UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA *EX REL.* [UNDER SEAL],

AND

STATE OF TEXAS *EX REL.* [UNDER SEAL],

Plaintiffs,

vs.

[UNDER SEAL],

Defendants.

Case No.: 3 03 CV 1589D

FIRST AMENDED COMPLAINT FOR VIOLATION OF FEDERAL FALSE CLAIMS ACT AND TEXAS MEDICAID FRAUD PREVENTION ACT

FILED IN CAMERA AND UNDER SEAL

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

UNITED STATES OF AMERICA *EX REL.* CYNTHIA I. FITZGERALD, AND STATE OF TEXAS *EX REL.* CYNTHIA I. FITZGERALD Plaintiffs, vs. NOVATION, LLC, VHA, INC., UNIVERSITY HEALTHSYSTEM CONSORTIUM, HEALTHCARE PURCHASING PARTNERS INTERNATIONAL, LLC, JOHNSON & JOHNSON, BECTON DICKINSON & CO., HERITAGE BAG COMPANY, GLOBAL HEALTHCARE EXCHANGE, CARDINAL HEALTH, INC., ALLEGIANCE CORP., OWENS & MINOR, INC., NYCOMED, INC., BEN-VENUE LABORATORIES, DUPONT NUCLEAR, ABBOTT LABORATORIES, BRISTOL-MEYERS SQUIBB CO., and MERCK & CO., Defendants.	Case No.: 3 03 CV1589 D FIRST AMENDED COMPLAINT FOR VIOLATION OF FEDERAL FALSE CLAIMS ACT AND TEXAS MEDICAID FRAUD PREVENTION ACT **FILED IN CAMERA AND UNDER SEAL**

I. INTRODUCTION

1. This is an action to recover damages and civil penalties on behalf of the United States of America and the State of Texas arising from false statements and claims made, presented, and caused to be presented by the defendants and/or their agents, employees and co-conspirators in violation of the Federal Civil False Claims Act, 31 U.S.C. §§ 3729 et seq., as amended ("the Federal FCA"), and the Texas Medicaid Fraud Prevention Act, Texas Human Resources Code §§ 36.001 et seq. ("the Texas MFPA").

2. The Federal FCA provides that any person who knowingly submits or causes to be submitted a false or fraudulent claim to the government[1] for payment or approval is liable for a civil penalty of up to $11,000 for each such claim submitted or paid, plus three times the amount of the damages sustained by the government. The Texas MFPA similarly provides for civil penalties of up to $10,000 for each false claim and civil remedies of three times the amounts paid as a result of the false claims. Liability attaches both when a defendant knowingly seeks payment that is unwarranted from the government and when false records or statements are knowingly created or caused to be used to conceal, avoid or decrease an obligation to pay or transmit money to the government. The Federal FCA and Texas MFPA each allow any person having information regarding a false or fraudulent claim against the government to bring an action for herself (the "relator" or "qui tam plaintiff") and for the government and to share in any recovery. The Complaint is filed under seal for at least 60 days (without service on the defendants during that period) to enable the government: (a) to conduct its own investigation without the defendants' knowledge, and (b) to determine whether to join the action.

3. Defendants VHA, Inc. ("VHA") and University HealthSystem Cosortium ("UHC") are large hospital networks consisting of 2,200 community-owned hospitals and 100 teaching hospitals. Defendant Novation, and its predecessor VHA Supply Company (collectively "Novation"), are group purchasing organizations that provide purchasing services to the members of VHA and UHC. Defendant HealthCare Purchasing Partners International, LLC ("HPPI") is a

[1] As used herein, the term "government" shall refer to both the federal government and the government of the State of Texas.

group purchasing organization that markets Novation purchasing agreements to healthcare providers that are not members of VHA or UHC. Novation and HPPI will be referred to collectively as "the GPOs." Defendants Johnson & Johnson, Becton Dickinson & Co., Heritage Bag Company, Cardinal Health, Inc., Allegiance Healthcare Corp., Owens & Minor, Inc., Nycomed, Inc., Ben-Venue Laboratories, DuPont Co., Bristol Myers Squibb Co., Abbott Laboratories, Merck & Co. and Global Healthcare Exchange[2] (collectively, the "Vendor Defendants"), manufacture and/or distribute medicines and medical-related supplies and/or services that are purchased for VHA and UHC members, as well as non-members, through Novation and HPPI.

4. At all times relevant to this Complaint, meaning from 1993 to present, the member hospitals of VHA and UHC ("VHA and UHC Members"), as well as non-member providers, purchased, through Novation and HPPI, medicines and supplies that were used in providing medical care to beneficiaries of state and federally-funded health insurance programs. Those providers sought reimbursement for the cost of these supplies and services from the government health insurance programs, including Medicare, Medicaid, and TRICARE/CHAMPUS. Medicare is a federally-funded health insurance program primarily for the elderly. Medicaid is a state and federally-funded health insurance program for low-income patients. In Texas, the Medicaid program – known as the Texas Medicaid Program -- is funded with 60% federal funds and 40% state funds. The Civilian Health And Medical Program of the Uniformed Services, now known as TRICARE ("TRICARE/CHAMPUS"), is a federally-funded health insurance program for individuals with family affiliations to the military services.

5. At all times relevant to this Complaint, Novation was in the business of securing, on behalf of the VHA and UHC Members and HPPI customers, group contracts with manufacturers, suppliers, and distributors (collectively "vendors"[3]) for supplies and services. The

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[2] GHX acquired Neoforma, Inc., in 2005, and as such is liable for Neoforma's conduct as alleged herein. Neoforma provided an online ordering system through which VHA and UHC members ordered medicines and supplies.

[3] As used herein, the term "vendor" shall refer to manufacturers, distributors, and/or suppliers.

VHA and UHC Members and HPPI customers purchase more than $25 billion in supplies and services annually under Novation's group contracts and collectively comprised 27% of the national market of staffed beds, 31% of total admissions, and 29% of total surgeries. Accordingly, Novation wields considerable power in determining which manufacturer will be awarded one of its more than 600 group contracts and which distributors will be authorized to distribute products under these contracts.

6. Throughout the period from at least 1993 to present, defendant Novation, with the assistance of VHA, UHC and HPPI, used this power to secure kickbacks and other illegal remuneration from the vendors as payment for awarding them coveted Novation contracts. For their part, the Vendor Defendants offered and/or agreed to pay illegal kickbacks and other remuneration in exchange for obtaining those contracts.

7. Defendants engaged in these fraudulent practices knowing that such payments would inflate the costs of the contracted supplies that the VHA and UHC Members and HPPI customers purchased and would ultimately cause them to submit to the government health insurance programs – in their invoices and annual cost reports – claims for reimbursement for supplies and services that were higher than they would have been had Novation not solicited and received these illegal payments. Defendants also knew that their illegal kickback scheme would ensure that contracts went to those vendors willing to pay Novation the biggest kickback (and not necessarily those able to supply the best product at the lowest price). As such, the scheme would result in the exclusion of smaller manufacturers with safer and more innovative products that would have obviated or reduced the need for treatment of Medicare, Medicaid, and TRICARE/CHAMPUS beneficiaries. In so doing, defendants caused the government health insurance programs to incur increased health care costs.

8. Under the Federal FCA and Texas MFPA, <u>Qui</u> <u>Tam</u> Plaintiff/Relator Cynthia I. Fitzgerald ("Relator") seeks to recover damages, civil remedies, and civil penalties arising from defendants' actions in soliciting, receiving and paying kickbacks and thereby causing the VHA and UHC Members and HPPI customers to present false records, claims, and statements to the

United States Government, the state governments (including the State of Texas) and their respective agents in connection with the VHA and UHC Members' and HPPI customers' claims for excessive reimbursement for supplies and services provided to beneficiaries of the Medicare, Medicaid, and TRICARE/CHAMPUS programs.

9. Relator has information and believes that the fraudulent practices described herein were typical of defendant Novation at all times material to this action and that VHA, UHC, HPPI, and the Vendor Defendants aided and abetted Novation in these activities. Relator has information and believes that defendants have engaged in these fraudulent practices from at least 1993 to present.

II. PARTIES

10. Qui tam plaintiff and relator, Cynthia I. Fitzgerald ("Relator"), is a resident of Plano, Texas and was employed by Novation from July 1998 to February 1999 as a Senior Product Manager for Medical/Surgical products in their Irving, Texas office. Shortly after Ms. Fitzgerald began to complain to senior management at Novation about these fraudulent practices, Novation terminated her employment in retaliation for her questioning their propriety. Ms. Fitzgerald files this action for violations of 31 U.S.C. §§ 3729 et seq. on behalf of herself, the United States Government pursuant to 31 U.S.C. § 3730(b)(1), and the State of Texas pursuant to Texas Human Resources Code §§ 36.101. Ms. Fitzgerald has personal knowledge of the false records, statements and/or claims that defendant Novation – aided and abetted by VHA, UHC, and HPPI – caused the VHA and UHC Members and HPPI customers to submit to the government health insurance programs.

11. Defendant Novation, the nation's largest group purchasing organization, is a Delaware corporation with its principal place of business at 125 E. John Carpenter Freeway in Irving, Texas. Novation was founded in January 1998 by combining VHA Supply Company and UHC Supply, the former purchasing arms of the 2,300-member VHA and UHC hospital networks. Novation is a for-profit company jointly owned by VHA and UHC whose core business is negotiating and managing contracts for supplies and services on behalf of the 2,300 VHA and

UHC Members as well as the over 5,000 HPPI customers who access those contracts. Novation manages $25 billion in group purchasing volume. Under Novation's portfolio of over 600 contracts with hundreds of vendors, VHA and UHC Members and HPPI customers can purchase nearly all of their supply and service needs, including such diverse product lines as medical/surgical supplies, pharmaceuticals, diagnostic imaging products, laboratory products, business products, capital equipment and dietary and food products. As its controlling shareholder (with a 77% ownership interest), VHA has populated Novation largely with staff from its former purchasing company, VHA Supply Company. Most, if not all, of the fraudulent practices in which Novation has engaged originated at VHA and VHA Supply Company. Novation's stated mission is to use VHA's and UHC's considerable combined purchasing power "to deliver comprehensive value and the industry's best pricing to its customers."

12. Defendant VHA, formerly known as Voluntary Hospitals of America Inc., is a Delaware corporation, with its principal place of business located at 220 E. Las Colinas Boulevard in Irving, Texas. VHA is a nationwide network of community-owned health care systems and their physicians and includes such leading health care organizations as Baylor Health Care System in Dallas, Mayo Foundation in Rochester, Minnesota, and Cedars-Sinai Health System in Los Angeles. VHA has more than 2,200 members in 48 states (excluding Nevada and Utah). A list of VHA's membership is attached as Exhibit 1 and incorporated herein. VHA is a for-profit cooperative that was formed in 1977 to pool the resources and purchasing power of several formerly disparate community-owned hospitals. VHA's member organizations purchase a large percentage of their supplies and services under the more than 600 Novation contracts. From 1985 until January 1998, VHA had its own group purchasing organization, VHA Supply Company, that negotiated supply contracts on its members' behalf. VHA Supply was a wholly-owned subsidiary of VHA. In January 1998, VHA joined its purchasing business with UHC's to form Novation, VHA and UHC's jointly-owned GPO. VHA has a 77% ownership interest in Novation. Many of the fraudulent practices described herein originated from VHA Supply Company, which employed these tactics throughout its existence. Novation – which was created by combining UHC and

VHA Supply and is largely staffed by former employees of VHA Supply – continued to perpetrate and expand the fraudulent practices of VHA Supply.

