

ORIGINAL

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Attorneys for P. Victor Gonzalez, Qui Tam Plaintiff,
on Behalf of Himself, the United States of America,
and the State of California.

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

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**P. VICTOR GONZALEZ, QUI TAM
PLAINTIFF, ON BEHALF OF
HIMSELF, THE UNITED STATES
OF AMERICA, AND THE STATE
OF CALIFORNIA,**

Plaintiff,

vs.

**PLANNED PARENTHOOD OF
LOS ANGELES; PLANNED
PARENTHOOD SHASTA-
DIABLO; PLANNED
PARENTHOOD GOLDEN GATE;
PLANNED PARENTHOOD MAR
MONTE; PLANNED
PARENTHOOD RIVERSIDE AND
SAN DIEGO; PLANNED
PARENTHOOD ORANGE AND
SAN BERNARDINO; PLANNED
PARENTHOOD PASADENA;
PLANNED PARENTHOOD SANTA
BARBARA, VENTURA AND SAN
LUIS OBISPO; PLANNED
PARENTHOOD SIX RIVERS;
PLANNED PARENTHOOD
AFFILIATES OF CALIFORNIA;
MARY JANE WAGLE; MARTHA
SWILLER; KATHY KNEER;
LILLIAN SPITZ; and DOES 1
through 10,**

Defendants.

Case No. CV05-8818 AHM
(FMOx)

SECOND CORRECTED
COMPLAINT FOR:

- 1) DAMAGES; AND
- 2) CIVIL PENALTY

(FALSE CLAIMS ACTION)

[DEMAND FOR JURY TRIAL]

1 COMES NOW P. Victor Gonzalez, Qui Tam Plaintiff, on behalf of
2 himself, The United States of America and the State of California and alleges as
3 follows:

4 **INTRODUCTION**

5 Qui Tam Plaintiff/Relator P. Victor Gonzalez was employed as the
6 Vice President of Finance & Administration with Planned Parenthood of
7 Los Angeles (PPLA) between December 9, 2002 and March 9, 2004. His
8 job duties required him to take initiative to ensure compliance with all
9 financial rules and regulations governing the financial activities of the
10 Defendants.

11
12 In the months preceding the termination of Mr. Gonzalez's
13 employment with the defendants, he raised various serious financial
14 concerns directly related to conduct violative of Federal and State
15 statutory schemes by the defendants. These concerns about the illegal
16 accounting, billing, and donations practices of Planned Parenthood were
17 conveyed via writing, e-mails and orally to various Planned Parenthood
18 personnel. The written concerns related directly to the qualifications of
19 Planned Parenthood to remain qualified as a health care provider which
20 could legally receive continued funding from governmental and other
21 sources. Indeed, the response of the defendants was to terminate
22 Relator's employment.

23
24 Reviews of these problems had been undertaken from time to time
25 by Planned Parenthood, its affiliates, and a number of consultants.
26 However, other than the memorialization of these concerns during
27 various meetings, there was no effective action to stem these continuing
28 patterns of illicit corporate misconduct. Mr. Gonzalez had led numerous

1 efforts in identifying and enumerating these considerable problems and
2 illicit activities, locating consultants, looking for viable solutions,
3 presenting these solutions to all necessary parties, and procuring the
4 employees to formulate the solutions.

5
6 Section 340B of the Public Health Service Act requires drug
7 manufacturers to provide outpatient drugs to eligible health care centers,
8 clinics, and hospitals (termed "covered entities") at a reduced price. The
9 340B price is a "ceiling price", meaning it is the highest price the covered
10 entity would have to pay for select outpatient and over-the-counter drugs
11 and minimum savings the manufacturer must provide. The entities,
12 including Planned Parenthood, which are eligible to receive federally
13 discounted drugs are subject to various state and federal regulatory
14 schemes dictating their ability to dispense and seek reimbursement for
15 these drugs. California and Federal law provided payment for drugs
16 obtained under Section 340B be based on acquisition cost. As further
17 detailed below, Planned Parenthood violated these regulations and vastly
18 overbilled for reimbursements.

19
20 From late 2003 through the actual date of his termination, Mr.
21 Gonzalez had specifically complained about the following problems
22 which jeopardized PPLA's ability to continue receiving governmental
23 funding and monies and to maintain its continuing status as a nonprofit
24 organization. Mr. Gonzalez complained, went on record on this matter,
25 and, in an effort to address these serious issues, participated in numerous
26 phone calls with the defendants, including PPLA, the other Planned
27 Parenthood affiliates in California, and the Sacramento based PPAC
28 (political action committee).

1 The defendants had a practice of marking up medications (oral
2 contraceptives, nuvaRing etc.) bought under the "PHS 340B" discount
3 program. The effect of this was the defendants overcharging the Federal
4 Government, the State of California, and self-pay patients. For one of the
5 defendants, PPLA, this resulted in overcharging over \$2,000,000 per
6 year. This has been going on for a number of years, and is prevalent with
7 the other California Planned Parenthood affiliates. As a result the
8 overcharging exceeds \$10,000,000.00 per year. During his employment
9 with Planned Parenthood of Los Angeles, Mr. Gonzalez was requested by
10 PPLA to perform an assessment of the impact of these overbilling
11 practices, and the other many Planned Parenthood affiliates were asked to
12 do likewise. The result of this assessment report for PPLA revealed
13 approximately \$2,144,313.17 in overbilling. This reflects the financial
14 impact for only one of many Planned Parenthood affiliates in California
15 and only for one year. A copy of the report is enclosed.

16
17 In early February 2004, the California Department of Health
18 Services Audit and Investigations Branch began an audit of all ten
19 Planned Parenthood Affiliates in California starting with the San Diego
20 Planned Parenthood affiliate. The final audit report was limited to the
21 San Diego Planned Parenthood affiliate. The audit found extensive and
22 illegal markups of medications/contraceptives procured through the
23 federal discount drug program under 38 U.S.C. Section 340B.
24 Specifically, for over one year the audit uncovered at least \$5,213,545.92
25 of illegal billing at Planned Parenthood San Diego alone. The California
26 Department of Health Services chose to ignore these findings
27 notwithstanding the serious violations implicated thereby allowing the
28 illegal activity to continue unchecked.

1
2 Contrary to their national reputation as a prominent charity
3 organization and as a health care provider for reproductive services, there
4 is probable cause to believe Planned Parenthood's ten California affiliates
5 have systematically engaged in fraudulent overbilling against
6 government funded programs. Since 1997 the Planned Parenthood
7 affiliates of California have bought drugs at discount prices and rather
8 than selling the drugs to their indigent clientele at the required
9 Acquisition Cost, they illegally marked-up the drugs and billed them to
10 both clients and government sometimes at greater than 12 times the
11 acquisition cost. The estimated illegal billing over six years, beginning in
12 1999, exceeds \$180,000,000.00. This conservative figure only takes into
13 account the illegal and unscrupulous billing practices of Defendants
14 within the state of California.

15
16 **THE 340B PROGRAM**
17

18 In 1992, through enactment of section 340B of the Public Health
19 Service Act, 42 U.S.C. § 256b, Congress established the 340B Drug
20 Discount Program (the "340B Program"). The purpose of the 340B
21 Program was to reduce drug prices for community health centers, public
22 hospitals, and others that provide healthcare to the homeless, the
23 disabled, children, and the poor ("340B Providers").
24

25 To reduce prescription drug prices for 340B Providers, section
26 340B requires pharmaceutical manufactures to ensure that 340B
27 Providers pay no more for any pharmaceutical product than any other
28 public or private purchaser of that product. Congress intended the savings

1 achieved by requiring pharmaceutical manufacturers to give 340B
2 Providers their best price to help "stretch Federal resources as far as
3 possible, to reach more eligible patients and provide more comprehensive
4 services." H.R. Rpt. 102-384, 102d Cong., 2d session, pt 2, at 12 (1992).

5
6 The 340B Program has become a critical mechanism for safety net
7 organizations to serve the healthcare needs of the most needy in their
8 communities. In calendar year 2003, over 10,500 eligible healthcare
9 providers participated in the 340B Program and paid an estimated \$3.4
10 billion for outpatient drugs.

