CAUSE NO. GV-401288

THE STATE OF TEXAS, **ex rel.** **ALLEN JONES,** **Plaintiff,** **v.** **JANSSEN, L.P. , JANSSEN PHARMACEUTICAL, INC., ORTHO-MCNEIL PHARMACEUTICAL, INC., MCNEIL CONSUMER & SPECIALTY PHARMACEUTICALS, JANSSEN-ORTHO, LLC, and JOHNSON & JOHNSON, INC.,** **Defendants**	**IN THE DISTRICT COURT** **250th JUDICIAL DISTRICT** **TRAVIS COUNTY, TEXAS** **FILED UNDER SEAL PURSUANT TO TEX. HUM. RES. CODE § 36.102(b)** **DO NOT PLACE IN PRESS BOX** **DO NOT ENTER ON COMPUTER DOCKET**

RELATOR'S FIRST AMENDED PETITION (UNDER SEAL)

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RELATOR'S FIRST AMENDED PETITION (UNDER SEAL)

Relator, Allen Jones, files this First Amended Petition (the "Petition") under seal, as follows:

1. This case is filed under seal pursuant to Texas Human Resources Code § 36.102(b). Upon unsealing, discovery is intended to be conducted under Level 3 of Rule 190, Texas Rules of Civil Procedure.

THE PARTIES

2. Plaintiff, ALLEN JONES, ("JONES" or "RELATOR") is a citizen of the United States and a resident of the State of Pennsylvania. From May 2002 until June 28, 2004, Relator was an employee of the Office of the Inspector General ("OIG"), Bureau of Investigations of the Commonwealth of Pennsylvania. The Relator brings this action based on his direct, independent, and personal knowledge and also on information and belief. He brings this action against the Defendants for violations of Texas Human Resources Code § 36.002, for the State of

Texas (the "State") and for himself, pursuant to the authority granted by Texas Human Resources Code § 36.101.

3. Jones is an original source of the information underlying this First Amended Complaint and provided to the State of Texas in the Disclosure Statement served with Relator's Original Complaint. Furthermore, Jones was an original source of information underlying media reports on the Defendants' scheme. *See* e.g., Melody Peterson, Making Drugs, Shaping the Rules: Big Pharma is Eager to Help States Set Medication Guidelines, NEW YORK TIMES at 3-10 (Feb. 1, 2004). Jones has direct and independent knowledge of the information on which the allegations are based. Jones previously provided the Attorney General for Texas with a Disclosure Statement which presented substantially all material evidence and information he had in his possession at the time of the filing of the Original Complaint pursuant to Texas Human Resources Code §36.102. Jones brings this action on behalf of the State of Texas and himself against Defendants for treble damages and civil penalties arising from the Defendants' misrepresentations and failure to disclose material evidence false statements and false claims in violation of the Texas Medicaid Fraud Prevention Act ("TMFPC"), Texas Human Resources Code, §36.001 *et seq*.

4. Defendant JANSSEN, L.P. ("JANSSEN L.P.") is organized under the laws of New Jersey and has its principal place of business in New Jersey, at 1125 Trenton-Harbourton Rd., Titusville, NJ 08560. Janssen L.P. is a wholly-owned subsidiary of Johnson & Johnson. Janssen L.P. manufactured and marketed the drug Risperidone known by the brand name Risperdal. Janssen L.P. conducts business in Texas.

5. Defendant JANSSEN PHARMACEUTICA, INC., ("JANSSEN PHARMACEUTICA") is incorporated in Pennsylvania and has its principal place of business in

New Jersey, at 1125 Trenton Harbourton Rd., Titusville, NJ 08560. Janssen Pharmaceutica manufactured and marketed the drug Risperidone known by the brand name Risperdal. Janssen Pharmaceutica conducts business in Texas.[1]

6. Defendant ORTHO-MCNEIL PHARMACEUTICAL, INC. ("ORTHO-MCNEIL") is incorporated in Delaware and has its principal place of business in New Jersey, at 1000 US Hwy. 202, Raritan, NJ 08869. Ortho-McNeil is a wholly-owned subsidiary of Johnson & Johnson. Ortho-McNeil conducts business in Texas.

