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12 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF LOS ANGELES**

14 THE STATE OF CALIFORNIA, EX.
15 REL. CALIFORNIA ATTORNEY
16 GENERAL BILL LOCKYER, and
17 through RELATORS MICHAEL
18 FOWLER, PEPPY FOWLER, VICTOR
19 CORTES, AND DANNY NEVAREZ, AS
20 REALTORS UNDER THE CALIFORNIA
21 FALSE CLAIMS ACT,

22 Plaintiffs,

23 v.

24 CAREMARK RX, INC., A DELAWARE
25 CORPORATION, AND CAREMARK,
26 INC., A DELAWARE CORPORATION,
27 and DOES 1 through 100,

28 Defendants.

CASE NO. BC307240

[Assigned to the Honorable Victoria G. Chaney in the Complex Litigation Program, Dept. 324]

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

(Government Code § 12650, et. seq.)

DEMAND FOR JURY TRIAL

29 Qui Tam Plaintiffs, Michael Fowler, Peppi Fowler, Victor Cortes, and Danny
30 Nevarez, on behalf of the State of California, by and through their undersigned counsel,
31 state as follows as their Third Amended Complaint under the California False Claims Act,

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1 California Government Code §12650 et. seq., against Defendants Caremark Rx, Inc. and
2 Caremark, Inc. (hereinafter collectively referred to as “Caremark”).

3 **I. THE PARTIES**

4 1. Plaintiffs, Michael Fowler and Peppi Fowler, reside in the State of Florida and
5 have been employed by Caremark as licensed pharmacists in the State of Florida at all
6 times relevant to this action. Mr. and Mrs. Fowler were each formerly employed at
7 Caremark’s facility located at 3250 Meridian Parkway in Fort Lauderdale, Florida
8 (hereinafter “The Florida Facility”). Mr. and Mrs. Fowler are experienced, highly-trained,
9 and highly-skilled professionals who were at all times employees in good standing with
10 Caremark – i.e., that is until they became Whistleblowers and were thereafter subject to a
11 barrage of retaliatory treatment by Caremark. Mr. and Mrs. Fowler also possess detailed
12 and intimate direct and independent knowledge of certain aspects of Caremark’s other
13 prescription drug processing facilities, located in various locations across the United States
14 as further set forth below.

15 2. Plaintiff, Victor Cortes resides in Helotes, Texas. Mr. Cortes was employed
16 by Caremark during the relevant time period at Caremark’s prescription drug processing
17 facility located in San Antonio, Texas (the “Texas Facility”). Mr. Cortes has intimate and
18 detailed direct and independent knowledge of Caremark’s policies and practices with
19 respect to its national policy and practice of re-stocking and re-selling returned prescription
20 drugs as carried out at the Texas Facility. Indeed, on a daily basis and for a period of
21 many months, Caremark assigned Mr. Cortes the task of, *inter alia*, re-stocking, or placing
22 back into Caremark’s inventory, returned prescription drugs, consisting solely of
23 refrigerated drugs so that Caremark could re-sell them to CALPERS Plan Members and
24 others.

25 3. Plaintiff, Danny Nevarez resides in Somerset, Texas. Mr. Nevarez was also
26 employed by Caremark during the relevant time period at the Texas Facility. Mr. Nevarez
27 has intimate and detailed direct and independent knowledge of Caremark’s policies and

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1 practices with respect to, *inter alia*, Caremark’s practice of canceling or changing the
2 “receive date” (further described herein) of prescription drug orders submitted to Caremark
3 by or for CALPERS Plan Members and other Caremark plan members that had become
4 too old or otherwise troubled. Caremark’s Managerial/Supervisory personnel trained Mr.
5 Nevarez to conduct such activities; Mr. Nevarez actually performed such activities on a
6 daily basis; and Caremark’s Manager of the Department in which he performed such tasks
7 met with him and praised him for his successful performance of such activities.

8 4. Defendant, Caremark Rx, Inc. (“Caremark Rx”), is a Delaware corporation
9 with its corporate headquarters located in Nashville, Tennessee. Caremark Rx conducts
10 business and has conducted business in the State of California at all times relevant to this
11 action. Caremark Rx is one of the largest pharmaceutical services companies in the
12 United States, with annual net revenues of more than twenty-five billion dollars
13 (\$25,000,000,000). Caremark Rx is the parent corporation of Defendant Caremark, Inc.

14 5. Defendant, Caremark, Inc., is a Delaware corporation through which
15 Defendant Caremark Rx conducts its business operations. Caremark conducts business
16 and has conducted business in the State of California on a regular and continuous basis at
17 all times relevant to this action. As the operating arm of Caremark Rx, Caremark Inc. has
18 been purporting to carry out the terms of certain contractual agreements between
19 Caremark Rx and the State of California and/or its political subdivisions, which are
20 described more fully herein.

21 6. The Caremark entities described in Paragraphs 4 and 5 will hereinafter be
22 referred to collectively as “Caremark.”

23 7. Caremark provides pharmacy benefit management services and therapeutic
24 pharmaceutical services. Caremark markets and sells those services to corporations,
25 insurance companies, unions, government employee groups, and managed care
26 organizations throughout the United States to deliver prescription drugs to the members of
27 those entities’ health insurance plans. Caremark is one of the nation’s leading prescription

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1 benefit managers or “PBMs.” Accordingly, Caremark provides more than twenty million
2 (20,000,000) plan participants with more than seventy million (70,000,000) prescriptions
3 through Caremark’s retail, mail service, and home delivery services.

4 **II. JURISDICTION AND VENUE**

5 8. This Court has jurisdiction over this matter because Caremark Rx and Caremark
6 have submitted to the jurisdiction of this State by conducting and transacting business in this
7 State on a regular and continuous basis, by contracting with the State of California and/or its
8 political subdivisions, and by committing acts within this State and against its residents that are
9 in violation of the California False Claims Act or *qui tam* statute.

10 9. This Court can properly exercise venue of this action pursuant to the provisions
11 of the California Code of Civil Procedure.

12 **III. FACTUAL ALLEGATIONS**

13 **A. Caremark’s Agreements With The State Of California And/Or Its Political** 14 **Subdivisions To Provide Prescription Drug Benefit Management Services** **To Current State Of California Employees, Retirees, And Their Dependents**

15 10. Caremark and the State of California and/or its political subdivisions, have
16 been parties to contractual agreements, pursuant to which Caremark provided prescription
17 drugs and drug benefit management services to employees and retirees of the State of
18 California, and their eligible dependants, who constitute the “participants” or “Plan
19 Members” of the State’s insurance plan, or some portion of that Plan. These Agreements
20 include a \$265 million (\$265,000,000) contract with the State of California Public
21 Employees’ Retirement System (“CALPERS”), *the largest buyer of health care benefits*
22 *after the United States Government*. (The Agreements are hereinafter collectively referred
23 to as “the CALPERS Agreements”) Under the terms of the CALPERS Agreements,
24 Caremark agreed to provide California Plan Members (hereinafter all California Plan
25 Members as “CALPERS Plan Members”) -- in exchange for hundreds of millions of dollars
26 in monetary remuneration -- with mail service and retail prescription drug plans as well as
27 access to several clinical programs. That \$265 million dollar contract between Caremark

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1 and CALPERS took effect beginning January 1, 2003, and therefore Caremark began
2 providing prescription drugs and services to CALPERS Plan Members under that particular
3 contract as of that date. CALPERS recently announced that its \$265 million dollar contract
4 with Caremark would not be renewed based upon concerns about Caremark raised in
5 lawsuits filed against it regarding its allegedly fraudulent and questionable business
6 practices.

7 11. Caremark operates four main prescription drug processing mail order
8 facilities in the following locations: San Antonio, Texas (the "Texas Facility"); Lincolnshire,
9 Illinois and now Mount Prospect, Illinois (the "Illinois Facility"); Fort Lauderdale, Florida and
10 now Miramar, Florida (the "Florida Facility"); and Phoenix, Arizona (the "Arizona Facility").
11 (These four Facilities will be hereinafter referred to as the "Four Main Facilities," unless
12 referenced is being made to one of these Facilities). Each of the Four Main Facilities are
13 massive facilities, each and every one of which has regularly employed, on a daily basis,
14 hundreds of pharmacists, hundreds of pharmacy technicians, and hundreds of other
15 supporting personnel. Each of the four Main Facilities dispenses and ships out, on a daily
16 basis, tens of thousands of prescriptions to plan members on thousands of different plans
17 across the country and outside the United States.

18 12. Accordingly, at all times at least since January 1, 2003, Caremark has
19 regularly dispensed and shipped prescription drugs from the Four Main Facilities to
20 CALPERS Plan Members residing in the State of California and elsewhere.

21 13. Each and every one of the Four Main Facilities has at all relevant times
22 operated pursuant to the terms of written, national "Standard Operating Procedures" or
23 "SOPs" in dispensing and shipping prescription drug orders to CALPERS Plan Members in
24 the State of California and elsewhere, and at the direction of national Caremark
25 Management who oversaw and directed local Management at each of the Four Main
26 Facilities.

