

**IN THE CIRCUIT COURT OF THE STATE OF FLORIDA, SECOND CIRCUIT
LEON COUNTY, FLORIDA**

THE STATE OF FLORIDA, et al.)	
)	CASE NO. 03 CA 64
PLAINTIFFS,)	
)	QUI TAM LAWSUIT
v.)	JURY TRIAL DEMANDED
)	
CAREMARK Rx, INC., et al.)	
)	
DEFENDANTS.)	

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CLERK CIRCUIT COURT
LEON COUNTY FLORIDA

NOTICE OF FILING

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PLEASE TAKE NOTICE that on April 2, 2004, we caused to be filed with the Circuit Court of the State of Florida, Second Circuit, Leon County, Florida, PLAINTIFFS' THIRD AMENDED COMPLAINT, a copy of which is attached hereto and hereby served upon you.

By: [Signature]
Respectfully Submitted,
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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certify that a true and correct copy of the above referenced document was served to all counsel via U.S. Mail on April 1, 2004 before the hour of 5:00 p.m.

[Signature]
Michael I. Leonard

IN THE CIRCUIT COURT OF THE STATE OF FLORIDA, SECOND CIRCUIT LEON COUNTY, FLORIDA

THE STATE OF FLORIDA,)
EX. REL. FLORIDA ATTORNEY)
GENERAL CHARLIE CRIST)
AND THROUGH RELATORS)
MICHAEL FOWLER AND PEPI)
FOWLER, INDIVIDUALS AND)
RESIDENTS OF THE STATE OF FLORIDA,)
AS RELATORS UNDER THE FLORIDA)
FALSE CLAIMS ACT,)

PLAINTIFFS

v.

CAREMARK Rx, INC., A DELAWARE)
CORPORATION, AND CAREMARK, INC.)
A DELAWARE CORPORATION,)
DEFENDANTS.)

CASE NO. 03 CA 64

QUI TAM LAWSUIT

JURY TRIAL DEMANDED

PLAINTIFFS' THIRD AMENDED STATE FALSE CLAIMS ACT COMPLAINT

Plaintiffs, Michael Fowler and Peppi Fowler, by and through their undersigned counsel, state as follows as their Third Amended Complaint under the Florida False Claims Act or *qui tam* statute, 68.081, *et. seq.*, against Defendant Caremark Rx, Inc. ("Caremark Rx") and Defendant Caremark, Inc. ("Caremark").

I. The Parties

1. Plaintiffs, Michael Fowler and Peppi Fowler, reside in the State of Florida and have been employed by Defendants as licensed pharmacists in the State of Florida at all times relevant to this action. At all relevant times, Plaintiffs have been employed at Defendants' facility located at 3250 Meridian Parkway in Fort Lauderdale, Florida (hereinafter "The Fort Lauderdale Facility").

Plaintiffs are experienced, highly-trained, and highly-skilled professionals who have at all times been employees in good standing with Defendants. Plaintiffs are intimately familiar with, and possess first-hand knowledge of, Defendants' business activities, operations, procedures, and practices, including those at The Fort Lauderdale Facility. In addition, Michael Fowler possesses the same with regard certain policies, practices, and procedures employed by Caremark during the relevant time period at Caremark's prescription drug processing facility located in San Antonio, Texas.

2. Defendant, Caremark Rx, Inc. ("Caremark Rx") is a Delaware corporation with its corporate headquarters located in Tennessee. Caremark Rx conducts business and has conducted business in the State of Florida on a regular and continuous basis since at least calendar year 2000, and at all times relevant to this action. Caremark Rx is one of the largest pharmaceutical services companies in the United States, with annual net revenues of approximately eight billion dollars (\$8,000,000,000), including, according to Defendants, "record" third quarter 2003 revenue of \$2,300,000,000. Caremark Rx is the parent corporation of Defendant Caremark, Inc.

3. Defendant Caremark Inc. ("Caremark"), is a Delaware corporation through which Defendant Caremark Rx conducts its business operations. Caremark conducts business and has conducted business in the State of Florida on a regular and continuous basis at all times since at least calendar year 2000, and at all times relevant to this action.

4. Caremark provides pharmacy benefit management services and therapeutic pharmaceutical services. Caremark markets and sells those services to corporations, insurance companies, unions, government employee groups, and managed care organizations throughout the United States to deliver prescription drugs to the members of those entities' health insurance plans.

Caremark is one of the nation's leading prescription benefit managers or "PBMs." Accordingly, Caremark provides more than twenty million (20,000,000) plan participants with more than seventy million (70,000,000) prescriptions through Caremark's retail, mail service, and home delivery services. Thus, as a significant component of Caremark's prescription drug delivery sales and service, Caremark provides prescription drugs to health plan members through the use of the United States mail and other delivery services.

II. Jurisdiction

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

III. Venue

6. This Court has venue over this action pursuant to Florida Statutes, 68.081, because the present action is a False Claims or *qui tam* action that is statutorily required to be filed in this County.

IV. Facts

A. Caremark Rx's Contract With The State Of Florida To Provide Prescription Drug Benefit Management Services To Current State Of Florida Employees, Retirees, And Their Dependents

7. In or about August, 2000, Caremark Rx entered into a four-year contract with the State of Florida ("the Agreement"), effective January 1, 2001, pursuant to which it and Caremark agreed to provide prescription drug benefit management services to more than two hundred

thousand (200,000) State of Florida employees, retirees, and their eligible dependants who constitute the “participants” or “plan members” of the State’s self-insured State Employees Paid Provider Organization or “PPO” Plan. A copy of the Agreement is attached hereto as Exhibit 1. Under the terms of the Agreement, Caremark agreed to provide State of Florida plan members, in exchange for substantial monetary remuneration, with mail service and retail prescription drug plans as well as access to several clinical programs. According to Caremark’s public statements, the Agreement and associated prescription drug program would allow the State of Florida to better manage its increasing drug cost trend.

8. As the operating arm of Caremark Rx, Caremark has been purporting to carry out the terms of the Agreement between Caremark Rx and the State of Florida.

9. In practice, the Fort Lauderdale Facility has filled a significant percentage of the prescription drug orders placed by or for State of Florida plan members. Defendants also operate prescription drug processing facilities in at least the following locations: San Antonio, Texas (the “Texas Facility”); Mount Prospect, Illinois (the “Illinois Facility”); and Phoenix, Arizona (the “Arizona Facility”). Those other prescription drug processing facilities have also filled orders placed by or for Florida Plan Members. Indeed, Caremark’s Management has admitted that Caremark processed and dispensed thousands of prescriptions at facilities *other than* the Florida Facility.

10. The Agreement specifically provides, *inter alia*, that “[T]ime is of the essence in the Contractor’s [Defendants’] performance of this contract so as to allow DMS [State of Florida, Department of Management Services] to meet its responsibilities to provide insurance coverage and to prudently administer the State Group Insurance Program in accordance with Section

110.123, *Florida Statutes*. Failure by the Contractor [Defendants] to timely provide the services and commodities required by this contract shall be considered a material breach of this contract.”

See Agreement at p. 8, paragraph 8 (emphasis in original) (brackets added).

11. The Agreement provides that prescription drug orders filled from the Fort Lauderdale facility for State of Florida plan members, or from any of Caremark’s other facilities in the United States, are to be processed or “turned around” to the plan members within a particular “average” number of days from the date upon which Defendants first received the order for the prescription by or for the plan member. See Agreement at Attachment 1, page 2 of 4, section 6.

12. In the event that Defendants are unable to meet such average processing deadlines, Defendants are subject to monetary penalties. Id.

13. Furthermore, the Agreement specifically states that its imposition of penalties “is independent of the liability of the Contractor [Defendants] for any damages suffered by DMS due to the Contractor’s failure to satisfactorily provide the services required by this contract and imposition of such penalties shall not offset or reduce any such damages.” See Agreement at pp. 8-9, paragraph 10.

