SETTLEMENT AGREEMENT AND RELEASE

Part I: Parties

This Settlement Agreement (the "Agreement") is entered into by and between the STATE of TEXAS ("STATE"), Ven-A-Care of the Florida Keys, Inc. ("Relator") and Alpha Therapeutic Corporation ("ATC"). The STATE, Relator, and ATC shall be collectively referred to as the "Parties," through their authorized representatives.

Part II: Preamble

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

A. Alpha Therapeutic Corporation was a corporation organized under the laws of California and is no longer in business.

B. The STATE and Relator contend that the STATE has civil claims against ATC under the Texas Medicaid Fraud Prevention Act, TEX. HUM. RES. CODE ANN. chapter 36, for unlawful actions taken by ATC through the date this Agreement is executed, pertaining to the inclusion of certain of ATC's drugs on the Texas Drug Code Index ("TDCI"). ATC's drugs that are the subject of this settlement are collectively referred to hereafter as the Covered Drugs, and are those drugs listed at any time on the TDCI with labeler code **49669**, including, without limitation, products marketed under the following names: Alphanate, Alphanine, Profilnine, and Venoglobulin. The STATE and Relator contend that ATC has committed unlawful acts, as defined by Tex. Hum. Res. Code Ann. § 36.002, in connection with the submission of pricing information to the Texas Vendor Drug Program ("VDP") for the purpose of including certain of ATC's Covered Drugs on the TDCI. The acts and omissions sued upon and which are subject to

the release language in this Agreement are set forth in Cause No. GV000461, *State of Texas, ex. rel. Ven-A-Care of the Florida Keys, Inc., vs. Alpha Therapeutic Corporation, et.al.*, (the "Lawsuit"), and are alleged in PLAINTIFF'S SECOND AMENDED PETITION filed in the Lawsuit on or about June 23, 2005.

C. ATC's alleged conduct and transactions referenced in Paragraph II(B) are hereinafter referred to as the "Covered Conduct." The Covered Conduct is expressly limited to: (i) conduct which has occurred prior to October 17, 2003, when Alpha Therapeutic Corporation ceased doing business; and (ii) conduct as alleged in the SECOND AMENDED PETITION in the Lawsuit as though such conduct had been alleged with respect to all of the Covered Drugs.

D. ATC denies all of The STATE and Relator's claims and allegations and denies that it has any liability relating to such claims and allegations. ATC has asserted various defenses to the STATE and Relator's claims.

E. In order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these claims, and as a result of a mutual desire to settle their disputes, the Parties have reached a full and final settlement as set forth in this Agreement.

F. The STATE and Relator represent to ATC, subject only to the Relator's rights as a *qui tam* plaintiff under applicable state and federal law to participate in this Agreement and to receive a percentage of the Settlement Amount, and to the rights possessed by the United States, that no interest in any claim herein released has been assigned by them to any third party.

G. The STATE has concluded that this settlement is in the public interest.

Part III: Terms and Conditions

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

Incorporation of Representations

1) The foregoing Preamble is incorporated herein.

The Settlement Payment

2) (a) ATC agrees to pay the STATE, the Relator, and the United States of America the collective sum of **ONE MILLION TWO HUNDRED THOUSAND DOLLARS ($1,200,000)** (the "Settlement Amount") in full settlement of all claims, including restitution, compensatory damages, penalties, and attorneys fees related to the Covered Conduct. ATC shall make payment of the Settlement Amount by check or wire transfer as follows:

(1) The amount of **$479,250** payable to the State of Texas for the STATE's attorneys' fees and costs, and for the State's share;

(2) The amount of **$266,500** payable to the Relator for the Relator's attorneys' fees and costs, and for the Relator's share; and

(3) The amount of **$454,250** payable to the United States of America for the share due the United States of America.

The payment of the Settlement Amount pursuant to the wire instructions set forth in sub-paragraph (b) below shall satisfy Alpha's obligation to make payments under this Agreement, and no other payment by Alpha or any other Releasee shall ever be required.

(b) The payment for the Relator's attorneys' fees and costs and for the Relator's share (**$266,500**) shall be wired to the following account: Beneficiary Account/ID: [redacted]; Name/Address: Spottswood, Spottswood & Spottswood Trust Account; Beneficiary Bank Account/ID: [redacted]; Name/Address: First State Bank of the Florida Keys, Key West, Florida. A payment of **$933,500**, comprising payment for the STATE's attorneys' fees and costs and the STATE's share (**$479,250**), and for the United States' share (**$454,250**) shall be wired to the following account: Beneficiary Account/ID: [redacted]; Name/Address: Comptroller of Public Accounts, Treasury Operations; Beneficiary Bank Account/ ID: [redacted]; Name/Address: Texas Treasury Austin, Austin, Texas.

