



State of North Carolina

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November 9, 2015

North Carolina Senate President Pro Tempore Phil Berger
North Carolina House of Representatives Speaker Tim Moore
Co-Chairs, Joint Legislative Commission on Governmental Operations

Senator Stan Bingham
Senator Shirley Randleman
Senator E.S. "Buck" Newton
Representative James Boles, Jr.
Representative Leo Daughtry
Representative John Faircloth
Representative Pat Hurley
Co-Chairs, Appropriations Subcommittee on Justice and Public Safety

North Carolina General Assembly
Raleigh, North Carolina 27601-1096

Re: G.S. §114-2.5; Report on Settlement Agreement for Cephalon, Inc.;
Report on Settlement Agreement for Pharmacia Corporation

Dear Members:

G.S. §114-2.5 requires the Attorney General to report to the Joint Legislative Commission on Governmental Operations and the Chairs of the Appropriations Subcommittees on Justice and Public Safety regarding all settlements and court orders which result in more than \$75,000.00 being paid to the State. Pursuant to that statute, I am writing regarding the settlement of claims for Medicaid reimbursement to the State and Federal governments in the above-referenced matters. Pursuant to federal law (42 C.F.R. § 433.320) recoveries in these cases are shared on a pro rata basis by the State and Federal governments.

Cephalon, Inc.

The settlement resolves allegations that from January 1, 2007 through March 31, 2012, Cephalon falsely under-reported its Average Manufacturer's Price to CMS, improperly decreasing the amounts Cephalon rebated to the states under the Medicaid

Drug Rebate Program.

Under the terms of North Carolina's settlement, the State of North Carolina will recover \$385,132.61. Of that amount the federal government will receive \$264,400.00 for North Carolina's federal portion of Medicaid recoveries. Pursuant to G.S. § 1-610, the *qui tam* plaintiffs whose whistleblower actions brought this matter to the government's attention will receive \$28,589.81 of North Carolina's recovery. The North Carolina Medicaid Program will receive \$91,137.87 as restitution and interest. Pursuant to G.S. § 108A-70.12(b)(3), the North Carolina Department of Justice will receive \$1,004.93 for investigative costs.

Pharmerica Corporation

The settlement resolves allegations that from January 1, 2001 through December 31, 2008, Pharmerica knowingly solicited and received illegal remuneration from drug manufacturer Abbott Laboratories in the form of rebate agreements that required Pharmerica to engage in certain promotional programs, grants, and other financial support.

Under the terms of North Carolina's settlement, the State of North Carolina will recover \$122,397.19. Of that amount the federal government will receive \$77,927.45 for North Carolina's federal portion of Medicaid recoveries. Pursuant to G.S. § 1-610, the *qui tam* plaintiffs whose whistleblower actions brought this matter to the government's attention will receive \$6,524.74 of North Carolina's recovery. The North Carolina Medicaid Program will receive \$19,253.03 as restitution and interest. In addition, pursuant to Article IX, Section 7 of the North Carolina Constitution and G.S. § 115C-457.1, the penalty portion of the settlement in the amount of \$18,281.57 will be paid to the Civil Penalty Forfeiture Fund for the support of North Carolina public schools. Pursuant to G.S. § 115C-457.2 and G.S. § 108A-70.12(b)(3), the North Carolina Department of Justice will receive \$205.20 for investigative costs and \$205.20 for costs of collection.

We will be happy to respond to any questions you may have regarding this report.

Very truly yours,


Kristi Jones
Chief of Staff

cc: Kristine Leggett, NCGA Fiscal Research Division
Christy Agner, NCDOJ, Legislative Liaison
Nels Roseland, NCDOJ, Deputy Chief of Staff

STATE SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the State of North Carolina ("the State") and Cephalon, Inc. ("Cephalon"), hereinafter collectively referred to as "the Parties."

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. Cephalon is a company incorporated under the laws of Delaware with its headquarters in Frazer, Pennsylvania. At all relevant times, Cephalon manufactured and sold pharmaceutical products in the United States. In 2011, Teva Pharmaceuticals Industries Ltd. acquired Cephalon, and Cephalon became a wholly-owned subsidiary of Teva Pharmaceuticals.

B. On October 28, 2008, Ronald Streck ("Relator") filed a *qui tam* action in the United States District Court for the Eastern District of Pennsylvania captioned *United States of America et al., ex. rel. Streck et al. v. Allergan, et al.*, Civil Action No. 08-CV-5135. This *qui tam* action will be referred to herein as the "Civil Action."

