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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. LILIAN A. JAKACKI, a/k/a "LILIAN WIECKOWSKI," MW & W GLOBAL ENTERPRISES INC. d/b/a "CHOPIN CHEMISTS," and EUROPEAN APOTHECARY INC., d/b/a/ "CHOPIN CHEMISTS," Defendants.	15 Civ. 8512 **COMPLAINT** JURY TRIAL DEMANDED

Plaintiff, the United States of America, by its attorney, Preet Bharara, United States Attorney for the Southern District of New York, alleges upon information and belief as follows:

INTRODUCTION

1. The United States of America brings this civil enforcement action seeking (a) penalties and injunctive relief against defendants for violating the Controlled Substances Act, as amended, 21 U.S.C. §§ 801 *et seq.* (the "CSA"), and its implementing regulations, 21 C.F.R. § 1301 *et seq.* (the "CSA Regulations"), and (b) recovery of treble damages and civil penalties for violations of the False Claims Act ("FCA"), 31 U.S.C. §§ 3729 *et seq.*, in connection with a

scheme to defraud the United States' federal healthcare programs—namely, the federally funded Medicare program.

2. As set forth more fully below, the United States alleges in this action that Lilian Jakacki, a/k/a "Lilian Wieckowski" (hereafter, "Wieckowski"), a licensed pharmacist and the owner and/or former owner of the two retail pharmacies in Brooklyn and Queens that are the corporate defendants in this action, engaged in repeated and systemic violations of the Act and Regulations in the acquisition of Schedule II controlled substances and maintenance of related records as part of an unlawful oxycodone diversion scheme that illegally flooded New York City with hundreds of thousands of prescription pills.

3. In addition, Wieckowski conspired with others to defraud the federal Medicare program out of hundreds of thousands of dollars by submitting numerous false claims for prescription medications, thereby obtaining reimbursement from United States federal health care programs for medication her pharmacies did not actually dispense.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 21 U.S.C. §§ 842(c)(1) and 843(f)(2), 31 U.S.C. § 3732, and 28 U.S.C. §§ 1345 and 1355.

5. Venue is proper in the Southern District of New York pursuant to 21 U.S.C. § 843(f)(2), 31 U.S.C. § 3732(a), and 28 U.S.C. §§ 1391(b) and 1395(a).

THE PARTIES

6. Plaintiff is the United States of America.

7. Defendant MW & W Global Enterprises, Inc., d/b/a Chopin Chemists, was—until 2014—a retail pharmacy located at 911 Manhattan Avenue in Brooklyn, New York (hereafter,

the "Brooklyn Pharmacy"). Prior to its sale to CVS in April 2014, the Brooklyn Pharmacy dispensed, among other things, Schedule II controlled substances as defined under the Act, pursuant to Drug Enforcement Administration ("DEA") registration number BM4633269. *See* 21 U.S.C. § 802(6), 21 C.F.R. § 1308.12.

8. Defendant European Apothecary, Inc., d/b/a Chopin Chemists, is a retail pharmacy located at 66-19 Fresh Pond Road in Ridgewood, New York (hereafter, the "Queens Pharmacy"). The Queens Pharmacy dispenses, among other things, Schedule II controlled substances as defined under the Act, pursuant to DEA registration number FE2683969. *See* 21 U.S.C. § 802(6), 21 C.F.R. § 1308.12.

9. Defendant Wieckowski is a pharmacist licensed in the State of New York, the owner of the Queens Pharmacy, and the former owner of the Brooklyn Pharmacy (collectively, the "Pharmacies"). At all times relevant to this action, Wieckowski was actively involved in, supervised, and was responsible for, among other things, the business of dispensing Schedule II controlled substances at the Pharmacies, as well as non-controlled prescription medications.

CSA STATUTORY AND REGULATORY FRAMEWORK

10. Schedule II controlled substances as defined under the Act are drugs that have a currently accepted medical use in the United States, but also a high potential for abuse, which may lead to severe psychological or physical dependence. *See* 21 U.S.C. § 812(b)(2).

11. Oxycodone is a Schedule II controlled substance. *See* 21 U.S.C. § 812(c).

12. Oxycodone is the generic term for the class of synthetic opioids that are commonly abused for their heroin-like effects (collectively referred to here as "Oxy"). The Oxy class of opioids is among the most abused and diverted prescription drugs in the United States.