7. Defendant MCNEIL CONSUMER & SPECIALTY PHARMACEUTICALS ("MCNEIL CONSUMER & SPECIALTY") is incorporated in New Jersey and has its principal place of business in Pennsylvania at 7050 Camp Hill Rd., Fort Washington, PA 19034. McNeil Consumer & Specialty is a wholly-owned subsidiary of Johnson & Johnson. McNeil Consumer & Specialty conducts business in Texas.

8. Defendant JANSSEN ORTHO LLC ("JANSSEN ORTHO") is incorporated in Delaware and has its principal place of business at One Johnson & Johnson Plaza, New Brunswick, NJ 08933. Janssen Ortho is a wholly owned subsidiary of Johnson & Johnson. Janssen Ortho conducts business in Texas.

9. Defendant JOHNSON & JOHNSON ("JOHNSON & JOHNSON") is incorporated in New Jersey and has its principal place of business in New Jersey at One Johnson & Johnson Plaza, New Brunswick, NJ 08933. Johnson & Johnson is the parent company of Janssen, L.P, Janssen, Ortho-McNeil, McNeil Consumer & Specialty, and Janssen Ortho.[2] Johnson & Johnson conducts business in Texas.

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[1] Janssen, L.P. and Janssen Pharmaceutica are collectively referred to herein as Janssen.
[2] Johnson & Johnson, Janssen, L.P, Janssen, Ortho-McNeil, McNeil Consumer & Specialty, and Janssen Ortho are collectively referred to herein as the "Defendants."

10. In connection with services rendered to and medications prescribed to patients covered by the Texas Medicaid program, the Defendants herein have conspired to and have, in fact, knowingly and/or intentionally committed unlawful acts that caused the State of Texas to pay excessive reimbursements under the Texas Medicaid program by:

a. making or causing to be made false statements or misrepresentations of material fact intended to be used to determine prescription drug(s) eligibility for a benefit or payment under the Medicaid program;

a. concealing or failing to disclose events and information that Defendants knew affected the initial and continued right to eligibility, benefit or payment under the Medicaid program;

b. concealing or failing to disclose events and information to permit Defendants to receive a benefit or payment that is not authorized or benefit that is greater than authorized; and

c. making, causing to be made, inducing, or seeking to induce the making of false statements or misrepresentations of material fact concerning the efficacy and safety of prescription medications in order that the prescription drug(s) may qualify for reimbursement under the Medicaid program.

FILING UNDER SEAL

11. In accordance with Texas Human Resources Code § 36.102(b), this Petition is filed *in camera* and under seal and will not be served on the Defendants until the Court so orders. Also in accordance with Texas Human Resources Code § 36.102(a), a copy of this First Amended Petition has been provided to the Attorney General of the State of Texas.

JURISDICTION AND VENUE

12. This Court has jurisdiction of this action pursuant to Texas Human Resources Code § 36.101.

13. Venue is proper in this judicial district pursuant to the Texas Human Resources Code § 36.052(d).

FACTUAL BACKGROUND

14. Beginning in the early 1990s and through the present day, drug companies developed new schizophrenia drugs known as "Atypical Antipsychotics" ("Atypicals"). These drugs are also known as Second Generation Antipsychotics ("SGAs"). For example, the following prescription antipsychotics, Risperdal, Zyprexa, and Seroquel, are Atypicals. The cost of these prescription antipsychotics far exceeds the cost of the older generation of antipsychotic drugs which were available in generic form. Each of the newer prescription antipsychotics listed above is a patented medication for which no available generic exists.

