

IN THE COURT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR  
LEON COUNTY, FLORIDA

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CLERK OF CIRCUIT COURT  
LEON COUNTY, FLORIDA

THE STATE OF FLORIDA )  
 )  
ex rel. )  
 )  
VEN-A-CARE OF THE )  
FLORIDA KEYS, INC., )  
a Florida Corporation, by and )  
through its principal )  
officers and directors, )  
ZACHARY T. BENTLEY and )  
T. MARK JONES, )  
 )  
Plaintiffs )

CIVIL ACTION NO. 98-3032A

v. )  
 )  
BOEHRINGER INGELHEIM )  
CORPORATION; DEY, INC.; )  
DEY, L.P.; EMD )  
PHARMACEUTICALS INC.; )  
LIPHA, S.A.; MERCK, KGaA; )  
MERCK-LIPHA, S.A.; )  
SCHERING CORPORATION; )  
SCHERING-PLOUGH CORPORATION; )  
ROXANE LABORATORIES, INC.; and )  
WARRICK PHARMACEUTICALS )  
CORPORATION, )  
 )  
Defendants. )

**ATTORNEY GENERAL AND RELATOR'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT AS TO LIABILITY  
ON COUNT I OF PLAINTIFFS' COMPLAINT AGAINST DEY, INC.**

The State of Florida, Office of the Attorney General, Department of Legal Affairs  
(the "Attorney General"), by and through the below signed Assistant Attorneys General, and  
the qui tam plaintiff, Ven-A-Care of the Florida Keys, Inc. (the "Relator"), by and through its

*[Handwritten signature]*

undersigned attorney, file this motion for partial summary judgment against defendant Dey, Inc. ("Dey") as to liability on Count I (the Florida False Claims Act, § 68.082(2)(a) and (b), Florida Statutes) of the complaint in this action. In support of this motion, the Attorney General and the Relator say:

### INTRODUCTION

1. The United States Congress established Medicaid under Title XIX of the Social Security Act of 1965, the same legislation that created Medicare. Medicaid was intended to ensure access to health care for poor Americans of all ages. Like Medicare, Medicaid permits those who are eligible to purchase health care from the same hospitals and physicians as the general public, with the fees paid by the program. Unlike Medicare, however, which is run by the federal government, Medicaid is administered by the individual states, with a combination of state and federal funding.

2. To borrow a phrase adopted by its own Chief Executive Officer, Charles Rice, when theoretically discussing such conduct, Dey was "gaming the system" of Medicaid funds set aside for the poor. As set forth in detail below, Dey knew that Medicaid recipients obtained prescription medications directly from "providers" such as pharmacies, hospitals and physicians. Dey also knew that these providers were reimbursed for such medications through state Medicaid agencies, and that in Florida the amount of such reimbursement was based upon prices reported by Dey to a third party reporting company known as First DataBank. By knowingly reporting false and inflated prices to First DataBank, Dey established a system whereby providers would be reimbursed far more than they actually paid for the medications. This enabled Dey to sell its products by

promoting the reimbursement "spread" to providers. In this manner, Dey "gamed the system" by providing false information that caused taxpayer money, set aside to provide healthcare to the poor, to instead be diverted to providers in a scheme intended to increase Dey's market share for its products. This directly violates the Florida False Claims Act, and Dey should be found liable thereunder as a matter of law.

### BACKGROUND

3. This is a motion for partial summary judgment pursuant to Rule 1.510, Fla. R. Civ. P., filed by the Attorney General and the Relator against Dey. The Attorney General and the Relator request a partial summary judgment against Dey as to liability under the Florida False Claims Act, § 68.082(2)(a) and (b), Florida Statutes, for Dey's intentional submission of false pharmaceutical pricing information with respect to its asthma inhalant products.

4. The Relator originally filed a *qui tam* action in 1998 in the Circuit Court for the Second Judicial Circuit In and For Leon County, Florida, which remains under seal pursuant to court order. The Attorney General filed a Complaint for Intervention in that action on July 9, 2003 under the Florida False Claims Act §§ 68.082 - 68.091, Florida Statutes, and common law fraud.

5. Dey is a Delaware Corporation with its principal offices in Napa, California. Dey manufactures, distributes, markets, and sells pharmaceutical products which are purchased and consumed by Florida Medicaid recipients. Dey's inhalant products identified in the Attorney General's Complaint were and continue to be listed on the Florida Medicaid Program's formulary for pharmaceuticals. *Exhibit "A," Affidavit of Jerry Wells.*

**STANDARD FOR ENTRY OF SUMMARY JUDGMENT**

6. Rule 1.510, Florida Rules of Civil Procedure provides in pertinent part:

(a) For Claimant. A party seeking to recover upon a claim . . . may move for a summary judgment in that party's favor upon all or any part thereof with or without supporting affidavits at any time after the expiration of 20 days from the commencement of the action. . .

(c) Motion and Proceeding Thereon. The motion shall state with particularity the grounds upon which it is based and the substantial matters of law to be argued and shall be served at least 20 days before the time fixed for the hearing . . . The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated On Motion. On motion under this rule if judgment is not rendered upon the whole case or for all the relief asked and a trial or the taking of testimony and a final hearing is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall ascertain, if practicable, what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. On the trial or final hearing of the action the facts so specified shall be deemed established, and the trial or final hearing shall be conducted accordingly . . . .

*R. 1.510, Fla. R. Civ. P.*

7. Summary judgment is proper when there is no issue of material fact and the moving party is entitled to judgment as a matter of law. *Volusia County v. Aberdeen at*

*Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000). To prevail, the moving party must demonstrate the absence of any genuine issue of material fact, even after all facts are construed in favor of the non-moving party. *Castellano v. Raynor*, 725 So. 2d 1197, 1198 (Fla. 2d DCA 1999). If the facts and all reasonable inferences based on those facts are undisputed, it is the court's duty to enter summary judgment in favor of the movant as a matter of law. *Castellano*, 725 So. 2d at 1199. When the Plaintiff moves for summary judgment before the defendant files an answer, the plaintiff must demonstrate conclusively that the defendant can neither plead nor otherwise raise a genuine issue of material fact. *J & L Enterprises v. Jones*, 614 So. 2d 1151, 1153 (Fla. 4<sup>th</sup> DCA 1993), *rev. denied*, 626 So. 2d 206 (Fla. 1993). Summary judgment on liability is appropriate and withstands appellate review where, as is the case here, there is no record evidence refuting the moving party's allegations. *Chillemi v. Rorabeck*, 629 So. 2d 206, 208 (Fla. 4<sup>th</sup> DCA 1993).

8. For the reasons discussed below, the Attorney General and the Relator are entitled to partial summary judgment against Dey as to liability under the Florida False Claims Act, § 68.082(2)(a) and (b), Florida Statutes, based upon Dey's knowing submission of false pharmaceutical pricing information. There are no disputed genuine issues of material fact surrounding Dey's intentional submission of false pricing information.

