

MARK J. BENNETT 2672
ATTORNEY GENERAL
STATE OF HAWAII

Civil No. 06-1-0720-04 EEH
(Other Civil Action)

MINER, BARNHILL & GALLAND, P.C.
CHARLES BARNHILL, JR.
(Pro Hac Vice Pending)
44 East Mifflin Street, Suite 803
Madison, Wisconsin 53703
Telephone: (608) 255-5200
Facsimile: (608) 255-5380
E-mail: cbarnhill@lawmbg.com

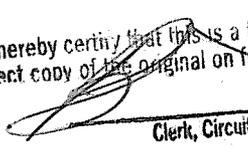
SPECIAL DEPUTY ATTORNEY GENERAL
ATTORNEY FOR PLAINTIFF

MINER, BARNHILL & GALLAND, P.C.
ROBERT S. LIBMAN
(Pro Hac Vice Pending)
14 West Erie Street
Chicago, IL 60610
Telephone: (312) 751-1170
Facsimile: (312) 751-9490
E-mail: rlibman@lawmbg.com

BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, P.C.
W. DANIEL "Dee" MILES, III
CLINTON C. CARTER
(Pro Hac Vice Pending)
272 Commerce Street
P.O. Box 4160
Montgomery, Alabama 36103-4160
Telephone: (334) 269-2343
Facsimile: (334) 954-7555
E-mail: dee.miles@beasleyallen.com
E-mail: clint.carter@beasleyallen.com

P. JEFFREY ARCHIBALD
(Pro Hac Vice Pending)
1914 Monroe Street
Madison, Wisconsin 53711
Telephone: (608) 661-8855
Facsimile: (608) 661-0067
E-mail: archibaldlaw@tds.net

I do hereby certify that this is a full, true, and
correct copy of the original on file in this office.


Clerk, Circuit Court, First Circuit

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STATE OF HAWAII
FILED

MICHAEL WINGET-HERNANDEZ
(Pro Hac Vice Pending)
3112 Windsor Road, Suite 228
Austin, Texas 78703
Telephone: (512) 474-4095
Facsimile: (512) 697-0080
Email: m.winget.hernandez@gmail.com

PRICE, OKAMOTO, HIMENO & LUM
WARREN PRICE, III 1212
KENNETH T. OKAMOTO 2068
RICK J. EICHOR 1588
707 Richards Street, Suite 728
Honolulu, Hawaii 96813
Telephone: (808) 538-1113
Facsimile: (808) 533-0549
E-mail: wprice@pohlhawaii.com
E-mail: kokamoto@pohlhawaii.com
E-mail: reichor@pohlhawaii.com

ATTORNEYS FOR PLAINTIFF

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

State of Hawaii,

Plaintiff,

vs.

Abbott Laboratories Inc.; Alpharma USPD, Inc.; Apothecon, Inc.; AstraZeneca Pharmaceuticals LP, AstraZeneca LP; Aventis Pharmaceuticals, Inc.; Aventis Behring LLC n/k/a ZLB Behring; Barr Laboratories, Inc.; Baxter Healthcare Corporation; Ben Venue Laboratories, Inc.; Boehringer Ingelheim Pharmaceuticals, Inc.; Boehringer Ingelheim Roxane, Inc. f/k/a Roxane Laboratories, Inc.; Bristol-Myers Squibb Co.; Centocor, Inc.; Dey, Inc.; Forest Pharmaceuticals, Inc.; GlaxoSmithKline Pharmaceuticals; Hoffman-LaRoche, Inc.; Hospira, Inc.; Ivax Corporation; Ivax Pharmaceuticals Inc.; Janssen Pharmaceutical Products, LP; Johnson & Johnson, Inc.; McNeil-PPC, Inc.; Merck & Co., Inc.; Mylan Laboratories, Inc.; Mylan Pharmaceuticals, Inc.; Novartis Pharmaceuticals Corporation; Ortho Biotech Products, LP; Par Pharmaceutical Cos., Inc.; Pfizer, Inc.; Pharmacia Corporation; Purepac Pharmaceutical Co.; Roche Laboratories, Inc.; Sandoz, Inc.; Schering-Plough Corporation; Sicor Pharmaceuticals, Inc. f/k/a Gensia Sicor Pharmaceuticals, Inc.; TAP Pharmaceutical Products, Inc.; Teva Pharmaceuticals USA, Inc.; Warrick Pharmaceuticals Corporation; Watson Pharmaceuticals, Inc.; Watson Pharma, Inc., f/k/a Schein Pharmaceuticals, Inc.; Watson Laboratories, Inc.; Doe Corporations 1-100; Doe Entities 1-100.

Defendants.

Civil No. 06-1-0720-04 EEH
(Other Civil Action)

FIRST AMENDED COMPLAINT;
EXHIBITS "1 to 3"; SUMMONS TO
ANSWER FIRST AMENDED
COMPLAINT; DEMAND FOR JURY
TRIAL

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FIRST AMENDED COMPLAINT

I. INTRODUCTION

1. This case is an enforcement action brought by the State of Hawaii under State law on behalf of its Medicaid program, as well as Hawaii residents who are Medicare beneficiaries, against Defendant Drug Companies who have caused the submission of false claims and engaged in unfair or deceptive acts or practices in the sale, pricing and marketing of their prescription drug products. The State of Hawaii brings this action exclusively under the common law and statutes of the State of Hawaii. No federal claims are asserted. No aspect of the claims asserted herein is brought pursuant to any federal law, including either Medicare or ERISA, nor is any aspect of the claims asserted herein brought for the purpose of interpreting a federal contract or the terms of an ERISA plan.

2. The Defendant Drug Companies' fraudulent pricing and marketing of their prescription drugs have impacted elderly, disabled, and poor Hawaii citizens covered by Medicaid and Medicare by causing them to pay grossly excessive prices for the Defendants' prescription drugs. Defendants have taken advantage of the enormously complicated and non-transparent market for prescription drugs to engage in an unlawful scheme to cause Hawaii and its citizens to pay inflated prices for prescription drugs. The scheme involves the publication by Defendants of phony "average wholesale prices," which become the basis for calculating the cost at which "providers" - the physicians, clinics, and pharmacies who provide these prescription drugs to patients - are reimbursed by Plaintiff. Defendants reinforce this basic tactic with other deceptive practices described in this First Amended Complaint, including the use of secret discounts and rebates to providers and the use of various devices to keep secret the prices at which their drugs are

currently available in the marketplace to other purchasers. By willfully engaging in this scheme, Defendants have succeeded in having Plaintiff finance windfall profits to these providers. Defendants attempt to profit from their scheme by using the lure of these windfall profits competitively to encourage providers to buy their drugs instead of competing in the marketplace solely on the basis of legitimate factors such as price and the medicinal value of their drugs.

3. Fair and honest drug pricing is a matter of great importance to the State and its citizens. Expenditures by the State and its agencies for prescription drug reimbursement have increased dramatically in the past several years as a result, in part, of Defendants' fraudulent pricing scheme. Each year Hawaii spends millions of dollars on prescription drugs under the Hawaii Medicaid program. The cost of prescription drug services in the Hawaii Medicaid program has seen dramatic increases rising from \$25.4 million in 1997 to \$117 million in 2004, an increase of over 350%.

4. This exponential increase in prescription drug costs in recent years has contributed to a health care funding crisis within the State that requires action to ensure fair dealing between the Defendants and the State and Hawaii Medicare beneficiaries.

