SEALED

TO THE

PUBLIC

Code: $1425
Mark A. Winter
Attorney for Qui Tam Plaintiffs
Nevada Bar #1977
801 N. Division Street
Carson City, Nevada 89703
(775) 882-2183
(775) 883-9413 fax

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA
EX REL. (UNDER SEAL)

PLAINTIFFS,

vs.

(UNDER SEAL),

DEFENDANT.

Case No. CV05 00869

Dept. No. 9

COMPLAINT FOR DAMAGES UNDER NEVADA FALSE CLAIMS ACT
NRS 357.010 et. seq.

FILED IN CAMERA AND UNDER SEAL

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413

Code: $1425
Mark A. Winter
Attorney for Qui Tam Plaintiffs
Nevada Bar #1977
801 N. Division Street
Carson City, Nevada 89703
(775) 882-2183
(775) 883-9413 fax

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA EX REL. H. DEAN STEINKE, PLAINTIFFS, vs. MERCK & CO., INC., a NEW JERSEY CORPORATION, DEFENDANT.	Case No. CV05 00869 Dept. No. 9

COMPLAINT FOR DAMAGES UNDER NEVADA FALSE CLAIMS ACT
NRS 357.010 et. seq.

FILED IN CAMERA AND UNDER SEAL

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413

Through his attorneys, H. Dean Steinke, for his Complaint against Defendant Merck & Co., Inc. alleges as follows:

1. This is a *qui tam* action brought by Relator and Plaintiff H. Dean Steinke and the State of Nevada to recover treble damages and civil penalties under the Nevada False Claims Act, N.R.S. § 357.010, et. seq.

2. The Defendant, Merck & Co., Inc. ("Merck") devised a number of marketing schemes to regain or increase its market share in the face of competition. One of these schemes centered on Zocor, which is a drug prescribed for the treatment of cardiac problems, and one scheme centered on Vioxx, which was prescribed for the treatment of chronic pain or joint inflammation. These drugs share a common characteristic - they are both prescribed for chronic conditions. Thus, a patient who is prescribed one of these drugs will generate income for Merck for years after the initial prescription is made. Merck's marketing strategy for these drugs included programs to ensure that hospitals would prescribe Zocor or Vioxx to hospital admittees in order to "capture" the patient early on and capitalize on the long term "spillover" effect of that patients continued use of the drug after they were released from the hospital.

3. Merck therefore gave selected hospitals tremendous financial incentives, in the form of steep discounts to either start patients on Vioxx or Zocor, or to switch them to these drugs away from competitor's drugs during their hospital stay in

expectation that such patients would continue to take Merck's products after they were released from the hospital to achieve a "pull-through" strategy, as it is known in the pharmaceutical industry.

4. Merck was required under the Medicaid Rebate Act,42 U.S.C.§ 1396r-8, to report these discounts as "best prices" for calculating Merck's rebates to the States, including Nevada. Merck, however concealed these discounts. Merck, however, concealed these discounts from the Centers for Medicare and Medicaid Services (CMS) which relies on truthful reporting of best price information so that rebates due to the States may be properly calculated. Merck knowingly, deliberately, and purposefully concealed the discounted prices; because if it had reported the true discounted prices, Merck would have had to pay far greater rebates to the States.

5. Merck's conduct damaged Nevada's Medicaid program in four ways: (1) Nevada did not receive the rebates to which it was entitled; (2) Nevada had to pay for outpatient prescriptions which were more expensive prescriptions than the old prescriptions; (3) switching patients to Zocor required Medicaid beneficiaries to undergo expensive liver function tests; and (4) a measurable percentage of Medicaid beneficiaries who were switched to Vioxx developed cardiac problems as a result of the switch, necessitating more treatment.

6. This complaint details Merck's fraudulent and illegal conduct and is based upon non-public information Mr.

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413

Steinke obtained while employed by Merck.

7. In connection with the filing of the Complaint, Relator furnished the State of Nevada with a written disclosure of all material evidence in his possession pursuant to N.R.S. § 357.080(5).

THE PARTIES

8. Relator H. Dean Steinke ("Steinke") is a citizen of the United States and a resident of the state of Michigan. Steinke was employed by Merck from March of 1995 to April 2001. Merck initially hired Steinke as a sales representative, and then promoted to become one of the Business Managers of the Michigan sales region. During the course of his employment with Merck, Steinke acquired direct, personal knowledge of Merck's fraudulent and illegal practices.