#### **UNDISPUTED ISSUES OF MATERIAL FACT**

9. The following constitutes a statement of material facts, supported by evidence

submitted to the Court along with this motion, to which there is no genuine issue. The evidence submitted consists of the affidavit of Jerry Wells, Pharmaceutical Program Manager of Florida's Agency for Health Care Administration, as well as relevant portions of transcripts of depositions taken in the case entitled *The State of Texas ex rel. Ven-A-Care of the Florida Keys, Inc. v. Dey, Inc., et al.*, presently pending in the District Court of Travis County, Texas, 53<sup>rd</sup> Judicial District, at No. GV002327. That case involves falsely inflated drug prices submitted to the Texas Medicaid Program by certain pharmaceutical companies, including Dey. Dey was a party to the action in which the depositions were taken, Dey had notice of the depositions, Dey had legal representation present at each of the depositions, and Dey had an opportunity to cross-examine each of the deponents. Thus, this Court may consider and rely upon those deposition transcripts in consideration of plaintiffs' motion for partial summary judgment. See, *Burlingham v. Allen*, 317 So. 2d 780 (Fla. 1<sup>st</sup> DCA 1975).

10. The deponents, portions of whose deposition transcripts are submitted in support of this motion, are nearly all present or former officers or employees of Dey. Two deponents are officers of First DataBank. They are:

- a. Robert Mozak, former Dey Exec. Vice President for Sales & Marketing;
- b. Charles Rice, Chief Executive Officer of Dey;
- c. Helen Burnham, former Director of Marketing for Dey;
- d. Ross Uhl, Dey Regional Sales Manager;
- e. Bruce Tipton, former Sales Department, Dey
- f. Robert Ellis, Marketing Department, Dey;

- g. Rick Upp, former Sales Department, Dey
- h. Debbie Bronstein, former Director of Marketing after Ms. Burnham;
- i. Joseph Hirschmann, President of First DataBank;
- j. Patricia Morgan, Executive at First DataBank.

### **I. The Florida Medicaid Pharmaceutical Program**

11. The Agency for Healthcare Administration ("AHCA") administers the Florida Medicaid Program pursuant to § 409.902, Florida Statutes. Prescription drugs are provided to Medicaid recipients under the Florida Medicaid Program pursuant to § 409.906(20), Florida Statutes.

12. The ultimate providers of pharmaceuticals to Medicaid recipients include physicians, hospitals, nursing homes and pharmacies. These Medicaid providers purchase drugs either from manufacturers such as Dey or from wholesalers or distributors. These Medicaid providers dispense or administer the drugs to Florida Medicaid recipients.

13. Medicaid providers submit claims for reimbursement of their costs incurred in purchasing and dispensing drugs to AHCA's fiscal agent under Medicaid Provider contracts with AHCA pursuant to § 409.907, Florida Statutes. These claims submitted to AHCA by providers inform AHCA of the number of units of particular drugs purchased and dispensed by the providers but do not convey the providers' cost to acquire the drugs. AHCA's fiscal agent processes these claims on AHCA's behalf pursuant to its contract

with AHCA. *Exhibit "A," Affidavit of Jerry Wells.*

14. AHCA's current reimbursement to the provider of a drug is based on AHCA's best estimate of the provider's acquisition cost ("EAC") for the drug. 42 C.F.R. § 447.331(b); *Exhibit "A," Affidavit of Jerry Wells.* AHCA's estimate of acquisition cost is the lower of the Average Wholesale Price ("AWP") minus 13.25 percent or Wholesaler Acquisition Cost ("WAC") plus seven (7) percent. *See, Prescribed Drug Services Coverage, Limitations and Reimbursement Handbook, p. 6-2, July 2001 as incorporated into Rule 59G-4.250, Fla. Admin. Code. See, also, §§ 409.908(14), 409.912(40)(a), Fla. Stat. See, also Exhibit "A," Affidavit of Jerry Wells.* AHCA currently reimburses pharmaceutical providers the lesser of AWP minus 13.25 percent, plus a dispensing fee; WAC plus seven (7) percent, plus a dispensing fee; the federal upper limit ("FUL"), plus a dispensing fee; the state maximum allowable cost ("MAC"), plus a dispensing fee; or the provider's usual and customary charge to the public. *Id.*

a. The Omnibus Budget Reconciliation Act of 1990 (OBRA '90) permits the establishment of a FUL by the federal government for a generic drug product if there are three (or more) versions of the product rated therapeutically equivalent and at least three suppliers are listed in the current editions of published national compendia.

b. MAC's are set by the state government and similarly place a price ceiling on generic drugs to encourage the use of generics where medically appropriate.

c. Neither FUL's nor MAC's set the amount of reimbursement for drugs. Rather, the amount of reimbursement by the state governments is based upon prices

reported by the manufacturers to third party reporting services such as First DataBank. FUL's and MAC's simply set a ceiling on such reimbursements and are themselves established in part based upon prices reported by the manufacturers to the reporting services. *Id.*

15. Florida Medicaid's dispensing fee is currently \$4.23 per prescription for all providers, except nursing homes, whose dispensing fee is \$4.73 per prescription. *Prescribed Drug Services Coverage Limitations and Reimbursement Handbook*, at p. 6-3; *Exhibit "A," Affidavit of Jerry Wells*. An additional \$0.015 per prescription is paid to pharmacies who prepare in-house unit dose packaging of tablets or capsules. *Id.*

16. First DataBank ("FDB") publishes drug prices in terms of AWP and WAC. *Exhibit "A," Affidavit of Jerry Wells*. FDB publishes drug prices and costs on a weekly basis, changing and updating the prices and costs weekly, for approximately 60,000 national drug code numbers ("NDC's"). *Id.* These NDC's identify the drugs by their manufacturers, their strengths and their sizes. *Id.* AHCA's fiscal agent reimburses the ultimate providers of these drugs directly based upon AWP's and WAC's supplied and updated weekly by FDB's National Drug Data file electronic service. *Prescribed Drug Services Coverage Limitations and Reimbursement Handbook*, at p. 6-3, as incorporated into Rule 59G-4.250, *Fla. Admin. Code*; *Exhibit "A," Affidavit of Jerry Wells*.