II. PARTIES

A. Plaintiff

5. This action is brought by the State of Hawaii for violations of 1) the Hawaii False Claims Act, Unfair Competition, Deceptive Trade Practices, Non-Disclosure, and Unjust Enrichment, and 2) as parens patriae on behalf of Medicare beneficiary purchasers for Unfair or Deceptive Acts or Practices and/or Unfair Competition, Deceptive Trade Practices, declared unlawful by Hawaii Revised Statutes ("H.R.S.") §480-2, H.R.S. §480-13 and H.R.S. § 481A-3(a)(9), (11) and (12) and Unjust

Enrichment. No claim is asserted for Medicare beneficiaries who made flat insurance co-payments and those whose co-payment was reimbursed in full by a third-party insurer.

6. The Attorney General is authorized to bring this action on behalf of the State of Hawaii and its agencies by virtue of H.R.S. §28-1. The Attorney General is authorized to bring this case for indirect purchasers based upon unfair or deceptive acts or practices and/or unfair competition declared unlawful by H.R.S. §480-2 by virtue of H.R.S. §480-14.

B. Defendants

7. Defendants are all pharmaceutical companies whose fraudulent schemes, including the publication of excessive and inflated prices for prescription drugs, as described in this First Amended Complaint, have caused to be presented to officers and/or employees of the State of Hawaii false or fraudulent claims for payment or approval of certain drugs to get these false or fraudulent claims paid or approved by the State of Hawaii Medicaid program, and have resulted in Hawaii and its citizens paying for drugs at inflated prices, as detailed below.

8. At all times material to this civil action, each Defendant has transacted business in the State of Hawaii by, including but not limited to, selling directly or through wholesalers its drugs, including those identified in this First Amended Complaint, to purchasers within the State of Hawaii.

9. Defendant Abbott Laboratories Inc. ("Abbott") is an Illinois corporation with its principal place of business located at 100 Abbott Park Road, Abbott Park, IL 60064-6400.

10. The following two Defendants are hereinafter referred to as the Alharma group:

(a) Defendant Alharma USPD, Inc. ("Alharma") is a Delaware corporation in the business of manufacturing and selling pharmaceuticals. Alharma's principal place of business is located at One Executive Drive, Ft. Lee, NJ 07024; and

(b) Defendant Purepac Pharmaceutical Co. ("Purepac") is a Delaware corporation in the business of manufacturing and selling pharmaceuticals. Purepac's principal place of business is located at 14 Commerce Drive, Suite 301, Cranford, NJ 07016. Purepac is a wholly owned subsidiary of Alharma, Inc.

11. Defendants AstraZeneca Pharmaceuticals LP and AstraZeneca LP ("AstraZeneca") are related Delaware corporations with their principal place of business located at 1800 Concord Pike, Wilmington, DE 19850.

12. The following two Defendants are referred to as the Aventis group:

(a) Defendant Aventis Pharmaceuticals, Inc. is a Delaware corporation with its principal place of business is located at 300-400 Somerset Corporate Boulevard, Bridgewater, NJ 08807-2854; and

(b) Defendant Aventis Behring, LLC n/k/a ZLB Behring is headquartered at 1020 First Avenue, King of Prussia, PA 19406-2854.

13. Defendant Barr Laboratories, Inc. ("Barr") is a Delaware corporation with its principal place of business located at 400 Chestnut Ridge Road, Woodcliff Lake, NJ 07677.

14. Defendant Baxter Healthcare Corporation ("Baxter") is a Delaware corporation with its principal place of business located at One Baxter Parkway, Deerfield, IL 60015.

15. The following three Defendants are hereinafter referred to as the Boehringer group:

(a) Defendant Boehringer Ingelheim Pharmaceuticals, Inc. ("Boehringer Pharm"), a wholly owned subsidiary of Boehringer Ingelheim Corp. ("Boehringer"), is a Connecticut corporation engaged in the business of manufacturing and selling pharmaceuticals. Boehringer Pharm's principal place of business is located at 900 Ridgebury Road, Ridgefield, CT 06877; and

(b) Defendant Boehringer Ingelheim Roxane, Inc. ("BIRI"), f/k/a Roxanne Laboratories, Inc., a wholly-owned subsidiary of Boehringer, is a Delaware corporation engaged in the business of manufacturing and selling pharmaceuticals. BIRI's principal place of business is located at 1809 Wilson Road, Columbus, OH 43216-6532; and

(c) Defendant Ben Venue Laboratories, Inc. ("Ben Vue") is a wholly owned subsidiary of Boehringer Ingelheim Corporation and is a Delaware corporation engaged in the business of manufacturing and selling pharmaceuticals. Ben Venue's principal place of business is located at 300 Northfield Road, Bedford, OH 44146. Ben Venue is also being sued for the conduct of its subsidiaries and/or divisions, including but not limited to Bedford Laboratories.

16. Defendant Bristol-Myers Squibb Co. ("Bristol-Myers") is a Delaware corporation engaged in the business of manufacturing and selling pharmaceuticals. Bristol-Myers' principal place of business is located at 345 Park Avenue, New York, NY 10154-0037. Bristol-Myers is also being sued for the conduct of its subsidiaries and/or divisions, including but not limited to E.R. Squibb & Sons, Inc. and Apothecon, Inc.

17. Defendant Dey, Inc. ("Dey") is a Delaware corporation with its principal place of business located at 2751 Napa Valley Corporate Drive, Napa, CA 94558.

18. Defendant Forest Pharmaceuticals, Inc. ("Forest") is a Delaware corporation engaged in the business of manufacturing and selling pharmaceuticals. Forest's principal place of business is located at 909 Third Avenue, New York, NY 10022.

19. Defendant GlaxoSmithKline Pharmaceuticals ("GlaxoSmithKline"), is a Delaware corporation with its principal place of business located at One Franklin Plaza, Philadelphia, PA 19102.

20. Defendant Hoffman-LaRoche, Inc. ("Hoffman-LaRoche") is a New Jersey corporation with its principal place of business located at 340 Kingsland Street, Nutley, NJ 07110-1199. Hoffman LaRoche is also being sued for the conduct of its subsidiaries and/or divisions, including but not limited to Roche Laboratories, Inc.

21. Defendant Hospira, Inc. ("Hospira") is a corporation organized under the laws of Delaware, with its principal offices located at 275 N. Field Drive, Lake Forest, IL. 60045, Hospira is the successor to Abbott's Hospital Products Division.

22. The following five Defendants are hereinafter referred to as the Johnson & Johnson group:

(a) Defendant Johnson & Johnson, Inc. ("J&J") is a New Jersey corporation engaged in the business of manufacturing and selling pharmaceuticals. J&J's principal place of business is located at One Johnson & Johnson Plaza, New Brunswick, NJ 08933; and

(b) Defendant Janssen Pharmaceutical Products, LP ("Janssen"), a wholly-owned subsidiary of J&J, is a New Jersey limited partnership engaged in the business of manufacturing and selling pharmaceuticals. Janssen's principal place of business is located at 1125 Trenton-Harbourton Road, Titusville, NJ 08560; and

(c) Defendant Ortho Biotech Products, LP ("Ortho Biotech"), a wholly owned subsidiary of J&J, is a New Jersey limited partnership engaged in the business of manufacturing and selling pharmaceuticals. Ortho Biotech's principal place of business is located at 700 U.S. Highway 202, Raritan, NJ 08869; and

(d) Defendant McNeil-PPC, Inc. ("McNeil"), a wholly owned subsidiary of J&J, is a New Jersey corporation engaged in the business of manufacturing and selling pharmaceuticals. McNeil's principal place of business is located at 7050 Camp Hill Road, Ft. Washington, PA 19034. McNeil Consumer & Specialty Pharmaceuticals ("McNeil Cons") is a division of McNeil; and

(e) Defendant Centocor, Inc. ("Centocor") is a wholly owned subsidiary of Defendant Johnson & Johnson with its principal place of business located at 800/850 Ridgeview Drive, Horsham, PA 19044. The principal drug it markets is Remicade for autoimmune conditions.