14. Moreover, the Agreement *does not* provide for the waiver or non-compliance by Defendants with the Florida False Claims Act, nor could it.

15. The Agreement further provides, *inter alia*, that Defendants are required to create and maintain accurate and truthful records regarding activities performed under the Agreement .

For example, the Agreement states, in part:

The Contractor shall maintain sufficient documentation to substantiate claims for payment under this contract and any records, papers and documents which were made in connection with the performance of this contract. Such records shall include magnetic tapes, CD-ROM diskettes, or other electronic media of files maintained by the Contractor for the

operation of the State account, including file labels, complete file layouts, data element descriptions and detailed processing logic to assist the State auditor in processing or utilizing files. The Contractor shall maintain these records for at least five (5) years from the termination of this contract . . . **The Contractor shall not destroy or make records inaccessible** without the express written permission of DMS.

See Agreement at p. 17, paragraph 24 (emphasis added).

B. Caremark's Actual And False And Fraudulent Practices In Carrying Out The Terms Of The Agreement With The Florida Plan

1. False Date-Stamping And Misrepresentations Regarding When Orders Have Actually Been Received, Filled, And Shipped By The Fort Lauderdale Facility, The Texas Facility, And Other Caremark Prescription Drug Processing Facilities

16. Since the inception of the Agreement and in fulfillment of their provisions, Caremark's Florida Facility, as well as its other facilities located within the United States, have been receiving on a daily basis anywhere from tens to thousands of requests to fill prescription drug orders for Florida Plan Members located throughout the country.

17. Accordingly, as noted above, even though a Florida Plan Member resides in Florida, his or her prescription drug order under the Agreement may actually be filled by the Illinois Facility, the Florida Facility, the Texas Facility, or the Arizona Facility.

18. The Florida Facility and Caremark's other prescription drug processing facilities also received and processed hundreds of thousands of other orders for prescription medications from plan participants residing in States throughout the United States, who were *not* plan participants of the Florida Plan.

19. Since its inception in late 1992 or early 1993, the Florida Facility has generally operated six to seven days per week, nearly twenty-four hours per day, to fill all those orders. Caremark's other drug processing facilities have been similarly busy.

20. Florida Plan Members (as patients), or physicians on their behalf, send those orders via United States mail or fax to the Florida Facility and/or to Caremark's other drug processing facilities within the United States. The prescription drug orders from Florida Plan Members received at the Florida Facility are processed by the mail room, sent to the main building for "translation," and inputted into the computer system.

21. Ultimately, those prescription drug orders are physically filled and checked by pharmacists for accuracy before being shipped from the Florida Facility or from some other Caremark drug processing facility.

22. However, pursuant to the established practices and procedures of the *Florida Facility* and in an attempt to evade the penalties associated with the average processing targets in the Agreement and in Caremark's agreements with hundreds of other plan, all prescription drug orders received by the *Florida Facility* on week-ends were *not* date-stamped and inputted into the computer system until the following Monday.

23. Likewise, pursuant to the established practices and procedures of the *Texas Facility* and in an attempt to evade the penalties associated with the average processing targets in The Agreement and in Caremark's agreements with hundreds of other plan, all prescription drug orders received by the *Texas Facility* on week-ends were *not* date-stamped and inputted into the computer system until the following Monday.

24. In addition, on a regular basis, the Florida Facility and Caremark's other prescription drug facilities became inundated with orders. In response, the Florida Facility shipped orders received at that location from Florida Plan Members and others to one of Caremark's other prescription drug processing facilities located outside the State of Florida, including the Texas

Facility, the Illinois Facility, and the Arizona Facility. Likewise, those other prescription drug processing facilities shipped orders received at those locations to the Florida Facility after becoming inundated with orders. In addition, Caremark would send prescription drug orders from one drug processing site to another for no reason other than to even out the workflow between its facilities, i.e., for its own business convenience or to even out workflow between its prescription drug processing sites.

25. On those occasions, and in a further attempt to evade the turnaround time targets for processing and filling prescription drug orders set forth in the Agreement, Caremark employees entered the date that the order had been received at the *second* facility as the date that the order was first received by Caremark in the State of Florida, or at one of its other facilities.

26. Likewise, Caremark's Florida Facility followed those same procedures when other facilities became inundated with orders, or for other reasons, forwarded those orders to the Florida Facility as the second recipient of those drug orders.

27. Further, on a regular basis and in accordance with Caremark's established practices and procedures, Caremark's employees at the Florida Facility manipulated Caremark's electronic and other records to indicate to the Florida Plan and others that the prescription drug orders received from them were filled on the date of receipt instead of on the date that the orders were actually filled and shipped.

28. Caremark followed and employed those same deceptive practices in processing prescription drug orders at its other drug processing facilities, including at the Illinois Facility and Texas Facility.

29. Indeed, at the Illinois Facility, Caremark's intentionally and blatantly disregarded

actual received dates for prescription drug orders in favor of received dates that corresponded only with the dates that those employees physically entered the prescription drug orders into Caremark's computer system. Those employees regularly engaged in those practices in order to meet onerous and arbitrary "quotas" for data entry of prescription drug orders and to avoid disciplinary action by Caremark. These quota systems placed profits and expediency in front of patient safety, ethical and honest business practices, and false claims laws.

30. Moreover, Caremark set up its computer system so that, if an employee did not enter a received date at all, the computer would simply, by default, automatically provide a receive date that corresponded with the date that the employee was inputting the information into the computer, rather than its actual date of receipt at the facility. Alternatively, if a Caremark employee did not change the receive date each time he or she processed an order that was different than the last order inputted into the computer, the computer would enter the received date of the last order inputted.

2. Re-Stocking Of Returned Prescription Drugs At The Fort Lauderdale Facility And The Shipment Of Those Drugs To Illinois Without Disclosure Or Credit To The Florida Plan

31. The Florida Facility regularly received, on a daily basis and through the United States mail or otherwise, numerous "returns" of prescription drugs that had been already sent out by Caremark destined to Florida Plan Members and others. For example, a Florida Plan Member or the postal or other mailing or delivery service would return or re-ship to Caremark prescription drugs that had originally been processed, dispensed, and mailed by the Florida Facility or by some other Caremark prescription drug processing facility. These drugs were returned to Caremark because, *inter alia*, the order contained the wrong medication, the order was shipped in error, the

order was placed by the patient's doctor in error, the order contained a generic prescription drug that the patient could not or would not accept, the order went to the wrong address, or for a myriad of other reasons.

32. Pursuant to the regular practices and procedures of the Florida Facility, Caremark received returned drugs at its Florida Facility and *did not* destroy them.

33. Caremark *did not* destroy all of those returned drugs despite the fact that it could not ascertain the handling and storage of those drugs from the time they first left Caremark's prescription drug processing sites and prior to the time that they were eventually returned to Caremark, days or weeks later.

34. Instead, at the Florida Facility, a non-licensed employee or pharmacist of the Florida Facility simply viewed or physically "eyeballed" the returned prescription drugs and discarded or destroyed only those packages that he or she believed had been actually opened or damaged in the mail. At least for one to two years, that non-licensed pharmacist was not even supervised by a Caremark supervisor and pharmacist, and simply made destruction decisions on his or her own.

35. Those returned drugs were not subjected to any analysis, testing, or investigation that would have allowed Caremark's employees to ensure that those drugs had not been tampered with, altered, modified, or adulterated – after having been sent at least twice through the United States mail or by another mailing or delivery service.

36. In fact, according to at least one of the individuals (non-pharmacist) who was actually charged with initially handling and processing the returned drugs at the Florida Facility, Caremark did not have any idea if the returned drugs were safe; if they had maintained their

strength; if anyone had substituted or adulterated the drugs after they first left the Florida Facility and prior to the time they were returned to the Florida Facility.

