



Legal Document

Illinois Northern District Court
Case No. 1:09-cv-07891

**United States of America et al v. Ukrainian Village
Pharmacy, Inc. et al**

Document 76



View Document



View Docket

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA; STATES OF ILLINOIS,
FLORIDA, and GEORGIA; and COMMONWEALTH OF
MASSACHUSETTS *ex rel.* YURY GRENADYOR,

Plaintiffs,

v.

UKRAINIAN VILLAGE PHARMACY, INC.; PHARMA LIFE,
LLC; MEI SERVICES, INC.; PHARMA LIFE ATLANTA;
PHARMA LIFE MINNESOTA; STORCHAK PHARMACY,
LLC; STORCHAK, LLC; GLOBAL PHARMA LIFE, LLC;
BUCKHEAD PHARMACY, INC.; PHARMA LIFE COLUMBUS;
BUCKHEAD PHARMACEUTICAL ASSOCIATION, INC.;
PHARMA LIFE BOSTON; PHARMA LIFE MASSACHUSETTS,
INC.; MALECON PHARMACY, INC.; MIKHAIL BOGACHEK,
AKA MICHAEL BOGACHEK; EDUARD BOGACHEK, AKA
EDWARD BOGACHEK; SEMEN DINKEVICH; SVITLANA
KHARLAMOVA; VASILY SHEVCHUK; YAROSLAW
BANDURA; ALLA BRODECH; WALTER BRODECH; EMILY
CHATSKIS; YURI CHERNY; AARON GREENSPAN; IOURI
MELNIK; RIMA POLOTSKAYA; GALINA SABIR; YURI
SHAPIRO; ABRAM STARR; YEYGENY TSYRULNIKOV;
BELLA ZARUBINSKY; EDUARD ZINGER; AND JOHN DOES
15-200,

Defendants.

Civil Action No. 09 C 7891

Judge Harry D. Leininweber

Magistrate Judge Susan E. Cox

QUI TAM

SECOND AMENDED COMPLAINT

Robert A. Clifford
Courtney A. Marinscin
CLIFFORD LAW OFFICES
120 North LaSalle Street
Suite 3100
Chicago, Illinois 60602
(312) 899-9090

C. Barry Montgomery
Edward Roy Moor
WILLIAMS MONTGOMERY & JOHN, LTD.
233 South Wacker Drive
Suite 6100
Chicago, IL 60606
(312) 443-3200

Kirk E. Chapman
Barry A. Weprin
Ross B. Brooks
Alastair J.M. Findeis
MILBERG LLP
One Pennsylvania Plaza
New York, NY 10119
(212) 594-5300

Attorneys for Plaintiff

TABLE OF CONTENTS

	<u>Page</u>
I. NATURE OF THE CASE	1
II. PARTIES	4
III. JURISDICTION AND VENUE	7
IV. RELEVANT STATUTES AND REGULATIONS.....	8
A. Prohibition on Kickbacks.....	8
B. The False Claims Act.....	10
C. DME Suppliers Must Use Their Own Identifying Numbers	12
V. DEFENDANTS’ UNLAWFUL CONDUCT	13
A. Kickbacks to Patients	14
1. PharmaLife-Wide Scheme To Give Inducements to Customers	14
2. Specific Examples – Chicago Location	17
3. Specific Examples – Minneapolis Location	22
4. Specific Examples – Creve Coeur Location	23
5. Specific Examples – Mayfield Village Location	24
6. Specific Examples – Columbus Location	25
7. Specific Examples – Boston Location	26
8. Specific Examples – Hialeah Location	27
9. Specific Examples – Atlanta Location.....	28
10. Specific Example Summary.....	29
B. Kickbacks to Doctor Defendants	29
C. Charging for Pills Never Received by Beneficiaries	32
D. False DME Identifying Numbers.....	33
E. Retaliatory Discharge.....	34

COUNT I:
FALSE CLAIMS, 31 U.S.C. §3729(a)(1)(A).....35

COUNT II:
FALSE CLAIMS, 31 U.S.C. § 3729(a)(1)(B)36

COUNT III:
CONSPIRACY TO SUBMIT FALSE CLAIMS, 31 U.S.C. § 3729(a)(1)(C)36

COUNT IV:
RETALIATION STATUTE, 31 U.S.C. § 3730(h), AS TO MIKHAIL
BOGACHEK, DINKEVICH, KHARLAMOVA, SHEVCHUK, AND UVP,
ONLY37

COUNT V:
RETALIATION UNDER ILLINOIS WHISTLEBLOWER REWARD AND
PROTECTION ACT, AS TO MIKHAIL BOGACHEK, DINKEVICH,
KHARLAMOVA, SHEVCHUK, AND UVP ONLY37

COUNT VI:
ILLINOIS WHISTLEBLOWER REWARD AND PROTECTION ACT38

COUNT VII:
FLORIDA FALSE CLAIMS ACT39

COUNT VIII:
GEORGIA FALSE MEDICAID CLAIMS ACT39

COUNT IX:
MASSACHUSETTS FALSE CLAIMS ACT40

Relator Yury Grenadyor (“Relator”), pursuant to the *qui tam* provisions of the federal False Claims Act, 31 U.S.C. §§ 3729-3733 (“FCA”); and pursuant to the *qui tam* provisions of the Illinois Whistleblower Reward and Protection Act, 740 Ill. Comp. Stat. § 175/1, *et seq.* (“IWRPA”), Florida False Claims Act, Fla. Stat. §68.083(2)-(5) (“Florida FCA”), State False Medicaid Claims Act, Ga. Code § 49-4-168.2(c)(2) (“Georgia FCA”), and the Massachusetts False Claims Act, Mass. Gen. Laws Ann. Chap 12 § 5(A) *et seq.* (“Massachusetts FCA”), collectively, the “State False Claims Acts”; collectively with the FCA, the “State and Federal False Claims Acts,” files this Amended Complaint against:

Ukrainian Village Pharmacy, Inc. (“Ukrainian Village Pharmacy” or “UVP”); PharmaLife, LLC; MEI Services, Inc. d/b/a PharmaLife Atlanta and MEI Services, Inc. d/b/a Buckhead Pharmacy (collectively, “PharmaLife Atlanta”); Storchak, LLC and Storchak Pharmacy, LLC d/b/a PharmaLife Minnesota (collectively, “PharmaLife Minnesota”); Buckhead Pharmacy, Inc., PharmaLife Columbus, and Buckhead Pharmaceutical Association, Inc. (collectively, “Buckhead Pharmacy”); PharmaLife Boston and PharmaLife Massachusettes, Inc. (collectively, “PharmaLife Boston”); Malecon Pharmacy, Inc. (“Malecon Pharmacy”); Global PharmaLife, LLC (“Global PharmaLife”); (all collectively, “PharmaLife Pharmacies”) and

Mikhail Bogachek, aka Michael Bogachek (“Bogachek”) and Eduard Bogachek, aka Edward Bogachek (collectively, the “Bogacheks”); Semen Dinkevich (“Dinkevich”); Svitlana Kharlamova (“Kharlamova”); and Vasily Shevchuk (“Shevchuk”) (all collectively with the PharmaLife Pharmacies, the “PharmaLife Defendants”); and

Yaroslav Bandura (“Bandura”); Alla Brodech; Walter Brodech; Emily Chatskis (“Chatskis”); Yuri Cherny (“Cherny”); Aaron Greenspan (“Greenspan”); Iouri Melnik (“Melnik”); Rima Polotskaya (“Polotskaya”); Galina Sabir (“Sabir”); Yuri Shapiro (“Shapiro”); Abram Starr (“Starr”); Yevgeny Tsyrlunikov (“Tsyrlunikov”); Bella Zarubinsky (“Zarubinsky”); and Eduard Zinger (“Zinger”) (collectively, “Doctor Defendants”); and John Does 1-100 (all of the preceding collectively, “Defendants”).

In support thereof, Relator alleges as follows:

I. NATURE OF THE CASE

1. Relator brings this *qui tam* action to challenge Defendants’ fraud against government healthcare programs, including an illegal kickback scheme targeting doctors and

their patients who purchase prescription drugs and other medical supplies paid for by government healthcare programs, such as Medicare and Medicaid; charging government healthcare programs for pills not actually given to beneficiaries of those programs; and using other healthcare providers' identification numbers.

2. Federal statutory and regulatory law forbids any payment of any remuneration to induce prescriptions by doctors or purchases by patients, and proscribes that any claims submitted to the government that are tainted by such unlawful remuneration are not to be paid.

3. Specifically, the federal Anti-Kickback Statute ("AKS") bars anyone from offering to pay or paying "any remuneration" whether "directly or indirectly, overtly or covertly, in cash or in kind," to induce the purchase of goods "for which payment may be made in whole or in part under a Federal healthcare program."¹ The purpose of the AKS is to prevent doctors and patients from acting self-interestedly based on bribes, kickbacks, and other inducements, rather than on the considerations of medical necessity, high quality, and low cost that are supposed to drive purchasing decisions. This prevents overutilization of particular prescription products or suppliers and unnecessary price inflation.