15. In 1994, Defendants launched their prescription antipsychotic, Risperdal, entering a market which until that time had been dominated by a single Atypical, Clozaril. At the time, the only FDA-approved indication for Risperdal use was for adults diagnosed with schizophrenia. Risperdal had no FDA-approved indication for any use in the child and adolescent population until October 2006. At that time, Risperdal received a narrow indication for use in the limited population of children and adolescents diagnosed with irritability associated with autism. Defendants' acts and omissions in the course of its marketing activities and plans for the penetration of the Atypical market provide the factual basis for this Petition.

16. The older prescription antipsychotics, first appearing in the 1960s, are known as "Typical Antipsychotics" ("Typicals"). Today, the availability of a generic form for each of the

older Typicals means that patients and state health programs pay pennies per pill rather than the dollars per pill incurred for the purchase of newer, patented Atypicals. The United States of America and the several states fund health care for the poor and mentally ill through public health assistance programs, Medicaid and Medicare. The states administer Medicaid with substantial reimbursement by the federal government. State and federal assistance programs incur the vast majority of the prescription drug costs associated with the treatment of mental illness in the United States. In an effort to efficiently manage the monies budgeted for prescription drug costs, governmental agencies historically exhibited a preference for generic drugs. To overcome this historical preference for and the economic advantages offered by generic Typicals, Defendants sought to distinguish their product, Risperdal, from older Typicals by improperly claiming that it was safer, more effective and more economical based upon improved outcomes in the treated populations.

17. In the mid-1990s, the State of Texas began developing a set of medication protocols or "algorithms"[3] to standardize the treatment of patients in public mental health programs with certain psychiatric disorders. These efforts resulted in the creation and implementation of the "Texas Medication Algorithm Project" or TMAP (pronounced "T-Map"). Defendants, in conjunction with other manufacturers of Atypicals, provided substantial financial contributions to and improperly influenced the development of these standardized public health protocols. At least one Texas mental health program decision-maker stated in speeches and other documents that funding for TMAP exceeded 6 million dollars. The largest contributors to this

[3] Medication algorithms are flow charts that illustrate step-by-step movements in a process. The proposed algorithms, together with text guidelines, were to guide a clinician in prescribing medications to patients and in changing or adjusting medications. The underpinning of a medication algorithm is a formulary of approved and required medications. A formulary, much like a menu in a restaurant, lists the medications available to the clinician. The formulary lists the medications a clinician may choose from in determining which medication to prescribe his patients. A clinician may not "special order;" unless a drug is on the menu, the clinician may not prescribe it for a patient without a written justification.

fund were the Defendants and the charitable arm of Johnson & Johnson, the Robert Wood Johnson Foundation. These donations facilitated the designation of their profit-center drug, Risperdal, to replace the cheaper, equally effective generics available to the State of Texas at that time.

18. Schizophrenia and bipolar disorder were two principal conditions targeted by TMAP. Studies indicate that the incidence of schizophrenia in the United States population ranges from .55% to 1%. The National Institute of Mental Health reports that manic bipolar disorder affects approximately 2.6% of the United States population. TMAP required the prescription of specific medications for the treatment of mental illness. Fundamentally, TMAP required doctors to first treat their patients with the newest, most expensive drugs patented by the pharmaceutical companies. Based upon TMAP, providers treating mental illness could choose which patented drug to use, but effectively could not choose to use less expensive, equally beneficial generic drugs unless and until the patented drugs failed. The Defendants viewed TMAP as a mechanism to overcome both the barriers created by the dearth of scientific evidence supporting widespread prescription of the newer medications and also the historic economic advantage of generic Typicals.

19. In Texas, the Defendants unduly influenced at least one mental health program decision-maker to become a chief proponent of Risperdal's inclusion in the TMAP protocol and to help secure TMAP's adoption and implementation. TMAP includes separate algorithms and drug menus for the treatment of schizophrenia, depression and bi-polar disorder. Defendants' product, Risperidone or Risperdal, is mandated as a drug of choice in the schizophrenia treatment model and regimen. Defendants' antipsychotic Risperdal, obtained its position on the TMAP

algorithms as a result of Defendants' improper influence over at least one mental health program decision-maker.