13. Defendant UHC is an Illinois corporation with its principal place of business at 2001 Spring Road, Suite 700 in Oak Brook, Illinois. UHC is an alliance of approximately 100 academic health centers nationwide and includes as its members such leading teaching hospitals as NYU Medical Center, Yale-New Haven Hospital, Johns Hopkins Hospital, and Emory University Hospital. A complete list of UHC's members is attached as Exhibit 2 and incorporated herein. Like VHA, UHC was formed to aggregate the resources and purchasing power of teaching hospitals and achieve operational efficiencies and other economies of scale. In January 1998, UHC combined its purchasing business with that of VHA's to form Novation, a VHA and UHC jointly-owned GPO. UHC has a 23% ownership interest in Novation. Prior to 1998, UHC operated its own GPO – UHC Supply -- and negotiated supply contracts on behalf of its members. Because many of UHC's member hospitals are part of publicly-funded universities, UHC -- and now Novation – uses a public competitive bid process in soliciting bids and awarding contracts. (In contrast, before joining with UHC to form Novation, VHA and VHA Supply Company did not subject its contracts to public competitive bid.) UHC's member hospitals purchase a large percentage of their supplies and services under the more than 600 Novation contracts.

14. Defendant HPPI is a Delaware corporation with headquarters located at 220 East Las Colinas Boulevard in Irving, Texas. Like Novation, HPPI is a group purchasing organization that is jointly owned by VHA and UHC. HPPI is engaged in the business of providing access to Novation contracts (and subsequently managing the contracts) for those health care organizations who are not members of VHA and UHC and otherwise served by Novation. Rather than community-owned and teaching hospitals, HPPI's over 5,000 customers consist largely of physician offices, clinics, home health agencies, ambulatory care, and long-term care facilities. A list of HPPI's customers is attached as Exhibit 3 and incorporated herein. HPPI was purchased by VHA in 1994. In January 1998, at the same time that Novation was formed, UHC acquired a partial ownership interest in HPPI from VHA and became a joint owner (with VHA) of HPPI.

15. Defendant Johnson & Johnson manufactures medical products for healthcare providers. Johnson & Johnson is a New Jersey corporation with headquarters in New Brunswick, New Jersey.

16. Defendant Becton Dickinson & Co. ("Becton Dickinson") manufacturers and sells medical supplies, devices, and laboratory and diagnostic equipment. Becton Dickinson is a New Jersey corporation with headquarters in Franklin Lakes, New Jersey.

17. Defendant Heritage Bag Company ("Heritage Bag") manufactures plastic waste and storage bags, and specializes in the manufacturer of waste bags used by healthcare providers. Heritage Bag is a privately-held corporation with headquarters in Carrollton, Texas.

18. Defendant Cardinal Health distributes pharmaceuticals and other medical-related items to hospitals and other healthcare providers. Cardinal Health is an Ohio corporation with headquarters in Dublin, Ohio.

19. Defendant Allegiance Corporation is a wholly-owned subsidiary of Cardinal Health. Allegiance Corporation manufactures and distributes healthcare products to hospitals and other providers.

20. Defendant Owens & Minor, Inc. provides distribution and supply-chain management services to healthcare providers. Owens & Minor is a Virginia Corporation with headquarters in Mechanicsville, Virginia.

21. Defendant Nycomed, Inc. manufactures and distributes medical imaging equipment and pharmaceuticals to hospitals and other providers. Nycomed is organized under the laws of, and headquartered in, Denmark.

22. Defendant Ben-Venue Laboratories manufactures sterile medical products for hospitals and other health care providers. Ben-Venue Laboratories is located in Bedford, Ohio and is owned by Boehringer Ingelheim Corp., (with headquarters in Ridgefield, Connecticut), the United States subsidiary of the German company Boehringer Ingelheim GmbH.

23. Defendant DuPont Co. manufactures healthcare-related products and devices. DuPont is a Delaware corporation with headquarters in Wilmington, Delaware.

24. Defendant Bristol-Myers Squibb Co. manufactures and distributes pharmaceutical and other health care products to hospitals and other providers. Bristol-Myers Squibb is a Delaware corporation with headquarters in New York, New York.

25. Defendant Abbott Laboratories manufactures and sells pharmaceutical and other healthcare-related products to hospitals and other providers. Abbott Laboratories is an Illinois corporation with headquarters in Abbott Park, Illinois.

26. Defendant Merck & Co., Inc. manufactures and markets pharmaceuticals and other health care related products. Merck & Co. is a New Jersey corporation, with its principal office located in Whitehouse Station, New Jersey.

27. Defendant GHX is a privately-held corporation located in Westminster, Colorado. GHX acquired Neoforma, Inc. in 2005. Prior to this acquisition Neoforma provided supply-chain management services to the healthcare industry. In 2001 and thereafter, the majority of Neoforma stock was owned by VHA and UHC, and Neoforma derived the majority of its income from its no-bid contracts with VHA and UHC members.

III. JURISDICTION AND VENUE

28. This Court has jurisdiction over the subject matter of the Federal FCA action pursuant to 28 U.S.C. § 1331 and 31 U.S.C. § 3732(a), which specifically confers jurisdiction on this Court for actions brought pursuant to 31 U.S.C. §§ 3729 and 3730. This Court has jurisdiction over the subject matter of the Texas Medicaid Fraud Prevention Act ("Texas MFPA") action pursuant to 28 U.S.C. § 1367 and 31 U.S.C. § 3732(b) because the Texas MFPA action arises from the same transactions or occurrences as the Federal FCA action.

29. This Court has personal jurisdiction over the defendants pursuant to 31 U.S.C. § 3732(a), which provides for nationwide service of process. During the relevant period, defendants resided and/or transacted business in the Northern District of Texas.

30. Venue is proper in this district pursuant to 31 U.S.C. § 3732(a) because defendants each can be found in, resides in, and/or transacts business in the Northern District of Texas and

because many of the violations of 31 U.S.C. § 3729 described herein occurred within this judicial district.

IV. BACKGROUND ON GROUP PURCHASING ORGANIZATIONS

31. In the mid-to-late 1980s, mergers among several of the large hospital suppliers increased their market power and helped drive up the costs of medical supplies and services. In response, individual hospitals and health systems sought to increase their bargaining power by joining to form hospital buying cooperatives, known as group purchasing organizations ("GPOs"). By pooling the purchases of their member hospitals and negotiating group contracts for supplies and services, GPOs could use volume purchasing as leverage to negotiate lower prices with suppliers. Member hospitals would also be able to reduce their purchasing staffs, thereby lowering operating costs, as the GPO assumed their contracting functions.

32. As the primary purchasing agent for its member hospitals, the GPO handles all aspects of group contracting -- from drafting the request for proposal, soliciting and evaluating bids to awarding and subsequently managing the group contracts. Once it has awarded a group contract to a vendor, the GPO notifies hospital members of its terms (Novation issues members a "Launch Packet") and hospital members buy directly from the vendor for the price specified in the group contract. The GPO does not purchase any of the contracted supplies or services for its members nor does it take custody of the supplies.

33. Although they have an ownership interest in the GPOs and are the beneficiaries of the contracting services GPOs provide, neither the member hospitals nor their hospital network pays the GPOs' operating costs. Instead, GPOs are primarily financed by the vendors with whom the GPOs contract through the use of "administrative fees." Administrative fees are typically calculated as a percentage of each hospital member's purchases from a vendor.

34. To prevent these fees from being treated as a 'kickback' or illegal payment under the Anti-Kickback Act, the GPO-industry convinced Congress to amend the Act in 1986 to include a safe harbor for administrative fees paid to a GPO by a vendor. See 42 U.S.C. § 1320a-7b(b). In defining what constitutes an appropriate administrative fee, the regulations require that

the following criteria be satisfied: (1) the GPO must have a written agreement with each of its members under which the fees (and its terms) are disclosed; (2) the agreement must state that the fees are to be 3 percent or less of the purchase price of the supplies to be provided, or for fees above 3 percent, the amount or maximum amount to be paid by each vendor; and (3) the GPO must provide each member with an annual report listing the amount the GPO received from each vendor in administrative fees based on that member's purchases. 42 C.F.R. § 1001.952(j).

35. To enable GPOs to calculate their administrative fee, vendors provide GPOs with monthly reports listing, for each of its members, the amount of supplies and services the member purchased from the vendor the previous month under a particular group contract or set of contracts.

36. After paying its operating expenses, GPOs typically distribute any revenue they earn to their hospital members or hospital networks in the form of annual dividends. Where the administrative fees the GPO receives from vendors exceed its operating costs, a GPO should return the surplus fees to the member hospitals/networks in proportion to the amount of purchases each member made under the group contracts.

V. DEFENDANTS' FRAUDULENT SCHEMES

37. Federal law makes it a felony to "solicit[] or receive[] any remuneration (including any kickbacks, bribe or rebate) directly or indirectly, overtly or covertly, . . . in return for purchasing, . . . ordering, or <u>arranging for or recommending</u> purchasing, . . . or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program [Medicare, Medicaid or TRICARE/CHAMPUS]." 42 U.S.C. § 1320a-7b(b) (emphasis added). It is likewise a felony to "offer[] or pay[] any remuneration (including any kickback, bribe or rebate), directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person . . . to purchase, lease, order or arrange for or recommend purchasing, leasing or ordering any good, facility, service or item for which payment may be made in whole or in part under a Federal health care program." *Id.*

38. As the nation's largest GPO, Novation negotiates contracts on behalf of – and thereby arranges for and recommends the purchasing of supplies and services for -- more than 7,300 health care providers (2,300 VHA and UHC Members and more than 5,000 HPPI customers) who constitute 22% of the national market of staffed beds, 29% of total admissions, and 30% of total surgeries. As Novation informs potential bidders in its Invitations-to-Bid, Novation's customers represent greater than $25 billion in actual annual purchasing volume and $32 billion in purchasing potential. As these figures demonstrate, a contract with Novation can mean millions of dollars in sales and increased market share for the successful vendor who is awarded the group contract.

39. Rather than use its considerable collective purchasing power to serve its customers (the VHA and UHC Members and HPPI customers) by awarding group contracts to vendors offering the best product at the lowest price, Novation – with the assistance of VHA, UHC and HPPI -- has often acted to increase its profits, and those of its officers and executives, by awarding contracts to the Vendor Defendants and other vendors who pay Novation the largest kickback, irrespective of the quality or price of their supplies/services.