4. The False Claims Act ("FCA"),² in turn, creates liability for anyone who causes the submission of false claims to the government, whether directly or indirectly. Because the government will not knowingly pay for any purchase tainted by bribes, kickbacks, or other inducements, requests for reimbursement of any such tainted purchases are false claims and actionable under the FCA.

¹ 42 U.S.C. § 1320a-7b(b)(2)(B).

² 31 U.S.C. § 3729-3733.

5. While employed at Defendant Ukrainian Village Pharmacy, Relator learned that Defendants systematically and knowingly violated the AKS and the FCA. The PharmaLife Defendants' primary sales strategy was to "buy business" from the Doctor Defendants and their patients by offering various inducements to doctors and patients in exchange for filling the patients' prescriptions at a PharmaLife Pharmacy.

6. The PharmaLife Defendants violated the AKS through a variety of means. Among other things, PharmaLife (1) offered and paid kickbacks to doctors to write prescriptions that were filled at a PharmaLife Pharmacy; (2) paid kickbacks to patients in the form of gifts; and (3) paid kickbacks to patients in the form of waived co-pays. The Doctor Defendants violated the AKS by accepting the offered kickbacks.

7. The inducements included both gifts and payments to doctors (including cognac, wines, chocolate, and checks for at least \$1 per prescription) and gifts to patients of expensive foods (such as caviar), over-the-counter medications, other miscellaneous items, and systematically-waived copayments on items paid for by government healthcare programs.

8. The PharmaLife Defendants also defrauded the government by not crediting government healthcare programs for pills ordered by their beneficiaries and paid for by those programs, but not actually picked up from PharmaLife Pharmacies by those beneficiaries.

9. The PharmaLife Defendants also defrauded the government by falsely and knowingly using incorrect NSC provider numbers for durable medical equipment ("DME") items from other PharmaLife Pharmacies, even though a provider's use of its own number is

material to the government's reimbursement decision: the government does not knowingly reimburse purchases submitted with another entity's NSC number.³

10. Finally, Defendants Mikhail Bogachek, Dinkevich, Kharlamova, Shevchuk, and Ukrainian Village Pharmacy violated 31 U.S.C. § 3730(h) by wrongfully terminating Relator when he complained to them about their illegal activities throughout the summer of 2008.

II. PARTIES

11. Relator Yury Grenadyor ("Relator" or "Grenadyor") is a resident of Illinois who was employed as a pharmacist by the Bogacheks' Ukrainian Village Pharmacy in Chicago from April, 2006, until October, 2008. In this capacity, Relator Grenadyor was responsible for, *inter alia*, dispensing prescriptions and having government healthcare programs billed for those prescriptions. In the course of his employment, Relator became aware of the scheme set forth herein, both in the Chicago location and elsewhere. His investigation, in co-operation with counsel, revealed additional detail regarding the operation of the scheme.

12. The States⁴ and the United States, real parties in interest under the FCA and the State False Claims Acts, paid claims submitted under government healthcare programs, including Medicare and Medicaid, that were false: because of Pharmalife's unlawful inducements paid to doctors and patients as part of the PharmaLife-wide scheme described herein; because they were submitted for individual prescriptions that were recycled and sold more than once to different beneficiaries of government healthcare programs; and because they were submitted with deliberately incorrect NSC numbers.

³ The importance and nature of NSC numbers to reimbursement issues is set forth more fully in sections IV. C. and V. D., below.

⁴ Illinois, Georgia, Florida, and the Commonwealth of Massachusetts; hereinafter, the "States."

13. The United States paid the false claims alleged herein (Medicare claims in full and Medicaid claims in part) and is entitled to the bulk of Relators' recovery. Medicare is a federal health insurance program administered by CMS for the elderly and disabled. *See* 42 U.S.C. §§ 1395-1395hhh. CMS contracts with carriers to handle Medicare enrollment and payment activities. Medicaid is a jointly-funded federal and state public-assistance program that pays for medical expenses incurred by low-income patients. *See* 42 U.S.C. §§ 1396-1396v.

14. Defendants Mikhail "Mike" Bogachek ("Bogachek") and Eduard "Edward" Bogachek (collectively, the "Bogacheks") are the principal conspirators and the architects of this scheme to defraud the government. They so thoroughly control all of the PharmaLife Pharmacies that each PharmaLife Pharmacy is an alter ego of the Bogacheks. As a result, the Bogacheks are liable for the acts of all of the PharmaLife Pharmacies and the PharmaLife Pharmacies are liable for Bogacheks' acts.

15. Defendant Semen "Simon" Dinkevich ("Dinkevich") is Mikhail Bogachek's uncle and another principal conspirator who worked closely with the Bogacheks, supervising the day-to-day operations of the Chicago location (Defendant Ukrainian Village Pharmacy) and reporting directly to Mikhail Bogachek. Dinkevich was the Bogacheks' "eyes and ears" in the UVP location and was in constant contact by telephone with the Bogacheks when they were in Atlanta and the othe PharmaLife Pharmacies.

16. Because he was a trusted lieutenant of the Bogacheks, it was Dinkevich who usually purchased the inducements that were given to customers and doctors by PharmaLife's UVP location.

17. Defendant Ukrainian Village Pharmacy is a privately-held Illinois corporation that was controlled by the Bogacheks and jointly owned by Mikhail Bogachek, Dinkevich,

Kharlamova, and Shevchuk. The Bogacheks maintained this control by threats and intimidation, including through their control of purchasing all of Ukrainian Village Pharmacy's inventory.

18. The PharmaLife Pharmacies comprise a small chain of retail pharmacies serving and operated by ethnic Russians and Ukrainians. The PharmaLife Pharmacies are empty shells, directed by the Bogacheks, who own substantial shares of each of them. The Bogacheks exercise this control via e-mail and daily and weekly telephone calls.

19. Because of the Bogacheks' control, none of the PharmaLife Pharmacies purchase their drugs directly. Instead, to maintain their control over the PharmaLife Pharmacies, the Bogacheks have all drugs for the entire PharmaLife chain purchased from wholesalers Amerisource Bergen Corp. and J.M. Smith Corp. via PharmaLife's corporate headquarters in Atlanta, regularly billing to the Buckhead Pharmacy name in 2006-2008, and then have the drugs delivered to each PharmaLife location. Thus, although orders may be placed by co-owners at each location, if those orders are not in accord with the Bogacheks' requirements, Mikhail Bogachek berates the co-owner of the relevant location and instructs that person to handle subsequent purchases as he directs.

20. For example, Relator often heard Mikhail Bogachek yelling at Kharlamova, his co-conspirator and a part-owner of UVP, for ordering too much of a certain drug, and telling her to order less next time.

21. Likewise, the PharmaLife Pharmacies do not use their own NSC numbers.⁵ For example, PharmaLife's Chicago location, UVP, has its own NSC number, which it is by law

⁵ "National Supplier Clearinghouse" number, a number which uniquely identifies each supplier of Durable Medical Equipment. *See, e.g.*, <https://www.cahabagba.com/glossary/definitions/content7n15.htm>, last visited July 26, 2011.

required to use⁶ when selling durable medical equipment (“DME”). The PharmaLife Defendants regularly sell DME to Medicare and Medicaid beneficiaries who live in Chicago and the surrounding area, but instead of using the UVP NSC number, 5702130001, it was instead the PharmaLife Defendants’ regular practice to use 1279850001 – the NSC number of MEI Services, Inc. d/b/a PharmaLife Atlanta.

22. Mikhail Bogachek also regularly alters the inventory records of each PharmaLife location from PharmaLife Headquarters in Atlanta, Georgia.

23. Defendant PharmaLife, LLC is a Georgia corporation. Its principal place of business is in Atlanta, Georgia, but is so thoroughly dominated and controlled by the Bogacheks that each is the alter ego of the other. Defendant PharmaLife, LLC transacts business and committed acts proscribed by the FCA within this District via its alter egos, the Bogacheks.

III. JURISDICTION AND VENUE

24. Relator brings this action on behalf of the States and the United States for violations of the FCA, 31 U.S.C. §§ 3729-3733, and State False Claims Acts.

25. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 3732(a), which confer jurisdiction over actions brought pursuant to 31 U.S.C. §§ 3729 and 3730. Supplemental jurisdiction for Counts V-IX arises under 28 U.S.C. § 1367 because these claims relate closely to the federal claims, such that they form part of the same case or controversy under Article III of the U.S. Constitution.

26. This Court has personal jurisdiction over Defendants pursuant to 31 U.S.C. § 3732(a) because they are found, transact business, or committed acts prohibited by 31 U.S.C.

⁶ As set forth in section IV. C., below.

§ 3729 in this District. Furthermore, because Defendants jointly conspired to violate the FCA and the AKS, each of them is liable for the acts taken in furtherance of the conspiracy.

27. Venue is proper in this District pursuant to 31 U.S.C. § 3732(a) because Defendants are found, transact business, or committed acts prohibited by 31 U.S.C. § 3729 in this District.

28. This suit is not based upon prior public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, lawsuit or investigation; in a Government Accountability Office or Auditor General's report, hearing, audit, investigation; in news media; or in any other location as the term "publicly disclosed" is defined in 31 U.S.C. § 3730 (e)(4)(A).

