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**ENDORSED FILED
SAN MATEO COUNTY**

MAR - 3 2009

Clerk of the Superior Court
By Siolo S. Sala
DEPUTY CLERK

14 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF SAN MATEO**
16

17
18 STATE OF CALIFORNIA *ex rel.*
19 [FILED UNDER SEAL]

20 Plaintiff,

21 vs.

22 [FILED UNDER SEAL]

23 Defendants.
24

Case No. CIV 450691

**FIFTH AMENDED COMPLAINT
FOR MONEY DAMAGES AND
CIVIL PENALTIES FOR
VIOLATIONS OF CALIFORNIA
FALSE CLAIMS ACT**

25 **[FILED UNDER SEAL AND CONFIDENTIAL]**

26 **PURSUANT TO CALIFORNIA RULES OF COURT 2.550 AND 2.570-2.573]**
27

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13 *Hunter Laboratories, LLC and Chris Riedel*

14 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **IN AND FOR THE COUNTY OF SAN MATEO**

16
17 Case No. CIV 450691

18 STATE OF CALIFORNIA *ex rel.* HUNTER
19 LABORATORIES, LLC and CHRIS RIEDEL, an
individual,

20 Plaintiff,

21 vs.

22 QUEST DIAGNOSTICS INCORPORATED, a Delaware
corporation; QUEST DIAGNOSTICS CLINICAL
23 LABORATORIES, INC., a Delaware corporation;
24 QUEST DIAGNOSTICS NICHOLS INSTITUTE, f/k/a
QUEST DIAGNOSTICS, INC., a California corporation;

**FIFTH AMENDED
COMPLAINT FOR MONEY
DAMAGES AND CIVIL
PENALTIES FOR
VIOLATIONS OF
CALIFORNIA FALSE
CLAIMS ACT**

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QUEST DIAGNOSTICS INCORPORATED, a Nevada Corporation; UNILAB CORPORATION, d/b/a/ QUEST DIAGNOSTICS/UNILAB, a Delaware corporation; LABORATORY CORPORATION OF AMERICA, a Delaware corporation; LABORATORY CORPORATION OF AMERICA HOLDINGS, a Delaware corporation; SPECIALTY LABORATORIES, INC., a California corporation; TAURUS WEST, INC., f/k/a HEALTH LINE CLINICAL LABORATORIES, INC., a California corporation; WESTCLIFF MEDICAL LABORATORIES, INC., a California corporation; PHYSICIANS IMMUNODIAGNOSTIC LABORATORY, INC., a California corporation; WHITEFIELD MEDICAL LABORATORY, INC., a California corporation; SEACLIFF DIAGNOSTICS MEDICAL GROUP, a California Corporation, and Does 11 through 100, inclusive,

Defendants.

**[FILED UNDER SEAL AND CONFIDENTIAL
PURSUANT TO CALIFORNIA RULES OF COURT 2.550 AND 2.570-2.573]**

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1 Plaintiff STATE OF CALIFORNIA (“California”), by and through *Qui Tam* Plaintiffs
2 HUNTER LABORATORIES, LLC and CHRIS RIEDEL, alleges as follows:

3 **I. INTRODUCTION**

4 1. California’s Medi-Cal program (“Medi-Cal”) is a crucial safety net for
5 Californians unable to afford health care. Intended to provide essential care for California’s
6 growing indigent population, Medi-Cal funds are stretched to their limit. Too many times, Medi-
7 Cal has been subject to fraud and abuse by unscrupulous providers who have put profits above
8 the public good. Funds that have been designated for essential services to the neediest among
9 Californians have been diverted away because of false billing schemes. Those fraudulent
10 schemes have threatened to diminish the quality of care, unnecessarily burdened taxpayers, and
11 degraded the medical profession. This case is being brought to stop the rampant Medi-Cal fraud
12 in the clinical laboratory industry, carried out over a period of years by the largest medical
13 laboratory companies in the United States – years during which some of the Defendants were
14 investigated, prosecuted and/or fined for other billing abuses.

15 2. That fraud has been knowingly perpetrated against a backdrop of unique, clearly
16 defined laws that require Medi-Cal providers to bill Medi-Cal their *lowest* rates for the same
17 services under comparable circumstances. Instead, these Defendants have habitually billed
18 Medi-Cal some of their *highest* rates, deeply discounting many of their *private* fees to draw in
19 lucrative Medi-Cal and other referrals. As but one example, the most commonly ordered
20 laboratory test is an Automated Hemogram, which has a maximum Medi-Cal reimbursement rate
21 of \$8.59. One Defendant, Quest, which happens to be the largest lab in California, has charged
22 others as little as \$1.42 for the same test. As a result, when the clinic refers a Medi-Cal patient to
23 the laboratory for testing, Medi-Cal pays more than five times as much as the clinic pays for the
24 identical service.

25 3. For some tests, rates have been discounted well below costs, and the laboratories
26 cannot earn a profit on them. The Defendants nevertheless have an interest in keeping those
27 private rates low, because it makes it essentially impossible for any new laboratories to gain a
28 foothold in a large share of the market. To attract new business from customers who have been

1 receiving deep discounts, prospective competitors must either match or beat those impossibly
2 low prices. In other words, by using the publicly funded Medi-Cal program to subsidize private
3 discounts, the larger and better established laboratories have cornered much of the market for
4 themselves.

5 4. This suit calls Defendants to answer for defrauding California's taxpayers and
6 compromising the welfare of Medi-Cal beneficiaries.

7 **II. OVERVIEW OF THE SCHEME**

8 5. This is a *qui tam* action for violation of California's False Claims Act, Gov. Code
9 §§ 12650 *et seq.*, to recover treble damages, civil penalties and attorneys' fees and costs for
10 Plaintiffs and on behalf of California for fraudulent Medi-Cal billings.

11 6. As will be discussed below, Defendants made false claims for payment of Medi-
12 Cal covered laboratory tests by falsely representing that the fees being charged were no greater
13 than the maximum fees payable pursuant to regulations of the California Department of Health
14 Care Services ("DHCS") (formerly the California Department of Health Services ("DHS")). As
15 participating Medi-Cal providers, Defendants were and are subject to DHCS regulations that
16 require them to provide services to Medi-Cal patients at their most favorable rates. California
17 Code of Regulations, title 22, section 51501, subdivision (a), requires as follows:

18 ***Notwithstanding any other provisions of these regulations***, no provider shall
19 charge for any service or any article more than would have been charged for the
20 ***same service*** or article to ***other purchasers of comparable services*** or articles
21 ***under comparable circumstances***. (Emphasis added.)

22 7. That regulation is intended to address "federal and state concerns with dual
23 pricing and the Department's obligation to see that Medi-Cal is managed economically."
24 *Physicians & Surgeons Laboratories, Inc. v. Department of Health Services* (1992) 6
25 Cal.App.4th 968, 985. Defendants were free to charge any other purchaser any fee for their
26 services, so long as Medi-Cal obtained the best price available to other purchasers of comparable
27 services under comparable circumstances.

28 8. Defendants' Medi-Cal Provider Agreements also made clear their duty, consistent
with the program's public purposes, to charge their *lowest* fees to DHCS and refrain from

1 conduct that would harm the Medi-Cal program or its beneficiaries. Among other commitments,
2 Defendants agreed to do all of the following:

3 **Compliance with Laws and Regulations.** Provider agrees to comply with all
4 applicable provisions of Chapters 7 and 8 of the Welfare and Institutions Code
(commencing with Sections 14000 and 14200), and any applicable rules or
5 regulations promulgated by DHS pursuant to these chapters. . . .

6 **Forbidden Conduct.** Provider agrees that it shall not engage in conduct inimical
7 to the public health, morals, welfare and safety of any Medi-Cal beneficiary, *or*
8 *the fiscal integrity of the Medi-Cal program.* (Emphasis added.)

9 . . .

10 **Provider Fraud and Abuse.** Provider agrees that it shall not engage in fraud or
11 abuse.

12 . . .

13 **Prohibition of Rebate, Refund or Discount.** Provider agrees that it shall not
14 offer, give, furnish, or deliver any rebate, refund, commission, preference,
15 patronage dividend, discount, or any other gratuitous consideration, in connection
16 with the rendering of health care services to any Medi-Cal beneficiary. Provider
17 further agrees that it shall not solicit, request, accept, or receive, any rebate,
18 refund, commission, preference, patronage dividend, discount, or any other
19 gratuitous consideration, in connection with the rendering of health care services
20 to any Medi-Cal beneficiary. Provider further agrees that it shall not take any
21 other action or receive any other benefit prohibited by state or federal law.

22 9. In other words, Defendants agreed to **bill Medi-Cal at their lowest rates**, not to
23 give or take *kickbacks*, and to conduct their business relationship with DHCS with a view to the
24 *program's public purpose* and the *welfare of California's medically indigent citizens*.