9. Defendant Merck is a global pharmaceutical company, comprised of several reportable segments, including Merck Pharmaceuticals and Merck Human Health Division. Merck is a New Jersey corporation with its principal executive office in Whitehouse Station, New Jersey. Merck's pharmaceutical business is conducted through divisional headquarters located in West Point, Pennsylvania and Rahway, New Jersey. Principal research facilities are also located in West Point and Rahway. According to its internet website, in 2001 Merck experienced total sales of over $47 billion and a net income of over $7 billion. Prescription products sold by Merck include those at issue here, Zocor and Vioxx.

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413

JURISDICTION

10. This court has personal jurisdiction over the Defendant as the Defendant transacts business in the State of Nevada and has engaged in wrongdoing in Nevada. Defendant Merck sells the drugs it manufacturers to hospitals in Nevada, such as St. Mary's Regional Medical Center in Reno, Nevada and University Medical Center of Southern Nevada, Sunrise Hospital and Medical Center, and Valley Hospital Medical Center, all in Las Vegas, Nevada.

11. There has been no statutorily relevant public disclosure of the allegations or transactions in this Complaint. Relator, moreover, would qualify under the Act as an original source even if such a public disclosure were found to exist because he has direct and independent knowledge of the wrongdoing alleged in this Complaint and because he voluntarily provided this information relating to such misconduct to State prior to initiating this qui tam lawsuit.

BACKGROUND

a. The Nevada False Claims Act

12. The pertinent provisions of the Nevada False Claims Act provides liability for any person who -

> (a) knowingly presents or causes to be presented a false claim for payment or approval;
>
> (b) knowingly makes or uses, or causes to be made or used, a false record or statement to obtain payment or approval of a false claim; and/or
>
> (c) knowingly makes or uses, or causes to be made or used, a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or

property to the state or a political subdivision. N.R.S. § 357.040(1).

13. The Nevada False Claims Act violations here involve the knowing and deliberate submission of false records and/or statements to CMS (formally, HCFA) regarding the best price, i.e. the lowest price, that Merck sold the drugs known as Zocor and Vioxx, in abuse of the Medicaid Program.

b. The Federal Medicaid Program

14. In 1965, Congress enacted Title XIX of the Social Security Act to expand the nation's medical assistance program for the needy and the medically needy aged, blind, disabled, and families with dependent children. 42 U.S.C. §§ 1396-1396v. This became known as the Medicaid Program. The Medicaid Program is funded by both Federal and State monies, collectively referred to as "Medicaid Funds," with the federal contribution computed separately for each state. 42 U.S.C. §§ 1396b; 1396d(b).

15. Each State is permitted, within certain parameters, to design its own medical assistance plan, subject to approval by the Department of Health and Human Services (HHS). Among other forms of medical assistance, the States are permitted to provide medical assistance from the Medicaid Funds to eligible persons for outpatient prescription drugs. 42 U.S.C. § 1396a(10)(A); 1396d(a)(12).

16. HHS is an agency of the United States and is

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413

responsible for the administration, supervision and funding of the federal Medicaid Program. CMS is the division of HHS that is directly responsible for administering the federal Medicaid Program. Prior to 2001, CMS was known as the Health Care Finance Administration, or HCFA.

17. In 1990, Congress enacted the Medicaid Rebate Program, 42 U.S.C. § 1396r-8, as part of the Omnibus Budget Reconciliation Act of 1990. The Medicaid Rebate Program, also known as the Medicaid Rebate Act and the Medicaid Rebate Statute, is "a cost-savings measure" that Congress passed "(i)n response to increasing Medicaid expenditures for prescription drugs (and) requires drug companies to pay rebates to states on their Medicaid purchases." Pharmaceutical Research & Mfrs. Of America v. Walsh, 538 U.S. 644, 649, 123 S. Ct. 1855, 1860 (2003).

18. Pursuant to the Medicaid Rebate Act participating manufacturers who want their drugs covered by Medicaid must contract with the federal government in a manner that is consistent with Congressional intent in passing the Medicaid Rebate Act.

19. Drug manufacturer must enter into a Rebate Agreement with the Secretary of HHS in order for federal matching funds to be made available for that manufacturer's covered outpatient drugs, 42 U.S.C. § 1396r-8(a)(1). Each patcipipataing manufacturer must sign, indicating agreement and

compliance with all provisions therein, including that "The Rebate Agreement shall be construed in accordance with federal common law and ambiguities shall be interpreted in the manner which best effectuates the statutory scheme."