29. To the extent that there has been a public disclosure unknown to Relator, he is an original source under 31 U.S.C. § 3730(e)(4). Relator has direct knowledge of the information on which the allegations are based, and voluntarily provided this information to the federal government before filing this action based on that information. *See* 31 U.S.C. § 3730(b)(2).

IV. RELEVANT STATUTES AND REGULATIONS

A. Prohibition on Kickbacks

30. The federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b)(2)(B) ("AKS"), prohibits offering to pay or paying "any remuneration" whether "directly or indirectly, overtly or covertly, in cash or in kind," to induce the purchase of goods or services "for which payment may be made in whole or in part under a federal healthcare program." *Id.* Compliance with the AKS is a material requirement of the Medicare and Medicaid programs.

31. "The federal anti-kickback statute is one of several statutes that, broadly speaking, seek to eliminate potential financial conflicts of interest from the Federal health care programs so that health care decision-making is untainted by inappropriate financial influence Financial

incentives linked to referrals create risks of, among other problems, overutilization of items or services, increased costs to the Federal programs, corruption of medical decision-making, and unfair competition.” Testimony of Lewis Morris, Chief Counsel to the Inspector General of the U.S. Dept. of Health and Human Services, before the U.S. House Committee on Ways and Means, Subcommittee on Health, April 6, 2006.

32. The two primary federal healthcare programs protected by the AKS are Medicare and Medicaid. Medicare is a federal health insurance program created by Congress in 1965 for the elderly and disabled. *See* 42 U.S.C. §§ 1395-1395hhh. It is the nation’s largest health insurance program and covers nearly 40 million lives. Medicare is administered by a federal agency, the Centers for Medicare and Medicaid Services (“CMS”).

33. Medicaid is a public-assistance program that pays for medical expenses incurred by low-income patients. The Medicaid program pays for services pursuant to plans developed by the states and approved by the U.S. Department of Health and Human Services (“HHS”) through CMS. *See* 42 U.S.C. §1396a(a)-(b). States pay doctors, hospitals, pharmacies, and other providers and suppliers of medical goods and services according to government-established rates. *See* 42 U.S.C. §1396b(a)(1), 1903(a)(1). The federal government then pays each state a statutorily determined percentage of “the total amount expended . . . as medical assistance under the State plan . . .” *See* 42 U.S.C. §1396b(a)(1). This federal-to-state payment is known as federal financial participation.

34. The AKS operates to prevent misuse of public funds by barring Medicare and Medicaid from paying for claims that are tainted by improper solicitations, payments or other remuneration from vendors to service providers. The AKS provides, in relevant part, that it is illegal to “offer[] or pay[] any remuneration . . . to induce [any] person . . . to purchase, lease,

order, or arrange for or recommend . . . any good . . . for which payment may be made . . . under a Federal health care program.” 42 U.S.C. § 1320a-7b(b)(2). Thus, the AKS and its implementing regulations apply not only to those on the receiving end of the remuneration, but also to those pharmacies and others who give gifts or other inducements to doctors or patients.

B. The False Claims Act

35. Because the government will not knowingly pay for prescriptions and other purchases tainted by violations of the Anti-Kickback Statute, the False Claims Act has the effect of making claims for payment associated with kickbacks false claims for purposes of the FCA, creating liability for any kickback payor or payee with respect to such claims. Any person conspiring in the payment or receipt of kickbacks is also liable under the FCA.

36. Medicare and Medicaid generally require that patients share in the cost of their medications and pay a small portion of whatever the pharmacy charges Medicare for such prescription. *See* 42 C.F.R. § 410.152. Routine waiver of co-payments by pharmacies constitutes kickbacks to patients and thus violates the AKS. *See* HHS OIG Advisory Opinion No. 97-4, *citing* 42 U.S.C. § 1320a-7a(i)(6) (defining “remuneration” to include routine waiver of co-payments). Waiver of co-payments is improper because it is “likely to influence a beneficiary’s choice of a particular provider [*i.e.*, pharmacy].” *Id.* Where a pharmacy routinely waives co-payments in violation of the AKS, the resulting claims for payment on behalf of those patients are false for purposes of the FCA.

37. Payment by Pharmacies to doctors for patient referrals also constitutes kickbacks and thus violates the AKS. Whether a pharmacy gives illegal remuneration to doctors for patient referrals or gives that remuneration directly to the patients themselves, the resulting claims for payment on behalf of those patients are false under the FCA.

38. The Office of the Inspector-General for the Department of Health and Human Services (OIG-HHS) has long stressed the impropriety of remuneration flowing either to physicians or to patients in the form of routine, blanket copayment waivers. *See* 59 F.R. 65372-01 (December 19, 1994) (criticizing both a wide variety of forms of physician reimbursement, such as “frequent flier” campaigns, and routine waiver of patient kickbacks as being illegal under the AKS, noting that a “supplier who routinely waives Medicare copayments or deductibles also could be held liable under the Medicare and Medicaid anti-kickback statute.”)

39. Indeed, preventing this type of fraud and abuse is so important to the government that 42 C.F.R. § 423.504(b)(4)(vi)(H) requires Medicare Part D plan sponsors to implement training programs specifically directed to preventing fraud, waste, and abuse of Medicare funds.

40. The FCA imposes liability on any person who knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval (“false claim”). § 3729(a)(1)(A)⁷. The FCA defines “claim” to include any request or demand, whether under contract or otherwise, for money that is made to an agent of the United States or to a contractor if the money is to be spent to advance a government program or interest and the government provides or will reimburse any portion of the money. § 3729(b)(2). The FCA defines “knowingly” to mean actual knowledge, deliberate ignorance of truth or falsity, or reckless disregard of truth or falsity, and no proof of specific intent to defraud is required. § 3729(b)(1).

41. The FCA also imposes liability on any person who knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim (“false statement”). § 3729(a)(1)(B). The FCA defines “material” to mean having a natural

⁷ Unless otherwise indicated, all “§” references are to sections of Title 31 of the United States Code.

tendency to influence, or be capable of influencing, the payment or receipt of money or property.
§ 3729(b)(4).

42. The FCA also imposes liability on any person who conspires to commit false claims or false statements (“conspiracy claim”). § 3729(a)(1)(C).

43. Here, as detailed below, Defendants violated the AKS and FCA in order to buy patients’ prescription business volume away from local competitors, and also “recycled” pills – keeping government payments for pharmaceuticals that were not given to beneficiaries of the Medicaid and Medicare programs that paid for them.

C. DME Suppliers Must Use Their Own Identifying Numbers

44. Medicare and Medicaid pay for certain DME provided by suppliers to Medicare and Medicaid beneficiaries. To be eligible for such payments, a supplier must enroll with the programs as a Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Supplier (“DME Supplier”) by submitting a Form CMS-855S application and supporting documentation to Medicare. If the supplier’s application is accepted by Medicare, the supplier is then eligible to receive Medicare payments. If the supplier’s application is accepted by a state Medicaid program, a prerequisite of which is acceptance by Medicare, the supplier is then eligible to receive Medicaid payments from those states.

45. Use of a DME Supplier’s own number is a material requirement of the Medicare and Medicaid programs. As certified in its Form CMS-855S enrollment application, a DME Supplier “must not convey or assign a supplier number, i.e. the supplier may not sell or allow another entity to use its Medicare Supplier Billing Number.” CMS-855S (03/09), at 37.

V. DEFENDANTS' UNLAWFUL CONDUCT

46. The PharmaLife Defendants operated a widespread scheme to defraud Medicare and Medicaid by paying kickbacks to doctors and patients to induce the writing of prescriptions that would be filled at PharmaLife Pharmacies; by “recycling” pills – charging Medicare and Medicaid for prescriptions that were never given to the beneficiaries of those programs; and by falsely submitting other PharmaLife entities’ NSC numbers for DME reimbursement requests.

47. The AKS prohibits payment of kickbacks in connection with drugs and other goods supplied to Medicare and Medicaid patients. The PharmaLife Defendants’ extensive kickback program violated the letter and spirit of the AKS, and created the very dangers that the statute and regulations are intended to prevent: the government’s potential payment of inflated prices for, and overutilization of, drugs sold by PharmaLife Defendants; loss of market share to other pharmacies seeking to compete in the market-place without paying illegal inducements to doctors and patients; and corruption of doctors’ medical judgment and patients’ purchasing judgment, all of which are dangers identified by Congress and OIG-HHS and which flow from Defendants’ violations of the AKS.

48. By routinely waiving their Medicaid and Medicare customers’ co-payments, without regard to individual circumstance and without documentation of any patient’s financial need, in exchange for getting their patients’ prescription-filling business, PharmaLife Defendants knowingly violated the AKS. Accordingly, all claims for payment submitted to Medicaid and Medicare by PharmaLife Defendants for patients receiving those co-payment waivers are false claims. Moreover, PharmaLife Defendants by their involvement with kickbacks conspired to violate the FCA.