(c) ATC shall make payment to the STATE and Relator in accordance with paragraph 2(b) above, within one business day after notice that the court has granted the agreed motion to dismiss, attached as Exhibit A to this Agreement.

(d) **THIS PARAGRAPH CONTAINS AN INDEMNITY AND HAS BEEN READ CAREFULLY BY RELATOR. The Relator expressly INDEMNIFIES and Holds the ATC Released Party (as defined by section 3 below) harmless from and against any claims by persons or entities who have represented or provided services to the Relator in connection with the claims released herein for: (1) attorneys fees, costs, and expenses; or (2) any portion of the settlement amount.**

The STATE and Relator: Release of ATC

3) Subject to the exceptions in Paragraph III(7) below, in consideration of the obligations of ATC set forth in this Agreement, and conditioned upon ATC's payment in full of the Settlement Amount specified herein, the STATE (on behalf of itself, its officers, agents, agencies and departments), and the Relator (on behalf of itself, its officers, agents, employees, servants, and its

attorneys) fully and finally release ATC, its predecessors, successors, parents, subsidiaries, affiliates and assigns as well as their respective current and former directors, officers, employees, agents, shareholders and attorneys (collectively, the "ATC Released Party") from any civil or administrative claim, action, suit or proceeding (including attorneys fees, penalties, punitive damages, costs, and expenses of every kind and however denominated) the STATE and Relator have or may have or could assert in the future under any source of law against the ATC Released Party, related to the Covered Conduct. The payment of this Settlement Amount fully discharges the ATC Released Party from any civil or administrative obligation to the STATE for the Covered Conduct. The Office of the Attorney General of Texas shall not initiate or prosecute litigation against the ATC Released Party, related to the Covered Conduct, on behalf of the United States.

4) In consideration of the obligations of ATC set forth in this Agreement, conditioned upon ATC's payment in full of the Settlement Amount specified herein, the STATE agrees to release and refrain from instituting, directing or maintaining any action seeking exclusion from the VDP or any other Texas Medicaid program against the ATC Released Party for the Covered Conduct except as reserved in Paragraph III(7), below.

ATC: Release of the STATE and Relator

5) ATC fully and finally releases the STATE, its agencies, employees, servants, attorneys and agents from any claims based on events occurring prior to the date of this Agreement (including attorneys fees, costs, and expenses of every kind and however denominated) which ATC has asserted, could have asserted, or may assert in the future against the STATE, its agencies, employees, servants, attorneys and agents, related to the Covered Conduct and the STATE and Relator's investigation and prosecution thereof. This release shall not release any

accounts receivable unrelated to the Covered Conduct due from the STATE, or any agency or instrumentality of the STATE.

6) ATC fully and finally releases the Relator, its employees, officers, servants, attorneys and agents from any claims based on events occurring prior to the date of this Agreement (including attorneys fees, costs, and expenses of every kind and however denominated) which ATC has asserted, could have asserted, or may assert in the future against the Relator, its employees, officers, servants, attorneys and agents, related to the Covered Conduct and the STATE and Relator's investigation and prosecution thereof. This provision is not intended to release claims unrelated to conduct in Texas.

Limitations on Release

7) Notwithstanding any other terms of this Agreement, including the release provisions in paragraphs III(3), (4), (5), and (6) above, specifically reserved and excluded from the scope and terms of this Agreement, and from the scope and terms of the releases, as to any entity or person (including ATC, the STATE and Relator), are any and all of the following:

(a) Any claims based upon such obligations as are created by this Agreement;

(b) Any express or implied product or service warranty claims or other claims for defective or deficient products or services, including quality of goods and services, provided by ATC;

(c) The subrogation rights to claims for personal injury or property damage arising from usage by a participant in the Medicaid program of any of the Covered Drugs;

(d) Any claims based on a failure to deliver products or services due;

(e) Any claims arising from ATC's obligations to report and/or to pay rebates to the STATE under any law or contract, including, but not limited to, the Omnibus Budget Reconciliation Act of 1990 ("OBRA 90");

(f) Any claims that the Relator may have under any provision of 31 U.S.C.A. §§ 3729-3733 (the federal False Claims Act), other than claims related to the Covered Conduct; or

(g) Any claims that the Relator may have under the *qui tam* provisions of the laws of any state other than Texas.

No Waiver or Release of Claims Against Other Persons

8) This Agreement is intended to be solely for the benefit of the Parties and persons and entities released, and except as stated herein, the Parties do not by this instrument release any claims against any other person or entity, including any individual or entity that purchased drugs or pharmaceutical products from ATC. No word, term, phrase or definition in this Agreement is or may be used for the benefit of any person, entity or litigant who is not a signatory to, or released by this Agreement.