37. Obviously, any Florida Plan Member or any other consumer of prescription drugs would refuse to receive or purchase Caremark's prescription drugs if they had known of those practices and procedures. Moreover, on at least one occasion, a Florida Plan Member has returned a prescription drug order sent to her in the mails by Caremark that was mislabeled, i.e., it contained a drug other than the one indicated on the label and for which the patient had sought a prescription. If that patient had not had the sophistication to notice that a difference drug was enclosed, and had that patient not notified Caremark that the wrong drug was enclosed when the patient returned that drug, that drug could have been re-stocked and sent out by Caremark to a less suspecting and savvy customer as the drug on its label.

38. Caremark's employees then used hot irons or steamers to remove the labels from those returned drugs, possibly even subjecting the returns to further damage.

39. Moreover, with respect to those returned drugs, Caremark created a fraudulent paper record, namely "RGM Memos" or "Returned Goods Memos" indicating that those returned drugs had actually been destroyed at the Florida Facility by circling the word "destroyed" on that record at the bottom of the document.

40. Thus, Caremark's employees created thousands of fraudulent records supporting their purported "destruction" returned drugs that had *not* been destroyed but had instead been re-stocked by Caremark.

41. Once Caremark first received notice of Mr. and Mrs. Fowler's Florida lawsuit, Caremark's employees gathered and boxed all of those fraudulent documents – from at least the

Florida and Texas Facilities and shipped them to Caremark's Management in Illinois.

42. Caremark was not done with the returned drugs that it received back in the mails at the Florida Facility. Caremark regularly gathered and shipped the returned drugs from the Florida Facility through the mails on a regular or weekly basis from the Florida Facility to the Illinois Facility.

43. According to Caremark's Management, upon receipt at the Illinois Facility in Mount Prospect, Illinois, those returned drugs were not subjected to any testing, analysis, or investigation that would have allowed Caremark to ensure that those returned drugs had not been tampered with, altered, modified, or adulterated – either in transit to or from the Florida Plan Members, or in transit from the Florida Facility to the Illinois Facility.

44. At the Illinois Facility, Caremark's employees in Mount Prospect, Illinois "re-stocked," or added to Caremark's inventory, those returned drugs.

45. Caremark sent those returned drugs from the Florida Facility to the Illinois Facility in the first instance because Caremark believed that it was illegal to re-stock those returned drugs in the State of Florida. Indeed, Carlos Gonzales, a high-ranking member of Caremark's Management team at the Illinois Facility, acknowledge that as the basis for such practices.

46. Yet, according to Caremark's Management, Caremark admittedly sent those very same returned drugs back into the steam of commerce, including back into the State of Florida.

47. Thus, those returned drugs were regularly returned to the stream of commerce, including to Florida Plan Members, on a regular basis by Caremark's Illinois Facility.

48. Indeed, at the Illinois Facility, Caremark placed those returned drugs back into the stream of commerce by re-selling and re-shipping them to Florida Plan Members and to any of the

more than 1,200 other health plans throughout the United States who, like the Florida Plans, have contractual relationships with Caremark.

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

50. Caremark engaged in those transactions without disclosing to the Florida Plan, the Florida Plan Members, and the other plans the nature of its returned goods practices or the nature of its profiteering in connection with those returns.

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

52. More importantly, Caremark did not credit or otherwise reimburse the Florida Plan or the Florida Plan Members for those returns.

53. Instead, in accordance with its regular practices and procedures, Caremark charged the Florida Plan and Florida Plan Members for those returned prescription drugs as if the drugs had in fact been used by the plan members and *not* returned.

54. Caremark did not regularly return or credit the plan members with the co-payments that they had made for the purchase of those returned drugs.

55. Caremark's generally only credited or reimbursed Florida Plan Members if they if they complained to Caremark's representatives. Otherwise, Caremark billed and retained the monies that they had received for returned prescription drugs.

56. Caremark's actions and procedures in *not* destroying returned prescription drugs, and instead re-stocking and re-selling those returned drugs, was directly contrary to the original

design of its computer system.

3. Re-Stocking Of Returned Prescription Drugs At The Texas Facility Without Disclosure Or Credit To The Florida Plan

57. At the Texas Facility, Caremark engaged in returned goods practices that were similar to those employed by Caremark at the Florida Facility. In fact, during Caremark's training of certain new employees at the Texas Facility, including new customer service representatives, Caremark provided those employees with a tour of the Texas Facility and informed them that Caremark accepted and re-stocked *all returned drugs*, unless they were controlled substances.

58. Accordingly, as part of their required daily routine and often in the late afternoon, several of Caremark's employees in the Materials Handling Department at the Texas Facility would each pick up a number of "totes" full of prescription drugs that had been sent back to the Texas Facility and processed in the returned goods room at the Texas Facility. These included all types of drugs. These employees would then re-stock those returned goods back into Caremark's inventory.

59. Caremark's employees at the Texas Facility utilized red blow dryers or blowers to remove the patient labels off of those returned goods.

60. Once again, as previously set forth above, Caremark was able to sell the same drugs twice, without credit or reimbursement to the Florida Plan or Florida Plan Members, or members of other plans, for the returns or any share of the proceeds from the second sale.

61. Moreover, according to Carlos Gonzales, a member of upper management at the Illinois Facility, for at least some period of time, Caremark also shipped prescriptions that were returned to the Texas Facility to the Illinois Facility. Again, Mr. Gonzales testified that those returned drugs could not be re-stocked by Caremark in Texas because it is illegal. Yet, Caremark

turned around and sent back out into the stream of commerce those very same returns that had been sent from Texas to Illinois, including back to Texas.

62. Upon the arrival of those returned drugs that were sent from the Texas Facility to the Illinois Facility, Caremark simply re-stocked those returned drugs at the Illinois Facility. Like its handling of the returned drugs that it regularly received from the Florida Facility, Caremark did not subject the returns sent to it at the Illinois Facility from the Texas Facility to any testing, analysis, or investigation that would have allowed Caremark to ensure that those returned drugs had not been tampered with, altered, modified, or adulterated – either in transit to or from the Florida Plan Members, or in transit from the Texas Facility to the Illinois Facility.

4. Falsification Of The Dates That Drugs Were Actually Prescribed By Physicians

63. At all of Caremark's prescription drug processing facilities, including at the Texas Facility and at the Illinois Facility, Caremark employed and employs hundreds of individuals known by names or job titles such as "technicians" or "translation technicians."

64. The duties of such individuals included "translating," or entering into Caremark's computer system, information regarding the prescription drug orders that Caremark received from patients or from doctors on their behalf.

65. On a regular basis, Caremark would receive prescription drug orders that did *not* indicate that date that the patient's doctor had prescribed the drug.

66. At least at the Texas Facility and at the Illinois Facility, (and possibly unless those prescription drug orders were for controlled substances), Caremark's representatives would not bother to check with the doctor or even his office staff to confirm *when* the prescription drug order had been actually prescribed by the patient's doctor. Instead, in the ordinary course of business,

Caremark's representatives would falsely enter, indicate, and represent that the date the drug had been prescribed by the doctor was the date of the postmark on the mailing envelope that Caremark received from the patient or the doctor.

67. Thus, even if the patient or doctor had "sat on" the prescription for five, ten, thirty, or even ninety days, and then sent the prescription to Caremark to be filled, Caremark would falsely claim that the drug was prescribed when the order was postmarked and sent to Caremark by the patient or doctor.

68. Moreover, Caremark's representatives affirmatively trained employees to engage in that practice and made this standard operating practice.

69. In fact, Caremark paid the employees charged with entering the prescription data, at least in part, on a quota or incentive basis. Thus, for example, the employees might be required to enter or input into the computer system thirty-five (35) (or some other number) prescriptions per hour, each working day. In exchange for meeting that type of quota, Caremark paid those employees an hourly wage. However, if those employees were unable to meet the quota, and, for example, only typed in thirty prescriptions per hour, Caremark would lower the employee's hourly rate, by, for example, twenty-five cents per hour, and subject them to some other form of monetary penalty. As a result, Caremark incentivized the employees to be as productive as possible and not to waste time checking things such as the doctor's actual prescription date. Caremark reprimanded and/or fired employees who could not meet the quotas imposed.