23. Defendant Merck & Co., Inc. ("Merck") is a New Jersey corporation engaged in the business of manufacturing and selling pharmaceuticals. Merck's principal place of business is located at One Merck Drive, Whitehouse Station, NJ 08889-0100.

24. The following two Defendants are hereinafter referred to as the Mylan group:

(a) Defendant Mylan Laboratories, Inc. ("Mylan") is a Pennsylvania corporation engaged in the business of manufacturing and selling pharmaceuticals, mainly through its subsidiaries. Mylan's principal place of business is located at 1500 Corporate Drive, Suite 400, Canonsburg, PA 15317; and

(b) Defendant Mylan Pharmaceuticals, Inc. ("Mylan Pharm"), a wholly owned subsidiary of Mylan, is a West Virginia corporation engaged in the business of manufacturing and selling pharmaceuticals. Mylan Pharm's principal place of business is located at 1500 Corporate Drive, Suite 400, Canonsburg, PA 15317.

25. The following two Defendants are hereinafter referred to as the Novartis group:

(a) Defendant Novartis Pharmaceuticals Corp. ("Novartis") is a New Jersey corporation engaged in the business of manufacturing and selling pharmaceuticals. Novartis' principal place of business is located at One Health Plaza, East Hanover, NJ 07936; and

(b) Defendant Sandoz, Inc. ("Sandoz"), formerly known as Geneva Pharmaceuticals, Inc., is a Delaware corporation engaged in the business of manufacturing and selling pharmaceuticals. Sandoz's principal place of business is located at 506 Carnegie Center, Princeton, NJ 08540.

26. Defendant Par Pharmaceutical Cos., Inc. ("Par") is a Delaware corporation with its principal place of business located at One Ram Ridge Road, Spring Valley, NY 10977. Par is also being sued for the conduct of its subsidiaries and/or divisions, including but not limited to Par Pharmaceutical, Inc.

27. Defendant Pfizer, Inc. ("Pfizer") is a Delaware corporation with its principal place of business located at 235 E. 42nd Street, New York, NY 10017. In April, 2003, Pfizer acquired Pharmacia Corporation. Pfizer is also being sued for the conduct of its subsidiaries and/or divisions, including but not limited to Warner-Lambert, Pfizer-Warner-Lambert, and Parke-Davis.

28. The following two Defendants are hereinafter referred to as the Schering group:

(a) Defendant Schering-Plough Corp. ("Schering-Plough") is a New Jersey corporation with its principal place of business located at 2000 Galloping Hill Road, Kenilworth, NJ 07033-0530. Schering-Plough has engaged in the practices described in this First Amended Complaint under its own name and through its wholly-owned subsidiary, Warrick Pharmaceutical Industries, Ltd.; and

(b) Defendant Warrick Pharmaceuticals Corporation ("Warrick"), is a Delaware corporation with its principal place of business located at 12125 Moya Boulevard, Reno, NV 89506-2600. Warrick is a wholly owned subsidiary of Defendant Schering-Plough and has been since its formation in 1993. Warrick manufactures generic pharmaceuticals.

29. Defendant TAP Pharmaceutical Products, Inc. ("TAP") is a Delaware corporation headquartered at Bannackburn Lake Office Plaza, 2355 Waukegan Road, Deerfield, IL 60015. TAP is jointly owned by Abbott Laboratories and Takeda Chemical Industries, Ltd.

30. The following four Defendants are referred to as the Teva Group:

(a) Defendant Teva Pharmaceuticals USA, Inc. ("Teva US") is a Delaware corporation engaged in the business of manufacturing and selling pharmaceuticals. Teva's principal place of business is located at 650 Cathill Road, Sellersville, PA 18960. Teva US is a subsidiary of an Israeli corporation, Teva Pharmaceutical Industries, Ltd. ("Teva Ltd."); and

(b) Defendant Ivax Corp. ("Ivax"), which became a wholly owned subsidiary of Teva Ltd. on January 26, 2006, is a Florida (formerly Delaware) corporation engaged in the business of manufacturing and selling pharmaceuticals. Ivax's principal place of business is located at 4400 Biscayne Boulevard, Miami, FL 33137; and

(c) Defendant Ivax Pharmaceuticals Inc. ("Ivax Pharm"), a wholly owned subsidiary of Ivax, is a Florida corporation engaged in the business of manufacturing and selling pharmaceuticals. Ivax Pharm's principal place of business is located at 4400 Biscayne Boulevard, Miami, FL 33137; and

(d) Defendant Sicor Pharmaceuticals, Inc., f/k/a Gensia Sicor Pharmaceuticals, Inc., is a Delaware corporation with its principal place of business located at 19 Hughes, Irvine, CA 92618-1902. Sicor is owned by Teva Ltd.

31. The following three Defendants are hereinafter referred to as the Watson group:

(a) Defendant Watson Pharmaceuticals, Inc. ("Watson") is a Nevada corporation engaged in the business of manufacturing and selling pharmaceuticals. Watson's principal place of business is located at 311 Bonnie Circle, Corona, CA 92880; and

(b) Defendant Watson Pharma, Inc., f/k/a Schein Pharmaceuticals, Inc. ("Watson Pharma"), a wholly-owned subsidiary of Watson Pharmaceuticals, Inc. since 2000, is a Delaware corporation. Watson Pharma's principal place of business is located at 311 Bonnie Circle, Corona, CA 92880; and

(c) Defendant Watson Laboratories, Inc. ("Watson Labs"), a wholly-owned subsidiary of Watson Pharmaceuticals, Inc., is a Nevada corporation with its principal place of business located at 311 Bonnie Circle, Corona, CA 92880.

32. This Court has jurisdiction over Plaintiff's claims as they involve claims arising exclusively under Hawaii statutes and the parens patriae authority of the Attorney General to act on behalf of the State of Hawaii and its citizens.

III. FACTUAL BACKGROUND

A. The Market for Prescription Drugs

33. The market for prescription drugs is extremely complex. It is composed of over 65,000 separate National Drug Codes (“NDCs”) and is non-transparent. (There is a separate NDC number for each dosage and package size of each drug manufactured by each manufacturer.) The essential structure of the prescription drug market is as follows: The drugs themselves are manufactured by enormous and hugely profitable companies such as Defendants. Defendants sell the drugs (with varying numbers of intermediaries, primarily wholesalers, involved in the process) to physicians, clinics, and pharmacies. These physicians, clinics, and pharmacies are called “providers.” The providers then in essence resell the drugs to those requiring them when the drugs are prescribed for, administered or dispensed to those patients.

34. In the case of Medicare and Medicaid programs, the price that is paid for the patient’s prescribed drug ultimately will be paid in whole or in large part by a government entity, and in the case of Medicare, the Medicare beneficiary pays a 20 percent co-payment. These entities are known as the “payers” or “third party payers.” In the case of Medicare and Medicaid programs the reimbursement is made directly to the provider, not to the patient.