13. For example, a Centers for Disease Control Study concluded in 2013 that the number of prescription pain reliever-related deaths from drugs such as Oxy over the last ten years was four times higher than the rate of death by cocaine and heroin overdose—combined. *See* http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6226a3.htm?s_cid=mm6226a3_w, last visited on October 23, 2015.

14. To combat the high potential for abuse of Oxy and other Schedule II controlled substances, the Act mandates strict adherence to a number of requirements by any person who or entity that dispenses these drugs.

15. Among these requirements is mandatory registration with the DEA. Specifically, retail pharmacies and other entities that dispense Schedule II controlled substances must register with the DEA, which is thereafter authorized to inspect the registrant's establishment to ensure compliance with the applicable rules and Regulations. *See* 21 U.S.C. §§ 822(a)(2), (f).

16. Additionally, pharmacies must adhere to all regulations prescribed by the Attorney General in ordering Schedule II controlled substances. *See* 21 U.S.C. § 828(a).

17. It is unlawful for any person "to refuse or negligently fail to make, keep, or furnish any record, report, notification, declaration, order or order form, statement, invoice, or information" required by the Act. 21 U.S.C. § 842(a)(5).

18. DEA registrants who wish to order Schedule II controlled substances electronically must separately register for the Controlled Substance Ordering System ("CSOS") maintained by DEA. *See* 21 C.F.R. § 1311.25. Registration for CSOS includes a representation by the registrant that it will abide by all DEA rules and regulations specific to CSOS.

19. DEA issues eligible individuals who register for CSOS a digital certificate and private key, allowing that individual to "sign" orders for controlled substances. *See* 21 C.F.R. §§ 1300.03 and 1311.05.

20. To be valid, all electronic orders placed through CSOS must include the ordering individual's unique digital "signature" issued by DEA. *See* 21 C.F.R. § 1305.21(a).

21. Only the certificate holder may access or use his or her digital certificate and private key; that individual must ensure that others do not use his or her key. *See* 21 C.F.R. §§ 1311.30(a), (c).

22. Schedule II controlled substances must be ordered by dispensing entities using order forms issued by DEA, known as "Form 222," or, for orders placed through CSOS, using the electronic equivalent. *See* 21 U.S.C. § 828(c)(2), 21 C.F.R. § 1305.03.

23. Form 222 Order Forms must be maintained for two years and be readily retrievable upon request. *See* 21 U.S.C. § 828(c)(2), 21 C.F.R. §§ 1311.60(a), (b).

24. Entities dispensing Schedule II controlled substances that utilize electronic order forms, upon receipt of a shipment, must reconcile the shipment with existing inventory by creating a record of the quantity of item received and the date received. This record must be electronically linked to the original order and archived. *See* 21 C.F.R. §§ 1305.22(g), 1311.60(a).

25. Generally, only the registrant may place orders for Schedule II controlled substances. A registrant may, however, authorize one or more individuals to issue orders for Schedule II controlled substances on the registrant's behalf by executing a power of attorney (the "Power of Attorney") for each individual, maintaining the Power of Attorney(s) on file, and

producing the Power of Attorney(s) for inspection, upon request by DEA. *See* 21 C.F.R. § 1305.05.

26. A retail pharmacy or other entity dispensing Schedule II controlled substances must maintain "a complete and accurate record of each such substance manufactured, imported, received, sold, delivered, exported, or otherwise disposed of." 21 C.F.R. § 1304.21(a).

27. A retail pharmacy also must conduct a complete and accurate biennial inventory of all Schedule II controlled substances, and must make that inventory available for DEA inspection. *See* 21 U.S.C. §§ 827(a)(1), (b), and 21 C.F.R. § 1304.11.

28. To transfer Schedule II substances, the receiving registrant must issue an official order form (DEA Form 222) or an electronic equivalent to the registrant transferring the drugs. Moreover, pursuant to 21 C.F.R. § 1304.11, pharmacies are required to keep records of the transfer.