70. Caremark's practices and procedures as set forth above once again placed profits and expediency in front of patient safety, ethical and honest business practices, and false claims laws.

5. Fraudulently Making Changes To Already Written Prescriptions So That Caremark Could Falsely Claim That It Had Brought About "Savings" To The Florida Plan And Other Plans Throughout The Country: General Overview

71. Caremark employed and employs individuals, including pharmacy technicians or technicians whose task was and is, to *inter alia*, make telephonic and/or other inquiries to doctor's offices throughout the country in an attempt to gain the doctor's approval of some change to an existing and already written prescription. These changes include: moving the patient from one particular drug within a class of similar drugs; moving the patient from a brand drug to a generic drug; wholly or partially eliminating the refills associated with that individual's already existing prescription; changing the dosage of the patient's prescription; or changing the patient from a prescription drug to an over-the-counter ("OTC") drug, among other activities. Regardless of the mechanism, Caremark directly benefits financially from these practices.

72. Caremark engages in those practices so that it can claim "savings" to the Florida Plan and other insurance plans by way of claimed reduced costs that allegedly result from the changes its representatives have engineered. In turn, Caremark receives additional remuneration or other benefits from the plans, including the Florida Plan, for bringing about those alleged "savings." Depending on the plan, Caremark's clients either pay to it fees that include compensation for providing such "services," or actually paying to Caremark a portion of the "savings" that it has allegedly brought to the plan. This "savings" program has been known by such names as "Concurrent Care Management," "Concurrent Case Management," and "Custom Care Mail" (collectively referred to hereinafter as "CCM"). Caremark received additional remuneration from the State of Florida/Florida Plan for engaging in the CCM program on their behalf. See Affidavit of representative of State of Florida, Department of Management Services,

attached hereto as Exhibit 2.

73. Thus, dozens of Caremark employees spend each and every day contacting doctor's office throughout the country, including the doctors who have written the prescriptions for the Florida Plan Members.

74. Caremark categorizes an employee's attempt at bringing about a change to an existing prescription as an "attempted conversion." If the employee is successful, he is credited by Caremark with a successful "conversion." Each Caremark employee who engages in these conversion activities is kept apprised by Caremark, at least by way of weekly reports, of his or her percentage success rate at gaining conversions from doctor's offices, and the number of calls during which they have attempted to bring about conversions. Furthermore, Caremark keeps these employees apprised on a regular basis of the alleged "savings" they have purportedly gained for the plans serviced by Caremark.

75. The term "conversion" has been derisively referred to by some of Caremark's employees, including at its Texas Facility as "perversions" because the manner in which conversions are brought about are not on the up and up.

76. Many of the Caremark employees who make these telephone calls to doctor's offices as members of the CCM department are non-pharmacists.

77. These non-pharmacists are paid on an hourly basis and are subject to disciplinary action if their conversion success ratio is not maintained at appropriate levels.

78. Caremark tracks the conversion success ratios of its employees on at least a weekly basis. Caremark provides the CCM employees with weekly and other reports that monitor their conversion success ratios and total "savings" and compare them to others within their own

Department with regard to those statistical measures. Caremark's CCM employees, at least at the Texas Facility, even maintain sheets of paper on a daily basis on which they can "tick" off and immediately calculate the alleged "savings" that they have brought about that day. Caremark's Managers at the Texas Facility also regularly make reference to the Texas Facility's CCM callers' conversion success ratio and "savings" as compared to other Caremark CCM Departments.

79. Despite the fact that Caremark's employees are required to attempt to obtain authorization from a doctor or only his or her other authorized representative to make changes to a prescription, Caremark has allowed and encouraged its employees to call doctor's offices throughout the country and obtain authorization from virtually anyone in the doctor's office, including receptionists and others with no authorization or competence to make medical decisions.

80. On a regular basis, Caremark's representatives never even talk to a doctor, and may even rarely talk to a nurse, to attempt to gain that doctor's office "approval" to make changes to a patient's/Florida Plan Members' existing prescription.

81. On a regular basis, Caremark's representatives never obtain doctor approval or other authorized approval from the doctor's office to make a conversion.

82. The patient who is being directly affected by these "conversion" activities does not find out about these practices until sometime later.

83. According to Caremark supervisory personnel within Caremark's CCM Department at the Texas Facility, Caremark regularly placed "savings" and money making activities ahead of professional judgment and sound clinical decision-making with respect to patient care.

84. Caremark supervisory personnel at the Texas Facility complained to the Managers

of the CCM Department at the Texas Facility on a number of occasions regarding those misplaced and unethical values, yet Caremark failed and refused to take any steps whatsoever to change those practices. In fact, those Managers continued to emphasize making the numbers and achieving monetary and paper "savings."

6. Caremark's Fraudulent Refill Elimination Program

85. On a regular basis for the past several years, the dozens of Caremark representatives who have been engaged in calling doctor's offices throughout the country have been attempting to bring about successful "conversions" by gaining the approval of a doctor's office to eliminate a patient's already prescribed refills.

86. In short, if a Caremark representative was able to call a doctor's office and obtain approval from anyone in that doctor's office to wholly or partially eliminate already prescribed refills for a patient, he or she would be credited by Caremark with a successful conversion. In turn, Caremark claimed to the affected plan, including the Florida Plans, it had brought about "savings" to the plan. For example, if the refills would have otherwise had a cost to the plan of a total of \$300, Caremark claimed that it had brought \$300 worth of savings to the plan based upon that particular refill elimination.

87. Procedurally, Caremark's technicians, including those in the CCM at the Texas Facility, receive notice, through Caremark's computer system, that a Florida Plan Member or other plan member was a target for refill elimination.

88. The patient's doctor or other authorized representative was actually supposed to approve the elimination of the Florida Plan Member's refills.

89. Nonetheless, it has been the procedure and practice of at least the representatives

employed within Caremark's CCM Department at the Texas Facility to allow any member of the Florida Plan Member's doctor's office to authorize the refill elimination/successful conversion, including receptionists and others who have no ability, qualifications, or authority to make such medical decisions.

90. Therefore, the technicians often rarely actually even speak to the Florida Plan Member's doctors, or even the nurses. Instead, the CCM technicians attempt to speak to such persons as receptionists and others who are not qualified or authorized to make medical decisions regarding the Florida Plan Members, in order to bring financial gain to Caremark and benefits to themselves.

91. Caremark's representatives are supposed to notify the doctor's office that they are actually calling to *eliminate* the Florida Plan Member's refills. However, because the CCM technicians believed that, if they made such a disclosure, the chances of achieving a successful attempted conversion would be diminished, they have regularly failed to notify the doctor's office of that fact during their telephone calls.

92. Moreover, Caremark's representatives, including at least those at the Texas Facility and the Florida Facility have been calling and telling persons at those doctor's offices, including receptionists, that they were calling in an attempt to "tie the patient's refills to his or her next office visit." Alternatively, Caremark's representatives, including at least those at the Texas Facility, have been calling and asking "approval" to give the patient a "90 day supply." What each of those inquiries actually meant was that they were calling to *eliminate* that patient's already prescribed refills. Caremark's representatives would regularly and intentionally fail to mention to those individuals at the doctor's office that the patient's refills were actually going to be eliminated.

Indeed, many of Caremark's representatives believed that, if they fully informed the individual at the doctor's office of what they were doing, the office personnel would refuse to agree to their request.

93. In other instances, a CCM representative from the Texas Facility has provided even less information to the doctor's office and has instead utilized a call to the individual's doctor's office, allegedly to verify some aspect of the patient/plan member's prescription, as the claimed basis for approval to eliminate that individual's refills.