11
12 The 340B Program is overseen by the Health Resources and
13 Services Administration ("HRSA"). HRSA is an agency within the
14 United States Department of Health and Human Services ("HHS"). The
15 HRSA maintains programs and services that safeguard the health and
16 well-being of millions of Americans. Each year, over 11 million mostly
17 low-income and uninsured patients are treated in HSRA's health centers,
18 and over 27 million women, infants, children, and adolescents are served
19 in its maternal and child health programs.

20
21 Immediate responsibility for oversight of the 340B Program resides
22 in HSRA's Pharmacy Affairs Branch ("PAB"). PAB administers the
23 Pharmaceutical Pricing Agreement signed pursuant to section 340B by
24 drug manufacturers who participate in the 340B Program, maintains an
25 electronic database of 340B Providers, and assists in establishing
26 affordable pharmacy services for new and expanding community health
27 centers. The Centers for Medicare and Medicaid Services, another HHS
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agency, also has responsibility for assistance with administration of the 340B Program.

THE FALSE CLAIMS ACT

The False Claims Act ("FCA") provides, in pertinent part that:

(a) Any person who (1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval; (2) knowingly makes, uses or causes to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the Government;... or (7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government,... is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000 plus 3 times the amount of damages which the Government sustains because the act of the person...

(b) For purposes of this section, the terms "knowing" and "knowingly" mean that a person, with respect to information (1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

False Claims Act, 31 U.S.C. Section 3729

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JURISDICTION AND VENUE

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1. This action is brought under the False Claims Act ("FCA" or "Act"), 31 U.S.C. § 3729 et seq., by P. Victor Gonzalez ("Relator"), on behalf of the United States of America, under the qui tam provisions of the Act. The case also includes pendent state law claims for violations of the California False Claims Act ("State False Claims Act"), Gov. Code § 12650 et seq., and the California Insurance Frauds Prevention Act, Ins. Code § 1871.7 et seq., both of which permit interested persons to bring civil actions on behalf of the State of California.

2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331 and 28 U.S.C. § 1345, for the United States is a party to this matter and certain of the causes of action set forth herein are founded upon a law of the United States of America.

3. Venue lies in this District pursuant to 28 U.S.C. § 1391(b) and 31 U.S.C. § 3732, for the defendants conduct business in this District, and a substantial part of the events or omissions giving rise to the claims occurred in this District.

PARTIES

4. Defendant PLANNED PARENTHOOD OF LOS ANGELES (PPLA) is a California nonprofit corporation that regularly conducts its business at 1920 Marengo Street, Los Angeles, California 90033-1317.

1 5. Defendant PLANNED PARENTHOOD SHASTA-DIABLO is a
2 California nonprofit corporation that regularly conducts its business at
3 2185 Pacheco Street, Concord, California 94520.

4
5 6. Defendant PLANNED PARENTHOOD GOLDEN GATE is a California
6 nonprofit corporation that regularly conducts its business at 2211 Palm
7 Avenue, San Mateo, California 94403.

8
9 7. Defendant PLANNED PARENTHOOD MAR MONTE is a California
10 nonprofit corporation that regularly conducts its business at 1691 The
11 Alameda, San Jose, California 95126.

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13 8. Defendant PLANNED PARENTHOOD RIVERSIDE AND SAN DIEGO
14 is a California nonprofit corporation that regularly conducts its business
15 at 1075 Camino Del Rio South, San Diego, California 92108.

16
17 9. Defendant PLANNED PARENTHOOD ORANGE AND SAN
18 BERNARDINO is a California nonprofit corporation that regularly
19 conducts its business at 700 S. Tustin Street, Orange, California 92866.

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21 10. Defendant PLANNED PARENTHOOD PASADENA is a California
22 nonprofit corporation that regularly conducts its business at 1045 N. Lake
23 Avenue, Pasadena, California 91104.

24
25 11. Defendant PLANNED PARENTHOOD SANTA BARBARA,
26 VENTURA AND SAN LUIS OBISPO is a California nonprofit
27 corporation that regularly conducts its business at 518 Garden Street,
28 Santa Barbara, California 93101.

- 1 12. Defendant PLANNED PARENTHOOD SIX RIVERS is a California
2 nonprofit corporation that regularly conducts its business at 2316
3 Harrison Avenue, Eureka, California 95501.
4
- 5 13. Defendant PLANNED PARENTHOOD AFFILIATES OF CALIFORNIA
6 (PPAC) is a California nonprofit corporation that regularly conducts its
7 business at 555 Capitol Mal, Suite 510, Sacramento, California 95814.
8
- 9 14. Defendant MARY JANE WAGLE was at all times an individual and an
10 employee of PPLA in the capacity of chief executive officer (CEO).
11
- 12 15. Defendant MARTHA SWILLER was at all times an individual and an
13 employee of PPLA formerly in the capacity of chief executive officer
14 (CEO) and currently Vice President.
15
- 16 16. Defendant KATHY KNEER was at all times an individual and an
17 employee of PPAC in the capacity of President.
18
- 19 17. Defendant LILLIAN SPITZ was at all times an individual and an
20 employee of PPAC.
21
- 22 18. Defendants Does 1 through 10 are PLANNED PARENTHOOD (PP)
23 districts, and individual PLANNED PARENTHOOD affiliates/clinics;
24 employees and agents of PLANNED PARENTHOOD districts and
25 individual PLANNED PARENTHOOD affiliates/clinics; and individuals,
26 persons, associations and organizations, whose identity and capacity are
27 presently unknown to Relator. Relator is informed and believes and
28 thereon alleges that Defendants Does 1 through 10 are legally responsible

1 and liable for the acts, omissions, injuries, damages and false claims
2 hereinafter set forth and that each of said Defendants legally and
3 proximately caused the injuries and damages herein alleged by reason of
4 the conduct hereinafter set forth, or by reason of direct or imputed
5 negligence or vicarious fault or breach of duty arising out of the matters
6 herein alleged. Relator will seek leave to amend this Complaint to set
7 forth the true names, capacities and identities of Does 1 through 10, when
8 same are ascertained.

9
10 19. Relator, P. Victor Gonzalez is an individual residing/domiciled in San
11 Diego County, State of California. Relator was employed as the Vice
12 President of Finance & Administration with Defendant PPLA between
13 December 9, 2002 and March 9, 2004.

14
15 20. This action by Relator is not based upon a "public disclosure" as defined
16 by 31 U.S.C. § 3730(e)(4)(A), and even if there were a public disclosure
17 in this case, Relator would qualify as an "original source" as defined by
18 31 U.S.C. § 3730(e)(4)(A). P. Victor Gonzalez relayed the information
19 contained herein to the DHS services auditor by e-mail correspondence,
20 and further relayed the information contained herein to the Department of
21 Justice, the Health and Human Services Office of the Inspector General,
22 the Federal Bureau of Investigations, and the Los Angeles County
23 District Attorney as the "original source" of this information. (Attached
24 hereto as Exhibit 1 are true and correct copies of correspondence
25 directed to the aforementioned Entities/Individuals)

26
27 21. Relator is informed and believes and thereon alleges that at all times
28 relevant, some or all of the Defendants, including each and every Doe

1 Defendant, were agents and/or employees of some or all of the remaining
2 Defendants, and in doing each of the things alleged hereinafter were
3 acting within the course and scope of said agency and/or employment.
4

5 22. Relator is informed and believes and thereon alleges that at all times
6 relevant, Defendants, and each of them, including each and every Doe
7 Defendant, authorized and ratified some or all of the acts and omissions
8 alleged hereinafter.
9

10 23. Relator is informed and believes and thereon alleges that at all times
11 relevant, Defendants, and each of them, including each and every Doe
12 Defendant, conspired with some or all of the remaining Defendants
13 herein, including Doe Defendants, to commit the acts and omissions
14 hereinafter alleged, and are therefore jointly and severally liable pursuant
15 to Federal and State law for some or all of the acts and omissions
16 hereafter alleged, and are liable for the injuries, damages and penalties
17 hereinafter alleged.
18

19 **GENERAL ALLEGATIONS**
20

21 24. At all times relevant to this Complaint, the Defendants provided care and
22 prescription medications including contraceptives to patients at one or
23 more of the facilities referenced above. Defendants receive funding from
24 state and federal governments, from private donors, certain insurance
25 plans, and from fees received from patients.
26

27 25. At all times relevant to this Complaint, Defendants were authorized
28 providers of services to patients insured by Medicare, Medicaid, the

1 Family Planning, Access, Care and Treatment (FPACT) program under
2 the authority of section 1115(a)(2) of the Social Security Act, and other
3 federally funded programs. All of these federally funded programs are
4 collectively referred to hereinafter as "Federal Insurers." Defendants also
5 received benefits pursuant to Section 340B of the Public Health Service
6 Act.

