

STATE OF LOUISIANA

596164  
STATE OF LOUISIANA SEC. 25

VERSUS

PARISH OF EAST BATON ROUGE

ABBOTT LABORATORIES, INC.;  
BAXTER INTERNATIONAL, INC.;  
BAXTER HEALTHCARE  
CORPORATION; COVIDIEN, INC.;  
MALLINCKRODT BRAND  
PHARMACEUTICALS, INC.;  
FOREST LABORATORIES, INC.;  
FOREST PHARMACEUTICALS, INC.;  
KING PHARMACEUTICALS, INC.;  
MONARCH PHARMACEUTICALS, INC.;  
LUPIN PHARMACEUTICALS, INC.;  
RANBAXY PHARMACEUTICALS, INC.;  
RANBAXY LABORATORIES LIMITED;  
RANBAXY LABORATOIRES, INC.; TAP  
PHARMACEUTICAL PRODUCTS, INC.;  
UNITED RESEARCH LABORATORIES,  
INC.; WATSON PHARMACEUTICALS,  
INC.; WATSON LABORATORIES, INC.; and  
WATSON PHARMA, INC.

19<sup>TH</sup> JUDICIAL DISTRICT

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**PETITION FOR DAMAGES AND JURY DEMAND**

Plaintiff, the State of Louisiana, by and through its Attorney General, James D. "Buddy" Caldwell, (hereinafter the "State") submits this Petition against defendants and upon information and belief avers as follows:

**I. INTRODUCTION**

1. The Defendants have engaged in false, misleading, wanton, unfair, and deceptive acts and practices in the pricing and marketing of their prescription drug products. The Defendants' fraudulent pricing and marketing of their prescription drugs have impacted elderly, disabled, and poor Louisiana citizens covered by the State's Medicaid program, by causing the State's Medicaid agency to pay grossly excessive prices for the Defendants' prescription drugs.

2. Fair and honest drug pricing is a matter of great importance to the State and its citizens. Expenditures by the State and its agencies for prescription drug reimbursements have increased dramatically in the past several years as a result, in part, of Defendants' fraudulent pricing scheme. Each year Louisiana spends hundreds of millions of dollars on prescription drugs under the Louisiana Medicaid program. In the past year alone, Louisiana Medicaid has spent approximately \$850 million on prescription drugs. Since 1991, Louisiana Medicaid prescription drug expenditures have increased exponentially. This increase in prescription drug

costs in recent years has contributed to a health care funding crisis within the State that requires action to ensure fair dealing between the Defendants and the State and its agencies.

3. The State is accountable to its citizens and taxpayers for how it spends limited State resources, and it is obligated to pursue any party whose unlawful conduct has led to the overspending of State funds. Consequently, the State, by and through its Attorney General, brings this action to recover amounts overpaid for prescription drugs by Louisiana Medicaid, including pharmacy dispensed drugs and co-payments for drugs covered by Medicaid, as a result of the fraudulent and deceptive conduct of Defendants. The State further seeks to require Defendants to account for and disgorge all profits obtained by Defendants as a result of their improper and unlawful actions.

4. This lawsuit seeks legal and equitable redress for the fraudulent and wanton marketing and pricing conduct of Defendants, who have profited from their wrongful acts and practices at the expense of the State.

## **II. PARTIES**

5. This action is brought for and on behalf of the sovereign State of Louisiana, by and through its duly elected and current Attorney General, James D. "Buddy" Caldwell. The Attorney General of the State of Louisiana, as chief law officer of the State, is statutorily authorized to initiate and prosecute any and all suits deemed necessary for the protection of the interests and rights of the State pursuant to La. R.S. §§ 13:5036, 46:437.2, 51:1405 and related statutes.

6. The Made Defendants named in this Petition engage in the business of manufacturing, distributing, marketing, and/or selling both brand name and generic prescription drugs.

7. The Defendants named in this Petition shall include all of their predecessor entities and all of their past and present components, subsidiaries and affiliate entities, by contractual agreement and/or by having substantially the same business purpose, operation, customers, management and/or ownership.

8. The acts alleged to have been done by Defendants, in this Petition, were authorized, ordered, done and/or ratified by their respective officers, directors, agents, employees or representatives while engaged in the management, direction, control or transaction of their respective business affairs.

### **Defendant Abbott**

9. Defendant Abbott Laboratories, Inc. ("Abbott") is a Delaware corporation with its principal place of business located at 100 Abbott Park Road, Abbott Park, IL 60064. Ross Products is a division of Abbott. Abbott is engaged in the business of manufacturing, distributing, marketing, and/or selling prescription drugs that are reimbursed by state Medicaid agencies nationwide.

### **The Baxter Defendants**

10. Defendant Baxter International, Inc. ("Baxter International") is a Delaware corporation with its principal place of business located at One Baxter Parkway, Deerfield, IL 60015-4633. Defendant Baxter Healthcare Corporation ("Baxter Healthcare"), a subsidiary of Baxter International, Inc., is a Delaware corporation with its principal place of business located at One Baxter Parkway, Deerfield, IL 60015. Baxter International and Baxter Healthcare (collectively, the "Baxter Defendants") are diversified healthcare companies that individually, and/or in combination with one another, engage in the business of manufacturing, distributing, marketing, and/or selling prescription drugs that are reimbursed by state Medicaid agencies nationwide.