17. AHCA's fiscal agent has at all times during the period covered in the Complaint (hereinafter "the relevant period"), contracted with FDB to provide National Drug Data file

prices to establish AHCA's Medicaid reimbursement rate to Florida Medicaid providers for pharmaceuticals. *Exhibit "A," Affidavit of Jerry Wells.*

18. In fact, AHCA is without authority to reimburse a provider for any drug which is not listed on FDB's National Drug Data file. *Prescribed Drug Services Coverage Limitations and Reimbursement Handbook, p. 6-2, as incorporated into Rule 59G-4.250, Fla. Admin. Code; Exhibit "A," Affidavit of Jerry Wells.*

19. AHCA has relied on the prices and costs published by FDB in setting its Medicaid reimbursement rate to Florida Medicaid providers for drugs, including Dey's products, throughout the relevant period. *Exhibit "A," Affidavit of Jerry Wells.*

20. In determining the drug pricing data that it reports, FDB receives and publishes the prices and costs *reported to it* by the respective drug manufacturers, including Dey's representations of its drug prices and costs. *Exhibit "F," deposition of Joseph Hirschmann, p. 133, l. 18 - p. 134, l. 10; p. 135, l. 4-17; p. 138, l. 14-22; p. 139, l. 6-12; Exhibit "L," deposition of Patricia Kay Morgan, p. 40, l. 12-21; p. 47, l. 5 - p. 48, l. 3.; p. 52, l. 14 - p. 53, l. 12; p. 89, l. 1-17.* FDB reports prices that include a representation of Dey's WAC. *Id.*

21. AHCA determines EAC, upon which it bases the amount of its reimbursement of providers for the drugs that they dispense, from the AWP's and WAC's reported by pharmaceutical manufacturers, including Dey, to FDB. *Exhibit "A," Affidavit of Jerry Wells.*

22. Pharmaceutical manufacturers including Dey have had a legal duty to report

truthful and accurate pricing information to FDB which reflected actual prices charged in the marketplace. § 68.082(2)(a) and (b), Florida Statutes.

## II. Dey's Conduct

23. Dey knew that the Florida Medicaid Program relied on WAC, as reported by FDB, to set its reimbursement rate for Dey's products.

*(Exhibit "D," May 30, 1995 Memorandum of Helen Burnham; Exhibit "E," testimony of Helen Burnham at p. 64, l. 13 - p. 65, l. 5; p. 86, l. 21 - p. 87, l. 17; Exhibit "G," deposition of Ross Uhl at p. 45, l. 25 - p. 46, l. 22.; Exhibit "H," deposition of Bruce Tipton at p. 25, l. 121 - p. 26, l. 4; Exhibit "B," deposition of Robert Mozak at p. 492, l. 7 - 23; Exhibit "C", deposition of Charles Rice at p. 150, l. 25 - p. 151, l. 13; Exhibit "I," deposition of Robert Ellis at p. 13, l. 2 - p. 14, l. 19; p. 15, l. 2-11; Exhibit "K," deposition of Debbie Bronstein at p. 64, l. 11 - 14.)*

24. Dey has admitted that it reported phony, inflated WAC prices to FDB as a marketing tool so Dey could compete with other pharmaceutical companies.

*(Exhibit "B," deposition of Robert Mozak at p. 95, l. 17 - p. 97, l. 8; p. 119, l. 12 - p. 121, l. 6; p. 271, l. 22 - p. 272, l. 20; p. 299, l. 18 - p. 300, l. 7; p. 301, l. 18 - p. 302, l. 5; Exhibit "C," deposition of Charles Rice, at p. 453, l. 15 - p. 456, l. 21; Exhibit "I," deposition of Robert Ellis at p. 33, l. 20 - p. 34, l. 5; p. 35, l. 2-24; p. 47, l. 19 - p. 48, l. 11; p. 54, l. 11 - p. 55, l. 6; p. 75, l. 23 - p. 76, l. 7; p. 79, l. 1-4; p. 124, l. 11-23; p. 195, l. 16 - p. 196, l. 2; p. 205, l. 11-22; Exhibit "G," deposition of Ross Uhl at p. 110, l. 21-25; p. 113, l. 10-16; p. 117, l. 24 - p. 118, l. 6; p. 118, l. 16-23; p. 120, l. 4-13; p. 124, l. 20 - p. 125, l. 19; p. 139, l. 14 - p. 140, l. 4; p. 172, l. 4-11; p. 202, l. 16-22; p. 216, l. 6-16; p. 218, l. 3-22; p. 306, l. 11-17.)*

25. Dey reported these false, inflated WACs so Dey could compete in the marketplace for the maximum Medicaid reimbursement spread and market that spread to providers in order to capture or increase market share.

*(Exhibit "E," testimony of Helen Burnham at p. 64, l. 13 - p. 65, l. 5; p. 75, l. 13 - p. 76, l. 24; p. 84, l. 20 - p. 86, l. 1; Exhibit "G," deposition of Ross Uhl at p. 110, l. 21-25; p. 113, l.*

10-16; p. 117, l. 24 - p. 118, l. 6; p. 118, l. 16-23; p. 120, l. 4-13; p. 124, l. 20 - p. 125, l. 19; p. 139, l. 14 - p. 140, l. 4; p. 172, l. 4-11; p. 202, l. 16-22; p. 216, l. 6-16; p. 218, l. 3-22; p. 306, l. 11-17; Exhibit "I," deposition of Robert Ellis at p. 33, l. 20; - p. 34, l. 10; p. 35, l. 2-24; p. 39, l. 24 - p. 40, l. 14; p. 47, l. 19 - p. 48, l. 11; p. 50, l. 10 - p. 51, l. 8; p. 54, l. 11 - p. 55, l. 6; p. 124, l. 11-23; p. 195, l. 16 - p. 196, l. 2; p. 205, l. 11-22; Exhibit "H," deposition of Bruce Tipton, p. 163, l. 17 - p. 164, l. 1; p. 167, l. 24 - p. 165, l. 4; p. 212, l. 19 - p. 213, l. 4.)

26. The "spread" is the difference between what a provider pays to acquire Dey's drugs, either directly from Dey or from a wholesaler or distributor, and what the provider is reimbursed by the State.

(Exhibit "G," deposition of Ross Uhl at p. 69, l. 20-22; p. 110, l. 21-25; p. 113, l. 10-16; Exhibit "I," deposition of Robert Ellis at p. 33, l. 20 - p. 34, l. 5.)

27. The following documents, and many others, confirm that Dey actively engaged in an effort to sell its products by i) creating an incentive for pharmacies to purchase Dey's unit dose albuterol instead of Dey's competitors' multi-dose albuterol by increasing the Medicare and Medicaid reimbursement spread; and ii) actively promoting this increase in profit on Medicare and Medicaid reimbursements to its customers:

a. The "Reimbursement Comparison Worksheet" (also known as the ProfitGain.xls), a copy of which is attached hereto as Exhibit "P,"

b. The "MHA Proposal," a copy of which is attached hereto as Exhibit "Q,"  
and

c. A series of sales managers' reports regarding their working visits with Dey sales representatives (also known as "Work-With Reports"), sample copies of which are attached hereto as Exhibit "R."

28. Dey has admitted that it has a legal duty to report prices which reflect Dey's actual market prices.

*(Exhibit "N," October 24, 2000 agreement and acknowledgment of duties with Amerisource; Exhibit "C," deposition of Charles Rice at p. 371, l. 8 - p. 372, l. 5; p. 508, l. 6-25.)*

29. Dey has also admitted that reporting prices which are not net of all discounts and rebates violates anti-kickback laws.

*(Exhibit "N," October 24, 2000 agreement and acknowledgment of duties with Amerisource.)*

30. Dey knew that it had a legal duty to report prices for its products to FDB which were reflective of their actual market prices net of all discounts and rebates.