7
8 26. In 1992, Section 340B of the Public Health Service Act was enacted.
9 Section 340B requires drug manufacturers to provide outpatient drugs to
10 eligible health care centers, clinics, and hospitals (termed "covered
11 entities") at a reduced price. The 340B price is a "ceiling price", meaning
12 it is the highest price the covered entity would have to pay for select
13 outpatient and over-the-counter drugs and minimum savings the
14 manufacturer must provide. The 340B price is at least as low as the price
15 that state Medicaid agencies currently pay.

16
17 27. Entities covered under Section 340B must maintain accurate records
18 documenting that the entities are not double dipping or reselling, or
19 transferring drugs to persons who are not patients of the entity. An entity
20 must present records in the case of an audit by the manufacturer or the
21 federal government.

22
23 28. Relator was employed as the Vice President of Finance & Administration
24 with Defendant PPLA between December 9, 2002 and March 9, 2004.
25 His job duties statutorily required him to report violations to the various
26 State and Federal Agencies and regulators, and take initiative to ensure
27 compliance with all financial rules and regulations governing the
28 business activities of the Defendant.

1 29. In the months preceding Relator's employment termination, he had raised
2 various serious financial concerns directly related to conduct violative of
3 Federal and State statutory schemes. These concerns about the illegal
4 accounting, billing, and donations practices of the Defendant were
5 conveyed via writing, e-mails or orally. The written concerns related
6 directly to the qualifications of PPLA to remain qualified as a health care
7 provider and to receive continued funding from governmental and other
8 sources. (Attached hereto as exhibit 2 are true and correct copies of e-
9 mails/correspondence regarding Relator's concerns)

10
11 30. A review of these problems had been undertaken from time to time by
12 PPLA, its affiliates, a number of consultants, and internal reviews
13 conducted by PPLA employees and Board members. Relator had led the
14 effort in identifying and enumerating these considerable problems and
15 illicit activities, locating consultants, looking for viable solutions,
16 presenting these solutions to all necessary parties, and procuring the
17 employees to formulate the solutions. Attached hereto is a true and
18 correct copy of the original draft report that mentions the various
19 problems that existed at PPLA during Plaintiff's employment. (Please
20 See Exhibit 3). This report was subsequently altered by Mary Jane
21 Wagle. (Please See Exhibit 4).

22
23 31. From late 2003 through the actual date of his employment termination,
24 Plaintiff had specifically complained about the following problems which
25 jeopardized the defendants' ability to continue receiving governmental
26 funding and monies and to maintain continuing status as nonprofit
27 organizations. Many of these complaints are mentioned in Exhibit 5, a
28

1 true and correct copy of a memorandum provided to upper management
2 at Planned Parenthood.

3
4 32. PPLA had a practice of marking up medications (oral contraceptives,
5 nuvaRing etc) bought under the "PHS 340B" discount program). The
6 effect of this at PPLA is overcharging the Federal Government, the State
7 of California, and self-pay patients approximately \$2,000,000.00 per
8 year. This has been going on for a number of years, and is prevalent with
9 all the other California PP affiliates. As a result the overcharging exceeds
10 \$10,000,000.00 per year.

11
12 33. Relator complained, went on record on this matter, and, in an effort to
13 address these serious issues, participated in numerous phone calls with
14 both PPLA and the Sacramento based PPAC (political action committee).

15
16 34. In early February 2004, The California Department of Health Services
17 began an audit of all ten Planned Parenthood affiliates in California
18 beginning with the San Diego Planned Parenthood affiliate. The final
19 audit report was limited to the San Diego Planned Parenthood affiliate.
20 The audit found extensive and illegal markups of
21 medications/contraceptives procured through the federal discount drug
22 program under 38 U.S.C. section 340B. Specifically, the audit uncovered
23 at least \$5,213,545.92 of illegal billing at Planned Parenthood San Diego
24 alone. (Attached hereto as Exhibit 6 is a true and correct copy of the
25 audit and letter detailing the illegal activity.)

26
27 35. The California Department of Health Services, following intervention by
28 Defendants, chose to ignore these findings notwithstanding the serious

1 violations implicated allowing for this illegal activity to continue
2 unchecked. (Please See Exhibit 7.)
3

4 36. There are nine separate Planned Parenthood affiliates in California each
5 of which also engaged in the same unscrupulous billing practices. These
6 Nine affiliates are part of a nationwide organization consisting of 123
7 affiliates forming the Planned Parenthood Federation of America. The
8 estimated illegal billing of the defendants over six years, beginning in
9 1999, exceeds \$180,000,000.00. This conservative figure only takes into
10 account the illegal and unscrupulous billing practices of Defendants
11 within the state of California.
12

13 37. The actions of PPLA and other Defendants resulted in violations of the
14 public policy set forth in or furthered by OMB Circular A-133, FPACT
15 Written Regulations, 61 CFR 4359, Section 340B of Public Law 102-585
16 (Veterans Health Care Act of 1992), regulations of the Office of
17 Pharmacy Affairs, and US Department of Health & Human Services
18 regulations, California Government Code §§ 12650-12655, 31 U.S.C. §
19 3729 et seq., and various other statutes.
20

21 38. While applicable regulations are designed to protect the most vulnerable
22 of patient populations by reducing the costs of drugs, a fundamental
23 public policy, PPLA and other Defendants have instead undercut this
24 policy by overcharging, creating excess inventory, and other acts
25 designed to generate revenue for themselves at the expense of the public.
26

27 39. Relator additionally complained of filing, providing doctored and rosy
28 financial projections, and suppression of Single Audit Report (OMB 133)

1 findings to California Health Facilities Financing Authority (CHFFA)
2 with the intention of inducing CHFFA to approve a loan of \$400,000 to
3 save the South Los Angeles PPLA clinic.
4

5 40. PPLA intentionally did not disclose the Single Audit findings and
6 material weaknesses to CHFFA or other regulatory agencies, even though
7 it pointed out failures in management and financial controls. This Single
8 Audit report covered precisely the period under review and being
9 questioned by CHFFA officials. In fact the Single Audit report's findings
10 likely disqualified PPLA from many other government programs.
11

12 41. PPLA also sought to hide the losses and the funding freeze from the
13 California Family Health Council (CHFC)—over half a million dollars in
14 the same 2002 period. Mary Jane Wagle sent an email advising Relator
15 to be deliberately vague in these disclosures. The chairman of the PPLA
16 finance committee was copied in this email. True and correct copies of
17 emails evidencing the scheme to suppress and camouflage as well as
18 continue the aforementioned illegal activity are attached as Exhibit 8.
19

20 42. Rather than remedying the multiple serious problems identified by
21 Relator, Defendants instead terminated his employment.
22

23 43. At and before the time of Relator's termination it was the intent of PPLA
24 to suppress information relating to illegal billing from the government,
25 potential auditors, and members of the public. (See Exhibit 9).
26 Moreover, Defendants knew that false and misleading information had
27 been provided to the State of California, private funding sources, and the
28

1 federal government, or that billing codes used by PPLA were creating
2 problems that would affect funding. (See Exhibit 9).
3

4 44. The violations of normally accepted financial practices, rules and
5 regulations by Defendants placed the State of California, the United
6 States, and private grant sources at risk of serious financial loss.
7 Defendants disregarded these policies by suppressing Relator's findings,
8 by terminating his employment in order to further prevent the lawfully
9 required disclosure of damaging facts known by Relator and Defendants,
10 and by intentionally failing to disclose the facts discovered by Relator to
11 funding sources such as the State of California, and the federal
12 government by and through its agents within the State of California.
13

14 45. Relator's negative findings and reports to management were known to
15 Defendants and their leadership throughout the latter part of 2003 and up
16 until the time that Relator was terminated in March 2004.
17