35. This market structure means that the prescription drug market differs in two crucial respects from most markets.

36. First, in most markets, the ultimate consumer determines the product demand. This is not the case for prescription drugs. In the prescription drug market, the decision to use a prescription drug is made by the physicians, by the hospitals in which the patient is treated, home health care agencies, long term care pharmacies or

(with respect to the decision to use generic drugs versus brand-name drugs) a pharmacy. Since prescription drugs are dispensed only on a physician's order, the physician has the principal say in what drug will be chosen for the patient. However, hospitals, particularly teaching hospitals, also have considerable influence over this choice. If a hospital decides to put one drug as opposed to a competing drug on its "formulary" (the list of drugs that the hospital pharmacy stocks), the result will be that the physicians (particularly residents and attending physicians who are employed by the hospital) will likely order that drug rather than a competing drug. Likewise, although pharmacists do not prescribe drugs, pharmacists can exert an important influence over the choice of which drug the patient will purchase where there is a choice between buying different generic versions of the same drug.

37. A second difference of the prescription drug market from other markets is that in ordinary markets, the ultimate consumer of the product pays for it directly. In the prescription drug market, however, most payments are made by "payers" through private or public insurance programs.

38. The structure of the prescription drug market produces the following fundamental fact that underlies Defendants' unlawful scheme. If a Defendant Drug Manufacturer can cause a "payer" to reimburse for the Defendant's drug at a higher price than the price the provider paid to buy the drug from the Defendant, there will be a "spread" between the two prices, and that "spread" is retained by the provider as profit. The larger the "spread" that can be created for a particular drug, the greater the incentive the provider has for choosing, or for influencing the choice of, that drug rather than a drug from a competing manufacturer.

B. The Purpose of the Medicaid Program and How it Responds to the Complexity of the Drug Markets

39. The purpose of Hawaii's Medicaid program is to provide medical assistance to the State's neediest citizens.

40. Hawaii, through its Medicaid program, is a huge purchaser of drugs, currently purchasing over \$110 million annually. Although participation by the Defendants in the Hawaii Medicaid program is purely voluntary, because of the size of the Hawaii Medicaid program all Defendants have chosen to participate and sell drugs to Hawaii's Medicaid participants. Thus, Hawaii may at any given time have to reimburse a pharmacist for any of the drugs from any of the Defendants—a universe of many thousands of drugs.

41. Hawaii's task is further complicated in that Federal law places limits on what Hawaii may pay for any particular drug. According to 42 CFR § 447.331, Hawaii may reimburse pharmacists at "the lower of the — 1) Estimated acquisition costs plus reasonable dispensing fees established by the agency; or 2) Providers' usual and customary charges to the general public." 42 CFR § 447.331. The "estimated acquisition cost" ("EAC") means the agency's estimate of the price generally and currently paid by providers for a drug marketed or sold by a particular manufacturer or labeler in the package size of drug most frequently purchased by providers." 42 CFR § 447.301. Thus, pursuant to federal law, the highest price Hawaii can pay for a drug is the estimated acquisition cost of that drug to a provider. Hawaii currently estimates the EAC as the AWP minus 10.5%.

42. Defendants have hidden the wholesale prices at which they sell their drugs, and their knowledge about the prices at which wholesalers sell their drugs to providers, (as described in more detail herein) thus depriving Hawaii of access to the pricing information it needs to estimate accurately the acquisition cost of Defendants' drugs. Because neither Hawaii nor any other state has the knowledge base required to accurately estimate Defendants' drug prices, entire businesses have grown up to provide pricing information to the states and others. Two of these are of particular importance in this case. They are First DataBank and the Redbook. These compendiums purport to supply accurate price information on Defendants' drugs through information obtained from Defendants themselves.

43. Hawaii, as have most other states, has chosen First DataBank as its primary price source. First DataBank purports to supply the states with accurate information about the average wholesale price ("AWP") of all drugs that it receives from the drug manufacturers themselves. As First DataBank explained the concept of the Average Wholesale Price to its customers in September 1991:

Average Wholesale Price (AWP) is perhaps the most misunderstood concept in the pharmaceutical industry. The purpose of this article is to describe what is meant by AWP and to explain some of the underlying concepts involved in the acquisition, determination and maintenance of First DataBank's AWP.

AWP represents an average price that a wholesaler would charge a pharmacy for a particular product. The operative word is *average*. AWP never means that every purchase of that product will be exactly at that price. There are many factors involved in pricing at the wholesale level that can modify the prices charged even among a group of customers from the same wholesaler. AWP was developed because there had to be some price that all parties could agree upon if machine processing was to be possible.

At First DataBank, all pricing information is received in hard copy from the manufacturers. Catalogs, price updates, and other information reach us by fax, Federal Express, or U.S. mail. In the past two years, fax transmission has streamlined the acquisition of data to a large extent.

Exhibit 1.

For virtually the entire time period relevant hereto, First DataBank has represented that its published prices reflect actual average wholesale prices.

44. Because Hawaii, like most states, has no consistent source of systematic information about providers' acquisition cost for the drugs that it reimburses, Hawaii has relied on the prices reported to First DataBank by Defendants and published by First DataBank to estimate the acquisition cost of most of its drugs. Consistent with the explanation of AWP by First DataBank that some providers pay less than the published AWP and some more – that the AWP is only an average of wholesale prices - Hawaii set its reimbursement at AWP minus 10.5% for most of the relevant period. Hawaii also pays a separate dispensing fee to providers. It has never been Hawaii's intention to pay more for a drug than the cost of that drug to a provider.

45. As a practical matter, Hawaii, as most other states, is dependent on the First DataBank pricing reports for the maintenance of its Medicaid claims processing system. Hawaii contracts with ACS, a company whose business is to electronically process on a real-time basis the claims for drugs prescribed, or administered to, Hawaii Medicaid participants. At the time a prescription is presented to a pharmacy, the pharmacy submits a real-time claim to ACS electronically through what is called a Point-of-Sale ("POS") claims processing system. Upon receipt, the POS system monitors the reimbursement claim for eligibility, covered drugs, Medicaid cost containment policies and pricing. ACS then sends a real time response that includes the authorized

payment. Thereafter ACS sends Remittance and Status Reports (“R&S”) to Medicaid certified providers for paid real-time claims.

46. First DataBank sends its updated AWP’s for the thousands of NDC codes listed in its database to ACS on a weekly basis and this information is entered into the system. These prices become the basis for Hawaii’s reimbursements to providers. There is no other electronic source for this information.

47. Thus, Hawaii is functionally dependent on the accuracy of the data supplied by First DataBank, and supplied to First DataBank by the Defendants, in meeting its obligation to pay providers no more than the actual acquisition cost of their drugs.

C. Defendant’s Corruption of the Government Medicaid Programs

48. Defendants have defeated the intent of the Medicaid Program to pay providers at a rate no greater than their acquisition cost by reporting false and inflated AWP’s to First DataBank and/or by reporting prices which, they knew, because of the manner of First DataBank’s operations, would misrepresent Defendants’ true wholesale prices. One purpose of this scheme was and is to create the spread between the true wholesale price of a drug and the false and inflated AWP reported by First DataBank and thereby increase the incentive for providers to choose the drug for their patients, or, at a minimum, to counteract the same tactic used by a competitor.