*(Exhibit "C," deposition of Charles Rice at p. 371, l. 8 - p. 372, l. 5; p. 508, l. 6-25; Exhibit "N," October 24, 2000 agreement and acknowledgment of duties with Amerisource.)*

31. Dey defines WAC as the actual invoice price that Dey bills to wholesalers for Dey's products.

*(Exhibit "B," deposition of Robert Mozak at p. 271, l. 22 - p. 272 l. 20; p. 397, l. 8 - p. 400, l. 19; Exhibit "C," deposition of Charles Rice at p. 71, l. 22 - p. 72, l. 15.)*

32. However, Dey's invoice price is not net of rebates, discounts, and other incentives.

*(Exhibit "B," deposition of Robert Mozak at p. 271, l. 22 - p. 272, l. 20;; Exhibit "O," January 4, 1999 letter to AHCA from Robert Mozak.)*

33. All of the Dey drugs identified in the Attorney General's Complaint were sold to wholesalers and other large volume customers for prices dramatically less than WAC and

invoice price.

*(Exhibit "D," May 30, 1995 Memorandum of Helen Burnham; Exhibit "E," testimony of Helen Burnham at p. 87, l. 12 - 21; p. 79, l. 19 - 23; Exhibit "G," deposition of Ross Uhl at p. 172, l. 4-11; p. 306, l. 1-17; Exhibit "H," deposition of Bruce Tipton at p. 25, l. 21 - p. 26, l. 4; Exhibit "B," deposition of Robert Mozak at p. 95, l. 17 - p. 97, l. 8; 119, l. 12 - p. 121, l. 6; 271, l. 22 - p. 272, l. 20; Exhibit "I," deposition of Robert Ellis at p. 75, l. 23 - p. 76, l. 6; p. 79, l. 1-4; p. 181, l. 22 - p. 182, l. 5.)*

34. Following inquiries and subpoenas from the Department of Health and Human Services Office of the Inspector General, Dey later notified the Florida Medicaid program that Dey's WAC should not be used to set reimbursement because Dey's defined WAC was not reduced to account for discounts, rebates, and other incentives to wholesalers and other large volume customers.

*(Exhibit "O," January 4, 1999 letter to AHCA from Robert Mozak.)*

35. Dey intentionally concealed from the Florida Medicaid Program the true market prices it charged wholesalers and other large volume customers.

*(Exhibit "G," deposition of Ross Uhl at p. 110, l. 21-25; p. 113, l. 10-16; p. 117, l. 24 - p. 118, l. 6; p. 118, l. 16-23; p. 120, l. 4-13; p. 124, l. 20 - p. 125, l. 19; p. 139, l. 14 - p. 140, l. 4; p. 172, l. 4-11; p. 202, l. 16-22; p. 216, l. 6-16; p. 218, l. 3-22; p. 306, l. 11-17; Exhibit "E," testimony of Helen Burnham at p. 75, l. 13 - p. 76, l. 9; Exhibit "H," deposition of Bruce Tipton at p. 212, l. 19 - p. 213, l. 4.)*

36. Dey executives thought it would be foolish to report its true prices because Dey would not be able to take advantage of the Medicaid reimbursement spread and would lose its competitive edge in the generic marketplace.

*(Exhibit "H," deposition of Bruce Tipton at p. 167, l. 19 - p. 168, l. 4.)*

37. Dey knowingly reported fictitious, inflated WACs for its inhalation drugs to FDB.

(Exhibit "K," deposition of Debbie Bronstein at p. 110, l. 7 - p.111, l. 7; Exhibit "E," testimony of Helen Burnham at p. 79, l. 19 - 23; p. 75, l. 13 - p. 76, l. 9; p. 86, l. 2 - 12; p. 87, l. 12 - 21; Exhibit "G," deposition of Ross Uhl at p. 110, l. 21-25; p. 113, l. 10-16; p. 117, l. 24 - p. 118, l. 6; p. 118, l. 16-23; p. 120, l. 4-13; p. 124, l. 20 - p. 125, l. 19; p. 139, l. 14 - p. 140, l. 4; p. 172, l. 4-11; p. 202, l. 16-22; p. 216, l. 6-16; p. 218, l. 3-22; p. 306, l. 11-17; Exhibit "H," deposition of Bruce Tipton at p. 56, l. 21 - p. 57, l. 1; p. 212, l. 19 - p. 213, l. 4; Exhibit "I," deposition of Robert Ellis at p. 13, l. 2 - p. 14, l. 19; p. 15, l. 2 - 11; p. 33, l. 20 - p. 34, l. 5; p. 35, l. 2 - 24; p. p. 39, l. 24 - p. 40, l. 14; p. 47, l. 19 - p. 48, l. 11; p. 50, l. 10 - p. 51, l. 8; p. 54, l. 11 - p. 55, l. 6; p. 75, l. 23 - p. 76, l. 7; p. 79, l. 1 - 4; p. 124, l. 11 - 23; p. 181, l. 22 - p. 182, l. 3; p. 195, l. 16 - p. 196, l. 2; p. 205, l. 11 - 22.)

38. Dey knew that the Florida Medicaid Program would, and did, set its reimbursement rate for Dey's products based on the phony, inflated WAC pricing information that Dey reported to FDB.

(Exhibit "E," testimony of Helen Burnham at p. 64, l. 13 - p. 65, l. 5, p. 86, l. 21 - p. 87, l. 21; p. 79, l. 12 - 23; Exhibit "B," deposition of Robert Mozak at p. 95, l. 17 - p. 97, l. 8; p. 119, l. 12 - p. 121, l. 6; p. 271, l. 22 - p. 272, l. 20; p. 299, l. 18 - p. 300, l. 7; p. 301, l. 18 - p. 302, l. 5; p. 492, l. 7 - 13; Exhibit "C," deposition of Charles Rice at p. 150, l. 25 - p. 151, l. 13; Exhibit "I," deposition of Robert Ellis at p. 13, l. 2 - p. 14, l. 19; p. 15, l. 2 - 11.)

### THE FLORIDA FALSE CLAIMS ACT

39. § 68.082, Florida Statutes provides in pertinent part as follows:

(1)(c) "Knowing" or "knowingly" means, with respect to information, that a person:

1. Has actual knowledge of the information;
2. Acts in deliberate ignorance of the truth or falsity of the information; or
3. Acts in reckless disregard of the truth or falsity of the information.

No proof of specific intent to defraud is required. . .

(2) Any person who:

(a) Knowingly presents **or causes to be presented** to an officer or employee of an agency a false claim for payment or approval;

(b) Knowingly makes, uses, **or causes to be made or used** a false record or statement to get a false or fraudulent claim paid or approved by an agency;

(c) Conspires to submit a false claim to an agency or to deceive an agency for the purpose of getting a false or fraudulent claim allowed or paid; . . .

is liable to the state for a civil penalty of not less than \$5,000 and not more than \$10,000 and for treble the amount of damages the agency sustains because of the act or omission of that person.

§ 68.082, Fla. Stat. (*emphasis added*).