18 46. Defendants' conduct poured over into misrepresentation that was made to
19 private donors and governmental agencies as well during and prior to
20 2004 in violation of California Business & Professions Code § 17500, et
21 seq., and California Civil Code § 1760, et seq. (California Consumer
22 Legal Remedies Act), which prohibit this type of deception. Moreover,
23 Defendants had already agreed not to engage in certain violations of
24 public policy designed to protect taxpayers from fraud and abuse.
25

26 47. Relator is informed and believes that at all times relevant to this
27 Complaint, Defendants submitted, or caused to be submitted, claims for
28 reimbursement for prescription medications/contraceptives and services

1 provided to Medicare, Medicaid, and FFACT patients to the Health Care
2 Financing Administration ("HCFA"), an agency of the Department of
3 Health and Human Services ("HHS"), for payment.
4

5 48. At all times relevant to this Complaint, Defendants were authorized
6 providers of services to patients insured by MediCal and other state
7 funded programs. All of these state funded programs are collectively
8 referred to hereinafter as "State Insurers."
9

10 49. Relator is informed and believes and thereon alleges that, at all times
11 relevant to this Complaint, Defendants submitted, or caused to be
12 submitted, claims for reimbursement for services provided to individuals
13 insured by MediCal to Electronic Data Systems, Inc., which then
14 forwarded those claims to the Department of Health Services for ultimate
15 payment by the Controller of the State of California. Relator is informed
16 and believes and thereon alleges that, at all times relevant to this
17 Complaint, the State of California received at least 50% of its funding
18 from HHS for payments made on behalf of MediCal patients.
19

20 50. Between at least 1999 and the present, Defendants have knowingly
21 engaged in a series of fraudulent billing practices that have damaged
22 State and Federal Insurers. Defendants have been enriched by these
23 practices, directly or indirectly, in the form of excessive payments for the
24 services provided.
25

26 51. At all times relevant to this Complaint, defendants billed, or caused to be
27 billed, State and Fiscal Intermediaries who act on behalf of the State and
28 the Federal Government, for Evaluation and Management ("E&M")

1 services, drugs and medications provided to the patient and clientele
2 population of Defendant, and other services as prescribed in the FPACT
3 manual and guidelines controlling and emanating from the various
4 Waiver programs and demonstration projects which funded these
5 activities for Defendant and Does over the years as the law was
6 interpreted and applied to all services performed by the health care
7 providers on behalf of patients. The amount paid for such services
8 depended variously on the Current Procedural Terminology ("CPT") code
9 assigned by defendants for the services performed, as well as the "local
10 and state codes" which FPACT enacted from time to time. The CPT
11 coding system provides for the assignment of different codes by
12 healthcare providers depending on the type of services provided as well
13 as the drug and medications, the contraceptive pills, devices, and other
14 drugs and materials being dispensed as a result of a physician visits or
15 otherwise as "social" or community services visits as these were
16 variously designated from time to time by Defendant and Does.

17
18 52. One of the practices of Defendants was the knowing and systematic
19 assignment of codes allowing them to charge at other than cost for the
20 services, drugs, and medications being dispensed and made available to
21 patients and clientele. For example, the coding may have been designated
22 as "supplies" from time to time and charged to the State, and by
23 derivation to the Federal programs, at the marked up prices and not at the
24 required cost of such services, drugs, and medications.

25
26 53. As a result of this mechanism of coding and perpetuating of historical flat
27 fees charged for such medications, services, and drugs, in many instances,
28 Defendants practices resulted in the equivalent of "upcoding" the acuity,

1 economic, and time value of their services or prescriptions within the
2 range applicable to the relevant type of service or prescription.
3

4 54. In many cases, the code assigned for a service or prescription was not
5 even selected by a healthcare provider under whose name the service was
6 billed or who provided the prescription medication; the charge was
7 instead assigned by a non-healthcare provider staff member. The code
8 was also often gang-assigned mechanically by a system, or "hidden from
9 view" by use of "spoofing or cover coding" resulting in various tables,
10 entries and devices inside the system being used to elevate miscoding and
11 price-gouging and thereby creating an artifice of accepted and established
12 methods of charging and coding. This artifice was comprised of billing
13 entries correlating to historically charged amounts for the corresponding
14 medications or services which were never checked by State DHS audits
15 or otherwise validated. This was widely known to the Defendants and
16 was the subject of emails with PPAC.

17
18 55. The alleged justification for this misconduct, as evident in the subject
19 emails, was that the entire system was compensating for the shortfall in
20 the basic visits charge that the State and by derivation the Federal
21 government allowed. Complying with proper billing practices would
22 have meant that Defendants' entire healthcare delivery system would
23 have had to be significantly reshaped adopting more austere budgets and
24 forestalling its expansion. It follows that complying with proper billing
25 practices was not in Defendants' best interests and therefore was
26 disregarded.
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1 56. A report of PPLA's billing practices was performed on or about January
2 2004. (See Exhibit 2) The report, which focused on the provision of
3 contraceptives and subsequent reimbursements, showed that the extent of
4 defendants' fraud was pervasive. The report indicates that defendants
5 routinely engaged in numerous other improper billing practices and
6 collected substantially higher reimbursement amounts for these
7 contraceptives than if they had billed correctly.
8

9 57. The internally prepared study, responsive to a call to action by PPAC,
10 was based on PPLA records from 2002 through 2003. It represented a 12
11 month projection and it is representative of the general billing practices
12 and exorbitant overbilling by Defendants. Based on his experience
13 working at PPLA, Relator is informed and believes that other defendants
14 were at least equally aggressive, if not more so, when billing on behalf of
15 patients insured by State and Federal Insurers.
16

17 58. Relator is further informed and believes that the Defendants' aggressive
18 billing practices with State and Federal Insurers were in place from as
19 early as 1999 and persisted consistently thereafter. Previous auditing had
20 revealed similar patterns of overbilling on the part of Defendants dating
21 back to 1999 and earlier, yet the problems were not corrected by
22 defendants.
23

24 59. Defendants were made aware of the various aforementioned
25 improprieties. Nonetheless, Relator is informed and believes that
26 Defendants have not reimbursed State or Federal Insurers for the amounts
27 that have been improperly and falsely billed. Relator is further informed
28 and believes that Defendants continued to engage in the unlawful

1 practices described herein even after the problems were brought to their
2 attention and the San Diego DHS audit was completed.
3

4 **COUNT I**

5 (Submission of False Claims in Violation of 31 U.S.C, § 3729(a)(1)) (All
6 Defendants)
7

8 60. Relator realleges and incorporates paragraphs 1 through 47 and all
9 preceding paragraphs of this Complaint as if fully set forth herein.
10

11 61. Between at least 1999 and the present, Defendants have knowingly
12 submitted, or caused to be submitted, claims for payment by Federal
13 Insurers, FPACT, and MediCal for higher levels of Evaluation and
14 Management (E&M) services than were actually provided to patients as
15 well as reimbursements for medications/contraceptives in excess of
16 allowable limits.
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18 62. Relator is informed and believes that, between at least 1999 and the
19 present, Defendants have knowingly overbilled Federal Insurers, FPACT,
20 and MediCal.
21

22 63. Defendants thus knowingly caused the submission of false claims to the
23 United States in violation of the False Claims Act. The exact amount of
24 the United States' harm has not yet been determined. The precise amount
25 of damage caused by defendants will be ascertained at trial.
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COUNT II

(Use of False Statements or Records or Statements in Violation of 31 U.S.C. § 3729(a)(2)) (All Defendants)

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64. Relator realleges and incorporates paragraphs 1 through 47 and all preceding paragraphs of this Complaint as if fully set forth herein.

65. Between at least 1999 and the present, Defendants knowingly prepared or caused to be prepared false records and/or statements in connection with the upcoding of the E&M services provided by defendants. Incorrect CPT codes and modifier codes were assigned to patients' records that were knowingly false.

66. Relator is informed and believes that, between at least 1999 and the present, Defendants also knowingly prepared false records and/or statements in connection with billing for medications/contraceptives. Defendants frequently assigned incorrect CPT codes.