C. Cephalon has entered into a separate civil settlement agreement (the "Federal Settlement Agreement") with the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General of the Department of Health and Human Services (hereinafter referred to as the "United States").

D. The State contends that Cephalon caused claims for payment to be submitted to the State's Medicaid Program (see 42 U.S.C. §§ 1396-1396(v)).

E. The State contends that it has certain civil and administrative causes of action against Cephalon for engaging in the following conduct during the period from January 1, 2007 through March 31, 2012 (the "Covered Conduct"):

1. Pursuant to the Medicaid Drug Rebate Program, Cephalon was required to report the Average Manufacturer Price ("AMP") for each of its covered outpatient drugs to the Centers for Medicare and Medicaid Services ("CMS") on a monthly and quarterly basis, and to pay quarterly rebates to state Medicaid programs that were based, in part, on the quarterly AMPs reported by Cephalon. Prior to enactment of the Affordable Care Act ("ACA"), the AMP for a drug generally was based on the average unit price paid to the manufacturer for the drug by wholesalers for drugs distributed to the retail pharmacy class of trade, including cash discounts and other price concessions that reduced the actual price paid for the drug. The ACA revised the definition of AMP, in part, by replacing the term "retail pharmacy class of trade" with "retail community pharmacies" and including manufacturer direct sales to pharmacies. Both before and after enactment of the ACA, bona fide service fees are excluded from manufacturers' AMP calculations.

2. Cephalon entered into distribution services agreements with wholesalers ("Distribution Services Agreements") to facilitate the distribution and sale of the pharmaceuticals listed on Attachment A hereto ("the Covered Drugs"). Pursuant to the Distribution Services Agreements, the wholesalers performed various specified services, and Cephalon compensated the wholesalers for performing those services by providing the wholesalers quarterly credits calculated as a percentage of the quarterly

sales of the Covered Drugs, subject to certain performance penalties based on criteria set forth in the agreements.

3. The State contends that Cephalon improperly treated compensation provided to the wholesalers pursuant to the Distribution Services Agreements as price reductions, rather than as bona fide service fees, in calculating and reporting quarterly AMPs to CMS for the Covered Drugs. The State contends that, as a result of Cephalon's reporting such improperly reduced AMPs, Cephalon underpaid quarterly rebates owed to the states for the Covered Drugs under the Medicaid Drug Rebate Program, and caused the State Medicaid Program to be overcharged for the Covered Drugs.

F. This Agreement is made in compromise of disputed claims. This Agreement is neither an admission of facts or liability by Cephalon, nor a concession by the State that its claims are not well founded. Cephalon expressly denies the allegations of the State as set forth herein and in the Civil Action. Neither this Agreement, its execution, nor the performance of any obligation under it, including any payment, nor the fact of the settlement, is intended to be, or shall be deemed as, an admission of liability or wrongdoing, or other expression reflecting upon the merits of the dispute by Cephalon.

G. To avoid the delay, expense, inconvenience, and uncertainty of protracted litigation of these causes of action, and in consideration of the mutual promises and obligations of this Agreement, the Parties mutually desire to reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants and obligations set forth in this

Agreement, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Cephalon agrees to pay to the United States and the Medicaid Participating States (as defined in sub-paragraph (c) below), collectively, the sum of \$7,500,000.00 ("Settlement Amount") and interest on the Settlement Amount as set forth in Sections III.1(a) and III.1(b). The Settlement Amount and applicable interest shall constitute a debt immediately due and owing to the United States and the Medicaid Participating States on the Effective Date of the Federal Settlement Agreement, and subject to the terms of this Agreement. The debt shall forever be discharged by payments to the United States and the Medicaid Participating States, under the following terms and conditions:

(a) Cephalon shall pay to the United States the sum of \$4,319,528.56, plus accrued interest on that amount at the rate of 2.125% per annum from September 26, 2014 to and including the Effective Date of the Federal Settlement Agreement ("Federal Settlement Amount"). The Federal Settlement Amount shall be paid pursuant to the terms of the Federal Settlement Agreement.