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1 14. Caremark's national Executives and Management created, approved, and
2 signed each and every one of the written, national SOPs. Those national Executives and
3 Management created, approved, and oversaw dozens of such SOPs for the Four Main
4 Facilities, including but not limited to those relating to: returned drug processing and re-
5 sale; translation or entry of orders into Caremark's national and interconnected computer
6 system utilized by the Four Main Facilities; and changes or switches to those orders once
7 they entered into Caremark's national computer system.

8 15. Thus, Caremark's national Executives or Management created, drafted,
9 approved, signed, and oversaw written, national SOPs on the subject of returned drugs
10 beginning at least in the early 1990's. In fact, Michael and Peppi Fowler were privy to and
11 reviewed those returned drug SOPs beginning in the early 1990's and continuing until the
12 time that their employment with Caremark ended, in or about the Spring of 2004. Indeed,
13 as set forth more fully below, at the Florida Facility, Peppi Fowler not only reviewed the
14 written, national SOPs for returned drugs, she was actually required to engage in the
15 processing of those returned drugs.

16 16. In addition, Caremark's national Executives and Management further
17 governed, supervised, and directed the operations of the four Main Facilities by other
18 verbal and written directives to the local, on-site Managers, Supervisors, and employees at
19 each of the Four Main Facilities. In addition, Caremark Management physically located at
20 each of the Four Main Facilities instructed and directed the employees at each of those
21 sites to carry out practices and procedures dictated by Caremark's national Executives and
22 Management, including the written, national SOPs.

23 17. The Relators and their counsel, and Caremark and its counsel, are in
24 possession of those written, national SOPs, including those written, national SOPs relating
25 to returned goods practices to be carried out at the Four Main Facilities. Indeed, Caremark
26 has even produced those documents in other lawsuits and has provided them to the
27 California Attorney General's Office and to other government investigators. In addition, in

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1 numerous depositions in the lawsuit brought by the Fowler Relators in Florida state court
2 under the Florida False Claims Act, Caremark's present and former Executive, Managerial,
3 and other employees have testified to the creation, content, and carrying out of those
4 national SOPs for returned drugs, and those national SOPs have been introduced and
5 attached as exhibits at those depositions. Those depositions are in the possession of the
6 Plaintiff-Relators and their counsel in this case; they are in the possession of Caremark
7 and its attorneys; and they are in the possession of various governmental entities and
8 prosecutors. The California Attorney General's Office never requested copies of those
9 depositions and exhibits.

10 18. The CALPERS Agreements provide that prescription drug orders filled from
11 the Four Main Facilities had to be processed or "turned around" to the CALPERS Plan
12 Members within an "average" number of days measured from the date upon which
13 Caremark first actually received the orders at one of the Four Main Facilities from
14 CALPERS Plan Members to the date that Caremark actually dispensed and shipped those
15 orders out of the Four Main Facilities to CALPERS Plan Members residing in the State of
16 California or elsewhere (i.e., for instance retirees or dependents who may not live in the
17 State of California). Information specific to the CALPERS contracts was available to be
18 viewed by the employees at the Four Main Facilities on Caremark's national computer
19 system utilized by the Four Main Facilities, including information relating to turnaround time
20 and other contractual provisions of the CALPERS Agreements.

21 19. In fact, Caremark's Managerial employees at the Florida Facility regularly
22 emphasized in meeting and other communications to Mr. and Mrs. Fowler, and to all of
23 Caremark's employees at that site, that Caremark was required to "turn around" the orders
24 from CALPERS Plan Members and from other Plan Members so as to meet Caremark's
25 contractual "turnaround time" penalties and to avoid paying the CALPERS Plan and other
26 Caremark plans monetary penalties if Caremark failed to do so. Indeed, Caremark's
27 employees at the Florida Facility, including the Fowler Relators, were provided with

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1 information about the turnaround times (days in house) being achieved not only at the
2 Florida Facility, but at the other Four Main Facilities – almost as if it was a competition
3 between the Four Main Facilities. This information was provided at what Caremark termed
4 “Town Meetings” that local Caremark Management carried out at the Four Main Facilities
5 on a regular basis, and in other forms such as posters or boards within the sites. Those
6 Caremark created types of meetings were attended by the Relators at their respective
7 sites.

8 20. In the event that Caremark was unable to meet such average processing
9 deadlines, or average “Turnaround Times,” Caremark was subject to monetary penalties
10 under the CALPERS Agreements, to be paid by Caremark to CALPERS on a quarterly
11 basis. The Fowler Relators and Relator Nevarez know this because they were repeatedly
12 told these facts by Caremark Management, and were told that Caremark faced such
13 penalties under the CALPERS Agreements and all other agreements with plans. In fact,
14 while this case was under seal, Caremark not only admitted to the California Attorney
15 General’s Office that it had such obligations under the CALPERS Agreements, but, upon
16 information and belief, represented to that Office that it met those obligations without
17 engaging in fraud.

18 **B. Caremark’s False, Fraudulent, And Potentially Dangerous Practices**
19 **In Carrying Out The Terms Of The CALPERS Agreements**

20 **1. Re-Stocking And Re-Sale Of Returned Drugs**

21 **THE FLORIDA FACILITY: Caremark’s Re-Stocking And Re-Sale Of**
22 **Returned Prescription Drugs At The Florida Facility, And Its Re-Shipment**
23 **Of Other Returned Prescription Drugs To The Illinois Facility For**
24 **Stocking And Re-Sale, Without Disclosure Or Credit To The CALPERS**
25 **Plan, As Mandated By Caremark’s National, Written SOPs For Returned**
26 **Drugs**

25 **“Processing” Returned Drugs**

26 21. At all times relevant to this action, the Florida Facility regularly received,
27 through the United States mail, by fax, or otherwise, prescription drug orders from

1 CALPERS Plan Members residing in the State of California or elsewhere. This normally
2 happened in one of two ways. One, CALPERS Plan Members, or physicians on their
3 behalf, submitted prescription drug orders directly to the Florida Facility which were then
4 dispensed and directly shipped by the Florida Facility to those CALPERS Plan Members
5 residing in the State of California or elsewhere. Mr. and Mrs. Fowler possess knowledge of
6 this because they processed, assisted in the processing, or were otherwise involved with
7 the processing of these prescription drug orders sent by CALPERS Plan Members to the
8 Florida Facility which were dispensed and shipped by the Florida Facility to CALPERS Plan
9 Members residing in the State of California or elsewhere.

10 22. Secondly, in other instances and on a regular basis, CALPERS Plan
11 Members, or physicians on their behalf, submitted prescription drug orders directly to one
12 of the other Four Main Facilities, i.e., directly to the Illinois Facility, the Texas Facility, or the
13 Arizona Facility. However, Caremark regularly re-directed those orders, which had been
14 originally received by one of those other Four Main Facilities, to the Florida Facility.
15 Caremark did this for its own business convenience as a way to even the workflow among
16 the Four Main Facilities, or for a variety of other reasons. Mr. and Mrs. Fowler possess
17 knowledge of this because they processed, assisted in the processing, or were otherwise
18 involved with the processing of these prescription drug orders which were originally sent by
19 CALPERS Plan Members to one of the other Four Main Facilities, which were then
20 regularly to the Florida Facility and ultimately dispensed and shipped by the Florida Facility
21 to CALPERS Plan Members residing in the State of California or elsewhere.

22 23. However, in certain instances, CALPERS Plan Members, or others on their
23 behalf including mailing services, returned the prescription drugs that the Florida Facility
24 had originally dispensed and shipped to those CALPERS Plan Members.

25 24. Those drugs were returned by CALPERS Plan Members, or by others on
26 their behalf including mailing services, for at least the following reasons: Caremark sent the
27 wrong medication; Caremark sent the wrong dosage of the medication; Caremark sent the

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1 medication to the wrong address; Caremark sent the medication but it was damaged or
2 destroyed in transit; Caremark sent the medication but it was “found loose” in the mail by
3 the mailing/delivery personnel; Caremark sent the medication without proper temperature
4 stabilization or because temperature stabilization was not maintained after being sent by
5 Caremark; Caremark switched the medication that had been actually ordered to another
6 medication without authorization from the CALPERS’ Plan Member’s physician’s office
7 and then sent that unauthorized medication through the mails; Caremark sent the
8 medication but it was returned back by Federal Express, the Postal Service, or other
9 mailing service; or the medication had been recalled by its manufacturer.

10 25. Upon receipt of those returned drugs at the Florida Facility, those returned
11 drugs from or for CALPERS Plan Members were processed. Instead of destroying those
12 returned drugs upon receipt back at the Florida Facility, Caremark’s employees at the
13 Florida Facility were required by Caremark’s national Executives and Management, by the
14 Management on-site at the Florida Facility, and pursuant to Caremark’s written, national
15 SOPs for returned drugs, *not* to destroy those returned drugs. Instead, Caremark’s
16 employees at the Florida Facility were required by those Executive and Management
17 officials, and pursuant to Caremark’s written, national SOPs for returned drugs, to
18 “process” those returned drugs.

19 26. Thus, at all times relevant to this action, including the time period beginning
20 with the January 1, 2003 effective date of the \$265 million dollar contract between
21 Caremark and CALPERS, pursuant to those national, written SOPs for returned drugs,
22 Caremark regularly directed and required unlicensed, non-pharmacists (and sometimes
23 pharmacists) at the Florida Facility to view, i.e., physically “eyeball,” those returned
24 prescription drugs from CALPERS Plan Members and other Caremark plan members, and
25 to discard or destroy only those packages they believed had been actually opened or
26 damaged in the mail – and maybe still not even then were they destroyed.