67. Defendants thus knowingly used false records or statements to get false or fraudulent claims paid or approved by the United States in violation of the False Claims Act. The exact amount of the United States' harm has not yet been determined. The precise amount of damage caused by defendants will be ascertained at trial.

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COUNT III

(Conspiracy to Get False Claims Paid - 31 U.S.C. § 3729(a)(3))

(All Defendants)

68. Relator realleges and incorporates paragraphs 1 through 47 and all preceding paragraphs of this Complaint as if fully set forth herein.

69. Between at least 1999 and the present, Defendants agreed on the submission of claims that were known by each to be false by reason of the practices described herein.

70. Defendants thus knowingly conspired to defraud the United States by getting false claims paid in violation of the False Claims Act. The exact amount of the United States' harm has not yet been determined. The precise amount of damage caused by Defendants will be ascertained at trial.

COUNT IV

(Reverse False Claims - 31 U.S.C. § 3729(a)(7)) (All Defendants)

71. Relator realleges and incorporates paragraphs 1 through 47 and all preceding paragraphs of this Complaint as if fully set forth herein.

72. By engaging in the conduct described above, Defendants avoided or reduced obligations owed to reimburse funds to Federal Insurers.

73. When seeking additional payments from Federal Insurers following the improper receipt of funds described above, Defendants knowingly

1 concealed information concerning the offsetting reimbursements that
2 were owed to the Government and thus reduced defendants' obligation to
3 Federal Insurers. Further, Relator is informed and believes that by
4 knowingly concealing and/or failing to disclose the overpayments during
5 federal government audits or reviews of their billing, Defendants avoided
6 making payments to Federal Insurers to refund monies overpaid to them.

7
8 74. Defendants thus knowingly used false records or statements to reduce or
9 avoid an obligation to pay the United States in violation of the False
10 Claims Act. The exact amount of the United States' harm has not yet been
11 determined. The precise amount of damage caused by Defendants will be
12 ascertained at trial.

13
14 **COUNT V**

15 (Conspiracy to defraud the Government with respect to claims in Violation of
16 18 USC Section 286) (All Defendants)

17
18 75. Relator realleges and incorporates paragraphs 1 through 47 and all
19 preceding paragraphs of this Complaint as if fully set forth herein.

20
21 76. Between at least 1999 and the present, Defendants agreed on the
22 submission of claims for services, which were known by each to be false
23 by reason of the practices described herein, to Federal Insurers.

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25 77. Defendants thus knowingly conspired to defraud the State of California
26 and the United States by getting false claims paid in violation of the False
27 Claims Act and the within statute. Relator is informed and believes and
28 thereon alleges that the United States was damaged by Defendants in an

1 amount as yet unknown. The exact amount of the United States' harm has
2 not yet been determined. The precise amount of damage caused by
3 Defendants will be ascertained at trial.
4

5 **COUNT VI**

6 (False, fictitious or fraudulent claims in Violation of 18 USC Section 287) (All
7 Defendants)
8

9 78. Relator realleges and incorporates paragraphs 1 through 47 and all
10 preceding paragraphs of this Complaint as if fully set forth herein.
11

12 79. Between at least 1999 and the present, Defendants have knowingly
13 submitted, or caused to be submitted, claims for payment by Federal
14 Insurers, FPACT, and MediCal for higher levels of Evaluation and
15 Management (E&M) services than were actually provided to patients as
16 well as reimbursements for medications/contraceptives in excess of
17 allowable limits.
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19 80. Relator is informed and believes that, between at least 1999 and the
20 present, Defendants have knowingly overbilled Federal Insurers, FPACT,
21 and MediCal.
22

23 81. Defendants thus knowingly caused the submission of false claims to the
24 United States in violation of the False Claims Act and the within statute.
25 Relator is informed and believes and thereon alleges that the United
26 States was damaged by Defendants in an amount as yet unknown. The
27 exact amount of the United States' harm has not yet been determined. The
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1 precise amount of damage caused by Defendants will be ascertained at
2 trial.

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COUNT VII

5 (Conspiracy to commit offense or to defraud United States in Violation of 18
6 USC Section 371) (All Defendants)

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8 82. Relator realleges and incorporates paragraphs 1 through 47 and all
9 preceding paragraphs of this Complaint as if fully set forth herein.

10

11 83. Between at least 1999 and the present, Defendants agreed on the
12 submission of claims for services, which were known by each to be false
13 by reason of the practices described herein, to Federal Insurers.

14

15 84. Defendants thus knowingly conspired to defraud the State of California
16 and the United States by getting false claims paid in violation of the False
17 Claims Act and the within statute. Relator is informed and believes and
18 thereon alleges that the United States was damaged by Defendants in an
19 amount as yet unknown. The exact amount of the United States' harm has
20 not yet been determined. The precise amount of damage caused by
21 Defendants will be ascertained at trial.

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COUNT VIII

24 (Theft or embezzlement in connection with health care in Violation of 18 USC
25 Section 669) (All Defendants)

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27 85. Relator realleges and incorporates paragraphs 1 through 47 and all
28 preceding paragraphs of this Complaint as if fully set forth herein.

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86. Between at least 1999 and the present, Defendants willfully and knowingly misapplied funds of a health care benefit program.

87. Defendants thus knowingly misapplied and converted funds of the United States in violation of the False Claims Act and the within statute. Relator is informed and believes and thereon alleges that the United States was damaged by Defendants in an amount as yet unknown. The exact amount of the United States' harm has not yet been determined. The precise amount of damage caused by Defendants will be ascertained at trial.

COUNT IX

(Major fraud against the United States in Violation of 18 USC Section 1031)
(All Defendants)

88. Relator realleges and incorporates paragraphs 1 through 47 and all preceding paragraphs of this Complaint as if fully set forth herein.

89. Between at least 1999 and the present, Defendants willfully and knowingly, by means of false or fraudulent pretenses, obtained funds and defrauded the United States.

90. Defendants thus knowingly misapplied and converted funds of the United States in violation of the False Claims Act and the within statute. Relator is informed and believes and thereon alleges that the United States was damaged by Defendants in an amount as yet unknown. The exact amount of the United States' harm has not yet been determined. The precise amount of damage caused by Defendants will be ascertained at trial.

COUNT X

(False statements relating to health care matters in Violation of 18 USC Section 1035) (All Defendants)

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91. Relator realleges and incorporates paragraphs 1 through 47 and all preceding paragraphs of this Complaint as if fully set forth herein.

92. Between at least 1999 and the present, Defendants made and used materially false writings and documents knowing the same to contain materially false, fictitious, or fraudulent statements and/or entries, in connection with the delivery of or payment for health care benefits.

93. In so doing, Relator is informed and believes that, between at least 1999 and the present, Defendants have knowingly overbilled Federal Insurers, FPACT, and MediCal.

94. Defendants thus knowingly caused the submission of false claims to the United States in violation of the False Claims Act and the within statute, Relator is informed and believes and thereon alleges that the United States was damaged by Defendants in an amount as yet unknown. The exact amount of the United States' harm has not yet been determined. The precise amount of damage caused by Defendants will be ascertained at trial.

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COUNT XI

(Submission of False Claims - Violation of California Government Code
Section 12651(a)(1)) (All Defendants)

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95. Relator realleges and incorporates paragraphs 1 through 47 and all preceding paragraphs of this Complaint as if fully set forth herein.

96. Between at least 1999 and the present, Defendants have knowingly submitted, or caused to be submitted, claims for payment by State Insurers (including MediCal) for higher levels of E&M services and other types of services, medications, and drugs, as variously coded from time to time, than were actually provided to patients.

97. Relator is informed and believes that, between at least 1999 and the present, Defendants have knowingly over-billed State Insurers (including MediCal) for medications/contraceptives.

98. Defendants thus knowingly caused the submission of false claims to the State of California in violation of the California False Claims Act. The exact amount of the State of California's harm has not yet been determined. Relator is informed and believes and thereon alleges that the State of California was damaged by Defendants in an amount as yet unknown. The precise amount of damage caused by Defendants will be ascertained at trial.

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COUNT XII

(Use of False Statements or Records - California Government Code Section
12651(a)(2)) (All Defendants)

99. Relator realleges and incorporates paragraphs 1 through 47 and all preceding paragraphs of this Complaint as if fully set forth herein.