(b) Cephalon shall make a single payment to the Medicaid Participating States, consisting of \$3,180,471.44 plus accrued interest (the "Medicaid State Settlement Amount"), subject to the non-participating state deduction provision of Sub-paragraph (d) below ("Medicaid Participating State Settlement Amount"). Interest will accrue at a rate of 2.125% per annum from September 26, 2014 until the day the single payment is made under this Agreement. The single payment shall be made no later than seven (7) business days after the expiration of the 60 day opt-in period for Medicaid Participating States

described in Sub-paragraph (c) below. The Medicaid Participating State Settlement Amount shall be paid by electronic funds transfer to the New York State Attorney General's National Global Settlement Account pursuant to written instructions from the State Negotiating Team ("State Team"), which written instructions shall be delivered to counsel for Cephalon on or before the expiration of the 60 day opt-in period for Medicaid Participating States described in Sub-paragraph (c) below.

(c) A State shall constitute a Medicaid Participating State, provided that the State fully executes a State Settlement Agreement (either in this form to which Cephalon and the State Team have agreed, or in a form otherwise agreed to by Cephalon and the individual State) and delivers it to Cephalon's attorneys within 60 days of receiving this Agreement. If this condition is not satisfied within those 60 days, Cephalon's offer to resolve this matter with the individual State shall become null and void absent written agreement between counsel for Cephalon and the State Team to extend the 60 day period.

(d) The total portion of the amount paid by Cephalon in settlement for the Covered Conduct for the State is \$383,524.21, consisting of a portion paid to the State under this Agreement and another portion paid to the United States as part of the Federal Settlement Agreement. The amount allocated to the State under this Agreement is the sum of \$119,124.21, plus applicable interest (the ("State Amount")). If the State does not execute this Agreement within 60 days of receiving this Settlement Agreement, the State Amount shall be deducted from the Medicaid State Settlement Amount and shall not be paid by Cephalon absent written agreement between counsel for Cephalon and the State Team to extend the time period for executing this Agreement.

2. Within fourteen (14) business days of the Effective Date of this Agreement, the State agrees to dismiss with prejudice any state law claims which the State has the authority to dismiss currently pending against Cephalon in State or Federal Courts for the Covered Conduct including any supplemental state law claims asserted in the Civil Action. Contingent upon the receipt of its State Amount, the State, if served with the Civil Action and liable to pay a Relator's share, agrees to pay the Plaintiff-Relator through the State Team an amount to be determined by court hearing or by agreement between the State Team and the Plaintiff-Relator in the Civil Action.

3. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of Cephalon set forth in this Agreement, and conditioned upon receipt by the State of the State Amount, the State agrees to release Cephalon, together with its current and former parents, divisions, subsidiaries, other affiliates ("affiliate" defined as an entity that controls, or is controlled by, Cephalon through common ownership), predecessors, successors, transferees, heirs and assigns, and their current and former directors, officers, partners, shareholders, representatives, agents, and employees, individually and collectively (collectively, the "Cephalon Released Entities"), from any civil or administrative monetary cause of action that the State has for any claims submitted or caused to be submitted to the State Medicaid Program as a result of the Covered Conduct, including under the State's False Claim Act and any state common law theories, including payment by mistake, unjust enrichment, and fraud. The payment of the State Settlement Amount fully discharges Cephalon from any obligation to pay Medicaid restitution, Medicaid damages, and/or any Medicaid civil fines or civil penalties to the State for the Covered Conduct.

4. Notwithstanding any term of this Agreement, the State specifically does not release any person or entity from any of the following liabilities:

- (a) any criminal, civil, or administrative liability arising under state revenue codes;
- (b) any criminal liability not specifically released by this Agreement;
- (c) except as explicitly stated in this Agreement, any civil or administrative liability that any person or entity, including any Released Entities, has or may have to the State or to individual consumers or state program payors under any statute, regulation or rule not expressly covered by the release in Paragraph 3 above, including but not limited to, any and all of the following claims: (i) State or federal antitrust violations; (ii) Claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;
- (d) any liability to the State for any conduct other than the Covered Conduct;
- (e) any liability which may be asserted on behalf of any other payors or insurers, including those that are paid by the State's Medicaid program on a capitated basis;
- (f) any liability based upon obligations created by this Agreement;
- (g) except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusions from the State's Medicaid program;

- (h) any liability for expressed or implied warranty claims or other claims for defective or deficient products and services provided by Cephalon;
- (i) any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; or
- (j) any liability based on a failure to deliver goods or services due.

5. Cephalon waives and shall not assert any defenses it may have to criminal prosecution or administrative action for the Covered Conduct, which defenses may be based in whole or in part on a contention, under the Double Jeopardy Clause of the Fifth Amendment of the Constitution or the Excessive Fines Clause of the Eighth Amendment of the Constitution, that this Agreement bars a remedy sought in such criminal prosecution or administrative action.