**AN OVERWHELMING BODY OF EVIDENCE ESTABLISHES DEY'S VIOLATION OF THE FLORIDA FALSE CLAIMS ACT IN THAT DEY, WITH ACTUAL KNOWLEDGE, CAUSED TO BE PRESENTED TO THE PROGRAM MANAGER AND EMPLOYEES OF FLORIDA MEDICAID FALSE CLAIMS FOR REIMBURSEMENT FOR THE PURCHASE OF ITS DRUGS AND MADE AND USED A FALSE RECORD OF ITS PRICES FOR THE PURPOSE OF GETTING FALSE AND FRAUDULENT CLAIMS PAID**

40. Dey's actions as alleged in the complaint and established by the evidence submitted with this motion satisfy each of the elements of the Florida False Claims Act.

41. First, from the executive offices of Dey, Inc. to the sales force selling Dey's drugs from pharmacy to pharmacy, Dey acted not just in deliberate ignorance or reckless disregard of the truth, but with *actual knowledge* that Dey created false pricing information and caused it to be presented to Florida Medicaid. Through the testimony of Dey's officers and employees, it is clear that Dey engaged in this course of conduct in order to enable Dey to increase the market share of its drugs by "marketing the spread." Even Dey's Chief

Executive Officer, Charles Rice, candidly characterized such behavior as "gaming the system" and "wrong." *Exhibit "C," deposition of Charles Rice, p. 371, l.8 -p. 372, l. 5; p. 508, ll. 6-25.*

42. Indeed, the evidence is overwhelming that Dey had *actual knowledge* that:

- a. the WAC pricing data it reported to FDB for use by the Florida Medicaid Program was false;

*(Exhibit "D," May 30, 1995 Memorandum of Helen Burnham; Exhibit "E," testimony of Helen Burnham at p. 64, l. 13 - p. 65, l. 5; p. 79, l. 19 - 23; p.86, l. 21 - p. 87, l. 21; Exhibit "G," deposition of Ross Uhl at p. 110, l. 21-25; p. 113, l. 10-16; p. 117, l. 24 - p. 118, l. 6; p. 118, l. 16-23; p. 120, l. 4-13; p. 124, l. 20 - p. 125, l. 19; p. 139, l. 14 - p. 140, l. 4; p. 172, l. 4-11; p. 202, l. 16-22; p. 216, l. 6-16; p. 218, l. 3-22; p. 306, l. 11-17; Exhibit "H," deposition of Bruce Tipton at p. 25, l. 21 - p. 26, l. 4; p. 56, l. 21 - p. 57, l. 1; p. 212, l. 19 - p. 213, l. 4; Exhibit "B," deposition of Robert Mozak at p. 95, l. 17 - p. 97, l. 8; p. 119, l. 12 - p. 121, l. 6; p. 271, l. 22 - p. 272, l. 20; p. 299, l. 18 - p. 300, l. 7; p. 301, l. 18 - p. 302, l. 5; p. 488, l. 14 - p. 492, l. 6; Exhibit "C," deposition of Charles Rice at p. 74, l. 2 - 20; p. 92, l. 10 - p. 93, l. 25; p. 118, l. 22 - p. 121, l. 8; p. 150, l. 25 - p. 153, l. 11; p. 362, l. 17 - p. 365, l. 15; p. 369, l. 18, - p. 370, l. 5; p. 448, l. 22 - p. 456, l. 21; Exhibit "I," deposition of Robert Ellis at p. 13, l. 2 - p. 14, l. 9; p. 15, l. 2-11; p. 33, l. 20 - p. 34, l. 5; p. 35, l. 2-24; p. 47, l. 19 - p. 48, l. 11; p. 50, l. 10 - p. 51, l. 8; p. 54, l. 11 - p. 55, l. 6; p. 75, l. 23 - p. 76, l. 7; p. 79, l. 1 - 4; p. 124, l. 11 - 23; p. 181, l. 22 - p. 182, l. 3; p. 195, l. 16 - p. 196, l. 2; p. 205, l. 11 - 22; Exhibit "K," deposition of Debbie Bronstein at p. 110, l. 7 - p. 111, l. 7.)*

and

- b. the Florida Medicaid Program relied on WAC pricing information as reported by FDB to set reimbursement rates for pharmaceuticals including Dey's products.

*(Exhibit "D," May 30, 1995 Memorandum of Helen Burnham; Exhibit "E,"*

*testimony of Helen Burnham at p. 64, l. 13 - p. 65, l. 5; p. 75, l. 13 - p. 76, l. 9; p. 86, l. 21 - p. 87, l. 21; Exhibit "G," deposition of Ross Uhl at p. 45, l. 25 - p. 46, l. 22; Exhibit "H," deposition of Bruce Tipton at p. 25, l. 21 - p. 26, l. 4; Exhibit "I," deposition of Robert Ellis at p. 13, l. 2 - p. 14, l. 19; p. 15, l. 2-11; p. 181, l. 22 - p. 182, l. 3; Exhibit "J," deposition of Rick Upp at p. 38, l. 11-22; Exhibit "B," deposition of Robert Mozak at p. 299, l. 18 - p. 300, l. 7; p. 301, l. 18 - p. 302, l. 5; p. 492, l. 7 - 23; Exhibit "C," deposition of Charles Rice at p. 150, l. 25 - p. 151, l. 13.)*

43. Dey therefore knowingly caused false claims to be presented to the Florida Medicaid Program for payment in violation of the Florida False Claims Act §68.082(2)(a), Fla. Stat.

*(Exhibit "E," testimony of Helen Burnham at p. 64, l. 13 - p. 65, l. 5; p. 79, l. 19 - 23; p. 86, l. 21 - p. 87, l. 21; Exhibit "G," deposition of Ross Uhl at p. 110, l. 21-25; p. 113, l. 10-16; p. 117, l. 24 - p. 118, l. 6; p. 118, l. 16-23; p. 120, l. 4-13; p. 124, l. 20 - p. 125, l. 19; p. 139, l. 14 - p. 140, l. 4; p. 172, l. 4-11; p. 202, l. 16-22; p. 216, l. 6-16; p. 218, l. 3-22; p. 306, l. 11-17; Exhibit "H," deposition of Bruce Tipton at p. 56, l. 21 - p. 57, l. 1; p. 212, p. 19 - p. 213, l. 4; Exhibit "I," deposition of Robert Ellis at 13, l. 2 - p. 14, l. 19; p. 15, l. 2 - 11; p. 33, l. 20 - p. 34, l. 5; p. 35, l. 2 - 24; p. 47, l. 19 - p. 48, l. 11; p. 54, l. 11 - p. 55, l. 6; p. 75, l. 23 - p. 76, l. 7; p. 79, l. 1 - 4; 124, l. 11 - 23; p. 181, l. 22 - p. 182, l. 3; p. 195, l. 16 - p. 196, l. 2; p. 205, l. 11 - 22.)*

44. Dey also knowingly created and used a false record by reporting false WAC pricing data to FDB to get reimbursement claims paid by the Florida Medicaid Program for its products in violation of the Florida False Claims Act § 68.082(2)(b), Fla. Stat.