A. Kickbacks to Patients

49. To induce Medicare and Medicaid beneficiaries to have their prescriptions filled at PharmaLife Pharmacies, the PharmaLife Defendants routinely waived these patients' copays. The PharmaLife Defendants did so without regard to individual circumstance and without any documentation of indigence. By waiving co-payments required by Medicare and Medicaid to induce their patient customers to have their prescriptions filled at a PharmaLife location, the PharmaLife Defendants knowingly gave something of value to their patient customers – thus violating the AKS. Thus, all the PharmaLife Defendants claims for payment submitted to Medicaid and Medicare for patients receiving such waivers were false under the FCA.

1. PharmaLife-Wide Scheme To Give Inducements to Customers

50. It is the regular practice of every PharmaLife Pharmacy to provide these inducements to their customers. This was done at the direction of the individuals controlling the PharmaLife Pharmacies: the Bogacheks, their alter ego. The Bogacheks instituted this practice to buy business for the PharmaLife Pharmacies.

51. The scheme is accomplished straightforwardly: as to waived co-pays, the co-pay is simply not collected, without regard to individual circumstance or documentation of any patient's financial need, in exchange for getting their patients' prescription-filling business.

52. It is important to note that at all PharmaLife Pharmacies, the pharmacy management computer program is not connected to the cash registers. This is done to conceal the scheme; by default, this pharmacy management system is set to falsely reflect that co-pays have been paid when they have not been paid, and in fact the PharmaLife Defendants' regular practice is to make these false entries.

53. As to other gifts, as a PharmaLife customer fills a prescription, whether he or she comes to the store in person or has the medications dropped off by PharmaLife, the patient is

regularly given a gift as an inducement, such as a 5 oz. tin of red salmon caviar, a packet of whole grains, over-the-counter (non-prescription) drugs not covered by Medicaid or Medicare, such as acetaminophen or a laxative like docusate sodium, vitamin D or E, or other products carried by the PharmaLife Pharmacies – along with a copy of a Russian-language TV guide, typically published in Brooklyn, NY. Many of the PharmaLife Pharmacies’ customers did not come into a PharmaLife Pharmacy to pick up their prescriptions, and so these inducements were placed in the same plastic bags as the patients’ medication and given to the PharmaLife Pharmacies’ drivers, who then delivered the packages to the patients.

54. In addition to waiving the copayments of their Medicare and Medicaid customers, it was PharmaLife’s standard practice to give at least the following with each delivery of prescriptions: one tin of caviar, plus either a packet of whole grains or a tin of Riga sprats (a small fish packed in oil), plus a Russian-language T.V. Guide.⁸ This would be delivered every month.⁹ Customers with many prescriptions received an even larger allotment of gifts, often as much as two tins of caviar, and a packet of whole grains, and a tin of Riga sprats, and a Russian-language TV guide.¹⁰

55. Likewise, Kharlamova instructed the pharmacy technicians to keep a logbook of these inducements – with a certain number of “bonus points” per each prescription – so that she could make sure that each patient received the appropriate inducement. This practice was so regular that when customers did not receive their regular monthly allotment, they would telephone the UVP location to complain that they were missing whichever part of this package

⁸ Hereinafter, the “Standard Package.”

⁹ The overwhelming majority of UVP’s customers were on medication that was dispensed in monthly amounts.

¹⁰ Hereinafter, the “Bonus Package.”

that was not included. Also, if a current customer referred a new customer, then that referring patient would receive an additional, one-time gift of the Standard Package described above.

56. Not counting the waived co-payments or the over-the-counter medication and vitamins, etc. described above, the annual value of receiving the Standard Package was at least \$150 and the annual value of receiving the Bonus Package over \$250.

57. Finally – as did all PharmaLife locations, as is set forth in the further detail below – PharmaLife’s UVP locations regularly conducted phone advertising of this kickback scheme. So whenever a customer of a competing chain, such as Walgreens or CVS, would call the UVP location, one of the employees there would attempt to induce the customer to switch to UVP by offering this standard package inducement.

58. As a result of the practices outlined above, PharmaLife was able to induce many Medicare and Medicaid beneficiaries to have their prescriptions filled at UVP and other PharmaLife Pharmacies.

59. As illustrated below, this scheme was not limited to PharmaLife’s UVP location

60. Like all the PharmaLife Pharmacies, UVP was controlled by the Bogacheks. Although Mikhail Bogachek works out of what the PharmaLife website¹¹ describes as its “Corporate Headquarters” in Atlanta, Georgia,¹² on multiple occasions in 2007 and 2008, he travelled to each of the other PharmaLife locations to oversee operations there in person.

61. During several of these visits, Mikhail Bogachek went to PharmaLife’s Chicago location (UVP), where Relator overheard him discussing the kickback scheme with Defendants Dinkevich, Kharlamova, and Shevchuk. During that discussion, Mikhail Bogachek complained

¹¹ www.pharmalife.com/contact-us.html. Last visited on July 24, 2011.

¹² At 2915 Piedmont Rd, Suite A, Atlanta, GA 30305.

that the expenses of the inducements in PharmaLife's Chicago location (UVP) were higher than the cost of similar inducements in PharmaLife's Atlanta location. Defendants Dinkevich, Kharlamova, and Shevchuk explained that they faced stiff competition from other area pharmacies, and had to offer inducements at their then-present level in order to retain their customers' prescription business. The Bogacheks finally consented to UVP's inducement level.

62. That this conspiracy is PharmaLife-wide is further confirmed by various employees and former employees of other locations, as detailed below. Because it is a multi-state scheme involving thousands of patients, it is not possible to detail every single instance of Defendants' fraud in the four corners of Relators' Complaint. However, the paragraphs below provide illustrative, non-exhaustive examples of Defendant's scheme.

2. Specific Examples – Chicago Location

63. Confidential Witness "A" worked at PharmaLife's Ukrainian Village Pharmacy¹³ from 2005 to 2006 as a Pharmacy Consultant and operations manager.

64. Both Relator and Confidential Witness "A" saw the PharmaLife Defendants' constant, routine waivers of copayments and distribution of gifts described above to that location's Medicare and Medicaid patients, regardless of individual circumstance, to induce those patients to have their prescriptions filled at a PharmaLife Pharmacy, in this case UVP.

65. Photos of illustrative examples of these products, which photos were taken during Relator's employment at UVP and which products were actually distributed to UVP customers, are attached to this complaint as Exhibits A-E and incorporated herein by reference.

66. Confidential Witness "A" and Relator witnessed the acts listed in ¶ 46-65, above, being done routinely between 2005-2008.

¹³ Located at 2317 West Chicago Avenue, Chicago, IL 60622

67. Further specific examples of false claims include:

68. Patient A was a 78 year old woman living in Palatine, Illinois when she purchased a 30-day supply of Plavix 75 mg tablets at UVP via the Medicare program on October 19, 2006. The United States paid approximately \$102 for this prescription. Patient A's copay was supposed to be \$1, but PharmaLife waived that copay as part of its regular inducement program to induce Medicare and Medicaid beneficiaries to bring their business to PharmaLife Pharmacies – in this case, to UVP – so Patient A paid nothing for her prescription.

69. UVP's inducement was successful: Patient A continued to buy her Plavix from UVP, including on April 4, 2008, when she purchased another 30-day supply of Plavix 75 mg tablets at UVP via the Medicare program. The United States paid \$134.68 for this prescription. By this time, in an attempt to control rapidly-rising healthcare costs, the Medicare program had raised Patient A's copay to \$3.10, but PharmaLife waived that copay as part of its regular inducement program to induce Medicare and Medicaid beneficiaries to bring their business to PharmaLife Pharmacies – in this case, to UVP – so Patient A paid nothing for her prescription.

70. Patient B was a 78 year old man living in Chicago's Lakewood-Balmoral district when he purchased a 30-day supply of Plavix 75 mg tablets at UVP via the Medicare program on August 17, 2006. The United States paid approximately \$115 for this prescription. Patient B's copay was supposed to be \$1, but PharmaLife waived that copay as part of its regular inducement program to induce Medicare and Medicaid beneficiaries to bring their business to PharmaLife Pharmacies – in this case, to UVP – so Patient B paid nothing for his prescription.

71. UVP's inducement was successful: Patient B continued to buy his Plavix from UVP, including on April 28, 2008, when he purchased another 30-day supply of Plavix 75 mg tablets at UVP via the Medicare program. The United States paid \$129.59 for this prescription.

By this time, in an attempt to control rapidly-rising healthcare costs, the Medicare program had raised Patient A's copay to \$3.10, but PharmaLife waived that copay as part of its regular inducement program to induce Medicare and Medicaid beneficiaries to bring their business to PharmaLife Pharmacies – in this case, to UVP – so Patient B paid nothing for his prescription.

72. Patient C was a 68 year old woman living near from Chicago's Washington Square Park when she purchased a both a 30 day supply of Lipitor 10 mg tablets and a 30 day supply of Lipitor 20 mg tablets at UVP via the Medicare program on April 21, 2008. The United States paid \$80.13 for the 10 mg prescription and \$114.78 for the 20 mg prescription. Patient C's copays were supposed to be \$3.10 for each prescription, but PharmaLife waived both those copays as part of its regular inducement program to induce Medicare and Medicaid beneficiaries to bring their business to PharmaLife Pharmacies – in this case, to UVP – so Patient C paid nothing for her prescriptions.