6. In consideration of the obligations of the State set forth in this Agreement, Cephalon waives and discharges the State, its agencies, employees, and agents from any causes of action (including attorneys' fees, costs, and expenses of every kind and however denominated) which Cephalon has against the State, its agencies, employees, and agents arising from the State's investigation and prosecution of the Covered Conduct.

7. The amount that Cephalon must pay to the State pursuant to Paragraph III.1. above will not be decreased as a result of the denial of any claims for payment now being withheld from payment by the State's Medicaid program, or any other state payor, for the Covered Conduct; and Cephalon agrees not to resubmit to the State's Medicaid program or any other state payor, any previously denied claims, which denials were based on the Covered Conduct, and agrees to withdraw the appeal of or not to appeal or cause the appeal of any such denials of claims.

8. Cephalon shall not seek payment from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors for any claims for reimbursement to the State's Medicaid Program resulting from the Covered Conduct and covered by this Agreement.

9. Cephalon expressly warrants that it has reviewed its financial condition and that it is currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I).

10. The Parties each represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

11. Cephalon agrees to cooperate fully and truthfully with any State investigation, relating to the Covered Conduct, of individuals or entities not released in this Agreement. Upon reasonable notice, Cephalon shall facilitate, and agrees not to impair, the cooperation of its directors, officers, employees or agents, for interviews and testimony, consistent with the rights and privileges of such individuals and of Cephalon. Upon request, Cephalon agrees to furnish to the State complete and unredacted copies of all non-privileged documents including, but not limited to, reports, memoranda of interviews, and records in their possession, custody or control, concerning the Covered Conduct. Cephalon shall be responsible for all costs it may incur in complying with this paragraph.

12. Except as expressly provided to the contrary in this Agreement, each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

13. Except as otherwise stated in this Agreement, this Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any liability against any other person or entity.

14. Nothing in this Agreement constitutes an agreement by the State concerning the characterization of the amounts paid hereunder for purposes of the State's revenue code.

15. In addition to all other payments and responsibilities under this Agreement, Cephalon agrees to pay its share of the reasonable expenses and travel costs of the State Team, including reasonable consultant fees and expenses. Cephalon will pay this amount by separate check made payable to the National Association of Medicaid Fraud Control Units, after the Medicaid Participating States execute their respective Agreements, or as otherwise agreed by the Parties.

16. This Agreement is governed by the laws of the State, and venue for addressing and resolving any and all disputes relating to this Agreement shall be the state courts of appropriate jurisdiction of the State.

17. The undersigned Cephalon signatories represent and warrant that they are authorized as a result of appropriate corporate action to execute this Agreement. The undersigned State signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement on behalf of the State through their respective agencies and departments.

18. The Effective Date of this Agreement shall be the date of signature of the last signatory to this Agreement. Facsimiles of signatures shall constitute acceptable binding signatures for purposes of this Agreement.

19. This Agreement shall be binding on all successors, transferees, heirs, and assigns of the Parties.

20. This Agreement constitutes the complete agreement between the Parties with respect to this matter and shall not be amended except by written consent of the Parties.

21. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same Agreement.

STATE OF NORTH CAROLINA

By: Charles H. Hobgood

CHARLES H. HOBGOOD
Director, Medicaid Investigations Division
Office of the Attorney General

Dated: 8/6/2015

By: Dave Richard

DAVE RICHARD
Deputy Secretary for Medical Assistance
Division of Medical Assistance

Dated: 7/20/15

CEPHALON, INC.

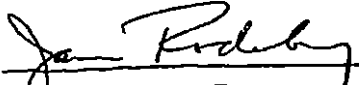
DATED: 9/22/15

BY: 
[name]
[title]

DATED: 9-21-15

BY: 
[name] Rebecca J. Hillier
Counsel for Cephalon, Inc.

