Oklahoma Medicaid False Claims Act, Okla. Stat. Tit. 63 §5053.

520. Defendants, at all times relevant to this action, sold and continue to sell pharmaceuticals in the State of Oklahoma that were and will be paid for by the State. Defendants, at all times relevant to this action, sold their pharmaceuticals to Walgreens, Omnicare, and other pharmacies in the State of Oklahoma for distribution to Oklahoma residents. Through defendants' sale of certain pharmaceutical products, including ranitidine capsules, fluoxetine tablets, and buspirone tablets, to Walgreens, Omnicare, and other pharmacies in the State of Oklahoma, defendants Par, Alphapharm, and Genpharm knowingly caused, and conspired in, the presentation of false claims to Oklahoma Medicaid.

521. In order to be eligible to receive Medicaid reimbursement for defendants' products and other prescription drugs, pharmacies in Oklahoma must submit an enrollment form and execute an application agreement to obtain a provider number. In agreeing to become a Medicaid provider and receive a unique provider number, pharmacies specifically represent that they will comply with all applicable federal and state laws and regulations governing Oklahoma Medicaid.

522. On a daily basis, Walgreens and other Oklahoma pharmacies batch Medicaid claims and submit them electronically to the State. As part of each electronic claim, a pharmacy affixes its unique Medicaid provider identification number. In making such reimbursement submissions, Walgreens, Omnicare, and other pharmacies represent to the State: (1) that the submissions comply with all applicable federal and state laws and regulations governing the Oklahoma Medicaid program; (2) that the information submitted is true, accurate, and complete; and (3) that there is no concealment or falsification of material facts.

523. By submitting requests for reimbursements, Walgreens, Omnicare, and other pharmacies represent that they are seeking reimbursement for the drug prescribed. On each electronic reimbursement claim to the State of Oklahoma, each prescription drug is identified by a unique NDC number. The NDC number reflects the specific manufacturer, dosage form and dosage strength of the drug on the claim form. For example, Par's unique NDC numbers include the following for the Par products and pack sizes as listed: Ranitidine capsules 150mg (60 units), #49884-647-02; Ranitidine capsules 300mg (30 units), #49884-648-11; Fluoxetine tablets 20mg (30 units), #49884-735-11; and Buspirone tablets 7.5mg (100 units), #49884-725-01.

524. On the basis of Walgreens', Omnicare's, and other pharmacies' reimbursement claim submissions and compliance representations, the State of Oklahoma regularly reimbursed pharmacies for sales of defendants' products that had been illegally substituted, including ranitidine capsules, fluoxetine tablets, and buspirone tablets. Defendants Par, Alphapharm, and Genpharm profited from sale of these products and the resulting reimbursements, knowing that the reimbursement claims were to be made in accordance with state and federal laws. Walgreens', Omnicare's, and other pharmacies' reimbursement requests for defendants' products

including ranitidine capsules, fluoxetine tablets, and buspirone tablets were false and/or fraudulent.

525. Walgreens, Omnicare, and other pharmacies sold, and may continue to sell, defendants' pharmaceuticals in violation of State pharmacy and Medicaid law. Walgreens, Omnicare, and other pharmacies regularly dispensed improper drugs marketed and manufactured by defendants on the basis of invalid or altered prescriptions or with total disregard for the terms of valid prescriptions. Walgreens, Omnicare, and other pharmacies in dispensing defendants' products did not comply with Oklahoma's pharmacy requirement that drugs must be validly prescribed and that the same dosage form and strength is necessary for substitution and/or drug equivalency. *See, e.g.*, Okla. Stat. Tit. 59 §353.13(D).

526. As a result of the pharmacies' certified claims for payment in its reimbursement submissions to the state Medicaid agency, Oklahoma Medicaid routinely made payments to the co-conspirator pharmacies for defendants' illegally-switched drugs.

527. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to make false claims and statements in violation of the terms of their Oklahoma Medicaid provider agreements and individual billing certifications by making claims for payment to the State of Oklahoma for defendants' illegally-switched drugs that violated Oklahoma and/or Federal law and omitted material facts.

528. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to falsely assert compliance with their Oklahoma Medicaid provider agreement and State and Federal law.

529. By virtue of the above-described acts, among others, defendants knowingly caused Walgreens, Omnicare, and other pharmacies to submit, and possibly continue to submit, directly or indirectly to officers, employees, or agents of the State of Oklahoma, false or fraudulent claims for payment or approval for defendants' products.

530. By virtue of the above-described acts, among others, defendants with and through Walgreens, Omnicare, and other pharmacies knowingly made, used, or caused to be made or used, and may continue to make, use, or cause to be made or used, false records and statements to obtain payment from the State of Oklahoma for false or fraudulent claims for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

531. By virtue of the above-described acts, defendants conspired with Walgreens, Omnicare, and other pharmacies to defraud the State of Oklahoma by submitting false claims and causing the presentation of false claims for defendants' illegally-switched drugs including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

532. The false or fraudulent claims to the State of Oklahoma were material.

533. Plaintiff State of Oklahoma, being unaware of the falsity of the claims and/or statements made, or caused to be made, by defendants, and in reliance on the accuracy thereof, paid and may continue to pay for illegally-switched prescriptions.

