

STATE SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the State of North Carolina ("the State"), Organon, as defined below, and Akzo Nobel N.V. 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, Organon USA Inc., a New Jersey corporation, as well as Organon Pharmaceuticals USA Inc. LLC, and Organon International, Inc., both Delaware corporations that were merged into Organon USA Inc. (all three companies collectively referred to as the "Organon Operating Entities"), were wholly owned subsidiaries of Organon Biosciences N.V, which was, in turn, wholly owned by Akzo Nobel N.V. ("Akzo Nobel"), a Dutch corporation. At all relevant times, the Organon Operating Entities distributed, marketed and/or sold pharmaceutical products in the United States under the trade names of Remeron and Remeron SolTab that were paid for under the State's Medicaid plan. In 2007, Organon Biosciences N.V. and the Organon Operating Entities were acquired by Schering-Plough Corporation, a New Jersey corporation engaged in the manufacture and sale of pharmaceutical products. Schering - Plough Corporation combined with Merck & Co., Inc., in 2009 (hereinafter, the foregoing entities except Akzo Nobel shall be collectively referred to as "Organon").

B. On September 13, 2007, James Banigan and Richard Templin ("Relators") filed a *qui tam* action in the United States District Court for the Southern District of Texas, Houston Division, captioned *United States of America et al., ex rel. James Banigan and Richard Templin v. Organon USA, Inc., et al.*, Civil Action No. H-07-2953. The case was transferred to the United States District Court for the District of Massachusetts under Civil Action No. 07-12153, and the Relators filed their Third Amended Complaint on March 25, 2011 (hereinafter, the "Civil Action").

C. On June 1, 2012, the Court dismissed all the claims asserted by Relators on behalf of the United States against Organon. Therefore, the United States is not a party to the settlement and will not be entering into a settlement agreement with Organon and/or Akzo Nobel.

D. The State contends that the Organon Operating Entities caused claims for payment to be submitted to the State's Medicaid Program and submitted or caused to be submitted to the Centers for Medicare and Medicaid Services ("CMS") certain reported prices for Remeron and Remeron SolTab pursuant to the Federal Medicaid Program (see 42 U.S.C. §§ 1396-1396v).

E. At all relevant times, the Organon Operating Entities participated in the Medicaid Drug Rebate Program, 42 U.S.C. 1396r-8, which is part of the Federal Medicaid Program. Pursuant to the Medicaid Drug Rebate Program, the Organon Operating Entities entered into national rebate agreements with the United States Department of Health and Human Services ("HHS") and the Organon Operating Entities' covered outpatient drugs were covered by the State's Medicaid plan. Under the Medicaid Drug Rebate Program and the rebate agreements with HHS, the Organon Operating

Entities agreed: (i) to report quarterly to CMS their Average Manufacturer Price ("AMP") for their covered outpatient drugs, as defined by 42 U.S.C. § 1396r-8(k)(1) and their "Best Price" as defined by 42 U.S.C. § 1396r-8(c)(1)(C); and (ii) to pay quarterly rebates to the State. For single source and innovator multiple source covered outpatient drugs, the quarterly rebates are based on the product of (a) the total number of units of each dosage form and strength paid for under the State Medicaid plan during the rebate period as reported by the State, and (b) the greater of the difference between the AMP and the Best Price, or the minimum rebate percentage of AMP, as further described in 42 U.S.C. § 1396r-8(c)(1).

F. Under 42 U.S.C. § 1396r-8(c)(1)(C)(ii), the term "Best Price": (i) shall be inclusive of cash discounts, free goods that are contingent on any purchase requirement, volume discounts, and rebates (other than rebates under this section); (ii) shall be determined without regard to special packaging, labeling, or identifiers on the dosage form or product or package; and (iii) shall not take into account prices that are "merely nominal in amount." Under the rebate agreement, the Best Price for a quarter shall be adjusted by the manufacturer if cumulative discounts, rebates or other arrangements subsequently adjust the prices actually realized for that quarter.

G. Under the rebate agreement, a "nominal price" is, for purposes of excluding prices from the Best Price calculation, any price less than 10% of the AMP in the same quarter for which the AMP is computed.