Dated: 9-21-15

By: 
James Rodenberry
GC, NA SM

ATTACHMENT A COVERED DRUGS

NDC	DRUG NAME
63459-0100-01	Provigil 100mg
63459-0101-01	Provigil 100 mg
63459-0101-30	Provigil 100 mg
63459-0200-01	Provigil 200 mg
63459-0201-01	Provigil 200 mg
63459-0201-30	Provigil 200 mg
63459-0205-30	Nuvigil 50mg
63459-0205-60	Nuvigil 50mg
63459-0215-30	Nuvigil 150mg
63459-0215-60	Nuvigil 150mg
63459-0225-30	Nuvigil 250mg
63459-0225-60	Nuvigil 250mg
63459-0300-42	Vivitrol 380mg
63459-0390-08	Treanda 25mg/5mL
63459-0391-20	Treanda 100mg/20mL
63459-0402-01	Gabitril 2mg
63459-0402-30	Gabitril 2mg
63459-0404-01	Gabitril 4mg
63459-0404-30	Gabitril 4mg
63459-0412-01	Gabitril 12mg
63459-0412-30	Gabitril 12mg
63459-0416-01	Gabitril 16mg
63459-0416-30	Gabitril 16mg
63459-0502-30	Actiq 200 mcg
63459-0504-30	Actiq 400 mcg
63459-0506-30	Actiq 800 mcg
63459-0508-30	Actiq 800 mcg
63459-0512-30	Actiq 1200 mcg
63459-0516-30	Actiq 1800 mcg
63459-0541-28	Fentora 100mcg
63459-0542-28	Fentora 200mcg
63459-0543-28	Fentora 300mcg
63459-0544-04	Fentora 400mcg
63459-0544-28	Fentora 400mcg
63459-0546-04	Fentora 600mcg
63459-0546-28	Fentora 600mcg
63459-0548-04	Fentora 800mcg
63459-0548-28	Fentora 800mcg
63459-0600-10	Trisenox 100 mg
63459-0700-60	Amrix 15 mg
63459-0701-60	Amrix 30mg

STATE SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the State of North Carolina ("the State") and PharMerica Corporation ("PharMerica"), hereinafter collectively referred to as "the Parties."

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. At all relevant times, PharMerica was a Delaware corporation with a principal place of business in Louisville, Kentucky. PharMerica operates approximately 95 pharmacies in the United States, providing pharmacy services to approximately 300,000 residents in long-term care and other facilities.

B. On October 31, 2007, Relator Meredith McCoyd filed a *qui tam* action in the United States District Court for the Western District of Virginia captioned United States of America and the states of California, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Louisiana, Massachusetts, Michigan, Nevada, New Hampshire, New Mexico, New York, Tennessee, Texas, Virginia, and the District of Columbia, ex rel. Meredith McCoyd v. Abbott Laboratories, Civil Action No. 1:07cv00081. On June 15, 2010, Relator Meredith McCoyd filed an Amended Complaint adding additional counts under the false claims statutes for the states of Connecticut, Montana, New Jersey, North Carolina, Oklahoma, Rhode Island, Wisconsin, and the City of Chicago.

On January 21, 2010, Relator Thomas J. Spetter, Jr. filed a *qui tam* action in the United States District Court for the Western District of Virginia captioned United States of America and the states of Arkansas, California, Delaware, District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Louisiana, Massachusetts, Michigan, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, Nevada, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, Virginia and Wisconsin, ex rel. Thomas J. Spetter, Jr. v. Abbott Laboratories, Inc., Civil Action No. 1:10cv00006.

On February 16, 2010, Relator Thomas J. Spetter filed a First Amended Complaint adding an additional count under the false claims statute for the state of Connecticut, and removing counts under the false claims statutes for Arkansas and Missouri. On December 3, 2010, Relator Thomas J. Spetter, Jr. filed a Second Amended Complaint adding additional counts under the false claims statutes for the states of Colorado, Maryland, and Minnesota.

The *qui tam* actions were consolidated in the United States District Court for the Western District of Virginia on June 29, 2011 under Civil Action 1:07cv00081 and will be referred to collectively as the "Civil Actions."

C. PharMerica has entered into a separate civil settlement agreement (the "Federal Settlement Agreement") with the United States of America (as that term is defined in the Federal Settlement Agreement) hereinafter referred to as the "United States."

D. The State contends that PharMerica caused claims for payment to be submitted to the State's Medicaid Program (see 42 U.S.C. §§ 1396-1396(v)).

E. The State contends that it has certain civil and administrative causes of action against PharMerica for engaging in the following conduct:

Knowingly soliciting and receiving illegal remuneration from drug manufacturer Abbott Laboratories ("Abbott") in the form of rebate agreements that required PharMerica to engage in certain promotional programs, grants, and other financial support. The remuneration was intended to induce PharMerica to promote and/or purchase Abbott's prescription drug Depakote in violation of the state anti-kickback statutes, the state False Claims Act and the Federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b), between January 1, 2001 and December 31, 2008. As a result, the State alleges that PharMerica knowingly submitted or caused to be submitted false and/or fraudulent claims for Depakote to Medicaid (the "Covered Conduct").