### **The Covidien Defendants**

11. Defendant Covidien, Inc. ("Covidien") is a wholly owned subsidiary of foreign corporation, Covidien plc. Defendant Covidien is a Delaware corporation with its principal place of business located at 15 Hampshire Street, Mansfield, MA 02048. Mallinckrodt Brand Pharmaceuticals, Inc. ("Mallinckrodt"), a Delaware corporation, is also a U.S. subsidiary of Covidien plc, with its principal place of business located at 675 McDonnell Blvd., Hazelwood, MO 63042. Defendant Covidien and Defendant Mallinckrodt (collectively, the "Covidien Defendants") are corporations that individually, and/or in combination with one another, engage in the business of manufacturing, distributing, marketing, and/or selling prescription drugs that are reimbursed by state Medicaid agencies nationwide.

### **The Forest Defendants**

12. Defendant Forest Laboratories, Inc. ("Forest") is a Delaware corporation with its principal place of business located at 909 Third Avenue, New York, NY 10022. Defendant Forest Pharmaceuticals, Inc. ("Forest Pharm"), a subsidiary of Forest, is a Delaware corporation with its principal place of business located at 13600 Shoreline Drive, St. Louis, MO 63045.

Forest and Forest Pharm (collectively, the "Forest Defendants") are diversified healthcare companies that individually, and/or in combination with one another, engage in the business of manufacturing, marketing, distributing, and/or selling prescription drugs that are reimbursed by State Medicaid agencies nationwide.

#### **The King Defendants**

13. Defendant King Pharmaceuticals, Inc. ("King") is a Tennessee corporation with its principal place of business located at 501 Fifth Street, Bristol, TN 37620. Defendant Monarch Pharmaceuticals, Inc. ("Monarch"), a subsidiary of King, is a Tennessee corporation with its principal place of business located at 501 Fifth Street, Bristol, TN 37620. King and Monarch (collectively, the "King Defendants") are diversified healthcare companies that individually, and/or in combination with one another, engage in the business of manufacturing, distributing, marketing, and/or selling prescription drugs that are reimbursed by state Medicaid agencies nationwide.

#### **Defendant Lupin**

14. Defendant Lupin Pharmaceuticals, Inc. ("Lupin") is a subsidiary of foreign corporation, Lupin Ltd. Defendant Lupin is a Virginia corporation with its principal place of business located at Harborplace Tower, 111 South Calvert Street, 21<sup>st</sup> Floor, Baltimore, MD 21202. Defendant Lupin is engaged in the business of manufacturing, distributing, marketing, and/or selling prescription drugs that are reimbursed by state Medicaid agencies nationwide.

#### **The Ranbaxy Defendants**

15. Defendant Ranbaxy Pharmaceuticals Inc. ("RPI"), a subsidiary of Defendant Ranbaxy Laboratories Limited ("RLL"), is a New Jersey Corporation with its principal place of business located at 600 College Road East, Suite 2100 Princeton, NJ, 08540. Defendant Ranbaxy Laboratories Inc. ("RLI") is also a subsidiary of Defendant RLL. RLL is the branded prescription division in the United States. RPI, RLI, and RLL are collectively known as the "Ranbaxy Defendants." The Ranbaxy Defendants are engaged in the business of manufacturing, distributing, marketing, and/or selling prescription drugs that are reimbursed by state Medicaid agencies nationwide.

#### **Defendant TAP Pharmaceutical**

16. Defendant TAP Pharmaceutical Products, Inc. ("TAP"), a joint venture between Abbott Laboratories and Takeda Chemical Industries, Ltd., of Osaka, Japan, is a Delaware

corporation with its principal place of business located at 675 North Field Drive, Lake Forest, IL 60045. Defendant TAP is engaged in the business of manufacturing, distributing, marketing, and/or selling prescription drugs that are reimbursed by state Medicaid agencies nationwide.

#### **Defendant URL**

17. Defendant United Research Laboratories, Inc. ("URL") is a Pennsylvania corporation with its principal corporate office located 1100 Orthodox Street, Philadelphia, PA 19124. Defendant URL is engaged in the business of manufacturing, distributing, marketing, and/or selling prescription drugs that are reimbursed by state Medicaid agencies nationwide.

#### **The Watson Defendants**

18. Defendant Watson Pharmaceuticals, Inc. ("Watson") is a Nevada corporation with its principal place of business located at 311 Bonnie Circle, Corona, CA 92880. Defendant Watson Laboratories, Inc., ("Watson Labs"), a subsidiary of Watson, is a Nevada corporation with its principal place of business located at 311 Bonnie Circle, Corona, CA 92880. Defendant Watson Pharma, Inc. ("Watson Pharma"), a subsidiary of Watson since 2000, is a Delaware corporation with its principal place of business located at 311 Bonnie Circle, Corona, CA 92880. Watson, Watson Labs, and Watson Pharma (collectively, the "Watson Defendants") are diversified healthcare companies that individually, and/or in combination with one another, engage in the business of manufacturing, distributing, marketing, and/or selling prescription drugs that are reimbursed by state Medicaid agencies nationwide.

