

SETTLEMENT AGREEMENT AND RELEASE

I. PARTIES

This Settlement Agreement and Release (“Agreement”) is entered into as of the “Effective Date”, defined in paragraph 26 below, by and among the STATE of TEXAS (“STATE”), Ven-A-Care of the Florida Keys, Inc. (“RELATOR”) and ESI Lederle, Lederle Labs, and Pharmacia Corp. (collectively “DEFENDANTS”). The STATE, RELATOR, and DEFENDANTS are each individually referred to as a “Party” and collectively referred to as the “Parties” in this Agreement.

II. PREAMBLE

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

A. ESI Lederle, Lederle Labs, and Pharmacia Corp. are biotechnology companies who develop, manufacture, market, and sell pharmaceutical products in the United States. Unless otherwise noted, ESI Lederle, Lederle Labs, and Pharmacia Corp. and all of those companies’ subsidiaries are collectively referred to herein as “DEFENDANTS.”

B. The pharmaceutical products manufactured, marketed, distributed and/or sold by DEFENDANTS using the labeler codes in the attached Exhibit A are referred to as the “Covered Drugs”;

C. The STATE and RELATOR contend that between September 1, 1995, and the Effective Date, DEFENDANTS knowingly set, reported and/or maintained, or caused to be set, reported and/or maintained false, fraudulent, and/or inflated prices for certain of the Covered Drugs, including the prices reported directly to the Texas Vendor Drug Program (“VDP”). The STATE and RELATOR also contend that between September 1, 1995, and the Effective Date,

DEFENDANTS knowingly concealed or failed to report the actual acquisition costs of their customers who purchased certain of the Covered Drugs, including the prices reported directly to VDP. The STATE and the RELATOR further contend that DEFENDANTS submitted or caused to be submitted, false claims to the VDP for certain of the Covered Drugs based on those false and/or inflated reported prices, or price omissions. The STATE and the RELATOR contend that DEFENDANTS have committed unlawful acts, as defined by TEX. HUM. RES. CODE ANN. § 36.002 in connection with the submission of pricing information to the VDP, including for the purpose of including certain of DEFENDANTS's Covered Drugs on the Texas Drug Code Index ("TDCI"). These alleged acts and omissions, which are subject to the release language in this Agreement, are further described and set forth in [REDACTED]

[REDACTED] (the "Lawsuit"), and are alleged in [REDACTED] the Lawsuit [REDACTED]

[REDACTED] The conduct described in this paragraph and the Lawsuit are hereinafter referred to as the "Covered Conduct";

D. This Agreement is the result of a compromise of disputed issues of law and fact and is neither an admission of facts or liability by DEFENDANTS, nor a concession by the STATE that the STATE's claims in the Lawsuit are not well-founded.

E. DEFENDANTS have a number of defenses to the STATE's and RELATOR's claims and to the Lawsuit, and have denied and continue to deny the STATE's and RELATOR's allegations or any wrongdoing as may be alleged by the STATE or by the RELATOR or as alleged in the Lawsuit.

F. As a result of a mutual desire to settle their disputes, and to avoid the delay, expense, inconvenience and uncertainty of protracted litigation of the STATE's claims, the

Parties have reached a full and final settlement, including a settlement and dismissal of the Lawsuit as against DEFENDANTS, as set forth in this Agreement; and

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

H. RELATOR agrees that this settlement is fair, adequate, and reasonable.

III. AGREEMENT

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

1. The foregoing Preamble is incorporated herein.
2. Not later than 5:00 p.m. (Central Standard Time) December 27, 2012, DEFENDANTS agrees to pay the STATE, the RELATOR, and the United States of America the aggregate sum of **TWENTY FIVE MILLION UNITED STATES DOLLARS (\$25,000,000)** (the "Final Settlement Payment") in the amounts set forth in the Settlement Allocation Schedule, attached as Exhibit 1, and in accordance with the wire instructions set forth in Exhibit 2. The Parties further agree that all amounts payable to the RELATOR, to any of the RELATOR's attorneys or other of the RELATOR's representatives or advisors, or to the United States, shall be paid out of the Final Settlement Payment, and that DEFENDANTS will have no liability or obligation to make any such payment. The payment of the Final Settlement Payment shall satisfy DEFENDANTS's obligation to make payments under this Agreement.

3. Within five (5) business days following its receipt of the Final Settlement Payment, the STATE shall file with the Travis County District Court the agreed joint motion to dismiss, attached as Exhibit 3 to this Agreement.