F. This Agreement is neither an admission of facts or liability by PharMerica, nor a concession by the State that its allegations are not well founded. PharMerica expressly denies the allegations of the State as set forth herein and in the Civil Actions.

G. To avoid the delay, expense, inconvenience, and uncertainty of protracted litigation of these causes of action, the Parties mutually desire to reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants and obligations set forth in this Agreement, and for good and valuable consideration as stated herein, the Parties agree as follows:

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1. PharMerica agrees to pay to the United States and the Medicaid Participating States (as defined hereinafter), collectively, the sum of Nine Million, Two Hundred Fifty Thousand Dollars (\$9,250,000), plus accrued interest on that amount of 2.125% per annum commencing on November 24, 2014 and continuing and including the day final payment is made under this Agreement (collectively, the "Settlement Amount"). The Settlement Amount shall constitute a debt immediately due and owing to the United States and the Medicaid Participating States on the Effective Date of the Federal Settlement Agreement and subject to the terms of this Agreement. The debt shall forever be discharged by payments to the United States and the Medicaid Participating States, under the following terms and conditions:

(a) PharMerica shall pay to the United States the sum of \$6,749,565.00, plus accrued interest on that amount at the rate of 2.125% per annum commencing on November 24, 2014 ("Federal Settlement Amount"). The Federal Settlement Amount shall be paid pursuant to the terms of the Federal Settlement Agreement.

(b) PharMerica shall pay to the Medicaid Participating States the sum of \$2,500,435.00, plus accrued interest on that amount of 2.125% per annum commencing on November 24, 2014 and continuing and including the day payment in full is made ("Medicaid State Settlement Amount"), subject to the non-participating state deduction provision of sub-paragraph (d) below ("Medicaid Participating State Settlement Amount"), in accordance with the State Payment Schedule attached hereto as Exhibit A. PharMerica shall pay the Medicaid Participating States no later than seven

(7) business days after the expiration of the 45 day opt-in period for Medicaid Participating States described in sub-paragraph (c) below. Medicaid Participating States receiving a settlement amount of more than \$25,000 will receive payment in accordance with the State Payment Schedule attached hereto as Exhibit A. Medicaid Participating States that are receiving a settlement amount of \$25,000 or less will receive a one-time lump sum payment no later than seven (7) business days after the expiration of the 45 day opt-in period for Medicaid Participating States. The Medicaid Participating State Settlement Amount shall be paid by electronic funds transfers to the New York State Attorney General's National Global Settlement Account pursuant to written instructions from the National Association of Medicaid Fraud Control appointed State Negotiating Team ("State Team"), which written instructions shall be delivered to counsel for PharMerica. The entire principal balance of the Medicaid State Settlement Amount or any portion thereof, plus any interest accrued on the principal as of the date of any prepayment, may be prepaid at any time without penalty.

(c) PharMerica shall execute a State Settlement Agreement with any State that executes such an Agreement in the form to which PharMerica and the State Team have agreed or in a form otherwise agreed to by PharMerica and an individual State. The State shall constitute a Medicaid Participating State provided the Agreement is fully executed by the State and delivered to PharMerica's attorneys within 45 days of receiving this Agreement. If this condition is not satisfied within 45 days, PharMerica's offer to resolve this matter with the individual State shall become null and void absent

written agreement between counsel for PharMerica and the State Team to extend the 45 day period.

(d) The total portion of the amount paid by PharMerica in settlement for the Covered Conduct for the State is \$121,425.74, consisting of a portion paid to the State under this Agreement and another portion paid to the United States as part of the Federal Settlement Agreement. The amount allocated to the State under this Agreement is the sum of \$43,498.29, plus applicable interest (the "State Amount"). If the State does not execute this Agreement within 45 days of receiving this Settlement Agreement, the State Amount shall be deducted from the Medicaid State Settlement Amount and shall not be paid by PharMerica absent written agreement between counsel for PharMerica and the State Team to extend the time period for executing this Agreement. Attached hereto as Exhibit A is the State Payment Schedule to be paid directly by electronic funds transfers to the New York State Attorney General's National Global Settlement Account pursuant to written instructions from the State Team.

