



originally provided information to the State of Texas that is the basis for this suit and is included as a named party plaintiff in this case.

I.

**DISCOVERY CONTROL PLAN**

1.1 Plaintiff, the State of Texas, designates this case as a Level 3 case requiring a discovery control plan tailored to the circumstances of this specific suit.

II.

**JURISDICTION & VENUE**

2.1 Jurisdiction over the subject matter is founded upon the TMFPA, which prohibits, and provides exclusive remedies to redress, the conduct of the Defendants and which provides for this action to be brought by the State of Texas and by Private Person Plaintiff, Ven-A-Care. Sec. 36.052, Tex. Hum. Res. Code.

2.2 This court has jurisdiction over each of the Defendants named herein, because each such Defendant does business in the State of Texas. Furthermore, the specific acts committed by Defendants and prohibited by the TMFPA constitute statutory torts committed in whole or in part in the State.

2.3 Venue is proper in Travis County pursuant to § 36.052(d), Tex. Hum. Res. Code; that section specifies Travis County as a County of proper venue. In addition, many of the unlawful acts committed by the Defendants were committed in Travis County including the making of false statements and misrepresentations of material fact to the State of Texas, and to the Texas Medicaid Program.

2.4 Additionally, venue is proper against these Defendants in Travis County as all or a substantial portion of the events giving rise to the instant claims occurred in Travis County. §§ 15.001, 15.002, Tex. Civ. Prac. & Rem. Code.

### III.

#### DEFENDANTS

The Defendants complained of and sued in this action are:

**A. Geneva Defendants:**

**3.1 The following related companies are hereinafter collectively referred to as the “Geneva Defendants”:**

3.1.1 Geneva Pharmaceuticals, Inc. (“Geneva”) was a corporation organized under the laws of Colorado with its principal offices in Broomfield, Colorado. In about December, 2003, it became known as Sandoz, Inc. (Sandoz) Sandoz has its principal office in Princeton, New Jersey. It is a subsidiary of Novartis AG. At all times material to this civil action, Geneva/Sandoz has transacted business in the State of Texas by, including but not limited to, selling and distributing to purchasers in the State of Texas pharmaceutical products that are the subject of this action. Geneva/Sandoz does not maintain a regular place of business in this state or a designated agent for service of process; thus, service by the Secretary of State is appropriate. Tex. Civ. Prac. & Rem. Code 17.044. Sandoz President and CEO Bernhard Hampl may be served at the following address.

Bernhard Hampl  
Sandoz, Inc.  
506 Carnegie Center, Suite 400  
Princeton, New Jersey 08540

3.1.2 Novartis Pharmaceuticals Corporation (“Novartis”) is a corporation organized under the laws of Delaware with its principal offices in East Hanover, New Jersey. It is a subsidiary of Novartis AG. At all times material to this civil action, Novartis has transacted business in the State of Texas by, including but not limited to, selling and distributing to purchasers in the State of Texas pharmaceutical products that are the subject of this action. Novartis may be served by serving its registered agent at the following address.

Corporation Service Company D/B/A+  
Attn: Novartis Pharmaceuticals Corp.  
701 Brazos Street, Suite 1050  
Austin TX 78701

3.1.3 Novartis AG is a corporation organized under the laws of Switzerland with its principal offices in Basel, Switzerland. Geneva/Sandoz is a subsidiary of Novartis AG. At all times material to this civil action, Novartis AG has transacted business in the State of Texas by, including but not limited to, selling and distributing to purchasers in the State of Texas pharmaceutical products that are the subject of this action. Novartis AG does not maintain a regular place of business in this state or a designated agent for service of process; thus, service by the Secretary of State is appropriate. Tex. Civ. Prac. & Rem. Code 17.044. Novartis AG may be served by serving Novartis AG Chairman and CEO Daniel Vasella at the following address.