40. At all times relevant to this Complaint, meaning from at least 1993 to present, Novation has solicited and received, from the Vendor Defendants and other vendors, kickbacks and other illegal remuneration as payment for awarding them group contracts. Unlike the administrative fees vendors pay to GPOs, which are condoned by Congress, these kickbacks and other illegal remuneration are in no way tied to the administrative costs Novation incurs in managing the contract. Nor are they calculated based on clearly defined, objective criteria such as the volume of purchases made under the contract by Novation's customers. Instead, they are simply payments Novation requires vendors to pay up-front or throughout the life of the contract for the privilege of being awarded a group contract and thereby gaining access to Novation's 7,300 customers.

41. Since these payments bear no relationship to the performance of the underlying contracts (or the administrative costs incurred in managing those contracts), Novation regularly

chooses among the competing vendors based on who is willing to pay the most. Under this guiding business "principle," Novation has awarded the majority of its over 600 contracts to large vendors, who have been able to pay the biggest kickbacks. The Vendor Defendants and other vendors, in turn, inflate the prices they charge under the contract in order to recoup the costs of paying Novation the kickbacks and other illegal remuneration necessary to win the contract. These increased costs are ultimately borne by the insurers, both government and private, who reimburse the VHA and UHC Members and HPPI customers for the costs of treating their insureds/beneficiaries. Small vendors, possessing fewer financial resources but safer and more innovative products, have often been unwilling or unable to make such up-front payments and consequently are routinely shut out of Novation contracts.

42. At all times relevant to this Complaint, Novation has concealed the existence of these kickbacks and other remuneration from the VHA and UHC Members and HPPI customers, disguising the proceeds in "slush funds," secret accounts and unrelated business ventures. The overwhelming majority of the monies/remuneration received from these kickbacks is retained by Novation, typically as lavish bonuses and "incentive" compensation for its officers and executives[4] or as capital for financing new ventures, such as the e-commerce company Neoforma, Inc. Novation distributes a modicum of its ill-gotten gains to the VHA and UHC Members in annual dividends of its revenue as a way of lulling the Members into believing Novation performs properly on their behalf and persuading them to continue to utilize its services.

43. As a Senior Product Manager at Novation from July 1998 to February 1999, Relator was responsible for negotiating and managing a portfolio of group contracts for medical/surgical supplies and services that was worth $243 million. During her six months in this position, Relator was privy to the inner workings of Novation's contracting process, including the criteria Novation utilized to determine the vendors to whom it would award contracts. From her interactions with her superiors Sherry Woodcock and John Burks, among others, Relator quickly

[4] In 2002, Novation's President Mark McKenna earned $928,000 ($403,000 in annual base salary; $357,000 under Novation's Retention Long-Term Incentive Program; $145,000 under Novation's Annual Incentive Plan; and $23,000 under Novation's Rewarding Excellence Incentive Plan).

came to understand that her performance would be judged not merely by her ability to deliver to the VHA and UHC Members contracts for the best supplies at the lowest prices, but also by the amount of revenue she was able to generate for Novation in the form of up-front payments and other illegal remuneration, of which the Members were not apprised. After raising concerns about these practices with Novation's Human Resources staff, Senior Management and In-House Legal Counsel and having those concerns summarily dismissed, Relator realized that these fraudulent practices were not unique to the Medical/Surgical Division but instead pervaded Novation's business. As described below, these illegal payments/remuneration took a wide variety of forms.

A. <u>Up-Front Payments to "Buy the Contracts"</u>

1. Johnson & Johnson's Attempt to Buy the IV Catheter Contract

44. One of the first medical/surgical contracts to which Relator was assigned in her position as Senior Contract Manager at Novation was Contract No. MS8020B, a three-year contract for "IV Standard and Safety Catheters and NOVAPLUS® IV Start Kits." Under this contract, Novation was seeking a vendor to supply IV Catheters as well as IV Start Kits under Novation's private label brand, NOVAPLUS®, to the VHA and UHC Members and HPPI customers. This was the first contract for IV Catheters and Start Kits put out for public competitive bid since Novation was formed.

45. Shortly after Relator received and opened the bids on the IV Catheter Contract, sales representatives from defendant Johnson & Johnson called Relator to request a meeting with her to discuss Johnson & Johnson's bid. Relator agreed. During the meeting, it quickly became clear that the Johnson & Johnson sales representatives had no substantive questions regarding the contract but rather had convened the meeting simply to inquire about Johnson & Johnson's prospects of receiving the bid award. Unwilling to provide this information, Relator called an abrupt end to the meeting.

46. Having had their lobbying efforts rebuffed by Relator, the Johnson & Johnson sales staff contacted Relator's supervisor, Sherry Woodcock, and arranged a private meeting with Woodcock to which Relator was not invited. When Relator later learned of the meeting, she

became concerned as to why she was being excluded and decided that, as the Senior Product Manager responsible for awarding this contract, she would attend. Early on in the meeting, while discussing Contract No. MS8020B, "IV Standard and Safety Catheters and NOVAPLUS® IV Start Kits," one of the Johnson & Johnson sales representatives asked Relator "How much will it take to get the contract?" When Relator appeared startled and did not have a ready response, the sales representative added, "Others before you have done it."

47. Offended by the request that she agree to accept a kickback (the price tag of which she was expected to name) in exchange for awarding the contract to Johnson & Johnson, Relator turned to her supervisor, Sherry Woodcock, and said "Oh, no. This is illegal, and I don't look good in orange and I don't look good in stripes." Shortly thereafter, when the meeting had concluded, Relator repeated her concerns to Sherry Woodcock about what had just transpired (i.e., Johnson & Johnson's offer to pay Novation a kickback to obtain the IV Catheter business) and asked Woodcock whether she would like Relator to notify John Burks, the former Head of Novation's Medical/Surgical Division, or whether Woodcock would rather do it. Woodcock assured Relator that she would inform Burks.

48. Over the ensuing seven to ten days, when Relator would ask Woodcock if she had spoken with Burks yet, Woodcock's standard reply was that she had been unable to get to it. Frustrated by Woodcock's apparent unwillingness to address the issue, Relator spoke with Burks herself. According to Burks, while Johnson & Johnson's actions may have been unethical, he did not consider them to be illegal. Burks believed that Relator's suggested action -- disqualifying Johnson & Johnson's bid -- was too harsh a punishment. After Burks refused to take action against Johnson & Johnson, Relator next took the matter to Novation's Human Resources staff, William Laws, Jr. and Shirley Lopez, and in-house counsel, Gerry Rubin, but was similarly rebuffed.

49. At the same time that she was being stonewalled by her superiors on this front, Relator also was beginning to have concerns about the way in which other Novation contracts, including the Can-Liner Contract (discussed below), had been awarded. Shortly after voicing

these concerns, Relator began to receive criticism about her job performance, was ostracized by her co-workers, and quickly terminated.

50. With the newfound perspective on Novation's contracting process gained from her work on the IV Catheter and Can-Liner Contracts, Relator came to realize what was evident from Johnson & Johnson's question/comment ("How much will it take to get the contract? Others before you have done it."), i.e., that it had been, and continued to be, the practice of Novation to award contracts to large vendors like Johnson & Johnson because of the amount they were willing to pay Novation in up-front payments and other illegal remuneration. Under this standard operating procedure, Novation would suggest to vendors the amount of money it needed to receive up-front to award them the contract; the vendors, who were typically larger companies like Johnson & Johnson capable of paying such sums, paid Novation these monies to obtain the contract; and Novation ultimately awarded the contracts to these vendors.

51. Relator's refusal to play by these rules in the course of her work negotiating the IV Catheter Contract (and later the Can-Liner Contract) represented an unexpected (albeit short-lived) departure from the norm. Although Relator did not award the IV Catheter Contract to Johnson & Johnson in exchange for a kickback as had been the prior practice of Novation/VHA Supply (as discussed below, Relator awarded the Contract to Becton Dickinson), this was the first and last contract Relator ever negotiated for Novation. Novation fired her before she could interfere with any further contracts.

52. At no time did Novation inform the VHA and UHC Members and HPPI customers that it was their standard practice to solicit and receive kickbacks from vendors, as they had done with Johnson & Johnson on several previous occasions, in exchange for awarding them contracts.

2. Becton Dickinson's $100,000 "Donation" to Novation in Connection with Winning the IV Catheter Contract

53. In addition to Johnson & Johnson, the other primary vendor to submit a bid on the IV Catheter Contract was defendant Becton Dickinson and Company ("Becton Dickinson"). While evaluating the Johnson & Johnson and Becton Dickinson bids under the traditional criteria

of price and product quality to determine which vendor to recommend to Novation management, Relator was pressured by her managers to consider what revenue each bidder would be able to provide Novation.

54. In response to this pressure, Relator implemented a revenue-generating plan that had recently been initiated by other Senior Product Managers at Novation. Under this plan, Relator solicited from bidders bronze, silver, and gold-level "sponsorships" of Novation's latest Information-Technology project, "VHAseCURE.net," an intranet developed by VHA to enable VHA members to communicate with one another over the Internet. Although to the objective observer these sponsorship payments appear wholly unconnected to the underlying contract, both Novation and the bidders understood that such "sponsorships" would buy favorable consideration from Novation in making its bid award. Such "sponsorship" payments were over and above the administrative/marketing fee (expressed as a %-of-total sales made under the contract) that vendors like Becton Dickinson had agreed to pay Novation to cover its costs for administering the contract.

55. In response to Relator's request for VHAseCURE.net donations, Becton Dickinson agreed to pay Novation $100,000. Becton Dickinson's willingness to make such a payment was one of the factors Relator considered in deciding to recommend Becton Dickinson as the proposed recipient of the IV Catheter and Start Kit contract. Shortly after approving Relator's recommendation, Novation awarded Becton Dickinson the contract and Becton Dickinson sent Novation a check for $100,000 . See Exhibit 4 ($100,000 check), which is incorporated herein. Senior management at Novation commended Relator for her work in procuring this and another "sponsorship" payment from vendors. See Exhibit 5 (e-mail from Novation I-T Manager to Relator), which is incorporated herein.

56. As its characterization of the payment on the face of the check – "Marketing Fee/Sole Award" – reveals, Becton Dickinson made this payment to Novation in order to receive the bid award. Id. At no time did Novation ever disclose the existence, amount or purpose of these "sponsorship" payments to the VHA and UHC Members and HPPI customers.

3. *Becton Dickinson's $1 Million Payment In Connection with Winning the Needle Contract*

57. In the course of negotiating Contract No. MS8020B, "IV Standard and Safety Catheters and NOVAPLUS® IV Start Kits," Relator had frequent dealings with Kevin Mooneyham, a sales manager at Becton Dickinson, and had earned his trust and respect. In late 1998, shortly after Relator awarded the IV Catheter Contract to Becton Dickinson, Mooneyham called Relator at work and asked her to meet him for lunch to discuss concerns he was having about activities taking place between Becton Dickinson and Novation regarding another upcoming contract. Over lunch, Mooneyham complained to Relator that Becton Dickinson had agreed to pay Novation large sums of money in order to secure "a huge Novation contract" that was coming up for bid. In short, Mooneyham claimed, Becton Dickinson was "buying the business," i.e., paying Novation an up-front fee to guarantee that it will be awarded the contract.