534. The State of Oklahoma sustained damages because of the defendants' actions.

COUNT XIX
Rhode Island Medicaid False Claims Act

535. Plaintiffs incorporate by reference and re-allege Paragraphs 1-261 as if fully set forth herein. This Count is brought by Lisitza in the name of the State of Rhode Island under the *qui tam* provisions of the Rhode Island False Claims Act, R.I. Gen. Laws §9-1.1.

536. Defendants, at all times relevant to this action, sold and continue to sell pharmaceuticals in the State of Rhode Island that were and will be paid for by the State. Defendants, at all times relevant to this action, sold their pharmaceuticals to Walgreens, Omnicare, and other pharmacies in the State of Rhode Island for distribution to Rhode Island residents. Through defendants' sale of certain pharmaceutical products, including ranitidine capsules, fluoxetine tablets, and buspirone tablets, to Walgreens, Omnicare, and other pharmacies in the State of Rhode Island, defendants Par, Alphapharm, and Genpharm knowingly caused, and conspired in, the presentation of false claims to Rhode Island Medicaid.

537. In order to be eligible to receive Medicaid reimbursement for defendants' products and other prescription drugs, pharmacies in Rhode Island must submit an enrollment form and execute an application agreement to obtain a provider number. In agreeing to become a Medicaid provider and receive a unique provider number, pharmacies specifically represent that they will comply with all applicable federal and state laws and regulations governing Rhode Island Medicaid.

538. On a daily basis, Walgreens and other Rhode Island pharmacies batch Medicaid claims and submit them electronically to the State. As part of each electronic claim, a pharmacy affixes its unique Medicaid provider identification number. In making such reimbursement submissions, Walgreens, Omnicare, and other pharmacies represent to the State: (1) that the submissions comply with all applicable federal and state laws and regulations governing the Rhode Island Medicaid program; (2) that the information submitted is true, accurate, and complete; and (3) that there is no concealment or falsification of material facts.

539. By submitting requests for reimbursements, Walgreens, Omnicare, and other pharmacies represent that they are seeking reimbursement for the drug prescribed. On each electronic reimbursement claim to the State of Rhode Island, each prescription drug is identified by a unique NDC number. The NDC number reflects the specific manufacturer, dosage form and dosage strength of the drug on the claim form. For example, Par's unique NDC numbers include the following for the Par products and pack sizes as listed: Ranitidine capsules 150mg (60 units), #49884-647-02; Ranitidine capsules 300mg (30 units), #49884-648-11; Fluoxetine tablets 20mg (30 units), #49884-735-11; and Buspirone tablets 7.5mg (100 units), #49884-725-01.

540. On the basis of Walgreens', Omnicare's, and other pharmacies' reimbursement claim submissions and compliance representations, the State of Rhode Island regularly reimbursed pharmacies for sales of defendants' products that had been illegally substituted, including ranitidine capsules, fluoxetine tablets, and buspirone tablets. Defendants Par, Alphapharm, and Genpharm profited from sale of these products and the resulting reimbursements, knowing that the reimbursement claims were to be made in accordance with state and federal laws. Walgreens', Omnicare's, and other pharmacies' reimbursement requests for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets were false and/or fraudulent.

541. Walgreens, Omnicare, and other pharmacies sold, and may continue to sell, defendants' pharmaceuticals in violation of State pharmacy and Medicaid law. Walgreens, Omnicare, and other pharmacies regularly dispensed improper drugs marketed and manufactured by defendants on the basis of invalid or altered prescriptions or with total disregard for the terms

of valid prescriptions. Walgreens, Omnicare, and other pharmacies in dispensing defendants' products did not comply with Rhode Island's pharmacy requirement that drugs must be validly prescribed and that the same dosage form and strength is necessary for substitution and/or drug equivalency. *See, e.g.*, R.I. Gen. Laws § 5-19.1-19.

542. As a result of the pharmacies' certified claims for payment in its reimbursement submissions to the state Medicaid agency, Rhode Island Medicaid routinely made payments to the co-conspirator pharmacies for defendants' illegally-switched drugs.

543. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to make false claims and statements in violation of the terms of their Rhode Island Medicaid provider agreements and individual billing certifications by making claims for payment to the State of Rhode Island for defendants' illegally-switched drugs that violated Rhode Island and/or Federal law and omitted material facts.

544. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to falsely assert compliance with their Rhode Island Medicaid provider agreement and State and Federal law.

545. By virtue of the above-described acts, among others, defendants knowingly caused Walgreens, Omnicare, and other pharmacies to submit, and possibly continue to submit, directly or indirectly to officers, employees, or agents of the State of Rhode Island, false or fraudulent claims for payment or approval for defendants' products.

