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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF LOS ANGELES

17
18 **THE STATE OF CALIFORNIA, 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,

21 Plaintiffs,

22 v.
23
24 **ABBOTT LABORATORIES, INC., WYETH Inc.,**
WYETH PHARMACEUTICALS Inc. and DOES
1-200

25 Defendants,

26 CASE NO. BC 287198 A
27
28 **ORIGINALY FILED UNDER**
SEAL ON JULY 28, 1998

COMPLAINT FOR MONEY
DAMAGES AND CIVIL
PENALTIES FOR VIOLATIONS
OF THE CALIFORNIA FALSE
CLAIMS ACT

29 The State of California, by and through its Attorney General, Bill Lockyer, brings this
30 action against Abbott Laboratories, Inc. ("Abbott"), Wyeth Inc., and Wyeth Pharmaceuticals Inc.,

1 (collectively, "Wyeth") pursuant to the California False Claims Act, California Government Code
2 sections 12650 et seq. and alleges that:

INTRODUCTION

4 Defendants Abbott and Wyeth defrauded California’s Medicaid Program (known as “Medi-
5 Cal”) by reporting excessively high prices for some of their prescription drugs with knowledge that
6 Medi-Cal relied on these reported prices for establishing reimbursement to its Medi-Cal providers for
7 these drugs. As a result, Medi-Cal sustained significant losses to its program by making
8 reimbursement payments for the drugs at grossly excessive prices compared to the prices at which the
9 Medi-Cal providers actually acquired the same drugs. In this lawsuit, the Attorney General is
10 demanding triple damages, civil penalties of up to \$10,000 for each false claim, and other damages
11 provided by California’s *qui tam* law. The Qui Tam Plaintiff, Ven-A-Care of the Florida Keys, Inc.
12 (“VAC”), originally provided information to the State of California which is the basis for this action
13 and VAC is included as a named party Plaintiff in this case.

I.

THE PARTIES

16 1. The Plaintiff in this action is the STATE OF CALIFORNIA (“STATE”) by and through
17 the CALIFORNIA ATTORNEY GENERAL (“ATTORNEY GENERAL”). At all times material to
18 this action, the California Department of Health Services (“D.H.S.”) and Medi-Cal were agencies of
19 the State, and their activities, operations and contracts in administering the Medi-Cal program were
20 paid largely from State funds. California’s D.H.S., acting on behalf of the State, provided Medi-Cal
21 benefits to qualified recipients, which included payment of claims to providers for the Abbott and
22 Wyeth prescription drugs specified herein. These claims were paid based upon the false, inflated,
23 direct price representations made by Abbott and Wyeth.

24 2. The Qui Tam Plaintiff, VEN-A-CARE OF THE FLORIDA KEYS, INC. ("VAC"),
25 is a corporation organized under the laws of the State of Florida, with its principal offices in Key West,
26 Florida. VAC's principal officers and directors include Zachary T. Bentley and T. Mark Jones, who
27 are each citizens of the United States and reside in Key West, Florida. The Qui Tam Plaintiff, VAC,
28 is a pharmacy and provides prescription drugs and pharmaceutical products such as the drugs

1 specified in this Complaint and the exhibits attached hereto.

2 3. Defendant, ABBOTT LABORATORIES Inc. (“ABBOTT”), is a corporation organized
3 under the laws of the State of Illinois, with its principal offices in Abbott Park, Illinois. At all times
4 material to this action, Abbott has transacted business in the State of California, including, but not
5 limited to, selling and distributing the prescription drugs at issue here to purchasers within the State
6 of California, including Los Angeles County.

7 4. Defendant, WYETH PHARMACEUTICALS, INC. (“WYETH”), is a corporation
8 organized under the laws of Pennsylvania and headquartered in Collegeville, Pennsylvania. Wyeth
9 Pharmaceuticals is engaged in the manufacturing, marketing, and sales of a variety of pharmaceuticals
10 worldwide. Wyeth Pharmaceuticals, Inc. holds itself out as a division of, and is wholly-owned by,
11 DEFENDANT WYETH, INC. (“WYETH”), a corporation organized under the laws of Delaware.
12 Wyeth, Inc. is the successor to Wyeth-Ayerst Laboratories, Inc. and Wyeth-Ayerst Laboratories
13 Company, and was formerly known as American Home Products Corporation. To the extent that the
14 acts of Wyeth Pharmaceuticals, Inc. at issue herein were performed by or otherwise attributable to
15 Wyeth, Inc., then judgment should be entered against Wyeth, Inc. where appropriate. At all times
16 material to this action, Wyeth Pharmaceuticals, Inc. has transacted business in the State of California
17 by, amongst other things, selling directly or through wholesalers its pharmaceuticals in the State of
18 California including Los Angeles County. For purposes of this Complaint, all of the Wyeth companies,
19 corporations, subsidiaries, and divisions will be collectively referred to as “Wyeth.”