20. After TMAP's initial adoption by Texas mental health program decision-makers, an implementation project was developed to facilitate the expansion of TMAP throughout Texas. The Defendants continued their financial support of and improper influence in the TMAP project through this implementation plan, also know as the Texas Implementation of Medication Algorithms, or TIMA.

21. On the heels of the adoption of TMAP and its corresponding implementation program, TIMA, TMAP's proponents turned their attention to an even more vulnerable segment of the population, children and adolescents. In 1997-98, TMAP proponents began working on the Texas Children's Medication Algorithm Project. ("TCMAP"). Defendants' improper influence infected this process as well. As a result of the continuing improper relationship between Defendants and at least one Texas mental health program decision maker, Defendants' product, Risperdal, received a preferential recommendation as a medication of choice on the TCMAP algorithms used to treat children and adolescents. Defendants' product did not have an FDA-approved indication for use in children and adolescents when it was placed on the TCMAP algorithms.

22. After the adoption of these new programs in Texas, Defendants experienced a significant increase in prescriptions and sales of Risperdal throughout the state. TMAP and TCMAP proved to be powerful marketing tools for Risperdal. Driven by these gains and revenues, Defendants turned to developing a concerted marketing plan to replicate these programs, and the dramatic revenue and market share generated by TMAP and its progeny, in other states. Defendants bypassed governmental safeguards and scientific review by promoting

TMAP and the related child and adolescent algorithms, TCMAP as "treatment models" developed by panels of "experts." Defendants relied upon paid consultants on their expert consensus panels, peer-to-peer, or "viral," marketing strategies and administrative decisions made by a select few public officials to facilitate the adoption of TMAP-like programs in other states. To date, at least seventeen states, including Texas, have implemented TMAP or are in the process of doing so. In effect, TMAP became the standard-bearer for Defendants' Risperdal marketing plan.

23. Based upon Risperdal's dramatic market success as a result of its inclusion in TMAP and its progeny, Defendants began a concerted campaign to encourage other states to adopt similar programs. As part of the Defendants' scheme to have other state governments adopt medication algorithms, Defendants' improperly influenced state mental health program decision-makers with trips, perks, travel expenses, honoraria and other payments and also paid these decision-makers to speak in their official capacities to promote the Defendants' scheme. Proponents of TMAP began distributing their "findings" widely. TMAP principals and mental health program decision-makers traveled extensively, at the expense of Defendants, to tout the wonders of the new drugs and to expand the guidelines and algorithms to other states — and to other nations. Through contributions to TIMA, Defendants, in concert with the charitable arm of Johnson & Johnson, The Robert Wood Johnson Foundation, deployed at least one Texas mental health decision maker throughout the United States to act as its corporate spokesman to endorse and to encourage the further adoption of TMAP. These TIMA contributions funded numerous trips and seminars nationwide at which this Texas mental health program decision maker consulted with Defendants, promoted TMAP, and assisted in the training of other states' mental health program decision makers in the development and use of TMAP.

24. Defendants began targeting states with substantial populations of Medicaid patients with mental illness. One of the earliest states targeted by Defendants was Pennsylvania, where TMAP transformed to PENNMAP through the efforts of Defendants' marketing and "education" plans.

25. Relator discovered some of the facts underlying this complaint while conducting an investigation for the Pennsylvania Office of the Inspector General. As an OIG employee, Relator began investigating allegations of impropriety in the course of PENNMAP's adoption and implementation. In the course of his investigation of PENNMAP, Jones traveled to Janssen headquarters in Titusville, NJ, to conduct interviews of Defendants' attorneys, agents and employees about payments made to state agencies and employees. During those interviews, one or more of Defendants' attorneys, agents or employees revealed payments made to at least one Texas state mental health program decision-maker. These interviews and Pennsylvania's investigation alerted the Defendants, through their attorneys, agents or employees, of the existence of suspected Medicaid fraud and potential violations of the Texas anti-kickback statutes. Despite this knowledge, Defendants failed to report this suspected Medicaid fraud and possible violation of the Texas anti-kickback statute to the State of Texas.