546. By virtue of the above-described acts, among others, defendants with and through Walgreens, Omnicare, and other pharmacies knowingly made, used, or caused to be made or used, and may continue to make, use, or cause to be made or used, false records and statements

to obtain payment from the State of Rhode Island for false or fraudulent claims for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

547. By virtue of the above-described acts, defendants conspired with Walgreens, Omnicare, and other pharmacies to defraud the State of Rhode Island by submitting false claims and causing the presentation of false claims for defendants' illegally-switched drugs including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

548. The false or fraudulent claims to the State of Rhode Island were material.

549. Plaintiff State of Rhode Island, being unaware of the falsity of the claims and/or statements made, or caused to be made, by defendants, and in reliance on the accuracy thereof, paid and may continue to pay for illegally-switched prescriptions.

550. The State of Rhode Island sustained damages because of the defendants' actions.

COUNT XX
Tennessee Medicaid False Claims Act

551. Plaintiffs incorporate by reference and re-allege Paragraphs 1-261 as if fully set forth herein. This Count is brought by Lisitza in the name of the State of Tennessee under the *qui tam* provisions of the Tennessee Medicaid False Claims Act, Tenn. Code §71-5-181 to 186.

552. Defendants, at all times relevant to this action, sold and continue to sell pharmaceuticals in the State of Tennessee that were and will be paid for by the State. Defendants, at all times relevant to this action, sold their pharmaceuticals to Walgreens, Omnicare, and other pharmacies in Tennessee for distribution to Tennessee residents. Through defendants' sale of certain pharmaceutical products, including ranitidine capsules, fluoxetine tablets, and buspirone tablets, to Walgreens, Omnicare, and other pharmacies in Tennessee,

defendants Par, Alphapharm, and Genpharm knowingly caused, and conspired in, the presentation of false claims to Tennessee Medicaid.

553. In order to be eligible to receive Medicaid reimbursement for defendants' products and other prescription drugs, pharmacies in Tennessee must submit an enrollment form and execute an application agreement to obtain a provider number. In agreeing to become a Medicaid provider and receive a unique provider number, pharmacies specifically represent that they will comply with all applicable federal and state laws and regulations governing Tennessee Medicaid.

554. On a daily basis, Walgreens and other Tennessee pharmacies batch Medicaid claims and submit them electronically to the State. As part of each electronic claim, a pharmacy affixes its unique Medicaid provider identification number. In making such reimbursement submissions, Walgreens, Omnicare, and other pharmacies represent to the State: (1) that the submissions comply with all applicable federal and state laws and regulations governing the Tennessee Medicaid program; (2) that the information submitted is true, accurate, and complete; and (3) that there is no concealment or falsification of material facts.

555. By submitting requests for reimbursements, Walgreens, Omnicare, and other pharmacies represent that they are seeking reimbursement for the drug prescribed. On each electronic reimbursement claim to the State of Tennessee, each prescription drug is identified by a unique NDC number. The NDC number reflects the specific manufacturer, dosage form and dosage strength of the drug on the claim form. For example, Par's unique NDC numbers include the following for the Par products and pack sizes as listed: Ranitidine capsules 150mg (60 units),

#49884-647-02; Ranitidine capsules 300mg (30 units), #49884-648-11; Fluoxetine tablets 20mg (30 units), #49884-735-11; and Buspirone tablets 7.5mg (100 units), #49884-725-01.

556. On the basis of Walgreens', Omnicare's, and other pharmacies' reimbursement claim submissions and compliance representations, the State of Tennessee regularly reimbursed pharmacies for sales of defendants' products that had been illegally substituted, including ranitidine capsules, fluoxetine tablets, and buspirone tablets. Defendants Par, Alphapharm, and Genpharm profited from sale of these products and the resulting reimbursements, knowing that the reimbursement claims were to be made in accordance with state and federal laws. Walgreens', Omnicare's, and other pharmacies' reimbursement requests for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets were false and/or fraudulent.

557. Walgreens, Omnicare, and other pharmacies sold, and may continue to sell, defendants' pharmaceuticals in violation of State pharmacy and Medicaid law. Walgreens, Omnicare, and other pharmacies regularly dispensed improper drugs marketed and manufactured by defendants on the basis of invalid or altered prescriptions or with total disregard for the terms of valid prescriptions. Walgreens, Omnicare, and other pharmacies in dispensing defendants' products did not comply with Tennessee's pharmacy requirement that drugs must be validly prescribed and that the same dosage form and strength is necessary for substitution and/or drug equivalency. *See, e.g.,* Tenn. Code §39-17-241.

558. As a result of the pharmacies' certified claims for payment in its reimbursement submissions to the state Medicaid agency, Tennessee Medicaid routinely made payments to the co-conspirator pharmacies for defendants' illegally-switched drugs.

559. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to make false claims and statements in violation of the terms of their Tennessee Medicaid provider agreements and individual billing certifications by making claims for payment to the State of Tennessee for defendants' illegally-switched drugs that violated Tennessee and/or Federal law and omitted material facts.

560. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to falsely assert compliance with their Tennessee Medicaid provider agreement and State and Federal law.