*(Exhibit "E," testimony of Helen Burnham at p. 64, l. 13 - p. 65, l. 5; p. 79, l. 19 - 23; p. 86, l. 21 - p. 87, l. 21; Exhibit "H," deposition of Bruce Tipton at p. 25, l. 21 - p. 26, l. 4; p. 56, l. 21 - p. 57, l. 1; p. 212, l. 19 - p. 213, l. 4; Exhibit "I," deposition of Robert Ellis at p. 13, l. 2 - p. 14, l. 19; p. 15, l. 2 - 11; p. 33, l. 20 - p. 34, l. 5; p. 35, l. 2 - 24; p. 39, l. 24 - p. 40, l. 14; p. 47, l. 19 - p. 48, l. 11; p. 50, l. 10 - p. 51, l. 8; p. 54, l. 11 - p. 55, l. 6; p. 75, l. 23, - p. 76, l. 7; p. 79, l. 1 - 4; p. 124, l. 11 - 23; p. 181, l. 22 - p. 182, l. 3; p. 195, l. 16 - p. 196, l. 2; p. 205, l. 11 - 22.)*

**THE ATTORNEY GENERAL AND THE RELATOR  
ARE ENTITLED TO JUDGMENT AS A MATTER OF LAW**

45. The Attorney General and the Relator are entitled to judgment as a matter of law with respect to Dey's liability under the Florida False Claims Act. § 68.082(2), Fla. Stat.; *Volusia County v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000); *Castellano v. Raynor*, 725 So. 2d 1197, 1199 (Fla. 2d DCA 1999); *J & L Enterprises v. Jones*, 614 So. 2d 1151, 1156 (Fla. 4<sup>th</sup> DCA 1993), *rev. denied*, 626 So. 2d 206 (Fla. 1993); Exhibit "D," May 30, 1995 Memorandum of Helen Burnham; Exhibit "E," testimony of Helen Burnham at p. 64, l. 13 - p. 65, l. 5; p. 75, l. 13 - p. 76, l. 9; p. 78, l. 3 - 15; p. 86, l. 21 - p. 87, l. 21; p. 90, l. 14 - p. 91, l. 25; Exhibit "G," deposition of Ross Uhl at p. 110, l. 21-25; p. 113, l. 10-16; p. 117, l. 24 - p. 118, l. 6; p. 118, l. 16-23; p. 120, l. 4-13; p. 124, l. 20 - p. 125, l. 19; p. 139, l. 14 - p. 140, l. 4; p. 172, l. 4-11; p. 202, l. 16-22; p. 216, l. 6-16; p. 218, l. 3-22; p. 306, l. 11-17; Exhibit "H," deposition of Bruce Tipton at p. 25, l. 21 - p. 26, l. 4; p. 56, l. 21 - p. 57, l. 1; p. 212, l. 19 - p. 213, l. 4; Exhibit "B," deposition of Robert Mozak at p. 95, l. 17 - p. 97, l. 8; p. 119, l. 12 - p. 121, l. 6; p. 271, l. 22 - p. 272, l. 20; p. 299, l. 18 - p. 300, l. 7; p. 301, l. 18 - p. 302, l. 5; p. 488, l. 14 - p. 492, l. 23; Exhibit "C," deposition of Charles Rice at p. 74, l. 2 - 20; p. 92, l. 10 - p. 93, l. 13; p. 118, l. 22 - p. 121, l. 8; p. 150, l. 25 - p. 153, l. 11; p. 371, l. 8 - p. 372, l. 5;; p. 448, l. 22 - 456, l. 21; p. 463, l. 10 - p. 477, l. 16; p. 508, l. 6-25; Exhibit "I," deposition of Robert Ellis at p. 13, l. 2 - p. 14, l. 19; p. 15, l. 2 - 11; p. 33, l. 20 - p. 34, l. 5; p. 35, l. 2 - 24; p. 39, l. 24 - p. 40, l. 14; p. 47, l.

19 - p. 48, l. 11; p. 50, l. 10 - p. 51, l. 8; p. 54, l. 11 - p. 55, l. 6; p. 75, l. 23 - p. 76, l. 7; p. 79, l. 1 - 4; p. 124, l. 11 - 23; p. 181, l. 22 - p. 182, l. 3; p. 195, l. 16 - p. 196, l. 2; p. 205, l. 11 - 22.

46. Liability may be determined by summary judgment where there is no evidence refuting the moving party's allegations. *Chillemi v. Rorabeck*, 629 So. 2d 206, 208 (Fla. 4<sup>th</sup> DCA 1993); *Brock v. Associates Finance, Inc.*, 625 So. 2d 135 (Fla. 1<sup>st</sup> DCA 1993). Since Dey admits that it engages in the above-described wrongful conduct, there can be no evidence refuting that Dey knowingly reported false WAC prices to FDB to induce the Florida Medicaid Program into structuring reimbursement rates for Dey's products on these falsely inflated WAC prices. *Exhibit "D," May 30, 1995 Memorandum of Helen Burnham; Exhibit "E," testimony of Helen Burnham at p. 64, l. 13 - p. 65, l. 5; p. 75, l. 13 - p. 76, l. 9; p. 78, l. 3 - 15; p. 86, l. 21 - p. 87, l. 21; p. 90, l. 14 - p. 91, l. 25; Exhibit "G," deposition of Ross Uhl at p. 110, l. 21-25; p. 113, l. 10-16; p. 117, l. 24 - p. 118, l. 6; p. 118, l. 16-23; p. 120, l. 4-13; p. 124, l. 20 - p. 125, l. 19; p. 139, l. 14 - p. 140, l. 4; p. 172, l. 4-11; p. 202, l. 16-22; p. 216, l. 6-16; p. 218, l. 3-22; p. 306, l. 11-17; Exhibit "H," deposition of Bruce Tipton at p. 25, l. 21 - p. 26, l. 4; p. 56, l. 21 - p. 57, l. 1; p. 212, l. 19 - p. 213, l. 4; Exhibit "B," deposition of Robert Mozak at p. 95, l. 17 - p. 97, l. 8; p. 119, l. 12 - p. 121, l. 6; p. 271, l. 22 - p. 272, l. 20; p. 299, l. 18 - p. 300, l. 7; p. 301, l. 18 - p. 302, l. 5; p. 488, l. 14 - p. 492, l. 6; Exhibit "C," deposition of Charles Rice at p. 74, l. 2 - 20; p. 92, l. 10 - p. 93, l. 13; p. 118, l. 22 - p. 121, l. 8; p. 150, l. 25 - p. 153, l. 11; p. 371, l. 8 - p. 372, l. 5; p. 429, l. 20 - p. 434, l. 8; p. 448, l. 22 - 456, l. 21;*