No Evidence of Liability

9) The State and Relator hereby agree that this Agreement, and any and all negotiations, documents and discussions associated with it shall be without prejudice to the rights of any party, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, of any liability or wrongdoing by the ATC Released Party or of the truth or the infirmity of any of the claims or allegations of the State or the Relator, and evidence thereof shall not be discoverable or used directly or indirectly by the State or the Relator in any way (except that the

provisions of this Agreement may be used by the parties to enforce its terms), whether in Texas or in any other action or proceeding.

Dismissal of Action

10) Within one day of the execution of this Agreement, the STATE and the Relator will execute and file an agreed motion to dismiss and an agreed order (in the forms collectively attached hereto as **Exhibit A**) dismissing with prejudice any lawsuit (including the Lawsuit) against ATC based on the Covered Conduct, but only as to ATC.

ATC's Information

11) Within 60 days after the date this agreement is executed, the STATE and Relator shall deliver to ATC all documents, including electronic data, provided to the STATE by ATC pursuant to: a Civil Investigative Demand; an informal exchange of information; and any other procedure. The STATE and Relator shall also deliver to ATC all copies of such documents. The State and Relator will maintain the confidentiality of such documents until they are returned.

No Impairment or Creation of Rights

12) Nothing in this Agreement shall be construed to abrogate or alter any future obligation of ATC pursuant to the law of the STATE.

No Waiver of Sovereign Immunity

13) Nothing in this Agreement shall be construed to create a waiver of the STATE's Sovereign Immunity.

Exclusive Venue for Enforcement of Agreement

14) Any party shall be entitled to enforce the terms of this Agreement in the District Courts of Travis County, Texas, which shall have exclusive jurisdiction and venue over any such action.

Complete Agreement

15) This Agreement, including all exhibits, constitutes the complete agreement between the Parties and may not be amended except by written consent of the Parties.

Costs

16) Except as otherwise provided herein, each party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

Choice of Law

17) This Agreement is governed by the laws of the State of Texas, except to the extent otherwise governed by federal law.

Notification

18) Unless otherwise stated in writing subsequent to the Effective Date of this Agreement, all notifications and communications made pursuant to this Agreement shall be submitted to the entities listed below:

(a) STATE for all purposes:

OFFICE OF THE ATTORNEY GENERAL
Civil Medicaid Fraud Division
P O Box 12548
Austin, Texas 78711-2548

(b) RELATOR for all purposes:

James J. Breen, Esq.
The Breen Law Firm, P.A.
5755 North Point Parkway, Suite 260
Alpharetta, GA 30022

(c) Alpha Therapeutic Corporation, for all purposes:

Rex D. VanMiddlesworth
Andrews Kurth LLP
111 Congress Ave., Suite 1700
Austin, Texas 78701

and

David M. Ryan
Nixon Peabody LLP
100 Summer Street
Boston, MA 02110-2131

ATC: No Duress

19) ATC represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

Relator: Agreement Reasonable

20) The Relator agrees that this Agreement is fair, adequate, and reasonable.

Authorization

21) The Parties have read the foregoing Agreement and accept and agree to the provisions contained herein and hereby have caused this Agreement to be signed as of the day and date adjacent to their respective signatures. The undersigned individuals signing this Agreement on behalf of ATC represents and warrants that they are authorized by ATC 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 and to compromise the claims of the STATE. The HHSC Executive Commissioner concurs with the aspects of the agreement that are within his authority and that the HHSC General Counsel are authorized to sign this Agreement on behalf of the HHSC Executive Commissioner. The

Relator's attorney, James J. Breen, and its president, T. Mark Jones represent that they are duly authorized to sign this Agreement on behalf of the Relator.

No Other Representations or Promises

22) The Parties represent and acknowledge that in entering into this Agreement they are not relying on any promises or representations other than those expressly set forth in this Agreement and its exhibits.

Counterparts

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

Acts Necessary to Effectuate Agreement

24) Each Party agrees to perform such further acts and to execute and to deliver such further documents as may reasonably be necessary to carry out this Agreement.

Captions Are for Convenience Only

25) The bold-face paragraph captions in this Agreement are for convenience only and do not add to, detract from or change the substantive language or terms of this Agreement.

Effective Date

26) The Effective Date of this Agreement shall be the date upon which all of the Parties below have executed this Agreement.