49. The higher the spread between the AWP and the wholesale price the provider actually pays, the more profit a provider can make. Defendants often market their products by pointing out (explicitly and implicitly) that their drug’s spread is higher than a competing drugs’.

50. One example of how Defendants market this spread is Adriamycin, one of the drugs used in treating breast cancer. Defendant Pharmacia reported an AWP of \$241.36 for Adriamycin in April 2000 when the drug was actually selling at wholesale for as low as \$33.43, creating a “spread” of \$207.93. These spreads were then advertised to oncology providers in promotions that emphasized a wide margin of profit.

51. All of the Defendants have inflated their reported average wholesale prices of their drugs and those of their subsidiaries to levels far beyond any real average wholesale price of their drugs and those of their subsidiaries. One high-ranking industry executive has described it as the industry practice to do so.

52. In 2004, high-ranking executives of Defendants Roxanne, Dey, Aventis and Barr testified in Congress that the AWP was not a legitimate price. And, Defendant Dey’s chief financial officer testified before Congress as follows: “Why doesn’t Dey lower its AWP on generic drugs? The simple answer is that given the system that now exists our customers won’t buy from us if we lower our AWP.”

53. Dey brought a lawsuit against First DataBank, the publisher of the medical compendium that Hawaii Medicaid relies on for prescription drug pricing, because it published the actual average wholesale price of Dey’s drugs instead of the false average wholesale price sent to the publisher by Dey. Dey’s principal allegation in that lawsuit was that the publication of its actual prices for drugs was inconsistent with the practice in the industry of accepting and publishing reported, inflated AWPs, and that such publication put Dey at a competitive disadvantage because it had no “spread” to advertise.

54. Attached as Exhibit 2 to this First Amended Complaint is a list of drugs manufactured by the Defendants and/or their subsidiaries that the U.S. Department of Justice, after an extensive investigation, found to have inflated AWP's. The U.S. Department of Health and Human Services concluded, with respect to all drugs utilized in the Medicare Program that "[a] general conclusion reached in reviewing GAO [General Accounting Office] and OIG [Office of Inspector General] data is that there is a level of overstatement in the listed AWP for *all* drugs." Payment Reform for Part B Drugs, 68 Fed. Reg. 50,430 (August 20, 2003) (emphasis added).

55. Examples of the Defendants' practices of inflating AWP's include:

Manufacturer/Drug	2000 AWP	2000 Available Price	Spread	% Spread
Baxter Dextrose	\$542.88	\$86.40	\$456.48	528%
Ben Venue/Bedford Labs Etoposide, 20 ml.	\$550.00	\$45.13	\$504.87	1119%
Pharmacia/Upjohn Methylprednisolone Sodium Succinate (Solu- Medrol)	\$21.90	\$5.51	\$16.39	297%

56. Plaintiff has secured the false prices Defendants caused to be published from FirstData Bank, the business that supplies Hawaii, and most other states, with pricing information for use in its Medicaid program. Hawaii has also secured data showing the true average wholesale prices of Defendants' drugs from AmeriSourceBergen, a major drug wholesaler. (The Defendants have not produced comprehensive pricing data because discovery is just starting.) Attached as Exhibit 3 is a chart containing a summary of falsely reported and actual wholesale prices for various of Defendants drugs. Exhibit 3 compares the false prices published in First DataBank to

the true average annual wholesale prices of the major wholesaler for each year from 2001 - 2004, where such data are available.

57. Defendants have similarly illegally and deceptively misrepresented and inflated the wholesale acquisition cost ("WAC") of their drugs making it appear that any reduction in the purchase price beyond the listed WAC would result in a loss to the wholesaler and was, hence, unachievable, when in fact the WAC was secretly discounted by the Defendants to purchasers other than the Medicaid and Medicare programs through an elaborate charge back system.

IV. DEFENDANTS' EXACERBATION OF THE COMPLEXITIES OF THE MARKET AND AFFIRMATIVE CONCEALMENT OF THEIR WRONGDOING

58. Defendants have been able to succeed in their drug pricing scheme for more than a decade by exacerbating the complexities of the incredibly huge, and dauntingly complex, drug market, and by purposely concealing their pricing scheme from Hawaii and other payers, as set forth below.

59. The published wholesale price of the thousands of NDC numbered drugs may, and often does, change at any time. As a consequence, just to track the current published prices of drugs utilized by a state's citizen requires resources and expertise that Hawaii and most other states do not have.

60. Defendants have further exacerbated the inherent complexities of the drug market by utilizing marketing schemes that conceal the true price of their drugs in the following different ways.

61. First, Defendants sell their drugs in a unique manner that hides the true price of their drugs. This scheme works as follows. Upon agreeing on a quantity and price of a drug with a provider, or group of providers, the Defendants purport to sell the

agreed upon drugs to wholesalers with whom they have a contractual arrangement, at a price they call the Wholesale Acquisition Cost (“WAC”). The WAC may be higher than the price agreed upon by the provider and the drug manufacturer. The wholesaler then ships the product to the provider, charging the provider the (lower) price originally agreed upon by the drug manufacturer and the provider. When the wholesaler receives payment from the provider, it charges the manufacturer for the difference between the price agreed-to between the manufacturer and the provider and the WAC, and sends a bill to the manufacturer, called a “charge back,” for the difference between the WAC and the price actually paid by the provider. These charge backs, (or shelf adjustments, or other economic inducements) are kept secret, so that it appears that the wholesaler actually purchased the drug at the higher WAC price. The effect of this practice is to create the impression that the “wholesale price” of the drug is higher than it really is. Defendants hide other actual price reductions by directly paying providers market share rebates that are calculated long after the actual provider dates of the drugs.

62. Second, Defendants further inhibit the ability of Hawaii and other ultimate purchasers to learn the true cost of their drugs by wrapping the sales agreements they negotiate with providers in absolute secrecy, terming them trade secrets and proprietary, to preclude providers from telling others the actual price they paid.

63. Third, Defendants further obscure their true prices for their drugs with their policy of treating different so-called classes of trade differently. Thus, for the same drug, pharmacies are given one price, hospitals another and doctors yet another.

64. Fourth, some Defendants have hidden their real drug prices by providing free drugs and phony grants to providers as a further means of discounting the overall

price of their drugs. For example, Defendant TAP pled guilty to a federal criminal indictment for engaging in such conduct and paid \$875 million in fines and damage, and Defendant AstraZeneca paid \$355 million to settle federal fraud charges that it induced doctors to falsely bill Medicare and Medicaid.

65. Defendants have hidden their motives for utilizing an inflated AWP from the public. Indeed, one official, a high ranking employee of Dey, even went so far as to lie under oath about Dey's marketing of its spread. Only with the disclosure of materials secured by litigants in recent discovery has it become apparent that one reason Defendants were intentionally manipulating the nation's drug reimbursement system was to compete for market share on the basis of a phony price spread, instead of the true selling price of their drugs or the medicinal efficacy of these drugs to their users.

66. Defendants have further concealed their conduct by making sure that all of the entities purchasing drugs directly from the Defendants (and, hence, knowledgeable about the true price of their drugs) have had an incentive to keep Defendants' scheme secret. Defendants' scheme permits all providers, pharmacies, physicians, and hospitals/clinics, to make some profit off of Defendants' inflated spread, because they are all reimbursed in some manner on the basis of the AWP for at least some of the drugs they sell or administer. For providers, therefore, the greater the difference between the actual price and the reported AWP, the more money they make. Thus, providers willingly sign drug sales contracts requiring them to maintain secrecy about the prices they pay for drugs.