25 10. Defendants have repeatedly defrauded the Medi-Cal program by billing DHCS
26 fees well in excess of their lowest rates. Rather than abide by DHCS regulations and their Medi-
27 Cal Provider Agreements, Defendants offered clinical laboratory services to private physicians,
28 clinics, hospitals, independent physician associations ("IPAs"), group purchasing organizations
(("GPOs")), and other health care providers at fees deeply discounted below the maximum
allowances provided under Medi-Cal's published fee schedule. Those maximum allowances are
only payable when the provider charges no lower fee, and charging DHCS more for any service
than would have been charged to other purchasers of comparable services under comparable
circumstances, violates Medi-Cal regulations.

1 11. In this lawsuit, Plaintiffs demands treble damages, civil penalties of up to \$10,000
2 for each false claim, and other relief provided by California's False Claims Act.

3 12. Information personally known to *Qui Tam* Plaintiffs HUNTER
4 LABORATORIES, LLC and CHRIS RIEDEL (together, "*Qui Tam* Plaintiffs") is the basis for
5 this action.

6 **III. PARTIES**

7 13. The plaintiff in this action is the STATE OF CALIFORNIA by and through *Qui*
8 *Tam* Plaintiffs HUNTER LABORATORIES, LLC and CHRIS RIEDEL. At all times material to
9 this action, DHCS was an agency of California and administered California's Medi-Cal program,
10 which paid benefits from a combination of State and Federal Government funds in an
11 approximate 50/50 ratio. DHCS provided Medi-Cal benefits to qualified recipients, which
12 included payment of claims to Defendants for their laboratory tests. These claims were paid
13 based upon Defendants' false representations that the fees being charged were calculated in
14 accordance with applicable Medi-Cal regulations.

15 14. *Qui Tam* Plaintiff HUNTER LABORATORIES, LLC ("HUNTER") is an affiliate
16 of Hunter Laboratories, Inc. ("Hunter Labs"), a corporation organized and existing under the laws
17 of California that is engaged in the commercial reference laboratory business.

18 15. *Qui Tam* Plaintiff CHRIS RIEDEL ("RIEDEL") is an individual engaged in the
19 commercial reference laboratory business.

20 16. Defendant QUEST DIAGNOSTICS INCORPORATED, f/k/a Corning Clinical
21 Laboratories, Inc., f/k/a Met Path, Inc. ("QUEST-DE") (NYSE: DGX) is a Delaware corporation
22 with its principal place of business at 1290 Wall Street West, Lyndhurst, New Jersey. At all
23 times relevant hereto, QUEST-DE conducted business in California, including but not limited to
24 providing clinical laboratory services to the general public in California. Plaintiff sues QUEST-
25 DE both based on conduct of QUEST-DE itself and in QUEST-DE's capacity as successor by
26 merger, consolidation, asset acquisition, or otherwise, to each of the following:

27 (a) Damon Reference Laboratories (Cal. Corp. No. C0706356), a California
28 corporation which merged into QUEST-DE (then known as Metpath) on December 31, 1994;

1 (b) Damon Clinical Laboratories, Inc. (Cal. Corp. No. C1812259), a
2 California corporation which merged into QUEST-DE (then known as Metpath) on
3 December 31, 1994;

4 (c) MAWD Medical Laboratories, f/k/a Nichols Acquisition, Inc. (Cal. Corp.
5 No. C1675739), a California corporation which merged into QUEST-DE (then known as
6 Metpath) on December 31, 1994;

7 (d) Nichols Institute Diagnostics (Cal. Corp. No. C0709631), a California
8 corporation which Quest acquired in or about June of 1994;

9 (e) SmithKline Beecham Clinical Laboratories, which Quest acquired on or
10 about on or about August 16, 1999;

11 (f) LabOne, Inc., f/k/a Lab Holdings, Inc., f/k/a Seafield Capital Corporation
12 (Cal. Corp. No. C0752637), a Missouri corporation presently headquartered at 1290 Wall Street
13 West, Lyndhurst, NJ 07071 which Quest acquired on or about November 1, 2005, and which
14 according to the *Washington G-2 Reports 2005 Laboratory Industry Strategic Outlook* was the
15 third ranked independent laboratory after Quest and LabCorp at the time of the acquisition;

16 (g) Meris Laboratories, Inc. (Cal. Corp. No. C1676170), a California
17 corporation whose principal place of business was at 2890 Zanker Road, San Jose, CA 95134
18 and the assets of which Quest acquired out of bankruptcy on or after September 17, 1998;

19 (h) Focus Diagnostics, Inc. (Cal. Corp. No. C1630165), a Delaware
20 corporation which Quest acquired on or about July 5, 2006, is headquartered at 1290 Wall Street
21 West, Lyndhurst, NJ 07071, and does business in California at 5785 Corporate Avenue, Cypress,
22 California 90630.

23 (i) AmeriPath, Inc., a Delaware corporation which Quest acquired on or
24 about May 31, 2007 and which has its principal place of business at 7111 Fairway Drive, Suite
25 400, Palm Beach Gardens, Florida 33418;

26 (j) Specialty Laboratories, Inc. (Cal. Corp. No. C0745948), a California
27 corporation whose principal place of business is at 7111 Fairway Drive, Suite 400, Palm Beach
28 Gardens, Florida 33418, whose principal place of business in California is at 27027 Tourney

1 Road, Valencia, California 91355, which became a wholly-owned subsidiary of Ameripath, Inc.
2 on or about January 30, 2006 through a merger with Silver Acquisition Corp. (Cal. Corp. No.
3 C2803326), and which QUEST-DE acquired with its May 31, 2007 acquisition of AmeriPath;
4 and

5 (k) Unilab Corporation (Cal. Corp. No. C2506379) (“UNILAB”), a Delaware
6 corporation that does business in California as Quest Diagnostics-Unilab, whose principal place
7 of business is at 1290 Wall Street, Lyndhurst, NJ 07071, whose principal place of business in
8 California is at 18448 Oxnard Street, Tarzana, California 91356, and which Quest-DE’s acquired
9 on or about February 28, 2003 and thereafter integrated into its California operations , as well as
10 the following labs acquired by UniLab prior to its acquisition by Quest:

11 (i) Southern California Clinical Labs, a business entity which Unilab
12 acquired in or about March of 2000;

13 (ii) Pathology Associates Laboratories, Inc., f/k/a Pathology Associates
14 Laboratory (Cal. Corp. No. C0879503), a California Corporation whose principal place of
15 business was at 11929 Saltair Terrace, Los Angeles, California 90049, and which Unilab
16 acquired in or about August of 2000;

17 (iii) Medical Arts, a business entity which Unilab acquired in or about
18 July of 2001; and

19 (iv) Physicians Clinical Laboratory, Inc. (Cal. Corp. No. C1823716), a
20 Delaware corporation which did business at 2499 Natomas Park Drive, Sacramento, California
21 95833, and which Unilab acquired in or about 1999.

22 17. Defendant QUEST DIAGNOSTICS NICHOLS INSTITUTE, f/k/a Quest
23 Diagnostics, Inc., f/k/a Corning Nichols Institute, Inc., f/k/a Corning Nichols Institute, f/k/a
24 Nichols Institute Reference Laboratories, f/k/a Nichols Institute Laboratories, f/k/a Nichols
25 Institute for Endocrinology (Cal. Corp. No. C0631317) (“QUEST-NICHOLS”) is a California
26 corporation with its principal place of business at 1290 Wall Street West, Lyndhurst, New Jersey.
27 At all times relevant hereto, QUEST-NICHOLS conducted business in California, including but
28

1 not limited to providing clinical laboratory services to the general public in California. QUEST-
2 NICHOLS is a wholly-owned subsidiary of QUEST-DE.

3 18. Defendant QUEST DIAGNOSTICS INCORPORATED (“QUEST-NV”) (Cal.
4 Corp. No. C2681228) is a Nevada corporation that does business in California as Quest
5 Diagnostics Incorporated of Nevada. On information and belief, since approximately October
6 29, 2005, QUEST-NV has conducted business in California, including but not limited to
7 providing clinical laboratory services to the general public in California. On information and
8 belief, QUEST-NV is a subsidiary of QUEST-DE.

9 19. Defendant QUEST DIAGNOSTICS CLINICAL LABORATORIES, INC., f/k/a
10 SmithKline Beecham Clinical Laboratories, Inc., f/k/a SmithKline Bioscience Laboratories, Inc.,
11 f/k/a SmithKline Clinical Laboratories, Inc., f/k/a Laboratory Procedure, Inc. (“QUEST
12 CLINICAL”) (Cal. Corp. No. C0763619) is a Delaware corporation with its principal place of
13 business at 1290 Wall Street West, Lyndhurst, New Jersey. At all times relevant hereto, QUEST
14 CLINICAL conducted business in California, including but not limited to providing clinical
15 laboratory services to the general public in California. QUEST CLINICAL is the successor-by-
16 merger to Nichols Institute, f/k/a Nichols Institute Northeast, Inc., f/k/a Nichols Institute for
17 Endocrinology, and is a wholly-owned subsidiary of Quest Diagnostics Holdings Incorporated, a
18 wholly-owned subsidiary of QUEST-DE.