### **III. JURISDICTION AND VENUE**

19. This Court has jurisdiction over the State's claims as they involve claims arising exclusively under Louisiana law.

20. The State of Louisiana asserts no claims governed by Federal statutory law or Federal common law, as all claims asserted herein are exclusively state law claims for relief. The State of Louisiana makes no claims that would give rise to federal jurisdiction, nor does the alignment of the named parties create federal jurisdiction.

21. This Court has personal jurisdiction over each Defendant pursuant to La. C.C.P. Art. 6, La. R.S. §§ 13:3201, 51:1407(a), 51:1418 and related statutes because each Defendant engages in consumer transactions within the State of Louisiana, purposefully directs and/or directed its actions toward the State of Louisiana, and/or has the requisite minimum contacts with the State of Louisiana necessary to permit the Court to exercise jurisdiction.

22. Venue is proper in this judicial district pursuant to the Louisiana Code of Civil Procedure; La. R.S. §§ 46:437.8, 46:438.5(B)(4), 51:1407 and related statutes. Further, the State pays reimbursement through its Medicaid agency for prescription drugs dispensed in this Parish and throughout the State. The events giving rise to the claims herein arose, in substantial part, in this Parish.

#### **IV. STATEMENT OF THE FACTS**

23. The Louisiana Medicaid program is a state-administered program with federal matching funds which pays for medical care, including prescription drug benefits, for Louisiana's low-income and disabled citizens. Louisiana Medicaid currently covers approximately 1,200,000 individuals. Prescription drug benefits represent approximately 15% of Louisiana Medicaid's annual budget. Since 1991, the total annual cost of pharmacy-dispensed prescription drugs to Louisiana Medicaid has increased exponentially. Today, the total annual costs are approximately \$850 million.

24. Louisiana Medicaid reimburses medical providers, including physicians and pharmacists, for drugs prescribed for, and dispensed to, Louisiana Medicaid recipients pursuant to statutory and administrative formulas.

25. Reimbursement for pharmacy-dispensed prescription drugs under the Louisiana Medicaid program is based on information supplied by Defendants to industry reporting services. This information includes the following price indices: (i) Wholesale Acquisition Cost (hereinafter "WAC"), which represents the price from the manufacturer to the wholesaler for prescription drugs; (ii) Average Wholesale Price (hereinafter "AWP"), which represents the price from the wholesaler or manufacturer to the pharmacy for prescription drugs; and on occasion (prior to 2003) (iii) Direct Price, which represents the price charged by drug manufacturers to non-wholesaler customers for prescription drugs. At all times relevant to this action, Defendants were aware of the State of Louisiana's Medicaid drug reimbursement formulas and procedures for pharmacy-dispensed drugs.

##### **a. Defendants' Reporting of Inflated Pricing Information**

26. Defendants knowingly, willfully, wantonly, and/or intentionally provided or caused to be provided false and inflated AWP, WAC, and/or Direct Price information for their drugs to various nationally known drug industry reporting services, including First Data Bank (a/k/a Blue Book), Medical Economics, Inc. (a/k/a Red Book), and Medispan. These reporting

services published the pricing information to various reimbursers, such as the State of Louisiana's Medicaid agency, who have contracted to receive the information (either in electronic or hard copy form) as a basis to providing reimbursement to those medical or pharmacy providers who dispense prescription drugs to patients.

27. The State of Louisiana's Medicaid agency utilized the Defendants' published AWP, WAC, and Direct Price information from First Data Bank and Medical Economics, Inc. The information from First Data Bank was and is used by the State with respect to reimbursement for pharmacy-dispensed drugs. At all relevant times to this action, the State's Medicaid agency relied upon the artificially inflated AWP, WAC, and/or Direct Price provided by Defendants to the industry reporting services in determining the amount at which the State must reimburse providers.

28. Defendants knew that the false and deceptive inflation of AWP, WAC, and/or Direct Price for their drugs would cause the State's Medicaid agency to pay excessive amounts for these drugs. Defendants' inflated AWPs, WACs, and Direct Prices greatly exceeded the actual prices at which they sold their drugs to retailers (physicians, hospitals, and pharmacies) and wholesalers. Defendants' reported AWPs, WACs, and/or Direct Prices were false and misleading and bore no relation to any price, much less a wholesale or actual sales price.

29. Defendants knowingly, willfully, wantonly, and/or intentionally concealed the true AWP, WAC, and/or Direct Price information for their respective drugs from the State's Medicaid agency. Each Defendant knows its own AWP, WAC, and Direct Price that it reports to the industry reporting services for use by the different state Medicaid agencies. Each Defendant also knows whether the prices it reports to the reporting services accurately and truthfully represent the actual prices, as reflected by market experience and conditions.

30. Unless governmental or industry surveys, lawsuits, or criminal or regulatory investigations publicly reveal the true AWP, WAC, and/or Direct Price for a particular drug at issue, the State of Louisiana's Medicaid agency, like other state Medicaid agencies, is not privy to the actual market prices which it can then compare against the reported prices. Defendants have concealed true market pricing information from the State for the purpose of avoiding detection of the fraudulent scheme described herein.