H. The State contends that it has certain civil and administrative causes of action against Organon and Akzo Nobel for engaging in the following conduct (the "Covered Conduct") alleged in the Civil Action:

During the period from January 1, 1999 through December 31, 2006:

- (1) Organon knowingly manipulated and failed to report its true Best Price to CMS for the sale of its drugs Remeron and Remeron SolTab, in that Organon (i) did not include rebates, market share discounts and other improper inducements and remuneration in its Average Manufacturer Price calculations and reporting requirements; (ii) failed to ensure an accurate list of 340B entities that would be excluded from Best Price reporting requirements and ultimately sold these drugs to ineligible entities; and (iii) mischaracterized Remeron transactions as nominal price sales and excluded those sales from Best Price reporting obligations when they were, in fact, not nominal because the sales were more than 10% of the AMP or were conditioned upon other purchase requirements of Remeron or Remeron SolTab. As a result of the conduct alleged above, Organon knowingly reported false Best Prices and thereby underpaid quarterly rebates owed under its rebate obligations with the State Medicaid Program for Remeron and Remeron SolTab;

During the period from January 1, 1999 through December 31, 2005:

- (2) Organon knowingly provided kickbacks to Long Term Care Pharmacy providers including Omnicare, PharMerica, NeighborCare, NCS Healthcare, American Pharmaceutical Services, and Sunscript in the form of market-share discounts and rebates including a "conversion rebate" for switching patients' prescriptions from Remeron to Remeron SolTab and a "therapeutic interchange bonus" for encouraging the utilization of Remeron over other antidepressants;
- (3) Organon knowingly promoted the sale and use of Remeron and Remeron SolTab for conditions that were not approved as safe and effective by the Food and Drug Administration, in that Organon marketed to Long Term Care Pharmacy providers, including Omnicare, PharMerica, NeighborCare, NCS Healthcare, American Pharmaceutical Services and Sunscript, the side-effects of Remeron and Remeron SolTab, including somnolence and increased appetite as possible benefits, and promoted the use of Remeron in children and adolescents for the treatment of depression and attention deficit disorder to induce utilization of Remeron and Remeron SolTab; and
- (4) Organon marketed the spread between the reimbursement rate under the State Medicaid Program and the price paid by Long Term Care Pharmacy providers including Omnicare, PharMerica, NeighborCare, NCS Healthcare, American Pharmaceutical Services, and Sunscript for Remeron and Remeron SolTab, in that Organon knowingly reported false and inflated Average Wholesale Prices ("AWPs") to the State

Medicaid Program, then offered the drugs at a lower cost as a financial inducement to the foregoing Long Term Care Pharmacy providers by increasing the "spread" between the actual cost of the drug to providers vs. the amount that the State Medicaid Program reimburses for that drug, when in fact, Organon knew that the State Medicaid Program would and did use the reported AWP's to reimburse the foregoing Long Term Care Pharmacy Providers for Remeron and Remeron SolTab.

As a result of the foregoing conduct, Organon submitted or caused to be submitted false claims for payment to the State Medicaid Program for Remeron and Remeron SolTab.

I. This agreement is made in compromise of disputed claims. This Agreement is neither an admission of facts or liability by Organon or Akzo Nobel, nor a concession by the State that its allegations are not well founded. Organon and Akzo Nobel expressly deny the allegations of the State as set forth herein and in the Civil Action.

J. 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:

1. Organon agrees to pay to the Medicaid Participating States (as defined in sub-paragraph (b) below), collectively, the sum of \$12,000,000, (the "Medicaid State Settlement Amount"). The Medicaid State Settlement Amount shall constitute a debt due

and owing to the Medicaid Participating States on the Effective Date subject to the terms of this Agreement, including the non-participating state deduction provision of sub-paragraph (c) below. The debt shall forever be discharged by payments to the Medicaid Participating States, under the following terms and conditions:

(a) Organon shall pay to the Medicaid Participating States the Medicaid State Settlement Amount, subject to the non-participating state deduction provision of sub-paragraph (c) below ("Medicaid Participating State Settlement Amount"), 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 (b) 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 Organon.

(b) Organon shall execute a State Settlement Agreement with any State that executes such an Agreement in the form to which Organon and the State Team have agreed, or in a form otherwise agreed to by Organon and an individual State. The State shall become a Medicaid Participating State provided this Agreement is fully executed by the State and delivered to Organon's attorneys within 60 days its receipt by the State. If this condition is not satisfied by the State within 60 days of receipt, Organon's offer to resolve this matter with the individual State shall become null and void absent written agreement between counsel for Organon and the State Team to extend the 60 day period.