58. From the goings-on in Novation's Medical/Surgical Division, Relator knew that the contract to which Mooneyham was referring was Novation's upcoming three-year contract for hypodermic needles and syringes, a big ticket item for most hospitals and therefore a highly valuable contract. Relator later learned that Novation had, in fact, awarded the needles and syringes contract to Becton Dickinson and Becton Dickinson had paid Novation $1 million in advance as a "special marketing fee." This $1 million fee was over and above the administrative/marketing fee Becton Dickinson had agreed to pay Novation over the life of the contract based on a percentage (3%) of the total sales made by VHA and UHC Members under the contract.

59. Relator has information and believes that Novation never disclosed to the VHA and UHC Members and HPPI customers the fact that it had received this payment from Becton Dickinson in connection with awarding Becton Dickinson the needle contract.

4. *"Fee Enhancements" By Distributors*

60. In addition to choosing the manufacturers to whom it will award contracts, Novation also controls the distribution channels for the products purchased under its contracts. For each of its product lines, e.g., medical/surgical supplies, dietary and food services, Novation

awards an exclusive right to distribute the products purchased under its contracts to a few select distributors whom Novation calls "Authorized Distributors." For their services in distributing the products, Authorized Distributors are paid "distribution service fees" by the VHA and UHC Members and HPPI customers. The distribution service fees, also known as "the Distribution Mark-Up Fees," are added to the price of the products/services and are calculated based on the total volume of distributed purchases made by the Novation customer.

61. Like its Invitations-to-Bid to manufacturers, Novation's Invitations-to-Bid to distributors are supposed to be a public competitive bid process. However, as is the case with manufacturers, Novation awards the distribution contracts based on which distributors are willing to pay Novation the largest kickback or other illegal remuneration. Relator has information and believes that Novation has failed to inform the VHA and UHC Members and HPPI customers of the existence or amount of these illicit payments.

62. Like the "administrative/marketing" fees it charges manufacturers for the cost of administering the contract (described below), Novation also requires distributors to pay it a monthly fee based on the total purchases of products made by its customers. Although Novation provides distributors with a minimum percentage for what this fee must be, Novation leaves it to the distributor's discretion to propose the amount of the percentage. See Exhibit 6 at 7 & 13 (Invitation-to-Bid Long Term Care Distribution Services), which is incorporated herein. Under such liberal contracting guidelines, Novation regularly solicited and accepted lavish fees from distributors in exchange for awarding them an authorized-distributor contract.

63. In addition to the monthly fee, Novation also encouraged bidders to propose fee enhancements – ways for distributors "to enhance the fee paid to Novation" -- and additional fees. Id. at 13. These enhancements and additional fees had no relationship to the underlying contract and were just another way for Novation to increase its revenue. Id. Relator has information and believes that Novation routinely awarded distribution contracts to large distributors like defendants Cardinal Health, Inc., Allegiance Corporation, and Owens & Minor, Inc., who were

willing and able to pay Novation the largest fee enhancement, "additional fees," or other illegal remuneration.

64. Like manufacturers, distributors also seek to recoup the costs of making these illegal payments to Novation. While manufacturers do so by increasing the price of the products/services themselves, distributors recoup the costs by building them into the distributor mark-up fee that is added to the price of the goods and services, which further inflates the price paid by the Novation customers and ultimately borne by the private insurers and government health insurance programs.

B. "Administrative/Marketing Fees"

65. In its Invitations-to-Bid, Novation requires all prospective bidders to include information on "marketing fees" to be paid to Novation and to calculate these fees as a percentage of sales made under the contract. See Exhibit 7 ("Novation 2001 Invitation to Bid, Enteral Products Bid") at 10, which is incorporated herein. Novation does not prescribe any limits on the size of the marketing fee that it is willing to accept (or that bidders may offer). Id. Contrary to the safe harbor requirements regarding appropriate GPO fees, Novation routinely has solicited and accepted marketing fees that greatly exceed the 3%-of-sales threshold and failed to inform the VHA and UHC Members or HPPI customers of the amount of the marketing fee they have agreed to receive.

66. According to a Novation "Contract Administration Fee Report," as of November 18, 1999, Novation had accepted administrative/marketing fees above 3% on at least 186 or 31% of its 600 contracts. See Exhibit 8 (Contract Administration Fee Report), which is incorporated herein. For many of these contracts, Novation received administrative/marketing fees as high as 30% of total sales made by Novation's customers under the contract. For instance, Novation received 30% administrative/marketing fees on Contract No. RX 132 (NOVAPLUS® Omnipaque, Nonionic Contrast Media, Hypaque) with defendant Nycomed, Inc. and Contract No. RX84160 (NOVAPLUS® Diltiazem) with defendant Ben Venue Laboratories. Id. at 20 & 28.

1. Major Pharmaceutical Manufacturers Pay Novation Some of the Highest "Administrative/Marketing Fees"

67. Pharmaceuticals are the largest product line in Novation's contract portfolio. Of Novation's 600 contracts, 275 or 46% are contracts with major pharmaceutical manufacturers for the sale of a wide array of pharmaceutical products. Id. at 17-31. Relative to other manufacturers, pharmaceutical manufacturers also paid Novation some of the highest administrative/marketing fees. In addition to the two pharmaceutical manufacturers listed above (Nycomed, Inc. and Bedford Laboratories) as having paid 30% administrative/marketing fees, the following are examples of some of the other pharmaceutical manufacturers from whom Novation received excessive administrative/marketing fees: defendants DuPont (Novation Contract No. RX64140) "NOVAPLUS® Dipyridamole," **25%** administrative/marketing fee; Bristol-Myers Squibb (Novation Contract No. RX019) "Multisource Antibiotics," **18%** administrative/marketing fee; Abbott Laboratories (Novation Contract No. RX80010) "Small Volume Injectibles Including Carpuject," **14.5%** administrative/marketing fee; and Merck & Company (Novation Contract No. RX81080) "Cozaar, Fosamax, Hyzaar, Mefoxin, Mevacor, Pepcid, Primaxin, Prinivil, Proscar, Recombivax, Timoptic, Trusopt, Vasotec, Vaccines, Zocor," **20%** administrative/marketing fee. Id.

68. Relator has information and believes that Novation has failed to inform the VHA and UHC Members and HPPI customers of the amount of any of these administrative/marketing fees that it has received and continues to receive from pharmaceutical companies.

2. Other Excessive "Administrative/Marketing Fees" Paid by Becton Dickinson and Heritage Bag

69. Before awarding a contract, it was the customary practice of Novation's Senior Contract Managers to prepare an "Executive Summary" setting forth their recommendation on and supporting rationale for which vendor should receive the bid award. The Summary was distributed exclusively to top management at Novation, including the head of the Division in which the Senior Contract Manager worked and Novation's Vice-President, for their approval. At no time was the Executive Summary given to the VHA and UHC Members and HPPI customers.

70. Once the contract was awarded, the Senior Contract Manager distributes a "Launch Packet" to the VHA and UHC Members announcing the recipient of the bid award, describing the supplies being offered and providing other information necessary for making purchases under the contract. At no time is any mention made of either Novation's receipt of or the amount of the "marketing fees" and other remuneration paid/to be paid to Novation by the successful vendors.

71. Attached as Exhibits 9 and 10 to this Complaint, and incorporated herein, are copies of two Executive Summaries Novation prepared that demonstrate Novation's and VHA's receipt of marketing fees well above 3% of total sales on four contracts. In the Executive Summary for Contract No. MS8020B, "IV Catheters and Start Kits," it is noted that Becton Dickinson – the recommended bidder – has offered to provide Novation a marketing fee of 9% of total sales of the NOVAPLUS® products, Novation's private label brand. Exhibit 9 at 4. After receiving approval for this recommendation from John Burks, Novation's former Head of Medical/Surgical Contracts, and Mark McKenna, Novation's former Vice-President, the contract was awarded to Becton Dickinson under the terms of its bid, which included paying Novation a 9% marketing fee. Novation never informed the VHA and UHC Members or HPPI customers, either orally or in writing, of the amount of this marketing fee.

72. In describing the marketing fee to be paid by Becton Dickinson, the author[5] of the Executive Summary also notes that Becton Dickinson's 9% fee represented an increase of between 1 to 4% above the marketing fee VHA had received under its prior contract for "IV Catheters and Start Kits" of between 5 and 8%. Exhibit 9 at 4. Accordingly, as this document illustrates, before the advent of Novation, VHA had also been receiving marketing fees above the 3% threshold as part of the VHA contract for "IV Catheters and Start Kits" that preceded Novation Contract No. MS8020B. Relator has information and believes that neither VHA nor VHA Supply ever informed the VHA Members, either orally or in writing, of the amount of this marketing fee.

[5] Although qui tam plaintiff/relator is listed as the author of this document, every Executive Summary she wrote at Novation, including this one, was thoroughly revised by her manager, Sherry Woodcock, before it was distributed to Novation management.

73. After its formation in January 1998, Novation experienced a transition period during which it phased out current VHA and UHC contracts and replaced them with new Novation contracts. With Contract No. MS80310, "NOVAPLUS® Can Liners," Novation sought to consolidate VHA and UHC's separate can liner contracts into a new Novation contract. In the Executive Summary for this contract, the author recommends that the Novation contract – available to both VHA and UHC Members (and HPPI customers) – be awarded to Heritage Bag under the same terms as those in VHA Supply's current can-liner contract with Heritage Bag. Exhibit 10 at 1-3. Among the reasons cited for recommending Heritage Bag is that the marketing fee Heritage Bag was offering – 8.19% of total sales -- is 6% higher than that being provided by UHC's supplier, Baxter Tennaco, under UHC's contract. Id. at 2.

74. After receiving approval for this recommendation from John Burks and Mark McKenna, Novation awarded Contract No. MS80310 to Heritage Bag under the same terms as the contract with VHA, which included the payment to Novation of an 8.19% marketing fee. Novation never informed the VHA and UHC Members or HPPI customers, either orally or in writing, of the amount of this marketing fee.

75. The Executive Summary for Contract No. MS80310 also makes clear that, like Novation, VHA Supply had also been receiving a marketing fee from Heritage Bag of 8.19% under its contract with Heritage Bag -- the predecessor to Novation Contract No. MS80310. See Exhibit 10 at 1-3. Relator has information and believes that neither VHA nor VHA Supply ever informed the VHA Members, either orally or in writing, of the amount of this marketing fee.