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1 27. However, before taking the time to “eyeball” those returned drugs from
2 CALPERS Plan Members and other Caremark plan members, Caremark’s employees at
3 the Florida Facility regularly allowed those returned drugs to languish in the Florida Facility
4 without being “examined” because Caremark’s Management failed and refused to provide
5 the manpower for those returned prescription drugs to be processed. Therefore, returned
6 drugs from CALPERS Plan Members and other Caremark plan Members at the Florida
7 Facility sometimes sat for days, weeks, or even months prior to being “eyeballed” for
8 processing, or re-stocking and re-sale to other unsuspecting Caremark customers.

9 28. In fact, because Caremark Management failed to provide the resources
10 necessary to even allow Caremark’s employees to promptly engage in the “eyeballing” of
11 returned prescription drugs to carry out the written national SOPs for returned drugs,
12 Relator Peppi Fowler regularly complained to officials at the Florida Facility regarding the
13 back-log of returned drugs at the Florida Facility.

14 29. Moreover, the unlicensed, non-pharmacists and all other personnel who
15 ultimately were required to carry out Caremark’s written, national SOPs for returned drugs
16 and to engage in the “eyeballing” of returned drugs from CALPERS Plan Members and
17 other Caremark plan members at the Florida Facility, had no expertise in making the
18 decision as to whether or not a particular returned drug should be re-stocked and re-sold or
19 destroyed.

20 30. More importantly, when those personnel at the Florida Facility got around to
21 processing returned drugs from CALPERS Plan Members and other Caremark plan
22 members for purposes of carrying out Caremark’s written, national SOPs for returned
23 drugs, they did *not* subject those returned drugs to any analysis, testing, or investigation
24 that would have allowed them to ensure that those returned drugs had not been tampered
25 with, altered, modified, or adulterated – after having been sent at least twice through the
26 United States mail or by another mailing or delivery service.

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1 31. Neither Caremark's written national SOPs for returned drugs nor Caremark
2 Management required or directed Caremark's employees to conduct any analysis, testing,
3 or investigation that would have ensured that those returned drugs had not been tampered
4 with, altered, modified, or adulterated.

5 32. Consistent with the dictates of Caremark's written, national SOPs for
6 returned drugs, Caremark's employees at the Florida Facility *did not* automatically destroy
7 the CALPERS Plan Members' returned drugs or other plan members' returned drugs,
8 despite the fact that those employees could not and did not ascertain the handling and
9 storage conditions of those prescription drugs from the time they first left Caremark's
10 prescription drug processing site through the time those drugs were eventually returned to
11 Caremark, days or weeks later. Indeed, in accordance with Caremark's written, national
12 SOPs for returned drugs, and at the direction of Caremark's Management, Caremark's
13 employees at the Florida Facility were not required to be able to ascertain those storage
14 and handling conditions of those returned drugs in order to deem them suitable for re-
15 stocking and re-sale by Caremark.

16 33. Consistent with Caremark's written, national SOPs for returned drugs and at
17 the direction of Caremark Management, Caremark's employees at the Florida Facility were
18 required to use, and did use, hot blow dryers or other heat emitting devices to remove the
19 patient labels from those returned prescription drugs from CALPERS Plan Members and
20 other Caremark plan members, possibly even subjecting those returned drugs to further
21 damage by way of exposure to extreme heat.

22 34. In carrying out Caremark's written, national SOPs for returned drugs and at
23 the direction of Caremark Management, Caremark's employees at the Florida Facility then
24 threw away the original patient labels that had been affixed to the returned drugs at the
25 time that they were first shipped out by Caremark from the Florida Facility to CALPERS
26 Plan Members residing in the State of California and elsewhere and to other Caremark
27 plan members.

1 35. In carrying out Caremark's written, national SOPs for returned drugs and at
2 the direction of Caremark Management, Caremark's employees at the Florida Facility
3 ultimately determined which returned drugs from CALPERS Plan Members and other
4 Caremark plan members would be re-stocked and re-sold by Caremark, including to other
5 CALPERS Plan Members.

6 36. At the Florida Facility, Caremark likewise generally did not regularly return or
7 credit CALPERS Plan Members with the co-payments that they had made for the purchase
8 of those returned drugs, unless those Plan Members complained to Caremark's
9 representatives.

10 37. In carrying out Caremark's national, written SOPs for returned drugs and at
11 the direction of Caremark Management, at all relevant times in situations where Caremark
12 received back returned drugs from or for CALPERS Plan Members and other Caremark
13 plan members at the Florida Facility, Caremark's employees did *not* credit or pay back, or
14 refrain from billing CALPERS in the first instance, for those returned drugs.

15 38. In fact, the Caremark computer system at the Florida Facility, which was part
16 of the interconnected computer system used by Caremark on a national basis and at all of
17 the Four Main Facilities, actually had a function and button that would have allowed
18 Caremark's employees at the Florida Facility and other Four Main Facilities to make such
19 payments or credits to the CALPERS Plan or to have stopped Caremark from billing
20 CALPERS for those returned drugs in the first instance. Further, Caremark has now
21 already admitted this to be the case in the Florida Action.

22 39. However, Caremark intentionally chose not to utilize that function. Further,
23 Caremark has already admitted this to be the case in the Florida Action. Instead,
24 consistent with Caremark's national, written SOPs for returned drugs and at the direction of
25 Caremark Management, Caremark directed its employees *not* to utilize that function and
26 not to credit back or to refrain from billing the CALPERS Plan and its other plans in the first
27 instance for those returned drugs. Indeed, the policy, practice, and procedure of not

1 paying or crediting back the CALPERS Plan and Caremark's other plans was mandated by
2 Caremark Management. Even if the national, written returned drug SOPs would have
3 allowed for the paying or crediting back to CALPERS Plan or the refraining from billing the
4 CALPERS Plan in the first instance for those returned drugs, Caremark's national and
5 local Management at all times directed that Caremark's employees at the Florida Facility
6 and the other Four Main Facilities not do so.¹

7 **Fraudulent Documents And Computer Entries**

8 40. Caremark's fraudulent and potentially dangerous national, written SOPs, and
9 its policies, practices, and procedures with respect to returned drugs which were carried
10 out at the Florida Facility were not just limited to the actual re-stocking, or shipment to
11 another site for re-stocking.

12 41. Caremark's employees, as required by Caremark's national, written SOPs for
13 returned goods practices and at the direction of Caremark Management, had to fill out a
14 written "Return Goods Memo" or "RGM" form with respect to each and every returned
15 drug they received from or for a CALPERS Plan Member (i.e., or from or for any other
16 Caremark plan member). Further, Caremark has now already admitted this to be the case
17 in the Florida Action.

18 42. Thus, with respect to each and every returned drug order received back from
19 or for a CALPERS Plan Member by Caremark at the Florida Facility, Caremark's
20 employees were required to fill out an individual RGM form indicating on the form, among
21 other data, the name of the CALPERS Plan Member who returned the drug(s) or on whose
22 behalf the drug was returned, and other personal identifying data regarding that CALPERS
23 Plan Member; the name of the drug(s) from that order being returned; the date that
24 Caremark originally shipped the drug(s) in that order to the CALPERS Plan Member; the
25 date that the returned drug(s) in that order were processed by Caremark's employees; the

26 1 At the Florida Facility, Caremark likewise generally did not regularly return or credit individual
27 CALPERS Plan Members with the co-payments that they had made for the purchase of those returned drugs,

1 reason for the return of the drugs in that order; each unique prescription number assigned
2 by Caremark and associated with each and every individual drug being returned; the
3 unique order number assigned by Caremark that applies to every prescription within that
4 order; and, as set forth more fully below, whether the drug(s) in that order were allegedly
5 going to be destroyed or re-stocked; and other miscellaneous information. Further,
6 Caremark has now already admitted this to be the case in the Florida Action.

7 43. In addition, at the direction of, and under the supervision of, Caremark's
8 Management, Caremark's employees at the Florida Facility were required to create, and
9 regularly created, fraudulent entries onto those RGM form.

10 44. Therefore, on those RGM forms, when returned drugs from CALPERS Plan
11 Members were going to be re-stocked by Caremark instead of destroyed -- including being
12 re-stocked by being sent from the Florida Facility to the Illinois Facility for re-stocking --
13 Caremark's employees intentionally indicated on those RGM forms that those returned
14 drugs had actually been *destroyed* at the Florida Facility by circling the word "destroyed"
15 near the bottom of the RGM document, even though those drugs had not been and were
16 not going to be destroyed, and even though they were actually going to be re-stocked.
17 Further, Caremark has now already admitted this to be the case in the Florida Action.

18 45. Thus, over the years, Caremark's employees created thousands of fraudulent
19 RGM records allegedly supporting their purported "destruction" of the returned drugs in
20 support of their claims for payment to the CALPERS Plan for those drugs.