26. After his on-site interviews with Janssen personnel, Jones's supervisor told him that the investigation would not cover drug companies, and should focus instead on Steven Fiorello, a fairly low-level state employee. When Jones pressed for an explanation for the limited nature of the investigation and the retaliation he was facing, one of his managers stated that: "Drug companies write checks to politicians — they write checks to politicians on both sides of the aisle." Thus, Relator Jones was meant to understand that political pressures brought on by drug companies' influence prevented the Pennsylvania OIG from doing its job and

safeguarding taxpayer funds. When Jones kept pressing to investigate the full scope of the wrongdoing, his supervisors removed him as lead investigator on the case in retaliation for those efforts.

27. TMAP represented only one piece of Defendants' entire market penetration scheme for Risperdal. Having convinced numerous state governments to express a preference for the use of its product through its specialty sales division devoted to public sector marketing, Defendants set out to brand Risperdal as the drug of choice throughout the mental health community. Through the use of a variety of marketing tools disguised as education, scientific research and patient advocacy literature, Defendants sought to penetrate every segment of the medical provider and patient caregiver communities. Defendants identified an untapped market which it sought to exploit by promoting its product as a panacea for a range of mental illnesses, symptoms and disorders. Examples of these marketing tools include Continuing Medical Education programs ("CMEs"), Speakers' Bureaus, Advisory Boards, Investigator Initiated Research, company-funded patient advocacy literature, and trade publications. Defendants hired third-party contractors to conceal Defendants' control and funding of CMEs, Speaker's Bureaus, Advisory Boards, clinical research and other events and organizations to lend an air of independent consensus about the acceptance, benefits and safety of Risperdal. For example, Defendants' Advisory Boards were often comprised entirely of key opinion leaders, including State Mental Health Directors, who were regularly treated to trips and conferences, with all expenses paid by Janssen. Central to all of these marketing vehicles were Defendants' claims that Risperdal was a safer, more effective medication which the mental health community should choose not only over the older, cheaper generic medications, but also over other available Atypicals. Defendants' made these claims in direct contravention to FDA notices and warnings.

28. In contrast to Defendants' claims of safety, increased tolerance and effectiveness, Defendants' product, Risperdal, appears to be only as effective or, in some instances, less effective and less safe in both the adult population and the child and adolescent population. In fact, the side effects in the child and adolescent population appear to be more pronounced and more serious. Despite Defendants' marketing and claims of safety and efficacy, the use of Risperdal has given rise to serious safety concerns and has been shown to have a number of serious side effects and health risks, including, but not limited to, Tardive Dyskinesia; increased risk of stroke and transient ischemic attacks; hyperglycemia; diabetes mellitus; metabolic syndrome; hyperlipidemia (elevations in cholesterol, triglycerides); excessive weight gain; renal failure; Hyperprolactinemia; increased risk of pituitary tumors; and mammary gland and pancreatic islet cell hyperplasia and/or neoplasia.

29. Defendants did not limit their claims of safety and efficacy to the treatment of the less than 5% of the adult population believed to suffer from schizophrenia and bipolar disorder. Defendants also focused on the child and adolescent population. Defendants used each of the marketing tools described above to inform the mental health community of their position that Risperdal was a medication which could be safely prescribed for a variety of symptoms and disorders in the child and adolescent population. Through a concerted campaign of CMEs, Speaker's Bureaus, Advisory Boards, purchased clinical research and other events and organizations, Defendants targeted the medical provider and patient caregiver communities to penetrate the child and adolescent market and remove the mental health community's traditional barriers to the prescription of antipsychotics for children and adolescents. Again, Defendants relied upon improper, and false, claims of safety and efficacy to overcome this resistance. Defendants marketed Risperdal, their newer, patented medication, as safer and more effective

than the older, generic brands and other Atypicals on the market. These drugs, they said, not only better treated the symptoms of mental illness, they did so without the troublesome side effects often seen with conventional medications.