76. Relator also has information and believes that since 1995 Novation's predecessor VHA Supply routinely solicited and received marketing fees of at least 10% on its committed programs, including the "Opportunity I" and "Opportunity II" Programs. (Under these programs, a VHA Member could receive discounts off of the contract's base price by committing to buy a large fixed percentage of its supplies – typically between 80 and 95% -- under the contract.) Relator has information and believes that neither VHA nor VHA Supply ever informed the VHA Members, either orally or in writing, of the amount of these marketing fees.

3. *Novation's Preference for Higher Priced Goods Because They Serve To Increase Its "Administrative/Marketing Fees"*

77. By requiring that its administrative/marketing fees be expressed as a percentage of the total sales made under the contract (and routinely suggesting to bidders that the percentage should exceed 3%), Novation has an interest in awarding contracts to the bidder with the highest priced goods because higher prices yield higher marketing fees. At all times relevant to this Complaint, Novation routinely chose to award contracts to vendors offering the largest marketing fee (either by virtue of the percentage of sales, higher prices or combination of the two) over competing vendors offering goods of comparable quality and lower prices than those of the chosen vendor.

78. For example, during the Summer of 2001, Novation issued an Invitation-to-Bid on a Novation contract to supply endo-mechanical products to its customers. Among the vendors who submitted bids to Novation were defendant Johnson & Johnson and United States Surgical ("U.S. Surgical"). In its bid, U.S. Surgical offered the endo-mechanical products at prices significantly lower than those offered by Johnson & Johnson. After performing market research, Novation found U.S. Surgical's products were of comparable quality to that of Johnson & Johnson's. Despite the potential cost-savings to its customers, however, Novation awarded the contract to Johnson & Johnson.

79. Primary among Novation's reasons for choosing Johnson & Johnson over U.S. Surgical was the fact that U.S. Surgical's significantly lower prices would have greatly diminished the marketing fee that Novation would receive. Relator has information and believes that Novation never informed the VHA and UHC Members or HPPI customers of the specific details of the vendors' bids (including U.S. Surgical's significantly lower prices and comparable quality) or the real reason for its decision to choose Johnson & Johnson over U.S. Surgical – a feared reduction in its marketing fee.

C. <u>Payments for Products Offered Under Novation's Private Label Brand, "NOVAPLUS®"</u>

80. As Senior Product Manager in Novation's Medical/Surgical Division, Relator was also responsible for increasing vendors' participation in Novation's private label brand program, NOVAPLUS®. NOVAPLUS® was an outgrowth of a similar private label program, VHA PLUS ("Prices Lowered Utilizing Standardization"), started by VHA Supply in the 1980s. Like VHA PLUS, the stated goals of NOVAPLUS® are to help the VHA and UHC Members and HPPI customers achieve cost savings and the benefits of product standardization by having vendors sell their products under Novation's private "NOVAPLUS®" label. In practice, however, NOVAPLUS® is simply another Novation scheme to generate more revenue without the knowledge of, and often at the expense of, the VHA and UHC Members and HPPI customers, whose interests it is supposed to serve.

81. Although made to sound like generics, the NOVAPLUS® products differ from generic products in a number of important ways. With generics, cost savings are achieved because a manufacturer is able to produce an equivalent product more cheaply than the name-brand manufacturer. However, neither Novation nor its predecessor VHA Supply manufactures any products. Instead, Novation (like VHA Supply before it) simply supplies the name. After manufacturing the products, the manufacturers simply affix the NOVAPLUS® label (in lieu of their own label) to their products. As explained in more detail below, rather than save Novation's customers money, the addition of the NOVAPLUS® name does little more than create additional costs, such as "trademark and licensing" fees, that cause the prices of the NOVAPLUS® products to exceed those of the identical products without the NOVAPLUS® label.

82. Rather than providing the VHA and UHC Members and HPPI customers with cost savings, Novation routinely convinced vendors to sell their product under the NOVAPLUS® label at a price significantly <u>higher</u> than what they were offering for the same product under their own label. For their participation in this scheme, Novation routinely offered to share with the vendors a percentage of the profits gained by charging the Members the increased NOVAPLUS® price.

83. For instance, after it had received and opened bids on a recent contract for blood collection tubes, Novation approached Retractable Technologies Inc. ("RTI"), one of the bidders, about the possibility of selling its blood collection tube holder to the VHA and UHC Members and HPPI customers under Novation's private "NOVAPLUS®" label. Although, in its bid, RTI had offered to sell its tube holders for 27 cents per unit, Novation proposed that RTI could sell the same tube holders to Novation's customers for $1 per unit -- a 270% mark-up -- simply by changing the label to Novation's NOVAPLUS® brand. In exchange for RTI's cooperation in this joint venture, Novation offered to share with RTI a percentage of the profits from the 270% mark-up.

84. Although RTI rejected Novation's offer, Relator has information and believes that Novation consummated many similar deals with other, less scrupulous vendors. Relator has information and believes that Novation never informed the VHA and UHC Members or HPPI customers of the terms of these deals, including the fact that Novation had arranged to have vendors sell the NOVAPLUS® products at prices higher than those charged for the same product without the NOVAPLUS® label and kept the profits.

85. To participate in Novation's private label program and sell products under its NOVAPLUS® brand, manufacturers are required to pay Novation a "trademark and licensing" fee. Despite its name, the "trademark and licensing" fee is not a fixed fee that corresponds to the costs Novation will incur obtaining a trademark and license for a manufacturer's product. Instead, like its "administrative/marketing" fees, Novation requires vendors to offer Novation a percentage of the total purchases of NOVAPLUS® products made by Novation's customers under the NOVAPLUS® contract. The "trademark and licensing" fee is in addition to the "administrative/marketing" fee Novation charges. By giving manufacturers the ability to name the amount of this fee, Novation encouraged manufacturers to bid up the percentage of total sales they were willing to provide as a trademark and licensing fee and routinely awarded the NOVAPLUS® contract to the highest bidder. Relator has information and believes that Novation failed to inform

the VHA and UHC Members and HPPI customers of either the existence or amount of these fees, let alone the method by which they were calculated.

86. Like the mark-up described above, the costs of such "trademark and licensing" and "administrative/marketing" fees are built into the prices of the NOVAPLUS® products. Therefore, contrary to their purported cost-savings benefits, the NOVAPLUS® products routinely are more expensive than identical products sold without the NOVAPLUS® label. In her position as Senior Product Manager at Novation, Relator had the opportunity to speak with Novation's Authorized Distributors. Because they carry a wide range of products and could draw direct price comparisons, many of these distributors remarked to Relator how the NOVAPLUS products were more expensive than the same products offered under the manufacturer's label. For instance, one distributor observed that its costs for a case of American Health Products ("AHP") gloves sold under the NOVAPLUS® label were $1 more than those for a case of the same gloves sold under AHP's label.

87. Because these practices are so lucrative, Novation has been aggressive in trying to get manufacturers to agree to sell their products under the NOVAPLUS® brand. In its Invitations-to-Bid on contracts, Novation informs prospective bidders that their willingness to consider "a private label strategy under the NOVAPLUS label" is a plus factor that Novation will consider – along with other "Non-Financial Award Criteria" -- in determining who will receive the bid award. See Exhibit 7 at 12 & Attachment B at 6. However, Novation's internal documents show that a bidder's willingness to sell products under the NOVAPLUS® label is given much more weight in choosing the successful bidder. In a slideshow presentation to its Senior Product Managers describing Novation's "Supplier Selection Criteria," Novation includes "Private Label" in with Price, Marketing Fees, and Committed programs, as one of the Financial Criteria it will consider. See Exhibit 11 (Novation Slides), which is incorporated herein. As of September 28, 2001, Novation claimed to have 75 agreements with 42 vendors to sell products under the NOVAPLUS® label, representing $1.2 billion in annual sales.

D. Conflicts of Interest/Beneficial Business Relationships

1. Nepotism/Cronyism with Heritage Bag

88. Another one of the first medical/surgical contracts to which Relator was assigned in her position as Senior Contract Manager at Novation was Contract No. MS00210, a three-year contract for "NOVAPLUS® Can Liners." Under this contract, Novation was seeking a vendor to supply trash can liners to the VHA and UHC Members and HPPI customers under Novation's private label brand, NOVAPLUS®. This contract was the first can-liner contract put out for public competitive bid since Novation was formed. (Novation Contract No. MS80310, the predecessor to MS00210, was an interim contract under which Novation extended the terms of VHA Supply's previous can-liner contract to the UHC Members until the above-referenced contract could be awarded by public competitive bid.)

89. Shortly after starting at Novation, Relator met with her supervisor Sherry Woodcock to discuss the contracts she had been assigned. When their discussions turned to Contract No. MS00210, "NOVAPLUS® Can Liners," Woodcock started to laugh and told Relator that this contract had always belonged to and would always belong to defendant Heritage Bag and that the last person who tried to remove it from Heritage Bag almost lost his job. When Relator asked why Heritage Bag deserved such special treatment, Woodcock replied that Heritage Bag was represented by John M. Doyle, the founder and former President of VHA Supply.

90. At first, Relator tried ignoring the comment and went about the business of preparing to put the contract out for bid. Relator conducted some preliminary market research and discovered that at least three vendors had can liners with prices lower than Heritage Bag. During Relator's interviews with these vendors, each expressed surprise at her interest in their can-liners and stated that, since Heritage Bag has had VHA Supply/Novation's can-liner contract for the last 13 years, they had little hope of ever getting it away from Heritage Bag. In the meantime, Sherry Woodcock continued to make comments to Relator that the upcoming can-liner contract should be awarded to Heritage Bag.

91. Increasingly concerned by these comments (particularly in light of her discovery that competitors' can liners were cheaper), Relator went to speak with Brad Mohler, the Novation contracting officer reputed to have almost lost his job for trying to wrest the can-liner contract away from Heritage Bag. Mohler confirmed that the can-liner contract belonged to Heritage Bag because its representative, John M. Doyle, was the founder and former President of VHA Supply and advised Relator not to "rock the boat" (i.e., recommend awarding the contract to another vendor) because "you cannot win."

92. In December 1998, John M. Doyle, his son, and other representatives of Heritage Bag took Relator to dinner at Newport's Seafood in Dallas. At this dinner, John Doyle asked Relator what its competitors were bidding on the upcoming can-liner contract and sought confirmation that, given its history with VHA Supply, Heritage Bag would, in fact, be awarded the contract. When Relator refused to answer, stating that these were improper questions, Doyle's son became visibly angry, at which point John Doyle reassured him Heritage Bag had been around for a long time (as compared to Relator's short tenure at Novation) and that he would "take care of her [Relator]."

93. Convinced by these events that Novation would reject her recommendation to award the Can-Liner Contract to any vendor other than Heritage Bag irrespective of a vendor's more competitive pricing, Relator informed her supervisor Sherry Woodcock – in front of the entire contracting staff of the Medical/Surgical Division (gathered at a holiday dinner) – that she no longer wanted to manage the Can-Liner Contract since she had been informed that she would be fired if she did not award it to Heritage Bag. Woodcock agreed to take over the contract.