20. The Rebate Agreement provides that the Secretary enters the agreement "on behalf of the Department of Health and Human Services and all States and the District of Columbia (except to the extent they have in force an Individual State Agreement)." Upon entering a Rebate Agreement with the Secretary, the manufacturer must pay a quarterly rebate directly to each participating State based on all of the manufacturer's drugs purchased by that State pursuant to its Medicaid plan during that quarter.

21. For single source or innovator multiple source drugs, the basic rebate due on each unit paid for under the State plan is calculated as the greater of either (a) a flat 15.1% off of the average manufacturers' price (AMP) or (b) the difference between the AMP and the "best price," or the lowest price available from the manufacturer during the previous quarter rebate period to *any* wholesaler, retailer, provider, health maintenance organization, nonprofit entity or non-excluded government entity. 42 U.S.C. § 1396r-8(c)(1),(2).

22. "The term 'average manufacturer price' means, with respect to a covered outpatient drug of a manufacturer for a rebate period, the average price paid to the manufacturer for

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413

the drug in the United States by wholesalers for drugs distributed to the retail pharmacy class of trade, after deducting customary prompt pay discounts." 42 U.S.C. § 1396r-8(k)(1).

23. The best price, or lowest price charged must take into account cash discounts, free goods that are contingent on any purchase requirement, volume discounts, and rebates, other than the rebate paid to the States under the Medicaid Rebate Program. The best price also is determined without regard to special packaging, labeling, or indentifiers on the dosage form or product or package. And, the best price does not take into account prices that are merely nominal in amount. 42 U.S.C. § 1396r-8(c)(1).

24. Nominally-priced discounts are intended for not-for-profit, charitable entities and for researchers using the drugs for experimental or non-standard purposes. See S. Rep. 102-28(I), Developments in Aging: 1990-Volume 1, 102nd Cong., 1st Sess. 1991 (March 22, 1991), 1991 WL 52579 (Leg.Hist.). Such discounts are not intended for marketing purposes. The Rebate Agreement defines "nominal price" as "any price less than 10% of the AMP in the same quarter for which the AMP is computed." Rebate Agreement at I. Definitions,(s).

25. Any rebate amounts received by the State must be offset against the State's Medicaid expenditures that quarter for purposes of calculating the matching federal financial

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413

participation. 42 U.S.C. § 1396r-8(b)(1)(B).

26. Drug manufacturers are required under the Medicaid Rebate Statute and Rebate Agreement to calculate and report their AMPs and best prices to the Secretary on a quarterly basis. 42 U.S.C. § 1396r-8(b)(3)(A)(i); Rebate Agreement at § II(e). Any information provided by a manufacturer or wholesaler under the rebate statute is confidential and "shall not be disclosed by the Secretary...or a State agency. . .except as the Secretary determines to be necessary to carry out this section." 42 U.S.C. § 1396r-8(b)(3)(D); Rebate Agreement at § VII.

27. States are required to report their total Medicaid drug utilization to each manufacturer and the Secretary sixty days after the end of the rebate quarter. 42 U.S.C. § 1396r-8(b)(2)(A). Using the manufacturer pricing data, CMS computes the unit rebate amount ("URA") "to which the Medicaid utilization information may be applied by States in invoicing the Manufacturer for the rebate payment due." Rebate Agreement at § I(dd). Using the Medicaid drug utilization data, manufacturers calculate and pay the States the rebates they believe are due and owing to each State.

c. The Nevada Medicaid Program

28. The Division of Health Care Financing and Policy is the Nevada state agency which, working with CMS, administers the Nevada State Medical Assistance Plan, or Medicaid. Nevada

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413

Medicaid pays for certain prescription drugs provided to eligible low-income individuals, including people with disabilities, children and elderly citizens. Pursuant to federal and state regulations, reimbursement for prescription drugs dispensed to participants in the Nevada Medicaid program is limited in accordance with formulas that are based on the provider's estimated acquisition cost of the drug or other regulatory limitations. In Nevada, the reimbursement rate is the lowest of: (a) the Maximum Allowable Cost (MAC) established by CMS for multiple source drugs that meet certain criteria, plus the professional/dispensing fee; (b) the Estimated Acquisition Cost (EAC), defined as the Average Wholesale Price (AWP) less 15%, plus the professional/dispensing fee (presently $4.76); or (c) the pharmacy's usual charge to the general public.

29. Nevada pays a portion of Medicaid the cost for goods and services given to the State's Medicaid beneficiaries. That current portion is approximately 55.9%. In the 2004 fiscal year, Nevada spent well over $900 million in Medicaid, over $125 million of which consisted of payments to pharmacies. See http://dhcfp.state.nv.us/pdf%20forms/Info/Fact%20Book%201-21-05%20Final.pdf.

