

# **Exhibit C**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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: UNITED STATES OF AMERICA, ET AL. :  
: EX REL. MARC SILVER, :  
: :  
: Plaintiffs, :  
: No. 1:11-cv-01326-NLH-JS :  
: v. :  
: :  
: OMNICARE, INC., ET AL. :  
: :  
: Defendants. :  
: :  
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**EXPERT REPORT OF W. DAVID BRADFORD, PH.D.**

**December 3, 2021**

**CONFIDENTIAL**

126. As an initial matter, Dr. Shaked makes several errors in his revenue calculations that significantly inflates his FCA Damages figures. Moreover, Dr. Shaked's calculations of Direct Non-Ingredient Costs are based on unsupported assumptions and inappropriate methodological choices. Moreover, the way in which Dr. Shaked allocates Direct Non-Ingredient Costs to individual SNFs is flawed. Because his analysis is highly flawed and is based on numerous errors, Dr. Shaked's calculations of contribution margins and his damages calculations are highly unreliable.

**A. Dr. Shaked's Contribution Margin and FCA Damages Calculations Are Significantly Inflated Due to His Errors in Calculating Revenues.**

127. Dr. Shaked's revenue calculations are riddled with errors. These errors render his analysis, his conclusions, and his resulting FCA Damages unreliable. In fact, the impact of the three errors discussed below alone inflate Dr. Shaked's FCA Damages by \$223.52 million, or 58.29 percent.<sup>179</sup>

**1. Dr. Shaked Uses the Billed Amounts Instead of the Actual Paid Amounts.**

128. Dr. Shaked's Medicare Part D and Medicaid revenue calculations are based on amounts billed to payors instead of amounts paid, thereby inflating his FCA Damages calculations.

129. Specifically, in identifying "revenues" for PharMerica's Medicare Part D and Medicaid businesses, Dr. Shaked uses the amounts billed by PharMerica, as opposed to amounts that were *actually paid* to PharMerica. The data show that the latter frequently are lower than the amounts billed.<sup>180</sup> Dr. Shaked's error in this regard shows a fundamental misunderstanding not only of the data itself, but also of the foundational basics of payment flows in the healthcare industry.

130. Dr. Shaked's use of the billed amount instead of the amount actually paid to PharMerica thus leads him to overstate PharMerica's revenues with respect to its Medicare Part D and Medicaid businesses. Because Dr. Shaked's damages methodology consists of adding up his calculated Medicare Part D and Medicaid "revenues" for all SNFs with a negative Part A contribution margin, any inflation of

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<sup>179</sup> See **Exhibit 2: Impact of Errors in Revenue Calculations on Dr. Shaked's FCA Damages**. This exercise is for illustrative purposes only, is not meant to imply that PharMerica engaged in swapping, and is not an opinion about how contribution margins or FCA Damages should be calculated.

<sup>180</sup> Dr. Shaked uses a field called "NET\_PRICE" which is the "Billed Amount," according to the LTC400 data dictionary. See Attachment C: PHCOREPW (Billing) Table. *LTC400 DW Transactional Data*. I use "BILL\_AMT" which is the "Credit Amount or Paid Amount," as well as the "BIL\_AMT\_2," which is the "Paid Amount that should be added to Bill\_Amt on payment records only" in order to obtain the amounts that were actually paid to PharMerica. See Attachment C: PHCVREPW (Billing Credits) Table. *LTC400 DW Transactional Data*.

the Part D and Medicaid revenues for such SNFs directly corresponds to an inflation of FCA Damages attributed to that SNF.

**2. Dr. Shaked Incorrectly Includes Non-Current Records.**

131. Apart from his erroneous identification of Medicare Part D and Medicaid revenue, Dr. Shaked incorrectly includes in his calculation “non-current” records that do not reflect the final adjudication of a given claim and thus do not generate revenue. This happens when PharMerica submits a claim to one payer, only to find out later that another payer is responsible for the claim. In the language of PharMerica’s dispensing database, the first, erroneous record becomes “non-current.” The second, correctly billed record becomes “current.”
132. For example, one dispense that was originally billed to a Wellcare/Walgreens Part D plan ultimately was switched to a United Healthcare Part D plan, which is the only record marked as current and that was paid. Dr. Shaked attributes revenue both to the “non-current” and “current” records, thus double counting the revenue, and hence the alleged damages resulting from this dispense. This is not an isolated error. Dr. Shaked includes all non-current records in his revenue and damages calculations.
133. Because Dr. Shaked’s contribution margins are calculated as revenue minus variable cost, including these non-current records inflates Part D contribution margins. More significantly, because he includes all Part D revenue in damages, this double counting of claims artificially inflates his damages calculations.

**3. Dr. Shaked Incorrectly Includes Records Not Reflective of Actual Claims.**

134. Dr. Shaked also does not filter out Medicare Part D and Medicaid records for canceled claims, records for fully credited claims, or “label only” records, i.e., records that are tracked for patient record purposes but do not reflect drugs that were actually dispensed by PharMerica.
135. As with non-current claims, these records represent claims that did not generate any revenue. Yet, Dr. Shaked includes them in his contribution margin analysis and damages calculations. Therefore, this error similarly results in an inflation in his FCA Damages by overstating Medicare Part D and Medicaid revenues.

**B. Dr. Shaked’s Flawed Analysis Contains Numerous Other Technical Mistakes.**

136. In addition to the three errors that result in a significant overstatement of Dr. Shaked’s FCA Damages figures, his analysis is riddled with numerous other technical mistakes. There are too many

**Exhibit 2****Impact of Errors in Revenue Calculations on Dr. Shaked's FCA Damages<sup>1, 2</sup>**

<b>Shaked Damages</b>	<b>Recalculation</b>	<b>Reduction (\$)</b>	<b>Reduction (%)</b>
\$383,453,676	\$159,929,185	\$223,524,491	58.29%

## Notes:

1. This exercise is for illustrative purposes only, is not meant to imply that PharMerica engaged in swapping, and is not an opinion about how contribution margins or FCA Damages should be calculated.
2. As described in Section IX.A, Dr. Shaked's contribution margin and FCA Damages calculations reflect numerous consequential errors, such as: (i) Dr. Shaked's use of billed amounts, as opposed to amounts actually paid to PharMerica, to identify revenues for PharMerica's Medicare Part D and Medicaid businesses; and (ii) Dr. Shaked's failure to remove non-current records, cancelled records, fully credited records, and label-only records. To show the impact that these errors have on Dr. Shaked's damages figures, I recalculate FCA Damages after correcting these errors.

## Source:

- Shaked, Israel. Expert Report of Israel Shaked. *United States, et al., ex rel. Marc Silver v. Omnicare, Inc., et al.* (D.N.J. No. 1:11-cv-01326-NHL-JS) (Sept. 21, 2021) and supporting materials.