67. Defendants have continuously concealed the true price of their drugs and continued to publish deceptive AWP and WACs as if they were real, representative prices. Indeed, in the 2000 Edition of *Novartis' Pharmacy Benefit Report*, an industry trade publication, the glossary defines AWP as follows:

Average wholesale price (AWP) – A published suggested wholesale price for a drug, based on the average cost of the drug to a pharmacy from representative sample of drug wholesalers. There are many AWP available within the industry, AWP is often used by pharmacies to price prescriptions. Health plans also use AWP – usually discounted – as the basis for reimbursement of covered medications.

Novartis Pharmacy Benefit Report: Facts and Figures, 2000 Edition, East Hanover, NJ, Novartis Pharmaceuticals Corporation, p. 43.

68. Defendants' unlawful scheme has completely corrupted the market for prescription drugs. Instead of competing on prices and medicinal value alone, the Defendants have deliberately sought to create a powerful financial incentive for providers to prescribe drugs based primarily on the spread between the true price of a drug and its published AWP or WAC. Creating incentives for providers to prescribe drugs based on such a spread is inconsistent not only with Hawaii statutes, but also its public policy. Large price spreads on higher priced drugs encourage providers to prescribe more expensive drugs instead of their lower priced substitutes thereby increasing the cost of healthcare, and competition on the basis of such spreads has the potential to influence (consciously or unconsciously) providers to prescribe less efficacious drugs over ones with greater medicinal value. Because of Defendants' concealment of their scheme, Hawaii and its citizens have unknowingly underwritten this perversion of competition in the drug market. In sum, Defendants have been, and continue to be, engaged in an insidious, deceptive scheme that is causing Hawaii and

its citizens to pay scores of millions of dollars a year more than they should for their prescription drugs, and may well be inducing some providers to prescribe less efficacious drugs.

V. THE GOVERNMENTAL INVESTIGATIONS OF DEFENDANTS' CONDUCT

69. The first governmental investigation of Defendants' conduct began in 1995 when a small infusion pharmacy, Ven-a-Care of the Florida Keys, filed sealed *qui tam* actions with the Federal Government and in Texas, Florida, California and Illinois alleging that certain Defendants were intentionally inflating the reported AWP's of certain drugs, primarily physician administered drugs.

70. In 1997, in response to the Ven-a-Care Complaint, the Federal Government issued subpoenas to certain of the Defendants including Dey, Abbott and Warrick seeking pricing information from them.

71. In 2000, Congress began its investigation of the pricing practices of some of the Defendants in connection with the Medicare Part B program based on the materials it received through its subpoenas. As part of this investigation U.S. Representative Pete Stark, on September 28, 2000, wrote to the President of the Pharmaceutical Research and Manufacturers of America (of which most of the Defendants are members) as follows:

Drug company deception costs federal and state governments, private insurers and others billions of dollars per year in excessive drug costs. This corruptive scheme is perverting the financial integrity of the Medicare program and harming beneficiaries who are required to pay 20% of Medicare's current limited drug benefit. Furthermore, these deceptive, unlawful practices have a devastating financial impact upon the states' Medicaid Program....

The evidence I have obtained indicates that at least some of your members have knowingly and deliberately falsely inflated their representations of the average wholesale price ("AWP"), wholesaler acquisition cost ("WAC") and direct price ("DP") which are utilized by the Medicare and Medicaid programs in establishing drug reimbursements to providers. The evidence

clearly establishes and exposes the drug manufacturers themselves that were the direct and sometimes indirect sources of the fraudulent misrepresentation of prices. Moreover, this unscrupulous “cartel” of companies has gone to extreme lengths to “mask” their drugs’ true prices and their fraudulent conduct from federal and state authorities. I have learned that the difference between the falsely inflated representations of AWP and WAC versus the true prices providers are paying is regularly referred to in your industry as “the spread.” . . .

The evidence is overwhelming that this “spread” did not occur accidentally but is the product of conscious and fully informed business decisions by certain PhRMA members....

146 Cong. Rec. E1622 (daily ed. September 28, 2000) (September 28, 2000 letter from House Committee on Ways and Means, Subcommittee on Health, to Alan F. Holmer, President, Pharmaceutical Research and Manufacturers of America, Washington, D.C.

72. On December 21, 2000, Congress passed the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 (“BIPA”), Pub. L. No. 106-554, § 429(c) (2000) which required a comprehensive study of drug pricing.

73. Continuing Congress’ investigation of Medicare Part B pricing in 2001 Congressman Stark wrote to Defendant Bristol-Myers on February 22, 2001 outlining numerous apparent illegal pricing practices:

The evidence clearly shows that Bristol has intentionally reported inflated prices and has engaged in other improper business practices in order to cause its customers to receive windfall profits from Medicare and Medicaid when submitting claims for certain drugs. The evidence further reveals that Bristol manipulated prices for the express purpose of expanding sales and increasing market share of certain drugs where the arranging of a financial benefit or inducement would influence the decisions of healthcare providers submitting the Medicare and Medicaid claims.

147 Cong. Rec. E244-45 (daily ed. February 28, 2001).

74. In 2003, the House Committee on Energy and Commerce expanded Congress’ Medicare investigation into pricing practices in the state Medicaid program. On June 26, 2003, Chairman Billy Tauzin (R.-La.) and Oversight and Investigations

Subcommittee Chairman James Greenwood (R.-Pa.) wrote as follows to 26 drug companies, including many of the Defendants here:

The Committee on Energy and Commerce is conducting an investigation into pharmaceutical reimbursements and rebates under Medicaid. This inquiry builds upon the earlier work by this Committee on the relationship between the drug pricing practices of certain pharmaceutical companies and reimbursements rates under the Medicare program. In that investigation, the Committee uncovered significant discrepancies between what some pharmaceutical companies charged providers for certain drugs and what Medicare then reimbursed those providers for dispensing those drugs. This price difference resulted in profit incentives for providers to use the drugs of specific companies as well as higher costs to the Medicare system and the patients it serves. For example, we learned that one manufacturer sold a chemotherapy drug to a health care provider for \$7.50, when the reported price for Medicare was \$740. The taxpayer therefore reimbursed the doctor almost \$600 for dispensing the drug and the cancer patient had a \$148 co-payment. Such practices are unacceptable in the view of the Committee, which is why we are in the process of moving legislation to address these abuses.

The Committee has similar concerns regarding drug prices in Medicaid, which has a substantially larger pharmaceutical benefit than Medicare.

House Committee on Energy and Commerce Press Release, Tauzin, Greenwood Expand Medicaid Fraud Investigation (June 26, 2003) at http://energycommerce.house.gov/108/News/06262003_1002.htm.

75. This investigation is continuing. On December 7, 2004, the House Subcommittee of Oversight and Investigation of the Commerce and Energy Committee conducted a hearing on "*Medicaid Prescription Drug Reimbursement: Why the Government Pays Too Much.*" In his opening remarks, Chairman Joe Barton (R-TX) stated:

Data obtained by the committee from five of the largest retail pharmacy chains reveals that during the period of July 1, 2002 to June 20, 2003, the average acquisition costs for seven widely prescribed generic drugs was 22 cents, while the average Medicaid reimbursement just for those drugs alone was 56 cents, more than double the cost

Medicaid Prescription Drug Reimbursement: Why the Government Pays Too Much: Hearing Before the House Subcomm. on Oversight and Investigations, No. 108-126, at 5 (2004) available at http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.52&filename=97275.pdf&directory=/disk2/wais/data/108_house_hearings (opening statement of Joe Barton, Chairman, House Subcomm. on Oversight and Investigations).