30. The State of Nevada relied and continues to rely upon the benefits conferred by the Medicaid Rebate program, and on the performance of Merck of the obligations imposed by the

Rebate Agreements, to ensure that the Nevada Medicaid program reimbursed payors, e.g. pharmacies, based on the best price available for Merck's pharmaceutical products.

d. Defendant's Reported AMP and Best Price Were False and Fraudulent.

31. Merck faces a continuous battle for market share of its prescription drugs. In response to the competition, Merck employs a variety of illegal marketing strategies to maintain and/or increase its market share by inducing doctors and hospitals to prescribe Merck products over those of competitors. Two such marketing strategies were the SAVE and VIP programs.

The Zocor SAVE Program

32. Merck launched the SAVE (Simvastatin Acute-Care Value Enhancement) Program for Zocor (simvastatin) in April 1998 to counter Pfizer's introduction into the marketplace of its lower priced statin, Lipitor. This national program was intended to have coronary heart disease (CHD) patients in the hospital either initially put on Zocor, or switched from Lipitor to Zocor so that when they were discharged, they would continue the prescription, thus creating a "spillover" market.

33. So long as the hospital or hospital system maintains a market share of 70% for Merck HMG's (Zocor and Mevacor(a lovastatin)), the hospital is entitled to "nominal price discounts" or a 92% discount off the catalog price of Zocor. In May 1999, Merck expanded SAVE to allow hospitals to

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413

get in on the 92% discount even if they could not maintain the 70% market share of the HMGs so long as they increased market share for Zocor by 10 points over the previous quarter or established Zocor as the exclusive or sole-preferred HMG on the formulary for the first time.

34. Merck also offers second-and third-tier, non-nominal price discounts for hospitals which could not meet any of these three standards to be given nominal price discounts. SAVE offers a 30% discount off of catalog price of Zocor for hospitals maintaining a 55% market share of Zocor and a 20% discount for a 45% market share.

35. By May of 1999, Merck was already seeing the desired results from SAVE. Internal reports stated that "in-patient market share for ZOCOR at SAVE hospitals continues to climb. Further, spillover analysis shows that SAVE blunts the growth of Lipitor leading to more scripts for ZOCOR in the communities surrounding SAVE hospitals." As of the beginning of December 1999, Merck reported that "Market share for ZOCOR for targeted SAVE hospitals has grown from 42% to 55% since SAVE was launched" and "SAVE has generated over $55 million in retail sales spillover for ZOCOR nationally."

36. Merck used the SAVE program to create a package of financial incentives to induce hospitals to achieve Merck's sought-after increased market share. For example, from the launch in April 1998 until October 1999, participating

hospitals, *regardless of the market share maintained*, were allowed to take advantage of the nominal price discounts.

37. For those hospitals that had not yet signed on to the SAVE program, Merck directed its pharmaceutical sales representatives to offer hospitals the following monetary incentives to induce them to join:

1. Over one year of up-front nominal pricing for ZOCOR -a benefit not typically seen in our industry.
2. A two month rebate at the start of the contract until wholesaler notification.
3. Multiple enhancements and extensions to SAVE designed to help hospitals achieve and maintain nominal pricing.

38. Merck also used SAVE to fend off the effects that favorable studies regarding Lipitor were having on Zocor's market share. As stated in an internal Merck memorandum: "One of the key objectives for Zocor for the remainder of 2000 is to blunt the potential impact of MIRACL, an outcomes trial utilizing Lipitor 80mg...(T)he SAVE contract is the key resource you can use to pre-empt the possible effects of MIRACL." The point was to keep Zocor in the hospitals to achieve the increased market share which would result from hospital prescriptions spilling over into outpatient retail scripts-paid by Medicaid. "By activelty reinforcing the value of ZOCOR through the SAVE program in these accounts, you can stay on the

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413

offense and continue to strengthen the position of ZOCOR on the hospital's formulary."

39. SAVE's "nominal pricing" is indisputably an incentive-based marketing program. Merck admits that the 20% and 30% discounts off of Zocor was "highly competitive versus competitive statins!" Merck is virtually giving away Zocor to hospitals so that they would exclusively prescribe Zocor to their CHD patients. Merck makes no bones about it: the purpose of SAVE was to induce the hospitals into using Zocor exclusively or at least primarily and to thereby induce the CHD patients into doing the same.

40. Merck permitted SAVE hospitals to purchase Zocor at nominal pricing, *regardless* of the market share the hospital maintained notwithstanding the parameters of the program until October 1999. Then, Merck identified those hospitals at risk of losing the nominal price or other discounts and pressured them to meet the market share requirements and warning that they would lose the SAVE discounts if they did not comply.