Daniel Vasella  
Novartis AG  
Postfach CH-4002 Basel  
Switzerland  
Facsimile 41-61-3248001

3.1.4 Eon Labs, Inc. ("Eon") is a corporation organized under the laws of Delaware with its principal offices in Princeton, New Jersey. It is a subsidiary of Sandoz and Novartis. At all times material to this civil action, Eon has transacted business in the State of Texas by, including but not limited to, selling and distributing to purchasers in the State of Texas pharmaceutical products that are the subject of this action. Eon does not maintain a regular place of business in this state or a designated agent for service of process; thus, service by the Secretary of State is appropriate. Tex. Civ. Prac. & Rem. Code 17.044. Eon may be served by serving Sandoz President and CEO Bernhard Hampl at the following address.

Bernhard Hampl  
Eon Labs, Inc/Sandoz Inc.  
506 Carnegie Center, Suite 400  
Princeton, New Jersey 08540

3.1.5 Apothecon, Inc. (Apothecon) was a corporation acquired by Geneva in 2000. Apothecon was merged into Geneva in 2002. At all times material to this civil action, Apothecon transacted business in the State of Texas by, including but not limited to, selling and distributing to purchasers in the State of Texas pharmaceutical products that are the subject of this action. Apothecon does not maintain a regular place of business in this state or a designated agent for service of process; thus, service by the Secretary of State is appropriate. Tex. Civ. Prac. & Rem. Code 17.044. Apothecon may be served by serving Sandoz President and CEO Bernhard Hampl at the following principal office address.

Bernhard Hampl  
Apothecon/Sandoz Inc.  
506 Carnegie Center, Suite 400  
Princeton, New Jersey 08540

**B. Mylan Defendants:**

**3.2 The following related companies are hereinafter collectively referred to as the “Mylan Defendants”:**

3.2.1 Mylan Laboratories, Inc. (“Mylan Labs”) is a corporation organized under the laws of Pennsylvania with its principal offices in Canonsburg, Pennsylvania. At all times material to this civil action, Mylan Labs has transacted business in the State of Texas by, including but not limited to, selling and distributing to purchasers in the State of Texas pharmaceutical products that are the subject of this action. Mylan Labs does not maintain a regular place of business in this state or a designated agent for service of process; thus, service by the Secretary of State is appropriate. Tex. Civ. Prac. & Rem. Code 17.044. Mylan Labs CEO and Vice President of the Board Robert J. Coury may be served at the following address.

Robert J. Coury  
Mylan Laboratories, Inc.  
1500 Corporate Drive  
Canonsburg, Pennsylvania 15317

3.2.2 Mylan Pharmaceuticals, Inc (“MPI”) is a corporation organized under the laws of West Virginia with its principal offices in Morgantown, West Virginia. MPI is a subsidiary of Mylan Labs. At all times material to this civil action, MPI has transacted business in the State of Texas by, including but not limited to, selling and distributing to purchasers in the State of Texas pharmaceutical products that are the subject of this action. MPI may be served at the following address.

Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Co.  
Attn: Harry Korman, President  
Mylan Pharmaceuticals, Inc.  
701 Brazos Street, Suite 1050  
Austin, Texas 78701

3.2.3 UDL Laboratories, Inc. (“UDL”) is a corporation organized under the laws of Illinois with its principal offices in Rockford, Illinois. UDL is a wholly-owned subsidiary of Mylan Labs. At all times material to this civil action, UDL transacted business in the State of Texas by, including but not limited to, selling and distributing to purchasers in the State of Texas pharmaceutical products that are the subject of this action. MPI President Harry Korman may be served at the following address.

Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Co.  
Attn: Harry Korman, President  
Mylan Pharmaceuticals, Inc.  
701 Brazos Street, Suite 1050  
Austin, Texas 78701

**C. Teva Defendants:**

**3.3 The following related companies are hereinafter collectively referred to as the “Teva Defendants”:**

3.3.1 Teva Pharmaceuticals USA, Inc. (“Teva USA”), formerly known as Lemmon Pharmaceuticals, Inc., is a corporation organized under the laws of Delaware with its principal offices in North Wales, Pennsylvania. It is a subsidiary of Teva Pharmaceutical Industries Ltd. At all times material to this civil action, Teva USA has transacted business in the State of Texas by, including but not limited to, selling and distributing to purchasers in the State of Texas

pharmaceutical products that are the subject of this action. Teva USA does not maintain a regular place of business in this state or a designated agent for service of process; thus, service by the Secretary of State is appropriate. Tex. Civ. Prac. & Rem. Code 17.044. Teva USA President and CEO William S. Marth may be served at the following address.