31. Defendants used undisclosed discounts, rebates and other inducements which had the effect of lowering the actual wholesale or sales prices charged to their customers as

compared to the reported prices. In addition, Defendants employed secret agreements to conceal the lowest prices charged for their pharmaceutical products. As a result of these concealed inducements, Defendants have prevented third parties, including the State's Medicaid agency, from determining the true prices charged to their customers.

**b. Defendants' Marketing of the "Spread"**

32. Defendants refer to the difference between the reported AWP and WAC, on the one hand, and the actual price of a drug, on the other, as the "spread" or alternatively, the "return to practice" or "return on investment." Defendants knowingly and intentionally created a "spread" for their drugs and used that "spread" to increase their sales and market share of these drugs, thereby increasing their profits.

33. Defendants induced physicians, pharmacies, and pharmacy chain stores to purchase their drugs, rather than their competitors' drugs, by persuading them that the larger "spread" would allow the physicians and pharmacies to receive more money, and make more of a profit, through reimbursement at the expense of the State.

34. Defendants manipulated and controlled the size of the "spread" on their drugs by both increasing their reported AWPs, WACs, and Direct Prices and decreasing their actual prices to wholesalers and providers over time.

35. In addition to manipulating the reported AWP, WAC, and/or Direct Price, Defendants used free goods, educational grants and other incentives to induce providers to purchase their drugs, all of which lowered the actual prices of the Defendants' drugs, resulting in increased profits for providers, as well as increased market share and profits for Defendants, all at the expense of the State.

36. The unfair, fraudulent, wanton, and deceptive practices engaged in by the Defendants in creating and reporting, or causing to be reported, false and inflated AWP, WAC, and/or Direct Price information for their drugs, or otherwise concealing actual pricing information, and marketing the "spread" on their drugs as an inducement to providers to utilize Defendants' drugs, has resulted in the State paying millions of dollars in excess Medicaid payments, while at the same time enriching Defendants with excessive, unjust and illegal profits.

**c. Other Lawsuits, Settlements, Government Investigations, and Criminal Proceedings**

37. The State's Petition was not drafted in a vacuum. Each family of Defendants in this case has been sued for the same or similar Medicaid drug pricing fraud scheme in one or

more of at least twenty other states.<sup>1</sup> A number of the Defendants have also been sued for related conduct in one or more of the numerous pending federal actions.<sup>2</sup>

38. Published opinions and other public record documents generated during the course of the parallel state and federal litigation reveal that these Defendants reported fraudulent AWP's and/or other pricing information for selected drugs that bore no relationship whatsoever to the price at which those drugs were actually being sold to pharmacies and providers. For example, a majority of the Defendants and drugs referenced above have been made the subject of an action in New York alleging a fraudulent AWP pricing scheme.<sup>3</sup> In that suit, New York City (which pays 25% of Medicaid costs for its residents) sets forth, for each of the manufacturers and drugs at issue, the inflated AWP reported to industry reporting services by the Defendants and the estimated true AWP which should have been reported. Depending on the drug in question, New York City alleges that, in some instances, the reported price is over 8 times the true price. New York City's reimbursement methodology, similar to the State of Louisiana's, is based upon the AWP reported by the manufacturers to the same reporting services upon which the State of Louisiana's Medicaid agency relies. Because the reported AWP's and, correspondingly, the true AWP's, are national (not regional) in scope, New York City's experience likely parallels with that of the State of Louisiana's and lends obvious support to the State's allegations herein. The other state lawsuits, dealing with many of the same Defendants and drugs at issue in the State of Louisiana, also lend corroborative support.

39. Federal criminal actions have been instituted against several drug manufacturers.<sup>4</sup> As part of several criminal proceedings, various drug companies that manufacture drugs at issue in this lawsuit, pled guilty to and/or agreed to settle criminal charges of having engaged in unlawful marketing and sales practices with respect to certain of their prescription drugs reimbursed under federal programs, such as Medicare, and state programs, such as Medicaid. These Defendants paid record fines and civil penalties for this admittedly wrongful conduct.

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<sup>1</sup> Lawsuits have been filed by the States of Alabama, Alaska, California, Florida, Hawaii, Iowa, Idaho, Illinois, Kansas, Kentucky, Massachusetts, Mississippi, Missouri, New York, Ohio, Pennsylvania, South Carolina, Texas, Utah, and Wisconsin.

<sup>2</sup> Most of the lawsuits that assert claims for violations of federal law have been consolidated for pretrial purposes in multi-district federal litigation in Boston, Massachusetts. However, no federal claims are being asserted in this case.

<sup>3</sup> *The City of New York v. Abbott Laboratories, Inc.*, 04-CV-06054, in the United States District Court for the Southern District of New York (August 4, 2004).

<sup>4</sup> The criminal actions include: *USA v. TAP Pharmaceutical Products, Inc.*, 1:01-cr-10354-WGY (D. Mass.); *USA v. AstraZeneca Pharmaceuticals, LP*, 1:03-cr-00055 (D. Del.); and *USA v. Bayer Corp.*, 1:03-cr-10118-RGS (D. Mass.).