29. In the event of a theft or significant loss of a Schedule II controlled substance, the dispensing entity must notify DEA within one business day of discovery. *See* 21 C.F.R. § 1301.74(c). Theft and loss reports are made to DEA on DEA Form 106 ("Form 106"). *See id.*

30. Violation of any of the above requirements under the Act carries a per-violation penalty of up to $10,000, as well as injunctive relief. *See* 21 U.S.C. §§ 842(c)(1)(B) and 843(f).

31. The Act mandates even higher penalties for registrants that knowingly participate in the diversion of controlled substances. For example, a prescription for a controlled substance may only be issued for a "legitimate medical purpose" by an individual practitioner acting in the usual course of his or her professional practice. *See* 21 C.F.R. § 1306.04(a). In tandem with doctors, pharmacists have a corresponding responsibility (a) not to fill orders for controlled

substances without a prescription, (b) not to fill orders for a fraudulent prescription, and (c) not to fill any prescription that lacks a legitimate medical purpose. *Id*.

32. Under the Act, no schedule II controlled substance may be dispensed without a legitimate prescription written for a legitimate medical purpose. 21 U.S.C. § 829(a).

33. Under the Act, any person that knowingly accepts a fraudulent prescription for a controlled substance, distributes controlled substances without a prescription, or knowingly honors prescriptions that lack a legitimate medical purpose, is subject to a per-violation penalty of up to $25,000, as well as to injunctive relief that the agency may seek. *See* 21 U.S.C. §§ 842(a)(1) & (c)(1)(A), 843(f) and 21 C.F.R. § 1306.04(a).

FALSE CLAIMS ACT FRAMEWORK

34. The FCA imposes liability upon any person who "knowingly presents, or causes to be presented [to the Government], a false or fraudulent claim for payment or approval"; or "knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim"; or "knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government." 31 U.S.C. § 3729(a)(1)(A), (B), (G).

35. Any person who is found to have violated these provisions is liable for a civil penalty of up to $11,000 for each false or fraudulent claim, plus three times the amount of the damages sustained by the Government.

36. The FCA imposes liability where the conduct is "in reckless disregard of the truth or falsity of the information," and "no proof of specific intent to defraud is required." 31 U.S.C. § 3729(b)(1).

37. Moreover, the FCA broadly defines a "claim" as including "any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that— (i) is presented to an officer, employee, or agent of the United States; or (ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the United States Government— (I) provides or has provided any portion of the money or property requested or demanded; or (II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded." 31 U.S.C. § 3729(b)(2)(A).

FACTS

The CSA Claims

38. During the relevant time period, Wieckowski and the Pharmacies regularly ordered and dispensed Oxy and other Schedule II controlled substances.

39. According to records reported to DEA by its registered pharmacies, Wieckowski's Brooklyn Pharmacy was the single largest purchaser of Oxy (all strengths) in its zip code for three straight years, from 2010 to 2012.

40. DEA began to investigate the Pharmacies. On or about January 9, 2013, DEA investigators visited the Brooklyn Pharmacy to survey the pharmacy, collect records and make

inquiries. DEA visited the Queens Pharmacy on or about January 24, 2013, for the same purpose.

41. DEA made follow-up visits and/or telephone calls to Wieckowski and the Pharmacies throughout January and February 2013, to seek and obtain additional information.

42. On June 4, 2013, DEA again went on-site to the Pharmacies to serve administrative subpoenas, and to collect records necessary to perform an audit of the Pharmacies.

43. DEA completed its audit on or about the end of 2013, and noted numerous record-keeping violations. The Government commenced an investigation, which subsequently uncovered serious violations at both Pharmacies, including the following:

(a) Wieckowski failed to keep numerous records that should have been made available upon request when DEA made its site visits;

(b) Wieckowski allowed all of her employees to share her CSOS key;

(c) Wieckowski failed to maintain accurate records of inventory;

(d) Wieckowski failed to reconcile her orders (both paper and electronic) on hundreds of occasions;

(e) Wieckowski failed to conduct biannual inventories;

(f) Wieckowski failed to notify DEA regarding 11 alleged theft and loss incidents;

(g) Wieckowski transported controlled substances between the Pharmacies but kept no records regarding such transfers;

(h) Wieckowski allowed employees to order controlled substances on behalf of the Pharmacies but maintained no Powers of Attorney on record;

(i) Wieckowski allowed non-pharmacists to dispense controlled substances at the Brooklyn Pharmacy without supervision;