21 46. Caremark has copies of each and every one of the RGM forms created by
22 Caremark's employees memorializing all of the drugs returned to Caremark by or for
23 CALPERS Plan Members. Further, Caremark has already admitted this to be the case in
24 the Florida Action. According to the California Attorney General's Office, Caremark
25 provided those documents or purported summaries of those documents to that Office.
26 According to the California Attorney General's Office, Caremark admitted that it accepted
27 unless those Plan Members complained to Caremark's representatives.

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1 back returned drugs from CALPERS Plan Members; that it re-stocked returned drugs; and
2 that it did not credit or pay back the CALPERS for all of those returned drugs.

3 47. In addition, after the Fowler Relators filed their Florida Action, Caremark hired
4 dozens of individuals to review all of the tens of thousands of RGM forms that its
5 employees filled out over the years in relation to the drugs that were returned back to
6 Caremark by or for all of its Plan Members, including CALPERS Plan Members. Further,
7 Caremark has now already admitted this to be the case in the Florida Action.

8 48. Once Caremark first received notice of the Fowler Relators' Florida Action,
9 Caremark's employees gathered and boxed all of those fraudulent RGM documents and
10 shipped them to Caremark's Executives in Illinois. The Fowler Relators know this to be the
11 case because they saw it taking place and were told about it. Further, Caremark has now
12 already admitted this to be the case in the Florida Action.

13 49. In accordance with its written, national SOPs for returned drugs and at the
14 direction and supervision of its national and local Management, Caremark also entered and
15 tracked in its national computer system each and every one of the drugs that were returned
16 back to Caremark's Four Main Facilities or to any other Caremark Facility by or for
17 CALPERS Plan Members, including all such returns sent back to the Florida Facility. In
18 each such computer entry, Caremark entered and cross-referenced the numeric identifier
19 contained in the top right hand corner of the RGM form that its employees filled out for
20 each returned drug by CALPERS Plan Members. Further, Caremark has now already
21 admitted this to be the case in the Florida Action.

22 50. Thus, it is not only possible to capture and retrieve from Caremark's national
23 computer system each and every instance where CALPERS Plan Members returned drugs
24 back to Caremark and to identify the corresponding written RGM form created by
25 Caremark's employees associated with each return, it is also possible to retrieve from
26 Caremark's national computer system other information with respect to each such return,
27 including but not limited to: all of the personal identifying information regarding each of

1 those CALPERS Plan Members; the unique numeric order identifier assigned by Caremark
2 to the order from which some or all of the prescriptions within that order were returned to
3 Caremark; the unique numeric prescription numbers assigned by Caremark to each and
4 every prescription within each order; if applicable, the date that the CALPERS Plan
5 Members or others contacted Caremark to indicate a prescription within an order or all the
6 prescriptions within an order were going to be returned to Caremark; if applicable, the
7 reason given for the return(s); whether the was going to be destroyed or re-stocked; and
8 other miscellaneous information. Further, Caremark has now already admitted this to be
9 the case in the Florida Action.

10 51. Caremark is in sole possession of all of these computer entries within its
11 computer system or stored or retrievable elsewhere. The only way that the Fowler Relators
12 could look up and print off these computer entries during their employment was in
13 situations where they were already working on an order or prescription for a CALPERS
14 Plan Member and therefore had that individual's prescription history, or some portion
15 thereof, up on their computer screen, or if they knew a CALPERS Plan Member's name or
16 other personal identifying information, and knew his/her prescription or order number and
17 therefore could look up that individual on Caremark's computer system and obtain his/her
18 prescription and other Caremark history. Indeed, Caremark's Florida Facility, like each of
19 the Four Main Facilities, processed tens of thousands of prescriptions on a daily basis for
20 its one to two thousand different Plans across the country.

21 52. Caremark has sued the Fowler Relators in Florida state court, contending
22 that the Fowlers were not allowed to take any of the RGM forms, or other documents
23 memorializing the returned drugs that it processed on behalf of any of its Plan Members,
24 including CALPERS Plan Members and contending that the Fowlers were not allowed to
25 access or to take (print off) any of the computer entries from Caremark's system which
26 also memorialize each and every returned drug.

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**Fraudulent Re-Shipping To Other Caremark Facilities, Re-Stocking,
And Re-Sale Of Returned Drugs From CALPERS Plan Members**

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2 53. Beginning in the early to mid-1990's and up until approximately 1997 or
3 1998, Caremark's employees at the Florida Facility regularly shipped returned drugs they
4 had processed at the Florida Facility to another Caremark prescription drug processing
5 which was then located in Richmond, Virginia ("Virginia Facility"). At the Virginia Facility,
6 Caremark then re-stocked and re-sold those returned prescription drugs. That Caremark
7 Virginia Facility closed in approximately 1998. Relator Mrs. Fowler knows of that former
8 practice because she was personally involved with the processing of returned goods at the
9 Florida Facility in carrying out the written, national SOPs for returned drugs during the time
10 period that such shipments to that Virginia Facility were made by Caremark, and the fact
11 that such shipments were to be made to that Virginia Facility was posted within Caremark
12 and viewed by her.

13 54. After the closure of the Virginia Facility, Caremark's employees at the Florida
14 Facility began shipping returned drugs they had first "processed" at the Florida Facility to
15 Caremark's Facilities located in the State of Illinois – i.e., to the Illinois Facility, which was
16 first located in Lincolnshire, Illinois and which later physically moved to its present Mount
17 Prospect, Illinois location in approximately early 2002. Mrs. Fowler knows this to be the
18 case through her continued involvement in the returned goods process at the Florida
19 Facility in carrying out the written, national SOPs for returned drugs, and based upon the
20 fact that such shipment and re-stocking destinations were posted within Caremark's
21 Florida Facility and viewed by Mrs. Fowler. Further, Caremark has now already admitted
22 this to be the case in the Florida Action. As a result of the Relators' further investigative
23 efforts into these practices, including the interviewing of former Caremark employees
24 and/or the obtaining of sworn statements from them, according to former employees of
25 Caremark, during certain time periods *prior* to January 1, 2003, Caremark's employees at
26 the Florida Facility actually re-stocked back into Caremark's inventory at that same Facility,
27 re-sold returned drugs that they processed at that site.

1 55. Thus, returned drugs from or for CALPERS Plan Members which were
2 returned by or for them to the Florida Facility -- including those returned to the Florida
3 Facility after January 1, 2003 and under the above-referenced \$265 million dollar
4 CALPERS contract with Caremark -- and which were deemed by the "eyeballing" of
5 Caremark's employees to be re-stockable were not re-stocked directly into the inventory at
6 the Florida Facility. Instead, those returned drugs were all sent to the Illinois Facility and
7 were re-stocked at that Facility upon receipt by Caremark at the Illinois Facility. All of those
8 returned drugs that were sent to the Illinois Facility by the Florida Facility and re-stocked
9 were done consistent with and because of Caremark's written, national SOPs for returned
10 drugs, and were done at the direction of Caremark's Management. Further, Caremark has
11 now already admitted this to be the case in the Florida Action.

12 56. As a result of the Relators' further investigative efforts into these practices,
13 including the interviewing of former Caremark employees and/or the obtaining of sworn
14 statements from them, according to former employees of Caremark, during certain time
15 periods *prior* to January 1, 2003, Caremark's employees at the Florida Facility actually re-
16 stocked back into Caremark's inventory at that same Facility, re-sold returned drugs that
17 they processed at that site.

18 57. Caremark's Management regularly tracked, in corporate reports, the amount
19 of money that Caremark was making by sending those returned drugs from the Florida
20 Facility to the Illinois Facility and re-stocking and re-selling them from the Illinois Facility to
21 CALPERS Plan Members and other plan members. Caremark has now already admitted
22 this to be the case in the Florida Action. Those reports are in the possession of counsel for
23 the Plaintiff-Relators; they in the possession of Caremark and its counsel; they were the
24 subject of testimony in the Florida state court action brought by the Fowler Relators under
25 the Florida False Claims Act (hereinafter "Florida Action") and are attached to those
26 transcripts as exhibits; and they are in the possession of various governmental entities who
27 have requested them from Caremark, including, upon information and belief, the California

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1 Attorney General's Office. In addition, Caremark's Materials Management personnel also
2 created national reports, known as Inventory Transaction Summary Reports, which
3 indicated each and every instance where a returned drug had been re-stocked by
4 Caremark in carrying out Caremark's written, national SOPs for returned drugs. Those
5 reports are in the possession of counsel for the Plaintiff-Relators; they are in the
6 possession of Caremark and its counsel; they were the subject of testimony in the Florida
7 Action brought by the Fowler Relators and are attached to those transcripts as exhibits;
8 and they are in the possession of various governmental entities who have requested them
9 from Caremark, including, upon information and belief, the California Attorney General's
10 Office. In addition, the Relators also learned of them through their further investigative
11 efforts, including the interviewing of former Caremark employees.

12 58. In carrying out the written, national SOPs for returned drugs and at the
13 direction of Caremark Management, Caremark sent those returned drugs from CALPERS
14 Plan Members and its other plan members from the Florida Facility to the Illinois Facility to
15 be re-stocked in the State of Illinois because Caremark believed that it was illegal to re-
16 stock those returned drugs in the State of Florida; because Caremark was attempting to
17 evade the law; and because it was in fact illegal to do so. Caremark has already admitted,
18 in the context of the Florida Action, that such transfer of returned drugs from the Florida
19 Facility to the Illinois Facility was done based upon the belief that it was illegal under
20 Florida law to directly re-stock returned drugs at the Florida Facility.