2. Medicaid Participating States that are receiving a settlement amount of \$25,000 or less agree to dismiss with prejudice any state law claims which the State has the authority to dismiss currently pending against PharMerica in State or Federal Courts for the Covered Conduct including any supplemental state law claims asserted in the Civil Actions. Medicaid Participating States that are receiving more than \$25,000 agree to dismiss without prejudice any state law claims which the State has the authority to dismiss currently pending against PharMerica in State or Federal Courts for the Covered Conduct including any supplemental state law claims asserted in the Civil Actions upon

payment of the first installment amount. Contingent upon the receipt of their respective State Amounts, the State agrees to pay, as soon as feasible after such receipt, agreed upon amounts that have been addressed via side letters with the Relators in the Civil Actions.

3. In the event that PharMerica fails to make any payment identified in the State Payment Schedule, PharMerica shall be in Default of its payment obligations (hereinafter "Default"). In the event of Default, the remaining unpaid balance of the Medicaid State Settlement Amount ("Remaining Settlement Amount") shall become immediately due and payable, and interest shall accrue at the rate of 12% per annum compounded daily from the date of Default until all amounts have been paid in full. PharMerica shall consent to a Consent Judgment in the amount of the Remaining Settlement Amount and interest due, and the State, at its sole option, may: (a) offset the Remaining Settlement Amount from any amounts due and owing to PharMerica by any department, agency or agent of the State at the time of Default; (b) collect the entire Remaining Settlement Amount, plus interest including 12% interest from the date of Default, and all other amounts due upon the event of Default as specified in this Paragraph; or (c) exercise any other rights granted by law or in equity, including but not limited to referring such matters for private collection. PharMerica agrees not to contest any consent judgment or offset imposed and PharMerica agrees not to contest, and hereby waives and discharges any defenses to, any collection action undertaken by the State or its agents or contractors pursuant to this Paragraph, either administratively or in any state or federal court. PharMerica shall pay the State all reasonable costs of collection and enforcement under this Paragraph.

4. Subject to the exceptions in Paragraph 5 below, in consideration of the obligations of PharMerica set forth in this Agreement, and conditioned upon receipt by the State of its entire share of the Medicaid State Settlement Amount, the State agrees to release PharMerica, its predecessors and current and former parents, divisions, subsidiaries, successors, transferees, heirs, and assigns, and their current and former directors, officers, and employees, individually and collectively (collectively, the "PharMerica Released Entities"), from any civil or administrative monetary cause of action that the State has for any claims submitted or caused to be submitted to the State Medicaid Program as a result of the Covered Conduct.

5. Notwithstanding any term of this Agreement, the State specifically does not release any person or entity from any of the following liabilities:

- (a) any criminal, civil, or administrative liability arising under state revenue codes;
- (b) any criminal liability not specifically released by this Agreement;
- (c) any civil or administrative liability that any person or entity, including any PharMerica Released Entities, has or may have to the State or to individual consumers or state program payors under any statute, regulation or rule not expressly covered by the release in Paragraph 4 above, including but not limited to, any and all of the following claims: (i) State or federal antitrust violations; (ii) claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;
- (d) any liability to the State for any conduct other than the Covered Conduct;

(e) any liability which may be asserted on behalf of any other payors or insurers, including those that are paid by the State's Medicaid program on a capitated basis;

(f) any liability based upon obligations created by this Agreement;

(g) except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusions from the State's Medicaid program;

(h) any liability for expressed or implied warranty claims or other claims for defective or deficient products and services provided by PharMerica;

(i) any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; or

(j) any liability based on a failure to deliver goods or services due.

6. In consideration of the obligations of PharMerica set forth in this Agreement and conditioned on receipt by the State of its share of the State Medicaid Settlement Amount, the State agrees to release and refrain from instituting, recommending, directing, or maintaining any administrative action seeking exclusion from the State's Medicaid program against PharMerica for the Covered Conduct, except as reserved in Paragraph 5 above. Nothing in this Agreement precludes the State from taking action against PharMerica in the event that PharMerica is excluded by the federal government, defaults pursuant to Paragraph 3 above, or for conduct and practices other than the Covered Conduct.

7. PharMerica waives and shall not assert any defenses it may have to criminal prosecution or administrative action for the Covered Conduct, which defenses may be based in whole or in part on a contention, under the Double Jeopardy Clause of the Fifth Amendment of the Constitution or the Excessive Fines Clause of the Eighth Amendment of the Constitution, that this Agreement bars a remedy sought in such criminal prosecution or administrative action.