94. Shortly after raising these (and other) concerns about Novation's contracting process and rebuffing John Doyle over dinner, Relator experienced a dramatic change in her work environment. Among other things, where before she had received praise and camaraderie, she started receiving criticism about her work performance (including a detailed "performance improvement plan"), was alienated by her co-workers and quickly terminated.

95. Novation ultimately awarded the Can-Liner Contract to Heritage Bag. See Exhibit 12 (Novation Launch Packet for Contract No. MS00210), which is incorporated herein. Relator has information and believes that the basis for awarding Heritage Bag this and every other can-liner contract for the past 16 years was as a pay-off to John Doyle (who received a commission for every liner sold under the contract) for his having agreed in 1986 to resign as President of VHA Supply amidst accusations by three female employees of sexual harassment and sex discrimination. Heritage Bag won its first can-liner contract from VHA Supply shortly after John Doyle began work as its representative and has held the Can-Liner Contract uninterrupted over the succeeding 16 years while Doyle has continued as its representative.

96. Relator has information and believes that neither Novation nor VHA has ever informed the VHA and UHC Members and HPPI customers of the deal that VHA Supply struck with John Doyle, Doyle's current ties to Heritage Bag and previous affiliation with VHA Supply, or the role these factors have played in guaranteeing Heritage Bag each of the can-liner contracts since 1986, despite the fact that there have been other bidders with less expensive can liners. In its Launch Packet for the most recent contract, which was distributed to its customers, Novation failed to include among the reasons listed under "Award Rationale" for awarding Contract No. MS00210 to Heritage Bag either its commitment to Doyle or the existence of other vendors with prices lower than Heritage Bag. See id.

2. *Owning Stock in Vendors to Whom Novation Awarded Contracts*

97. At all times relevant to this Complaint, Novation, VHA, and UHC, as well as top executives at these companies with considerable influence over contracting decisions, owned significant stock holdings in and had mutually beneficial business dealings with the vendors to whom Novation awarded contracts. Several of these executives also sat on the vendors' Board of Directors. Rather than award contracts based on objective criteria like quality and price, Novation routinely awarded contracts to vendors in which Novation, its parent companies VHA and UHC, and officers of these companies had a personal financial and/or business interest. Relator has information and believes that Novation, VHA and UHC failed to inform the VHA and UHC

Members and HPPI customers of these ownership interests or business dealings and the role such interests/dealings played in awarding contracts to these vendors.

98. At all times relevant to this Complaint, Novation has had significant stock holdings in vendors to whom Novation has awarded contracts, including Johnson & Johnson and Tyco International Ltd. ("Tyco"). As of November 18, 1999, some of the contracts Novation awarded to Johnson & Johnson while it held Johnson & Johnson stock were as follows: Novation Contract Nos. CE116 (Portable Blood Pressure Monitoring Systems), HPM035 (Baby Products), LAB409 (Chemistry Analyzers), MS607 (Sutures, Endo-Mechanicals), MS80142 (Reusable Surgical Instruments), and RX86100 (Baby Bath, Shampoo, Powder).

99. Kendall Sherwood-Davis & Geck ("Sherwood"), Sherwood Medical, and Kendall Healthcare Products Company ("Kendall") are all subsidiaries of Tyco. As of November 18, 1999, some of the contracts Novation awarded to Sherwood while it held Tyco stock were as follows: Novation Contract Nos. CE195 (Thermometers), HPM053 (Needles & Syringes), and MS644 (Needles & Syringes). As of November 18, 1999, some of the contracts Novation awarded to Sherwood Medical while it held Tyco stock were as follows: Novation Contract Nos. RX146 (Thermazene Cream) and RX81460 (Silver Sulfadiazine & Petrolatum Gauze). As of November 18, 1999, some of the contracts Novation awarded to Kendall while it held Tyco stock were as follows: Novation Contract Nos. MS153 (NOVAPLUS® Endotracheal Tubes, Tracheostomey Care Kits, Open Suction Catheters), MS609 (Vascular Therapy Products), MS642 (Wound Care Products), and MS80010 (Bandages, Dressings, Sponges, Gauze).

100. At all times relevant to this Complaint, VHA and UHC have had significant stock holdings in vendors to whom Novation has awarded contracts, including Neoforma (now owned by defendant GHX). On July 26, 2000, VHA, UHC and Novation entered into an outsourcing and operating agreement with Neoforma, under which VHA and UHC collectively received 45% of Neoforma's outstanding common stock and Neoforma agreed to create and manage an on-line marketplace – called Marketplace@Novation™ -- through which the VHA and UHC Members

and HPPI customers can order products under the Novation contracts. On January 25, 2001, VHA and UHC increased their holdings to 60.9% of Neoforma's total outstanding common stock.

101. Although Neoforma describes itself as an e-commerce company that creates and manages on-line marketplaces for GPOs, Integrated Delivery Networks, and other health care systems, Novation and its customers and vendors have been the primary source of Neoforma's business. In July 2000, Novation awarded Neoforma a sole source contract, which was never put out for public competitive bid, to establish and provide Novation's customers with the on-line ordering service, Marketplace@Novation™. In 2001 alone, Novation paid Neoforma approximately $21 million in fees for these services. In addition, Novation and Neoforma have an agreement under which Neoforma shares with Novation revenue related to transactions made through Marketplace@Novation.

102. C. Thomas Smith, who until recently was the President of VHA and had the ability to influence Novation's contracting decisions, held stock throughout his tenure at VHA in several vendors with whom Novation had contracts. Smith had significant stock holdings in Genetech and also sat on its Board of Directors from 1986 until 1999. During the time that Smith was President of VHA, a Genentech stockholder and a member of Genetech's Board of Directors, Genetech was awarded several Novation Contracts, including Contract Nos. RX 163 and RX 81830 under which Genetech supplied the drug activase to the VHA and UHC Members and HPPI customers. As President of VHA, Smith also held at least 3,500 shares in Neoforma and sat on its Board of Directors. Smith also owned stock in Sysco Corporation, to whom Novation had awarded several food services contracts.

103. Curt Nonomaque, who has succeeded Smith as VHA's President and previously served as VHA's Vice-President and Chief Financial Officer, also has owned stock in Neoforma and other vendors to whom Novation has awarded contracts during his tenure at VHA. Nonomaque also sat on Neoforma's Board of Directors. Relator has information and believes that Nonomaque has created a fictitious corporation, called NBI, LLC, through which he purchases stock in vendors to whom Novation has awarded contracts.

104. Mark McKenna, Novation's current President and a former Vice-President, also owned stock in vendors to whom Novation has awarded contracts, including Neoforma, and served on Neoforma's Board of Directors during his tenure at Novation. The following VHA and Novation executive-level employees, with influence over Novation's contracting decisions, also own stock in Neoforma: Daniel Bourque and John Collins, Senior Vice-Presidents at VHA, Donald Caccia, a VHA executive, and Marcea Bland Lloyd, in-house counsel for Novation.

105. Novation requires the vendors to whom it awards contracts to agree to use Marketplace@Novation. In its Invitations-to-Bid, Novation lists as a "basic qualifying factor" to receiving a contract that a vendor be willing to commit to participate in Marketplace@Novation. See Exhibit 7 (Enteral Products Invitation to Bid) at 10 & Attachment C at 10. In so doing, Novation is serving its own financial interests and those of VHA, UHC and their executives since they all have a financial stake in ensuring Neoforma's success.

3. *Excessive Conference Fees*

106. At all times relevant to this Complaint, Novation regularly organized and hosted conferences on topics of interest to the VHA and UHC Members and HPPI customers. In connection with these conferences, Novation routinely would approach large vendors whom it expected to be bidding on upcoming contracts and solicit from them exorbitant fees to attend segments of the conference at which the VHA and UHC Members would be present or sponsor high-profile keynote speakers. These fees typically were well in excess of the costs Novation incurred in putting on the conference. Relator has information and believes that Novation failed to inform the VHA and UHC Members and HPPI customers about the existence or amount of these fees and charges.

4. *Travel & Entertainment Costs*

107. At all times relevant to this Complaint, Novation accepted lavish trips, meals and other entertainment from vendors who regularly bid on Novation contracts and to whom Novation subsequently awarded contracts. These trips, meals and other entertainment had little if any legitimate business purpose. For example, shortly before Novation was expected to issue

Invitations-to-Bid for its NOVAPLUS® exam glove contract, American Health Products – a large manufacturer of gloves for medical use -- hosted a Riverboat cruise on Lake Michigan with drinks, dinner and dancing for Relator, Relator's supervisor Sherry Woodcock, and other members of the Novation contracting staff responsible for awarding this contract. Edward Marteka, President of AHP, Rick Feady, an AHP sales representative, and several other members of the AHP sales staff were present. Throughout the evening, little to no business was conducted. Relator has information and believes that Novation failed to inform the VHA and UHC Members and HPPI customers about any of these vendor-sponsored trips, meals and other entertainment, the fact that such events had little to no legitimate business purpose, or the role these events played in awarding contracts.

VI. DAMAGES

A. <u>Inflating Costs of Supplies Reimbursed by Government Health Insurance Programs</u>

108. In order to recoup the often considerable costs of paying Novation the kickbacks and other illegal remuneration described above, vendors build these costs into the prices they charge Novation's customers under the contracts for the supplies and services, thereby inflating the prices. A large percentage of these supplies and services are utilized in the treatment of beneficiaries of the government health insurance programs. The government reimburses health care providers for certain of the costs of these supplies based on cost-reimbursement calculations the providers include in cost reports filed annually with insurance companies the United States and Texas respectively have retained to act as their program fiscal intermediaries ("F.I.'s"). Under the federal cost-reporting regulations, there are several ways in which the vendors' inflated prices are borne by the government health insurance programs.

109. First, several areas of a hospital, such as rehabilitation and psychiatric units, are reimbursed by the government based on the actual costs incurred therein for treating Medicare/Medicaid/CHAMPUS/TRICARE beneficiaries. When a Novation customer uses an overpriced supply/service (<u>i.e.</u>, one that includes the hidden costs of the Novation kickbacks) in

one of these hospital areas, the inflated costs will cause a corresponding increase in the amount of the government's reimbursement to that customer.

110. For the majority of the time relevant to this Complaint, the two types/areas of a health care provider that were reimbursed based on the actual costs incurred therein are distinct part units and outpatient ancillary cost centers. As its name suggests, distinct part units are portions of the hospital (or free-standing facilities) that provide services that differ from the hospital's typical inpatient services. The four most typical types of distinct part units are psychiatric units/hospitals, rehabilitation units/hospitals, skilled nursing facilities ("SNFs"), and home health agencies ("HHAs"). Like the hospital itself, distinct part units have their own Medicare provider number under which all Medicare/Medicaid/TRICARE/CHAMPUS billing is processed.