(j) Wieckowski and the Pharmacies routinely distributed Oxy or caused Oxy to be distributed without any prescription at all, causing a shortfall of more than 400,000 Oxy pills at the Brooklyn Pharmacy; and

(k) Wieckowski and the Pharmacies accepted prescriptions that were falsified. For example, at times the Pharmacies accepted prescriptions made out to names that included famous luxury goods, such as "Coach" or "Chanel." At other times, Wieckowski assisted in forging the prescriptions herself by supplying fraudulent patient names. Through doctor interviews, the examination of forged prescriptions, and other investigatory techniques, DEA agents independently verified more than 1300 false prescriptions that Wieckowski and the Pharmacies had honored at both locations, thereby illegally diverting more than 160,000 additional pills.

44. In sum, the Government's investigation revealed that Wieckowski was involved in a multi-million dollar Oxy conspiracy in which no less than half a million pills were illegally diverted into the black market in New York City. As measured by the sheer quantity of pills distributed, the Defendants' Oxy scheme is one of the largest illegal diversions of oxycodone pills ever uncovered in a New York State pharmacy.

45. The Government's investigation revealed that Wieckowski routinely provided Oxy, and caused others to routinely provide Oxy, to certain trusted associates in exchange for cash, goods, and store credit.

46. Wieckowski and the Pharmacies provided, or caused to be provided, these trusted associates with large quantities of Oxy in exchange for fraudulent prescriptions, in exchange for

prescriptions with no legitimate medical purpose, and often times in exchange for no prescription at all.

47. The Government alleges that Wieckowski actively and knowingly participated in the aforementioned conspiracies and violations of the Act, as well as abrogated the duties imposed upon her by her New York State pharmacy license.

48. Using an approximate estimate of $30 per pill, DEA calculates that the street value of the quantity of Oxy pills that Wieckowski and the Pharmacies diverted for illegal use is no less than $10 million.

The FCA Claims

49. In connection with DEA's investigation, agents from the Office of the Inspector General ("OIG") for the United States Department of Health and Human Service ("HHS") also conducted a parallel audit and investigation of Wieckowski's prescription (*e.g.*, non-controlled) drug sales. By comparing pharmaceutical purchase records with the Pharmacies' Medicare reimbursement requests, HHS determined that Wieckowski billed the federal government, and in particular Medicare, for thousands of dollars in prescription medication that her pharmacies never purchased, and therefore never dispensed.

50. The Government's Medicare program is a federal health care program providing benefits to persons who are over the age of 65 or disabled. Medicare is overseen by the Centers for Medicare and Medicaid ("CMS"), a federal agency under HHS.

51. Medicare provides coverage to its beneficiaries for prescription drugs. Prescription drug coverage is provided through "Medicare Part D," which is administered by insurance companies that are reimbursed by Medicare through CMS.

52. When a beneficiary of Medicare seeks to obtain medication from a pharmacy, the pharmacy provides the medication to the beneficiary at a reduced or no cost to the beneficiary. The cost to the pharmacy is typically reimbursed in whole or in part by the Medicare program.

53. The HHS OIG investigation revealed, *inter alia*, that certain customers acting in concert with Wieckowski would come to one of her Pharmacies with a prescription that called for them to receive multiple units of a specific prescription medication. Wieckowski would then submit a claim to Medicare, to be reimbursed for the number of units of medication set forth on the prescription. Medicare would then reimburse Wieckoswki and the Pharmacies for that number of units.

54. Wieckowski, however, would not give the customer the number of units listed in the prescription. Instead, she would generally give the customer one unit of the prescription, and a percentage of the value of the remaining amount as a store credit. The customer could then "redeem" his or her store credit at the pharmacy.

55. For example, the most dispensed non-controlled medication at the Pharmacies was a high-cost prescription medication gel. HHS's investigation revealed that at various times, a customer conspiring with Wieckowski would present Wieckowski with, by way of example, a prescription for five tubes of this medication. Wieckowski would then submit a claim to Medicare seeking reimbursement for all five tubes, and would, in fact, be reimbursed for all five tubes. But Wieckowski would only give the customer one tube of medication, and would give the customer 50% of the value of the four undispensed tubes as a store credit. Wieckowski would then pocket the remaining 50% of the proceeds from Medicare as her "profit".