20 5. The true names and capacities, whether corporate, individual or otherwise, of
21 Defendants sued herein as DOES 1-200, inclusive, are unknown to Plaintiff(s) at this time, who/which
22 therefore sue(s) said Defendants by such fictitious names. Plaintiffs will seek leave of this Court to
23 amend their complaint when the true names and capacities of said Defendants have been ascertained.
24 Plaintiffs are informed and believe, and thereon allege, that each of the Defendants sued herein as a
25 Doe is legally responsible in some manner for the wrongdoing and damages as herein alleged. Each
26 of these Defendants is, and at all material times was, an agent, servant, or employee of each of the
27 remaining Defendants, and was acting within the course and scope of said agency or employment with
28 the approval, knowledge, or consent of each of the remaining Defendants. Furthermore, each DOE

1 Defendant is, and at all material times was, the predecessor, successor or related business entity to the
2 named Defendants herein.

II.

JURISDICTION & VENUE

5 6. Jurisdiction is founded upon the State of California False Claims Act, California
6 Government Code sections 12651(a) and 12652(c)(1) et seq. This case was originally filed under seal
7 on July 28, 1998.

8 7. Abbott and Wyeth have regularly transacted business in the State of California by
9 selling their drugs directly or through others throughout the State, including Los Angeles County.
10 Defendants knew their drugs would be supplied to Medi-Cal recipients, including those residing in Los
11 Angeles County.

12 8. Pursuant to California Government Code Section 12652(c)(3), copies of all the
13 pleadings and a written disclosure of substantially all relevant evidence and information that VAC
14 possesses were served on the State by certified mail, return receipt requested, addressed to the
15 Attorney General in Sacramento, California.

16 9. The Qui Tam Plaintiff alleges: (A) That this action is not based upon allegations nor
17 transactions that were, at the time of the initial pleadings in this action, the subject of a civil suit or
18 an administrative civil money penalty proceeding in which the State was already a party; (B) that the
19 initial pleadings in this action were not based upon the public disclosure of allegations or transactions
20 in a criminal, civil, or administrative hearing, in an investigation, report, hearing or audit conducted
21 by or at the request of the Senate, Assembly, auditor or governing body of a political subdivision, or
22 by the news media; and (C) that, if the Court makes a finding against the Qui Tam Plaintiff as to the
23 allegations set forth in (A) and/or (B), the Qui Tam Plaintiff is the Relator and the original source of
24 the information, has direct and independent knowledge of the information on which these allegations
25 are based within the meaning of California Government Code Section 12652(d)(3)(A) and (B), and
26 voluntarily provided the information to the State before filing the initial pleadings in this action, which
27 are based on the information provided by the Qui Tam Plaintiff to the State.

III.

BACKGROUND OF HOW PRESCRIPTION DRUG CLAIMS ARE PAID UNDER MEDI-CAL

4 10. California routinely provides prescription drug coverage as part of its Medi-Cal
5 program for medical assistance to the poor, needy, and disabled.

6 11. Medi-Cal reimburses providers based on the providers' Estimated Acquisition Cost
7 ("EAC") for a drug product. Pursuant to Title 22, Section 51513 (a)(6) of the California Code of
8 Regulations, EAC is defined as "the Department's best estimate of the price generally and currently
9 paid by providers for a drug product sold by a particular manufacturer or principal labeler in a standard
10 package." Section 51513 (a)(6)(A) and (B) of the California Code of Regulations provides that the
11 EAC for a drug product can be based on either the product's Average Wholesale Price ("AWP") or,
12 as was the case with Abbott and Wyeth, a "Direct Price" ("DP") reported by the manufacturers.