21 59. Upon receipt at the Illinois Facility, the return drugs from CALPERS Plan
22 Members and from Caremark's other plan members were not subjected to any testing,
23 analysis, or investigation by those carrying out Caremark's written, national SOPs for
24 returned drugs that would have allowed Caremark to ensure that those returned drugs had
25 not been tampered with, altered, modified, or adulterated – either in transit to or from the
26 CALPERS Plan Members, or in transit from the Florida Facility to the Illinois Facility.
27 Further, Caremark has now already admitted this to be the case in the Florida Action.

1 60. In fact, in carrying out Caremark’s written, national SOPs for returned drugs,
2 Caremark’s employees at the Illinois Facility did not have any idea if the returned drugs
3 from CALPERS Plan Members and other Caremark plan members, which Caremark had
4 sent from the Florida Facility to the Illinois Facility to be re-stocked, were safe; if they had
5 maintained their strength; or if anyone had substituted or adulterated the drugs after they
6 first left the Florida Facility and prior to the time they were re-stocked at the Illinois Facility.
7 Nor did they need to have such knowledge under Caremark’s written, national SOPs for
8 returned drugs. Further, Caremark has now already admitted this to be the case in the
9 Florida Action.

10 61. In carrying out Caremark’s written, national SOPs for returned drugs and at
11 the direction of Caremark Management, at the Illinois Facility, Caremark’s employees, like
12 their counterparts at the Florida Facility, “re-stocked,” or added back to Caremark’s
13 inventory, the returned drugs that the Florida Facility had re-shipped to the Illinois Facility,
14 and regularly sent those returned drugs back into the stream of commerce to other
15 unsuspecting Caremark Plan Members, including to CALPERS Plan Members. Indeed,
16 Caremark often mixed returned drugs with non-returned drugs. Further, Caremark has
17 now already admitted these allegations to be the case in the Florida Action.

18 62. Caremark engaged in all of those activities and transactions without
19 disclosing to the California Plan, CALPERS, CALPERS Plan Members, and other plans,
20 the nature of Caremark’s returned goods practices or the nature of its profiteering in
21 connection with those returns.

22 63. Each and every one of those returned drug transactions were taken at the
23 expense of patient safety, and were committed by a company that placed profit and
24 earnings in a paramount position.

25 64. In short, Caremark sold the same prescription drugs *twice* and was compensated
26 for both transactions.

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1 65. Moreover, whether or not Caremark re-sold a particular returned drug from a
2 CALPERS Plan Member, Caremark did not credit or otherwise reimburse the CALPERS
3 Plan for those returned drugs, or make sure that CALPERS was not billed in the first
4 instance for those drugs which had been sent out by Caremark but then returned before
5 Caremark billed CALPERS for those drugs (or where Caremark was given notice by the
6 CALPERS Plan Members that the drugs were being returned before Caremark billed the
7 CALPERS Plan for them). Thus, CALPERS paid for drugs that its Plan Members either
8 returned to Caremark; or which never were received by those Plan Members in the first
9 instance but which were returned to Caremark; or which were returned back to Caremark
10 prior to Caremark billing CALPERS for those drugs; or which were the subject of
11 communications between the CALPERS Plan Members and Caremark such that Caremark
12 knew the drugs were being returned prior to Caremark billing the CALPERS Plan for those
13 drugs. Even though it *did not* pay back, credit, or make sure that the CALPERS Plan was
14 not billed in the first instance for those returned drugs, Caremark has admitted that it was
15 required to do so in sworn deposition testimony in the Florida Action.

16 **The Relators**

17 66. In addition to the knowledge referenced from time-to-time above, the Fowler
18 Relators possess direct and independent, first-hand knowledge of all of the above-
19 referenced returned goods SOPs, and policies and practices as applied to CALPERS Plan
20 Members with respect to returned goods at the Florida Facility and at other Caremark
21 facilities based upon their combined nearly twenty-five years of daily work at the Florida
22 Facility because: they were trained by Caremark in these national returned drugs SOPs,
23 policies, and practices; they reviewed Caremark's national returned drugs SOPs, policies
24 and practices over the years; they were required to themselves engage in those national
25 returned drugs SOPs, policies and practices; they actually observed the activities
26 constituting Caremark's national returned drug SOPs, policies and practices taking place;
27 they had to communicate and did communicate with other employees at the Florida Facility

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1 regarding those national returned drug SOPs, policies and practices; they regularly
2 reviewed on Caremark's computer system, in the course of working on or dispensing
3 prescriptions, hundreds or thousand of notes and other entries regarding returned drugs
4 that had been entered by Caremark's employees into Caremark's computer system in the
5 ordinary course of business, including those relating to CALPERS Plan Members; they
6 reviewed and kept "RGM" forms and other documents relating to returned drugs; and, at
7 least with respect to Plaintiff Mrs. Fowler, she communicated with other Caremark
8 personnel at other Caremark Facilities, including the Illinois Facility, regarding those
9 national returned drug SOPs, policies and practices.

10 67. More specifically, Relator Mrs. Fowler actually physically worked in what the
11 Florida Facility called the "RGM" Room or Area at that site, performing all aspects of the
12 processing and re-shipment of returned drugs in the manner set forth more fully above,
13 and at the direction of Caremark's Management and pursuant to Caremark's national,
14 written SOPs, policies and practices regarding returned drugs. This also encompassed the
15 RGM form work and the computer work. All of this came about after Mrs. Fowler was
16 trained and instructed by Caremark to engage in those activities.

17 68. Subsequently, even when Mrs. Fowler was not physically working in the RGM
18 area on a daily basis, she had regular contact with its operations and with those who
19 worked therein, regarding the processing of returned drugs – including during the time
20 period when the \$265 million dollar contract between CALPERS and Caremark was in
21 effect. She observed those activities with her own eyes.

22 69. In fact, during that time period and prior thereto, Mrs. Fowler also
23 communicated with Carlos Gonzales, a Manager at Caremark's Illinois Facility, regarding
24 the processing and re-stocking of returned drugs.

25 70. Mrs. Fowler possesses direct and independent, first-hand knowledge that the
26 written, national SOPs, policies and practices as more fully set forth above were applied to
27 the CALPERS Plan and its Plan Members, and to all of Caremark's plans and members.

1 Mrs. Fowler also saw the written evidence of those national returned drug SOPs, policies
2 and practices.

3 71. Mr. Fowler was likewise trained in Caremark's national returned drug SOPs,
4 policies and practices as they are set forth above, and saw written evidence of them.

5 72. Mr. Fowler likewise observed with his own eyes those national returned drugs
6 SOPs, policies and practices being carried out at the Florida Facility and applied to the
7 CALPERS Plan and all other Caremark Plans.

8 73. Other individuals who Caremark employed at the Florida Facility and who
9 either personally carried out, or possessed knowledge of, the above-referenced returned
10 goods activities at the Florida Facility, included: Fred Burns; Rebecca Mechanik; Elizabeth
11 Gomez; Sandy Christiansen; Tony Tadros; Louis Bryant; Janet Dwyer; Michael Fischer;
12 Cidone Saint Vil; Tracy Long; Betty Frazier; Mark Karasich; Ryan Barrett; Alejandro
13 Rodriguez; Nilvia Santiago; Vicki Ross; Barry Campbell; Doug Zbrowski; Lillian
14 Aponte/Kofar; Marc Rosenthal; Mike (Inu); Lena (Inu); and numerous other individuals who
15 worked in the Materials Handling Department, or as pharmacists, or as technicians, or
16 otherwise. Indeed, Mrs. Fowler worked with and/or observed many of these individuals
17 performing such activities; they observed her performing such activities; and/or she
18 communicated with them regarding such activities. In addition, the Fowler Relators further
19 investigative efforts, by way of interviews and obtaining of sworn statements from former
20 Caremark employees corroborated the involvement and/or knowledge of these persons
21 regarding the returned goods processes at the Florida Facility.

22 74. It was illegal under Florida law to take back those returned drugs and not
23 destroy them.

24 75. It was illegal under Florida law to re-stock any of those returned drugs at the
25 Florida Facility.

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1 76. It was illegal under Florida law to send any of those returned drugs to the
2 Illinois Facility, or to any other Caremark Facility, and re-stock and re-sell those returned
3 drugs at those other sites.

4 77. It was illegal under Florida law to send any of those returned drugs to the Virginia
5 Facility, and re-stock and re-sell those returned drugs.

6 78. It was illegal under Illinois law for Caremark to re-stock those returned drugs from
7 the Florida Facility at the Illinois Facility.

8 79. It was illegal under Virginia law for Caremark to re-stock those returned drugs
9 from the Florida Facility at the Virginia Facility.

10 **ILLINOIS: Caremark Re-Stocks And Re-Sells Prescription Drugs**
11 **Returned Back Directly To The Illinois Facility And Returned Drugs**
12 **Received By The Illinois Facility From The Florida, Texas, And Possibly**
13 **From Other Caremark Facilities**

14 80. Like at the Florida Facility, at the Illinois Facility and at all times relevant to
15 this action, Caremark regularly received prescription drug orders through the United States
16 mail, by fax, or otherwise, prescription drug orders from CALPERS Plan Members residing
17 in the State of California or elsewhere, or from their physicians in one of two ways: by the
18 submission of those prescriptions directly to the Illinois Facility, or after those orders were
19 originally received by one of the other Four Main Facilities and then re-directed to the
20 Illinois Facility.