19 20. Defendant UNILAB CORPORATION, d/b/a Quest Diagnostics-Unilab
20 (“UNILAB”) (Cal. Corp. No. C2506379) is a Delaware corporation whose principal place of
21 business is at 1290 Wall Street, Lyndhurst, NJ 07071, and whose principal place of business in
22 California is at 18448 Oxnard Street, Tarzana, California 91356. At all times relevant hereto,
23 UNILAB conducted business in California, including but not limited to providing clinical
24 laboratory services to the general public in California. UNILAB is the successor by merger,
25 consolidation, asset acquisition, or otherwise, to Unilab Corporation (Cal. Corp. No. C1866941),
26 a Delaware corporation, which Quest-DE acquired on or about February 28, 2003 pursuant to an
27 Agreement and Plan of Merger dated April 2, 2002 and whose principal place of business in
28 California was at 18448 Oxnard Street, Tarzana, CA 91356. Plaintiff sues UNILAB both based

1 on conduct of UNILAB itself and in UNILAB's capacity as successor by merger, consolidation,
2 asset acquisition, or otherwise, to each of the following:

3 (i) Southern California Clinical Laboratory Services, a business entity
4 which Unilab acquired in or about 1999;

5 (ii) Pathology Associates Labs, a clinical reference laboratory business
6 which Unilab acquired in or about August of 2000;

7 (iii) Medical Arts, a clinical reference laboratory business which Unilab
8 acquired in or about July of 2001; and

9 (iv) Physicians Clinical Laboratory, a clinical reference laboratory that
10 was headquartered at 2499 Natomas Park Drive, Sacramento, California 95833.

11 21. As used herein, "QUEST" means and includes, individually and collectively,
12 QUEST-DE; QUEST-NICHOLS; QUEST CLINICAL; UNILAB as to events occurring on or
13 after February 28, 2003; and SPECIALTY as to events occurring on or after May 31, 2007. *Qui*
14 *Tam* Plaintiffs sue the QUEST entities, and each of them, as participants, alter egos of one
15 another, agents of one another, aiders and abettors of one another, and conspirators with one
16 another in the improper acts, plans, schemes, and transactions that are the subject of this
17 Complaint.

18 22. *Qui Tam* Plaintiffs are informed and believe that QUEST is the largest
19 commercial reference laboratory in the California, and that it operates over 500 patient service
20 centers and other facilities in California. Among other California locations, QUEST operates
21 patient service centers in San Mateo County at 801 Brewster Ave, Suite 245, Redwood City,
22 California 94063; 2950 Whipple Ave., Suite 5, Redwood City, California, 94062; 1100 Laurel
23 St., Suite C, San Carlos, California 94070; 127 N. San Mateo Dr., San Mateo, California 94401;
24 and 1828 El Camino Real, Suite 101, Burlingame, California 94010.

25 23. Defendant LABORATORY CORPORATION OF AMERICA, f/k/a National
26 Health Laboratories, d/b/a Laboratory Corp of America (Cal. Corp. No. C0644716)
27 ("LABCORP") is a Delaware corporation that operates clinical laboratory facilities throughout
28 the United States. At all times relevant hereto, LABCORP was and is conducting business in

1 California. Among other locations within California, LABCORP has patient service centers at in
2 San Mateo County at 1048 El Camino Real, Suite A, Redwood City, California 94063; 101
3 South San Mateo Drive, Suite 107, San Mateo, California 94401; and 1750 El Camino Real,
4 Suite 16, Burlingame, California 94010. *Qui Tam* Plaintiffs are informed and believe that
5 LABCORP is the second largest clinical laboratory in the United States, with total annual
6 revenue of more than \$3 billion. Plaintiff sues LABCORP both based on conduct of LABCORP
7 itself and in LABCORP's capacity as successor, by merger, consolidation, asset acquisition, or
8 otherwise, to each of the following:

9 (a) Allied Clinical Laboratories, Inc. (Cal. Corp. No. C1267750), an Oregon
10 corporation whose principal place of business is at 358 Main Street, Burlington, North Carolina
11 27215 and which does business in California at 2970 5th Avenue, San Diego, CA 92103;

12 (c) Bio-Diagnostics Laboratories (Cal. Corp. No. C0959959), a California
13 corporation whose principal place of business was at 2201 Hamilton Avenue, Suite 200,
14 Torrance, CA 90502;

15 (d) Immunodiagnostic Laboratories, Inc. ("IDL"), a business entity whose
16 principal place of business was at 10930 Bigge Street, San Leandro, CA 94577 and which
17 LabCorp acquired in or about June of 2005;

18 (e) U.S. Pathology Labs (Cal. Corp. No. C2116391), a Delaware corporation
19 whose principal place of business is at 430 South Spring Street, Burlington, North Carolina
20 27215, whose principal place of business in California is at 2601 Campus Drive, Irvine,
21 California 92612-1601, and which LabCorp acquired in or about February of 2005;

22 (f) Esoterix, Inc. (Cal. Corp. No. C2656180), a California corporation which
23 LabCorp acquired in or about May of 2005, whose principal place of business is 430 South
24 Spring Street, Burlington, NC 27215, and which operates testing centers in California in
25 Calabassas Hills and San Diego, California.

26 (g) Richard Severance, M.D., dba Redding Pathologists Lab, a clinical
27 reference laboratory whose principal place of business is at 1725 Gold Street, Redding,
28 California 96007 and which LabCorp acquired in or about 2005;

1 (h) The Lab (Cal. Corp. No. C1816608), a California corporation whose
2 principal place of business is at 1008-A Riley Street, Folsom, California 95630 and which
3 LabCorp acquired in or about 2006; and

4 (i) PoisonLab, Inc. (Cal. Corp. No. C1097144), a California Corporation
5 whose principal place of business was 818 West Seventh St., Los Angeles, California, 90017,
6 and which LabCorp acquired in or about 2003.

7 24. Defendant LABORATORY CORPORATION OF AMERICA HOLDINGS, f/k/a
8 National Health Laboratories Holdings, Inc. (Cal. Corp. No. C1891831) (NYSE: LH) is a
9 Delaware Corporation with its principal place of business in Burlington, North Carolina. *Qui*
10 *Tam* Plaintiffs are informed and believe that LABCORP is a wholly-owned subsidiary of
11 LABORATORY CORPORATION OF AMERICA, and that LABORATORY CORPORATION
12 OF AMERICA determined one or more of the fee schedules pursuant to which LABCORP
13 offered discounted rates to non-Medi-Cal customers in California.

14 25. SPECIALTY LABORATORIES, INC., f/k/a Clinical Immunology Laboratories,
15 Inc. (Cal. Corp. No. C0745948) (NYSE: SP) ("SPECIALTY") is a California corporation whose
16 principal place of business is at 7111 Fairway Drive, Suite 400, Palm Beach Gardens, Florida
17 33418 and whose principal place of business in California is 27027 Tourney Road, Valencia,
18 California 91355. SPECIALTY is a clinical reference laboratory that offers its services
19 throughout California. QUEST acquired SPECIALTY on or after May 31, 2007.

20 26. Defendant TAURUS WEST, INC., f/k/a HEALTH LINE CLINICAL
21 LABORATORIES, INC. (Cal. Corp. No. C1747470) ("HEALTH LINE") is a California
22 corporation that operates commercial reference laboratory facilities throughout California and
23 has its principal place of business at 1903 West Empire Avenue, Burbank, California 91504.

24 27. Defendant WESTCLIFF MEDICAL LABORATORIES, INC., f/k/a Golden Coast
25 Laboratories (Cal. Corp. No. C0557327) ("WESTCLIFF") is a California corporation that
26 operates commercial reference laboratory facilities throughout California and has its principal
27 place of business at 361 Hospital Road, Suite 222, Newport Beach, CA 92663. WESTCLIFF is
28 the successor by merger, consolidation, asset acquisition, or otherwise, to Westcliff Holding Inc.,

1 a California corporation (Cal. Corp. No. C1794851) and Westcliff Medical Laboratory (Cal.
2 Corp. No. C0459482). *Qui Tam* Plaintiffs are informed and believe that WESTCLIFF earned
3 \$45 million in 2005, placing WESTCLIFF among the four largest laboratory companies in
4 California. *Qui Tam* Plaintiffs are further informed and believe that with its acquisition of
5 Health Line Clinical Laboratories in 2006, WESTCLIFF has approximately \$100 million in
6 annual revenues, placing WESTCLIFF as the third largest laboratory company in California. *Qui*
7 *Tam* Plaintiffs therefore believe the current Medi-Cal overpayments to WESTCLIFF exceed
8 \$600,000 per month.