40. The guilty pleas, settlements, and admissions of fault by the criminal defendants implicate some of the Defendants herein, in what is becoming to be known as a far-reaching and widespread scheme in the pharmaceutical industry to unlawfully increase market share and profits for their products. For example, in early 2001, Bayer agreed to settle the federal criminal investigation into Bayer's marketing and sales practices, with respect to KOaTE® and Kogenate®, by paying \$14 million to the federal and state governments. The Government had alleged that Bayer set and reported AWP's for the drugs at levels far higher than the actual acquisition costs of the products. Then, in 2003, Bayer agreed to plead guilty to federal criminal charges and paid fines and civil penalties totaling over \$257 million for, among other things, illegally relabeling its drugs Cipro® and Adalat CC® in order to circumvent the Medicaid Rebate Program, thus defrauding the state Medicaid programs of millions of dollars in rebate payments.

41. In October 2001, Defendant TAP, in order to resolve federal criminal charges, agreed to plead guilty to federal criminal and civil fraud charges for, among other things, conspiring to violate the Prescription Drug Marketing Act ("PDMA") by providing free samples of Lupron® to medical providers "knowing and expecting" that these medical providers would charge patients for such free samples. TAP agreed to pay over \$875 million in fines and civil penalties to the federal government and the fifty (50) states.

42. In June 2003, certain of the AstraZeneca drug companies agreed to plead guilty to criminal charges similar to those brought against TAP. In particular, the AstraZeneca companies pled guilty to federal criminal and civil fraud charges for, among other things, conspiring to violate the PDMA by providing free samples of Zoladex® to medical providers "knowing and expecting" that those medical providers would charge patients for such free samples and illegally bill those free samples to state Medicaid programs. The AstraZeneca drug companies were also charged with knowingly and willfully offering and paying illegal remuneration to physicians by marketing a "Return-to-Practice" program to induce orders to purchase Zoladex®. The Return-to-Practice program consisted of inflating the AWP used by Medicaid for reimbursement of the drug, deeply discounting the price paid by physicians for the drug, and marketing the spread between the AWP and the discounted price to physicians. The AWP was set at levels far higher than the majority of its physician customers actually paid for the drug. In resolution of these

charges, the AstraZeneca companies paid almost \$355 million in damages and fines to the federal and state governments.

43. In 2004, Schering-Plough Corporation agreed to settle criminal and civil charges relating to the best price reporting of Claritin®. Schering Plough paid \$293 million to the federal and state governments to resolve its civil and administrative liabilities.

44. While a portion of the federal settlement proceeds from the above-described cases has been returned, Louisiana has not been compensated fully for its losses from the wrongful conduct that these guilty pleas or civil settlements evidence.<sup>5</sup>

45. Government investigations by Congress, the General Accounting Office (“GAO”), Health and Human Services, and the Department of Justice (“DOJ”) have also revealed fraudulent drug pricing schemes by various Defendants. For example, according to Representative Pete Stark of the U.S. House Ways and Means Committee, Abbott has engaged in a price manipulation scheme through inflated representations regarding AWP’s and Direct Prices. Representative Stark has stated that “Abbott has intentionally reported inflated prices and has engaged in other improper business practices in order to cause its customers to receive windfall profits from . . . Medicaid . . . for the express purpose of expanding sales and increasing market share . . . This was achieved by arranging financial benefits or inducements that influenced the decisions of health care providers submitting . . . Medicaid claims.” The U.S. Department of Justice has documented at least 81 instances in which Abbott’s reported AWP’s were substantially higher than the actual wholesale prices paid by wholesalers. Indeed, the federal government’s investigation revealed that Abbott created spreads of *more than 20,000 percent* through the reporting of false and misleading average wholesale prices.

46. Generic or multi-source drug manufacturers are aware of the AWP’s reported by their competitors and of the actual sales price of their generic competitors’ products. Generic drug manufacturers manipulate their own AWP’s in order to gain or maintain a competitive advantage in the market for their generic products. The natural and expected result is that multi-source drugs have some of the highest spreads of any drugs, sometimes resulting in an AWP exceeding actual costs by over 50,000%. A couple of examples collected by the DOJ are set forth below:

Defendant	Multi-source Drug	RedBook AWP	DOJ Determined Actual AWP	Percentage Spread
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<sup>5</sup> None of the settlements described herein operate as a bar to any of the claims made in this Petition.

Defendant	Multi-source Drug	RedBook AWP	DOJ Determined Actual AWP	Percentage Spread
Baxter*	Dextrose	\$ 928.51	\$ 2.25	41,167%
Baxter*	Sodium Chloride	\$ 928.51	\$ 1.71	54,199%

47. Some of the conduct described herein goes back over 10 years prior to the filing of this Petition. As explained above, however, the nature and extent of the fraudulent scheme were not known to the State, because information concerning the true prices which should have been reported to the reporting services was concealed and not publicly available. It has only been through recent regulatory investigations, criminal actions, and civil actions that the impact of the fraudulent scheme on the State has been indicated or revealed. Even today, the true market prices for many of the drugs in question for the entire time period at issue are not known by the State.