561. By virtue of the above-described acts, among others, defendants knowingly caused Walgreens, Omnicare, and other pharmacies to submit, and possibly continue to submit, directly or indirectly to officers, employees, or agents of the State of Tennessee, false or fraudulent claims for payment or approval for defendants' products.

562. By virtue of the above-described acts, among others, defendants with and through Walgreens, Omnicare, and other pharmacies knowingly made, used, or caused to be made or used, and may continue to make, use, or cause to be made or used, false records and statements to obtain payment from the State of Tennessee for false or fraudulent claims for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

563. By virtue of the above-described acts, defendants conspired with Walgreens, Omnicare, and other pharmacies to defraud the State of Tennessee by submitting false claims and causing the presentation of false claims for defendants' illegally-switched drugs including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

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

565. Plaintiff State of Tennessee, being unaware of the falsity of the claims and/or statements made by, or caused to be made, defendants, and in reliance on the accuracy thereof, paid and may continue to pay for illegally-switched prescriptions.

566. The State of Tennessee sustained damages because of the defendants' actions.

COUNT XXI
Texas Medicaid Fraud Prevention Act

567. Plaintiffs incorporate by reference and re-allege Paragraphs 1-261 as if fully set forth herein. This Count is brought by Lisitza in the name of the State of Texas under the *qui tam* provisions of the Texas Medicaid Fraud Prevention Act, Tx. Hum. Res. Code §36.101-117.

568. Defendants, at all times relevant to this action, sold and continue to sell pharmaceuticals in the State of Texas that were and will be paid for by the State. Defendants, at all times relevant to this action, sold its pharmaceuticals to Walgreens, Omnicare, and other pharmacies in Texas for distribution to Texas residents. Through defendants' sale of certain pharmaceutical products, including ranitidine capsules, fluoxetine tablets, and buspirone tablets, to Walgreens, Omnicare, and other pharmacies in Texas, defendants Par, Alphapharm, and Genpharm knowingly caused, and conspired in, the presentation of false claims to Texas Medicaid.

569. In order to be eligible to receive Medicaid reimbursement for defendants' products and other prescription drugs, pharmacies in Texas must submit an enrollment form and execute an application agreement to obtain a provider number. In agreeing to become a Medicaid provider and receive a unique provider number, pharmacies specifically represent that they will comply with all applicable federal and state laws and regulations governing Texas Medicaid.

570. On a daily basis, Walgreens and other Texas pharmacies batch Medicaid claims and submit them electronically to the State. As part of each electronic claim, a pharmacy affixes its unique Medicaid provider identification number. In making such reimbursement submissions, Walgreens, Omnicare, and other pharmacies represent to the State: (1) that the submissions comply with all applicable federal and state laws and regulations governing the Texas Medicaid program; (2) that the information submitted is true, accurate, and complete; and (3) that there is no concealment or falsification of material facts.

571. By submitting requests for reimbursements, Walgreens, Omnicare, and other pharmacies represent that they are seeking reimbursement for the drug prescribed. On each electronic reimbursement claim to the State of Texas, each prescription drug is identified by a unique NDC number. The NDC number reflects the specific manufacturer, dosage form and dosage strength of the drug on the claim form. For example, Par's unique NDC numbers include the following for the Par products and pack sizes as listed: Ranitidine capsules 150mg (60 units), #49884-647-02; Ranitidine capsules 300mg (30 units), #49884-648-11; Fluoxetine tablets 20mg (30 units), #49884-735-11; and Buspirone tablets 7.5mg (100 units), #49884-725-01.

572. On the basis of Walgreens', Omnicare's, and other pharmacies' reimbursement claim submissions and compliance representations, the State of Texas regularly reimbursed pharmacies for sales of defendants' products that had been illegally substituted, including ranitidine capsules, fluoxetine tablets, and buspirone tablets. Defendants Par, Alphapharm, and Genpharm profited from sale of these products and the resulting reimbursements, knowing that the reimbursement claims were to be made in accordance with state and federal laws. Walgreens', Omnicare's, and other pharmacies' reimbursement requests for defendants' products

including ranitidine capsules, fluoxetine tablets, and buspirone tablets were false and/or fraudulent.

573. Walgreens, Omnicare, and other pharmacies sold, and may continue to sell, defendants' pharmaceuticals in violation of State pharmacy and Medicaid law. Walgreens, Omnicare, and other pharmacies regularly dispensed improper drugs marketed and manufactured by defendants on the basis of invalid or altered prescriptions or with total disregard for the terms of valid prescriptions. Walgreens, Omnicare, and other pharmacies in dispensing defendants' products did not comply with Texas' pharmacy requirements that drugs must be validly prescribed and that in order to dispense a dosage form of a drug different from that prescribed, a provider must first obtain consent from the patient and notify the prescribing physician. *See*, Tex. Occ. Code § 562.012

574. As a result of the pharmacies' certified claims for payment in its reimbursement submissions to the state Medicaid agency, Texas Medicaid routinely made payments to the co-conspirator pharmacies for defendants' illegally-switched drugs.

575. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to make false claims and statements in violation of the terms of their Texas Medicaid provider agreements and individual billing certifications by making claims for payment to the State of Texas for defendants' illegally-switched drugs that violated Texas and/or Federal law and omitted material facts.

576. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to falsely assert compliance with their Texas Medicaid provider agreement and State and Federal law.

577. By virtue of the above-described acts, among others, defendants knowingly caused Walgreens, Omnicare, and other pharmacies to submit, and possibly continue to submit, directly or indirectly to officers, employees, or agents of the State of Texas, false or fraudulent claims for payment or approval for defendants' products.

578. By virtue of the above-described acts, among others, defendants with and through Walgreens, Omnicare, and other pharmacies knowingly made, used, or caused to be made or used, and may continue to make, use, or cause to be made or used, false records and statements to obtain payment from the State of Texas for false or fraudulent claims for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

579. By virtue of the above-described acts, defendants conspired with Walgreens, Omnicare, and other pharmacies to defraud the State of Texas by submitting false claims and causing the presentation of false claims for defendants' illegally-switched drugs including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

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

581. Plaintiff State of Texas, being unaware of the falsity of the claims and/or statements made, or caused to be made, by defendants, and in reliance on the accuracy thereof, paid and may continue to pay for illegally-switched prescriptions.

582. The State of Texas sustained damages because of the defendants' actions.

COUNT XXII
Virginia Fraud Against Taxpayers Act

583. Plaintiffs incorporate by reference and re-allege Paragraphs 1-261 as if fully set forth herein. This Count is brought by Lisitza in the name of the Commonwealth of Virginia

under the *qui tam* provisions of the Virginia Fraud Against Taxpayers Act, Va. Code §8.01-216.1 to 19.

584. Defendants, at all times relevant to this action, after the effective date of the Virginia Fraud Against Taxpayers Act (January 1, 2003), sold and continue to sell pharmaceuticals in the Commonwealth of Virginia that were and will be paid for by the Commonwealth. Defendants, at all times relevant to this action, sold their pharmaceuticals to Walgreens, Omnicare, and other pharmacies in Virginia for distribution to Virginia residents. Through defendants' sale of certain pharmaceutical products, including ranitidine capsules, fluoxetine tablets, and buspirone tablets, to Walgreens, Omnicare, and other pharmacies in Virginia, defendants Par, Alphapharm, and Genpharm knowingly caused, and conspired in, the presentation of false claims to Virginia Medicaid.

585. In order to be eligible to receive Medicaid reimbursement for defendants' products and other prescription drugs, pharmacies in Virginia must submit an enrollment form and execute an application agreement to obtain a provider number. In agreeing to become a Medicaid provider and receive a unique provider number, pharmacies specifically represent that they will comply with all applicable federal and Commonwealth laws and regulations governing Virginia Medicaid.

586. On a daily basis, Walgreens and other Virginia pharmacies batch Medicaid claims and submit them electronically to the Commonwealth. As part of each electronic claim, a pharmacy affixes its unique Medicaid provider identification number. In making such reimbursement submissions, Walgreens, Omnicare, and other pharmacies represent to the State: (1) that the submissions comply with all applicable federal and Commonwealth laws and

regulations governing the Virginia Medicaid program; (2) that the information submitted is true, accurate, and complete; and (3) that there is no concealment or falsification of material facts.

587. By submitting requests for reimbursements, Walgreens, Omnicare, and other pharmacies represent that they are seeking reimbursement for the drug prescribed. On each electronic reimbursement claim to the Commonwealth of Virginia, each prescription drug is identified by a unique NDC number. The NDC number reflects the specific manufacturer, dosage form and dosage strength of the drug on the claim form. For example, Par's unique NDC numbers include the following for the Par products and pack sizes as listed: Ranitidine capsules 150mg (60 units), #49884-647-02; Ranitidine capsules 300mg (30 units), #49884-648-11; Fluoxetine tablets 20mg (30 units), #49884-735-11; and Buspirone tablets 7.5mg (100 units), #49884-725-01.

588. On the basis of Walgreens, Omnicare's, and other pharmacies' reimbursement claim submissions and compliance representations, the Commonwealth of Virginia regularly reimbursed pharmacies for sales of defendants' products that had been illegally substituted, including ranitidine capsules, fluoxetine tablets, and buspirone tablets. Defendants Par, Alphapharm, and Genpharm profited from sale of these products and the resulting reimbursements, knowing that the reimbursement claims were to be made in accordance with Commonwealth and federal laws. Walgreens', Omnicare's, and other pharmacies' reimbursement requests for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets were false and/or fraudulent.

589. Walgreens, Omnicare, and other pharmacies sold, and may continue to sell, defendants' pharmaceuticals in violation of Commonwealth pharmacy and Medicaid law.

Walgreens, Omnicare, and other pharmacies regularly dispensed improper drugs marketed and manufactured by defendants on the basis of invalid or altered prescriptions or with total disregard for the terms of valid prescriptions. Walgreens, Omnicare, and other pharmacies in dispensing defendants' products did not comply with Virginia's pharmacy requirement that drugs must be validly prescribed and that the same dosage form and strength is necessary for substitution and/or drug equivalency. *See, e.g.*, Va. Code §54.1-3401.