94. Of course, each and every time that one of Caremark's representatives was able to gain that purported "approval" to entirely or partially eliminate the patient's already prescribed refills, he or she would be credited by Caremark with a successful "conversion." Likewise, Caremark would claim to its plans, including the Florida Plan, that they had brought about "savings" based upon those refill eliminations, and seek remuneration for those "savings."

95. Consequently, on numerous occasions where the patients found out what had happened to their prescription and their refills, they were forced to return to their doctor, or otherwise contact their doctor, to attempt to have their refills reinstated or another prescription written.

96. This could include making yet another co-pay to their doctor for a medication that had already been prescribed to them, but subsequently eliminated by Caremark.

97. Even worse, Caremark's computer system targets patients for refill elimination *by drug*. Therefore, even if the patient received another prescription for the same drug/refill from his doctor in response to Caremark's refill elimination, that same patient may be targeted *again* by Caremark's representatives for yet another drug refill elimination. That is true whether or not the

patient actually needs the refills.

98. As a result, the very same patients have had their refills for the very same drug eliminated and reinstated by their doctors on multiple occasions in response to the repeated conversion activities of Caremark's representative, specifically including those employed within the CCM Department at the Texas Facility.

99. Each time that same patient's refills were eliminated, Caremark credited the CCM representative who brought about that result with a successful conversion attempt and with the associated "savings" to the Florida Plan or other plans. Caremark was thus able to claim "savings" with respect to that same patient/plan member repeatedly.

100. Equally troubling, if not more, is Caremark's practice of allowing its CCM Department representatives, specifically including those employed at the Texas Facility, to target for conversions, including on a repetitive basis, those patients who have been prescribed drugs for conditions that are known to be long-term or even chronic.

101. In those circumstances, Caremark's representatives, specifically including those employed within the CCM Department at the Texas Facility, still targeted such individuals for refill elimination, including on a repetitive basis.

102. This was particularly true with respect to the class of drugs prescribed for a patient's "GERD" state, or gastrointestinal esophageal reflux disease, or for erosive esophagitis.

103. Despite the fact that Caremark's CCM callers, at least those at the Texas Facility, knew that the patients with those conditions might be suffering from that condition forever, they still targeted them for refill elimination.

104. Some of Caremark's employees, at least at the Texas Facility, have had a particular

problem with that practice. Indeed, at a continuing education seminar for CCM employees of the Texas Facility, one Caremark pharmacist even raised the appropriateness of that practice with the featured doctor-speaker, who agreed that it was not an appropriate practice. Caremark nonetheless continued that practice.

105. In those circumstances, Caremark, of course, repeatedly credited its CCM representatives with successful conversions and the associated savings in such circumstance, and claimed that “savings” had been brought about to the Florida Plan and other plans as a result.

106. Incredibly, Caremark’s CCM callers even targeted for refill elimination patients who are quadriplegics and who had therefore been prescribed prescription drugs on a long-term or lifetime basis.

107. The fraudulent practices described above are at the very least the indirect result of the fact that Caremark has financially incentivized its employees to engage in such conduct.

108. Caremark’s refill elimination activities as set forth above have placed Caremark’s financial gains and reporting ahead of professional judgment, sound clinical decision-making, patient safety, and the needs of the patients.

109. Not surprisingly, one of the more common complaints from Florida Plan Members and other plan members to Caremark’s customer service representatives was that Caremark had eliminated without doctor approval. In some of those instances, Caremark’s customer service representatives called doctors’ offices in response to those complaints, and the doctors verified that they had not approved the refill elimination activity.

7. Caremark’s Fraudulent “NO” *Does Not Mean* “NO” Campaign

110. In an attempt to bring about even more conversions, and thus corresponding

“savings” to its various plans, including the Florida Plans, Caremark’s management or supervisory personnel within the CCM Department at the Texas Facility implemented an initiative designed to target for conversions those doctor’s offices that had already indicated that Caremark was *not* authorized to make changes to the patient’s prescription.

111. Typically, such a prohibition was made known to Caremark by way of a fax that was sent by the patient’s doctor to Caremark in which the doctor indicated that changes could not be made to the patient’s prescription.

112. Nonetheless, Caremark directed its CCM representatives at the Texas Facility to re-contact those same doctor’s offices and attempt to gain a successful conversion and alleged corresponding savings.

113. Accordingly, Caremark’s representatives within the CCM Department at the Texas Facility called upon those doctors’ offices.

114. If the CCM callers were able to get anyone at the doctor’s office to agree to the requested change to that prescription, including a receptionist, they would override the doctor’s original stated directive.

115. Caremark was thus able to claim “savings” to its plans, including to the Florida Plan.

116. Caremark’s representatives would throw away the original fax containing the doctor’s prohibition against changes to the patient’s prescription, and the computer record with respect to that patient would not contain reference to the doctor’s original faxed limitations. In fact, in some instances, doctors would call Caremark and have possession of the fax upon which they had rejected Caremark’s conversion attempt – and, of course, that fax was different than the fax in

the possession of Caremark.

117. In addition, Caremark's employees used devices, such as entering notes into Caremark's computer "notepad," instead of into the actual patient history on the patient computer screens which had either the intent, and at a minimum, the effect, of hiding the fact that the doctor's office had originally rejected Caremark's attempts at bringing about a conversion.

118. Many of the conversion attempts made in these circumstances related to proton pump inhibitors because they were high dollar items and thus would bring about a great deal of alleged "savings."

119. These practices, or some variation thereof, was also practiced by employees, including pharmacists, at Caremark's Florida Facility. Indeed, one of Caremark's pharmacists at the Florida Facility told Michael Fowler that Caremark simply "lied" and acted as if faxes sent in by doctor's offices indicating a "NO" response to an attempted conversion was really a "YES."

8. Caremark's Fraudulent Program Of Intentionally Holding Prescriptions For Internal Reporting Purposes And For Reasons Wholly Unrelated To Patient Safety

120. In a further demonstration that Caremark placed the needs of its patients, including Florida Plan Members, as secondary to money making and appearances, within the CCM Department at Caremark's Texas Facility, Caremark's Management directed its representatives to improperly and unethically "hold" patients' orders so that the orders would not be processed for several additional days or more.

121. In short, Caremark's management representatives within the CCM Department at the Texas Facility instructed the CCM callers that, in circumstances in which it was getting towards the end of the month, they should hold prescription drug orders, or not release them for

processing and dispensing, even though those CCM callers had already attempted to make conversions with respect to those prescriptions and failed. In those circumstances, the next step should have been for Caremark to proceed with the processing and dispensing of those prescription drug orders.

122. However, Caremark's CCM management at the Texas Facility instructed the CCM callers to wait and hold the order, as if further calling was going to be done, so that the orders would not be processed until the beginning of the next month.

123. That way, the CCM Department's numbers would purportedly look better.

124. Thus, even though patients were waiting on those orders and there was no reason for those orders not to be dispensed, Caremark intentionally failed to provide those prescription medications, whether medically necessary or not, to their patients in a timely manner.

125. Caremark did not disclose to the plans, including the Florida Plans, in those instances that, whatever the turnaround time associated with those orders, it should have been less, but for Caremark's wrongful acts.

9. Caremark's Fraudulent CCM Antihistamine Program

126. Caremark's customers-patients, including Florida Plan Members, regularly received prescriptions from their doctors for antihistamines.

127. Caremark's CCM representatives at the Texas Facility and the Florida Facility were required to systematically target these prescriptions for conversions.

128. However, these types of conversions resulted in not merely a change to the patient's existing prescription, but rather the actual elimination of the patient's already written prescription.

129. In short, the CCM representatives would contact these patients' doctors' offices,

typically via fax, and request approval to change the patient's prescription to an over-the-counter or "OTC" medication.