William S. Marth  
Teva Pharmaceuticals USA, Inc.  
1090 Horsham Road  
North Wales, Pennsylvania 19454

3.3.2 Teva Pharmaceutical Industries Ltd. is a corporation organized under the laws of Israel with its principal offices in Jerusalem, Israel. Teva USA is a subsidiary of Teva Pharmaceutical Industries Ltd. At all times material to this civil action, Teva Pharmaceutical Industries Ltd. has transacted business in the State of Texas by, including but not limited to, selling and distributing to purchasers in the State of Texas pharmaceutical products that are the subject of this action. Teva Pharmaceutical Industries Ltd. does not maintain a regular place of business in this state or a designated agent for service of process; thus, service by the Secretary of State is appropriate. Tex. Civ. Prac. & Rem. Code 17.044. Teva Pharmaceutical Industries Ltd. CEO Dan Suesskind may be served at the following address.

Dan Suesskind  
Teva Pharmaceutical Industries, Ltd.  
Basel Street  
Petach Tikva 49131  
Israel  
Facsimile 972-3-9234050

3.3.3 Sicor Pharmaceuticals Inc. ("Sicor") is a corporation organized under the laws of Delaware with its principal offices in Irvine, California. It is a subsidiary of Teva Pharmaceutical Industries Ltd. At all times material to this civil action, Sicor has transacted business in the State of Texas by, including but not limited to, selling and distributing to purchasers in the State of Texas pharmaceutical products that are the subject of this action. Sicor does not maintain a regular place of business in this state or a designated agent for service of

process; thus, service by the Secretary of State is appropriate. Tex. Civ. Prac. & Rem. Code 17.044. Sicor CEO Marvin S. Samson may be served at the following address.

Marvin S. Samson  
Sicor Pharmaceuticals Inc.  
2050 Springdale Rd. Ste 400  
Cherry Hill, New Jersey 08003

3.3.4 Teva Novopharm USA, Inc. (“Novopharm”) is a corporation organized under the laws of Delaware with its principal offices in Schaumburg, Illinois. Novopharm is a subsidiary of Teva Ltd. At all times material to this civil action, Novopharm has transacted business in the State of Texas by, including but not limited to, selling and distributing to purchasers in the State of Texas pharmaceutical products that are the subject of this action. Novopharm does not maintain a regular place of business in this state or a designated agent for service of process; thus, service by the Secretary of State is appropriate. Tex. Civ. Prac. & Rem. Code 17.044. Novopharm may be served by serving Teva USA President and CEO William S. Marth at the following address.

William S. Marth  
Teva Pharmaceuticals USA, Inc.  
1090 Horsham Road  
North Wales, Pennsylvania 19454

3.3.5 IVAX Pharmaceuticals, Inc. (“IVAX”) is a corporation organized under the laws of Florida with its principal offices in Miami, Florida. IVAX is a subsidiary of IVAX Corporation, which was acquired by Teva in 2006. At all times material to this civil action, IVAX transacted business in the State of Texas by, including but not limited to, selling and distributing to purchasers in the State of Texas pharmaceutical products that are the subject of this action. IVAX may be served by serving its registered agent at the following address.

Attn: Ivax Pharmaceuticals, Inc.  
Corporate Creations Network Inc.  
4265 San Felipe, #1100  
Houston, Texas 77027

3.3.6 Copley Pharmaceuticals, Inc. (“Copley”) was a corporation acquired by Teva in 1999. Copley was merged into Teva in 1999. At all times material to this civil action, Copley

transacted business in the State of Texas by, including but not limited to, selling and distributing to purchasers in the State of Texas pharmaceutical products that are the subject of this action. Copley does not maintain a regular place of business in this state or a designated agent for service of process; thus, service by the Secretary of State is appropriate. Tex. Civ. Prac. & Rem. Code 17.044. Copley may be served by serving Teva USA President and CEO William S. Marth at the following principal office address.