111. The majority of Novation's customers are either free-standing distinct part units or have distinct part units associated with their hospitals. For instance, the 5,000 HPPI customers are largely comprised of alternate care providers such as free-standing rehabilitation hospitals, psychiatric hospitals, SNFs and HHAs. In addition, many of the 2,200 VHA and UHC Members, which consist largely of community and teaching hospitals, have distinct part units associated with their hospitals. Accordingly, distinct part units account for a large percentage of the $25 billion in total purchases that the Novation customers make each year. Since the actual costs of the supplies and services purchased by these units are reimbursed in whole or part by the government health insurance programs, by causing vendors to inflate the prices for such goods/services, defendants have caused the government to overstate its reimbursement to the large population of Novation customers with distinct part units, which has resulted in profound financial harm to the government health insurance programs.

112. The other primary area in which the government reimburses a health care provider based on actual costs incurred therein in treating Medicare/Medicaid/TRICARE/CHAMPUS beneficiaries is outpatient ancillary cost centers. As its name suggests, these are areas of the hospital that provide outpatient services that are ancillary to the hospital's typical inpatient

services. Unlike distinct part units, however, services provided in outpatient ancillary cost centers are billed under the hospital's Medicare provider number and do not have their own provider numbers.

113. Examples of outpatient ancillary cost centers are the Operating Room, Recovery Room, Radiology Department, Emergency Room, Electrocardiogram Department, and Laboratory. The 2,200 VHA and UHC Members, which consist largely of community and teaching hospitals, have several such outpatient ancillary cost centers in each of their hospitals. Although largely comprised of alternate care providers, some of the HPPI customers are traditional hospitals with the above-mentioned outpatient ancillary cost centers. Since the actual costs of the supplies/services purchased by these cost centers are reimbursed in whole or part by the government health insurance programs, by causing vendors to inflate the prices for such goods/services, defendants have caused the government to overstate its reimbursement to the many VHA and UHC Members and HPPI customers who have these cost centers, which has resulted in profound financial harm to the government health insurance programs.

114. Second, the overpriced supplies/services resulting from defendants' fraudulent practices also have served to improperly increase the amount of government reimbursement in areas of the hospital, like general acute care/Adults & Pediatrics, that are reimbursed under the "Prospective Payment System" or "PPS". Under PPS, the Medicare program uses payment schedules based on Diagnosis-Related Groups ("DRGs"), under which hospitals are paid pre-determined amounts for inpatient care in certain areas of the hospital based on the patients' diagnosis. The diagnosis-based DRG payments reflect the average costs an efficiently-run hospital would be expected to incur to treat such a patient. To determine the payment schedule that corresponds to each diagnosis, the government relies on pricing and other data from hospitals within the various geographic regions of the country as well as nationwide. Because Novation's 7,300 customers represent close to a third of the nation's health care providers, the government has necessarily relied on the inflated pricing information from many of Novation's customers in setting its DRG payments. Accordingly, the inflated prices incurred by the VHA and UHC

Members and HPPI customers have, in turn, increased the amount of the DRG rate on which the government bases its reimbursement.

115. Third, for the majority of the time relevant to this Complaint, there was a category of products called "moveable capital equipment" that the government reimbursed based on the cost of the product, irrespective of the part of the hospital in which they were used. Examples of moveable capital equipment are ultrasound devices, CAT scanners, x-ray machines, hospital beds, and operating room tables. Capital equipment was one of Novation's primary product lines and Novation regularly negotiated capital-equipment contracts for its customers. As with Novation's other product lines, Relator has information and believes that several capital-equipment vendors paid Novation kickbacks to obtain the contracts and increased the prices charged in Novation contracts for this equipment in order to recoup the illegal payments. Because such equipment is subject to cost-based reimbursement, the vendors' inflated prices on capital equipment also caused the government to overstate its reimbursement to the VHA and UHC Members and HPPI customers who purchased and later sought government reimbursement for the costs of this equipment.

B. <u>Precluding Manufacturers of Safer, More Innovative Products That Would Have Reduced Health care Costs</u>

116. As a result of its practice of requiring vendors to pay large kickbacks and other illegal remuneration to obtain contracts, Novation routinely awarded contracts to large, well-established vendors, like Johnson & Johnson, who were capable of making such large payments. Smaller vendors, who often have safer, cheaper and more innovative products, were routinely denied contracts because they were unable or unwilling to offer Novation the up-front payments necessary to obtain the business.

117. For example, Novation awarded the most recent contract for needles and syringes to defendant Becton Dickinson, a large, well-established medical product manufacturer. As discussed above, in connection with this contract, Becton Dickinson paid Novation a $1 million "special marketing fee." Novation awarded the contract to Becton Dickinson despite

contemporaneous market research showing that ECRI, a respected testing laboratory, had rated as "unacceptable" one of the Becton Dickinson needles to be supplied under the contract. Another bidder, Retractable Technologies, Inc. ("RTI"), who manufactures an innovative safety syringe and needle system with a demonstrated record of preventing needle sticks, was shut out of the contract largely because it was unable and unwilling to pay Novation kickbacks and other illegal remuneration.

118. By regularly shutting out the smaller vendors like RTI and awarding contracts to larger vendors who build the costs of the kickbacks into their prices, Novation caused the VHA and UHC Members and HPPI customers to submit to the government health insurance programs claims for medical supplies that were higher than they would have been had Novation awarded the contracts without such improper financial considerations as kickbacks and other illegal remuneration. In addition, by favoring larger manufacturers over smaller ones like RTI with safer, more innovative products, Novation caused the VHA and UHC Members and HPPI customers to submit to the government health insurance programs claims for additional treatment related to injuries caused or exacerbated by the use of the larger manufacturers' products, such as needle stick injuries caused by the use of less safe needles. In many instances, these injuries and additional treatment costs would have been preventable had Novation awarded the contracts based on quality and price rather than other improper financial considerations.

VII. EMPLOYMENT DISCRIMINATION FOR ACTS IN FURTHERANCE OF FALSE CLAIMS ACT ACTION

119. Relator began working for Novation on July 27, 1998 as a Senior Product Manager for Medical/Surgical Products with an annual salary of $63,500.04. From the beginning of her six months of employment at Novation until she started complaining to her superiors about the impropriety of the fraudulent practices described above, Relator was regularly commended by her superiors on her job performance.

120. For instance, upon completion of one of her first assignments – putting out to bid and awarding Contract No. MS8020B, "IV Catheters and Start Kits" – Relator received a hand-

written note from Novation's then President, James Hersma, complimenting her on her "[g]reat work." See Exhibit 9 at 1. As described above, this was also the contract pursuant to which Relator secured from Becton Dickinson a $100,000 "donation" to VHAseCURE.net. For her work in obtaining this donation as well as a similar donation from another vendor, the Head of Novation's Information Technology Department (who oversaw the VHAseCURE.net program) sent Relator an e-mail congratulating her on her success and thanking her for her efforts. See Exhibit 5. A copy of this e-mail was also sent to John Burks, the former Head of the Medical/Surgical Products Division. Id.

121. By the end of 1998/beginning of 1999, as a result of the experiences described above, Relator had come to realize that the kickbacks and other illegal remuneration were not isolated indiscretions by a few rogue vendors but instead were part of a larger Novation scheme that pervaded its business. Faced with two choices -- play by Novation's rules and be complicit in fraud or refuse and try to effect change from within -- Relator took the latter course. As described above, she informed her supervisor Sherry Woodcock that she could no longer manage the can-liner contract because of the favoritism being shown to Heritage Bag, and she rebuffed Johnson & Johnson's attempts to pay Novation a kickback to obtain the IV Catheter Contract. Relator also raised her concerns about the impropriety of these practices with Novation senior management, including the Head of the Medical/Surgical Products Division, Human Resources staff, and Novation's in-house counsel. Her concerns were largely ignored.

122. Shortly after she took these corrective measures, Relator began to experience a dramatic change in her employment conditions. Where previously she had been treated as part of the team, Relator now was being alienated by her co-workers. For instance, Relator's administrative assistant, who had previously worked cooperatively with her (while also serving the other members of the Medical/Surgical contracting staff to whom she was jointly assigned), now refused to do any work for her.

123. Relator's supervisor Sherry Woodcock issued Relator a 6-page "Performance Improvement Plan" chronicling a laundry list of serious alleged lapses in her job performance and

placing her on a 90-day probationary period. See Exhibit 13, which is incorporated herein. Although the vast majority of these alleged failings had supposedly occurred many months earlier, Relator had never before been informed of these "problems" and no reference to them had been made in her personnel file. Relator was hearing about them for the first time, a matter of days after she had first voiced concerns to management about Novation's contracting practices. Because of her supervisor's frequent fabrication and gross mischaracterization of the events described therein, Relator refused to sign the Performance Improvement Plan or agree to the conditions set forth therein. Fifteen days later, on February 5, 1999, Novation fired Relator for alleged problems related to her "performance/judgment."

124. Despite her supposed failings as an employee, Novation nevertheless chose to pay Relator – an at-will employee – a severance package of $7,949.69. Novation conditioned Relator's receipt of these monies on her signing a severance agreement containing a confidentiality provision that prohibited her from revealing any of Novation's confidential information or information about Novation's "business and opportunities" for three years. Relator signed the agreement and accepted the severance package.

125. As these circumstances clearly demonstrate, the reasons Novation gave for terminating Relator – "performance/judgment" – were a pretext. The real reason Novation fired Relator – as is belied by the close proximity between her complaints and Novation's belated criticism of her job performance – was in retaliation for her investigating and raising concerns about Novation's fraudulent contracting practices.

COUNT I

Substantive Violations of the Federal False Claims Act

[31 U.S.C. §§ 3729(a)(1), (a)(2), (a)(7) and 3732(b)]

126. Relator realleges and incorporates by reference the allegations made in Paragraphs 1 through 125 of this Complaint.

127. This is a claim for treble damages and forfeitures under the Federal False Claims Act, 31 U.S.C. §§ 3729 et seq., as amended.

128. Through the acts described above, defendants knowingly caused VHA and UHC Members and HPPI customers to present to the United States Government, through the Medicare, Medicaid, and TRICARE/CHAMPUS programs, false and fraudulent claims, records, and statements for reimbursement for health care supplies and services provided under Medicare, Medicaid, and TRICARE/CHAMPUS.

129. Through the acts described above and otherwise, defendants knowingly caused the VHA and UHC Members and HPPI customers to make or use false records and statements, which also omitted material facts, in order to induce the United States Government and its F.I.'s to approve and pay such false and fraudulent claims.

130. Through the acts described above and otherwise, defendants knowingly caused the VHA and UHC Members and HPPI customers to make or use false records and statements to conceal, avoid, and/or decrease the VHA and UHC Members' and HPPI customers' obligation to repay money to the United States Government that the defendants improperly and/or fraudulently received. Defendants also failed to disclose to the United States Government and its F.I.'s material facts that would have resulted in substantial repayments by the VHA and UHC Members and HPPI customers to the federal government.

131. The United States, through the Medicare, Medicaid, and TRICARE/CHAMPUS programs and their respective F.I.'s, unaware of the falsity of the records, statements, and claims made or submitted by the VHA and UHC Members and HPPI customers, paid and continue to pay the VHA and UHC members and HPPI customers for claims that would not be paid if the truth were known.