4. Subject to the exceptions in Paragraph 8 below, in consideration of the obligations of DEFENDANTS set forth in this Agreement, and conditioned upon DEFENDANTS's payment in full of the Final Settlement Payment, the STATE (on behalf of (i) itself, its past and present officers, agents, entities, divisions, agencies and departments and (ii) any insurers and reinsurers of those identified in subclause (i) (collectively the "STATE")), and the RELATOR (on behalf of (i) itself, its past and present subsidiaries, parents, holding companies, successors, predecessors, affiliates, partnerships, entities and divisions; (ii) all past and present officers, directors, members, partners and/or limited partners, principals, agents, assigns, representatives, employees, servants, and its attorneys of RELATOR and those identified in subclause (i); (iii) all heirs, executors, administrators, spouses, agents and assigns of those identified in subclauses (i) and (ii); and (iv) any insurers and reinsurers of RELATOR and those identified in subclauses (i) and (ii) (collectively "RELATOR")), fully and finally, and to the greatest extent allowed by law, release DEFENDANTS and (i) their past and present holding companies, predecessors, successors, parents, subsidiaries, entities and divisions; (ii) all past and present officers, directors, members, partners and/or limited partners, principals, assigns, representatives, employees, agents, servants, shareholders and attorneys of DEFENDANTS and those identified in subclause (i); (iii) all heirs, executors, administrators, spouses, agents and assigns of those identified in subclauses (i) and (ii); and (iv) any insurers and reinsurers of DEFENDANTS and those identified in subclauses (i) and (ii) (collectively, the "DEFENDANTS Released Parties") from any civil or administrative claim, action, suit or proceeding (including attorneys' fees,

penalties, 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 DEFENDANTS Released Parties related to the Covered Conduct. In addition, the Parties agree that the payment of the Final Settlement Payment fully discharges the DEFENDANTS Released Parties from any civil or administrative obligation to the STATE to pay restitution, damages, penalties or fines to the STATE for the Covered Conduct. In addition, the Office of the Attorney General of Texas agrees that it shall not initiate or prosecute litigation or any other civil or administrative action, including by way of example and not limitation, civil investigative demands, against the DEFENDANTS Released Parties, related to the Covered Conduct, on behalf of itself or the United States.

5. In consideration of the obligations of DEFENDANTS set forth in this Agreement, conditioned upon DEFENDANTS's payment in full of the Final Settlement Payment, 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 DEFENDANTS Released Parties for the Covered Conduct.

6. DEFENDANTS fully and finally release the STATE, its agencies, employees, servants, attorneys and agents from any claims based on events occurring prior to the date of this Agreement (including attorney's fees, costs, and expenses of every kind and however denominated) which DEFENDANTS have 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.

7. DEFENDANTS 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 DEFENDANTS have 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.

8. Notwithstanding any other terms of this Agreement, including the release provisions in Paragraphs 4, 5, 6 and 7 above, specifically reserved and excluded from the definition of Covered Conduct, and thus the scope and terms of this Agreement, and from the scope and terms of the releases, as to any entity or person (including DEFENDANTS, the STATE and RELATOR), are the following, for the time period September 1, 1995, through and including the Effective Date:

- (a) Any claims based upon such obligations 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 DEFENDANTS;
- (c) Any civil or administrative liability that any person or entity has or may have to individual consumers involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;
- (d) Any civil or administrative liability that any person or entity, including the DEFENDANTS Released Parties, have or may have to the State for state or federal antitrust violations;
- (e) Any civil or administrative liability that any person or entity has or may have related to marketing or promotion of any of the covered drugs, including but not limited to off-

label marketing, product misbranding, or misrepresentations or concealment of information about the safety, efficacy, or appropriate use of the covered drugs;

(f) Any civil or administrative liability that any person or entity has or may have regarding inducement of healthcare providers to prescribe any of the covered drugs;

(g) 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;

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

(i) Any claims arising from DEFENDANTS'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");

(j) Any claims asserted in Cause Numbers 1:10-CV-11166 in the District Court of Massachusetts; 2:05-CV-06795 in the Eastern District of Pennsylvania; 04-CV-0704 in the Eastern District of New York; 03-CV-11084 in the District Court of Massachusetts; 09-CV-11522 in the District Court of Massachusetts; 03-12366-DPW in the District Court of Massachusetts; and 06-11724-DPW in the District Court of Massachusetts; or

(k) Any liability to the State for any conduct other than the Covered Conduct.