William S. Marth  
Teva Pharmaceuticals USA, Inc.  
1090 Horsham Road  
North Wales, Pennsylvania 19454

#### IV.

#### RESPONDEAT SUPERIOR AND VICARIOUS LIABILITY

4.1 When the several Defendants herein are collectively referred to as the “Defendants”, the allegations contained in that sentence and paragraph are alleged severally against each separate Defendant.

4.2 The group of defendants identified as the “Geneva Defendants” are all related entities, in that these Defendants are corporations whose operations are inextricably intertwined and who were acting in concert together to foster, facilitate and promote the unlawful conduct alleged herein. As such, each of the Geneva Defendants is jointly and severally liable for the actions of each member of the Geneva Defendants group. It is alleged that employees and officers of all the Geneva Defendant Corporations acted in harmony and concert, although sometimes as a reaction or response to drug pricing manipulations of other companies, to commit the illegal acts specified in Parts VII, VIII, and IX of this Petition.

4.2.1 The Geneva Defendants are related entities sharing common elements of management, finances, control, supervision, and reporting and thus are mutually, jointly, and severally liable under legal theories of *respondeat superior*, and the past, present and continuing relations and dealings by and between these related entities are so inextricably intertwined that for purposes of

this suit, some or all of them should be considered as a single business entity, and/or a joint enterprise in pursuing the scheme made the basis of this suit.

4.3 The group of defendants identified as the “Mylan Defendants” are all related entities, in that these Defendants are corporations whose operations are inextricably intertwined and who were acting in concert together to foster, facilitate and promote the unlawful conduct alleged herein. As such, each of the Mylan Defendants is jointly and severally liable for the actions of each member of the Mylan Defendants group. It is alleged that employees and officers of all the Mylan Defendant Corporations acted in harmony and concert, although sometimes as a reaction or response to drug pricing manipulations of other companies, to commit the illegal acts specified in Parts VII, VIII, and IX of this Petition.

4.3.1 The Mylan Defendants are related entities sharing common elements of management, finances, control, supervision, and reporting and thus are mutually, jointly, and severally liable under legal theories of *respondeat superior*, and the past, present and continuing relations and dealings by and between these related entities are so inextricably intertwined that for purposes of this suit, some or all of them should be considered as a single business entity, and/or a joint enterprise in pursuing the scheme made the basis of this suit.

4.4 The group of defendants identified as the “Teva Defendants” are all related entities, in that these Defendants are corporations whose operations are inextricably intertwined and who were acting in concert together to foster, facilitate and promote the unlawful conduct alleged herein. As such, each of the Teva Defendants is jointly and severally liable for the actions of each member of the Teva Defendants group. It is alleged that employees and officers of all the Teva Defendant Corporations acted in harmony and concert, although sometimes as a reaction or response to drug pricing manipulations of other companies, to commit the illegal acts specified in Parts VII, VIII, and IX of this Petition.

4.4.1 The Teva Defendants are related entities sharing common elements of management, finances, control, supervision, and reporting and thus are mutually, jointly, and severally liable under legal theories of *respondeat superior*, and the past, present and continuing relations and dealings by and between these related entities are so inextricably intertwined that for purposes of this suit, some or all of them should be considered as a single business entity, and/or a joint enterprise in pursuing the scheme made the basis of this suit.

## V.

### **PRELIMINARY STATEMENT AND NATURE OF THE ACTION**

5.1 This is an action under the Texas Medicaid Fraud Prevention Act (hereinafter sometimes referred to as “TMFPA,” or “the Act”) for restitution of the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of an unlawful act of Defendants, or any of them, as herein described, along with, pre-judgment interest, civil penalties of not less than \$1,000.00 or more than \$10,000.00 for each unlawful act, two (2) times the value of the payments, and recovery of costs, attorneys’ fees, and expenses of the Attorney General of the State of Texas and Ven-A-Care against Defendants, as well as any and all other monetary amounts as may be allowed at law or in equity under Sec. 36.052 Tex. Human Resources Code.