13 12. Medi-Cal's reimbursement formula for Abbott's and Wyeth's drugs determined
14 Estimated Acquisition Cost at the manufacturers' Direct Price, pursuant to California Code of
15 Regulations section 51513.5, which provides in summary as follows:

16 The estimated acquisition cost for all of the drug products manufactured or distributed
17 by . . . Defendants Abbott and Wyeth . . . shall be the Direct Price listed for a standard package
18 in the Department's primary reference source; or for products not listed in the Department's
19 primary price reference source, the direct price listed for a standard package in the secondary
20 price reference source; or, if not listed in the secondary price source, the principal labeler's
21 catalogue.

22 13. With respect to the State of California, the Direct Price was supposed to represent the
23 price at which Abbott and Wyeth were selling their products to a pharmacy or end distributor without
24 a wholesaler being involved in the transaction. Based on information and belief, few, if any, other
25 State Medicaid programs in the Union other than California used Direct Price to reimburse providers
26 for their pharmaceutical products.

27 14. Medi-Cal obtains pharmaceutical price information from entities that are engaged in
28 collecting and reporting such data, including First Data Bank. The First Data Bank Division of the

1 Hearst Corporation is a nationally recognized company that specializes in gathering prescription drug
2 pricing and cost information, including Average Wholesale Price and Direct Price data. First Data
3 Bank then distributes this information on a national basis.

4 15. During all relevant times covered by this Complaint:

5 A. Medi-Cal contracted with a fiscal intermediary, Electronic Data Systems
6 (E.D.S.), to evaluate and process claims for payment.

7 B. Medi-Cal contracted with First Data Bank to provide the requisite drug pricing
8 information to establish provider reimbursements.

9 C. Medi-Cal has utilized First Data Bank as its primary reference source
10 and has utilized representations of Direct Price supplied by First Data Bank in setting providers'
11 reimbursement amounts for Abbott's and Wyeth's prescription drugs.

12 D. First Data Bank reported Abbott's and Wyeth's Direct Prices for the
13 specified prescription drugs based on the price information provided by those manufacturers. In the
14 1995 First Data Bank Blue Book, for example, First Data Bank described Direct Prices as "obtained
15 from the manufacturer."

16 E. Medi-Cal paid for drugs under two programs

- 17 (i) Pharmacy and;
18 (ii) Incident to a physician's service

19 16. The claims which are the subject of this action include claims from pharmacies,
20 pharmaceuticals administered incident to a physician's services, and claims for certain oral
21 pharmaceuticals, which were submitted to Medi-Cal to obtain reimbursement for prescription drugs
22 provided to Medi-Cal recipients. Claims for each prescription are submitted to Medi-Cal on hard copy
23 claim forms or through an electronic claims filing procedure using drug identification numbers known
24 as National Drug Code numbers (NDC's).

25 17. This case focuses on specified prescription drugs that are covered under Medi-Cal,
26 which were sold and/or distributed by defendants, and for which Medi-Cal, through its fiscal agents,
27 approved and paid claims to providers based on the falsely inflated direct price representations
28 reported by defendants. Defendants' inflation of their price reports caused each and every claim paid

1 by Medi-Cal for defendants' specified prescription drugs to be a false claim. Abbott and Wyeth, as
2 the parties knowingly supplying the false information that caused the claims to be false, are liable under
3 the California False Claims Act. Abbott's and Wyeth's inflation of their reported prices was a
4 misrepresentation which caused Medi-Cal to pay excessive reimbursement to providers who utilized
5 Defendants' products.

6 18. At all relevant times, VAC was a small, infusion pharmacy and a Medicaid provider in
7 Florida. Prices available to VAC from Defendants Abbott & Wyeth for the pharmaceutical products
8 in this complaint and the exhibits attached hereto, were available on a nationwide basis including
9 California's Medi-Cal providers.

10 **IV.**

11 **SUMMARY OF DEFENDANTS' FRAUD SCHEME**

12 19. As to defendant Abbott, the time period relevant to this complaint began on or before
13 January 1, 1988, continued up through June 1, 2001 at which time Abbott reduced its reported prices
14 to First Data Bank for many of its pharmaceutical products, and continues to the present time. As
15 to defendant Wyeth, the time period relevant to this complaint began on or before January 1, 1988 and
16 continues through to the present time. During the aforementioned times, Medi-Cal reimbursed health
17 care providers and pharmacies for certain of defendants' pharmaceutical products which were provided
18 to Medi-Cal beneficiaries. Those reimbursements were based on prices that Abbott and Wyeth
19 reported to the First Data Bank, which compiled and reported pharmaceutical prices to various third
20 party payers. Defendants caused the inflated Medi-Cal reimbursements by reporting false and
21 excessive prices for their products to First Data Bank, the price reporting service that Medi-Cal used
22 in setting its reimbursement rates. The difference between the true prices of defendants' drugs and
23 their falsely reported prices is referred to in the industry as the "spread."