73. In addition, that same day, UVP provided a 60-day supply of docusate sodium, an over-the-counter laxative, at no charge at all as a further inducement.

74. Upon information and belief, Patient C was a patient of one of the Defendant Doctors, who was prescribed two separate doses of Lipitor because of the inducements that PharmaLife gave to the Defendant Doctor who wrote this prescription, rather than because of Patient C's medical condition.

75. Patient D was a 71 year old woman living near the Cabrini Green neighborhood when she purchased a 30-day supply of Celebrex 200 mg tablets at UVP via the Medicare program on April 15, 2008. The United States paid \$102.14 for this prescription. Patient B's copay was supposed to be \$3.10, but PharmaLife waived that copay as part of its regular

inducement program to induce Medicare and Medicaid beneficiaries to bring their business to PharmaLife Pharmacies – in this case, to UVP – so Patient D paid nothing for her prescription.

76. Patient E was a 59 year old woman living in Chicago's Lakewood-Balmoral district when she purchased a 60-day supply of Avandia 4 mg pills at UVP via Illinois's Medicaid program on April 18, 2008. The State of Illinois paid \$200.55 for this prescription. Patient A's copay was supposed to be \$3.00, but PharmaLife waived that copay as part of its regular inducement program to induce Medicare and Medicaid beneficiaries to bring their business to PharmaLife Pharmacies – in this case, to UVP – so Patient E paid nothing for her prescription.

77. On April 28, 2008, Patient E purchased a 30-day supply of Crestor 10 mg pills at UVP via Illinois's Medicaid program. The State of Illinois paid \$100.25 for this prescription. Patient E's copay was supposed to be \$3.00, but PharmaLife waived that copay as part of its regular inducement program to induce Medicare and Medicaid beneficiaries to bring their business to PharmaLife Pharmacies – in this case, to UVP – so Patient E paid nothing for her prescription.

78. Patient F was a 96 year old man living near the Cabrini Green neighborhood when he purchased a 30-day supply of Lipitor 10 mg tablets at UVP via the Medicare program on April 15, 2008. The United States paid \$78.68 for this prescription. Patient F's copay was supposed to be \$3.10, but PharmaLife waived that copay as part of its regular inducement program to induce Medicare and Medicaid beneficiaries to bring their business to PharmaLife Pharmacies – in this case, to UVP – so Patient F paid nothing for his prescription.

79. On April 4, 2008, Patient F purchased a 30-day supply of Avodart capsules at UVP via the Medicare program. The United States paid \$89.34 for this prescription. Patient F's

copay was supposed to be \$3.10, but PharmaLife waived that copay as part of its regular inducement program to induce Medicare and Medicaid beneficiaries to bring their business to PharmaLife Pharmacies – in this case, to UVP – so Patient F paid nothing for his prescription.

80. Patient G was a 73 year old man living a few blocks from Chicago's Kilbourn Park when he purchased a 30-day supply of Vytorin 10/40 mg tablets via the Medicare program on April 14, 2008. The United States paid \$89.15 for this prescription. Patient G's copay was supposed to be \$3.10, but PharmaLife waived that copay as part of its regular inducement program to induce Medicare and Medicaid beneficiaries to bring their business to PharmaLife Pharmacies – in this case, to UVP – so Patient G paid nothing for his prescription.

81. That same day, Patient G purchased a 30-day supply of Plavix 75 mg tablets via the Medicare program. The United States paid \$129.02 for this prescription. Patient C's copay was supposed to be \$3.10, but PharmaLife waived that copay as part of its regular inducement program to induce Medicare and Medicaid beneficiaries to bring their business to PharmaLife Pharmacies – in this case, to UVP – so Patient G paid nothing for this prescription, either.

82. The UVP location routinely assists its Medicaid beneficiaries in falsely stating their expenses, so that those beneficiaries can maintain eligibility for certain programs benefitting indigent people. UVP does so by providing those beneficiaries with an account statement that falsely states that the required copayments were paid, when in fact they were not.

83. This false statement of expenses is possible for UVP because, as stated above, in order to surreptitiously provide copay waivers to its Medicare and Medicaid customers, PharmaLife's standard practice is to keep its cash registers completely separated from its drug management system. As a result, to generate this false report, UVP simply prints out a report of

the customer's purchases from the drug management system, which, as set forth in ¶¶ 47-48, above, falsely records that copayments were paid, when there were in fact not paid.

84. UVP routinely paid inducements of waived copyaments, expensive food such as caviar, "over-the-counter" (non-prescription) medication, and other free items to UVP's Medicare and Medicaid beneficiaries, without regard to individual circumstance, to induce them to fill their prescriptions at UVP. This was done in violation of the AKS, which forbids such payments. As a result of these kickbacks, all of the claims for reimbursement of those prescriptions were false under the AKS. This falsity was material to the government's decision to pay those claims. If the government had known that those claims were false, it would not have paid them.

3. Specific Examples – Minneapolis Location

85. The existence, extent, and regularity of this kickback practice is further confirmed by Confidential Witness "B" who worked at the PharmaLife Minnesota location¹⁴ as a pharmacy technician from the summer of 2009 to the summer of 2010.

86. During the course of her employment, Confidential Witness "B" saw that it was the standard practice of PharmaLife Minnesota not to charge copayments for generic prescriptions for Medicare and Medicaid beneficiaries, without regard to individual circumstance.

87. Confidential Witness "B" also witnessed the standard practice of PharmaLife Minnesota providing \$20 gift certificates redeemable at nearby Russian-oriented stores, to new patients who were the beneficiaries of government healthcare programs, to induce them to get their prescriptions filled at the Minneapolis PharmaLife Pharmacy.

¹⁴ Located at 9 West 14th Street, Minneapolis, MN 55403.

88. PharmaLife Minnesota's gifts of waived copayments and \$20 gift certificates were paid to that location's Medicare and Medicaid beneficiaries to induce them to fill their prescriptions there. This was done in violation of the AKS, which forbids such payments. As a result of these kickbacks, all of the claims for reimbursement of those prescriptions were false under the AKS. This falsity was material to the government's decision to pay those claims. If the government had known that those claims were false, it would not have paid them.

4. Specific Examples – Creve Coeur Location

89. In furtherance of the PharmaLife Defendants' telephone marketing scheme, as set forth in ¶ 57, above, on March 23, 2009, Yuriy Veselov, the registered agent of Defendant Global PharmaLife, explained that the Global PharmaLife location¹⁵ routinely waives copays for all Medicare and Medicaid beneficiaries, without regard to individual circumstance, for all generic prescriptions and all branded prescriptions of less than four or five dollars. Mr. Veselov also explained that patients with multiple prescriptions are given gifts in the manner described above.

90. Also in furtherance of the PharmaLife Defendants' telephone marketing scheme, as set forth in ¶ 57, above, on July 18, 2011, Luda, an employee of Global PharmaLife, confirmed this practice continues through the present, explaining that Global PharmaLife routinely waives copays for all Medicare and Medicaid beneficiaries, without regard to individual circumstance, for all generic prescriptions and for most branded prescriptions. Luda also explained that Global PharmaLife gives customers gifts on a regular basis in the manner described above, including annually at year-end.

¹⁵ Located at 10479 Old Olive Street Road, Creve Coeur, MO 63141.

91. Global PharmaLife's routine gifts of waived copayments, "over-the-counter" (non-prescription) medication, and other free items were paid to that location's Medicare and Medicaid beneficiaries to induce them to fill their prescriptions there. This was done in violation of the AKS, which forbids such payments. As a result of these kickbacks, all of the claims for reimbursement of those prescriptions were false under the AKS. This falsity was material to the government's decision to pay those claims. If the government had known that those claims were false, it would not have paid them.

5. Specific Examples – Mayfield Village Location

92. In furtherance of the PharmaLife Defendants' telephone marketing scheme, as set forth in ¶ 57, above, on March 23, 2009, Galina, an employee of Defendant Buckhead Pharmacy who works at the Mayfield Village location,¹⁶ stated that the Mayfield Village location routinely waives copays for its Medicare and Medicaid beneficiaries, without regard to individual circumstance, for all prescriptions for new customers for the first several months that they take their prescriptions there. Galina further explained that the Mayfield Village location routinely gives free gifts in the manner described above to its Medicare and Medicaid beneficiaries periodically and at year-end holidays.

93. Galina, however, actually understated the extent of the Mayfield Village location's kickbacks. As David "Dmitry" Braginsky ("Braginsky"), corporate Secretary and registered agent of Buckhead Pharmacy, explained in furtherance of the PharmaLife Defendants' telephone marketing scheme, as set forth in ¶ 57, above, on July 18, 2011, Buckhead Pharmacy's policy is broader: copays are waived for Medicare and Medicaid beneficiaries, without regard to

¹⁶ Defendant Buckhead Pharmaceutical Association, Inc. d/b/a Buckhead Pharmacy is located at 730 Som Center Road, Mayfield Village, OH 44143.

individual circumstance, for all generic prescriptions and for branded prescriptions where the co-pay is no more than \$3.50 or so.