21 81. Caremark's Illinois Facility likewise regularly received returned prescription
22 drugs CALPERS Plan Members and from its other Plan Members, which were returned
23 back directly to the Illinois Facility. Further, Caremark has now already admitted this to be
24 the case in the Florida Action.

25 82. Caremark regularly re-stocked those drugs internally, on-site at the Illinois
26 Facility back into Caremark's inventory and then re-sold those returned drugs, including to
27 CALPERS Plan Member. Further, Caremark has now already admitted this to be the case
28 in the Florida Action.

1 83. It was illegal for the Illinois Facility to re-stock those returned drugs which
2 were sent directly back to the Illinois Facility, including by CALPERS Plan Members.

3 84. In accordance with Caremark's written, national SOPs, and policies and
4 practices for returned drugs, Caremark's employees at the Illinois Facility utilized the very
5 same types of techniques employed by the Florida Facility and described above in carrying
6 out those re-stocking and re-sale schemes with respect to return drugs that were sent
7 directly back to the Illinois Facility from CALPERS Plan Members and its other Plans. In
8 sum, Caremark's employees at the Illinois Facility: removed the patient labels from those
9 returned prescription drugs, including with heat devices; visually "eyeballed" those returned
10 drugs in an attempt to determine if they were still "good" and thus could be re-stocked and
11 re-sold; created written, paper RGM forms containing the very same types of information
12 described above; made computer entries into Caremark's computer system regarding the
13 return and re-stocking of those returned drugs; re-stocked those returned drugs back into
14 the inventory of the Illinois Facility, including returned controlled substances; and re-sold
15 those returned drugs to other, unsuspecting Caremark customers across the country,
16 including to CALPERS Plan Members. Further, Caremark has already admitted this to be
17 the case in the Florida Action.

18 85. Caremark's employees at the Illinois Facility, like its employees at the Florida
19 Facility, did not and could not determine the storage and handling conditions of those
20 returned drugs which were sent directly back to the Illinois Facility, as they followed the
21 very same written, national returned drug SOPs and policies and practices in "processing"
22 those drugs. Further, Caremark has now already admitted this to be the case in the Florida
23 Action.

24 86. Moreover, as more fully set forth above, Caremark's employees at the Illinois
25 Facility regularly received returned prescription drugs that were sent to the Illinois Facility
26 by the *Florida Facility* to be re-stocked in Illinois, including from CALPERS Plan Members.
27 Caremark's present and former employees have also attested to such activities in sworn

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1 deposition testimony in the Florida Action, and in sworn statements. In addition, Mr. and
2 Mrs. Fowler have first-hand, direct and independent knowledge of such activities based
3 upon their knowledge and involvement in the returned drugs process as described above.

4 87. It was illegal under Illinois and Florida law for the Illinois Facility to re-stock
5 those returned drugs which were sent to the Illinois Facility from the Florida Facility to be
6 re-stocked at the Illinois Facility.

7 88. On the occasions where the Illinois Facility received returned drugs from the
8 Florida Facility, Caremark's employees re-stocked them without sufficient investigation or
9 analysis, relying upon the fact that the employees at the Florida Facility had already
10 subjected them to sufficient scrutiny and analysis. Further, Caremark has now already
11 admitted this to be the case in the Florida Action.

12 89. In addition, Caremark's employees at the Illinois Facility regularly received
13 returned prescription drugs that were sent to the Illinois Facility by the *Texas Facility* to be
14 re-stocked in Illinois. In addition, the Relators have corroborated this with as part of their
15 further investigative efforts, including by way of interviewing former Caremark employees
16 and/or obtaining sworn statements from them. Plaintiff-Relator Victor Cortes possesses
17 direct and independent, first-hand knowledge of such activities as he worked extensively
18 with returned drugs on a daily basis during his employment at Caremark. Mr. Cortes' duties
19 and responsibilities and knowledge is further set forth below. Further, Caremark has now
20 already admitted this to be the case in the Florida Action.

21 90. At the Illinois Facility, Caremark's employees also re-stocked those
22 returned drugs sent from the *Texas Facility*. As further set forth below, Mr. Cortes engaged
23 in those activities. Furthermore, as part of their further investigative efforts, the Fowler
24 Relators verified this to be the case by way of interviews with former Caremark employees
25 and/or obtaining sworn statements from them. Moreover, Caremark has now already
26 admitted this to be the case in the Florida Action.

27 91. It was illegal under Illinois and Texas law for the Illinois Facility to re-stock

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1 those returned drugs which were sent to the Illinois Facility from the Texas Facility to be re-
2 stocked at the Illinois Facility.

3 92. In carrying out Caremark's national, written returned drugs SOPs, on the
4 occasions where the Illinois Facility received those returned drugs from the Texas Facility,
5 Caremark's employees re-stocked them without sufficient investigation or analysis, relying
6 upon the fact that the employees at the Florida Facility had already subjected them to
7 sufficient scrutiny and analysis. Moreover, Caremark has now already admitted this to be
8 the case in the Florida Action.

9 93. In carrying out Caremark's national, written returned drugs SOPs, employees
10 at the Illinois Facility who made decisions to re-stock those returned drugs sent from the
11 Texas Facility to the Illinois Facility were not pharmacists. Moreover, Caremark has now
12 already admitted this to be the case in the Florida Action.

13 94. In carrying out Caremark's national, written returned drugs SOPs, Caremark
14 did not credit or pay back the CALPERS Plan, or make sure that it was not billed in the first
15 instance, in any of the circumstances in which the Illinois Facility received and/or re-
16 stocked returned prescription drugs from CALPERS Plan Members or from other Plan
17 Members at the Illinois Facility – i.e., including all of the occasions where the Illinois Facility
18 received such returns directly back and re-stocked them, and all such occasions where the
19 Illinois Facility received such returns from the Florida and Illinois Facilities. Caremark has
20 now already admitted in the Florida Action that it was required to do so.

21 95. Caremark was fully aware that its re-stocking and re-sale activities at the
22 Illinois Facility were illegal. The Fowler Relators learned this as part of their further
23 investigative efforts.

24 96. In fact, on or about April 7, 2004, a representative or representatives of the
25 Illinois Department of Professional Regulation (“IDPR”) paid a visit to the Illinois Facility in
26 Mount Prospect, Illinois, conducted an inspection of that facility, and spoke to an employee
27 or employees of Caremark.

1 97. During that April 2004 inspection, an IDPR representative questioned at least
2 one high-ranking employee of the Illinois Facility, Anne Klis, about Caremark's practices with
3 respect to re-stocking and re-sale of returned drugs.

4 98. In response to those inquiries by that IDPR representative, Ms. Klis *admitted* --
5 contrary to Caremark's position in another Whistleblower suit currently pending in the State of
6 Florida and its public statements -- that the Illinois Facility was *still* re-stocking returned drugs
7 at the Illinois Facility, but informed the IDPR representative that Caremark would immediately
8 cease such practices.

9 99. In carrying out Caremark's national, written returned drugs SOPs, the
10 individuals who Caremark employed at the Illinois Facility to engage in the above-
11 referenced returned goods activities at the Illinois Facility, included: Carlos Gonzales; Harry
12 Boyer; Ralph Martinez; Edgar Santos; Tom Jakubowski; Annette Sloss; Bill Finnerty; Gary
13 Krusinski; Gary Greisman; Chris Shore; Larry Graiber; Mike Rulli; Louis Martini; Sal Boldack;
14 Bonnie Peterson; Mukesh Rawal; Rick Coates; Rhett Sawyer; Sanah Krech; Cliff
15 Cunningham; and other individuals who worked in the Materials Handling Department, or
16 who were employed as pharmacists, who were employed as pharmacy technicians, and
17 who were employed in other capacities. In addition, Caremark's Management personnel
18 at that site who were involved with and/or possessed knowledge of those activities included
19 Tom Curtin; Brian Leadingham; Ted Terandy; Robert Tangora; Joseph Hajkaluk; and Anne
20 Klis.
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2 **TEXAS: Caremark's Internal Re-Stocking And Re-Sale Of Returned**
3 **Prescription Drugs At The Texas Facility, And By Way Of Shipments Of**
4 **Returned Drugs From The Texas Facility To The Illinois Facility, Without**
5 **Disclosure Or Credit To The CALPERS Plan**

6 100. Like at the Florida Facility and at the Illinois Facility and at all times relevant
7 to this action, at the Texas Facility Caremark regularly received prescription drug orders
8 through the United States mail, by fax, or otherwise, prescription drug orders from
9 CALPERS Plan Members residing in the State of California or elsewhere, or from their
10 physicians in one of two ways: by the submission of those prescriptions directly to the
11 Texas Facility, or after those orders were originally received by one of the other Four Main
12 Facilities and then re-directed to the Texas Facility. Plaintiff Relator Danny Nevarez has
13 knowledge of those facts as he was required to regularly access those orders on
14 Caremark's national computer system at the Texas Facility and to make changes to them.