p. 463, l. 10 - p. 477, l. 16; p. 488, l. 25 - p. 489, l. 9; p. 508, l. 6-25; Exhibit "I," deposition of Robert Ellis at p.13, l. 2 - p. 14, l. 19; p. 15, l. 2 - 11; p. 33, l. 20 - p. 34, l. 5; p. 35, l. 2 - 24; p. 39, l. 24 - p. 40, l. 14; p. 47, l. 19 - p. 48, l. 11; p. 50, l. 10 - p. 51, l. 8; p. 54, l. 11 - p. 55, l. 6; p. 75, l. 23 - p. 76, l. 7; p. 79, l. 1 - 4; p. 124, l. 11 - 23; p. 181, l. 22 - p. 182, l. 3; p. 195, l. 16 - p. 196, l. 2; p. 205, l. 11 - 22. Dey has admitted that it engaged in this conduct. Exhibit "D," May 30, 1995 Memorandum of Helen Burnham; Exhibit "E," testimony of Helen Burnham at p. 64, l. 13 - p. 65, l. 5; p. 75, l. 13 - p. 76, l. 9; p. 78, l. 3 - 15; p. 86, l. 21 - p. 87, l. 21; p. 90, l. 14 - p. 91, l. 25; Exhibit "G," deposition of Ross Uhl at p. 110, l. 21-25; p. 113, l. 10-16; p. 117, l. 24 - p. 118, l. 6; p. 118, l. 16-23; p. 120, l. 4-13; p. 124, l. 20 - p. 125, l. 19; p. 139, l. 14 - p. 140, l. 4; p. 172, l. 4-11; p. 202, l. 16-22; p. 216, l. 6-16; p. 218, l. 3-22; p. 306, l. 11-17; Exhibit "H," deposition of Bruce Tipton at p. 25, l. 21 - p. 26, l. 4; p. 56, l. 21 - p. 57, l. 1; p. 212, l. 19 - p. 213, l. 4; Exhibit "B," deposition of Robert Mozak at p. 95, l. 17 - p. 97, l. 8; p. 119, l. 12 - p. 121, l. 6; p. 271, l. 22 - p. 272, l. 20; p. 299, l. 18 - p. 300, l. 7; p. 301, l. 18 - p. 302, l. 5; p. 488, l. 14 - p. 492, l. 23; Exhibit "C," deposition of Charles Rice at p. 74, l. 2 - 20; p. 92, l. 10 - p. 93, l. 13; p. 118, l. 22 - p. 121, l. 8; p. 150, l. 25 - p. 153, l. 11; p. 371, l. 8 - p. 372, l. 5; p. 429, l. 20 - p. 434, l. 8; p. 448, l. 22 - 456, l. 21; p. 463, l. 10 - p. 477, l. 16; p. 488, l. 25 - p. 489, l. 9; p. 508, l. 6-25; Exhibit "I," deposition of Robert Ellis at p. 13, l. 2 - p. 14, l. 19; p. 15, l. 2 - 11; p. 33, l. 20 - p. 34, l. 5; p. 35, l. 2 - 24; p. 39, l. 24 - p. 40, l. 14; p. 47, l. 19 - p. 48, l. 11; p. 50, l. 10 - p. 51, l. 8; p. 54, l. 11 - p. 55, l. 6; p. 75, l. 23 - p. 76, l. 7; p. 79, l. 1 - 4; p. 124, l. 11 - 23; p. 181, l. 22 - p. 182, l. 3; p. 195, l. 16 - p. 196, l. 2; p. 205, l. 11 -

22. Consequently, it is impossible for Dey to contest that it submitted false, inflated WAC prices to FDB for these purposes. *Chillemi v. Rorabeck*, 625 So. 2d 206, 208 (Fla. 4<sup>th</sup> DCA 1993).

47. Although Dey has not yet answered the Complaint, Dey can neither plead nor raise any genuine issues of material fact concerning its knowing submission of false WAC prices to FDB to induce the Florida Medicaid Program to set reimbursement for Dey's products based on artificially inflated WAC data. *J & L Enterprises v. Jones*, 614 So. 2d 1151, 1156 (Fla. 4<sup>th</sup> DCA 1993), *rev. denied*, 626 So. 2d 206 (Fla. 1993); *Exhibit "D," May 30, 1995 Memorandum of Helen Burnham; Exhibit "E," testimony of Helen Burnham at p. 64, l. 13 - p. 65, l. 5; p. 75, l. 13 - p. 76, l. 9; p. 78, l. 3 - 15; p. 86, l. 21 - p. 87, l. 21; p. 90, l. 14 - p. 91, l. 25; Exhibit "G," deposition of Ross Uhl at 110, l. 21-25; p. 113, l. 10-16; p. 117, l. 24 - p. 118, l. 6; p. 118, l. 16-23; p. 120, l. 4-13; p. 124, l. 20 - p. 125, l. 19; p. 139, l. 14 - p. 140, l. 4; p. 172, l. 4-11; p. 202, l. 16-22; p. 216, l. 6-16; p. 218, l. 3-22; p. 306, l. 11-17; Exhibit "H," deposition of Bruce Tipton at p. 25, l. 21 - p. 26, l. 4; p. 56, l. 21 - p. 57, l. 1; p. 212, l. 19 - p. 213, l. 4; Exhibit "B," deposition of Robert Mozak at p. 95, l. 17 - p. 97, l. 8; p. 119, l. 12 - p. 121, l. 6; p. 271, l. 22 - p. 272, l. 20; p. 299, l. 18 - p. 300, l. 7; p. 301, l. 18 - p. 302, l. 5; p. 488, l. 14 - p. 492, l. 23; Exhibit "C," deposition of Charles Rice at p. 74, l. 2 - 20; p. 92, l. 10 - p. 93, l. 13; p. 118, l. 22 - p. 121, l. 8; p. 150, l. 25 - p. 153, l. 11; p. 371, l. 8 - p. 372, l. 5; p. 429, l. 20 - p. 434, l. 8; p. 448, l. 22 - 456, l. 21; p. 463, l. 10 - p. 477, l. 16; p. 488, l. 25 - p. 489, l. 9; p. 508, l. 6-25; Exhibit "I," deposition of Robert Ellis at p. 13, l. 2 - p.*

14, l. 19; p. 15, l. 2 - 11; p. 33, l. 20 - p. 34, l. 5; p. 35, l. 2 - 24; p. 39, l. 24 - p. 40, l. 14; p. 47, l. 19 - p. 48, l. 11; p. 50, l. 10 - p. 51, l. 8; p. 54, l. 11 - p. 55, l. 6; p. 75, l. 23 - p. 76, l. 7; p. 79, l. 1 - 4; p. 124, l. 11 - 23; p. 181, l. 22 - p. 182, l. 3; p. 195, l. 16 - p. 196, l. 2; p. 205, l. 11 - 22. In these circumstances, it is the Court's duty to enter summary judgment in favor of the Attorney General and the Relator holding Dey liable under the Florida False Claims Act, § 68.082(2)(a) and (b), Florida Statutes. *Castellano v. Raynor*, 725 So. 2d 1197 (Fla. 2d DCA 1999).