56. HHS's audit revealed that the above scheme (and similar variations of this scheme) resulted in more than 300 missing tubes of the prescription medication gel alone, and $170,000 in losses to the Medicare program. According to Medicare records, between 2010 and 2014, the Brooklyn Pharmacy was the highest billing pharmacy in its zip code for this prescription medication gel, which has a value of several hundred dollars per tube.

57. Overall, the HHS audit examined the top 33 "drugs of interest," consisting of those drugs that represented the highest paid reimbursements to the Pharmacies by the Government's Medicare program during the periods January 2010 through April 2014. The 33 drugs were further broken out into a total of 80 drugs when the same drug but different dosage strengths were considered. HHS then obtained the pharmaceutical sales records for these 33 drugs and compared them to the Pharmacies' Medicare requests for reimbursement.

58. The HHS audit revealed a dramatic discrepancy between the top 33 drugs for which Wieckowski sought reimbursement and the lesser number of those same drugs that the sales records and invoices reflected that the Pharmacies had actually purchased. In other words, Wieckowski consistently sought reimbursement for prescription medication that she never actually purchased from pharmaceutical distributors, and therefore never dispensed to customers.

59. This discrepancy reflected that for the 33 drugs of interest, Wieckowski claimed to have dispensed—and fraudulently received reimbursement from the federal government for—more than $790,000 worth of prescription medication.

FIRST CAUSE OF ACTION

(CSA: Failure to Provide Records Upon Request including DEA Form 222s and CSOS Order Forms–at least 632 Violations)

60. Plaintiff incorporates by reference paragraphs 1 through 59 of the complaint as if fully set forth herein.

61. Wieckowski and the Pharmacies were unable, upon the request of the DEA, to provide access to at least 17 paper DEA Form 222 Order Forms and 368 electronic CSOS Order Forms for orders of Schedule II controlled substances created at the Brooklyn Pharmacy between January 1, 2011 and June 4, 2013.

62. Wieckowski and the Pharmacies were unable, upon the request of the DEA, to provide access to at least 4 paper DEA Form 222 Order Forms and 243 electronic CSOS Order Forms for orders of Schedule II controlled substances created at the Queens Pharmacy location between January 1, 2011 and June 4, 2013.

63. This failure to make the Pharmacy's Form 222 and Electronic Order Forms available upon request violated 21 U.S.C. §§ 828(c)(2), 842(a)(5), and 21 C.F.R. § 1311.60.

64. This violation is subject to a penalty of up to $10,000 per occurrence.

SECOND CAUSE OF ACTION

(CSA: Abuse of Digital Certificate and Private Key – at least 1,959 Violations)

65. Plaintiff incorporates by reference paragraphs 1 through 59 of the complaint as if fully set forth herein.

66. On at least 1,612 occasions at the Brooklyn Pharmacy, and 347 occasions at the Queens Pharmacy, between January 1, 2011 and June 4, 2013, Wieckowski allowed employees at the Pharmacies to order Schedule II through V controlled substances for use at the Pharmacies

through the CSOS system using Wieckowski's digital certificate and private key, in violation of 21 U.S.C. §§ 828(a), 842(a)(5), and 21 C.F.R. § 1311.30.

67. This violation is subject to a penalty of up to $10,000 per occurrence.

THIRD CAUSE OF ACTION

(CSA: Failure to Reconcile DEA Form 222s / CSOS Order Forms – at least 414 Violations)

68. Plaintiff incorporates by reference paragraphs 1 through 59 of the complaint as if fully set forth herein.

69. For at least 12 paper DEA Form 222s and 373 CSOS electronic order forms, created at the Brooklyn Pharmacy between January 1, 2011 and June 4, 2013, for orders of Schedule II controlled substances, Wieckowski and the Pharmacy failed to reconcile the order by creating a record of the quantity of item and the date received and physically or electronically linking this item to the original order, in violation of 21 U.S.C. § 842(a)(5) and 21 C.F.R. § 1305.22(g).

70. For at least 29 paper DEA Form 222s, created at the Queens Pharmacy location between January 1, 2011 and June 4, 2013, for orders of Schedule II controlled substances, Wieckowski and the Pharmacy failed to reconcile the order by creating a record of the quantity of item and the date received and physically or electronically linking this item to the original order, in violation of 21 U.S.C. § 842(a)(5) and 21 C.F.R. § 1305.22(g).