41. Merck continues to employ the SAVE program as a key marketing strategy for Zocor.

42. Were Merck to use nominal pricing, as it is intended, to benefit non-profits or financially disadvantaged institutions, the SAVE hospitals would be predominantly "DSHs" or Disadvantaged Share Hospitals which have 11.75% indigent population and qualify for nominal pricing. Yet, only a few of

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413

the hospitals of those listed who were being tracked for falling off the SAVE program are designated as DSHs. Instead, Merck offers these terms only to hospitals which achieve Merck's goals of market control.

43. Merck knows, and knew that the nominal price it charges to hospitals must be reported to CMS. Even so, Merck purposefully did not report both the nominal-price discounts and the non-nominal pricing discounts hospitals were given under SAVE as required under the Medicaid Rebate Act. Merck knowingly and deliberately concealed these discounts for the purposes of calculating best price. Had Merck truthfully reported these prices, they would have affected the best price calculations and Merck would have paid the State of Nevada much greater rebates.

44. Merck knowingly did not disclose these discounts and knowingly did not account for the steep discounts offered under the SAVE program in calculating its quarterly report of AMP or best price to CMS.

The Vioxx VIP Program

45. Merck used a nominal pricing discount scheme similar to SAVE to promote its cornerstone COX-2 inhibitor drug, Vioxx. Merck marketed Vioxx through the Vioxx Incentive Program or VIP. The VIP Program gave hospitals "upfront discounts for Vioxx commensurate with a Hospital/System's agreement to achieve a (greater than or equal to) 80% Market Share for Vioxx...and designating Vioxx as the 'Exclusive NSAID that selectively

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413

inhibits COX-2 on Formulary'." The discount amounted to a nominal price of 92% off of the Merck Catalog Price.

46. Merck knows that the nominal price it charges to hospitals must be reported. Even so, Merck purposefully did not report the nominal-price discount hospitals were given under VIP as required under the Medicaid Rebate Act. Merck knowingly and deliberately concealed these discounts for the purposes of calculating best price. Had Merck truthfully reported these prices, they would have affected the best price calculations and Merck would have paid the State of Nevada much greater rebates.

47. Merck knowingly did not disclose the nominal price discount and knowingly did not account for the steep discount offered under the VIP program in calculating its quarterly report of AMP or best price to CMS.

48. Both the VIP and SAVE programs misused and abused nominal pricing to lure hospitals into purchasing and maintaining a high market share of Vioxx and Zocor. The nominal pricing offered by Merck should have been reported as the best price on which rebates should have been calculated and issued to the States. Since the purpose of nominal pricing is to make drugs available for charitable institutions and facilities which treat large numbers of uninsured patients, and not a marketing ploy, the discounts Merck offered, and continues to offer, are the best price upon which Medicaid Rebate Act rebates should have been, and should be, issued to Nevada.

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413

COUNT 1
VIOLATION OF NEVADA FALSE CLAIMS ACT
FOR NOMINAL PRICE DISCOUNTS

49. Plaintiff repeats and realleges each allegation contained in paragraphs 1 through 48 above as if fully set forth herein.

50. Merck's products Zocor and Vioxx are prescribed to Nevada public aid recipients and Nevada's Division of Health Care Financing and Policy makes payment to pharmacies that sell these drugs to Nevada public aid recipients.

51. Merck knowingly and willfully makes or made and/or causes or caused to be made false statements and/or representations of material facts, directly and indirectly to Nevada's Division of Health Care Financing and Policy, to obtain reimbursement to pharmacies from the Nevada Medicaid program for its pharmaceutical products in violation of N.R.S. § 357.040(1)(a) and/or (b). Specifically, Merck causes the Secretary to make false statements to Nevada regarding URAs which are used to invoice Merck with the amount that Merck rebates to Nevada.

52. Merck uses the schemes detailed herein that have the effect of increasing the total amount the Nevada Medicaid program pays for pharmaceutical products beyond the maximum amount payable for such products under the applicable rate or fee schedule in violation N.R.S. § 357.040(1)(a) and/or(b).

53. Merck's deliberate and purposeful concealment

from Nevada of the marketing, promotional and pricing inducements it offers to hospital purchasers participating in the SAVE and VIP programs, and Merck's deliberate and purposeful failure to report the net reduction in the prices paid by the hospitals constitute violations of N.R.S. § 357.040(1)(a) and/or (b).