5.2 Providers who dispense approved pharmaceutical products to Texas Medicaid recipients are entitled to reimbursement from the Texas Medicaid Program for the estimated acquisition costs of the pharmaceutical products they dispense. 42 CFR §§ 447.301, 447.331. The Defendants, as a matter of law, are all charged with actual notice and knowledge of the statutes, rules and regulations of the State of Texas, where they chose to market their products, and knew that the Texas Medicaid program intended to, and was required to, estimate providers’ acquisition costs for their drugs based on information supplied by Defendants. Nonetheless, the Defendants knowingly or intentionally made false representations, including misrepresentations

by silence and omission, of costs for certain of their drugs directly or indirectly to the Texas Medicaid Program.

5.3 As required by Texas law and regulations, the Texas Medicaid Program relied on Defendants' false representations and misrepresentations. 42 CFR §§ 447.301, 447.331; *see also* 1 Tex. Admin. Code § 354.1921(b). As a result of these misrepresentations of drug costs by Defendants, Texas Medicaid was caused to overestimate the provider acquisition costs for the drugs in question. Thus Defendants' misrepresentations, failure to disclose, and false representations caused the Texas Medicaid Program to pay reimbursement for the Defendants' drugs in amounts well in excess of the actual acquisition costs to the providers.

5.4 Plaintiff has identified certain drugs for which the Defendants reported false and misleading prices to, and/or concealed the true prices from, the State. The drugs manufactured and sold by the Geneva Defendants are identified in Exhibit A, which is attached hereto and incorporated herein for all purposes. The drugs manufactured and sold by the Mylan Defendants are identified in Exhibit B, which is attached hereto and incorporated herein for all purposes. The drugs manufactured and sold by the Teva Defendants are identified in Exhibit C, which is attached hereto and incorporated herein for all purposes. A list of the specific National Drug Code (NDC) numbers for these drugs is incorporated into these exhibits. Plaintiffs may discover evidence of additional pharmaceuticals for which Defendants misrepresented prices to the State, in which event, those drugs will be added to Exhibit's A, B, and C, as appropriate by amended pleadings.

5.5 The Defendants marketed their drugs to chain warehouse companies, wholesalers, distributors, group purchasing organizations, pharmacies, home health care companies, and other customers, through financial inducements, including but not limited to, false price markups, discounts, rebates, chargebacks, and other financial incentives. These devices were designed to, and did, create a difference between the "price" as reported to the Texas Medicaid Program and

the actual amount charged by Defendants to their customers (the “Spread”). Defendants thus wrongfully exploited and defrauded the Texas Medicaid Program by causing it to pay the claims of Defendants’ customers at grossly inflated amounts that far exceeded the commercially available prices that would lead to a reasonable estimate of the acquisition costs of the drugs in question.

## VI.

### **BACKGROUND: HOW PHARMACEUTICAL CLAIMS ARE PAID UNDER THE TEXAS MEDICAID PROGRAM**

6.1 The Texas Medicaid Program reimburses eligible providers, including pharmacies, for the approved pharmaceuticals they provide to Medicaid recipients. In accordance with state and federal law the Texas Medicaid Program estimates provider acquisition cost, based on prices reported by the drug manufacturers.

6.2 The Texas Vendor Drug Program (TVDP) of the Texas Health and Human Services Commission (“THHSC”)<sup>1</sup> administers this program. Providers can obtain reimbursement through the TVDP only for products listed on the Texas Drug Code Index. 1 TEX. ADMIN. CODE § 354.1831. To have its particular pharmaceutical products listed on the index, a drug company or manufacturer must file and have approved an application for its products with the Texas Department of Health. 1 TEX. ADMIN. CODE § 354.1921. Section 2 of the application requires the manufacturer to report, for each drug submitted, the suggested wholesale price to pharmacies, the price at which the drug is sold to wholesalers and/or distributors, the direct price to pharmacies, the price to chain warehouses and the price at which the drug is sold to any other special purchasing groups. Additionally, the form contains a separate question in section 4 inquiring whether the drug company sells the drug to wholesalers and/or distributors. The application requires that a manufacturer certify that the information it has provided is correct