9 28. Defendant PHYSICIANS IMMUNODIAGNOSTIC LABORATORY, INC.
10 (“PHYSICIANS IMMUNODIAGNOSTIC”) (Cal. Corp. No. C1928302) is a California
11 corporation that operates commercial reference laboratory facilities in California and has its
12 principal place of business at 512 South Verdugo Drive, Burbank, CA 91502.

13 29. Defendant WHITEFIELD MEDICAL LABORATORY, INC. (“WHITEFIELD”)
14 (Cal. Corp. No. C1382222) is a California corporation that operates commercial reference
15 laboratory facilities in California and has its principal place of business at 764 Indigo Court,
16 Suite A, Pomona, CA 91767-2269.

17 30. Defendant SEACLIFF DIAGNOSTICS MEDICAL GROUP (“SEACLIFF”) (Cal.
18 Corp. No. C2547450) is a California corporation that operates commercial reference laboratory
19 facilities in California and has its principal place of business at 2100 Saturn St., Suite 102,
20 Monterey Park, California, 91755.

21 31. *Qui Tam* Plaintiffs are ignorant of the names and capacities of the Defendants
22 sued herein as DOES 11 through 100, inclusive, and therefore sue such Defendants by fictitious
23 names pursuant to California Code of Civil Procedure section 474. *Qui Tam* Plaintiffs will
24 amend this complaint to allege the true names and capacities of the fictitiously named
25 Defendants once ascertained. *Qui Tam* Plaintiffs are informed and believe that Defendants Does
26 11 through 100, inclusive, are in some manner responsible for the actions alleged herein.

1 **IV. THE COMMERCIAL LABORATORY BUSINESS**

2 32. Defendants QUEST, LABCORP, SPECIALTY, HEALTH LINE, WESTCLIFF,
3 PHYSICIANS IMMUNODIAGNOSTIC, WHITEFIELD, and SEACLIFF are commercial
4 reference laboratories. Commercial reference laboratories perform clinical laboratory services,
5 which entail analyses of human blood, urine, stool, and other body specimens to assist physicians
6 in diagnosing human disease and monitoring treatment. Two types of laboratories generally
7 perform clinical laboratory services. Hospital laboratories are primarily concerned with inpatient
8 testing. Commercial reference laboratories primarily provide outpatient testing for physician
9 offices and/or esoteric testing for hospitals and other laboratories.

10 33. Commercial reference laboratories, including Defendants, perform clinical
11 laboratory services for patients covered under California’s Medi-Cal program, which is
12 administered by the DHCS. Commercial reference laboratories obtain requests for clinical tests
13 from physicians and hospitals. When these tests are eligible for Medi-Cal reimbursement,
14 Defendants submit electronic and/or paper invoices directly to DHCS for Medi-Cal
15 reimbursement, identifying the tests by a uniform Current Procedure Technology (“CPT”) code.
16 *Qui Tam* Plaintiffs are informed and believe that those invoices are stored in electronic form on
17 computer hard drives and other storage devices maintained by Defendants and DHCS.
18 Defendants are required by their Medi-Cal provider agreements to retain these records for at least
19 three years.

20 34. The commercial reference laboratory market is extremely competitive. Since at
21 least the early 1990s, it has been common industry practice to offer and provide deeply
22 discounted fees for laboratory tests billed directly to physicians, independent physician
23 associations (“IPAs”), group purchasing organizations (“GPOs”), health maintenance
24 organizations, hospitals and clinics. Commercial reference laboratories offer those discounts to
25 induce their customers to use a single commercial reference laboratory for the majority or all of
26 their clinical testing needs. The discounted fees can be so low that they do not cover the
27 laboratory’s costs. Therefore, the laboratory relies on higher paying, “pull through” of Medi-Cal
28 and other referrals from those customers to operate at a profit. Despite DHCS regulations

1 mandating that Medi-Cal receive the commercial reference laboratories' *lowest* fees, Defendants
2 have treated Medi-Cal referrals in much the same way as other "pull through" business.

3 35. *Qui Tam* Plaintiffs are informed and believe that Defendants depended, and
4 continue to depend, on referrals to Defendants of large volumes of Medi-Cal and other testing
5 business to cover the losses they would otherwise sustain in offering deeply discounted testing
6 services. By offering those deeply discounted rates, Defendants have erected a nearly
7 insurmountable "loss leader" barrier to entry into the subject market, in that for a significant part
8 of the market, any would-be competitor can only attract new business by offering comparably
9 discounted services, which cannot be performed at a profit.

10 36. This is not the first time that clinical laboratory billing practices have come under
11 scrutiny. During the 1990's, the United States government obtained hundreds of millions of
12 dollars in the "Operation Labscam" probe – including \$182 million from LABCORP and \$119
13 million from QUEST. Then, the laboratories' fraud on the public took the form of billing
14 Medicare for unnecessary tests. Industry-wide fraudulent practices persisted even in the face of
15 that widespread probe.

16 37. QUEST's checkered history provides but one example of those undeterred
17 fraudulent practices. In 1996, the company paid an \$11 million fine to settle charges that
18 whenever a physician ordered a automated hemogram ("CBC") – the most commonly ordered
19 laboratory test – QUEST routinely billed Medicare and other government insurance programs for
20 additional, unnecessary tests. Two years later, QUEST paid an additional \$6.8 million for
21 allegedly billing Medicare for unordered tests. QUEST paid a further \$15 million settlement
22 later that year. In 2001, QUEST paid yet another \$13.1 million penalty for unnecessary tests
23 billed by a company QUEST had acquired. In 2003, the Attorney General of the State of New
24 York ordered QUEST to cease double-billing for tests. A U.S. Attorneys' investigation into
25 billings for unnecessary, unordered tests performed by QUEST and its California subsidiary
26 Unilab resulted in an \$11.35 million settlement in March 2004. By the end of that year, QUEST
27 was again under scrutiny for practices relating to tests on dialysis patients.

1 38. Nor was QUEST alone. In April 2004, HEALTH LINE agreed to pay the United
2 States and California \$10 million to settle charges that it: (a) added esoteric and expensive tests
3 to commonly ordered panels; and (b) substituted a more expensive, unapproved syphilis test for
4 the primary screening test, billing those tests under a general code to avoid detection.

5 39. In this instance, Defendants' practices are independently unlawful as kickback
6 schemes, strictly prohibited by California's health care providers licensing and Medi-Cal statutes.
7 Specifically, Business and Professions Code section 650 prohibits, *inter alia*, the offer or
8 acceptance of "any rebate, refund, . . . preference, . . . **discount** or other consideration, whether
9 in the form of money or otherwise, as compensation or inducement for referring patients, clients,
10 or customers." (Emphasis added.) Welfare and Institutions Code section 14107.2 similarly
11 prohibits every Medi-Cal provider from soliciting or receiving "any **kickback**, bribe, or rebate,
12 **directly or indirectly, overtly or covertly**, in cash or in valuable consideration of any kind . . . [i]n
13 return for the referral, or promised referral, of any person for the furnishing . . . of any service"
14 covered by the Medi-Cal program. (Emphasis added.) Kickback schemes are also prohibited in
15 Federal health care programs pursuant to 42 U.S.C. § 1320a-7b(b)(2)(A).

16 40. Each Defendant offered, solicited, gave, and received kickbacks by using deeply
17 discounted private rates to draw in large volumes of "pull through" Medi-Cal and other referrals.
18 *Qui Tam* Plaintiffs are informed and believe that at all times relevant hereto, each Defendant
19 knew that California law prohibited their giving or receiving kickbacks. The volume discounts
20 and Medi-Cal overcharges described herein are all the more egregious because they have been
21 accomplished through knowing violations of those long-established Federal and State anti-
22 kickback laws.

23 **V. DEFENDANTS VIOLATED THE FALSE CLAIMS ACT BY FAILING TO BILL**
24 **DHCS FOR MEDI-CAL REIMBURSEMENT AT THEIR LOWEST RATES**

25 41. Under Title 22, Section 51501, subdivision (a) of the California Code of
26 Regulations, "no provider shall charge for any service or any article more than would have been
27 charged for the same service or article to other purchasers of comparable services or articles
28 under comparable circumstances." Charges in excess of the maximum allowable fees are subject

1 to recovery under both the Medi-Cal statute (Cal. Welf. & Inst. Code § 14107.11) and the
2 California False Claims Act (Gov. Code §§ 12650 *et seq.*).