130. Once they gained that approval, Caremark would not change the prescription to an OTC medication. Instead, Caremark would cancel the prescription entirely. In sum, if the doctor's office agreed to the requested change, the patient would no longer have any antihistamine prescription at all, and it would be the patient's responsibility to obtain a retail OTC medication on his own, unless he went back to his doctor.

131. In those circumstances, Caremark would typically send the patient a letter indicating to him that his doctor had authorized an OTC medicine and that the patient would have to get that on his own.

132. This was all done to bring about additional "savings" to the Florida Plan and the other plans serviced by Caremark. Caremark would claim the full amount of the prescription as "savings" even though Caremark did not even fill the patient's order, and even though the patient had originally paid a co-pay to obtain the original antihistamine prescription which had now been entirely eliminated.

10. Caremark's Unilateral Cancellation Of Prescription Drug Orders Without Notice To Patients

133. For a number of years, at least until sometime in 2003, Caremark's primary and only dedicated customer service call center was housed and operated out of its prescription drug processing facility located at the Texas Facility.

134. Even to-date, Caremark continues to house and staff that same enormous customer service call center at the Texas Facility with hundreds of employees.

135. Caremark's customer service call center has been inundated with customer

complaints at the Texas Facility.

136. There are more than twenty different customer call center teams who operate the Texas Facility's national customer service center.

137. Each and every one of those teams at the Texas Facility includes up to eighteen or so non-supervisory customer service representatives ("CSRs").

138. Thus, depending upon the year and time of year, Caremark has employed, at any given time, anywhere from hundreds of CSRs to more than one thousand CSRs to operate the San Antonio customer service call center.

139. Those CSRs receive inadequate training. Moreover, it has been Caremark's regular practice to hire hundreds of such CSRs on a temporary basis and then to lay them off or fire them.

140. Each individual team of CSRs is headed up by a supervisor. Those two dozen or so supervisors of the Texas Facility's national customer service call center report to a Manager at that location.

141. The CSRs at the Texas Facility are essentially exclusively charged with the responsibility of fielding the telephonic inquiries/complaints from Caremark plan members, including the Florida Plan Members, all day, every day.

142. Importantly, the CSRs at the Texas Facility's national customer service call center, at least until sometime in mid to late 2003, and perhaps to-date, handle telephonic inquiries/complaints from plan members, including Florida Plan Members, who had ordered prescription drugs from any one of Caremark's various prescription drug processing centers located throughout the United States. In short, the Texas Facility's national customer service call center has not simply been responding to the telephonic inquiries/complaints from plan members,

including Florida Plan Members, who had placed a prescription drug order from the Texas Facility.

143. The CSRs are paid on an hourly basis. They are expected to handle a certain amount of telephonic inquiries/complaints, on average per hour, each and every day.

144. The CSRs, like virtually all of the employees at the Texas Facility, are also entitled to receive bonuses if the Texas Facility meets certain performance criteria on a quarterly basis, including "turnaround time" goals for the Texas Facility's handling and processing of prescription drug orders received from hundreds of different plans, including from Florida Plan Members.

145. Caremark's CSRs received hundreds of calls on a daily basis where the primary inquiry from the plan members, including Florida Plan Members, was the whereabouts and status of a prescription drug order that they have sent to any of Caremark's prescription drug processing facilities, and not just to the Texas Facility.

146. If a CSR was unable to successfully or satisfactorily resolve the plan member's telephonic inquiry/complaint, including a Florida Plan Member's complaint, that inquiry/complaint was "escalated" to a supervisor in the San Antonio customer service center.

147. At least during circumstances that have resulted in "escalated" calls, Caremark's CSRs and supervisors at the Texas Facility's national customer service call center have become aware that Caremark's representatives have simply *cancelled*, in Caremark's computer system, prescription drug orders made by the plan members serviced by Caremark, including by Florida Plan Members.

148. Indeed, the CSRs and customer service call center supervisors have personally observed, during their attempts to resolve telephonic complaints, that Caremark has simply cancelled the orders placed with Caremark for prescription drugs.

149. In those instances, the prescription drug orders *had not* been held up or diverted for further or special processing by Caremark. Instead, those orders had been: 1) received at one of Caremark's prescription drug processing centers , such as at the Illinois Facility, or the Florida Facility, or the Texas Facility, and processed by Caremark's mailroom personnel; 2) entered into Caremark's computer system by one of Caremark's translation technicians or others to be handled, processed, dispensed, and mailed, and 3) then later unilaterally *cancelled* in Caremark's computer system by Caremark's personnel.

150. After those orders were cancelled, Caremark **did not** notify the patients that they had decided to unilaterally cancel their prescription drug orders.

151. Instead, Caremark did nothing.

152. Accordingly, the Texas Facility's national customer service call center subsequently received telephonic complaints from anxious or angry patients who would be making inquiry regarding the status of their prescription drug orders.

153. By that time, days or weeks had elapsed from the time that Caremark had first received that complaining customer's prescription drug order.

154. On some of those occasions, after a computer check by a CSR revealed that Caremark had simply cancelled the order, Caremark's representatives at the Texas Facility's national customer service call center falsely told the complaining patient that the order must have gotten lost in the mail or some other such false statement.

155. Whether or not Caremark's representatives were truthful with the complaining party, Caremark would then have to re-institute the order by contacting that individual's physician, obtaining a new prescription, and having the order actually processed and dispensed by Caremark.

156. In those circumstances, rather than entering into Caremark's computer system as the actual date that Caremark originally received that cancelled prescription drug order as the received date, Caremark instead entered the receive date of the "new" order.

157. That further fraudulent act could save Caremark as much as twenty or thirty days for purposes of calculating average turnaround time.

158. Once again, Caremark's fraudulent practices gave a back seat to patient safety and well being.

11. Caremark's Fraudulent Manipulation Of Data Already Entered Into Caremark's Computer System And Related Fraudulent Acts

159. Information that had already been entered into Caremark's computer system by CSRs as computer "notes" or other entries regarding complaints made by patients was sometimes changed and manipulated, after the fact, so as to remove negative or incriminating facts regarding complaints made by patients. In fact, at least on occasions, members of management within the Texas Facility's customer service call center personally directed that computer entries be changed or sanitized.

160. In addition, CSRs sometimes categorized or "coded" into Caremark's computer system the nature of the issue/complaint that they handled in a manner that did not truly or completely reflect the nature of the complaint they handled.

161. As a result of the actions described in the two preceding Paragraphs, when reports or other information regarding the nature of patients' complaints, including Florida Plan Members, were provided by Caremark in the ordinary course of business to the Florida Plans, that information did not provide an accurate representation of the nature of the complaints and problems raised with Caremark's CSRs.

12. Caremark's Fraudulent Changes To Received Dates For "Aged" Prescription Drug Orders At The Texas Facility And At The Florida Facility: Phone Call Activity As An Artifice To Change Receive Dates

162. Caremark utilized its "aged order" or "old order" reports as yet another mechanism to engage in fraudulent acts.

163. In short, for years, including up to the present time, the Texas Facility has created, on a daily basis, an "aged order" or "old order report." This report would regularly consist of several hundred pages, each day, and identified prescription drug orders sent to the Texas Facility from anywhere in the country, including from Florida Plan Members, that the Texas Facility was having difficulty filling in a timely manner. These reports included the listing of orders that were as old as 20 or 30 days or more and which had not filled by Caremark.

164. For at least the past several years, members of Caremark's Management at the Texas Facility have met to discuss those reports each and every day.

165. Caremark used those aged or old order reports as a means to identify patients to call to talk about the status of their prescription drug orders, and as a guise to commit fraud.

166. During those phone calls, Caremark's representatives would tell patients that there was some reason why their order had not been filled and further inquire of the patients if they "still wanted their order" or words to that effect.