94. Braginsky also explained that customers are given gifts on a regular basis in the manner described above, periodically and on an annual basis at year-end, and that new customers are given a \$40 credit that can be used on over-the-counter (non-prescription) medications and other items.

95. The Mayfield Village location's routine gifts of waived copayments, "over-the-counter" (non-prescription) medication, and other free items were paid to that location's Medicare and Medicaid beneficiaries to induce them to fill their prescriptions there. This was done in violation of the AKS, which forbids such payments. As a result of these kickbacks, all of the claims for reimbursement of those prescriptions were false under the AKS. This falsity was material to the government's decision to pay those claims. If the government had known that those claims were false, it would not have paid them.

6. Specific Examples – Columbus Location

96. In furtherance of the PharmaLife Defendants' telephone marketing scheme, as set forth in ¶ 57, above, on July 18, 2011, Lilia, a manager at PharmaLife Columbus,¹⁷ explained that the PharmaLife Columbus location routinely waives copays for Medicare and Medicaid beneficiaries, without regard to individual circumstance, for all generic prescriptions and for most brands as well; copays for the remaining brands are waived to the extent that they exceed \$1. Lilia also explained that the PharmaLife Columbus location routinely gives free gifts in the

¹⁷ Defendant Buckhead Pharmaceutical Association, Inc. d/b/a PharmaLife Columbus (collectively, "PharmaLife Columbus") is located at 1299 McNaughten Rd, Columbus, OH 43232.

manner described above to its Medicare and Medicaid beneficiaries periodically and at the year-end holidays.

97. Lilia further explained that the PharmaLife Columbus location routinely assists its Medicaid beneficiaries in falsely stating their expenses, so that those beneficiaries can maintain eligibility for certain programs benefitting indigent people. The PharmaLife Columbus location does so by providing those beneficiaries with an account statement that falsely states that the required copayments were paid, when in fact they were not.

98. This false statement of expenses is possible because, as stated above, in order to surreptitiously provide copay waivers to its Medicare and Medicaid customers, PharmaLife's standard practice is to keep its cash registers completely separated from its drug management system. As a result, to generate this false report, PharmaLife Columbus takes the same actions as set forth in ¶¶ 82-83 for PharmaLife's UVP: printing out a report of the customer's purchases from the drug management system, which, as set forth in ¶ 47-48, above, falsely records that copayments were paid, when there were in fact not paid.

99. The PharmaLife Columbus location's routine gifts of waived copayments, "over-the-counter" (non-prescription) medication, and other free items were paid to that location's Medicare and Medicaid beneficiaries to induce them to fill their prescriptions there. This was done in violation of the AKS, which forbids such payments. As a result of these kickbacks, all of the claims for reimbursement of those prescriptions were false under the AKS. This falsity was material to the government's decision to pay those claims. If the government had known that those claims were false, it would not have paid them.

7. Specific Examples – Boston Location

100. In furtherance of the PharmaLife Defendants' telephone marketing scheme, as set forth in ¶ 57, above, on March 23, 2009, Marina or Marianne, an employee who worked at

PharmaLife Boston,¹⁸ explained that the PharmaLife Boston location routinely waives copays for all Medicare and Medicaid beneficiaries, without regard to individual circumstance, for all generic prescriptions and all branded prescriptions of less than four dollars. Marina or Marianne also explained that the PharmaLife Boston location's standard practice is to give its Medicare and Medicaid patients gifts on a regular basis in the manner described above.

101. The PharmaLife Boston location's routine gifts of waived copyments, "over-the-counter" (non-prescription) medication, and other free items were paid to that location's Medicare and Medicaid beneficiaries to induce them to fill their prescriptions there. This was done in violation of the AKS, which forbids such payments. As a result of these kickbacks, all of the claims for reimbursement of those prescriptions were false under the AKS. This falsity was material to the government's decision to pay those claims. If the government had known that those claims were false, it would not have paid them.

8. Specific Examples – Hialeah Location

102. In furtherance of the PharmaLife Defendants' telephone marketing scheme, as set forth in ¶ 57, above, on March 23, 2009, Boris, an employee who worked at Malecon Pharmacy,¹⁹ explained that the Malecon Pharmacy location routinely waives copays for all Medicare and Medicaid beneficiaries, without regard to individual circumstance, for all generic prescriptions and all branded prescriptions of less than \$2-3, and receive an additional \$1 discount off all other prescriptions.

103. On July 19, 2011, Andrey Solovyev, President and former Registered Agent of Malecon Pharmacy, explained – also in furtherance of the PharmaLife Defendants' telephone

¹⁸ Located at 367 Washington Street, Brighton, MA 02135.

¹⁹ 5966 West 16th Avenue, Hialeah, FL 33012.

marketing scheme, as set forth in ¶ 57, above – that the Malecon Pharmacy location continues to routinely waive copays for all Medicare and Medicaid beneficiaries, without regard to individual circumstance, for most generic and branded prescriptions.

104. The Malecon Pharmacy location’s routine gifts of waived copayments were paid to that location’s Medicare and Medicaid beneficiaries to induce them to fill their prescriptions there. This was done in violation of the AKS, which forbids such payments. As a result of these kickbacks, all of the claims for reimbursement of those prescriptions were false under the AKS. This falsity was material to the government’s decision to pay those claims. If the government had known that those claims were false, it would not have paid them.

9. Specific Examples – Atlanta Location

105. In furtherance of the PharmaLife Defendants’ telephone marketing scheme, as set forth in ¶ 57, above, on March 23, 2009, Irina, an employee who worked at PharmaLife Atlanta, explained that PharmaLife Atlanta routinely waives copays for all Medicare and Medicaid beneficiaries, without regard to individual circumstance, for all generic prescriptions and all branded prescriptions of less than \$3.50. Irina also explained that PharmaLife Atlanta²⁰ routinely give its patients gifts on a regular basis in the manner described above, and that “our patients are very happy with their gifts.”

106. The Atlanta location’s routine gifts of waived copayments, “over-the-counter” (non-prescription) medication, and other free items were paid to that location’s Medicare and Medicaid beneficiaries to induce them to fill their prescriptions there. This was done in violation of the AKS, which forbids such payments. As a result of these kickbacks, all of the claims for

²⁰ Located at 2915 Piedmont Rd, Suite A, Atlanta, GA 30305, the same address as PharmaLife’s “Corporate Headquarters,” *see* www.pharmalife.com/contact-us.html. Last visited on July 22, 2011.

reimbursement of those prescriptions were false under the AKS. This falsity was material to the government's decision to pay those claims. If the government had known that those claims were false, it would not have paid them.

10. Specific Example Summary

107. By routinely providing inducements in exchange for getting their patients' prescription-filling business and advertising those inducements over the telephone with prospective customers, the PharmaLife Defendants violated the AKS. Accordingly, all claims for payment submitted to Medicare and Medicaid by PharmaLife Defendants for patients receiving those inducements are false claims. Moreover, PharmaLife Defendants by their involvement with these inducements conspired to violate the FCA.

B. Kickbacks to Doctor Defendants

108. The PharmaLife Defendants paid bribes and kickbacks to the Doctor Defendants to induce them to write prescriptions that would be filled at the PharmaLife Pharmacies. The PharmaLife Defendants routinely provided the Doctor Defendants with checks and gifts such as cognac, wine, and expensive chocolates in exchange for receiving the patients' prescriptions for filling and reimbursement.

109. While employed at Ukrainian Village Pharmacy ("UVP"), Confidential Witness "A" became aware of UVP's practice of paying kickbacks to doctors to induce them to write prescriptions for their patients and to steer those patients to UVP to have the prescriptions filled.

110. Confidential Witness "A" stated that at UVP there were "certain physicians with whom [UVP] had agreements. I saw the checks that got written out per prescription. There were prescription count reports every month by doctor name and counted up and then checks were written out to those physicians." These checks were for at least \$1 per prescription.

111. Confidential Witness “A” identified Drs. Alla Brodech, Walter Brodech, Emily Chatskis, Yuri Cherny, Aaron Greenspan, Rima Polotskaya, Galina Sabir, Yuri Shapiro, Abram Starr, Bella Zarubinsky, and Eduard Zinger as recipients of these kickbacks.

112. In addition to kickbacks in the form of checks, UVP also gave gifts of cognac, wine, and dark chocolates to all of the Defendant Doctors towards the end of each year, for at least one of Thanksgiving, Christmas, Hannukah, and New Year’s, to induce the Defendant Doctors to write prescriptions that would be filled at UVP. These gifts were put into bags and given to Mikhail Kuzmis and Oleg Platok, UVP’s drivers, who then delivered the packages to the Defendant Doctors.

113. These allegations are further supported by an analysis of UVP’s prescriptions filled in the year preceding July 18th, 2008 (“Analysis Period”).

114. During the Analysis Period, UVP filled a total of 60,074 prescriptions, from a total of 1,170 Chicago-area physicians. Of these 60,074 prescriptions, more than half – over 30,000 prescriptions – were written by the fourteen Defendant Doctors. The average number of prescriptions per non-Defendant doctor filled by UVP during the Analysis Period was approximately 25; the average number of prescriptions per Defendant Doctor filled by UVP during the Analysis Period was over 2,000.