24 20. The spread was an unlawful financial inducement arranged by defendants in order to
25 increase their market share and profits. Defendants caused Medi-Cal to reimburse providers' claims
26 for the specified prescription drugs at inflated amounts while, at the same time, selling the drugs to the
27 same providers at deep discounts, thus increasing the spread. The net result was to maximize the
28 market share of the defendants for the specified prescription drugs by inducing Medi-Cal providers

1 to use the defendants' brand of drugs over another. Consequently, Medi-Cal paid out more in
2 reimbursement than it would have or should have but for this unlawful conduct by the defendants.

3 21. As a result of their fraudulent and illegal scheme, defendants and their customers have
4 reaped hundreds of millions of dollars in illegal profits at the expense of the State of California and
5 directly contributed to Medi-Cal's soaring cost of providing prescription drugs for the State's needy.
6 The following chart reflects the fact that during the period from 1997 through 2001, California
7 succeeded in reducing the number of Medi-Cal recipients by almost 15%. However, Medi-Cal
8 prescription drug costs doubled over that period, from \$1.55 billion in 1997 to \$3.11 billion in 2001,
9 due in part to the false price reporting of Abbott, Wyeth and others, which inflated the prices paid by
10 Medi-Cal for such drugs, as illustrated by the chart below:

Year	Total Prescription Drug Cost to Medi-Cal	Number of Medi-Cal Recipients	Average Annual Prescription Cost Per Recipient
2001	\$3,110,003,138.75	11,200,055	\$277.67
2000	\$2,399,891,464.95	10,708,028	\$224.12
1999	\$2,129,665,292.40	10,945,838	\$194.56
1998	\$1,809,364,948.40	11,748,817	\$154.00
1997	\$1,553,151,142.74	13,115,974	\$118.41

18 22. Defendants knew that the providers' acquisition costs they were charging for many of
19 their prescription drugs were declining at the same time they falsely reported to First Data Bank that
20 the same drug prices were rising. The following chart highlights the fact that the true wholesale price
21 for Abbott's drug Vancomycin was declining in the marketplace at the same time that Abbott was
22 misrepresenting an inflated amount for the Direct Price of Vancomycin, which California relied upon
23 in reimbursing its Medi-Cal providers for this drug. As a result of these inflated representations of
24 Direct Price, Medi-Cal made excessive reimbursement payments to its providers, thus causing Medi-
25 Cal to sustain damages each year from 1994 to the present.

26 ///
27 ///
28

Vancomycin 1 gm. NDC# 00074-6533-01

Date	Abbott's False Direct Price & Medi-Cal's Corresponding Reimbursement	VAC's Price	Difference Between Reported Direct Price and VAC's Price (the "Spread")
3-04-1994	\$49.42	\$8.06	\$41.36
1-05-1995	\$50.90	\$8.06	\$42.84
1-05-1996	\$52.94	\$7.95	\$44.99
1-05-1997	\$55.59	\$7.60	\$47.99
1-05-1998	\$58.37	\$7.60	\$50.77
1-05-1999	\$61.29	\$7.40	\$53.89
1-05-2000	\$64.35	\$7.40	\$56.95
1-05-2001	\$64.35	\$7.40	\$56.95
6-01-2001	\$14.89	\$7.40	\$7.49
7-01-2002	\$5.76	\$4.36	\$1.40

14 23. On or about June 1, 2001, Abbott submitted revised pricing information and data to
15 First Data Bank which resulted in substantially reduced reported Direct Prices. Based on the lowered
16 reported Direct Prices, which were used as the basis for Medi-Cal reimbursement, Medi-Cal's
17 reimbursement amounts dropped, as demonstrated by the reduction in Medi-Cal's reimbursement for
18 1 gm of Vancomycin from \$64.35 on March 1, 2001 to \$14.89 on June 1, 2001. The 77% reduction
19 in Abbott's *reported* Direct Price for Vancomycin had nothing to do with actual pricing changes in
20 the marketplace. On or about July 1, 2002, Abbott further reduced their Direct Price for Vancoymycin
21 to \$5.76, bringing it more in line with prevailing market prices for this product.