167. If the patient indicated that he or she wanted the order to be filled, Caremark would then unilaterally change in its computer system the received date for that order. In short, Caremark would delete the original received date that had been entered into the computer shortly after the Texas Facility's receipt of that order, and substitute the date that they called the patient as the new and "real" received date.

168. Caremark did not tell the patients or the plans that they were engaging in this conduct.

169. Caremark employed a very similar fraudulent scheme at the Florida Facility. Like the activities of Caremark's representatives at the Texas Facility, Caremark's representatives at the Florida Facility similarly regularly placed phone calls to patients to purportedly talk to them about the status of their orders and subsequently changed the received date for the patient's order.

170. The practices described above would obviously impact Caremark's average turnaround time by changing the received dates, in hundreds or thousands of instances, to dates that substantially shortened the amount of time that it allegedly took Caremark to actually process and dispense prescription drug orders.

171. There was no patient or drug safety issue that necessitated Caremark's fraudulent acts in these instances.

13. Caremark's Fraudulent Changes To Received Dates For "Aged" Prescription Drug Orders At The Texas Facility And At The Florida Facility: The Systematic Cancellation Of Patient's Order And The Systematic Alteration

172. In addition to using aged or old order reports in conjunction with patient phone calls as a means to systematically commit fraud, Caremark used those aged order reports and related documents to systematically commit fraud in an even simpler, more direct, and old fashion way of committing fraud.

173. At the Texas Facility, Caremark employed individuals to routinely, on a daily basis, utilize the aged or old order reports, or some portion thereof, as a basis for entirely canceling pending patient orders from Florida Plan Members and plan members throughout the country. Alternatively, those individuals would use those reports or other reports as a means to identify

patient orders that should simply have their received dates changed to the current date or some other more current date.

174. It was a Caremark Supervisor who trained and instructed at least one of those employees on how to access the pending patient prescriptions, including those of Florida Plan Members, on Caremark's computer system, and how to either cancel the order entirely or to change the received date to a more current date, usually to the date that he was making the change on the computer.

175. Accordingly, on a daily basis at the Texas Facility, Caremark provided employees with documents such as the old order or aged order reports, or some portion of that report, or another report addressing "escalated issues" and had him engage in those practices.

176. Thus, those employees were required to, and did, cancel thousands of orders and change the received dates on thousands of other orders, including those for Florida Plan Members.

177. The obvious result of Caremark's fraudulent activities as set forth above was to place patient safety in a secondary position to Caremark's need to meet its turnaround time averages.

14. Other Caremark Fraudulent Receive Date Manipulation

178. While Caremark's CCM representatives at the Texas Facility were going about their daily tasks they would notice that Caremark had changed received dates in Caremark's computer system.

179. For example, the CCM representatives at the Texas Facility often first look at physical hard copies of screen prints from Caremark's computer system relating to prescription drug orders on which they may attempt conversions that day. By the time the CCM representative

actually brings that same order up on Caremark's computer system, some hours later or even the next day, Caremark has changed the received date on the order to a more current date.

180. That practice once again had the effect at least, if not the intended purpose, of lowering Caremark's average turnaround processing times for the Florida Plan and all other plans it services.

15. Caremark's Intentional Refusal To Substitute A Generic For The Prescription Drug Prilosec To Make Additional Monies

181. For a period of time in late 2002 and 2003, Caremark failed and refused to "link" in its computer system, or substitute, the generic form of the prescription drug Prilosec, unless a specific request was made by the patient or his doctor for that now available generic.

182. Caremark engaged in that practice despite the fact that it had both ample supplies of that generic form of Prilosec as well as ample access to additional supplies.

183. There was a significant price disparity between Prilosec and its generic equivalent at that time. Accordingly, by failing to make that generic available to Florida Plan Members and Caremark's other plan members, Caremark was able to derive a substantial economic advantage on each Prilosec transaction at the expense of the Florida Plan and all other plans.

16. Other Evidence Of Caremark's Fraudulent Intent And Disregard For Patient Safety

184. For a number of years and on at least an annual basis, the Texas Facility would send a great number of pallets full of prescription drugs to the Florida Facility, where they were covered with tarps or plastic and kept away from the Florida Facility's inventory of prescription drugs. Those pallets full of prescription drugs would sit in the Florida Facility for a period of time, specifically not to be used by the Florida Facility, and then re-routed back to the Texas Facility.

185. Similarly, on other occasions, the Texas Facility had a truck drive loads of prescription drugs to the Florida Facility. At the Florida Facility, the drugs would be signed for as if they had been received by the Florida Facility. The truck would then turn around, with the drugs in tow and having never left the truck, to be returned to the Texas Facility.

V. CLAIM: VIOLATIONS OF FLORIDA FALSE CLAIMS ACT

186. Plaintiffs incorporate and reallege, as though fully set forth herein, Paragraphs 1 through 185 above as Paragraph 186 of this Complaint.

187. Plaintiffs assert this cause of action under the State of Florida False Claims Act or *qui tam* statute, 68.081.

188. At all relevant times and in furtherance of the schemes and fraudulent acts described above, Caremark billed the State of Florida, the Florida Plan, and Florida Plan Members for hundreds of thousands of prescription drug orders.

189. At all relevant times and in furtherance of the schemes and fraudulent acts described above, Caremark falsely and fraudulently made "claims" to the State of Florida, the Florida Plan, and Florida Plan Members within the meaning of the Florida False Claims Act, and accepted compensation, remuneration, and other benefits for such claims.

190. At all relevant times, Caremark falsely represented and claimed to the State of Florida, the Florida Plan, and Florida Plan Members, through weekly billing statements, reports, quarterly reports, and otherwise, that it was entitled to compensation, remuneration, or other benefits pursuant to the terms of the Agreement and otherwise. Caremark accepted compensation, remuneration, or other benefits from the State of Florida, the Florida Plan, and Florida Plan Members in accordance with such claims and misrepresentations.

non-returned prescription drugs, either affirmatively or by omission.

195. At all relevant times, Caremark falsely represented and claimed to the State of Florida, Florida Plan, and Florida Plan Members, through weekly billing statements, reports, quarterly reports, and otherwise, that it was entitled to compensation, remuneration, or other benefits for filling of prescription drug with false prescription dates, received dates, and other patient information that Caremark had either invented out of convenience or altered. Caremark accepted compensation, remuneration, and other benefits based upon those false claims and misrepresentations.

196. At all relevant times, Caremark falsely represented and claimed to the State of Florida, the Florida Plan, and Florida Plan Members, through weekly billing statements, reports, quarterly reports, and otherwise, that they it was entitled to compensation, remuneration, or other benefits for making changes, "conversions," and for "savings" that it purportedly brought about to existing prescription drug orders for Florida Plan Members based upon having first obtained doctor or other authorized approval. Caremark falsely represented on those occasions that it had actually obtained doctor or other authorized approval for those changes or "conversions," that it had properly brought about such "conversions," that such "conversions" were appropriate, and that it was entitled to alleged "savings." Caremark wrongfully accepted compensation and remuneration premised upon those false claims.

197. At all relevant times, Caremark falsely represented and claimed to the State of Florida, the Florida Plan, and Florida Plan Members, through weekly billing statements, reports, quarterly reports, and otherwise, that it was entitled to compensation, remuneration, or other benefits for "eliminating" refills that patients would have otherwise received, after Caremark

purportedly obtained doctor or other authorized approval for such actions. Caremark falsely represented on those occasions that it had actually obtained such approval for those refill eliminations and/or that such refill eliminations were otherwise appropriate. Caremark wrongfully accepted compensation, remuneration, and other benefits premised upon those false claims and representations.

198. At all relevant times, Caremark falsely represented and claimed to the State of Florida, the State of Florida Plan, and Florida Plan Members that it had realized “savings” to them in instances in which Caremark denied refills to a Florida Plan Member after the patient requested a refill too soon or was otherwise not entitled to a refill. Caremark accepted compensation, remuneration, or other benefits based upon those false claims and representations.