48. Dey's admitted and unrefuted systematic submission of falsely inflated WAC prices to FDB constitutes the creation of a false record to get false claims for payment approved and paid by the Florida Medicaid Program in violation of § 68.082(2)(b), Florida Statutes. Dey's admitted and unrefuted conduct as aforesaid caused false claims for payment to be submitted to the Florida Medicaid Program in violation of § 68.082(2)(c), Florida Statutes.

49. Therefore, the Attorney General and the Relator are entitled to judgment as a matter of law that Dey violated § 68.082(2)(c), Florida Statutes by creating a false record to get false claims approved and paid by the Florida Medicaid Program and § 68.082(2)(b), Florida Statutes, by causing false claims for payment to be submitted to the Florida Medicaid Program. § 68.082(2)(b), (c), Fla. Stat.; R. 1.510, Fla. R. Civ. P.; *Volusia County v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000); *Castellano v. Raynor*, 725 So. 2d 1197, 1199 (Fla. 2d DCA 1999); *J & L Enterprises v. Jones*, 614 So. 2d 1151,

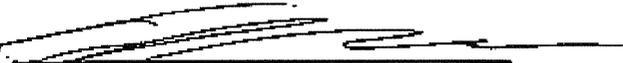
1156 (Fla. 4<sup>th</sup> DCA 1993), *rev. denied*, 626 So. 2d 206 (Fla. 1993); *Chillemi v. Rorabeck*, 629 So. 2d 206, 208 (Fla. 4<sup>th</sup> DCA 1993); Exhibit "D," May 30, 1995 Memorandum of Helen Burnham; Exhibit "E," testimony of Helen Burnham at p. 64, l. 13 - p. 65, l. 5, p. 75, l. 13 - p. 76, l. 24; p. 78, l. 3 - 15; p. 79, l. 19 - 23; p. 86, l. 21 - p. 87, l. 21; p. 90, l. 14 - p. 91, l. 25; Exhibit "G," deposition of Ross Uhl at 110, l. 21-25; p. 113, l. 10-16; p. 117, l. 24 - p. 118, l. 6; p. 118, l. 16-23; p. 120, l. 4-13; p. 124, l. 20 - p. 125, l. 19; p. 139, l. 14 - p. 140, l. 4; p. 172, l. 4-11; p. 202, l. 16-22; p. 216, l. 6-16; p. 218, l. 3-22; p. 306, l. 11-17; Exhibit "H," deposition of Bruce Tipton at p. 25, l. 21 - p. 26, l. 4; p. 56, l. 21 - p. 57, l. 1; p. 212, l. 19 - p. 213, l. 4; Exhibit "B," deposition of Robert Mozak at p. 95, l. 15 - p. 97, l. 8; p. 119, l. 12 - p. 121, l. 6; p. 271, l. 22 - p. 272, l. 20; p. 299, l. 7; p. 301, l. 7 - p. 302, l. 5; p. 488, l. 14 - p. 492, l. 23; Exhibit "C," deposition of Charles Rice at p. 74, l. 2 - 20; p. 92, l. 10 - p. 93, l. 13; p. 118, l. 22 - p. 121, l. 8; p. 150, l. 25 - p. 153, l. 11; p. 370, l. 8 - p. 371, l. 5; p. 429, l. 20 - p. 434, l. 8; p. 448, l. 22 - 456, l. 21; p. 463, l. 10 - p. 477, l. 16; p. 488, l. 25 - p. 489, l. 9; p. 508, l. 6-25; Exhibit "I," deposition of Robert Ellis at p. 13, l. 2 - p. 14, l. 19; p. 15, l. 2 - 11; p. 33, l. 20 - p. 34, l. 5; p. 35, l. 2 - 24; p. 39, l. 24 - p. 40, l. 14; p. 47, l. 19 - p. 48, l. 11; p. 50, l. 10 - p. 51, l. 8; p. 54, l. 11 - p. 55, l. 6; p. 75, l. 23 - p. 76, l. 7; p. 79, l. 1 - 4; p. 124, l. 11 - 23; p. 181, l. 22 - p. 182, l. 3; p. 195, l. 16 - p. 196, l. 2; p. 205, l. 11 - 22; Exhibit "K," deposition of Debbie Bronstein at p. 64, l. 11 - 14; p. 110, l. 7 - p. 111, l. 7; Exhibit "N," October 24, 2000 Agreement and Acknowledgment fo Duties with Amerisource; Exhibit "O," January 4, 1999 letter to AHCA from Robert Mozak.

WHEREFORE, the Attorney General and the Relator pray this Court will enter an order and therein to:

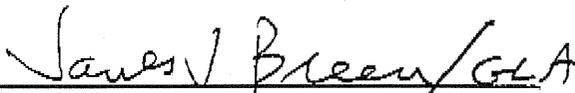
- A. Grant the Attorney General and Relator's Motion for Partial Summary Judgment;
- B. Enter judgment for the Attorney General and the Relator on Count I of the Attorney General's Complaint finding Dey liable for violating § 68.082(2)(b), and (c), Florida Statutes; and
- C. Grant such other and further relief as this Court deems just and equitable.

Respectfully submitted this 25th day of February, 2004.

CHARLES J. CRIST, JR.  
ATTORNEY GENERAL  
STATE OF FLORIDA

By: 

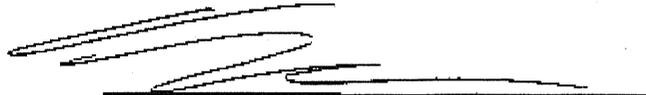
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Pembroke Pines, Florida 33029-7476  
Telephone: 954-874-1653  
Facsimile: 954-874-1705  
Counsel for Ven-A-Care of the Florida  
Keys, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished to: JAMES J. BREEN, ESQ., The Breen Law Firm, P.A., P.O. Box 297470, Pembroke Pines, Florida 33029-7470, Counsel for Ven-A-Care of the Florida Keys, Inc; GARY L. AZORSKY, ESQ., Berger & Montague, P.C., 1622 Locust Street, Philadelphia, Pennsylvania 19103, Counsel for Ven-A-Care of the Florida Keys, Inc.; JOHN E. CLARK, ESQ., Goode, Casseb, Jones, Riklin, Choate & Watson 2122 North Main Avenue, P.O. Box 120480, San Antonio, Texas 78212-9680, Counsel for Ven-A-Care of the Florida Keys, Inc.; DANA G. TOOLE, Esquire, Dunlap & Toole, P.A., 2057 Delta Way, Tallahassee, Florida, 32303-4227; CHRISTOPHER PALERMO, Esquire, Kelley, Drye & Warren, LLP, 101 Park Avenue, New York, New York, 10178, KELLY OVERSTREET JOHNSON, Esquire, Broad and Cassel, 215 South Monroe Street, Suite 400, Tallahassee, Florida 32301, by U.S. Mail, this 25<sup>th</sup> day of February, 2004.

  
\_\_\_\_\_  
Attorney