100. Between at least 1999 and the present, Defendants knowingly prepared or caused to be prepared false records and/or statements in connection with incorrect CPT codes and modifiers which were assigned to patients' records that were knowingly false, misleading in their method of assignment, or deliberately concealed and billed as generalized supplies.

101. Relator is informed and believes that, between at least 1999 and the present, defendants also knowingly prepared false records and/or statements in connection with billing for prescription medications/contraceptives. Defendants frequently assigned incorrect CPT codes and modifiers which were assigned to patients' records that were knowingly false, misleading in their method of assignment, or deliberately concealed and billed as generalized supplies. In an effort to conceal this pattern of coding and miscoding, Defendants' Chief Operations Officer, Steven Emmert, caused the OSHPD report to be inflated for the calendar year 2002.

102. Defendants thus knowingly used false records or statements to get false or fraudulent claims paid or approved by the State of California in violation of the California False Claims Act. The exact amount of the

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State of California's harm has not yet been determined. Relator is informed and believes and thereon alleges that the State of California was damaged by Defendants in an amount as yet unknown. The precise amount of damage caused by Defendants will be ascertained at trial.

COUNT XIII

(Inadvertent Submission of False Claims - California Government Code Section 12651(a)(8)) (All Defendants)

103. Relator realleges and incorporates paragraphs 1 through 47 and all preceding paragraphs of this Complaint as if fully set forth herein.

104. By virtue of the acts and omission described above, Defendants are the beneficiary of inadvertent submissions of false claims to the State of California and failed to disclose the false claims to the State of California within a reasonable time after their subsequent discovery of the falsity of the claims.

105. The exact amount of the State of California's harm has not yet been determined. Relator is informed and believes and thereon alleges that the State of California was damaged by Defendants in an amount as yet unknown. The precise amount of damage caused by Defendants will be ascertained at trial.

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COUNT XIII

(Conspiracy to Submit False Claims - Government Code Section 12651(a)(3))
(All Defendants)

106. Relator realleges and incorporates paragraphs 1 through 47 and all preceding paragraphs of this Complaint as if fully set forth herein.

107. Between at least 1999 and the present, Defendants agreed on the submission of claims for services, which were known by each to be false by reason of the practices described herein, to Federal Insurers.

108. Defendants thus knowingly conspired to defraud the State of California by getting false claims paid in violation of the State False Claims Act. The exact amount of the State's harm has not yet been determined. Relator is informed and believes and thereon alleges that the State of California was damaged by Defendants in an amount as yet unknown. The precise amount of damage caused by Defendants will be ascertained at trial.

COUNT XV

(Submission of False Claims in Violation of Penal Code § 550(a)(6)/
Insurance Code § 1871.7) (All Defendants)

109. Relator realleges and incorporates paragraphs 1 through 47 and all preceding paragraphs of this Complaint as if fully set forth herein.

110. Between at least 1999 and the present, Defendants have knowingly submitted, caused to be submitted, and conspired to submit, claims for payment the FFACT program for higher levels of reimbursement than

1 Defendants were actually provided to for provision of prescription
2 Medications/contraceptives to patients. Relator is informed and believes
3 that, between at least 1999 and the present, Defendants have knowingly
4 submitted, caused to be submitted, and conspired to submit, inflated bills.
5

6 111. Defendants thus knowingly caused the submission of false claims to the
7 State Compensation Fund in violation of Penal Code §§ 550(a)(6) and
8 Insurance Code § 1871.7(b). The exact amount of harm to the State has
9 not yet been determined. The precise amount of damage caused by
10 Defendants will be ascertained at trial.

11
12 **COUNT XVI**

13 (Use of False Statements or Records in Violation of California Penal Code §§
14 550(a)(5), 550(b)(1)-(2)/Insurance Code § 1871.7(b)) (All Defendants)
15

16 112. Relator realleges and incorporates paragraphs 1 through 47 and all
17 preceding paragraphs of this Complaint as if fully set forth herein.
18

19 113. Defendants knowingly prepared, caused to be prepared, and conspired to
20 prepare, false records and/or statements in connection with their coding
21 of services and provision of prescription medications/contraceptives.
22 Specifically, CPT codes and modifiers which were assigned to patients'
23 records that were knowingly false, misleading in their method of
24 assignment, or deliberately concealed and billed as generalized supplies.
25

26 114. Defendants thus knowingly used false records or statements to get false
27 or fraudulent claims paid or approved by the State in violation of Penal
28 Code §§ 550(a)(5), 550(b)(1)-(2), and Insurance Code § 1871.7(b). The

1 exact amount of harm to the State has not yet been determined. The
2 precise amount of damage caused by Defendants will be ascertained at
3 trial.

4
5 **COUNT XVII**

6 (Concealing Overbilling in Violation of Penal Code Section 550(b)(3)/
7 Insurance Code § 1871.7(b)) (All Defendants)

8
9 115. Relator realleges and incorporates paragraphs 1 through 47 and all
10 preceding paragraphs of this Complaint as if fully set forth herein.

11
12 116. Defendants have concealed and knowingly failed to disclose the fact that
13 they have overbilled the State for services rendered and provision of
14 prescription medications/contraceptives, despite having had audits
15 performed and other information that make the extent of the fraud
16 manifest to Defendants.

17
18 117. The exact amount of harm to the State Compensation Fund has not yet
19 been determined.). The exact amount of harm to the State has not yet
20 been determined. The precise amount of damage caused by Defendants
21 will be ascertained at trial.

22
23 **COUNT XVIII**

24 (Unjust Enrichment) (All Defendants)

25
26 118. Relator realleges and incorporates paragraphs 1 through 47 and all
27 preceding paragraphs of this Complaint as if fully set forth herein.

28

1 119. This is a claim for the recovery of monies and the reasonable value of
2 benefits such as improper and excessive reimbursement by which
3 Defendants have been unjustly enriched through the fraud committed
4 against the United States and the State of California.

5
6 120. By directly or indirectly obtaining government funds and benefits to
7 which they were not entitled Defendants were unjustly enriched and are
8 liable to account and pay such amounts or the proceeds therefrom. The
9 exact amount of harm to United States and the State of California has not
10 yet been determined. The precise amount of damage caused by
11 Defendants will be ascertained at trial.

12
13 **COUNT XIX**

14 **Unfair Business Practices**

15 (Business and Professions Code Section 17200 et seq.)
16

17 121. Relator realleges and incorporates paragraphs 1 through 47 and all
18 preceding paragraphs of this Complaint as if fully set forth herein.

19
20 122. Beginning at an exact date that is unknown to plaintiffs, but within four
21 years prior to the filing of this Complaint, defendants engaged in unfair
22 competition as defined by Business and Professions Code section 17200,
23 by engaging in the following unlawful, unfair or fraudulent acts or
24 practices. Defendants violated the California False Claims Act,
25 Government Code sections 12650 et seq., by the acts and practices set
26 forth in paragraphs 1 through 47 of this First Amended Complaint;

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COUNT XX

Unfair Business Practices

(Business and Professions Code Section 17500 et seq.)

123. Relator realleges and incorporates paragraphs 1 through 47 and all preceding paragraphs of this Complaint as if fully set forth herein.

124. Defendants' desire to suppress evidence of illegal billing and other misconduct was extended into misrepresentation made to private donors and government agencies as well during and prior to 2004 in violation of California Business & Professions Code § 17500, et seq., and California Civil Code § 1760, et seq. (California Consumer Legal Remedies Act), which prohibit this type of deception. Moreover, Defendants had already agreed not to engage in certain violations of public policy designed to protect taxpayers from fraud and abuse.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff/Relator prays for judgment against Defendants as follows:

A. On Count I (Submission of False Claims), an order holding each of the Defendants liable for treble the single damages they caused, the amount of which is to be established at trial, penalties of \$10,000 for each false claim, the number of which is to be established at trial, plus such other relief as this Court deems just and appropriate;

1 B. On Count II (Use of False Statements or Records), an order holding
2 each of the Defendants liable for treble the single damages they caused,
3 the amount of which is to be established at trial, penalties of \$10,000 for
4 each false statement or record, the number of which is to be established at
5 trial, plus such other relief as this Court deems just and appropriate;

6
7 C. On Count III (Conspiracy to Get False Claims Paid), an order
8 holding each of the Defendants liable for treble the single damages they
9 caused, the amount of which is to be established at trial, penalties of
10 \$10,000 for each false statement or claim, the number of which is to be
11 established at trial, plus such other relief as this Court deems just and
12 appropriate;

13
14 D. On Count IV (Reverse False Claims), an order holding each of the
15 Defendants liable for treble the single damages they caused, the amount
16 of which is to be established at trial, penalties of \$10,000 for each false
17 statement or claim, the number of which is to be established at trial, plus
18 such other relief as this Court deems just and appropriate.