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<sup>1</sup> The Vendor Drug Program was transferred from the Texas Department of Health to the Texas Health and Human Services Commission, effective September 1, 2001.

and that it will provide correct information regarding subsequent changes in pricing of the product within 15 days of such changes occurring. Further, in approving the application, THHSC expressly requires that supplemental updated price information be timely provided. By executing the certification of information provided concerning pricing as a legally mandated requirement for placing their products on the formulary of Texas Medicaid, each manufacturer specifically agrees and certifies that they will update future price changes within 15 days of a change.

6.3 THHSC bases its reimbursement schedule on the prices reported by the manufacturer on the application, and on subsequent price changes supplied by the manufacturer, as each certifies they will provide. Reimbursement to a pharmaceutical provider is based on THHSC's best estimate of acquisition cost, referred to as ("EAC"), a number derived from the information supplied by manufacturers. 1 TEX. ADMIN. CODE § 355.8541 (1).

6.4 When a manufacturer reports false pricing information to TVDP, or conceals true pricing information from it, the agency's calculation of estimated acquisition cost ("EAC") is inflated and thus the reimbursement schedule is also inflated. These circumstances result in drug reimbursement overpayments to drug providers by the State.

## VII.

### ACTIONABLE CONDUCT OF DEFENDANTS

7.1 The Defendants knew that by reporting false and inflated prices and by obfuscating, omitting or concealing market prices, thus failing to report legally required truthful pricing information for the Identified Drugs, they would cause the Texas Medicaid Program to overestimate acquisition costs for their drugs and thus to pay excessive reimbursement to Medicaid providers. Notwithstanding this knowledge, the Defendants reported false or misleading price and cost information and concealed and failed to disclose price reductions and truthful pricing information, and this caused the Texas Medicaid program to pay excessive

reimbursements. The Defendants' actions created "spreads" between the acquisition costs of the Identified Drugs and the amounts reimbursed for those drugs by Medicaid. Defendants believed and intended that these "spreads" would financially benefit the Defendants' Texas Medicaid provider customers. This benefit to the providers was intended to and did induce the providers to purchase from Defendants, thus increasing Defendants sales and thus their profits, all to the detriment of the Texas Medicaid program, the beneficiaries thereof, and the taxpayers of Texas.

7.2 The Defendants were fully capable of making truthful representations about costs of the Identified Drugs. Notwithstanding the Defendants' knowledge that they were required to provide truthful price information vital to Texas Medicaid's ability to adequately estimate provider acquisition costs, the Defendants knowingly or intentionally reported misleading price information about the Identified Drugs and concealed or failed to disclose truthful price information.

7.3 In one or more of the following ways, the Defendants acted knowingly or intentionally in making false statements and misrepresentations of material fact to the Texas Medicaid program, and in concealing from or failing to disclose the truth to the Texas Medicaid program:

- A. Falsely reporting costs and concealing true costs on initial applications to have its pharmaceutical covered by Texas Medicaid;
- B. Concealing or otherwise failing to disclose decreases in the costs of its pharmaceutical;
- C. Concealing or otherwise failing to disclose events or transactions that decrease the cost of its pharmaceutical to purchasers;
- D. Falsely reporting that the cost of its pharmaceutical was increasing when it in fact was not increasing;
- E. Falsely reporting that the cost of its pharmaceutical was the same when in fact it was falling; and

- F. Falsely reporting that its pharmaceutical was not sold to a specific sector or segment of the market (also known as a “class of trade”).
- G. Failing to disclose that its pharmaceutical was sold to a specific class of trade.

7.4 Defendants knowingly or intentionally committed the above acts and omissions. The Texas Medicaid program relied upon, was deceived by, and used Defendants’ false price representations as bases for calculating provider EAC and provider reimbursement.