590. As a result of the pharmacies' certified claims for payment in its reimbursement submissions to the Commonwealth Medicaid agency, Virginia Medicaid routinely made payments to the co-conspirator pharmacies for defendants' illegally-switched drugs.

591. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to make false claims and statements in violation of the terms of their Virginia Medicaid provider agreements and individual billing certifications by making claims for payment to the Commonwealth of Virginia for defendants' illegally-switched drugs that violated Virginia and/or Federal law and omitted material facts.

592. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to falsely assert compliance with their Virginia Medicaid provider agreement and Commonwealth and Federal law.

593. By virtue of the above-described acts, among others, defendants knowingly caused Walgreens, Omnicare, and other pharmacies to submit, and possibly continue to submit, directly or indirectly to officers, employees, or agents of the Commonwealth of Virginia, false or fraudulent claims for payment or approval for defendants' products.

594. By virtue of the above-described acts, among others, defendants with and through Walgreens, Omnicare, and other pharmacies knowingly made, used, or caused to be made or used, and may continue to make, use, or cause to be made or used, false records and statements to obtain payment from the Commonwealth of Virginia for false or fraudulent claims for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

595. By virtue of the above-described acts, defendants conspired with Walgreens, Omnicare, and other pharmacies to defraud the Commonwealth of Virginia by submitting false claims and causing the presentation of false claims for defendants' illegally-switched drugs including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

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

597. Plaintiff Commonwealth of Virginia, being unaware of the falsity of the claims and/or statements made, or caused to be made, by defendants, and in reliance on the accuracy thereof, paid and may continue to pay for illegally-switched prescriptions.

598. The Commonwealth of Virginia sustained damages because of the defendants' actions.

COUNT XXIII
Wisconsin False Claims for Medical Assistance Act

599. Plaintiffs incorporate by reference and re-allege Paragraphs 1-261 as if fully set forth herein. This Count is brought by Lisitza in the name of the State of Wisconsin under the *qui tam* provisions of the Wisconsin False Claims for Medical Assistance Act, Wis. Stat. §20-931.

600. Defendants, at all times relevant to this action, sold and continue to sell pharmaceuticals in the State of Wisconsin that were and will be paid for by the State.

Defendants, at all times relevant to this action, sold its pharmaceuticals to Walgreens, Omnicare, and other pharmacies in Wisconsin for distribution to Wisconsin residents. Through defendants' sale of certain pharmaceutical products, including ranitidine capsules, fluoxetine tablets, and buspirone tablets, to Walgreens, Omnicare, and other pharmacies in Wisconsin, defendants Par, Alphapharm, and Genpharm knowingly caused, and conspired in, the presentation of false claims to Wisconsin Medicaid.

601. In order to be eligible to receive Medicaid reimbursement for defendants' products and other prescription drugs, pharmacies in Wisconsin must submit an enrollment form and execute an application agreement to obtain a provider number. In agreeing to become a Medicaid provider and receive a unique provider number, pharmacies specifically represent that they will comply with all applicable federal and state laws and regulations governing Wisconsin Medicaid.

602. On a daily basis, Walgreens and other Wisconsin pharmacies batch Medicaid claims and submit them electronically to the state. As part of each electronic claim, a pharmacy affixes its unique Medicaid provider identification number. In making such reimbursement submissions, Walgreens, Omnicare, and other pharmacies represent to the State: (1) that the submissions comply with all applicable federal and state laws and regulations governing the Wisconsin Medicaid program; (2) that the information submitted is true, accurate, and complete; and (3) that there is no concealment or falsification of material facts.

603. By submitting requests for reimbursements, Walgreens, Omnicare, and other pharmacies represent that they are seeking reimbursement for the drug prescribed. On each electronic reimbursement claim to the State of Wisconsin, each prescription drug is identified by

a unique NDC number. The NDC number reflects the specific manufacturer, dosage form and dosage strength of the drug on the claim form. For example, Par's unique NDC numbers include the following for the Par products and pack sizes as listed: Ranitidine capsules 150mg (60 units), #49884-647-02; Ranitidine capsules 300mg (30 units), #49884-648-11; Fluoxetine tablets 20mg (30 units), #49884-735-11; and Buspirone tablets 7.5mg (100 units), #49884-725-01.

604. On the basis of Walgreens, Omnicare's, and other pharmacies' reimbursement claim submissions and compliance representations, the State of Wisconsin regularly reimbursed pharmacies for sales of defendants' products that had been illegally substituted, including ranitidine capsules, fluoxetine tablets, and buspirone tablets. Defendants Par, Alphapharm, and Genpharm profited from sale of these products and the resulting reimbursements, knowing that the reimbursement claims were to be made in accordance with state and federal laws. Walgreens', Omnicare's, and other pharmacies' reimbursement requests for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets were false and/or fraudulent.