71. This violation is subject to a penalty of up to $10,000 per occurrence.

FOURTH CAUSE OF ACTION

(CSA: Failure to Maintain Accurate Records of Inventory – at least 2 Violations)

72. Plaintiff incorporates by reference paragraphs 1 through 59 of the complaint as if fully set forth herein.

73. An accountability audit of Oxy pills (all strengths) from January 1, 2011 through June 4, 2013 revealed that the Brooklyn Pharmacy had a shortage of more than 430,000 Oxy tablets (all strengths).

74. An accountability audit of Oxy pills (all strengths) from January 1, 2011 through June 4, 2013 revealed the Queens Pharmacy had an overage of 4,000 Oxy tablets (all strengths). An overage demonstrates a failure to accurately track and maintain inventory, which is an essential mandate of the CSA.

75. The Pharmacies were unable to account for these inconsistencies in their records.

76. Wieckowski and the Pharmacies thus failed to "maintain on a current basis a complete and accurate record" of their supply of Oxy, in violation of 21 U.S.C. § 842(a)(5) and 21 C.F.R. § 1304.21(a).

77. This violation is subject to a penalty of up to $10,000 per occurrence.

FIFTH CAUSE OF ACTION

(CSA: Failure to Conduct a Complete and Accurate Biennial Inventory – at least 2 Violations)

78. Plaintiff incorporates by reference paragraphs 1 through 59 of the complaint as if fully set forth herein.

79. Wieckowski and the Pharmacies failed to conduct a biennial inventory at each Pharmacy, between January 1, 2011 through June 4, 2013, in violation of the requirement codified at 21 U.S.C. §§ 827(a)(1), 827(b), 842(a)(5), and 21 C.F.R. § 1304.11.

80. This violation is subject to a penalty of up to $10,000 per occurrence.

SIXTH CAUSE OF ACTION

(CSA: Failure to Timely Notify DEA of Theft or Loss – at least 11 Violations)

81. Plaintiff incorporates by reference paragraphs 1 through 59 of the complaint as if fully set forth herein.

82. Between January 24, 2012, and November 24, 2012, Wieckowski failed to report 11 separate incidents of alleged employee theft, leading to the loss of approximately 1300 tablets of oxycodone 30 mg from the Brooklyn Pharmacy location.

83. Wieckowski was aware of this purported loss no later than January 24, 2013, but failed to report the losses until she filed DEA Form 106 recording the losses on January 31, 2013 and February 7, 2013, in violation of 21 U.S.C. § 842(a)(5) and 21 C.F.R. § 1301.74(c), which require that losses be reported within one business day.

84. This violation is subject to a penalty of up to $10,000 per occurrence.

SEVENTH CAUSE OF ACTION

(CSA: Failure to Maintain and Produce Powers of Attorney – at least 3 Violations)

85. Plaintiff incorporates by reference paragraphs 1 through 59 of the complaint as if fully set forth herein.

86. Between January 1, 2011 and June 4, 2013, Wieckowski allowed at least 3 non-registrants to order Schedule II controlled substances on behalf of the Pharmacies.

87. Wieckowski failed to produce for inspection, when requested by DEA, Powers of Attorney for any employees that had ordered controlled substances on behalf of the pharmacy, in violation of 21 U.S.C. § 842(a)(5) and 21 C.F.R. § 1305.05.

88. This violation is subject to a penalty of up to $10,000 per occurrence.

EIGHTH CAUSE OF ACTION

(CSA: Failure to Maintain Records Relating to
Transport of Controlled Substances Between Pharmacies – at least 1 Violation)

89. Plaintiff incorporates by reference paragraphs 1 through 59 of the complaint as if fully set forth herein.

90. Between January 1, 2011 and June 4, 2013, Wieckowski transported controlled substances between the two Pharmacies, but produced no records of these transfers, including DEA Form 222, when requested by DEA.

91. This failure to make the Pharmacies' DEA Form 222s relating to transfers available upon request violated 21 U.S.C. §§ 828(c)(2), 842(a)(5), and 21 C.F.R. § 1304.04(a).

