

1 WALTER J. LACK, ESQ. State Bar No. 57550
2 PAUL A. TRAINA, ESQ. State Bar No. 155805
3 RAHUL RAVIPUDI, ESQ. State Bar No. 204519
4 **ENGSTROM, LIPSCOMB & LACK**
5 A Professional Corporation
6 10100 Santa Monica Blvd., 16th Floor
7 Los Angeles, California 90067-4107
8 (310) 552-3800 Fax (310) 552-9434

6 MICHAEL I. LEONARD, ESQ.
7 JONATHAN LICHTERMAN, ESQ.
8 **MECKLER, BULGER & TILSON**
9 123 N. Wacker Drive, Suite 1800
Chicago, Illinois 60606
(312)474-7925 (phone)
(312)474-7898 (fax)

10 Attorneys for Plaintiffs,
11 The State of California, *et al.*

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,

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

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

28

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

28

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.

27

28

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

28

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

28

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

28

