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## **MASTO ANNOUNCES \$400 MILLION NATIONWIDE SETTLEMENT WITH MERCK**

*Carson City, NV*— Nevada Attorney General Catherine Cortez Masto announced today the settlement of *State of Nevada ex rel. Steinke v. Merck & Co., Inc.*, a civil fraud action brought under the Nevada False Claims Act. The lawsuit alleged that Merck overcharged the Medicaid program for prescriptions of Zocor and Vioxx to Nevada Medicaid recipients.

The settlement ends a four-year investigation and prosecution by the Medicaid Fraud Control Unit ("MFCU") of the Nevada Attorney General's Office against Merck. In April 2005, the State of Nevada intervened in a lawsuit originally filed by a former Merck sales manager, H. Dean Steinke, under the whistleblower provisions of the Nevada False Claims Act alleging that Merck illegally over-charged Nevada's Medicaid program for Zocor and Vioxx through a sales program that was designed to reach Medicaid patients admitted to hospitals in the state.

Nevada's prosecution under the Nevada False Claims Act helped lead a nationwide investigation dating back to 2000 into Merck's marketing practices involving Zocor and Vioxx and other popular drugs manufactured by Merck. In late 2004, Mr. Steinke and his legal team outlined the details of Merck's marketing practices on the Nevada Medicaid program to Chief Deputy Attorney General Tim Terry, Director of the Nevada MFCU. Nevada's investigation revealed that hospitals were able to purchase Zocor at over a 92% discount off of Merck's reported price, leading to drastically marked-up costs to Nevada's Medicaid program. Soon after, Nevada joined Mr. Steinke's whistleblower lawsuit, and took over its prosecution.

Nevada's prosecution of the lawsuit led to a landmark court decision by U.S. District Court Judge Howard McKibben in May 2006 allowing Nevada and the whistleblower to continue to prosecute Merck for failing to properly charge Nevada for Zocor and Vioxx prescriptions to Nevada Medicaid patients. [This decision can be found at 432 F.Supp.2d 1082 (D. Nev. 2006)]. Nevada's groundbreaking legal victory had a wide-ranging impact on Merck because Merck was using the same pricing programs for all state Medicaid programs. The decision exposed Merck to potential liability for hundreds of millions of dollars in rebates Merck should have paid to Nevada, and all other states, for Medicaid sales.

After this court ruling the State of Nevada, in conjunction with the United States Attorney's Office in Philadelphia, the United States Department of Justice in Washington, D.C. and a team of state representatives from Delaware, Illinois and Massachusetts, was able to negotiate a nationwide

settlement with Merck for \$400 Million. The State of Nevada will receive approximately \$1.5 Million of this amount.

Attorney General Masto noted that "The government's limited resources must be used as efficiently as possible to protect government funded programs and so as to facilitate the greatest return on the taxpayer's dollars. This joint effort between the federal and state governments should serve as a blueprint for future cases."

The Nevada MFCU worked closely with the team of private lawyers representing the whistleblower to coordinate the Nevada prosecution. Mr. Steinke was represented by Steven H. Cohen of Chicago, Illinois, Mark A. Kleiman of Los Angeles, California and BethAnne Yeager, from Madison, Wisconsin. Cohen, Kleiman and Yeager also represented Mr. Steinke in a 400 million dollar global settlement reached today by the federal government and the other states.

"Simply put, there would not be a global settlement against Merck if it had not been for Tim Terry and Nevada Attorney General's Office," according to Cohen. "Nevada's lead in this case made it all happen."

Kleiman agrees with Cohen's assessment, "The Nevada Attorney General's Office stepped up to the plate on behalf of all the States and the federal government, took the lead in testing the government theory of the case, and scored a resounding victory for the taxpayers."

According to Mr. Steinke's lawyers, who have been representing whistleblowers in cases brought under federal and state false claims laws since 1995, the Nevada case represents a breakthrough model for the way government is prosecuting nationwide fraud practices by drug companies and other Medicaid providers.

"Nevada has changed the landscape of anti-fraud enforcement" says Ms. Yeager. "This case and the global settlement it created will pave the way for future prosecutions of nationwide fraud."

The *Nevada v. Merck* case alleged that Merck promoted Zocor and Vioxx through two incentive marketing programs known as SAVE and VIP, respectively, which offered hospitals steep discounts—92% or greater—on the drugs so long as the hospitals met certain conditions. These conditions required that the hospitals maintain its purchases of Zocor or Vioxx at a 70% or higher market share or established the drugs as the exclusive drug on the hospital's formulary. Merck designed SAVE and VIP to induce the hospitals to promote Zocor and Vioxx, and to use the hospitals as a portal to capture the long-term prescriptions that patients would require long after they were discharged, known as the spill-over effect. The case also alleged that Merck further induced hospitals by giving away free stock bottles of these drugs to offset the hospitals' costs.

The \$400-million settlement announced today is the second-largest nationwide civil Medicaid settlement. More information about the global settlement and the Nevada settlement may be found at the Relator's Web site: [www.drugfraudsettlement.com](http://www.drugfraudsettlement.com).

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