54. Accordingly, Merck violated N.R.S. § 357.040(1)(a) and/or (b) from at least 1994 to the present by engaging in the fraudulent and illegal practices described herein, including its deliberate and knowing submission of false records and/or statements of quarterly reports to CMS of AMP and best price for Zocor and Vioxx which did not take into account the nominal-price discounts offered under the SAVE and VIP programs.

55. Merck violated N.R.S §357.040(1) (a) and/or (b) and knowingly causes or caused thousands of false claims to be made, used and presented to the State of Nevada from at least 1994 to the present.

56. Compliance with applicable Medicaid laws, regulations, and provisions was and continues to be an express condition of payment of claims submitted to the State of Nevada, and an express condition of Merck's participation in the Nevada Medicaid program.

57. Had the State of Nevada known that Merck was violating the Medicaid Rebate Act and the state laws cited herein, it would not have paid the claims submitted by health

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413

care providers and third party payers in connection with Merck's fraudulent and illegal practices. More importantly, Nevada would have disallowed Merck's participation in the Nevada Medicaid Program.

58. The State of Nevada, by and through the Nevada Medicaid program and other state health care programs, and unaware of Merck's fraudulent and illegal practices, paid the claims submitted for outpatient prescriptions for Zocor and Vioxx in connection therewith. As a result of Merck's false statements and/or representations of material facts, Nevada has paid sums in excess of the amounts which should have been charged for pharmaceutical products.

59. As a result of Merck's violations of N.R.S. § 357.040(1)(a) and/or (b) the State of Nevada has been damaged in the millions of dollars.

60. Steinke is a private person with direct and independent knowledge of the allegations of this Complaint, who has brought this action pursuant to N.R.S. § 357.080(1) on behalf of himself and the State of Nevada.

61. WHEREFORE, Relator H. Dean Steinke respectfully demands judgement against Merck as prayed for below.

COUNT II
VIOLATION OF NEVADA FALSE CLAIMS ACT
FOR NOMINAL PRICE DISCOUNTS

62. Plaintiff repeats and realleges each allegation contained in paragraphs 1 through 48 above as if fuly set forth

herein.

63. Merck's product Zocor and Vioxx are prescribed to Nevada public aid recipients and Nevada's Division of Health Care Financing and Policy makes payment.

64. Merck knowingly and willfully makes or made and/or causes or caused to be made false statements and/or representations of material facts, directly and indirectly to Nevada's Division of Health Care Financing and Policy, to avoid paying a sum certain of a rebate based upon the difference between AMP and the nominal price which should have been reported as the best price, in violation of N.R.S. § 357.040(1)(g).

65. Merck uses the schemes detailed herein that have the effect of decreasing the total amount paid by Merck to Nevada, in violation of N.R.S. § 357.040(1)(g).

66. Merck's deliberate and purposeful concealment from Nevada of the marketing, promotional and pricing inducements it offers to hospital purchasers participating in the SAVE and VIP program, and Merck's deliberate and purposeful failure to report the net reduction in the prices paid by the hospitals constitute violations of N.R.S. § 357.040(1)(g).

67. Accordingly, Merck violated N.R.S. § 357.040(1)(g) from at least 1994 to the present by engaging in the fraudulent and illegal practices described herein, including its deliberate and knowing submission of false records and/or

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413

statements of quarterly reports to CMS of AMP and best price for Zocor and Vioxx which did not take into account the nominal-price discounts offered under the SAVE and VIP programs.

68. Merck violated N.R.S. § 357.040(1)(g) and knowingly causes or caused thousands of false claims to be made, used and presented to the CMS and the State of Nevada from at least 1994 to the present.

69. Compliance with applicable Medicaid laws, regulations, and provisions was and continues to be an express condition of payment of claims submitted to the State of Nevada, and an express condition of Merck's participation in the Nevada Medicaid program.

70. Had the State of Nevada known that Merck was violating the Medicaid Rebate Act and the state laws cited herein, it would not have paid the claims submitted by pharmacies arising from Merck's fraudulent and illegal practices. More importantly, Nevada would have disallowed Merck's participation in the Nevada Medicaid Program.

71. The State of Nevada, by and through the Nevada Medicaid program and other state health care programs, and unaware of Merck's fraudulent and illegal practices, paid the claims submitted for outpatient prescriptions for Zocor and Vioxx in connection therewith. As a result of Merck's false statements and/or representations of material facts, Nevada has paid out excessive amounts in Medicaid reimbursements for

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413

Merck's pharmaceutical products to pharmacies throughout the state of Nevada.

72. As a result of Merek's violations of N.R.S. § 357.040(1)(g) the State of Nevada has been damaged in the millions of dollars.