(c) The total portion of the amount paid by Organon in settlement for the Covered Conduct to the State is \$297,230.19 (the "State Amount"). If the State does not execute this Agreement and deliver it to Organon's attorneys 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 Organon absent written agreement between counsel for Organon and the State Team to extend the time period for executing this Agreement.

2. Within fifteen days of receipt of the State Amount, the State, if named in the Civil Action, shall move to or consent to dismiss with prejudice (or otherwise effectuate dismissal with prejudice of) the Civil Action against Organon and Akzo Nobel. Contingent upon receipt by the State of the State Amount, the State, if served with the Civil Action and liable to pay a Relator's share, agrees to pay the Relators the amount of \$83,224.45. This amount is to be paid through the State Team and has been addressed via side letter with the Relators in the Civil Action.

3. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of Organon set forth in this Agreement, and conditioned upon - receipt by the State of the State Amount, the State (on behalf of itself, its officers, agents, agencies, departments, boards and commissions) hereby fully and finally releases Organon and Akzo Nobel, their predecessors and current and former parents, divisions, subsidiaries, successors, transferees, heirs, shareholders and assigns, and their current and former directors, officers, shareholders and employees, individually and collectively (collectively, the "Organon Released Entities"), from any civil or administrative monetary cause of action that the State has asserted or may have asserted for any claims

submitted or caused to be submitted to the State Medicaid Program as a result of 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) any civil or administrative liability that any person or entity, including any of the Organon 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 Organon;

(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. Organon and Akzo Nobel waive and shall not assert any defenses they 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, Organon and Akzo Nobel waive and discharge the State, its agencies, employees, servants, and agents from any causes of action (including attorneys' fees, costs, and expenses of every kind and however denominated) which Organon or Akzo Nobel have asserted or may have asserted against the State, its agencies, employees, servants, and agents, arising from the State's investigation and prosecution of the Covered Conduct.

7. The amount Organon 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 Organon 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.

8. Organon 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.

9. Organon expressly warrants that it has reviewed its financial condition and that it is currently solvent and shall remain solvent following payment of the Medicaid State Settlement Amount described in Paragraph III.1. and in compliance with this Agreement.

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

11. 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.

12. 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.

13. 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.

14. In addition to all other payments and responsibilities under this Agreement, Organon agrees to pay all reasonable expenses and travel costs of the State Team, including reasonable consultant fees and expenses. Organon 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.

15. 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. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

16. The undersigned Organon and Akzo Nobel 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.

17. 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.

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

19. 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.

20. 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: 9/8/2014


By: Robin G. Cummings

ROBIN G. CUMMINGS, M.D., Director
Division of Medical Assistance

Dated: 8/22/14

NORTH CAROLINA

ORGANON

By:  Dated: 10/15/14

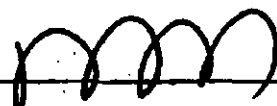
[Name] Bruce N. Kuhlik

[General Counsel] Executive Vice President and General Counsel

Merck & Co., Inc.

By: _____ Dated: _____

Jeffrey L. Handwerker
James W. Cooper
Arnold & Porter LLP
Counsel for Organon

By:  Dated: 10/2/14

John P. McDonald
Locke Lord, LLP
Counsel for Organon

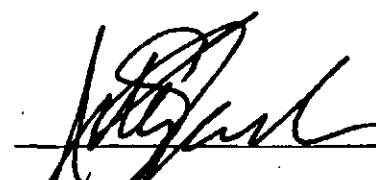
ORGANON

By: _____ Dated: _____

[Name]

[General Counsel]

Merck & Co., Inc.

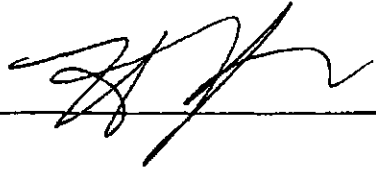
By:  _____ Dated: 10/8/14

Jeffrey L. Handwerker
James W. Cooper
Arnold & Porter LLP
Counsel for Organon

By: _____ Dated: _____

John P. McDonald
Locke Lord, LLP
Counsel for Organon

Akzo Nobel N.V.

By:  _____ Dated: 10/6/14

Counsel for Akzo Nobel N.V.