22 24. Defendant Wyeth similarly created an illegal spread for its Ativan line of products, as
23 alleged herein. The spread caused Ativan reimbursement by California's Department of Health
24 Services, which administers the Medi-Cal Program, to be as much as five times the drug's actual cost
25 to providers.

26 |||

27 | //

V.

THE ACTIONABLE CONDUCT OF DEFENDANTS

A. AS TO DEFENDANT ABBOTT

4 25. At various times from January 1, 1988 to the present, defendant Abbott knowingly
5 caused Medi-Cal to pay false claims for their pharmaceutical products. As a result, Medi-Cal paid
6 grossly excessive, unreasonable, and unlawful amounts for claims for the pharmaceutical products
7 specified in this complaint and Exhibits 1 and 2 attached hereto and incorporated herein. The acts
8 committed by Abbott which caused Medi-Cal to pay or approve said false or fraudulent claims
9 included, but were not necessarily limited to, knowingly making false representations about the Direct
10 Prices of the drugs specified in this Section which defendant Abbott knew would be used by Medi-Cal
11 in paying or approving claims for the drugs specified in this Section. Each of said representations was
12 in fact used by Medi-Cal in paying or approving claims for the drugs specified in this Section.

13 26. For the purposes of specificity and particularity, Abbott's false price representations
14 for certain drugs submitted to First Data Bank by Defendant Abbott in 1996 have been organized into
15 a table entitled "Defendant Abbott's Subject Pharmaceutical Products (With Spread Calculations)"
16 attached to this Complaint as **Exhibit 1**. In this table, the specified pharmaceutical products are listed
17 by name, NDC number, Abbott's reported Direct Price to First Data Bank (and therefore its Medi-Cal
18 reimbursement), VAC's (ergo a provider's) price to acquire the same pharmaceutical products, the
19 gross profit or "spread" to the provider, and the gross profit or "spread" to the provider expressed as
20 a percentage of VAC's price. The amount listed under the estimated true Direct Price based upon
21 VAC's cost for the drugs reflects the actual prices available to VAC for the listed drugs from Abbott
22 or from a wholesaler. As a small pharmacy, VAC does not always receive the lowest prices available
23 to volume purchasers. Accordingly, a comparison of VAC's costs with the Direct Price
24 representations made by Defendant Abbott, which were used to set Medi-Cal's reimbursement
25 amount, establishes a minimum degree of falsity of Abbott's price representations for the prescription
26 drugs.

27 27. In addition to the pharmaceuticals listed on **Exhibit 1** (attached), Abbott created and
28 marketed the spread on hundreds of other drugs and pharmaceutical products. A table entitled

1 “Abbott’s Additional Subject Pharmaceutical Products” listing these drugs by name and NDC number
2 is attached as **Exhibit 2**. The State and VAC intend to pursue their claims with regard to all drugs
3 for which Abbott engaged in pricing fraud and marketing the spread to Medi-Cal providers.

4 28. The following is alleged with respect to Defendant Abbott as to all relevant periods of
5 time:

6 A. In furtherance of its scheme to inflate Medi-Cal’s reimbursement,
7 and to create an appearance of veracity for the falsely inflated Direct Prices it reported to First Data
8 Bank, Abbott regularly mailed to Medi-Cal catalogs containing the falsely inflated reported Direct
9 Prices.

10 B. Abbott systematically reported false or misleading prices by
11 concealing or otherwise failing to disclose contract terms that decreased the actual price of specified
12 prescription drugs such as discounts, rebates, off-invoice pricing, free goods, cash payments,
13 kickbacks, charge backs and other financial incentives;

14 29. The acts of defendant Abbott in providing false and misleading price information to
15 Medi-Cal:

16 A. Were committed knowingly in order to cause Medi-Cal to pay claims for the
17 specified drugs that substantially exceeded the amounts that otherwise would have been paid according
18 to law.

19 B. Were committed knowingly in order to cause Medi-Cal to pay unwittingly
20 excessive amounts for Abbott’s drugs.

21 C. Were committed knowingly in order to induce Abbott’s customers, and those
22 acting in conjunction with them, to cause Abbott’s drugs to be utilized for the treatment of Medi-Cal
23 recipients.