76. The importance to Hawaii and the other states of the information being sought by this investigation was explained by Henry Waxman during the December 2004 House Committee on Energy and Commerce hearings on Medicaid pricing practices. Congressman Waxman explained that even though the federal government had access to the manufacturers' actual average manufacturers prices ("AMPs"), the states did not:

the drug industry was powerful, and they succeeded in securing a provision in the basic legislation that kept the Best Price and the AMP information a secret. Can you imagine that? The federal government knew this information, but we kept it a secret from the states. This has proved to be a costly error. Without this crucial piece of information, states who were, after all, responsible for establishing the reimbursement rate for prescription drugs could not set their reimbursement rates appropriately. As a result, [the states] continued to rely on the average wholesale price minus the arbitrary amount because they did not have the information needed to set a more appropriate reimbursement rate.

Id. at 23. (Emphasis added).

77. Concomitant with Congress' investigation, the United States Department of Justice and the National Association of Medicaid Fraud Control Units (NAMFCU) conducted their own much more limited investigation into 400 of the 50,000 NDC numbers state Medicaid programs reimbursed in 2000 concluding that some drug manufacturers were reporting inflated average wholesale prices for certain of these drugs.

78. As a result of all these investigations many states began to investigate on their own Defendants' drug pricing practices leading to lawsuits in some 20 separate states including Hawaii. Notwithstanding these investigations and lawsuits Defendants continue to publish, or participate in the publication of, inflated wholesale prices and continue to hide the true prices of their drugs including opposing discovery of the actual prices of these drugs in litigation.

VI. THE INJURY TO GOVERNMENTAL HEALTH PLANS CAUSED BY DEFENDANTS' FALSE WHOLESALE PRICES

A. The Hawaii Medicaid Program

79. Medicaid is a joint federal and state health care entitlement program authorized by federal law, with mandatory and optional provisions for eligibility and benefits covered, including prescription drugs. Plaintiff State of Hawaii, via the Department of Human Services ("DHS"), administers Hawaii's Medicaid program and reimburses physicians and pharmacies for drugs prescribed for, and dispensed to, Medicaid recipients. Hawaii Medicaid also pays the 20% co-payment for prescription drugs for Hawaii Medicare beneficiaries who are also qualified to receive Medicaid benefits.

80. In 2004 there were approximately 43,189 individual recipients of Hawaii's Medicaid drug services. The cost of drug services in the Hawaii Medicaid program have seen dramatic increases rising from slightly over \$20.7 million in 1997 to slightly over \$112.5 million in 2004, an increase of over 500%.

81. In its report to the Legislature on Act 259, Part III, Section 39 Prescription Drugs for Fee for Service Clients, the DHS reported expending \$63,255,737 for medication in calendar year 2000. There were approximately 35,000 eligible recipients.

In its report to the Twenty-Third Hawaii State Legislature in 2005, DHS reported that it spent \$112,575,993.82 for all prescription drugs in fiscal year 2004 in its Med-Quest program.

82. Hawaii's Medicaid program provides services through various programs such as the Fee-For-Service program that provides services to qualified persons who are aged 65 and over, or certified blind or disabled under which payment is made directly to the provider, and the Med-Quest program that provides coverage for all other qualified persons under a managed care program.

83. With some exceptions, reimbursement to pharmacies and physicians for drugs covered by the Hawaii Medicaid program is made at the AWP minus a percentage (currently 10.5%), plus a dispensing fee.

84. For a minority of the drugs purchased by Hawaii, the state sets its reimbursement rate at either the Federal Upper Limit ("FUL") or at a rate established by the State Maximum Acquisition Cost ("SMAC") Program. For multi-source drugs that have at least three suppliers, the Center for Medicaid Services ("CMS") generally establishes federal upper limits of FULs, defined as 150% of the least costly therapeutic equivalent (using all national compendia) that can be purchased by pharmacies in quantities of 100 tablets or capsule or, in the case of liquids, the commonly listed size. 42 C.F.R. § 447.332. As a practical matter CMS relies on the published AWP to set most of its FULs. The states may also set reimbursement rates for these drugs at rates lower than the FUL pursuant to the State SMAC program and Hawaii has done so in a number of instances.

85. At all relevant times, each Defendant was aware of Hawaii's Medicaid reimbursement formulas and Hawaii's reliance on the Defendants reported AWP's.

86. By publishing false and inflated wholesale prices, and by keeping their true wholesale prices secret, Defendants have knowingly enabled providers of drugs to Medicaid recipients to charge Hawaii false and inflated prices for these drugs, and interfered with Hawaii's ability to set reasonable reimbursement rates for these drugs. As a consequence, Hawaii's Medicaid program has paid more for prescription drugs than it would have paid if Defendants had published their true wholesale prices.

B. The Medicare Program

87. Medicare is a health insurance program created by the federal government for the elderly and disabled and other eligible persons. 42 U.S.C. 1395, *et. seq.* Typically, individuals become eligible for Medicare health insurance benefits if they are over 65 years of age, disabled, or have end stage renal disease. There are two major components of the Medicare Program, Part A and Part B.

88. Medicare Part B is an optional program that provides coverage for some healthcare services for Hawaii's participating elderly and disabled citizens not covered by Part A. 42 U.S.C. 1395j through 1395w-4. Medicare Part B is supported by government funds and premiums paid by eligible individuals who choose to participate in the program.

89. At issue here is Medicare Part B's limited benefit for drugs which are provided either: (a) incident to a physician's service and cannot generally be self-administered; or (b) in conjunction with the medical necessity of an infusion pump or nebulizer or other durable medical device payable under Medicare's DME benefit equipment ("DME").

90. In order to calculate the portion Medicare recipients must pay for Part B benefits, the Medicare program has looked to the falsely-reported AWP. The starting point is the calculation of the "allowable cost." From 1992 until 1997, the methodology for calculating the allowable cost of Medicare Part B drugs was 100% of the published AWP. From 1997 until January 1, 2004, the methodology for calculating the allowable cost of brand name (single-source) drugs was 95% of the published AWP. During this same time period, for multiple-source drugs, the allowable cost was calculated as 95% of the lower of (a) the median AWP for all sources of the generic forms of the drug or (b) the lowest brand-name product AWP. 42 C.F.R. §405.517. From January 1, 2004 until January 1, 2005, the methodology for calculating the allowable cost was 85% of the published AWP. Medicare pays 80% of the allowable cost. The remaining 20% is paid as a co-payment by the Medicare Part B beneficiary, or for individuals eligible for Medicaid (known as "dual eligibles"), by the Medicaid program. In addition, Medicare Part B beneficiaries are required to pay an annual deductible amount before Part B benefits are payable.

91. Because Medicare Part B participants must pay 20 percent of the allowable cost, which is based on the AWP, for their medications, and because Defendants have published false and inflated AWP for their drugs, Medicare Part B participants are paying substantially more for their co-pay than they would pay if Defendants published their true wholesale prices. Indeed, with respect to some drugs, the 20% co-pay for the Medicare Part B participant is greater than the cost of the drug.