73. Steinke is a private person with direct and independent knowledge of the allegations of this Complaint, who has brought this action pursuant to N.R.S. § 357.080(1) on behalf of himself and the State of Nevada.

74. WHEREFORE, Relator H. Dean Steinke respectfully demands judgement against Merck as prayed for below.

COUNT III
VIOLATION OF NEVADA FALSE CLAIMS ACT
FOR OTHER THAN NOMINAL PRICE DISCOUNTS

75. Plaintiff repeats and realleges each allegation contained in paragraphs 1 through 48 above as if fully set forth herein.

76. Merck's products Zocor and Vioxx are prescribed to Nevada public aid recipients and Nevada's Division of Health Care Financing and Policy makes payment to pharmacies that sell these drugs to Nevada public aid recipients.

77. Merck knowingly and willfully makes or made and/or causes or caused to be made false statements and/or representations of material facts, directly and indirectly to Nevada's Division of Health Care Financing and Policy, to obtain reimbursement to pharmacies from the Nevada Medicaid program for

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413

its pharmaceutical products in violation of N.R.S. § 357.040(1) (a) and/or (b). Specifically, Merck causes the Secretary to make false statements to Nevada regarding URAs which are used to invoice Merck with the amount that Merck rebates to Nevada.

78. Merck uses the schemes detailed herein that have the effect of increasing the total amount the Nevada Medicaid program pays for pharmaceutical products beyond the maximum amount payable for such products under the applicable rate or fee schedule in violation of N.R.S. § 357.040(1) (a) and/or (b).

79. Merck's deliberate and purposeful concealment from Nevada of the marketing, promotional and pricing inducements it offers to hospital purchasers participating in the SAVE program, and Merck's deliberate and purposeful failure to report the net reduction in the prices paid by the hospitals constitute violations of N.R.S. § 357.040(1) (a) and/or (b).

80. Merck violated N.R.S. § 357.040(1) (a) and/or (b) from at least 1994 to the present by engaging in the fraudulent and illegal practices described herein, including its deliberate and knowing submission of false records and/or statements of quarterly reports to CMS of AMP and best price for Zocor which did not take into account the first and second-tier discounts (other than nominal-price discounts) offered under the SAVE program.

81. Merck furthermore violated N.R.S. § 357.040(1) (a) and/or (b) and knowingly caused hundreds of thousands of

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413

false claims to be made, used and presented to the State of Nevada from at least 1994.

82. Compliance with applicable Medicaid laws, regulations, and provisions was and continues to be an express condition of payment of claims submitted to the State of Nevada, and an express condition of Merck's participation in the Nevada Medicaid program.

83. Had the State of Nevada known that Merck was violating the Medicaid Rebate Act and the State laws cited herein, it would not have paid the claims submitted by health care providers and third party payers in connection with Merck's fraudulent and illegal practices. More importantly, Nevada would have disallowed Merck's participation in the Nevada Medicaid Program.

84. Relator is informed and believes and based thereon alleges that Merck further violated N.R.S. § 357.040(1)(a) and/or (b) by delivering to some Nevada health care providers free samples, in the form of stock bottles, in such volumes as to effectively lower the price Merck was charging these providers for these drugs.

85. The State of Nevada, by and through the Nevada Medicaid program and other state health care programs, and unaware of Merck's fraudulent and illegal practices, paid the claims submitted by health care providers and third party payers in connection therewith. As a result of Merck's false

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413

statements and/or representations of material facts, Nevada has paid sums in excess of the amounts which should have been charged for pharmaceutical products.

86. As a result of Merck's violations of N.R.S. § 357.040(1) (a) and/or (b) the State of Nevada has been damaged in the millions of dollars.

87. Steinke is a private person with direct and independent knowledge of the allegations of this Complaint, who has brought this action pursuant to N.R.S. § 357.080(1) on behalf of himself and the State of Nevada.

88. WHEREFORE, Relator H. Dean Steinke respectfully demands judgment against Merck as prayed for below.

COUNT IV
VIOLATION OF NEVADA FALSE CLAIMS ACT
FOR NOMINAL PRICE DISCOUNTS

89. Plaintiff repeats and realleges each allegation contained in paragraphs 1 through 48 above as if fully set forth herein.

90. Merck's products Zocor and Vioxx are prescribed to Nevada public aid recipients and Nevada's Division of Health Care Financing and Policy makes payment to pharmacies that sell these drugs to Nevada public aid recipients.