### VIII.

#### **THE DEFENDANTS’ ACTIONS CONSTITUTE “UNLAWFUL ACTS” AND VIOLATE THE TEXAS MEDICAID FRAUD PREVENTION ACT**

8.1 At various times in the past, and continuing through the present date, Defendants knowingly or intentionally reported to the State of Texas’ Medicaid Program false statements or misrepresentations regarding their pharmaceutical products, including, but not limited to, the pharmaceuticals described in the attached Exhibits A, B, and C.

8.2 Defendants have repeatedly and continuously violated the TMFPA. The Act specifies 10 separate acts that are declared to be unlawful. Each of the Defendants repeatedly committed at least three of those unlawful acts:

- A. The Act prohibits a person from knowingly or intentionally making or causing to be made a false statement or misrepresentation of material fact on an application for a contract, benefit, or payment under the Medicaid Program; or that is intended to be used to determine a person’s eligibility for a benefit or payment under the Medicaid program. TEX. HUM. RES. CODE §36.002(1).
- B. The Act prohibits a person from knowingly or intentionally concealing or failing to disclose an event that permits a person to receive a benefit or payment that is not authorized, or that permits a person to receive a benefit or payment that is greater than the benefit or payment that is authorized. TEX. HUM. RES. CODE §36.002(2).
- C. The Act prohibits a person from knowingly or intentionally making or causing to be made a false statement or misrepresentation of fact concerning information required to be

provided by a federal or state law, rule, regulation or provider agreement pertaining to the Medicaid Program. TEX. HUM. RES. CODE § 36.002(4).

8.3 In the TMFPA, The Texas Legislature has specified acts and omissions that are illegal. Those acts and omissions give rise to civil and criminal liability and penalties that can be imposed against drug manufacturers such as the Defendants, who voluntarily chose to place their respective products into the Texas Medicaid Vendor Drug Program and thus are subject to and bound by the laws, rules, regulations, and agreements pertinent thereto. The TMFPA provides no statutory defenses and contains no references to common law defenses or allowances for mitigation and none of these are allowed.

## **IX.**

### **REMEDIES**

9.1 Pursuant to the terms of the Medicaid Fraud Prevention Act, each Defendant is liable to the State of Texas for the value of any payment provided under the Medicaid program, directly or indirectly, as a result of the unlawful act. TEX. HUM. RES. CODE § 36.052(1). Each Defendant is severally and individually liable for restitution as defined by statute (T.M.F.P.A. § 36) as well as civil penalties as a result of their individual unlawful act(s). Additionally, each Defendant is liable for interest on the value of the payment, civil penalties ranging from \$1,000 to \$10,000 for each unlawful act, two (2) times the value of the payments for which restitution is awarded, and all fees, expenses, and costs reasonably incurred. *Id.* at (2), (3), & (4) and § 36.007.

9.2 Plaintiff and Relator invoke in the broadest sense all relief possible at law or in equity under § 36.052, whether specified in this pleading or not. Plaintiffs will seek an amount as civil penalties that will be justified and appropriate under the facts relevant to this issue and under the laws as determined by the Court.

9.3 The amounts sought from each Defendant are in excess of the minimum jurisdictional limits of this Court.

9.4 The TMFPA is a statute of absolute strict liability. There are no defenses available for any violation of its provisions and in particular any violation of any part of § 36.002 of the TMFPA. Likewise, according to the Texas Supreme Court, as a matter of law the defenses of estoppel, laches, and limitations are not available against the State of Texas, as a Sovereign. *State v. Durham*, 860 S.W.2d 63, 67 (Tex. 1993).

9.5 The Defendants' violations have cost the State of Texas many millions of dollars over the years. At present, the State is unable to determine the full extent of the overpayments caused by Defendants' fraudulent conduct. Attached hereto as Exhibit D is a spreadsheet showing examples of overcharging by defendants from the Geneva Defendants. Exhibit E shows examples of overcharging by Mylan Defendants; Exhibit F shows examples of overcharging by Teva Defendants.