48. Additionally, it would be impractical, if not impossible, to list in this Petition, for the entire time period that the inflated pricing scheme has been in effect, the true market price as compared to the reported price for each drug in question. It is not unusual for a drug manufacturer to report fluctuating prices for a particular drug on multiple occasions within a particular year, month, week, or even day. To display pricing reports for all of the Defendants and all of the drugs in question over a ten-year-plus period would be a massive undertaking, and limitations of time and space do not permit that information, even if it were available, to be set forth in this pleading.

49. For purposes of specificity of pleading (particularly with respect to the fraud allegations), suffice it to say that Defendants are and have been on notice of the claims asserted herein as a result of the many investigations and actions undertaken around the country on this same subject. Indeed, each Defendant should know, without further allegation from the State, exactly how its reported prices compare to its true prices and whether it has engaged in an inflated pricing scheme regarding prescription drugs.

## V. CAUSES OF ACTION

### a. Violations of the State's Unfair Trade Practices and Consumer Protection Law

50. The State hereby repeats, incorporates by reference and realleges each and every allegation set forth above in this Petition.

51. Defendants' reporting of a false and inflated AWP, WAC, and/or Direct Price for its prescription drugs, to consumers within the stream of commerce, knowing that the State

would use them to calculate Medicaid reimbursement, constitutes unfair and deceptive practices in violation of the State's Unfair Trade Practices and Consumer Protection Law, La. R.S. § 51:1401, *et seq.*

- A. In the course of trade or commerce, Defendants intentionally, fraudulently, and deceitfully reported or caused to be reported artificially inflated prices, for the purpose and with the intent to induce the State to pay higher Medicaid reimbursements to pharmacies, resulting in larger market share and/or profits for Defendants, in violation of La. R.S. § 51:1405.
- B. Defendants knew or should have known that the State of Louisiana relied upon its reported prices in making reimbursement payments for prescription drugs. Therefore, there existed at all relevant times, a duty owed to the State and its Medicaid agency, by Defendants, not to mislead the State when voluntarily providing and/or reporting the prices of its drugs.
- C. Defendants' unfair and deceptive practices, as outlined above, are immoral, unethical, oppressive and offensive to established public policy. Furthermore, Defendants' actions will continue to have a direct impact upon the public interest, as said actions and deceptive practices have potential for repetition.
- D. As the actual and proximate result of Defendants' unfair and deceptive practices, the State has suffered actual damages by paying grossly excessive amounts for prescription drugs.
- E. In addition to actual damages pursuant to La. R.S. § 51:1408, the State is entitled to the civil penalties prescribed in La. R.S. § 51:1407 and related sections, since Defendants willfully engaged in unfair and deceptive acts and/or practices with the intent to defraud the State.

**b. Violations of the State's Medical Assistance Programs Integrity Law**

52. The State hereby repeats, incorporates by reference and realleges each and every allegation set forth above in this Petition.

53. Defendants' reporting of a false and inflated AWP, WAC, and/or Direct Price for its prescription drugs, for purposes of obtaining excessive Medicaid reimbursements for

providers in return for an increase in market share, constitutes a violation of the State's Medical Assistance Programs Integrity Law, La. R.S. § 46:437.1, *et seq.*

- A. By knowingly and willfully providing and/or publishing artificially inflated prescription drug prices, thereby causing a resulting difference or "spread" between the actual prices of the drugs and the false and inflated prices of the drugs, and directly or indirectly offering that "spread" to providers as a form of kickback or bribe "[i]n return for purchasing. . . or ordering. . . any good, supply, or service [of Defendants']. . . for which payment may be made. . . under the medical assistance programs," such as Medicaid, Defendants violated the State's prohibition against illegal remuneration pursuant to La. R.S. § 46:438.2(A)(2).
- B. By knowingly and willfully providing and/or publishing artificially inflated prescription drug prices, thereby causing a resulting difference or "spread" between the actual prices of the drugs and the false and inflated prices of the drugs, and directly or indirectly offering that "spread" as a form of kickback or bribe "[t]o a recipient of goods, services, or supplies. . . for which payment may be made. . . under the medical assistance programs," such as Medicaid, Defendants violated the State's prohibition against illegal remuneration pursuant to La. R.S. § 46:438.2(A)(3).
- C. By knowingly and willfully providing and/or publishing false and inflated prescription drug prices with knowledge that providers' claims for reimbursement from the State's Medicaid program are based upon those inflated prices, Defendants unlawfully "present[ed] or cause[d] to be presented a false or fraudulent claim" for Medicaid benefits, knowing the claim to be false, fictitious or fraudulent in violation of L.a. R.S. § 46:438.3(A).
- D. By knowingly and willfully providing and/or publishing false and inflated prescription drug prices with knowledge that providers utilize such price reportings to obtain reimbursement from the State's Medicaid program, Defendants unlawfully engaged in misrepresentation or made, used, or caused to be made or used "a false record or statement to obtain payment for

a false or fraudulent claim” from the State’s Medicaid fund in violation of L.a. R.S. § 46:438.3(B).