DEFENDANTS' UNLAWFUL ACTS UNDER THE TEXAS MEDICAID FRAUD PREVENTION ACT

30. Relator realleges and incorporates the allegations in paragraphs 1 – 29 as if fully set forth herein.

31. In connection with services rendered to and medications prescribed for patients covered by the Texas Medicaid program, the Defendants herein have conspired to and have, in fact, knowingly or intentionally caused the Texas Medicaid program to be overcharged, through the following unlawful acts:

32. Defendants knowingly and intentionally made or caused to be made false statements or misrepresentations to Texas Medicaid prescribers and state decision-makers regarding the relative safety and efficacy of the Defendants' product, Risperdal, as compared to older generic antipsychotics and/or other Atypicals available on the market. This conduct violated TMFPA Section 36.002 (1).

33. Defendants knowingly and intentionally made or caused to be made false statements or misrepresentations to Texas Medicaid prescribers and state decision-makers regarding the significant side effects and long-term health risks experienced by patients taking the Defendants' product, Risperdal. Defendants knowingly and intentionally made or caused to be made misrepresentations that their product, Risperdal, caused fewer side effects and long-term health complications than the older generic antipsychotics and/or other Atypicals available on the market. This conduct violated TMFPA Section 36.002 (1).

34. Defendants knowingly and intentionally made or caused to be made false statements or misrepresentations to Texas Medicaid prescribers and state decision-makers regarding the appropriate use of Risperdal as a broad-use medication for children and adolescents. This conduct violated TMFPA Section 36.002 (1).

35. Defendants knowingly or intentionally concealed or failed to disclose evidence that Defendants improperly influenced at least one Texas mental health program decision-maker to promote and/or require the use of Risperdal in Medicaid patients through medication algorithms mandated throughout the Texas mental health care system. This conduct violated TMFPA Section 36.002 (2).

36. Defendants knowingly or intentionally concealed or failed to disclose evidence that Defendants improperly influenced at least one Texas mental health program decision-maker to adopt medication algorithms for children and adolescents that recommended Risperdal. This improper influence and the resulting algorithms created the appearance of the existence of substantial scientific evidence to support the use of Risperdal in children and adolescents at a time when no FDA indication existed for any usage of Risperdal in the child and adolescent population. This conduct violated TMFPA Section 36.002 (2).

37. Defendants knowingly or intentionally concealed or failed to disclose evidence to Texas Medicaid prescribers and state decision-makers concerning the significant increased risk of serious side effects and long-term health consequences associated with the use of the Defendants' product, Risperdal, in the child and adolescent population. This conduct violated TMFPA Section 36.002 (2).

38. Defendants knowingly or intentionally concealed or failed to disclose evidence of which each of them, through their attorneys, agents or employees, had knowledge regarding

suspected Medicaid fraud within the State of Texas and possible violations of the State of Texas's anti-kickback statute as codified at Human Resource Code Section 32.039 (b). These acts of suspected Medicaid fraud and possible violations of the Texas anti-kickback statute include, but are not limited to, acts which were investigated and disclosed to each of the Defendants, through their attorneys, employees and agents, by the Pennsylvania OIG. These acts include, but are not limited to, acts and possible violations which involved at least one Texas mental health program decision-maker. This conduct violated TMFPA Section 36.002 (2).

39. Defendants knowingly or intentionally made, caused to be made, induced, or sought to induce, the making of a false statement or misrepresentation of material fact concerning the safety and efficacy, or lack thereof, of Risperdal which is information required by state law, rule, regulation, and/or provider agreement pertaining to the Texas Medicaid Program. This conduct violates TMFPA Section 36.002 (4).

40. Defendants, individually and in conjunction, each knowingly or intentionally entered into an agreement, combination or conspiracy to commit unlawful acts and to defraud the State of Texas by obtaining or aiding another person in obtaining an unauthorized payment or benefit from the Medicaid Program or fiscal agent. At least one of the Defendants committed at least one overt act in furtherance of the conspiracy. This conduct violates TMFPA Section 36.002(9).