91. Merck knowingly and willfully makes or made and/or causes or caused to be made false statements and/or representations of material facts, directly and indirectly to Nevada's Division of Health Care Financing and Policy, to avoid

paying a sum certain of a rebate based upon the difference between AMP and the best price for Zocor which did not take into account the first and second-tier discounts (other than nominal-price discounts) offered under the SAVE program, in violation of N.R.S. § 357.040(1)(g).

92. Relator is informed and believes and based theron alleges that Merck further violated N.R.S. § 357.040(1)(g) by delivering to some Nevada health care providers free samples, in the form of stock bottles, in such volumes as to effectively lower the price Merck was charging these providers for these drugs. Merck knowingly and willfully makes or made and/or causes or caused to be made false statements and/or representations of material facts, directly and indirectly to Nevada's Division of Health Care Financing and Policy, to avoid paying a sum certain of a rebate based upon the difference between AMP and the best price for Zocor which did not take into the discounts which resulted from the stock bottle free samples, in violation N.R.S. § 357.040(1)(g).

93. Merck uses the schemes detailed herein that have the effect of decreasing the total amount paid by Merck to Nevada, in violation of N.R.S. § 357.040(1)(g).

94. Merck's deliberate and purposeful concealment from Nevada of the marketing, promotional and pricing inducements it offers to hospital purchasers participating in the SAVE program, and Merck's deliberate and purposeful failure

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413

to report the net reduction in the prices paid by the hospitals constitute violations of N.R.S. § 357.040(1)(g).

95. Accordingly, Merck violated N.R.S. § 357.040(1)(g) from at least 1994 to the present by engaging in the fraudulent and illegal practices described herein, including its deliberate and knowing submission of false records and/or statements of quarterly reports to CMS of AMP and best price for Zocor and Vioxx which did not take into account the nominal-price discounts offered under the SAVE and VIP programs.

96. Merck violated N.R.S. § 357.040(1)(g) and knowingly causes or caused thousands of false claims to be made, used and presented to the CMS and the State of Nevada from at least 1994.

97. Compliance with applicable Medicaid laws, regulations, and provisions was and continues to be an express condition of payment of claims submitted to the State of Nevada, and an express condition of Merck's participation in the Nevada Medicaid program.

98. Had the State of Nevada known that Merck was violating the Medicaid Rebate Act and the State laws cited herein, it would not have paid the claims submitted by health care providers and third party payers in connection with Merck's fraudulent and illegal practices. More importantly, Nevada would have disallowed Merck's participation in the Nevada Medicaid Program.

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413

99. The State of Nevada, by and through the Nevada Medicaid program and other state health care programs, and unaware of Merck's fraudulent and illegal practices, paid the claims submitted for outpatient prescriptions for Zocor and Vioxx in connection therewith. As a result of Merck's false statements and/or representations of material facts, Nevada has paid sums in excess of the amounts which should have been charged for pharmaceutical products.

100. As a result of Merck's violations of N.R.S. §357.040(1)(g) the State of Nevada has been damaged in the millions of dollars.

101. Steinke is a private person with direct and independent knowledge of the allegations of this Complaint, who has brought this action pursuant to N.R.S. § 357.080(1) on behalf of himself and the State of Nevada.

102. WHEREFORE, Relator H. Dean Steinke respectfully demands judgment against Merck as prayed for below.

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413

PRAYER FOR RELIEF

103. WHEREFORE, Relator H. Dean Steinke respectfully requests this Court to award the following damages to the following parties and against Merck:

To the STATE OF NEVADA:

(1) Three times the amount of actual damages which the State of Nevada has sustained as a result of Merck's fraudulent and illegal practices;

(2) A civil penalty of not less than $2,000 and not more

than $10,000 for each false claim which Merck caused to be presented to the State of Nevada.

(3) Prejudgment interest; and

(4) All costs incurred in bringing this action.

To RELATOR, H. DEAN STEINKE:

(1) The maximum amount allowed pursuant to N.R.S. § 357.210 and/or any other applicable provision of law;

(2) Reimbursement for reasonable expenses which Relator incurred in connection with this action.

(3) An award of reasonable attorneys' fees and costs; and

(4) Such further relief as this Court deems equitable and just.

Dated: April 19, 2005

STATE OF NEVADA, ex rel.
H. DEAN STEINKE

By: _____
Mark A. Winter
State Bar No. 001977
801 N. Division St.
Carson City, NV 89703
(775) 882-2183
(775) 883-9413 fax

Law Offices
STOKES & WINTER
801 North Division Street
Carson City, Nevada 89703-3925
(775) 882-2183 FAX (775) 883-9413