3 42. Defendants submitted electronic or paper invoices for clinical laboratory tests
4 directly to DHCS for Medi-Cal for reimbursement. Defendants did not apply the discounts
5 alleged above, which were given to other purchasers of comparable services under comparable
6 circumstances, when submitting invoices for the same services directly to Medi-Cal for
7 reimbursement. Defendants, and each of them, instead submitted invoices for an amount that
8 equaled or exceeded the maximum Medi-Cal reimbursement rate for each test performed.

9 43. In submitting those claims for payment to Medi-Cal, each Defendant represented
10 that its fees complied with DHCS regulations. Those representations were false, in that
11 Defendants were in fact charging far lower fees for the same services to other purchasers of
12 comparable services under comparable circumstances.

13 44. At all times relevant hereto, each Defendant “knew” or acted “knowingly,” as
14 those terms are defined in California Government Code section 12650, subdivision (b)(2), in
15 making, presenting, or submitting false claims. In that respect, each Defendant acted:

- 16 (a) With actual knowledge of the information; or
- 17 (b) In deliberate ignorance of the truth or falsity of the information; or
- 18 (c) With reckless disregard of the truth or falsity of the information

19 45. At all times relevant hereto, each Defendant presented false claims, as defined in
20 California Government Code sections 12650 and 12651, by:

21 (a) Knowingly presenting or causing to be presented to an officer or employee
22 of California false claims for payment or approval of claims for Medi-Cal reimbursement;
23 and/or,

24 (b) Knowingly making, using, or causing to be made or used false records or
25 statements to get false claims paid or approved by California for Medi-Cal reimbursement;
26 and/or

1 (c) Being a beneficiary of inadvertent submissions of false claims to
2 California, subsequently discovering the falsity of the claims, and failing to disclose the false
3 claims to California within a reasonable time after discovery of the false claims.

4 46. *Qui Tam* Plaintiffs are informed and believe that at all times relevant hereto, each
5 Defendant submitted electronic or paper invoices to Medi-Cal for clinical laboratory testing that
6 reflected fees higher than those charged to other clients and the general public.

7 47. *Qui Tam* Plaintiffs are informed and believe that at all times relevant hereto, each
8 Defendant knew that its conduct would cause Medi-Cal to pay claims for the clinical laboratory
9 tests based on fees higher than those charged for the same services to other purchasers of
10 comparable services under comparable circumstances.

11 48. As a result of the foregoing, each claim for payment for each test that violated
12 DHCS regulations was a false claim in violation of California's False Claims Act (Gov. Code
13 § 12650 *et seq.*).

14 49. California has been damaged by Defendants' false claims in an amount that is
15 presently unknown, but believed to be in the hundreds of millions of dollars.

16 **VI. MEDI-CAL OVERCHARGES BY QUEST**

17 50. On or after November 1, 1995, QUEST has charged DHCS for laboratory tests at
18 rates that exceed the maximum amounts permitted by law and that exceeded the amounts it
19 offered and charged for the same services to other purchasers of comparable services, under
20 comparable circumstances.

21 51. During the period between 2001 and 2004, QUEST instructed its sales personnel
22 that QUEST offer discounted fees on laboratory tests to members of the Council of Community
23 Clinics ("CCC"), the Southwest Community Clinic in Santa Rosa, the Petaluma Health Center
24 and many others, in order to capture their "pull through," *i.e.*, higher paying Medi-Cal and other
25 referrals. *Qui Tam* Plaintiffs are informed and believe that QUEST, in fact, counted on Medi-Cal
26 and other "pull through" revenue to cover losses on tests for which it charged others deeply
27 discounted fees, in that it could not otherwise afford to offer them.

52. QUEST presently offers deeply discounted fees to members of Premier, Inc.'s and Council Connections' group purchasing programs. Those volume-based fees are well below maximum Medi-Cal reimbursement rates.

53. QUEST fee schedules dating from January 3, 2001, to the present and reflecting prices offered to non-Medi-Cal purchasers of QUEST clinical laboratory services further confirm that QUEST has charged other purchasers of its services fees well below those charged to DHCS for Medi-Cal tests.

54. The following chart, which compiles fees published in QUEST's private fee schedules and compares them with Medi-Cal's maximum fee schedule, shows QUEST's non-Medi-Cal fees to be well below what it charged to DHCS for Medi-Cal reimbursement.

Test Name	Quest Test No.	CPT	Medi-Cal Fee	Quest Fee	Per Test Overcharge
CBC w Diff & Platelets	35023	85025	\$8.59	\$1.43	501%
Lipid Panel		80061	\$13.88	\$4.75	192%
Comp. Metabolic Panel		80053	\$11.69	\$1.90	515%
TSH (ultra sensitive)		84443	\$18.57	\$5.70	226%
Thin Prep PAP		88142	\$22.40	\$16.00	40%
Chl & GC Amp DNA probe	84885	87491 & 87591	\$77.60	\$14.25	445%
GC Amplified DNA probe	56860	87591	\$38.80	\$11.40	240%
Chlamydia Amplified DNA probe	56850	87491	\$38.80	\$11.40	240%
Hemoglobin (A1C)		83036	\$10.74	\$4.51	138%
Culture, Urine		87086	\$7.60	\$4.75	60%
Urinalysis w/micro		81001	\$3.50	\$1.43	145%
PSA (Ultra-sensitive)		84153	\$20.34	\$5.86	247%
Basic Metabolic		80048	\$9.36	\$1.66	464%
RPR/ reflex TPPA		86592	\$4.56	\$1.43	219%
Hepatic Function Panel		80076	\$9.03	\$1.57	475%
Sed Rate		85652	\$2.98	\$1.43	108%

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Test Name	Quest Test No.	CPT	Medi-Cal Fee	Quest Fee	Per Test Overcharge
Antibiotic Susceptibility (Disc)		87184	\$7.62	\$2.85	167%
Hepatitis B Surface Ag.		87340	\$11.42	\$4.75	140%
ft4		84439	\$9.97	\$6.41	56%
Urinalysis		81003	\$2.48	\$1.43	73%
Uric Acid		84550	\$5.00	\$1.65	203%
Iron		83540	\$7.16	\$1.43	401%
Glucose, Fasting		82947	\$4.34	\$1.19	265%
T4, Total (Thyroxine)		84436	\$7.60	\$2.38	219%
Culture, Group B. Strep		87081	\$7.33	\$2.38	208%
Ferritin		82728	\$15.06	\$2.85	428%
Testosterone, Total		84403	\$28.54	\$14.25	100%
GGT		82977	\$7.96	\$2.58	209%
SGPT (ALT)		84460	\$5.86	\$2.85	106%
SGOT (AST)		84450	\$5.71	\$2.85	100%
Glu., Gest. Screen		82947	\$4.34	\$2.00	117%
Culture, Genital		87070	\$9.52	\$4.75	100%
Estradiol		82670	\$30.90	\$14.25	117%
ft3		84481	\$17.71	\$12.21	45%
Rubella IgG		86762	\$15.36	\$2.96	419%
Hepatitis C Antibody		86803	\$15.78	\$7.60	108%
Rh		86901	\$5.32	\$2.30	131%
ABO (Blood Group)	50200	86900	\$3.30	\$2.79	18%
RBC Antibody Screen		86850	\$7.93	\$3.17	150%
Hepatitis B Surface Ab.		86706	\$11.87	\$4.75	150%
Beta-HCG (Quant)		84702	\$14.07	\$5.15	173%
FSH		83001	\$20.55	\$8.55	140%
Free Testosterone		84402	\$28.15	\$7.12	295%
Occult Blood		82270	\$3.47	\$2.45	42%
Progesterone		84144	\$23.06	\$14.75	56%

1 55. On information and belief, QUEST has also offered and charged lower rates to,
2 and collected lower rates from, other purchasers of comparable services, under comparable
3 circumstances, than it charged to DHCS for Medi-Cal reimbursement for other tests within the
4 80000 to 89999 range of CPT codes.

5 **VII. MEDI-CAL OVERCHARGES BY LABCORP**

6 56. From at least 2001 until at least 2003, LABCORP has charged DHCS for
7 laboratory tests at rates that exceed the maximum amounts permitted by law and that exceeded
8 the amounts it offered and charged for the same services to other purchasers of comparable
9 services, under comparable circumstances.

10 57. Among other things, LABCORP has provided and continues to provide volume-
11 based discounts to members of the Premier, Inc. purchasing collective based on the volume of
12 tests ordered. Those discounted fees are below the fees LABCORP has charged to Medi-Cal.

13 58. Specifically, when compared with the August 13, 2002 LABCORP/Laboratory
14 Corporation of America Reference Testing Services Tier 1, Tier 2 and Tier 3 Contract Pricing list
15 for their Premier, Inc. contract for the period beginning July 1, 2002 and ending March 31, 2004,
16 a LABCORP internally generated July 31, 2002 computer printout shows that LABCORP
17 charged Medi-Cal fees far in excess of those charged to Premier, Inc. members. The chart
18 summarizes those differences.