15 101. At the Texas Facility, Caremark's employees operated under and pursuant to
16 the very same written, national returned goods SOPs and policies and practices described
17 above in processing returned drugs from CALPERS Plan Members and from its other plan
18 members. As part of their further investigative efforts, the Fowler Relators verified this to
19 be the case, including by way of interviews with former Caremark employees from that site
20 and/or obtaining sworn statements from them. In addition, as set forth below, Plaintiff
21 Relator Victor Cortes engaged in those returned drug activities at the Texas Facility on a
22 daily basis.

23 102. Because they operated pursuant to the same written, national returned drugs
24 SOPs and policies and practices, like their counterparts at the Florida Facility and at the
25 Illinois Facility, Caremark's employees at the Texas Facility utilized essentially the very
26 same fraudulent and potentially dangerous techniques detailed above in receiving,
27 processing, re-stocking, and re-selling returned prescription drugs. Plaintiff Relator Victor
28 Cortes has direct and independent, first-hand knowledge of those activities as he engaged

1 in returned drug practices on a daily basis at the Texas Facility, and he also witnesses with
2 his own eyes others engaging in those activities. Likewise, as part of their further
3 investigative efforts, the Fowler Relators verified this to be the case, including by way of
4 interviews with former Caremark employees from that site and/or obtaining sworn
5 statements from them.

6 103. Thus, in sum, in carrying out Caremark's written, national returned drugs
7 SOPs, and policies and practices and at the direction of Caremark Management,
8 Caremark's employees at the Texas Facility: removed the patient labels from those
9 returned prescription drugs, including with heat devices; visually "eyeballed" those returned
10 drugs in an attempt to determine if they were still "good" and thus could be re-stocked and
11 re-sold; created written, paper RGM forms containing the very same types of information
12 described above; made the same types of computer entries into Caremark's computer
13 system regarding the return and re-stocking of those returned drugs; re-stocked those
14 returned drugs back into the inventory of the Texas Facility, including returned controlled
15 substances, refrigerated drugs, and other drugs; and re-sold those returned drugs to other,
16 unsuspecting CALPERS Plan Members and other plan members. As part of their further
17 investigative efforts, the Fowler Relators verified this to be the case, including by way of
18 interviews with former Caremark employees from that site and/or obtaining sworn
19 statements from them. In addition, Plaintiff Relator Victor Cortes has direct and
20 independent first-hand knowledge of those activities as he engaged in returned drug
21 practices on a daily basis at the Texas Facility, and saw with his own eyes other employees
22 engaged in those activities. In addition, Caremark has now already admitted these
23 allegations in the Florida Action.

24 104. In carrying out Caremark's written, national SOPs and at the direction of
25 Management, Caremark's employees at the Texas Facility regularly re-stocked, back into
26 the physical inventory at the Texas Facility, returned prescription drugs that had been
27 originally sent out by the Texas Facility and returned directly back to the Texas Facility,

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1 including by or for CALPERS Plan Members and other Caremark plan members. As part
2 of their further investigative efforts, the Fowler Relators verified this to be the case,
3 including by way of interviews with former Caremark employees from that site and/or
4 obtaining sworn statements from them. In addition, Plaintiff Relator Victor Cortes has
5 direct and independent first-hand knowledge of those activities as he engaged in returned
6 drug practices on a daily basis at the Texas Facility, and saw with his own eyes other
7 employees engaged in those activities. In addition, Caremark has now already admitted
8 these allegations in the Florida Action.

9 105. In carrying out the national, written SOPs for returned drugs and at the
10 direction of Management, Caremark regularly re-sold those same returned prescription to
11 CALPERS Plan Members and other Caremark plan members. As part of their further
12 investigative efforts, the Fowler Relators verified this to be the case, including by way of
13 interviews with former Caremark employees from that site and/or obtaining sworn
14 statements from them. In addition, Plaintiff Relator Victor Cortes has direct and
15 independent first-hand knowledge of those activities as he engaged in returned drug
16 practices on a daily basis at the Texas Facility, and saw with his own eyes other employees
17 engaged in those activities. Caremark has now already admitted these allegations in the
18 Florida Action. In addition, Caremark has now already admitted these allegations in the
19 Florida Action.

20 106. In carrying out the national, written SOPs for returned drugs and at the
21 direction of Management, in addition to regularly re-stocking returned drugs internally, on-
22 site, at the Texas Facility, Caremark's employees at the Texas Facility also regularly re-
23 shipped batches of returned prescription drugs to the Illinois Facility. As noted above,
24 upon receipt at the Illinois Facility, those prescription drugs were likewise re-stocked and
25 re-sold from the Illinois Facility to unsuspecting Caremark CALPERS Plan Members and
26 other Caremark plan members. As part of their further investigative efforts, the Fowler
27 Relators verified these allegations to be the case, including by way of interviews with

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1 former Caremark employees from that site and/or obtaining sworn statements from them.
2 In addition, Plaintiff Relator Victor Cortes has direct and independent, first-hand knowledge
3 of those activities as he engaged in returned drug practices on a daily basis at the Texas
4 Facility. Caremark has now already admitted these allegations in the Florida Action.

5 107. In carrying out the national, written SOPs for returned drugs and at the
6 direction of Management, Caremark's employees at the Texas Facility did not know and
7 did not attempt to ascertain the storage and handling conditions of prescription drugs that
8 were returned to the Texas Facility, whether those returned drugs were re-stocked
9 internally at the Texas Facility and re-sold, or whether they were shipped to the Illinois
10 Facility to be re-stocked and re-sold. As part of their further investigative efforts, the
11 Fowler Relators verified these allegations to be the case, including by way of interviews
12 with former Caremark employees from that site and/or obtaining sworn statements from
13 them. In addition, Plaintiff Relator Victor Cortes has direct and independent, first-hand
14 knowledge of those activities as he engaged in returned drug practices on a daily basis at
15 the Texas Facility. Caremark has now already admitted these allegations in the Florida
16 Action.

17 108. It was illegal under Texas law for Caremark to re-stock returned prescription
18 drugs internally at the Texas Facility, and it was illegal under Texas law and Illinois law for
19 Caremark to re-stock returned drugs by sending them from the Texas Facility to the Illinois
20 Facility.

21 109. In carrying out Caremark's national, written SOPs and at the direction of
22 Management, Caremark's employees at the Texas Facility were required to falsely and
23 fraudulently create paper records -- namely, the RGM forms -- as well as the above-
24 referenced computer entries and records -- indicating that the prescription drugs that were
25 returned to the Texas Facility by CALPERS Plan Members had been "destroyed," when in
26 fact they had not been destroyed, but rather had been re-stocked and re-sold. As part of
27 their further investigative efforts, the Fowler Relators verified these allegations to be the

1 case, including by way of interviews with former Caremark employees from that site and/or
2 obtaining sworn statements from them. In addition, Caremark has now already admitted
3 these allegations in the Florida Action.

4 110. With respect to Mr. Cortes, in carrying out Caremark's national, written SOPs
5 and at the direction of Management, during a substantial portion of calendar year 2003 and
6 on a daily basis, he was required to, and did in fact, re-stock returned drugs, including
7 returned refrigerated and other drugs, that had been sent back to the Texas Facility after
8 having first been sent out by Caremark in the mails destined for CALPERS Plan Members
9 and other Caremark plan members.

10 111. Accordingly, in carrying out Caremark's national, written SOPs and at the
11 direction of Management, as part of his daily routine and usually in the late afternoon, Mr.
12 Cortes was required to, and did pick up a number of "totes" full of prescription drugs that
13 had been returned back to the Texas Facility after having been first sent out by Caremark
14 from the Texas Facility to CALPERS Plan Members and to other Caremark plan members.
15 Mr. Cortes regularly re-stocked those returned prescription drugs back into Caremark's
16 physical inventory so that Caremark could turn around and sell those same returned drugs
17 to other CALPERS Plan Members and to other unsuspecting Caremark customers
18 throughout the nation. Mr. Cortes observed with his own eyes other Caremark employees
19 at the Texas Facility engaged in the very same activities.

20 112. In carrying out Caremark's national, written SOPs and at the direction of
21 Management, this re-stocking of returned drugs by Mr. Cortes, including from CALPERS
22 Members and other plan members, included the following refrigerated drugs: insulins; liquid
23 drugs; "chemo" or chemotherapy drugs, including vials; "little purple pills" containing a
24 liquid that was inside a vial; and pills that were white on one side and purple on the other.

25 113. In carrying out Caremark's national, written SOPs and at the direction of
26 Management, Mr. Cortes himself re-stocked up to fifty or so such returned drugs per day,
27 including from CALPERS Plan Members. Moreover, a great number of Mr. Cortes' peers

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1 likewise engaged in the re-stocking of returned drugs on a daily basis at the Texas Facility.
2 Mr. Cortes saw them do so. Those employees in the Materials Handling Department at
3 the Texas Facility were required to, and did in fact, re-stock other types of returned drugs
4 on a daily basis. Those activities were part of their daily routine at the Texas Facility. Mr.
5 Cortes knows because he saw that happen and Caremark Management told him and his
6 peers to do it.