9. The STATE and RELATOR hereby agree that this Agreement, and any and all negotiations, documents and discussions associated with this Agreement 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 DEFENDANTS Released Parties 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 forum. The STATE agrees it will not urge or seek to admit this Agreement as evidence of any fault or liability of the DEFENDANTS Released Parties in any investigation, administrative claim, action, suit or proceeding, or federal or state court or arbitration proceeding unless ordered to do so by a state court, federal court, or arbitration panel.

10. The STATE and RELATOR represent to DEFENDANTS, 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 Final Settlement Payment, 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.

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

12. 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.

13. This Agreement, including all exhibits, constitutes the complete agreement between the Parties with regard to the settlement and dismissal of the Lawsuit and Covered Conduct as defined herein. This Agreement may not be amended except by a writing signed by all Parties.

14. Each Party will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

15. This Agreement shall be governed by the laws of the State of Texas.

16. This Agreement shall be construed and interpreted to effectuate the Parties' intent, which is to resolve completely the Lawsuit and the STATE's and RELATOR's claims and allegations in connection with the Covered Conduct with respect to DEFENDANTS.

17. None of the Parties to this Agreement shall be considered the drafter of this Agreement or of any included provision for the purpose of any statute, case law or rule of construction that would or might cause any provision to be construed against the drafter.

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

19. 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) DEFENDANTS for all purposes:

John C. Dodds
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921

Pfizer Inc.
Legal Division
150 East 42nd Street, 2nd Floor
New York, NY 10017

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

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 individual signing this Agreement on behalf of DEFENDANTS represents and warrants that he is authorized by DEFENDANTS 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 Texas Health and Human Services Commission ("HHSC") Executive Commissioner concurs with the aspects of the agreement that are within his authority and that the HHSC General Counsel is 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, each represent that they are duly authorized to sign this Agreement on behalf of the RELATOR.

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.

23. The waiver of any rights conferred by this Agreement shall be effective only if made in writing by the waiving Party. The waiver of any Party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior to, subsequent to, or contemporaneously with this Agreement.

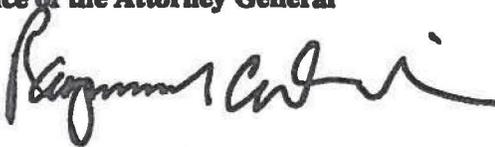
24. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement.

25. 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.

26. The Effective Date of this Agreement shall be the date of signature of the last signatory to this Agreement.

EXECUTION OF RELEASE

**STATE of TEXAS
Office of the Attorney General**

By: 

Date: 12.20.12

**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**

DEFENDANTS:

ESI Lederle, Lederle Labs, and Pharmacia Corp.

By: 

Date: 12/21/12

**Pfizer Inc.
Legal Division
150 East 42nd Street, 2nd Floor
New York, NY 10017**

Texas Health & Human Services Commission

By: 

Date: 12.20.12

**Kyle Janek, M.D.
Executive Commissioner
Texas Health & Human Services Commission
Brown-Heatley Building
4900 N.Lamar Blvd.
Austin, Texas 78751-2316**

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Office of the Attorney General**

**DEFENDANTS:
ESI Lederle, Lederle Labs, and Pharmacia
Corp.**

By:

By:

Date:

Date:

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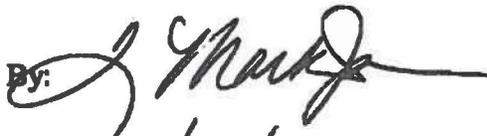
By: 

Date: 12.20.12

Kyle Janek, M.D.
Executive Commissioner
Texas Health & Human Services Commission
Brown-Heatley Building
4900 N.Lamar Blvd.
Austin, Texas 78751-2316

RELATOR AND ITS ATTORNEY

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

By: 

Date: 12/19/12

T. Mark Jones
President

The Breen Law Firm, P.A.

By:

Date:

James J. Breen
The Breen Law Firm, P.A.
Counsel to Ven-A-Care of the Florida Keys, Inc.
5755 North Point Parkway
Alpharetta, Georgia 30022

RELATOR AND ITS ATTORNEY

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

By:

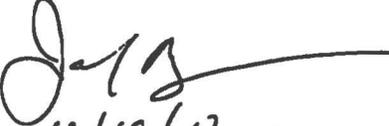
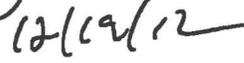
Date:

**T. Mark Jones
President**

The Breen Law Firm, P.A.

By:

Date:

**James J. Breen
The Breen Law Firm, P.A.
Counsel to Ven-A-Care of the Florida Keys, Inc.
5755 North Point Parkway
Alpharetta, Georgia 30022**