19

20 Test Name	LabCorp Test No.	CPT Code	Medi-Cal Fee	LabCorp Lowest Fee	Per Test Overcharge
21 CBC w Diff & Platelets	5009	85025	\$9.80	\$3.62	171%
22 Lipid Panel	303756	80061	\$13.27	\$8.51	56%
23 Comp. Metabolic Panel	322000	80053	\$13.58	\$5.75	136%
24 TSH (ultra sensitive)	4259	84443	\$21.88	\$6.44	240%
25 Hemoglobin (A1C)	1453	83036	\$12.49	\$5.52	126%
26 Culture, Urine	8847	87088	\$7.60	\$7.36	3%
27 Urinalysis w/micro	3772	81001	\$4.37	\$3.97	10%
28 PSA (Ultra-sensitive)	480772	84153	\$23.24	\$5.52	321%

Test Name	LabCorp Test No.	CPT Code	Medi-Cal Fee	LabCorp Lowest Fee	Per Test Overcharge
Basic Metabolic	322758	80048	\$9.96	\$5.00	99%
RPR/ reflex TPPA	12005	86593	\$4.23	\$2.76	53%
Hepatic Function Panel	322755	80076	\$9.11	\$4.95	84%
Sed Rate	5215	85652	\$4.28	\$3.62	18%
Hepatitis B Surface Ag.	6510	87340	\$13.64	\$3.68	271%
Urinalysis	3038	81003	\$4.37	\$2.82	55%
T4, Total (Thyroxine) & TSH	24026	84436 & 84443	\$8.87 + \$21.88	\$11.04	179%
Ferritin	4598	82728	\$15.75	\$3.68	328%
Testosterone, Total	4226	84403	\$35.04	\$7.36	376%
Estradiol	4515	82670	\$37.99	\$15.64	143%
Hepatitis C Antibody	14608	86803	\$30.09	\$6.44	367%
Hepatitis B Surface Ab.	6395	86706	\$16.03	\$3.68	336%
FSH	4309	83001	\$16.71	\$7.36	127%
Free Testosterone	144980	84402	\$34.56	\$27.60	25%
Progesterone	4317	84144	\$28.20	\$10.12	179%

59. On information and belief, LABCORP has also offered and charged lower rates to, and collected lower rates from, other purchasers of comparable services, under comparable circumstances, than it charged to DHCS for Medi-Cal reimbursement for other tests within the 80000 to 89999 range of CPT codes.

60. In addition, current LABCORP fee schedules show that LABCORP continues to charge other purchasers of comparable services, under comparable circumstances, rates lower than it bills to Medi-Cal for the same tests.

VIII. MEDI-CAL OVERCHARGES BY SPECIALTY

61. On or after November 1, 1995, SPECIALTY has charged DHCS for laboratory tests at rates that exceed the maximum amounts permitted by law and that exceeded the amounts it offered and charged for the same services to other purchasers of comparable services, under comparable circumstances.

1 62. Under comparable circumstances, SPECIALTY has charged Hunter Labs lower
2 rates than it charged to Medi-Cal for the same services.

3 63. Two former SPECIALTY salespersons have confirmed to Qui Tam Plaintiffs that
4 for at least the past ten years, SPECIALTY has billed Medi-Cal more than it has billed other
5 comparable purchasers, for the same services. One has stated that SPECIALTY calculated sales
6 representatives' commissions based on this discriminatory pricing against California.

7 64. SPECIALTY fee schedules dating from 2004 to the present and reflecting prices
8 offered to non-Medi-Cal purchasers of SPECIALTY clinical laboratory services further confirm
9 that SPECIALTY has charged other purchasers of its services fees well below those charged to
10 DHCS for Medi-Cal reimbursement under comparable circumstances.

11 65. The following chart, which compiles fees published in SPECIALTY's private fee
12 schedules and compares them with the fees charged by SPECIALTY to Medi-Cal for the same
13 tests, shows SPECIALTY's non-Medi-Cal fees to other purchasers of comparable services, under
14 comparable circumstances, to be well below the fees it charged to Medi-Cal for the same tests.

Test Name	Specialty Test No.	CPT Code	Medi-Cal Fee	Specialty Fee	Per Test Overcharge
Chl & GC Amp DNA probe	2927	87491 & 87591	\$77.60	\$16.38	374%
DHEA-S	3150	82627	\$24.58	\$15.02	64%
Estradiol	3155	82670	\$30.90	\$23.43	32%
Ferritin	3170	82728	\$15.06	\$10.69	41%
Free Testosterone	3247	84402	\$28.15	\$16.38	72%
FSH	3175	83001	\$20.55	\$10.05	104%
ft3	3234	84481	\$17.71	\$16.31	9%
ft4	3228	84439	\$9.97	\$5.79	72%
GC Amplified DNA probe	2930	87591	\$38.80	\$8.19	374%
GGT	5302	82977	\$7.96	\$2.23	257%
Glucose, Fasting	5301	82947	\$4.34	\$2.23	95%
Hemoglobin (A1C)	4972	83036	\$10.74	\$6.37	69%
Hepatitis B Surface Ab.	2453	86706	\$11.87	\$7.21	65%

Test Name	Specialty Test No.	CPT Code	Medi-Cal Fee	Specialty Fee	Per Test Overcharge
Hepatitis B Surface Ag.	2454	87340	\$11.42	\$7.21	58%
Hepatitis C Antibody	2446	86803	\$15.78	\$10.47	51%
Iron	3532	83540	\$7.16	\$2.23	221%
Progesterone	3163	84144	\$23.06	\$12.42	86%
PSA (Ultra-sensitive)	3546	84153	\$20.34	\$7.31	178%
Rubella IgG	9416	86762	\$15.36	\$8.78	75%
SGOT (AST)	1345	84450	\$5.71	\$2.23	156%
SGPT (ALT)	1347	84460	\$5.86	\$2.23	163%
T4, Total (Thyroxine)	3226	84436	\$7.60	\$4.37	74%
Testosterone, Total	3244	84403	\$28.54	\$14.56	96%
TSH (ultra sensitive)	3250	84443	\$18.57	\$4.65	299%
Uric Acid	1310	84550	\$5.00	\$2.23	124%
HIV Ab Screen	9915	86703	\$12.65	\$6.81	86%
Chlamydia Amplified DNA probe	2925	87491	\$38.80	\$8.19	374%

66. On information and belief, SPECIALTY has also offered and charged lower rates to, and collected lower rates from, other purchasers of comparable services, under comparable circumstances, than it charged to DHCS for Medi-Cal reimbursement for other tests within the 80000 to 89999 range of CPT codes.

IX. MEDI-CAL OVERCHARGES BY HEALTH LINE

67. On or after November 1, 1995 and continuing to the present, HEALTH LINE charged DHCS for laboratory tests at rates that exceed the maximum amounts permitted by law and that exceeded the amounts it offered and charged for the same services to other purchasers of comparable services under comparable circumstances.

68. A former HEALTH LINE sales representative has confirmed to *Qui Tam* Plaintiffs that HEALTH LINE's billing policy was to negotiate and charge individual physicians discounted prices, but to bill all other payors, including Medi-Cal, Medicare, insurance

1 companies and patients, at prices that were two times the rates on Medi-Cal's maximum
 2 reimbursement schedule.

3 69. HEALTH LINE fee schedules and invoices dating from 2003 to the present and
 4 reflecting prices offered and charged to non-Medi-Cal purchasers of HEALTH LINE clinical
 5 laboratory services further confirm that HEALTH LINE has charged other purchasers of
 6 comparable services under comparable circumstances fees well below those it charged to DHCS
 7 under Medi-Cal for the same tests.