7 114. In carrying out Caremark's national, written SOPs and at the direction of
8 Management, and because of those policies and practices, Caremark once again sold the
9 same drugs twice, without credit or reimbursement to the CALPERS Plan or its Plan
10 Members. Of equal importance, however, is the fact that, whether or not Caremark re-sold
11 the prescription drugs that were returned by CALPERS Plan Members to the Texas
12 Facility, Caremark failed to credit or reimburse the CALPERS Plan for those returned
13 drugs.

14 115. According to the California Attorney General's Office Caremark quantified for
15 it the total number of times that Caremark claims it accepted back returned drugs from
16 CALPERS Plan Members, at all of its facilities, and did not credit or pay back CALPERS in
17 those instances, and Caremark assigned a monetary number to those occasions.

18 116. Other persons who personally assisted in carrying out the above-referenced
19 returned goods practices at the Texas Facility, or who possessed knowledge of those
20 activities included: Karl Von Reich; Casey Wilkes; Jeff Audley; Kim Duggan; Blake
21 Simpson; Chris Huggins; Eufemia Rodriguez; Emma Gonzales; Ramona Hernandez;
22 Candy Alvarado; Regina Gonzales; Roy Gill; Ruby Nava; Yesenia Garcia; Gary Wise; Mike
23 Jones; Ruby Nava; Lee Carranza; Robert Rivas; Robert Maldonado; Lorenzo Ortiz; Alfonso
24 Ramos; Rene Gonzales; Pedro Camarillo; Diane Luna; Cecilia Morante; Patricia Lozano;
25 Mark Brewer; Jerry Salinas. Indeed, Relator Mr. Cortes had contact with and/or observed
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1 many of these individuals while they were engaged in those activities. In addition, the
2 Relators' further investigative efforts, including by way of interviews and/or obtaining of
3 sworn statements, revealed many of those individuals' knowledge and/or participation in
4 those activities.

5 **CALIFORNIA: Caremark's Re-Stocking And Re-Sale Of Returned**
6 **Refrigerated Prescription Drugs, Including Blood Products For Hemophiliacs,**
7 **At Caremark's "Specialty Pharmacies" Across The United States, Including In**
8 **Redlands, California**

9 116. In addition to operating the Four Main Facilities (i.e., Florida, Texas; Illinois,
10 and Arizona), Caremark has at all relevant times to this action operated an *additional*
11 twenty or more "*Specialty*" mail order prescription pharmacies across the United States.
12 These Specialty facilities are unlike the four giant "mills" in that they typically employ a
13 small number of pharmacists and other personnel and dispense and ship a much smaller
14 daily volume of prescription drugs.

15 117. These additional Caremark "Specialty Pharmacies" are located in or around
16 at least the following locations: Milford, Massachusetts; Pinebrook, New Jersey; Pittsburgh,
17 Pennsylvania; Southfield, Michigan; Roseville, Minnesota; Lenexa, Kansas; Bothell,
18 Washington; Grand Prairie, Texas; Columbia, Maryland; Saint Rose, Louisiana; Memphis,
19 Tennessee; Raleigh, North Carolina; Kennesaw, Georgia; Tampa, Florida; Mount Prospect,
20 Illinois; Houston, Texas; Richardson, Texas; Mobile, Alabama; Daphne, Alabama; Tampa,
21 Florida; Rockville, Maryland, and Kailua, Hawaii.

22 118. In addition, Caremark has at all relevant times operated a Specialty
23 Pharmacy in Redlands, California (the "California Specialty Facility"). The California
24 Specialty Facility is one of, if not the biggest Caremark Specialty Pharmacy in the United
25 States.

26 119. Caremark's Specialty Pharmacies, like the Four Main Facilities, although
27 operating with substantially less daily volume, likewise serviced Caremark's more than
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1 2,000 plans and their millions of plan members, including CALPERS and the CALPERS
2 Plan Members.

3 120. Caremark's Specialty Pharmacies generally only stock and dispense
4 expensive, highly specialized prescription drug products, including blood products for
5 hemophiliacs, human growth hormone, cancer drugs, and a variety of others.

6 121. More specifically, the Caremark Specialty Pharmacies generally stock and
7 dispense prescription drugs for the following conditions: Hemophilia and von Willebrand
8 Disease, Multiple Sclerosis, Rheumatoid Arthritis, Pulmonary Arterial Hypertension,
9 Pulmonary Disorders, Growth Hormone Disorders, Allergic Asthma, Cancer, Crohn's
10 Disease, Lysosomal Storage Disorders, Hematopoiesis Disorders, Hepatitis C, Immune
11 Disorders, Respiratory Syncytial Virus, and Psoriasis, among others.

12 122. In general, all of the products stocked, filled, and dispensed by the Specialty
13 Pharmacies to CALPERS Plan Members and other plan members across the country are
14 refrigerated prescription drug products, requiring special care and handling, and which
15 typically required temperature sensitive packaging or "cold packs." Or, as Caremark
16 advertises it to its Plans, "secure, plain, temperature-controlled packaging."

17 123. As part of their further investigative efforts, including by way of interviews of
18 former Caremark employees and/or obtaining sworn statements from them, the Fowler
19 Relators and other Relators likewise verified that the California Specialty carried out
20 returned drug activities in accordance with, and because of, national Caremark SOPs,
21 policies, and practices with respect to return drugs. Thus, at the California Specialty
22 Facility, Caremark regularly dispensed and shipped a number of refrigerated drug products
23 for the treatment of hemophilia and related conditions, including "Monoclate," "Benemid,"
24 "Hemophil," "Recombonate," and "Monoclate P."

25 124. Caremark's specialty prescription drug products, like all other Caremark
26 dispensed prescription mail order products, were regularly returned by Caremark's plan
27 members, including CALPERS Plan Members, to Caremark's Specialty Pharmacies,

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1 including such returns to the California Specialty Facility. The Fowler Relators and the
2 other Relators possess knowledge of this because a former Caremark employee provided
3 that that information as part of the Relators further investigative efforts and verification of
4 the national nature of Caremark's returned goods practices. Moreover, that information
5 subsequently became the subject of sworn deposition testimony in the Florida Action.

6 125. Thus, as part of their further investigative efforts, including by way of
7 interviews of former Caremark employees and/or obtaining sworn statements from them,
8 the Fowler Relators and the other Relators verified that the California Specialty Facility
9 received returned drugs back at that California Specialty Facility from as far away as
10 Texas, Florida, Massachusetts, and Arizona.

11 126. Incredibly, in carrying out Caremark's national returned goods policies and
12 practices, despite the fact that these returned prescription drug products normally had
13 been shipped out by Caremark's Specialty Pharmacies, including the California Specialty
14 Facility, in "cold packs" or other temperature sensitive packaging, Caremark regularly
15 received these returned drugs, re-stocked them, and re-sold them to other unsuspecting
16 Caremark customers, including to CALPERS Plan Members. As part of their further
17 investigative efforts, including by way of interviews of former Caremark employees and/or
18 obtaining sworn statements from them, the Fowler Relators and the other Relators verified
19 this to be the case.

20 127. In carrying out Caremark's national returned goods policies and practices, at
21 the California Specialty Facility, in violation of law and to the possible endangerment of
22 CALPERS and other Caremark plan members, Caremark's employees regularly re-
23 stocked returned refrigerated drugs and returned controlled substances, in addition to a
24 variety of other returned prescription drug products. As part of their further investigative
25 efforts, including by way of interviews of former Caremark employees and/or obtaining
26 sworn statements from them, the Fowler Relators and the other Relators verified this to be
27 the case.

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1 128. In carrying out Caremark's national returned goods policies and practices, at
2 the California Specialty Facility, Caremark's pharmacists regularly re-stocked returned
3 drugs "[A]s long as the expiration dates were good." Caremark then re-sold those re-
4 stocked returned drugs into the stream of commerce within the State of California and
5 across this nation, to CALPERS Plan Members and to other Caremark plan members. As
6 part of their further investigative efforts, including by way of interviews of former Caremark
7 employees and/or obtaining sworn statements from them, the Fowler Relators and the
8 other Relators verified this to be the case.

9 129. In carrying out Caremark's national returned goods policies and practices, at
10 the California Specialty Facility, Caremark's employees making those re-stocking decisions
11 at the Caremark Specialty Pharmacies, including at the California Specialty Facility, *did not*
12 *know* the storage and handling conditions of those returned drugs, including refrigerated
13 blood products, from the time that those specialized prescription drug products initially left
14 Caremark's Specialty Pharmacies until the time that they were received back at those
15 Specialty Pharmacies as returned drugs to be re-stocked and re-sold by Caremark. As
16 part of their further investigative efforts, including by way of interviews of former Caremark
17 employees and/or obtaining sworn statements from them, the Fowler Relators and the
18 other Relators verified this to be the case.

19 130. Moreover, in carrying out Caremark's national returned goods policies and
20 practices, at the California Specialty Facility, some of those returned prescription mail order
21 drugs that were returned to the Caremark Specialty Pharmacies, including to the California
22 Specialty Facility, sat in Caremark's Specialty Pharmacies for extended lengths of time
23 until Caremark's employees got around to determining if those returned drugs should be
24 re-stocked and re-sold to unsuspecting Caremark Plan Members. As part of their further
25 investigative efforts, including by way of interviews of former Caremark employees and/or
26 obtaining sworn statements from them, the Fowler Relators and the other Relators verified
27 this to be the case.