605. Walgreens, Omnicare, and other pharmacies sold, and may continue to sell, defendants' pharmaceuticals in violation of state pharmacy and Medicaid law. Walgreens, Omnicare, and other pharmacies regularly dispensed improper drugs marketed and manufactured by defendants on the basis of invalid or altered prescriptions or with total disregard for the terms of valid prescriptions. Walgreens, Omnicare, and other pharmacies in dispensing defendants' products did not comply with Wisconsin's pharmacy requirement that drugs must be validly prescribed and that the same dosage form and strength is necessary for substitution and/or drug equivalency. *See, e.g.*, Wis. Stat. §450.13.

606. As a result of the pharmacies' certified claims for payment in its reimbursement submissions to the state Medicaid agency, Wisconsin Medicaid routinely made payments to the co-conspirator pharmacies for defendants' illegally-switched drugs.

607. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to make false claims and statements in violation of the terms of their Wisconsin Medicaid provider agreements and individual billing certifications by making claims for payment to the State of Wisconsin for defendants' illegally-switched drugs that violated Wisconsin and/or Federal law and omitted material facts.

608. Defendants conspired with and caused Walgreens, Omnicare, and other pharmacies to falsely assert compliance with their Wisconsin Medicaid provider agreement and state and Federal law.

609. By virtue of the above-described acts, among others, defendants knowingly caused Walgreens, Omnicare, and other pharmacies to submit, and possibly continue to submit, directly or indirectly to officers, employees, or agents of the State of Wisconsin, false or fraudulent claims for payment or approval for defendants' products.

610. By virtue of the above-described acts, among others, defendants with and through Walgreens, Omnicare, and other pharmacies knowingly made, used, or caused to be made or used, and may continue to make, use, or cause to be made or used, false records and statements to obtain payment from the State of Wisconsin for false or fraudulent claims for defendants' products including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

611. By virtue of the above-described acts, defendants conspired with Walgreens, Omnicare, and other pharmacies to defraud the State of Wisconsin by submitting false claims

and causing the presentation of false claims for defendants' illegally-switched drugs including ranitidine capsules, fluoxetine tablets, and buspirone tablets.

612. The false or fraudulent claims to the State of Wisconsin were material.

613. Plaintiff State of Wisconsin, being unaware of the falsity of the claims and/or statements made, or caused to be made, by defendants, and in reliance on the accuracy thereof, paid and may continue to pay for illegally-switched prescriptions.

614. The State of Wisconsin sustained damages because of the defendants' actions.

JURY DEMAND

615. Plaintiffs demand trial by jury on all claims.

PRAYER

616. WHEREFORE, plaintiffs pray for judgment against defendants as follows:

- a. That defendants be found to have violated and be enjoined from future violations of the federal False Claims Act, 31 U.S.C. §3729-32; the California False Claims Act, Cal. Gov't Code §§12650-5; the Delaware False Claims and Reporting Act, Del. Code Ann. Tit. VI, §§1201-9; the District of Columbia False Claims Act, D.C. Code Ann. §2-308; the Florida False Claims Act, Fl. Stat. Ann. §68.081-092; the Georgia False Medicaid Claims Act, Ga. Code Ann. §49-4-168; Illinois Whistleblower Reward and Protection Act, 740 Ill. Comp. Stat. 175/1-8; the Indiana False Claims Act, Ind. Code §5-11-5.5; the Louisiana Medical Assistance Programs Integrity Law, La. Rev. Stat. Ann. §§46:437.2 to 440.3; the Massachusetts False Claims Act, Mass. Gen. Laws ch.12, §5; the

Michigan Medicaid False Claims Act, Mich. Comp. Laws Ann. §400.601-13; the Nevada False Claims Act, Nev. Rev. Stat. §357.010-250; the New Hampshire Medicaid Fraud and False Claims Act, N.H. Rev. Stat. Ann. §167:61; the New Jersey False Claims Act, N.J. Stat. Ann. §2A:32C; the New Mexico Medicaid False Claims Act, N.M. Stat. Ann. §27-14-1 to 15; the New York False Claims Act, N.Y. State Fin. Law §§187-94; the Oklahoma Medicaid False Claims Act, Okla. Stat. Tit. 63 §5053; the Rhode Island False Claims Act, R.I. General Laws §9-1.1; the Tennessee Medicaid False Claims Act, Tenn. Code Ann. §71-5-181 to 186; the Texas Medicaid Fraud Prevention Act, Tx. Hum. Res. Code §36.101-117; the Virginia Fraud Against Taxpayers Act, Va. Code §8.01-216.1 to 19; and the Wisconsin False Claims for Medical Assistance Act, Wis. Stat. §20-931.

- b. That this Court enter judgment against defendants in an amount equal to three times the amount of damages the United States Government has sustained because of defendants' false or fraudulent claims, plus the maximum civil penalty for each violation of 31 U.S.C. §3729.
- c. That plaintiffs be awarded the maximum amount allowed pursuant to § 3730(d), and all relief to which they are entitled pursuant to §3730(h) of the False Claims Act.
- d. That this Court enter judgment against defendants in an amount equal to three times the amount of damages the State of Illinois has sustained

because of defendants' false or fraudulent claims, plus the maximum civil penalty for each violation of the Illinois Whistleblower Reward and Protection Act, 740 Ill. Comp. Stat. ILCS 175.