92. This violation is subject to a penalty of up to $10,000 per occurrence.

NINTH CAUSE OF ACTION

(CSA: Accepting False or Fraudulent Prescriptions – more than 1300 Violations)

93. Plaintiff incorporates by reference paragraphs 1 through 59 of the complaint as if fully set forth herein.

94. On at least 1027 occasions between January 1, 2011 and June 4, 2013, the Brooklyn Pharmacy distributed controlled substances by filling purported "prescriptions" for Oxy.

95. On at least 340 occasions between January 1, 2011 and June 4, 2013, the Queens Pharmacy distributed controlled substances by filling purported "prescriptions" for Oxy.

96. DEA investigated each of the alleged prescriptions. None of the purported prescriptions referenced herein were issued for a legitimate medical purpose by a physician or other individual practitioner acting in the usual course of his or her professional practice. Many of these prescriptions were unquestionably fraudulent on their face because the defendant frequently (a) assisted in forging the prescriptions herself by supplying patient names, (b) accepted obviously falsified names of patients named after luxury goods such as "Coach" or

"Chanel", and (c) distributed controlled substances in exchange for special arrangements involving cash, goods or store credit.

97. Therefore, Wieckowski and the Pharmacies knowingly filled the above-mentioned fraudulent prescriptions in violation of 21 U.S.C. § 829(a), 842(a)(1) and 21 C.F.R. § 1306.04.

98. This violation is subject to a penalty of up to $25,000 per occurrence.

TENTH CAUSE OF ACTION

(False Claims Act: Presentation of False Claims – 31 U.S.C. § 3729(a)(1)(A))

99. Plaintiff incorporates by reference paragraphs 1 through 59 of the complaint as if fully set forth herein.

100. As set forth above, between January 2010 and approximately June 2015, Wieckowski knowingly presented or caused to be presented to Medicare false or fraudulent claims for payment or approval in violation of 31 U.S.C. § 3729(a)(1)(A).

101. As a result of Wieckowski's actions, the Government suffered damages of no less than approximately $790,000 in the form of reimbursements it was fraudulently induced to pay to Wieckowski.

ELEVENTH CAUSE OF ACTION

(False Claims Act: Making or Using a False Record of Statement to Cause a Claim to be Paid – 31 U.S.C. § 3729(a)(1)(B))

102. Plaintiff incorporates by reference paragraphs 1 through 59 of the complaint as if fully set forth herein.

103. As set forth above, between January 2010 to approximately June 2015, Wieckowski knowingly made, used, or caused to be made or used, false records or statements –

i.e., the false billing records that caused Medicare to reimburse Wieckowski for medications that Wieckowski's pharmacy did not actually dispense – material to false or fraudulent claims in violation of 31 U.S.C. § 3729(a)(1)(B).

104. As a result of Wieckowski's actions, the Government suffered damages of no less than approximately $790,000 in the form of reimbursements it was fraudulently induced to pay to Wieckowski.

TWELFTH CAUSE OF ACTION

(False Claims Act: Conspiracy – 31 U.S.C. § 3729(a)(1)(C))

105. Plaintiff incorporates by reference paragraphs 1 through 59 of the complaint as if fully set forth herein.

106. As set forth above, between January 2010 to approximately June 2015, Wieckowski conspired with complicit customers to make or present false or fraudulent claims and performed one or more acts to effect payment of those false or fraudulent claims.

107. As a result, the Government suffered damages of no less than approximately $790,000 in the form of reimbursements it was fraudulently induced to pay to Wieckowski.

WHEREFORE, the United States demands judgment in its favor and against the Pharmacies and Wieckowski as follows:

(a) for a maximum statutory penalty in the amounts set forth above for each of the CSA violations set forth herein pursuant to 21 U.S.C. §§ 841-43;

(b) for appropriate CSA injunctive relief pursuant to 21 U.S.C. § 843(f);

(c) for an amount equal to three times the amount of damages the United States Medicare program sustained in connection with Wieckowski's false claims, plus a civil penalty of not more than $11,000 for each violation of 31 U.S.C. § 3729, *et seq.*;

(d) for the costs of this action; and

(e) for such further relief as the Court may deem proper.

Dated: New York, New York
October 29, 2015

PREET BHARARA
United States Attorney
Southern District of New York
Attorney for the United States of America

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