8. In consideration of the obligations of the State set forth in this Agreement, PharMerica waives and discharges the State, its agencies, political subdivisions, employees, servants, and agents from any causes of action which PharMerica has asserted, could have asserted, or may assert in the future against the State, its agencies, political subdivisions, employees, servants, and agents, arising from the State's investigation and prosecution of the Covered Conduct. However, nothing in this agreement shall be construed as releasing the Pharmerica released entities from any obligation under 31 U.S.C. § 3730(d) or applicable state laws, for payment of Relators' reasonable attorney's fees and costs.

9. The amount that PharMerica must pay to the State pursuant to Paragraph III.1. above will not be decreased as a result of the denial of claims for payment now being withheld from payment by the State's Medicaid program, or any other state payor, for the Covered Conduct; and PharMerica agrees not to resubmit to the State's Medicaid program or any other state payor, any previously denied claims, which denials were based on the Covered Conduct, and agrees not to appeal or cause the appeal of any such denials of claims.

10. PharMerica, in the future, shall not seek payment for any claims for reimbursement to the State's Medicaid Program covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors.

11. PharMerica expressly warrants that it has reviewed its financial condition and that it is currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(B)(ii)(I), and shall remain solvent following payment of the entire Settlement Amount and compliance with this Agreement.

12. The Parties each represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

13. PharMerica agrees to cooperate fully and truthfully with any State investigation of individuals or entities not released in this Agreement, related to the Civil Actions. Upon reasonable notice, PharMerica shall facilitate, and agrees not to impair, the cooperation of its directors, officers, employees or agents, for interviews and testimony, consistent with the rights and privileges of such individuals and of PharMerica. Upon request, PharMerica agrees to furnish to the State complete and unredacted copies of all non-privileged documents including, but not limited to, reports, memoranda of interviews, and records in their possession, custody or control, concerning the Covered Conduct. PharMerica shall be responsible for all costs it may incur in complying with this paragraph.

14. Except as expressly provided to the contrary in this Agreement, each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

15. Except as otherwise stated in this Agreement, this Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any liability against any other person or entity.

16. Nothing in this Agreement constitutes an agreement by the State concerning the characterization of the amounts paid hereunder for purposes of the State's revenue code.

17. In addition to all other payments and responsibilities under this Agreement, PharMerica agrees to pay all reasonable expenses and travel costs of the State Team, including reasonable consultant fees and expenses. PharMerica will pay this amount by separate check made payable to the National Association of Medicaid Fraud Control Units, after the Medicaid Participating States execute their respective Agreements, or as otherwise agreed by the Parties. PharMerica also agrees to pay any invoiced amount(s) for costs incurred by the New York State Attorney General's Office for distributing timed payments to Medicaid Participating States receiving more than \$25,000.

18. This Agreement is governed by the laws of the State, except disputes arising under any CIA shall be resolved exclusively under the dispute resolution provisions of the CIA, and venue for addressing and resolving any and all disputes relating to this Agreement shall be the state courts of appropriate jurisdiction of the State.

19. The undersigned PharMerica signatories represent and warrant that they are authorized as a result of appropriate corporate action to execute this Agreement. The undersigned State signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement on behalf of the State through their respective agencies and departments.

20. The Effective Date of this Agreement shall be the date of signature of the last signatory to this Agreement. Facsimiles of signatures shall constitute acceptable binding signatures for purposes of this Agreement.

21. This Agreement shall be binding on all successors, transferees, heirs, and assigns of the Parties.

22. This Agreement constitutes the complete agreement between the Parties with respect to this matter and shall not be amended except by written consent of the Parties.

23. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same Agreement.

STATE OF NORTH CAROLINA

By: Charles H. Hobyood
CHARLES H. HOBGOOD
Director, Medicaid Investigations Division
Office of the Attorney General

Dated: 8/17/2015

By: D/R/R
DAVE RICHARD
Deputy Secretary for Medical Assistance
Division of Medical Assistance

Dated: 8/8/15

PHARMERICA CORPORATION

By: Thomas A. Caneris Dated: 10/5/15
Thomas A. Caneris
Senior Vice President and General Counsel
Authorized Corporate Officer

By: Michael Manthei Dated: 10/5/15
Michael Manthei
Counsel to PharMerica Corporation

Exhibit A

State of North Carolina

Payment Date	Principal	Interest	Total Payment
At Settlement	\$14,426.85	To be determined	To be determined
April 20, 2016	\$11,273.35	\$286.19	\$11,559.54
April 20, 2017	\$11,273.35	\$489.82	\$11,763.17