9.6 These examples are only a few of the many drugs sold by Defendants, and the State's loss on these drugs is not confined to the years shown in the examples. Following discovery, the State will be better able to establish the total amount of the overpayments resulting from Defendants' intentionally misleading conduct.

## X.

### JURY DEMAND

10.1 The State respectfully requests a trial by jury pursuant to Tex. R. Civ. P. 216.

## XI.

### ATTORNEYS FEES COSTS AND EXPENSES

11.1 The State has retained private attorneys, pursuant to Sec. 36.105, Texas Human Services Code, to prosecute this matter. Pursuant to Sec. 36.007, Texas Human Services Code, the State

seeks to recover fees, expenses, and costs reasonably incurred in obtaining civil remedies including court costs, reasonable attorneys fees, witness fees, and deposition fees, including the fee contracted by the State with the undersigned attorneys pursuant to **Sec. 2254.101, Tex. Gov't Code, et seq.**

**PRAYER**

Wherefore, Premises Considered, the State prays that it recover from the Defendants restitution of overpayments, statutory additional restitution as provided in sec. 36.052(a)(4) Tex. Human Services Code<sup>2</sup>, pre-judgment interest, attorneys fees, costs, and expenses and compensatory and punitive civil penalties as provided in TEX. HUM. RES. CODE ANN., Chapter 36. Plaintiff and Relator invoke in the broadest sense all relief possible at law or equity under Texas Human Resources Code, Chapter 36 without qualification or limitation. The State asks that upon trial of this case that judgment be entered in favor of the State and against the Defendants as set forth herein. The Relator further asks that it be awarded its costs and expenses; a reasonable attorney fee; and the maximum Relator's share provided for under the TMFPA. The State prays for such other and further relief to which it may show itself entitled either at law or in equity.

Respectfully submitted,

GREG ABBOTT  
Attorney General of Texas

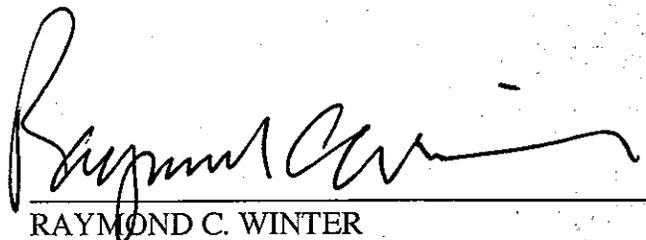
KENT C. SULLIVAN  
First Assistant Attorney General

JEFF ROSE  
Deputy Attorney General for Litigation

MARK TOBEY  
Chief, Antitrust & Civil Medicaid Fraud Division

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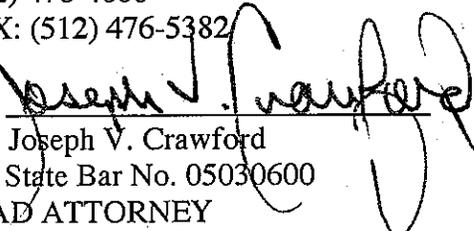
<sup>2</sup> Previously §36.003(a)(4), Tex. Human Services Code.



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221 West 6<sup>th</sup> Street, Suite 1800  
Austin, Texas 78701-3495  
(512) 476-4600  
FAX: (512) 476-5382

by:



Joseph V. Crawford  
State Bar No. 05030600

LEAD ATTORNEY

Mahon B. Garry, Jr.  
State Bar No. 06039750  
ATTORNEY IN CHARGE FOR CLAIMS  
AGAINST GENEVA DEFENDANTS

Archie Carl Pierce  
State Bar No. 15991500  
ATTORNEY IN CHARGE FOR CLAIMS  
AGAINST MYLAN DEFENDANTS

Brantley Ross Pringle, Jr.  
State Bar No. 16330001  
ATTORNEY IN CHARGE FOR CLAIMS  
AGAINST TEVA DEFENDANTS

ATTORNEYS FOR THE STATE OF TEXAS

RAND RIKLIN  
State Bar No: 16924275

JOHN E. CLARK  
State Bar No: 04287000

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