24 D. Were committed knowingly in order to induce Abbott’s customers and those
25 acting in concert with them to select Abbott’s drugs for Medi-Cal recipients rather than select similar
26 drugs of competitors, or prescribe alternative therapies.

27 E. Did in fact cause Abbott’s customers, and those acting in concert with them,
28 to utilize Abbott’s specified drugs for treatment of Medi-Cal recipients rather than competing drugs

1 or alternative therapies.

2 30. The impact of Abbott's inflated pricing was enormous. Providers chose Abbott's
3 products rather than competitors' equivalent drugs which had lower spreads. For example, in 1996,
4 Florida Medicaid utilization was overwhelmingly concentrated in Abbott's drug Vancomycin, which
5 had a spread that dwarfed that available on its competitors' drugs. The following table is illustrative:

**1996 FLORIDA MEDICAID UTILIZATION FOR
VANCOMYCIN HCL 1 GRAM**

Company/NDC	True Cost \$	Florida Medicaid Reimbursement	The Spread	Reimbursement Paid by Florida Medicaid	Market Share %
Abbott 00074-6533-01	\$ 7.95	\$58.75	\$50.80	\$381,480.78	83.37
Fujisawa 00469-2840-40	\$ 6.42	\$13.91	\$ 7.49	\$ 19,023.54	4.16
Lederle 00205-3154-15	\$ 3.98	\$ 9.36	\$ 5.38	\$ 21,297.64	4.65
Lilly 00002-7321-10	\$14.30	\$13.35	\$(0.95)	\$ 19,096.96	4.17
Schein 00364-2473-91	\$ 6.05	\$12.52	\$ 6.47	\$ 16,672.18	3.64

Based on information and belief, Abbott's spread and market share data in California for this same period of time were similar to that of the State of Florida.

31. Evidence that the manufacturer-created spreads in fact caused government-funded subsidies to providers is abundant. For example, in a letter dated May 11, 2001 from Timothy E. Bien of Omnicare, Inc. to Jeffrey F. Balzer, National Account Manager of Abbott's Hospital Products Division, Omnicare strongly protested Abbott's 2001 lowering of its reported Wholesale Acquisition Cost ("WAC") prices:

As we discussed in person, this is a written notification by Omnicare to Abbott requesting restitution of Omnicare profits lost as a result of the WAC changes by Abbott HPD.

1 Omnicare currently purchases \$87,722,773 annually of Abbott
2 products as follows:
3

PPD	\$36,868,784
HPD	\$ 2,987,094
Ross	\$13,900,000
Tap @50%	\$33,966,895

5 The HPD WAC changes cost Omnicare \$2,613,651 per quarter or
6 \$10,454,604 in revenue loss dropping right to our bottom line.
7

8 B. AS TO DEFENDANT WYETH

9 32. At various times from on or after January 1, 1988 and continuing through the present
10 date, defendant Wyeth knowingly caused Medi-Cal to pay false claims for drugs. As a result, Medi-
11 Cal paid grossly excessive, unreasonable and unlawful amounts for claims for the drugs specified in
12 this Section. The acts committed by Wyeth which caused Medi-Cal to pay or approve said false or
13 fraudulent claims included, but were not necessarily limited to, knowingly making false representations
14 about the Direct Prices of the drugs specified in this Section, which Wyeth knew would be used by
15 Medi-Cal in paying or approving claims for the drugs specified in this Section. Each of said
16 representations was in fact used by Medi-Cal in paying or approving claims for the drugs specified in
17 this Section.

18 33. For the purposes of specificity and particularity, the false price and cost representations
19 as they were submitted by Wyeth to First Data Bank in 2001 (unless otherwise noted) have been
20 organized into a table entitled "Defendant Wyeth's Prices & Spread for Ativan" (attached, **Exhibit**
21 **3**). The various sizes and strengths for the subject pharmaceutical products are listed by name, NDC
22 Number, Wyeth's reported Direct Price to First Data Bank (and therefore its Medi-Cal
23 reimbursement), VAC's (ergo a provider's) acquisition price for the same pharmaceutical products,
24 the gross profit or "spread" to the provider, and the gross profit or "spread" to the provider expressed
25 as a percentage of VAC's price. The amount listed under the estimated true Direct Price based upon
26 VAC's cost for the drugs reflects the actual prices available to VAC for the listed drugs from Wyeth
27 or from a wholesaler. As a small pharmacy, VAC does not always receive the lowest prices available
28 to volume purchasers. Accordingly, a comparison of VAC's costs with the direct price
representations made by Defendant Wyeth and set as Medi-Cal's reimbursement amount establishes
a minimum degree of falsity of Wyeth's price representations for the prescription drugs.