19
20 E. On Count V (Conspiracy to defraud the Government with respect
21 to claims in Violation of 18 USC Section 286) an order holding each of
22 the Defendants liable for treble the single damages they caused, the
23 amount of which is to be established at trial, penalties of \$10,000 for each
24 false statement or record, the number of which is to be established at trial,
25 Any applicable fines pursuant to Title 18, plus such other relief as this
26 Court deems just and appropriate;

27
28

1 F. On Count VI (False, fictitious or fraudulent claims in Violation of
2 18 USC Section 287) an order holding each of the Defendants liable for
3 treble the single damages they caused, the amount of which is to be
4 established at trial, penalties of \$10,000 for each false statement or
5 record, the number of which is to be established at trial, Any applicable
6 fines pursuant to Title 18, plus such other relief as this Court deems just
7 and appropriate;

8
9 G. On Count VII (Conspiracy to commit offense or to defraud United
10 States in Violation of 18 USC Section 371) an order holding each of the
11 Defendants liable for treble the single damages they caused, the amount
12 of which is to be established at trial, penalties of \$10,000 for each false
13 statement or record, the number of which is to be established at trial, Any
14 applicable fines pursuant to Title 18, plus such other relief as this Court
15 deems just and appropriate;

16
17 H. On Count VIII (Theft or embezzlement in connection with health
18 care in Violation of 18 USC Section 669) an order holding each of the
19 Defendants liable for treble the single damages they caused, the amount
20 of which is to be established at trial, penalties of \$10,000 for each false
21 statement or record, the number of which is to be established at trial, Any
22 applicable fines pursuant to Title 18, plus such other relief as this Court
23 deems just and appropriate;

24
25 I. On Count IX (Major fraud against the United States in Violation of
26 18 USC Section 1031) an order holding each of the Defendants liable for
27 treble the single damages they caused, the amount of which is to be
28 established at trial, penalties of \$10,000 for each false statement or

1 record, the number of which is to be established at trial, Any applicable
2 fines pursuant to Title 18, plus such other relief as this Court deems just
3 and appropriate;
4

5 J. On Count X (False statements relating to health care matters in
6 Violation of 18 USC Section 1035) an order holding each of the
7 Defendants liable for treble the single damages they caused, the amount
8 of which is to be established at trial, penalties of \$10,000 for each false
9 statement or record, the number of which is to be established at trial, Any
10 applicable fines pursuant to Title 18, plus such other relief as this Court
11 deems just and appropriate;
12

13 K. On Count XI (Submission of False Claims in Violation of
14 California Government Code Section 12651(a)(1)), an order holding each
15 of the Defendants liable for treble the single damages they caused, the
16 amount of which is to be established at trial, penalties of \$10,000 for each
17 false claim, the number of which is to be established at trial, plus such
18 other relief as this Court deems just and appropriate;
19

20 L. On Count XII (Use of False Statements or Records in Violation of
21 California Government Code Section 12651(a)(2)), an order holding each
22 of the Defendants liable for treble the single damages they caused, the
23 amount of which is to be established at trial, penalties of \$10,000 for each
24 false statement or record, the number of which is to be established at trial,
25 plus such other relief as this Court deems just and appropriate;
26

27 M. On Count XIII (Inadvertent Submission of False Claims in
28 Violation of California Government Code Section 12651(a)(8)), an order

1 holding each of the Defendants liable for treble the single damages they
2 caused, the amount of which is to be established at trial, penalties of
3 \$10,000 for each false statement or claim, the number of which is to be
4 established at trial, plus such other relief as this Court deems just and
5 appropriate;

6
7 N. On Count XIV (Conspiracy to Get False Claims Paid in Violation
8 of California Government Code Section 12651(a)(3)), an order holding
9 each of the Defendants liable for treble the single damages they caused,
10 the amount of which is to be established at trial, penalties of \$10,000 for
11 each false statement or claim, the number of which is to be established at
12 trial, plus such other relief as this Court deems just and appropriate.

13
14 O. On Count XV (Submission of False Claims in Violation of Penal
15 Code § 550(a)(6)/Insurance Code § 1871.7), an order holding each of the
16 Defendants liable for treble the single damages they caused, the amount
17 of which is to be established at trial, penalties of \$10,000 for each false
18 statement or record, the number of which is to be established at trial, plus
19 such other relief as this Court deems just and appropriate;

20
21 P. On Count XVI (Use of False Statements or Records in Violation of
22 California Penal Code §§ 550(a)(5), 550(b)(1)-(2)/Insurance Code §
23 1871.7(b)), an order holding each of the Defendants liable for treble the
24 single damages they caused, the amount of which is to be established at
25 trial, penalties of \$10,000 for each false statement or claim, the number of
26 which is to be established at trial, plus such other relief as this Court
27 deems just and appropriate;

28

1 Q. On Count XVII (Concealing Over-billing in Violation of Penal
2 Code Section 550(b)(3)/Insurance Code § 1871.7(b)), an order holding
3 each of the Defendants liable for treble the single damages they caused,
4 the amount of which is to be established at trial, penalties of \$10,000 for
5 each false statement or claim, the number of which is to be established at
6 trial, plus such other relief as this Court deems just and appropriate;

7
8 R. On Count XVIII (Unjust Enrichment) disgorgement of unjustly
9 obtained funds, plus such other relief as this Court deems just and
10 appropriate;

11
12 S. On Count XIX (Business and Professions Code Section 17200 et
13 seq.)

14
15 1. Pursuant to Business and Professions Code section 17206, each
16 Defendant be assessed a civil penalty of \$2,500 for each violation of
17 Business and Professions Code section 17200, in an amount of not less
18 than \$1,000,000.00;

19
20 2. That pursuant to Business and Professions Code section 17203,
21 Defendants, their successors, agents, representatives, employees, and all
22 other persons who act under, by, through, or on behalf of any of them, or
23 any of them, be permanently restrained and enjoined from performing or
24 proposing to perform any of the acts of unfair competition in the State of
25 California;

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27 3. That Defendants be ordered to make full restitution for acts of
28 unfair competition as determined by the court;

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T. On Count XX (Business and Professions Code Section 17500 et seq.)

1. Plaintiff requests pursuant to Business and Professions Code §§ 17082 treble damages;


2. That pursuant to Business and Professions Code section 17203, Defendants, their successors, agents, representatives, employees, and all other persons who act under, by, through, or on behalf of any of them, or any of them, be permanently restrained and enjoined from performing or proposing to perform any of the acts of unfair competition in the State of California;

U. That Qui Tam Plaintiff/Relator be awarded all costs of this action, including attorneys' fees; and costs;

V. That the United States and Qui Tam Plaintiff/Relator receive such other relief as the Court deems just and proper.

DATED: March 23, 2006

SCHULER & BROWN

By: 

Jack M. Schuler
Sam D. Ekizian
Attorneys for Plaintiffs, Qui
Tam Plaintiff, On Behalf of
Himself and the United
States

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November 18, 2005

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Gentlepersons:

We represent P. Victor Gonzalez who was employed as the Vice President of Finance & Administration with Planned Parenthood of Los Angeles (PPLA) between December 9, 2002 and March 9, 2004. His job duties required him to take initiative to ensure compliance with all financial rules and regulations governing the financial activities of the Defendant. On behalf of Mr. Gonzalez, and pursuant to his request, the following information we have received from him is provided to you.

In the months preceding the termination of Mr. Gonzalez's employment with PPLA, he had raised various serious financial concerns directly related to conduct violative of Federal and State statutory schemes. These concerns about the illegal accounting, billing, and donations practices of Planned Parenthood were conveyed via writing, e-mails and orally to various Planned Parenthood personnel. The written concerns related directly to the qualifications of

EXHIBIT

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Page 2

Planned Parenthood to remain qualified as a health care provider and to receive continued funding from governmental and other sources.