8 70. The following chart, which compiles fees published in HEALTH LINE's private
 9 fee schedules and compares them with Medi-Cal's maximum fee schedule, shows HEALTH
 10 LINE's non-Medi-Cal fees for the same services to be well below what HEALTH LINE charged
 11 to Medi-Cal under comparable circumstances

Test Name	Health Line Test No.	CPT Code	Medi-Cal Fee	Health Line Fee	Per Test Overcharge
CBC w Diff & Platelets	1302	85025	\$8.59	\$2.00	330%
Lipid Panel	95950	80061	\$13.88	\$4.50	208%
Lipid Panel, Basic Metabolic, CBC Custom Panel	676	80061, 80048, 85025	\$31.83	\$15.75	102%
Comp. Metabolic Panel	54	80053	\$11.69	\$4.00	192%
TSH (ultra sensitive)	672	84443	\$18.57	\$11.00	69%
PAP Smear	APAP	88148	\$16.80	\$10.00	68%
Hemoglobin (A1C)	771	83036	\$10.74	\$6.00	79%
Culture, Urine	UC	87086	\$7.60	\$6.00	27%
Basic Metabolic	5048	80048	\$9.36	\$3.00	212%
HIV Antibody	1856	86703	\$12.65	\$1.75	623%
Glucose, Fasting	543	82947	\$4.34	\$1.75	148%
HIV + RPR	694	86701, 86593	\$14.69	\$2.50	488%
GGT	210	82977	\$7.96	\$5.00	59%
RBC Antibody Screen	366	86850	\$7.93	\$2.00	297%
Beta-HCG (Quant)	823	84702	\$14.07	\$8.00	76%
Free Testosterone	8457	84402	\$28.15	\$20.00	41%

Test Name	Health Line Test No.	CPT Code	Medi-Cal Fee	Health Line Fee	Per Test Overcharge
HPV (Human Pappiloma Virus)	HPVDH	87621	\$38.80	\$20.00	94%
Chl & GC Amp DNA probe	90517	87491 & 87591	\$77.60	\$11.00	605%
GC DNA probe	390	87590	\$22.17	\$9.00	146%

71. On information and belief, HEALTH LINE has also offered and charged lower rates to, and collected lower rates from, other purchasers of comparable services, under comparable circumstances, than it charged to DHCS for Medi-Cal reimbursement for other tests within the 80000 to 89999 range of CPT codes.

X. MEDI-CAL OVERCHARGES BY WESTCLIFF

72. Within the past thirteen years, WESTCLIFF has charged DHCS for laboratory tests at rates that exceed the maximum amounts permitted by law and that exceeded the amounts it offered and charged for the same services to other purchasers of comparable services, under comparable circumstances.

73. *Qui Tam* Plaintiffs are informed and believe that WESTCLIFF's sales practice is to match deeply discounted prices offered by QUEST and LABCORP to physicians and clinics in order to secure other referrals (including Medi-Cal, Medicare, insurance companies and patients) from these physicians and clinics for laboratory testing at much higher prices.

74. The following chart compares one example of discounted pricing offered by WESTCLIFF, showing WESTCLIFF's discounted fee, which it charged to other purchasers of comparable services, under comparable circumstances, to be well below what it charged to DHCS for Medi-Cal reimbursement for the same services.

Test Name	CPT Code	Medi-Cal Fee	Westcliff Fee	Per Test Overcharge
CBC w Diff & Platelets	85025	\$8.59	\$2.50	244%

1 75. On information and belief, WESTCLIFF has also offered and charged lower rates
2 to, and collected lower rates from, other purchasers of comparable services, under comparable
3 circumstances, than it charged to DHCS for Medi-Cal reimbursement for other tests within the
4 80000 to 89999 range of CPT codes.

5 76. Based on its management's extensive experience in the clinical reference
6 laboratory testing business and knowledge of current staffing, technology and other costs, *Qui*
7 *Tam* Plaintiffs believe that the discounted fees offered by WESTCLIFF are well below the fully
8 loaded costs for performing the tests.

9 77. *Qui Tam* Plaintiffs are informed and believe that the clinical laboratory testing
10 WESTCLIFF conducted for its other clients, and the circumstances in which it was performed,
11 were comparable in all material respects to that conducted for Medi-Cal.

12 **XI. MEDI-CAL OVERCHARGES BY PHYSICIANS IMMUNODIAGNOSTIC**

13 78. Within the past thirteen years, PHYSICIANS IMMUNODIAGNOSTIC has
14 offered and charged lower rates to, and collected lower rates from, other purchasers of
15 comparable services, under comparable circumstances, than it charged to DHCS for Medi-Cal
16 reimbursement for tests within the 80000 to 89999 range of CPT codes.

17 79. Based on extensive experience in the clinical reference laboratory testing business
18 and knowledge of current staffing, technology and other costs, *Qui Tam* Plaintiffs believe that the
19 discounted fees offered by PHYSICIANS IMMUNODIAGNOSTIC are well below the fully
20 loaded costs for performing the tests.

21 80. *Qui Tam* Plaintiffs are informed and believe that the clinical laboratory testing
22 PHYSICIANS IMMUNODIAGNOSTIC conducted for its other clients, and the circumstances
23 under which it was performed, were comparable in all material respects to that conducted for
24 Medi-Cal.

25 **XII. MEDI-CAL OVERCHARGES BY WHITEFIELD**

26 81. *Qui Tam* Plaintiffs are informed and believe that WHITEFIELD has offered and
27 charged lower rates to, and collected lower rates from, other purchasers of comparable services

1 than it charged to DHCS, under comparable circumstances, for Medi-Cal reimbursement for tests
2 within the 80000 to 89999 range of CPT codes.

3 82. Based on extensive experience in the clinical reference laboratory testing business
4 and knowledge of current staffing, technology and other costs, *Qui Tam* Plaintiffs believe that the
5 discounted fees offered by WHITEFIELD are well below the fully loaded costs for performing
6 the tests.

7 83. *Qui Tam* Plaintiffs are informed and believe that the clinical laboratory testing
8 WHITEFIELD conducted for its other clients, and the circumstances under which it was
9 performed, were comparable in all material respects to that conducted for Medi-Cal.

10 **XIII. MEDI-CAL OVERCHARGES BY SEACLIFF**

11 84. *Qui Tam* Plaintiffs are informed and believe that SEACLIFF has offered and
12 charged lower rates to, and collected lower rates from, other purchasers of comparable services
13 than it charged to DHCS, under comparable circumstances, for Medi-Cal reimbursement for tests
14 within the 80000 to 89999 range of CPT codes.

15 85. Based on extensive experience in the clinical reference laboratory testing business
16 and knowledge of current staffing, technology and other costs, *Qui Tam* Plaintiffs believe that the
17 discounted fees offered by SEACLIFF are well below the fully loaded costs for performing the
18 tests.

19 86. *Qui Tam* Plaintiffs are informed and believe that the clinical laboratory testing
20 SEACLIFF conducted for its other clients, and the circumstances under which it was performed,
21 were comparable in all material respects to that conducted for Medi-Cal.

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1 **XIV. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **(Against All Defendants)**

4 **California False Claims Act, Presenting False Claims**

5 **California Government Code § 12651(a)(1)**

6 87. Plaintiff incorporates herein by reference and realleges the allegations stated in
7 Paragraphs 1 through 90, inclusive, of this Complaint.

8 88. Defendants, and each of them, knowingly (as defined in California Government
9 Code section 12650, subdivision (b)(2)) presented or caused to be presented false claims for
10 payment or approval to an officer or employee of California.

11 89. Each Defendant knowingly made, used, and/or caused to be made and used false
12 records and statements, including but not limited to bills, invoices, requests for reimbursement,
13 and records of services, in order to obtain payment or approval of charges to the Medi-Cal
14 program that were higher than they were permitted to claim or charge by applicable law,
15 including but not limited to section 51501 of title 22 of the California Code of Regulations.
16 Among other things, Defendants, and each of them, charged more for services than would have
17 been charged for the same services to other purchasers of comparable services under comparable
18 circumstances.

19 90. Each Defendant knowingly submitted false claims for services performed by
20 means of, and as a result of, illegal kickbacks.

21 91. Each Defendant knowingly made, used, and caused to be made and used false
22 certifications that the services for which it charged Medi-Care were rendered in full compliance
23 with all applicable statutes and regulations.

24 92. The conduct of Defendants, and each of them, violated Government Code section
25 12651, subdivision (a)(1) and was a substantial factor in causing California to sustain damages in
26 an amount according to proof pursuant to California Government Code section 12651,
27 subdivision (a).

1 **SECOND CAUSE OF ACTION**

2 **(Against All Defendants)**

3 **California False Claims Act, Making or Using False Records or Statements**

4 **To Obtain Payment or Approval of False Claims**

5 **California Government Code § 12651(a)(2)**

6 93. Plaintiff incorporates herein by reference and realleges the allegations stated in
7 Paragraphs 1 through 90, inclusive, of this Complaint.

8 94. Defendants, and each of them, knowingly (as defined in California Government
9 Code section 12650, subdivision (b)(2)) made, used, or caused to be made or used false records
10 or statements to get false claims paid or approved by California.

11 95. Each Defendant knowingly made, used, and/or caused to be made and used false
12 records and statements, including but not limited to bills, invoices, requests for reimbursement,
13 and records of services, in order to obtain payment or approval of charges to the Medi-Cal
14 program that were higher than they were permitted to claim or charge by law, including but not
15 limited to section 51501 of title 22 of the California Code of Regulations. Among other things,
16 Defendants, and each of them, charged more for services than would have been charged for the
17 same services to other purchasers of comparable services under comparable circumstances.

18 96. Each Defendant knowingly submitted false claims for services performed by
19 means of, and as a result of, illegal kickbacks.