115. Specifically, during the Analysis Period, Dr. Alla Brodech wrote 940 prescriptions that were filled at UVP; Dr. Walter Brodech wrote 1,016 prescriptions that were filled at UVP; Dr. Bandura wrote 1,591 prescriptions that were filled at UVP; Dr. Chatskis wrote 7,427 prescriptions that were filled at UVP; Dr. Cherny wrote 2,159 prescriptions that were filled at UVP; Dr. Greenspan wrote 541 prescriptions that were filled at UVP; Dr. Melnik wrote 1,811 prescriptions that were filled at UVP; Dr. Polotskaya wrote 1,640 prescriptions that were filled at

UVP; Dr. Sabir wrote 4,687 prescriptions that were filled at UVP; Dr. Shapiro wrote 3,196 prescriptions that were filled at UVP; Dr. Starr wrote 1,247 prescriptions that were filled at UVP; Dr. Tsyruльников wrote 1,081 prescriptions that were filled at UVP; Dr. Zarubinsky wrote 1,467 prescriptions that were filled at UVP; and Dr. Zinger wrote 1,297 prescriptions that were filled at UVP. Every one of these prescriptions was tainted by the inducements offered and paid by PharmaLife's UVP location to the Doctor Defendants.

116. Accordingly, each claim for reimbursement for those prescriptions submitted by the PharmaLife Defendants was thus a false claim under the FCA because the government would not have paid those reimbursements had it known that the underlying prescriptions were tainted by kickbacks paid in violation of the AKS.

117. Upon information and belief, the practices listed above continued at least until UVP and PharmaLife Boston were sold to CVS in June/July, 2010.

118. Dalvin Rojhotte Lane ("Lane") is a physician licensed in Georgia²¹ and maintains an office in Atlanta at 3495 Piedmont Road,²² a few blocks from PharmaLife Headquarters at 2915 Piedmont Road.²³ He is also paid as a "supervisor" by PharmaLife Atlanta,²⁴ although PharmaLife Atlanta listed this relationship with the State of Georgia under its incorporated name, MEI Services, Inc., rather than using its business name, PharmaLife Atlanta.²⁵

²¹ See Exhibit F.

²² See Exhibit G.

²³ <http://www.pharmalife.com/contact-us.html>, last visited July 26, 2011.

²⁴ See Exhibit H.

²⁵ See Exhibit I: MEI Services, Inc. d/b/a PharmaLife Atlanta.

119. Upon information and belief, PharmaLife Atlanta and the Bogacheks pay kickbacks to Dr. Lane like those the paid to the Doctor Defendants for writing prescriptions that are to be filled at PharmaLife Atlanta.

120. By the PharmaLife Defendants paying referral fees of at least \$1 per filled prescription and giving alcohol and expensive chocolates to Defendant Doctors to induce them to write prescriptions to be filled at UVP, Defendants violated the AKS. Thus, all claims for payment submitted to Medicare and Medicaid by the PharmaLife Defendants for such prescriptions were false claims. Moreover, all Defendants by their involvement with kickbacks conspired to violate the False Claims Act.

C. Charging for Pills Never Received by Beneficiaries

121. Relator and Confidential Witness "A," who worked at UVP as a Pharmacy Consultant and operations manager, also witnessed UVP executing a scheme at the behest of its owners, Defendants Mikhail and Eduard Bogachek, Dinkevich, Kharlamova, and Shevchuk, whereby Medicare and Medicaid paid for pills that were ordered by Medicare and Medicaid beneficiaries, but never actually received by them.

122. The scheme operated thus: regularly, some customers would phone in refill orders but not come to pick them up. The pharmacists and pharmacy technicians would fill the prescriptions and place them in containers with a label on the outside bearing the prescription information and patient name on the outside. Medicare and Medicaid would be charged for these prescriptions. When the customers did not pick up the prescriptions, the label would be removed but the charges to Medicare and Medicaid would not be reversed. Sometimes, a label for a new customer would be placed directly on top of the label for the old customer, but at no time would the charges to Medicare and Medicaid be reversed. Relator argued with Kharlamova that the

charges for non-picked up prescriptions must be reversed, but she refused to do so. Instead, as detailed below at ¶¶ 133-35, PharmaLife terminated Relator's employment at UVP.

123. Because Relator and Confidential Witness "A" were responsible both for having the prescriptions filled and for billing, they were in a position to know – and did in fact know – that these pills were charged to the government, never given to the patient, and the charges to the government were never reversed.

124. Confidential Witness "B," who worked at PharmaLife's Minneapolis location as a pharmacy technician, witnessed the same scheme in operation there. Because she worked in filling the prescription and processed the actual payments to the government, she was in a position to know – and did in fact know – that these pills were charged to the government, never given to the patient, and the charges to the government were never reversed.

125. Further, this failure to credit the government was done at the Bogacheks' request via the local co-owners, Storchak (Minneapolis) and Kharlamova (UVP, in Chicago).

126. Upon information and belief, this scheme was also carried out at every other PharmaLife Pharmacy location.

D. False DME Identifying Numbers

127. As set forth in ¶¶ 44-45 above and as certified in its Form CMS-855S enrollment application, a DME Supplier "must not convey or assign a supplier number, i.e. the supplier may not sell or allow another entity to use its Medicare Supplier Billing Number." CMS-855S (03/09), at 37.

128. However, as set forth in ¶ 21, above, in contravention to federal and Illinois regulation, UVP used the NSC number for MEI Services, Inc. d/b/a PharmaLife Atlanta ("PharmaLife Atlanta").

129. Examples of DME provided by UVP but billed to Medicare and Medicaid under PharmaLife Atlanta's NSC number include diabetic supplies (such as blood strips, glucose monitors, and syringes), albuterol nebulizers, and nebulizer machines.

130. UVP's use of PharmaLife Atlanta's NSC number in the sale of DME was a false statement regarding a material requirement of the Medicare and Medicaid programs. Had the United States or the State of Illinois known of this false use of PharmaLife Atlanta's NSC number, they would not have paid those claims submitted by the PharmaLife Defendants.

131. Thus, all claims for payment submitted to Medicare and Medicaid by the the PharmaLife Defendants with PharmaLife Atlanta's NSC number were false claims under the FCA, Georgia False Medicaid Claims Act, and Illinois Whistleblower Reward and Protection Act. Moreover, all Defendants by their involvement with kickbacks conspired to violate these statutes.

132. Upon information and belief, this scheme of falsely using PharmaLife Atlanta's NSC number to get claims for DME paid by the Medicare and Medicaid programs was also carried out at every other PharmaLife Pharmacy location, except for PharmaLife Atlanta.

E. Retaliatory Discharge

133. The Bogacheks, Dinkevich, Kharlamova, and Shevchuk were happy with Relator's job performance. In fact, Relator impressed them so much that in June of 2008, Mikhail Bogachek invited Relator to buy into a 20% stake in UVP and work in the Florida location.

134. Relator's excellent job performance continued through the end of his employment. However, when Relator explained to them at least two formal meetings in the early summer of 2008 that he was concerned about UVP's fraudulent business practices, Dinkevich relayed Relator's concerns about Defendants' fraud to the Bogacheks in Atlanta.

135. In response to Relator's complaints about Defendants' fraud, Defendants Mikhail Bogachek, Dinkevich, and Kharlamova told Relator that he was "asking too many questions." They then cut Relator's hours to minimal part-time work in August or September, 2008, and created an unpleasant and hostile work environment; and then terminated his employment in October, 2008, without cause or explanation.

136. On several occasions during the summer and early autumn of 2008, Defendant Kharlamova further threatened Relator not to tell the authorities about their fraudulent scheme and activities, because Defendants "know where to find [Relator]" and "know where [Relator] live[s]."

COUNT I: FALSE CLAIMS, 31 U.S.C. §3729(a)(1)(A)

This is a claim for treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 (a)(1)(A). Relator re-alleges and incorporates the allegations in the preceding paragraphs as if fully set forth herein.

By virtue of the acts described above, Defendants knowingly presented or caused to be presented, false or fraudulent claims to the United States Government for payment or approval in violation of 31 U.S.C. § 3729(a)(1)(A).

As a result of the misconduct alleged herein, Defendants knowingly presented, or caused to be presented, to the United States government a false or fraudulent claim for payment or approval.

The United States government, unaware of the false or fraudulent nature of these claims, paid such claims when they would not otherwise have been paid.

By reason of these payments, the United States government has been damaged, and continues to be damaged, in a substantial amount.

COUNT II: FALSE CLAIMS, 31 U.S.C. § 3729(a)(1)(B)

This is a claim for treble damages and civil penalties under under the False Claims Act, 31 U.S.C. § 3729 (a) (1)(B). Relator re-alleges and incorporates the allegations in the preceding paragraphs as if fully set forth herein.

As a result of the misconduct alleged herein, Defendants knowingly made, used, or caused to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the United States government in violation of 31 U.S.C. § 3729(a)(1)(B).

The United States government, unaware of the false or fraudulent nature of these claims, paid such claims when they would not otherwise have paid.

By reason of these payments, the United States government has been damaged, and continues to be damaged, in a substantial amount.