A review of these problems had been undertaken by Planned Parenthood, its affiliates, a number of consultants, and internal reviews conducted by Planned Parenthood employees and Board members. Mr. Gonzalez had led the effort in identifying and enumerating these considerable problems and illicit activities, locating consultants, looking for viable solutions, presenting these solutions to all necessary parties, and procuring the employees to formulate the solutions.

In 1992, Section 340B of the Public Health Service Act was enacted. Section 340B requires drug manufacturers to provide outpatient drugs to eligible health care centers, clinics, and hospitals (termed "covered entities") at a reduced price. The 340B price is a "ceiling price", meaning it is the highest price the covered entity would have to pay for select outpatient and over-the-counter drugs and minimum savings the manufacturer must provide. The entities, including Planned Parenthood, which are eligible to receive federally discounted drugs are subject to various state and federal regulatory schemes dictating their ability to dispense and seek reimbursement for these drugs. California and Federal law provided payment for drugs obtained under Section 340B be based on acquisition cost. As further detailed below, Planned Parenthood violated these regulations and vastly overbilled for reimbursements.

From late 2003 through the actual date of his termination, Mr. Gonzalez had specifically complained about the following problems which jeopardized PPLA's ability to continue receiving governmental funding and monies and to maintain its continuing status as a nonprofit organization. Mr. Gonzalez complained, went on record on this matter, and, in an effort to address these serious issues, participated in numerous phone calls with both PPLA, Planned Parenthood of California, and the Sacramento based PPAC (political action committee).

PPLA had a practice of marking up medications (oral contraceptives, nuvaRing etc.) bought under the "PHS 340B" discount program. The effect of this at PPLA is overcharging the Federal Government, the State of California, and self-pay patients approximately \$2,000,000.00 per year. This has been going on for a number of years, and is prevalent with the other California Planned Parenthood affiliates. As a result the overcharging exceeds \$10,000,000.00 per year. During his employment with Planned Parenthood of Los Angeles, Mr. Gonzalez was requested by Planned Parenthood to perform an assessment of the impact of these overbilling practices, and the other many Planned Parenthood affiliates were asked to do likewise. The result of this assessment report for PPLA revealed approximately \$2,144,313.17 in overbilling. This reflects the financial impact for only one of many Planned Parenthood affiliates in California and only for one year. A copy of the report is enclosed.

In early February 2004, the California Department of Health Services began an audit of the San Diego Planned Parenthood affiliate. The audit was limited to the San Diego Planned Parenthood affiliate. The audit found extensive and illegal markups of medications/contraceptives procured through the federal discount drug program under 38 U.S.C. Section 340B. Specifically, the audit uncovered at least \$5,213,545.92 of illegal billing at

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Page 3

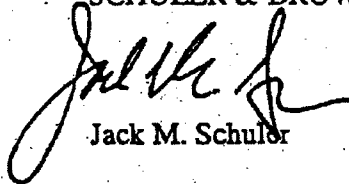
Planned Parenthood San Diego alone. The Department of Health Services chose to ignore these findings notwithstanding the serious violations implicated.

There are many separate Planned Parenthood affiliates in California and there is probable cause to believe that most, if not all of them, also engaged in the same illegal and unscrupulous billing practices. The estimated illegal billing over six years, beginning in 1999, exceeds \$180,000,000.00. This conservative figure only takes into account the illegal and unscrupulous billing practices of Defendants within the state of California.

A preliminary draft of a civil case which will soon be finalized and filed is enclosed for further factual background. Mr. Gonzalez is available to meet with you to provide further documentary evidence and information concerning these fraudulent and illegal overbilling practices.

Very truly yours,

SCHULER & BROWN



Jack M. Schuler

JMS:jpm
Enclosures

Inventory Item#	Description	Base Unit of Measure	Base Unit Cost	YTD Utilization	YTD Expense
CONTRACEPTIVE					
10000	Oral Contraceptive Veridale Com	Bx	\$	0	\$
10128	Oral Contraceptive Modicon	Ea	1.31	4,087	5,363.97
10211	Preven (Emer Contra Kit)	Pk	1.85	2,482	4,591.70
10328	Oral Cont Ortho Novum 135	Ea	0.61	6,481	3,953.41
10528C	Oral Cont Ortho Novum 150	Ea	3.66	217	794.22
10628	Oral Cont Ortho-Cyclen 28	Ea	3.74	15,500	57,970.00
10728	Oral Cont Ortho Novum 777	Ea	1.57	21,128	33,170.96
10828	Oral Cont Micronor	Ea	2.83	2,652	7,505.16
20000	Depo-Provera 150MG	VL	24.16	6,301	152,232.16
20001	Depo-Provera 150MG W/SRNG	SY	19.75	2,920	57,670.00
20002	Plan B	Ea	4.50	15,747	70,861.50
20003	Lunelle	VL	14.93	0	\$
20004	Ortho Evra	Ea	3.27	5,745	18,768.92
20005	Nuva-Ring	Ea	3.00	1,296	3,888.00
20008	Demulen 1/35	Ea	6.02	2,088	12,565.58
20018	Allesse-28	Ea	3.61	25,563	92,384.68
20028	Loestrin Fe 1/20 #913-45	Ea	10.16	9,060	92,049.60
20085	Diaphragms-All-Flex 85	Ea	18.50	4	74.00
20128	Tri-Levian #43303	Ea	1.89	7,908	14,946.12
20160	Diaphragms-All-Flex 160	Ea	15.25	2	30.50
20165	Diaphragms-All-Flex 165	Ea	18.50	24	444.00
20170	Diaphragms-All-Flex 170	Ea	18.50	29	536.50
20175	Diaphragms-All-Flex 175	Ea	18.50	36	666.00
20180	Diaphragms-All-Flex 180	Ea	18.50	8	148.00
20185	Diaphragms-All-Flex 185	Ea	6.50	1	6.50
20190	Diaphragms-All-Flex 190	Ea	18.50	1	18.50
20195	Diaphragms-All-Flex 195	Ea	18.50	2	37.00
20228	Levlen #41128	Ea	1.07	17,901	19,154.07
20255	Diaphragms-Koromex 255	Ea	15.25	2	30.50
20260	Diaphragms-Koromex 260	Ea	15.25	5	76.25
20265	Diaphragms-Koromex 265	Ea	15.25	7	106.75
20270	Diaphragms-Koromex 270	Ea	15.25	5	76.25
20275	Diaphragms-Koromex 275	Ea	15.25	10	152.50
20280	Diaphragms-Koromex 280	Ea	15.25	3	45.75
20285	Diaphragms-Koromex 285	Ea	18.50	1	18.50
20290	Diaphragms-Koromex 290	Ea	15.25	1	15.25
20295	Diaphragms-Koromex 295	Ea	18.50	3	55.50
20428	Ortho Tri-Cyclen Lo	Ea	2.25	23,664	53,244.00
25000	Cervical Cap-Filling Set	Ea	50.00	10	500.00
25022	Cervical Cap 22MM	Ea	46.00	1	46.00

Revenue

Net Income

49,044.00	43,690.03
47,009.08	42,417.38
77,772.00	73,818.59
2,604.00	1,809.78
186,000.00	128,030.00
253,536.00	220,365.04
31,824.00	24,318.84
294,697.77	142,465.61
136,568.40	78,898.40
328,482.42	257,620.92
63,941.85	45,172.94
47,964.96	44,076.96
25,056.00	12,490.42
306,756.00	214,371.32
108,720.00	16,670.40
52.00	(22.00)
94,896.00	79,949.88
26.00	(4.50)
312.00	(132.00)
377.00	(159.50)
468.00	(198.00)
104.00	(44.00)
13.00	6.50
13.00	(5.50)
26.00	(11.00)
214,812.00	195,657.93
26.00	(4.50)
65.00	(11.25)
91.00	(15.75)
65.00	(11.25)
130.00	(22.50)
39.00	(6.75)
13.00	(5.50)
13.00	(2.25)
39.00	(16.50)
283,968.00	230,724.00
130.00	(370.00)
13.00	(33.00)