STATE of TEXAS
Office of the Attorney General

By: Raymond C. Winter

Date: 8/6/09

Raymond C. Winter
Chief, Civil Medicaid Fraud Division
Assistant Attorney General
Office of the Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Alpha Therapeutic Corporation

By:

Date:

Printed Name:

Title:

Texas Health & Human Services Commission

By: Albert Hawkins

Date: 8-6-09

Printed Name: Albert Hawkins

Title: Executive Commissioner

STATE of TEXAS
Office of the Attorney General

By:

Date:

Raymond C. Winter
Chief, Civil Medicaid Fraud Division
Assistant Attorney General
Office of the Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Alpha Therapeutic Corporation

By: Donna Costa

Date: July 31, 2009

Donna Costa
Title: Secretary

Texas Health & Human Services Commission

By:

Date:

Printed Name:

Title:

Relator, Ven-A-Care of the Florida Keys, Inc.

Counsel

By: _____

Date: 8/6/09

James J. Breen, Esq.
The Breen Law Firm, P.A.
Assistant Attorney General
5755 North Point Parkway
Alpharetta, Georgia 30022

Relator, Ven-A-Care of the Florida Keys, Inc.

By:

Date:

T. Mark Jones
Title: President

Relator, Ven-A-Care of the Florida Keys, Inc.

By:

Date:

James J. Breen, Esq.
The Breen Law Firm, P.A.
Assistant Attorney General
5755 North Point Parkway
Alpharetta, Georgia 30022

Relator, Ven-A-Care of the Florida Keys, Inc.

By:

Date: 8/3/09

T. Mark Jones
Title: President

CAUSE NO. GV-00-0461

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
	§	
ex rel.	§	
	§	
VEN-A-CARE OF THE FLORIDA KEYS, INC.	§	
	§	
	§	
Plaintiffs,	§	TRAVIS COUNTY, TEXAS
v.	§	
	§	
ALPHA THERAPEUTIC CORP., *et al.*,	§	
Defendants.	§	
	§	
	§	
	§	
	§	201st JUDICIAL DISTRICT

JOINT MOTION TO DISMISS WITH PREJUDICE

TO THE HONORABLE JUDGE:

Plaintiffs the State of Texas and Ven-A-Care of the Florida Keys, Inc. ("Plaintiffs") and Defendant Alpha Therapeutic Corporation ("ATC"), having settled all matters in dispute between them in this cause, jointly move this Court to dismiss with prejudice all of the Plaintiffs' claims asserted herein against ATC, provided that the dismissal shall not affect the rights and duties of such parties as expressed in their Settlement Agreement.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

JEFF L. ROSE
Deputy First Assistant Attorney General

RAYMOND C. WINTER
Assistant Attorney General
Chief, Civil Medicaid Fraud Division
State Bar No. 21791950
MARGARET M. MOORE
Assistant Attorney General
State Bar No. 14360050

P.O. Box 12548
Austin, Texas 78711-2548
(512) 936-1709
(512) 499-0712 [Fax]

ATTORNEYS FOR THE STATE OF TEXAS

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P.O. Box 297470
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ATTORNEY FOR VEN-A-CARE OF THE FLORIDA KEYS, INC.

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(512) 320-9200
(512) 320-9292 [Fax]

ATTORNEY FOR ALPHA THERAPEUTIC CORP.

CAUSE NO. GV-00-0461

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
	§	
ex rel.	§	
	§	
VEN-A-CARE OF THE FLORIDA KEYS, INC.	§	
	§	
	§	
Plaintiffs,	§	TRAVIS COUNTY, TEXAS
v.	§	
	§	
ALPHA THERAPEUTIC CORP., *et al.,*	§	
	§	
Defendants.	§	
	§	
	§	
	§	201st JUDICIAL DISTRICT

ORDER OF DISMISSAL

Before the Court for consideration is the Joint Motion to Dismiss filed by Plaintiffs the State of Texas and Ven-A-Care of the Florida Keys, Inc. ("Plaintiffs") and Defendant Alpha Therapeutic Corporation ("ATC"). The Court finds that the motion is meritorious and it is, therefore,

ORDERED, ADJUDGED and DECREED that all claims asserted in the above-styled and numbered cause against ATC be, and the same hereby are, dismissed with prejudice, and that Plaintiffs take nothing against ATC, provided that this dismissal shall not affect the rights and duties of such parties as expressed in their Settlement Agreement. All costs are hereby taxed against the party incurring the same.

SIGNED this _____ day of _____, 2009.

JUDGE PRESIDING

AGREED AS TO FORM:

RAYMOND C. WINTER
ATTORNEY FOR THE STATE OF TEXAS

JAMES J. BREEN w/ permission by Rex
C. JARRETT ANDERSON
ATTORNEYS FOR VEN-A-CARE OF THE FLORIDA KEYS, INC.

REX D. VANMIDDLESWORTH
ATTORNEY FOR ALPHA THERAPEUTIC CORP.