1 34. The acts of defendant Wyeth in providing false and misleading price information to
2 Medi-Cal:

3 A. Were committed knowingly in order to cause Medi-Cal to pay claims for the
4 specified drugs that substantially exceeded the amounts that otherwise would have been paid according
5 to law.

6 B. Were committed knowingly in order to cause Medi-Cal to pay unwittingly
7 excessive amounts for Wyeth's drugs.

8 C. Were committed knowingly in order to induce Wyeth's customers, and those
9 acting in conjunction with them, to cause Wyeth's drugs to be utilized for the treatment of Medi-Cal
10 recipients.

11 D. Were committed knowingly in order to induce Wyeth's customers and those
12 acting in concert with them to select Wyeth's drugs for Medi-Cal recipients rather than select similar
13 drugs of competitors, or prescribe alternative therapies.

14 E. Did in fact cause Wyeth's customers, and those acting in concert with them,
15 to utilize Wyeth's specified drugs for treatment of Medi-Cal recipients rather than competing drugs
16 or alternative therapies.

17 35. As a direct and proximate result of the actions of defendant Wyeth alleged herein, the
18 State of California has sustained damages recoverable under the California False Claims Act as set
19 forth below.

20 C. **CALIFORNIA LAW VIOLATED BY BOTH DEFENDANTS ABBOTT &
21 WYETH**

22 36. At all times material to this action, defendants "knew" or acted "knowingly," which
23 terms are used interchangeably in this complaint as they are defined in California Government Code
24 §§12650(b)(2), in causing the making, presenting, or submission of false claims. In that respect,
25 Defendants acted:

26 A. With actual knowledge of the falsity of the information;

27 B. In deliberate ignorance of the truth or falsity of the information;

28 C. With reckless disregard of the truth or falsity of the information.

1 37. At all times material to this action, defendants “caused” the making, presenting, or
2 submitting of false claims, as that term is defined in California Government Code §§12651, in causing:

3 A. The presentation of false claims for payment or approval by
4 Medi-Cal; and

5 B. The making and using of false statements and/or records for the purpose of getting
6 false claims approved or paid by Medi-Cal.

7 38. At all times relevant hereto, defendants Abbott and Wyeth knew that their conduct
8 would cause Medi-Cal to pay claims for the specified prescription drugs in amounts exceeding that
9 contemplated by applicable law in that:

10 A. Defendants knew that Medi-Cal contracted through its fiscal agent
11 with First Data Bank to obtain defendants’ reported Direct Prices in order to set Medi-Cal
12 reimbursement rates;

13 B. Defendants knew that California statutes and regulations limited payment of Medi-
14 Cal claims for the specified prescription drugs to an amount that represented the provider’s estimated
15 acquisition cost of the drugs;

16 C. Defendants knew that Medi-Cal was not authorized or permitted by applicable
17 law to pay claims for the specified prescription drugs in excessive amounts;

18 D. Defendants knew that Medi-Cal was required to pay claims to the provider
19 submitting the claim based upon the drug’s published Direct Price. Cal. Regs. Title 22, Sec.
20 51513(a)(6)(A);

21 E. Defendants knew that, pursuant to California Regs., Title 22, Section 51513.5
22 (a) and (b), Medi-Cal utilized their reported Direct Prices as the Estimated Acquisition Cost;

23 F. Therefore, defendants knew that California statutes and regulations prohibited
24 them from making false or misleading representations about the specified prescription drugs, including
25 false or misleading price representations, as specified below.

26 39. Defendants “knowingly” reported false and inflated “Direct Prices” to First Data Bank
27 and the other pricing services by systematically concealing or otherwise failing to report decreases in
28 the prices of the specified prescription drugs.

VI.