- E. Defendants fraudulently concealed the falsity and inaccuracy of their price representations from the State and its Medicaid agency.
- F. As the actual and proximate result of Defendants’ violations of Louisiana’s Medical Assistance Programs Integrity Law, as outlined above, the State has suffered actual damages, which amount to significantly more than the requisite amount, by paying grossly excessive amounts for prescription drugs.
- G. In addition to actual damages, pursuant to La. R.S. § 46:438.6(A), the State is entitled to all civil penalties prescribed in La. R.S. § 46:438.6(B) and related sections, since Defendants have violated the State’s prohibitions against illegal remuneration and fraudulent claims, as outlined above.
- H. In addition to the actual damages provided in § 438.6(A) and the civil penalties imposed pursuant to § 438.6(B), Defendants shall further pay to the State all civil penalties provided in La. R.S. § 46:438.6(C)(1) and related sections.

**c. Violations of the State’s Antitrust Statute**

54. The State hereby repeats, incorporates by reference and realleges each and every allegation set forth above in this Petition.

55. Defendants’ reporting of an artificially inflated AWP, WAC, and/or Direct Price for its prescription drugs, for purposes of obtaining excessive Medicaid reimbursements for providers in return for an increase in market share, constitutes trade restriction and price fixing in violation of the State’s Antitrust Statute, La. R.S. § 51:121 *et seq.* By virtue of Defendants’ unlawful conduct and implementation of a fraudulent pricing scheme, the State of Louisiana has sustained damages and is therefore entitled to multiple damages pursuant to La. R.S. § 51:121 *et seq.*

**d. Fraud**

56. The State hereby repeats, incorporates by reference and realleges each and every allegation set forth above in this Petition.

57. By knowingly and willfully providing, publishing, and/or causing to be published an artificially inflated AWP, WAC, and/or Direct Price for its prescription drugs to the State of Louisiana, Defendants engaged and continue to engage in repeated fraudulent acts and practices, thus committing fraud against the State of Louisiana, pursuant to the Louisiana Civil Code, Articles 1953 and 2315.

- A. Knowing that the State of Louisiana relies upon its reported prices in making reimbursement payments for prescription drugs, there existed at all relevant times, a duty owed to the State and its Medicaid agency, by Defendants, not to mislead the State when voluntarily providing and/or reporting the prices of its drugs.
- B. Defendants knowingly and intentionally made or caused to be made false and misleading statements and representations regarding prescription drug prices in each Defendants' reporting of an artificially inflated AWP, WAC, and Direct Price, on a periodic and continuing basis, for publication and dissemination to the State of Louisiana and its Medicaid agency.
- C. Defendants made these false representations of prescription drug prices, knowing they were false and/or with reckless disregard of their truth.
- D. Defendants knew the false representations of the prescription drug prices, made to the State and its Medicaid agency, were to be used as the basis for Medicaid reimbursements and were; therefore, material.
- E. Defendants fraudulently concealed the falsity and inaccuracy of the price representations from the State and its Medicaid agency.
- F. Defendants misrepresented the pricing information with the intent to induce the State of Louisiana and its Medicaid agency to rely on the false prices and pay higher Medicaid reimbursements to pharmacies, resulting in larger market share and/or profits for Defendants.
- G. The State of Louisiana and its Medicaid agency did not know the true prices for these prescription drugs and had a right to rely on the pricing representations made by Defendants.
- H. The State of Louisiana and its Medicaid agency reasonably relied upon the false pricing information in order to reimburse providers.

- I. As an actual and proximate result of Defendants' fraudulent conduct, and the State of Louisiana's reasonable reliance thereof, the State has paid excessive amounts in connection with purchases or reimbursements of purchases of Defendants' prescription drugs.
- J. Defendants' misrepresentations are continuing, as they regularly and periodically continue to issue, or cause to issue and maintain false and inflated prescription drug prices for publication by the industry reporting services.
- K. The State and its Medicaid agency are entitled to judgment against Defendants for the pecuniary loss it has suffered as a direct and proximate result of Defendants' fraudulent conduct.

**e. Negligent Misrepresentation**

58. The State hereby repeats, incorporates by reference and realleges each and every allegation set forth above in this Petition.

59. By providing, publishing, and/or causing to be published false prescription drug prices to the State of Louisiana, Defendants made and continue to make negligent misrepresentations to the State of Louisiana, pursuant to the Louisiana Civil Code, Article 2315.

- A. There existed at all relevant times, a legal duty owed to the State and its Medicaid agency, by Defendants, to provide accurate information to the State when voluntarily providing and/or reporting the prices of its prescription drugs.
- B. Defendants breached their duty to provide accurate pricing information to the State, by affirmatively providing false and misleading statements regarding prescription drug prices contained in each Defendants' reporting of AWP, WAC, and/or Direct Price.
- C. The State of Louisiana and its Medicaid agency did not know the true prices of these prescription drugs and had a right to rely on the pricing representations made by Defendants.
- D. The State of Louisiana and its Medicaid agency reasonably relied upon the false pricing information in order to reimburse providers.

- E. As an actual and proximate result of Defendants' misrepresentations, and the State of Louisiana's reasonable reliance thereof, the State has been damaged by excessively overpaying for prescription drugs.
- F. The State and its Medicaid agency are entitled to judgment against Defendants for restitution and civil penalties for the losses incurred by the State of Louisiana, and its citizens, as a direct and proximate result of Defendants' misrepresentations.