CAUSATION

41. Relator realleges and reincorporates by reference as set forth herein the allegations contained in Paragraphs 1 – 40 of this Petition.

42. The State of Texas made excessive Medicaid payments based upon these misrepresentations, concealment and failure to disclose material facts and was therefore damaged.

43. The Defendants have profited and the State of Texas has paid excessive Medicaid reimbursements and has been damaged monetarily by the unlawful acts of Defendants.

44. The State of Texas, unaware of Defendants' wrongdoing and unlawful acts, paid excessive Medicaid reimbursements that would otherwise not have been allowed.

45. Defendants' acts and omissions constitute unlawful conduct, violations of the TMFPA, and were a legal cause, proximate cause, and/or cause-in-fact of the State's damages.

DAMAGES

46. Relator realleges and reincorporates by reference as set forth herein the allegations contained in Paragraphs 1 – 45 of this Petition.

47. Pursuant to TMFPA, the Defendants are liable to the State of Texas for damages far in excess of the minimum jurisdictional limits of this Court.

48. This action is a claim for restitution, pre- and post-judgment interest, civil penalties, double damages, attorneys' fees, expenses and costs, pursuant to Texas Human Resources Code § 36.001, *et seq.*, for violations of Texas Human Resources Code, § 36.002.

DEMAND FOR JURY TRIAL

Relator, on behalf of himself and the State of Texas, demands a jury trial on all claims alleged herein pursuant to Rule 216 of the Texas Rules of Civil Procedure.

PRAYER FOR RELIEF

WHEREFORE, Relator respectfully requests as follows:

1. That Defendants be cited to appear and answer this lawsuit;

2. That the State of Texas, upon trial of this case, be awarded damages in the amount of the damages sustained as a result of the unlawful acts and fraud alleged within this Petition, as described in the Texas Medicaid Fraud Prevention Act, Tex. Hum. Res. Code § 36.001 *et seq.*;

3. That the State receive restitution for the value of all payments that the State has made for Risperdal prescriptions written for children or adolescents under the Texas Medicaid Program;

4. That an administrative penalty of an amount not to exceed twice the amount of payments made by the State of Texas as a result of prescriptions written for children and adolescents be imposed;

5. That administrative penalties of not less $5,000 or more than $15,000 be imposed for each and every unlawful act that resulted in an injury to an elderly person, disabled person or a person younger than 18 years of age be imposed;

6. That administrative penalties of not less than $1,000 or more than $10,000 be imposed for each and every unlawful act committed by Defendants;

7. That pre-judgment interest be awarded on the value of all payments made for prescriptions written for children and adolescents at the rate in effect on the date the payments were made, for the period from the date the payment was made to the date that Defendants made restitution to the State;

8. That post-judgment interest be awarded at the legal rate;

9. For an award of reasonable attorneys' fees, costs, and expenses that the Relator or the State reasonably incurred in obtaining civil remedies or in conducting investigations in connection with this litigation, including, but not limited to, court costs, reasonable attorneys'

fees, witness fees, deposition fees and all other necessary and reasonable fees and expenses as determined by this Court; and

10. That the Relator be awarded the maximum percentage of the amounts recovered by the State of Texas as a result of this action, in accordance with Texas Human Resources Code § 36.110;

WHEREFORE, Plaintiff prays that upon trial or final hearing the Court grant judgment for Relator and the State of Texas against the Defendants for all damages and multiples of damages, civil penalties, attorneys' fees, costs and expenses, and interest recoverable under Texas Human Resources Code §§ 36.007 and 36.052; and

That this Court award such other and further relief as it deems proper.

Dated: November 30, 2006

Respectfully submitted,

FISH & RICHARDSON P.C.

By: Thomas M. Melsheimer by permission by John M. Bates TX SBN 24040618

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