COUNT III: CONSPIRACY TO SUBMIT FALSE CLAIMS, 31 U.S.C. § 3729(a)(1)(C)

This is a claim for treble damages and civil penalties under under the False Claims Act, 31 U.S.C. § 3729 (a) (1)(C). Relator re-alleges and incorporates the allegations in the preceding paragraphs as if fully set forth herein.

Defendants combined, conspired, or agreed together with physicians and others to defraud the United States by knowingly causing false claims to be submitted to the United States for the purpose of having those claims paid. Defendants committed other acts set forth above in furtherance of that conspiracy, all in violation of 31 U.S.C. § 3729(a)(1)(C).

The United States government, unaware of the false or fraudulent nature of these claims, paid such claims when they would not otherwise have paid.

By reason of these payments, the United States government has been damaged, and continues to be damaged, in a substantial amount.

COUNT IV: RETALIATION STATUTE, 31 U.S.C. § 3730(h), AS TO MIKHAIL BOGACHEK, DINKEVICH, KHARLAMOVA, SHEVCHUK, AND UVP, ONLY

This is a claim for treble damages and civil penalties under under the False Claims Act, 31 U.S.C. § 3729 (h). Relator re-alleges and incorporates the allegations in the preceding paragraphs as if fully set forth herein.

Defendants Mikhail Bogachek, Dinkevich, Kharlamova, Shevchuk, and Ukrainian Village Pharmacy retaliated against the Relator. Relator was discharged from his employment, also as a result of his lawful acts done in furtherance of this action, as set forth above. This discharge was in violation of 31 U.S.C. § 3730(h).

As a direct and proximate result of this unlawful retaliatory discharge, Relator has suffered emotional pain and mental anguish, together with serious economic hardship, including lost wages and special damages associated with his efforts to obtain alternative employment, in a substantial amount.

COUNT V: RETALIATION UNDER ILLINOIS WHISTLEBLOWER REWARD AND PROTECTION ACT, AS TO MIKHAIL BOGACHEK, DINKEVICH, KHARLAMOVA, SHEVCHUK, AND UVP, ONLY

This is a claim for treble damages and civil penalties under under the Illinois Whistleblower Reward and Protection Act, 740 Ill. Comp. Stat. § 175/1, *et seq.* Relator re-alleges and incorporates the allegations in the preceding paragraphs as if fully set forth herein.

Defendants Mikhail Bogachek, Dinkevich, Kharlamova, Shevchuk, and Ukrainian Village Pharmacy retaliated against the Relator. Relator was discharged from his employment, also as a result of his lawful acts done in furtherance of this action, as set forth above. This discharge was in violation of the Illinois Whistleblower Reward and Protection Act.

As a direct and proximate result of this unlawful retaliatory discharge, Relator has suffered emotional pain and mental anguish, together with serious economic hardship, including lost wages and special damages associated with his efforts to obtain alternative employment, in a substantial amount.

This Court is requested to accept supplemental jurisdiction of this related state claim as it is predicated upon the same facts as the federal claim.

COUNT VI: ILLINOIS WHISTLEBLOWER REWARD AND PROTECTION ACT

This is a claim for treble damages and civil penalties under the Illinois Whistleblower Reward and Protection Act, 740 Ill. Comp. Stat. § 175/1, *et seq.* Relator re-alleges and incorporates the allegations in the preceding paragraphs as if fully set forth herein

Defendants violated the Illinois Whistleblower Reward and Protection Act by engaging in the fraudulent and illegal practices described herein, including knowingly causing false claims to be presented to the State of Illinois, as described herein.

As a result of the misconduct alleged herein, Defendants knowingly made, used, or caused to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the State of Illinois.

The State of Illinois, unaware of the false or fraudulent nature of these claims, paid such claims when they would not otherwise have paid.

By reason of these payments, the State of Illinois has been damaged in a substantial amount.

This Court is requested to accept supplemental jurisdiction of this related state claim as it is predicated upon the same facts as the federal claim, and merely asserts separate damage to the State of Illinois.

COUNT VII: FLORIDA FALSE CLAIMS ACT

This is a claim for treble damages and civil penalties under under the Florida False Claims Act, Fla. Stat. § 68.081 *et seq.* Relator re-alleges and incorporates the allegations in the preceding paragraphs as if fully set forth herein

Defendants violated the Florida False Claims Act by engaging in the fraudulent and illegal practices described herein, including knowingly causing false claims to be presented to the State of Florida, as described herein.

As a result of the misconduct alleged herein, Defendants knowingly made, used, or caused to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the State of Florida.

The State of Florida, unaware of the false or fraudulent nature of these claims, paid such claims when they would not otherwise have paid.

By reason of these payments, the State of Florida has been damaged, and continues to be damaged, in a substantial amount.

This Court is requested to accept supplemental jurisdiction of this related state claim as it is predicated upon the same facts as the federal claim, and merely asserts separate damage to the State of Florida.

COUNT VIII: GEORGIA FALSE MEDICAID CLAIMS ACT

This is a claim for treble damages and civil penalties under under the State False Medicaid Claims Act, Ga. Code § 49-4-168 *et seq.* Relator re-alleges and incorporates the allegations in the preceding paragraphs as if fully set forth herein

Defendants violated the Georgia False Medicaid Claims Act by engaging in the fraudulent and illegal practices described herein, including knowingly causing false claims to be presented to the State of Georgia, as described herein.

As a result of the misconduct alleged herein, Defendants knowingly made, used, or caused to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the State of Georgia.

The State of Georgia, unaware of the false or fraudulent nature of these claims, paid such claims when they would not otherwise have paid.

By reason of these payments, the State of Georgia has been damaged, and continues to be damaged, in a substantial amount.

This Court is requested to accept supplemental jurisdiction of this related state claim as it is predicated upon the same facts as the federal claim, and merely asserts separate damage to the State of Georgia.

COUNT IX: MASSACHUSETTS FALSE CLAIMS ACT

This is a claim for treble damages and civil penalties under under the the Massachusetts False Claims Act, Mass. Gen. Laws Chap. 12 § 5(A) *et seq.* Relator re-alleges and incorporates the allegations in the preceding paragraphs as if fully set forth herein

Defendants violated the Massachusetts False Claims Act by engaging in the fraudulent and illegal practices described herein, including knowingly causing false claims to be presented to the Commonwealth of Massachusetts, as described herein.

As a result of the misconduct alleged herein, Defendants knowingly made, used, or caused to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Commonwealth of Massachusetts.

The Commonwealth of Massachusetts, unaware of the false or fraudulent nature of these claims, paid such claims when they would not otherwise have paid.

By reason of these payments, the Commonwealth of Massachusetts has been damaged in a substantial amount.

This Court is requested to accept supplemental jurisdiction of this related state claim as it is predicated upon the same facts as the federal claim, and merely asserts separate damage to the Commonwealth of Massachusetts.

PRAYER FOR RELIEF

WHEREFORE, Relator prays that judgment be entered against the Defendants, ordering that:

- A. The Defendants cease and desist from violating the State and Federal False Claims Acts;
- B. The Defendants pay not less than \$5,500 and not more than \$11,000 for each violation of 31 U.S.C. § 3729 *et seq.* and for each violation of the State False Claims Acts, plus three times the amount of damages the States and the United States have sustained because of Defendants' misconduct;
- C. Relator be awarded the full amount of damages and penalties allowed for his 31 U.S.C. § 3730(h) and Illinois Whistleblower Reward and Protection Act claims;
- D. Relator be awarded the maximum relator's share allowed pursuant to 31 U.S.C. § 3730(d) and State False Claims Acts;
- E. Relator be awarded all costs of this action, including attorneys' fees and costs pursuant to 31 U.S.C. § 3730(d) and State False Claims Acts;
- F. Defendants be enjoined from concealing, removing, encumbering, or disposing of assets which may be required to pay the damages, penalties, fines, attorneys' fees and costs awarded by the Court;
- G. Defendants disgorge all sums by which they have been enriched unjustly by their wrongful conduct; and

H. The States, United States, and Relator be awarded such other relief as the Court deems just and proper.

JURY TRIAL DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Relator hereby demands a trial by jury.

DATED January 10, 2012

Respectfully submitted,

/s/ Courtney A. Marincsin

Robert A. Clifford
rac@CliffordLaw.com
Courtney A. Marincsin
cbm@CliffordLaw.com
CLIFFORD LAW OFFICES
120 North LaSalle Street, Suite 3100
Chicago, Illinois 60602
(312) 899-9090

Kirk E. Chapman
kchapman@milberg.com
Barry A. Weprin
bweprin@milberg.com
Ross B. Brooks
rbrooks@milberg.com
Alastair J.M. Findeis (*pro hac vice* pending)
afindeis@milberg.com
MILBERG LLP
One Pennsylvania Plaza, 49th Floor
New York, NY 10119
(212) 594-5300

C. Barry Montgomery
cbm@willmont.com
Edward Roy Moor
erm@willmont.com
WILLIAMS MONTGOMERY & JOHN, LTD.
233 South Wacker Drive, Suite 6100
Chicago, IL 60606
(312) 443-3200