**f. Unjust Enrichment**

60. The State hereby repeats, incorporates by reference and realleges each and every allegation set forth above in this Petition.

61. By knowingly providing, publishing, and/or causing to be published false and inflated prescription drug prices for purposes of gaining an economic advantage through an enlarged market share, Defendants have been unjustly enriched.

- A. Defendants' unlawful conduct, as outlined above, conferred a benefit upon Defendants in the form of increased market share and resulting increased profits.
- B. Defendants have retained and continue to retain the benefits conferred upon them as a result of their unlawful conduct and to the detriment of the State of Louisiana.
- C. Defendants' retention of such a benefit is unjust, as it was obtained by fraudulently providing, publishing, and/or causing to be published false and inflated prescription drug prices to the State with the knowledge that the State would rely on such prices to its detriment.

**VI. JURY DEMAND**

Plaintiff hereby demands a trial by jury on all claims so triable pursuant to La. C.C.P. Art. 1731 and related statutes.

**VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, the State of Louisiana, by and through its Attorney General, James D. "Buddy" Caldwell, prays for relief as follows:

- A. An award of actual damages to the State in such amount as is proven at trial, together with prejudgment interest;

- B. All statutory fines, penalties, attorneys' fees and costs, pursuant to Louisiana's Unfair Trade Practices and Consumer Protection Law, Louisiana's Medical Assistance Programs Integrity Law, Louisiana's Antitrust Statute, and related statutes.
- C. An accounting of all profits or gains derived in whole or in part by each Defendant through the misconduct complained of herein and disgorgement of all improper and ill-gotten profits;
- D. Any other relief that is equitable under the law as may be proven at the trial.

Respectfully SUBMITTED and DATED this 28 day of October, 2010.

**JAMES D. "BUDDY" CALDWELL**

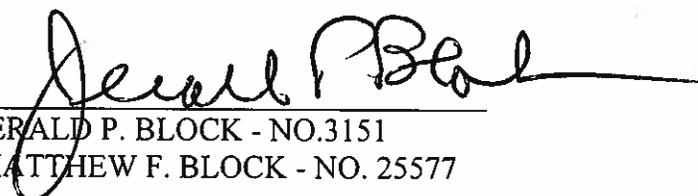
**ATTORNEY GENERAL FOR  
THE STATE OF LOUISIANA**

1885 North 3<sup>rd</sup> Street  
Baton rouge, Louisiana 70802

**BLOCK LAW FIRM**

Attorneys at Law

422 East First Street  
Post Office Box 108  
Thibodaux, Louisiana 70302  
Telephone: (985) 446-0418  
Facsimile: (985) 446-0422



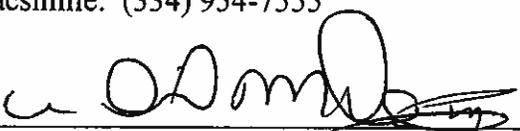
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JERALD P. BLOCK - NO.3151

MATTHEW F. BLOCK - NO. 25577

**BEASLEY, ALLEN, CROW,  
METHVIN, PORTIS & MILES, P.C.**

272 Commerce Street  
Post Office Box 4160 (36103)  
Montgomery, Alabama 36104  
Telephone: (334) 269-2343  
Facsimile: (334) 954-7555



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W. DANIEL "DEE" MILES, III (*pro hac vice* pending)

ROMAN A. SHAUL - NO. 30296

PLEASE SERVE:

**ABBOTT LABORATORIES, INC.**

*Through its agent for service:*

CT Corporation System  
5615 Corporate Blvd., STE. 400B  
Baton Rouge, 70808

**BAXTER HEALTHCARE CORPORATION**

*Through its agent for service:*

CT Corporation System  
5615 Corporate Blvd., STE. 400B  
Baton Rouge, 70808

**COVIDIEN, INC.**

*Through its agent for service:*

CT Corporation System  
5615 Corporate Blvd., STE. 400B  
Baton Rouge, 70808

**LUPIN PHARMACEUTICALS, INC.**

*Through its agent for service:*

National Registered Agents, Inc.  
1011 N. Causeway Blvd., STE. 3  
Mandeville, LA 70471

**WATSON PHARMA, INC.**

*Through its agent for service:*

CT Corporation System  
5615 Corporate Blvd., STE. 400B  
Baton Rouge, 70808

Pursuant to the Louisiana Long-Arm Statute R.S. 13:3201 *et seq.*, PLEASE SERVE:

**BAXTER INTERNATIONAL, INC.**

*Through its agent for service:*

The Corporation Trust Company  
Corporate Trust Center  
1209 Orange Street  
Wilmington, DE 19801

**MALLINCKRODT BRAND PHARMACEUTICALS, INC.**

*Through its agent for service:*

675 McDonnell Blvd.  
Hazelwood, MO 63042

**FOREST LABORATORIES, INC.**

*Through its agent for service:*

909 Third Avenue  
Corporate Headquarters  
New York, NY 10022

**FOREST PHARMACEUTICALS, INC.**

*Through its agent for service:*

909 Third Avenue  
Corporate Headquarters  
New York, NY 10022

**KING PHARMACEUTICALS, INC.**

*Through its agent for service:*

William L. Phillips, III  
Registered Agent