VII. DEFENDANTS' CONDUCT INTENTIONALLY DISREGARDED ESTABLISHED LAW

92. Defendants have a duty to deal completely honestly with the State of Hawaii and they know it.

93. Moreover, it is long-settled law that it is unlawful for a seller to cause to be circulated a price at which no, or few, sales are actually expected, whether it is called a list price, suggested price, or benchmark price. *E.g., FTC v. Colgate-Palmolive Co.*, 380 U.S. 372 (1965); *FTC v. The Crescent Publishing Group, Inc.*, 129 F. Supp.2d 311 (S.D.N.Y. 2001). Defendants either knew of this law or acted in reckless and conscious disregard of it.

94. Congressional hearings have excoriated the pharmaceutical industry for causing untrue AWP's to be published.

95. Defendants have violated their duty to Hawaii and its citizens by intentionally misrepresenting their reported prices. By manipulating the AWP and keeping secret the true AWP, Defendant Drug Manufacturers inflated the prescription drug prices thus causing Hawaii and its citizens to overpay for their drug purchases.

VIII. TOLLING

96. Any applicable statute of limitation has been tolled by Defendants' knowing and active concealment and or as a continuing violation. Because of their knowing, affirmative, and/or active concealment of the fraudulent nature of the published AWP's, Defendants are estopped from relying on any statutes of limitations.

Count I – False Claims

(On Behalf of the State of Hawaii)

97. Defendant Drug Manufacturers knowingly caused to be presented to an officer or employee of the State a false or fraudulent claim for payment, and/or caused to be made or used a false record or statement and/or conspired to defraud the State by getting a false or fraudulent claim allowed or paid in violation of H.R.S. § 661-21 (a)(1), (2) and (3).

Count II – Unfair or Deceptive Acts or Practices

(On Behalf of Hawaii Medicare Beneficiaries and State of Hawaii)

98. Plaintiff re-alleges and incorporates all the above allegations.

99. The AWP scheme constitutes an unfair or deceptive act or practice in violation of Chapter 480, H.R.S.

H.R.S. § 480-2 provides in part:

(a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

100. Defendants violated this section by, including but not limited to, intentionally engaging in a scheme to falsify the true AWP of their drugs, reporting false, misleading and inflated pricing information on their drugs to national reporting services while at the same time concealing actual AWP pricing information. The reporting services in turn published the Defendants' inflated pricing information to substantial numbers of persons, including but not limited to, the Medicare/Medicaid program, in connection with the promotion of the sale of, or to increase the consumption of, Defendants' prescription drugs. This conduct caused the beneficiaries to overpay, and allowed Defendants to increase their market share.

Count III – Unfair Competition

(On Behalf of Medicare Beneficiaries and the State of Hawaii)

101. Plaintiff re-alleges and incorporates all the above allegations.

102. The AWP Scheme constitutes an unfair competition act in violation of Chapter 480, Hawaii Revised Statutes.

103. Defendants violated this section by, including but not limited to, intentionally engaging in a scheme to falsify the true AWP of their drugs, reporting false, misleading and inflated pricing information on their drugs to national reporting services while at the same time concealing actual AWP pricing information. The reporting services in turn published the Defendants' inflated pricing information to substantial numbers of persons, including but not limited to, the Medicare/Medicaid program, in connection with the promotion of the sale of, or to increase the consumption. This conduct caused the beneficiaries and the State to overpay, and allowed defendants to increase their market share.

Count IV – Deceptive Trade Practices Act

(On Behalf of Medicare Beneficiaries and the State of Hawaii)

104. Plaintiff re-alleges and incorporates all the above allegations.

105. H.R.S. § 481A-3 provides:

- (a) A person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, the person:
 - (9) Advertises goods or services with the intent not to sell them as advertised;
 - (11) Makes false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;
 - (12) Engages in any other conduct that similarly creates a likelihood of confusion or misunderstanding.

106. Defendants violated these sections and thereby committed a per se violation of H.R.S. § 480-2 by, including but not limited to, intentionally engaging in a scheme to falsify the true AWP of their drugs, reporting false, misleading and inflated pricing information on their drugs to national reporting services while at the same time concealing actual AWP pricing information. The reporting services in turn published the Defendants' inflated pricing information to substantial numbers of persons, including but not limited to, the Medicare/Medicaid program, in connection with the promotion of the sale of or to increase the consumption of Defendants' prescription drugs and thereby caused Hawaii and its citizens to overpay for Defendants' drugs.

Count V – Intentional and / or Negligent Misrepresentation

(On Behalf of the State of Hawaii)

107. Plaintiff re-alleges and incorporates all the above allegations.

108. Defendants intentionally and/or negligently caused to be published false and incorrect pricing information, as described above, in trade publications.

109. Defendants engaged in this scheme with the intent that others, including the State of Hawaii's Medicaid Program, use it in their business transactions.

110. Plaintiff State of Hawaii's Medicaid Program relied upon the false and incorrect AWP information, as alleged above, and was damaged by overpaying for Defendants' drug products.

Count VI – Unjust Enrichment

(On Behalf of Medicare Beneficiaries and the State of Hawaii)

111. Plaintiff re-alleges and incorporates all the above allegations.

112. Defendant Drug Manufacturers knew that pharmacies and physicians who obtained Medicare/Medicaid reimbursement for Defendants' drug products were not

entitled to improperly inflated reimbursement rates that were based on Defendants' false pricing information.

113. As a result of the excessive payments to health care providers of all or part of the "spread," Defendants were unjustly enriched at the expense of the State of Hawaii and its citizens.

114. Defendants knew they were not entitled to the profits that resulted from the sales obtained through the use of the spreads they created, and should be required to make restitution of all such amounts obtained through the use of such spreads.

WHEREFORE, Plaintiff and the Attorney General on behalf of its citizens, ask the Court for the following relief and seek judgment against the Defendant Drug Manufacturers as follows:

a. That general and special damages be awarded to the State of Hawaii and Hawaii Medicare beneficiaries.

b. That mandatory treble damages be awarded pursuant to H.R.S. §§ 480-13, 480-14, 661-21 or alternatively punitive damages.

c. That qualifying Medicare beneficiaries be awarded the statutory minimum damages of \$5,000 per incident for unfair and deceptive acts and practices against elderly persons pursuant to H.R.S. § 480-13(b).

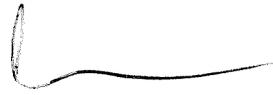
d. That the Court award costs of suit, pre-judgment and post-judgment interest, and attorneys' fees pursuant to H.R.S. § 480-13 and 480-14, 661-21 or as otherwise allowed by law; and such other relief as this Court deems just and proper.

e. That the Court assesses civil penalties pursuant to H.R.S. § 480-13.5 or 661-21 or as otherwise allowed by law.

f. That the Court enjoins the Defendant Drug Manufacturers from continuing the deceptive or unfair acts or practices complained of herein.

g. That the Court grants such other and further relief or equitable relief that it deems just and proper.

Dated: Honolulu, Hawaii, 7/11/06.



CHARLES BARNHILL, JR.
Special Deputy Attorney General
Attorney for Plaintiff

ROBERT LIBMAN
W. DANIEL "Dee" MILES, III
CLINTON CARTER
P. JEFFREY ARCHIBALD
MICHAEL WINGET-HERNANDEZ



WARREN PRICE, III
KENNETH T. OKAMOTO
RICK J. EICHOR

Attorneys for Plaintiff

STATE OF HAWAII v. ABBOTT LABORATORIES INC., et al.; Civil No. 06-1-0720-04
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