199. At all relevant times, Caremark falsely represented and claimed to the State of Florida, the Florida Plan, and Florida Plan Members that it had realized “savings” to them in instances in which plan members had lost eligibility for prescription services. Caremark accepted compensation, remuneration, or other benefits based upon those false claims and representations.

200. At all relevant times, Caremark falsely represented and claimed to the State of Florida, the Florida Plan, and Florida Plan Members that it had realized “savings” to them, in the instances involving “conversions” as more fully set forth above, in which Caremark failed to obtain doctor or other authorized approval for such actions and/or that such conversions were otherwise appropriate. Caremark accepted compensation, remuneration, or other benefits based upon those false claims and representations.

201. At all relevant times, Caremark falsely represented to the State of Florida, the Florida Plan, and Florida Plan Members, through billing statements, reports, and otherwise, that it

was entitled to compensation for prescriptions filled for Florida Plan Members. However, Caremark falsely failed to disclose that it wrongfully held such prescriptions and failed to timely release and dispense them, based upon internal accounting or other concerns. Caremark accepted compensation, remuneration, or other benefits based upon those false claims and representations.

202. At all relevant times, Caremark falsely represented to the State of Florida, the Florida Plan, and Florida Plan Members, through billing statements, reports, and otherwise, that it had received certain types and volumes of customer complaints from Florida Plan Members. Those reports and statements were false. Caremark accepted compensation, remuneration, or other benefits based upon those false claims and representations.

203. At all relevant times, Caremark falsely represented to the State of Florida, the Florida Plan, and Florida Plan Members, through billing statements, reports, and otherwise, that it was entitled to compensation or remuneration for filling and dispensing the prescription drug Prilosec for Florida Plan Members. Caremark failed to disclose that it had intentionally failed to substitute a generic form of that drug on those occasions. Caremark accepted compensation, remuneration, or other benefits based upon those false claims and representations.

204. Caremark's acts, statements, and claims as set forth above were in violation of the Florida False Claims Act.

205. Caremark acted with actual knowledge of the falsity of the information and claims they provided and made to the State of Florida, the Florida Plan, and Florida Plan Members as set forth above. By its acts as described above, Caremark knowingly presented, or caused to be presented, to the State of Florida, the Florida Plan, and Florida Plan Members, false and fraudulent claims for payment or approval.

206. Caremark, by its acts as described above, knowingly made, used, or caused to be made or used, false records or statements to get their false or fraudulent claims paid or approved by the State of Florida, the Florida Plan, and Florida Plan Members.

207. Caremark, by its acts as described above, knowingly made, used, or caused to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the State of Florida, the Florida Plan, and Florida Plan Members.

208. Caremark acted in deliberate ignorance of the truth or falsity of the information they provided and claims they made to the State of Florida, the Florida Plan, and Florida Plan Members as set forth above, or acted in reckless disregard of the truth or falsity of the information they provided and claims they made to the State of Florida, the Florida Plan, and Florida Plan Members as set forth above.

209. Indeed, according to Caremark management, one of the trusted advisors of Caremark's CEO actually conducted tours of the Texas Facility to prospective clients/plans. Thus, even at the very highest levels of Caremark's national management structure, Caremark may have been specifically aware of the fraudulent activities described above.

210. As a direct and proximate cause of Caremark's fraudulent acts and false claims, the State of Florida, the Florida Plan, and Florida Plan Members have suffered monetary damage and loss. Such damage has been suffered on each and every occasion that Caremark provided or created a false billing statement, invoice, or other document, to or for the State of Florida, the Florida Plan, and Florida Plan Members, and otherwise.

WHEREFORE, Plaintiffs, by their undersigned counsel, respectfully request the entry of an Order entering judgment in their favor and against the Defendants, and awarding the State of

Florida, the Florida Plan, and the Florida Plan Members monetary relief premised upon each and every violation of the Florida False Claims Act committed by the Defendants, for treble damages, for a percentage award of all such damages in an amount equal to at least thirty percent (30%) of the recovery by the State of Florida and the Florida Plan, for the legal fees and other expenses incurred in prosecuting this lawsuit, and for such other and further relief as the Court deems appropriate, and all other relief to which Plaintiffs are entitled to under the Florida False Claims Act, and Plaintiffs further demand trial by jury.

VI. VIOLATIONS OF THE ANTI-RETALIATION PROVISIONS OF THE FLORIDA FALSE CLAIMS ACT

211 Plaintiffs incorporate and reallege, as though fully set forth herein, Paragraphs 1 through 185 above as Paragraph 211 of this Complaint.

212. Plaintiffs assert these causes of action under the anti-retaliation provisions of the State of Florida False Claims Act or *qui tam* statute, 68.081 (the "Act").

213. The Act expressly forbids an employer or other entity from engaging in retaliation against a whistleblower, such as the Plaintiffs in the present action.

214. More specifically, Section 68.088 of the Act provides in pertinent part:

Protection for participating employees.

Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this act, including investigation for initiation of, testimony for, or assistance in an action filed or to be filed under this act, shall have a cause of action.

215. Caremark has violated those anti-retaliation provisions in numerous ways.

As an initial matter, Michael Fowler applied for and was being considered for a promotion to the

position of Opti Fill Administrator.

216. Mr. Fowler was the most qualified person for the position, and was told as such by Caremark's interviewing personnel.

217. However, Caremark failed and refused to promote Mr. Fowler to that position because, prior to Caremark filling that position, Caremark learned that Mr. Fowler was a whistleblower in this matter.

218. Caremark's decision not to promote Mr. Fowler was a direct and proximate result of his whistleblowing activities. As a direct and proximate result, he has suffered monetary and other damages.

219. In addition, Caremark has engaged in harassment of Mr. and Mrs. Fowler that is prohibited by the Act. Namely, Caremark instructed employees that they were not allowed to talk to Mr. and Mrs. Fowler, or, if they did, they could face disciplinary action. Caremark's directive was a direct and proximate result of Mr. and Mrs. Fowler's whistleblowing activities. As a direct and proximate result, they have suffered embarrassment, shame, and humiliation.

220. Caremark has assigned an individual or individuals to watch and monitor Mr. Fowler while he performed his daily duties, in an attempt to harass and intimidate Mr. Fowler. That action is the direct and proximate result of Mr. Fowler's whistleblowing activities and he has suffered embarrassment, shame, and humiliation as the direct and proximate result of that action.

221. Caremark also has filed a retaliatory lawsuit against Mrs. Fowler premised upon the fact that she obtained documents and information to support and corroborate her whistleblowing claims against Caremark. This is an attempt by Caremark to harass and intimidate Mrs. Fowler and to chill her and her husband's further participation in the present action, and to cause them to

needlessly expend time and money. That lawsuit is the direct and proximate result of Mrs. Fowler's whistleblowing activities, and she has and will suffer embarrassment, shame, humiliation, and monetary damages.

222. Finally, on March 31, 2004, Caremark summarily suspended Mr. and Mrs. Fowler for their whistleblowing activities, and, in the context of that action, intentionally subjected them to embarrassment, shame, humiliation, and ridicule as they escorted them from the building all the way to their vehicle. Those suspensions were a direct and proximate result of Mr. and Mrs. Fowler's whistleblowing activities and they have suffered damages as a direct and proximate result, including but not limited to the emotional damages referenced above.

223. Mr. Fowler learned, shortly prior to that suspension, that Caremark had begun tape recording its employees' conversations.

WHEREFORE, Plaintiffs, by their undersigned counsel, respectfully request the entry of an Order entering judgment in their favor and against the Defendants, premised upon each and every retaliatory act as set forth above, for all out-of-pocket damages, for emotional damages, for punitive damages, and for all other damages to which they are otherwise entitled to under the Act, and for such other and further relief as the Court deems appropriate, and Plaintiffs further demand trial by jury.

Respectfully Submitted,

By:


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