20 97. Each Defendant knowingly made, used, and caused to be made and used false
21 certifications that the services for which it charged Medi-Cal were rendered in full compliance
22 with all applicable statutes and regulations.

23 98. The conduct of Defendants, and each of them, violated Government Code section
24 12651, subdivision (a)(2) and was a substantial factor in causing California to sustain damages in
25 an amount according to proof pursuant to Government Code section 12651, subdivision (a).

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1 **THIRD CAUSE OF ACTION**

2 **(In the Alternative, Against All Defendants)**

3 **California False Claims Act, Retention of Proceeds**

4 **Of Inadvertently Submitted False Claims**

5 **California Government Code § 12651(a)(8)**

6 99. Plaintiff incorporates herein by reference and realleges the allegations stated in
7 Paragraphs 1 through 90, inclusive, of this Complaint.

8 100. In the alternative, Defendants, and each of them, was a beneficiary of inadvertent
9 submissions of false claims to California, subsequently discovering the falsity of the claims, and
10 failing to disclose the false claims to California within a reasonable time after discovery of the
11 false claims.

12 101. Each Defendant was the beneficiary of false bills and charges to DHCS for
13 amounts that were higher than permitted by law, including but not limited to section 51501 of
14 title 22 of the California Code of Regulations. Among other things, Defendants, and each of
15 them, were the beneficiaries of false bills and charges to the Medi-Cal program for more than
16 would have been charged for the same services to other purchasers of comparable services under
17 comparable circumstances.

18 102. Each Defendant was the beneficiary of false claims for services performed by
19 means of, and as a result of, illegal kickbacks.

20 103. Each Defendant was the beneficiary of false certifications that the services for
21 which it charged Medi-Cal were rendered in full compliance with all applicable statutes.

22 104. Each Defendant, on discovering that it was the beneficiary of the submission of
23 false claims for Medi-Cal reimbursement, failed promptly to disclose the overcharge to DHCS
24 and make restitution therefor.

25 105. The conduct of Defendants, and each of them, violated Government Code section
26 12651, subdivision (a)(8) and was a substantial factor in causing California to sustain damages in
27 an amount according to proof pursuant to Government Code section 12651, subdivision (a).

1 **XV. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays judgment in its favor and against Defendants as follows:

3 1. That judgment be entered in favor of plaintiff STATE OF CALIFORNIA *ex rel.*
4 HUNTER LABORATORIES, LLC and CHRIS RIEDEL, and against Defendants QUEST
5 DIAGNOSTICS INCORPORATED, a Delaware corporation; QUEST DIAGNOSTICS
6 CLINICAL LABORATORIES, INC., a Delaware corporation; QUEST DIAGNOSTICS
7 NICHOLS INSTITUTE, f/k/a QUEST DIAGNOSTICS, INC., a California corporation; QUEST
8 DIAGNOSTICS INCORPORATED, a Nevada Corporation, UNILAB CORPORATION, d/b/a/
9 QUEST DIAGNOSTICS/UNILAB, a Delaware corporation; LABORATORY CORPORATION
10 OF AMERICA, a Delaware corporation; LABORATORY CORPORATION OF AMERICA
11 HOLDINGS, a Delaware corporation; SPECIALTY LABORATORIES, INC., a California
12 corporation; TAURUS WEST, INC., f/k/a HEALTH LINE CLINICAL LABORATORIES, INC.,
13 a California corporation; WESTCLIFF MEDICAL LABORATORIES, INC., a California
14 corporation; PHYSICIANS IMMUNODIAGNOSTIC LABORATORY, INC., a California
15 corporation; WHITEFIELD MEDICAL LABORATORY, INC., a California corporation;
16 SEACLIFF DIAGNOSTICS MEDICAL GROUP, a California Corporation, and each of them,
17 for the amount of damages to California arising from overcharges on claims for their specified
18 laboratory tests and all other tests as to which said Defendants engaged in substantially similar
19 misconduct:

20 a. On the First Cause of Action (California False Claims Act; Presentation of
21 False Claims to California (California Government Code § 12651(a)(1)))
22 damages as provided by California Government Code section 12651,
23 subdivision (a) in the amount of:

- 24 i. Triple the amount of California's damages;
25 ii. Civil penalties of Ten Thousand Dollars (\$10,000.00) for each
26 false claim;
27 iii. Recovery of costs, attorneys' fees, and expenses;
28 iv. Such other and further relief as the Court deems just and proper;

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- b. On the Second Cause of Action (California False Claims Act; Causing False Records or Statements To Be Made or Used To Get False Claims Paid or Approved By California (California Government Code § 12651(a)(2))) damages as provided by California Government Code section 12651, subdivision (a) in the amount of:
 - i. Triple the amount of California’s damages;
 - ii. Civil penalties of Ten Thousand Dollars (\$10,000.00) for each false claim;
 - iii. Recovery of costs, attorneys’ fees, and expenses;
 - iv. Such other and further relief as the Court deems just and proper;

and

- c. On the Third Cause of Action (California False Claims Act; Retention of Proceeds Of Inadvertently Submitted False Claims (California Government Code § 12651(a)(8))) damages as provided by California Government Code section 12651, subdivision (a) in the amount of:
 - i. Triple the amount of California’s damages;
 - ii. Civil penalties of Ten Thousand Dollars (\$10,000.00) for each false claim;
 - iii. Recovery of costs, attorneys’ fees, and expenses;
 - iv. Such other and further relief as the Court deems just and proper.

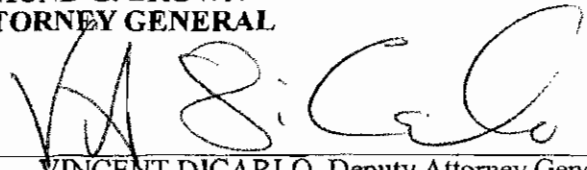
2. Further, the *Qui Tam* Plaintiffs, on their behalf, request that they receive such maximum amount as permitted by law, of the proceeds of this action or settlement of this action collected by California, plus an amount for reasonable expenses incurred, plus reasonable attorneys’ fees and costs of this action. The *Qui Tam* Plaintiffs request that their percentage be based upon the total value recovered, including any amounts received from individuals or entities not parties to this action.

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1 Dated: February 27, 2009

**EDMUND G. BROWN
ATTORNEY GENERAL**

2
3 By:



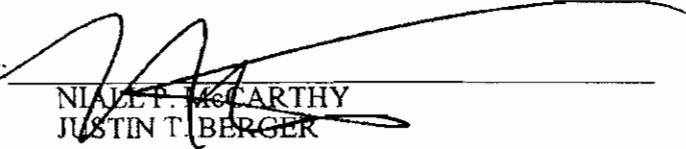
VINCENT DICARLO, Deputy Attorney General

Attorneys for the State of California

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7 DATED: February 27, 2009

COTCHETT, PITRE & McCARTHY

8
9 By:



NIALL P. McCARTHY
JUSTIN T. BERGER

*Attorneys for Qui Tam Plaintiffs
Hunter Laboratories, LLC and Chris Riedel*

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Dated: February 27, 2009

**EDMUND G. BROWN
ATTORNEY GENERAL**

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Attorneys for the State of California

DATED: February 27, 2009

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PROOF OF SERVICE

I am employed in San Mateo County, which is where service of the document(s) referred to below occurred. I am over the age of 18 and not a party to the within action. My business address is Cotchett, Pitre & McCarthy, San Francisco Airport Center, 840 Malcolm Road, Suite 200, Burlingame, California 94010. I am readily familiar with Cotchett, Pitre & McCarthy's practices for the service of documents. On this date, I served or caused to be served a true copy of the following document(s) in the manner listed below:

FIFTH AMENDED COMPLAINT FOR MONEY DAMAGES AND CIVIL PENALTIES FOR VIOLATIONS OF CALIFORNIA FALSE CLAIMS ACT

XXX BY MAIL: I caused the sealed envelope containing the aforementioned document(s) to be deposited with the United States Postal Service on that same day in the ordinary course of business.

[SEE ATTACHED SERVICE LIST]

____ **BY OVERNIGHT COURIER SERVICE:** I caused the sealed envelope containing the aforementioned document(s) to be delivered via overnight courier service to the addressee(s) specified below:

____ **BY FACSIMILE:** I caused the document(s) to be transmitted to the telephone number(s) of the addressee(s) specified below:

____ **HAND DELIVERY:** I caused the sealed envelope containing the aforementioned document(s) to be hand delivered to the addressee(s) specified below.

____ **ELECTRONIC MAIL:** My e-mail address is imartinez@cpmlegal.com. I am readily familiar with this firm's practice for causing documents to be served by e-mail. Following that practice, I caused the aforementioned document(s) to be emailed to the addressee(s) specified below:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Burlingame, California, on February 27, 2009.


IRMA MARTINEZ

1 SERVICE LIST

2 Via Mail

Courtesy Copy

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