132. The Medicare, Medicaid, and TRICARE/CHAMPUS programs and their respective F.I.'s, unaware of the falsity of the records, statements, and claims made or submitted by defendants and the VHA and UHC Members and HPPI customers -- or of defendants' failure to disclose material facts that would have reduced government obligations -- have not recovered Medicare, Medicaid, and TRICARE/CHAMPUS funds that would have been recovered otherwise.

133. By reason of the defendants' false records, statements, claims, and omissions and defendants' misconduct in causing the VHA and UHC Members and HPPI customers to make and submit false records, statements, claims and omissions, the United States has been damaged in the amount of many millions of dollars in Medicare, Medicaid, and TRICARE/CHAMPUS funds.

COUNT II

Federal False Claims Act Conspiracy

[31 U.S.C. §§ 3729(a)(3) and 3732(b)]

134. Relator realleges and incorporates by reference the allegations made in Paragraphs 1 through 133 of this Complaint.

135. This is a claim for treble damages and forfeitures under the Federal False Claims Act, 31 U.S.C. §§ 3729 et seq., as amended.

136. Through the acts described above and otherwise, defendants entered into a conspiracy or conspiracies with each other and with others to defraud the United States by getting false and fraudulent claims allowed or paid. Defendants have also conspired with each other and with others to omit disclosing or to actively conceal facts which, if known, would have reduced government obligations to the VHA and UHC Members and HPPI customers or resulted in repayments from the VHA and UHC Members and HPPI customers to government health insurance programs. Defendants have taken substantial steps in furtherance of those conspiracies, inter alia, by soliciting, accepting, offering or paying kickbacks and other monies from vendors as payment for awarding them Novation contracts knowing that these activities increased the cost of supplies and services ordered by the VHA and UHC Members and HPPI customers under these contracts and caused Novation's customers to submit false bills, cost reports and other records to the government and its F.I.'s for payment or approval that contained these improper costs, and by directing their agents and personnel not to disclose and/or to conceal their fraudulent practices or those of their co-defendants, as well.

137. The Medicare, Medicaid, and TRICARE/CHAMPUS programs and their respective F.I.'s, unaware of defendants' conspiracies or the falsity of the records, statements and claims

caused to be made by defendants and made by the VHA and UHC Members and HPPI customers, and as a result thereof, have paid and continue to pay millions of dollars in Medicare, Medicaid, and TRICARE/CHAMPUS interim and final reimbursement that they would not otherwise have paid. Furthermore, because of the false records, statements, claims, and omissions caused to be made by defendants and made by the VHA and UHC Members and HPPI customers, the United States has not recovered Medicare, Medicaid, and TRICARE/CHAMPUS funds from the VHA and UHC Members and HPPI customers that otherwise would have been recovered.

138. By reason of defendants' conspiracies and the acts taken in furtherance thereof, the United States has been damaged in the amount of many millions of dollars in Medicare, Medicaid, and TRICARE/CHAMPUS funds.

COUNT III

Substantive Violations of the Texas Medicaid Fraud Prevention Act

[Texas Human Resources Code §§ 36.002 (1)(A), (2)(B) & (4)(B)]

139. Relator realleges and incorporates by reference the allegations made in Paragraphs 1 through 138 of this Complaint.

140. This is a claim for civil remedies and civil penalties under the Texas Medicaid Fraud Prevention Act, Texas Human Resources Code, §§ 36.001 et seq.

141. Through the acts described above, defendants knowingly have caused the VHA and UHC Members and HPPI customers to present to the Texas Medicaid program and its F.I.'s false and fraudulent claims, records, and statements for reimbursement for health care supplies and services provided under Medicaid.

142. Through the acts described above and otherwise, defendants knowingly made, used, and/or caused the VHA and UHC Members and HPPI customers to make or use false records and statements, which also omitted material facts, in order to induce the Texas Medicaid program and its F.I.'s to approve and pay such false and fraudulent claims.

143. Through the acts described above and otherwise, defendants knowingly made, used, and caused the VHA and UHC Members to make or use false records and statements to

conceal, avoid, and/or decrease the VHA and UHC Members' and HPPI customers' obligation to repay money to the Texas Medicaid program and its F.I's that the VHA and UHC Members and HPPI customers improperly and/or fraudulently received. Defendants also failed to disclose to the Texas Medicaid program and its F.I.'s material facts that would have resulted in substantial repayments by the VHA and UHC Members and HPPI customers to the Texas government.

144. The Texas Medicaid program and its F.I.'s, unaware of the falsity of the records, statements, and claims made or submitted by defendants and the VHA and UHC Members and HPPI customers, paid and continue to pay the VHA and UHC Members and HPPI customers for claims that would not be paid if the truth were known.

145. The Texas Medicaid program and its F.I.'s, unaware of the falsity of the records, statements, and claims made or submitted by defendants or the VHA and UHC Members and HPPI customers -- or of their failure to disclose material facts which would have reduced government obligations -- have not recovered Medicaid funds that would have been recovered otherwise.

146. By reason of the defendants' false records, statements, claims, and omissions and defendants' misconduct in causing the VHA and UHC Members and HPPI customers to make or submit false records, statements, claims, and omissions, the State of Texas and the Texas Medicaid program have been damaged in the amount of many millions of dollars in Medicaid funds.

COUNT IV

Texas Medicaid Fraud Prevention Act Conspiracy

[Tex. Human Resources Code § 36.002(9)]

147. Relator realleges and incorporates by reference the allegations made in Paragraphs 1 through 146 of this Complaint.

148. This is a claim for restitution, double damages and penalties under the Texas Medicaid Fraud Prevention Act, Texas Human Resources Code §§ 36.001 et seq.

149. Through the acts described above and otherwise, defendants entered into a conspiracy or conspiracies with each of the other defendants and with others to defraud the Texas Medicaid program by getting false and fraudulent claims allowed or paid. Defendants have also conspired with each other and with others to omit disclosing or to actively conceal facts which, if known, would have reduced the Texas Medicaid program's obligations to the VHA and UHC Members and HPPI customers or resulted in repayments from the VHA and UHC Members and HPPI customers to the Texas Medicaid program. Defendants have taken substantial steps in furtherance of those conspiracies, inter alia, by soliciting, accepting, offering or paying kickbacks and other monies from vendors as payment for awarding them Novation contracts knowing that these activities increased the cost of supplies and services ordered by the VHA and UHC Members and HPPI customers under these contracts and caused Novation's customers to submit false bills, cost reports and other records to the Texas Medicaid program and its F.I.'s for payment or approval that contained these improper costs, and by directing their agents and personnel not to disclose and/or to conceal their fraudulent practices or those of their co-defendants, as well.

150. The Texas Medicaid program and its F.I.'s, unaware of defendants' conspiracies or the falsity of the records, statements and claims caused to be made by defendants and made by the VHA and UHC Members and HPPI customers, and as a result thereof, have paid and continue to pay millions of dollars in Medicaid interim and final reimbursement that they would not otherwise have paid. Furthermore, because of the false records, statements, claims, and omissions caused to be made by defendants and made by the VHA and UHC Members and HPPI customers, the Texas Medicaid program has not recovered Medicaid funds from the VHA and UHC Members and HPPI customers that otherwise would have been recovered.

151. By reason of defendants' conspiracies and the acts taken in furtherance thereof, the State of Texas and the Texas Medicaid program have been damaged in the amount of many millions of dollars in Medicaid funds.

COUNT V

Federal False Claims Act -- Employment Discrimination

[31 U.S.C. § 3730(h)]

152. Relator realleges and incorporates by reference the allegations made in Paragraphs 1 through 151 of this Complaint.

153. This is a claim for damages under the Federal False Claims Act, 31 U.S.C. § 3730(h).

154. Through the acts described above and otherwise, defendant Novation discriminated against Relator in the terms and conditions of her employment at Novation by, among other things, terminating her employment. Novation's stated reasons for terminating Relator regarding deficiencies in her job performance were baseless and simply a pretext for the real reason for her termination -- to retaliate against Relator for her investigation of defendants' fraudulent practices in preparation for filing the above-captioned False Claims Act lawsuit.

155. By reason of defendant Novation's actions, Relator has been damaged in the amount of many thousands of dollars.

COUNT VI

Texas Medicaid Fraud Prevention Act – Employment Discrimination

[Texas Human Resources Code § 36.115]

156. Relator realleges and incorporates by reference the allegations made in Paragraphs 1 through 155 of this Complaint.

157. This is a claim for damages under the Texas Medicaid Fraud Prevention Act, Texas Human Resources Code § 36.115.

158. Through the acts described above and otherwise, defendant Novation discriminated against Relator in the terms and conditions of her employment at Novation by, among other things, terminating her employment. Novation's stated reasons for terminating Relator regarding deficiencies in her job performance were baseless and simply a pretext for the real reason for her

termination -- to retaliate against Relator for her investigation of defendants' fraudulent practices in preparation for filing the above-captioned False Claims Act lawsuit.

159. By reason of defendant Novation's actions, Relator has been damaged in the amount of many thousands of dollars.

PRAYER

WHEREFORE, Relator prays for judgment against defendants as follows:

1. That defendants cease and desist from violating 31 U.S.C. §§ 3729 et seq. and Texas Human Resources Code §§ 36.001 et seq.;

2. That the Court enter judgment against defendants in an amount equal to three times the amount of damages the United States has sustained as a result of defendants' actions in violation of the Federal FCA, plus interest, as well as a civil penalty against each defendant of $11,000 for each violation of 31 U.S.C. § 3729;

3. That the Court enter judgment against defendants in an amount equal to three times the amounts paid by the Texas Medicaid program as a result of defendants' actions in violation of the Texas Medicaid Fraud Prevention Act, plus interest, as well as a civil penalty against each defendant of $10,000 for each violation of Texas Human Resources Code § 36.052(3), and the attorney's fees, expenses and costs of the Texas Attorney General.

4. That Relator be awarded the maximum amount allowed pursuant to 31 U.S.C. § 3730(d) and Texas Human Resources Code § 36.110;

5. That Relator be awarded all costs and expenses of this action, including attorneys' fees;

6. That the Court enter judgment against defendant Novation as a result of its actions in violation of 31 U.S.C. § 3730(h) and Texas Human Resources Code § 36.115 as well as all relief necessary to make Relator whole, including reinstatement with the same seniority status Relator would have had but for the discrimination, not less than two times the amount of back pay, interest on back pay, and compensation for any special damages sustained as a result of

Novation's employment discrimination, including litigation costs and reasonable attorney's fees; and

7. That the United States, the State of Texas, and Relator receive all such other relief as the Court deems just and proper.

JURY DEMAND

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

Dated: February 15, 2007

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CERTIFICATE OF SERVICE

15th I hereby certify that a true copy of the foregoing has been served by certified mail this 15th day of February, 2007, as follows:

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