CAUSES OF ACTION AND DAMAGES

FIRST CAUSE OF ACTION

**CALIFORNIA FALSE CLAIMS ACT,
CAUSING PRESENTATION OF FALSE CLAIMS
California Government Code Section 12651(a)(1)**

6 40. The State and Qui Tam Plaintiff reallege and incorporate by reference Paragraphs 1
7 through 39 as if fully set forth herein.

8 41. At all times relevant to this complaint, Defendants Abbott and Wyeth “knowingly” [as
9 defined in California Government Code Sections 12650(b)(2)], caused to be presented to officers or
10 employees of the State of California, false claims for payment or approval, in the form of false price
11 information for the drugs specified herein. As a result, the State paid out as reimbursement to the
12 Medi-Cal providers of the specified prescription drugs, sums of money grossly in excess of the
13 amounts contemplated by law, resulting in great financial loss to the State of California.

14 42. Because of Defendants' conduct in violation of California Government Code section
15 12651(a)(1) as set forth in this Count, the State of California sustained damages in an amount
16 according to proof pursuant to California Government Code section 12651(a).

SECOND CAUSE OF ACTION

**CALIFORNIA FALSE CLAIMS ACT,
CAUSING A FALSE RECORD OR STATEMENT TO BE MADE OR USED TO GET A
FALSE CLAIM PAID OR APPROVED BY THE STATE OF CALIFORNIA;
California Government Code Section 12651(a)(2)**

22 43. The State and Qui Tam Plaintiff reallege and incorporate by reference Paragraphs 1
23 through 39 as if fully set forth herein.

24 44. At all times relevant to this complaint, Defendants Abbott and Wyeth “knowingly” [as
25 defined in California Government Code §12650(b)(2)] caused false records or statements to be made
26 or used to get false claims to be paid or approved by the State of California, in that defendants caused
27 false records or statements of prices of defendants’ specified prescription drugs to be used by the State
28 of California to pay or approve claims presented by the providers and suppliers of defendant’s

1 specified prescription drugs. These paid or approved claims were grossly in excess of the amounts
2 contemplated by law, resulting in great financial loss to the State of California.

3 45. Because of Defendants' conduct in violation of California Government Code
4 §12651(a)(2) as set forth in this Count, the State of California sustained damages in an amount
5 according to proof pursuant to California Government Code section 12651(a).

VII.

JURY DEMAND

8 46. The State and Qui Tam Plaintiff respectfully request a trial by jury as to all issues so
9 triable.

VIII.

PRAYER FOR RELIEF

12 WHEREFORE, the State of California and the Qui Tam Plaintiff, demand:

13 1. That judgment be entered in their favor and against Defendant, Abbott Laboratories,
14 Inc., Defendant Wyeth, Inc., Defendant Wyeth Pharmaceuticals, Inc., and DOES 1-200, with judgment
15 to be entered against said Defendants, and each of them, for the amount of damages to Medi-Cal
16 arising from claims for their specified prescription drugs and all other drugs as to which said
17 Defendants engaged in substantially similar misconduct:

18 A. On the First Cause of Action (California False Claims Act; Causing Presentation
19 of False Claims to the State of California) damages as provided by California Government Code
20 §12651(a) in the amount of:

- (1). Triple the amount of the State of California's damages;
 - (2). Civil penalties of Ten Thousand Dollars (\$10,000.00) for each false claim;
 - (3). Recovery of costs, attorneys' fees and expenses;
 - (4). Such other and further relief as the Court deems just and proper.

27 B. On the Second Cause of Action (California False Claims Act; Causing False
28 Records or Statements To Be Made or Used To Get False Claims Paid By the State of California)

- 1 damages as provided by California Government Code §12651(a) in the amount of:
- 2 (1). Triple the amount of the State of California's damages;
- 3 (2). Civil penalties of Ten Thousand Dollars (\$10,000.00) for each false
- 4 claim;
- 5 (3). Recovery of costs, attorneys' fees and expenses;
- 6 (4). Such other and further relief as the Court deems just and
- 7 proper.

8 2. Further, the Qui Tam Plaintiff, on its behalf, requests that it receive such maximum
9 amount as permitted by law, of the proceeds of this action or settlement of this action collected by the
10 State of California, plus an amount for reasonable expenses incurred, plus reasonable attorneys' fees
11 and costs of this action. The Qui Tam Plaintiff requests that its percentage be based upon the total
12 value recovered, including any amounts received from individuals or entities not parties to this action.

13

14 DATED: January 7, 2003

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