- e. That this Court enter judgment against defendants for the maximum amount of damages sustained by each State or District because of defendants' false or fraudulent claims, plus the maximum civil penalty for each violation of the California False Claims Act, Cal. Gov't Code §12651(a); the Delaware False Claims and Reporting Act, Del. Code Ann. Tit. VI, §1201; the District of Columbia False Claims Act, D.C. Code Ann. §2-308; the Florida False Claims Act, Fl. Stat. Ann. §68.081-.09; the Georgia False Medicaid Claims Act, Ga. Code Ann. §49-4-168.1(a); the Indiana False Claims Act, Ind. Code §5-11-5.5; the Louisiana Medical Assistance Programs Integrity Law, La. Rev. Stat. Ann. §46:439; the Massachusetts False Claims Act, Mass. Gen. Laws ch.12, §5; the Michigan Medicaid False Claims Act, Mich. Comp. Laws Ann. §400.601-13; the Nevada False Claims Act, Nev. Rev. Stat. §357.010-250; the New Hampshire Medicaid Fraud and False Claims Act, N.H. Rev. Stat. §167:61; the New Jersey False Claims Act, N.J. Stat. Ann. §2A-32C-3; the New Mexico Medicaid False Claims Act, N.M. Stat. Ann. §27-14-1 to 15; the New York False Claims Act, N.Y. State Fin. Law §189(1); the Oklahoma Medicaid False Claims Act, Okla. Stat. Tit. 63, §5053; the Rhode Island False Claims Act, R.I. Gen. Laws §9-1.1-3(a)(7);

the Tennessee Medicaid False Claims Act, Tenn. Stat. §71-5-181 to 186; the Texas Medicaid Fraud Prevention Act, Tx. Hum. Res. Code §36.101-117; the Virginia Fraud Against Taxpayers Act, Va. Code §8.01-216.1 to 19; and the Wisconsin False Claims for Medical Assistance Act, Wis. Stat. §20-931(2).

- f. That plaintiffs be awarded the maximum amount allowed pursuant to the California False Claims Act, Cal. Gov't Code §12651(a); the Delaware False Claims and Reporting Act, Del. Code Ann. Tit. VI, §1201; the District of Columbia False Claims Act, D.C. Code Ann. §2-308; the Florida False Claims Act, Fl. Stat. Ann. §68.081-092; the Georgia False Medicaid Claims Act, Ga. Code Ann. §49-4-168.2(i); 740 Ill. Comp. Stat. ILCS 175/4(d) of the Illinois Whistleblower Reward and Protection Act; the Indiana False Claims Act, Ind. Code §5-11-5.5; the Louisiana Medical Assistance Programs Integrity Law, La. Rev. Stat. Ann. §46:439; the Massachusetts False Claims Act, Mass. Gen. Laws ch.12, §5; the Michigan Medicaid False Claims Act, Mich. Comp. Laws §400.601-13; the Nevada False Claims Act, Nev. Rev. Stat. §357.010-250; the New Hampshire Medicaid Fraud and False Claims Act, N.H. Rev. Stat. Ann. §167:61; the New Jersey False Claims Act, N.J. Stat. Ann. §2A-32C-7; the New Mexico Medicaid False Claims Act, N.M. Stat. Ann. §27-14-1 to 15; the New York False Claims Act, N.Y. State Fin. Law §190(6); the Oklahoma Medicaid False Claims Act, Okla. Stat. Tit. 63, §5053.4; the

Rhode Island False Claims Act, R.I. Gen. Laws §9-1.1-4(d); the Tennessee Medicaid False Claims Act, Tenn. Code Ann. §71-5-181 to 186; the Texas Medicaid Fraud Prevention Act, Tx. Hum. Res. Code §36.101-117; the Virginia Fraud Against Taxpayers Act, Va. Code §8.01-216.1 to 19; and the Wisconsin False Claims for Medical Assistance Act, Wis. Stat. §20-931(11) and all relief to which they are entitled pursuant to said laws.

- g. That defendants be found to have violated and be enjoined from future violations of the Illinois Insurance Claims Fraud Prevention Act.
- h. That this Court enter judgment against defendants for the maximum amount of damages sustained by Illinois private payors because of defendants' false or fraudulent claims, plus the maximum civil penalty for each violation of the Illinois Insurance Claims Fraud Prevention Act, 740 Ill. Comp. Stat. ILCS 92/1-45.
- i. That plaintiffs be awarded the maximum amount allowed pursuant the ICFPA, 740 Ill. Comp. Stat. ILCS 92/25.
- j. That plaintiffs be awarded all costs of this action, including expert witness fees, attorneys' fees, and court costs.
- k. That plaintiffs recover such other relief as the Court deems just and proper.

Respectfully submitted,

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

By:  _____

Date: July 6, 2011

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