

STATE SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (“Agreement”) is entered into between the State of CONNECTICUT (“the State”) and Abbott Laboratories (“Abbott”), 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, Abbott, an Illinois corporation headquartered in Abbott Park, Illinois, distributed, marketed and sold pharmaceutical products in the United States, including a drug sold under the trade names Depakote DR, Depakote ER, Depacon, and Depakote Sprinkle (collectively “Depakote”).

B. *Qui Tam* Actions

(1) 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.

(2) On December 12, 2007, Relators Susan Mulcahy, Doreen Merriam, and Sondra Knowles filed a *qui tam* action in the United States District Court for the District of Columbia captioned United States of America, ex rel. Susan Mulcahy, Doreen Merriam, and Sondra Knowles v. Abbott Laboratories & Abbott Pharmaceuticals PR Ltd. On January 7, 2008, the case was subsequently transferred to the United States District Court for the Western District of Virginia, under Civil Action No. 1:08cv00054.

(3) On April 7, 2009, Relator Tamara L. Dietzler filed a *qui tam* action in the United States District Court for the Northern District of Illinois captioned United States of America and the states of California, the District of Columbia, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Louisiana, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oklahoma, Rhode Island, Tennessee, Texas, Virginia and Wisconsin, ex rel. Tamara L. Dietzler v. Abbott Laboratories. The case was subsequently transferred to the United States District Court for the Western District of Virginia on June 15, 2009 under Civil Action No. 1:09cv00051.

(4) 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.

C. The *qui tam* actions identified in Paragraph (B) 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.”

D. On such date as may be determined by the Court, Abbott will plead guilty pursuant to Fed. R. Crim. P. 11 to an Information to be filed by the United States in United States v. Abbott Labs., Criminal Action No. [to be assigned] (W.D. Va.) (the “Federal Criminal Action”) that will allege a violation of 21 U.S.C. §§ 331 (a) and 333 (a)(1), and 352, namely, the introduction into interstate commerce of a misbranded drug, Depakote, in violation of the Food, Drug, and Cosmetic Act.

E. Abbott has entered into a separate civil settlement agreement (the “Federal Settlement Agreement”) with the United States (as that term is defined in the Federal Settlement Agreement).

F. The State contends that Abbott caused claims for payment to be submitted to the State’s Medicaid Program (Medicaid), 42 U.S.C. §§ 1396-1396v.

G. The State contends that it has certain civil and administrative causes of actions against Abbott for engaging in the following conduct between January 1998 and December 31, 2008 (the “Covered Conduct”):

Abbott illegally marketed Depakote by:

(a) knowingly promoting the sale and use of Depakote for uses that were not approved by the Food and Drug Administration as safe and effective ("unapproved uses"), including behavioral disturbances in dementia patients, psychiatric conditions in children and adolescents, schizophrenia, depression, anxiety, conduct disorders, obsessive-compulsive disorder, post-traumatic stress disorder, alcohol and drug withdrawal, attention deficit disorder, autism, and other psychiatric conditions. Some of these unapproved uses were not medically accepted indications for which the state Medicaid programs provided coverage for Depakote. This promotion included, in part:

(i) making false and misleading statements about the safety, efficacy, dosing, and cost-effectiveness of Depakote for some of these unapproved uses;

(ii) marketing Depakote to health care professionals to control behavioral disturbances in dementia patients in nursing homes by claiming that Depakote was not subject to certain requirements of the Omnibus Budget Reconciliation Act of 1987 (OBRA) designed to prevent the use of unnecessary drugs in nursing homes and that this use of Depakote would help nursing homes avoid the administrative burdens and costs of complying with OBRA regulatory restrictions applicable to antipsychotics.

(b) offering and paying illegal remuneration to health care professionals and long term care pharmacy providers to induce them to promote and/or prescribe Depakote and to improperly and unduly influence the content of company sponsored Continuing Medical Education programs, in violation of the Federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b).

As a result of the foregoing conduct, the State alleges that Abbott knowingly caused false and/or fraudulent claims for Depakote to be submitted to, or caused purchases by, Medicaid.

H. This Agreement is made in compromise of disputed claims. This Agreement is neither an admission of facts or liability by Abbott, nor a concession by the State that its claims are not well-founded. With the exception of such admissions that are made in connection with any guilty plea by Abbott in connection with the Federal Criminal Action, Abbott expressly denies the contentions and allegations of the State and Relators as set forth herein and in the Civil Actions and denies that it engaged in any

wrongful conduct in connection with the Covered Conduct. Neither this Agreement or its execution, nor the performance of any obligation arising under it, including any payment, nor the fact of settlement is intended to be, or shall be understood as, an admission of liability or wrongdoing, or other expression reflecting on the merits of the dispute by any party to this Agreement.

I. 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. Abbott agrees to pay to the United States and the Medicaid Participating States (as defined hereinafter), collectively, the sum of Eight Hundred Million Dollars (\$800,000,000), plus accrued interest in an amount of 2.5% per annum from September 16, 2011 and continuing until and including the day 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 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) Abbott shall pay to the United States the sum of \$560,851,357, plus accrued interest as set forth above (“Federal Settlement Amount”). The Federal Settlement Amount shall be paid by electronic funds transfer pursuant to written instructions from the United States no later than seven (7) business days after (i) the Federal Settlement Agreement is fully executed by the parties to that Agreement and delivered to counsel for Abbott; or (ii) the Court accepts a Fed. R. Crim P. 11(c)(1)(C) guilty plea as described in Preamble paragraph II.D above in connection with the Criminal Action and imposes the agreed upon sentence, whichever occurs later.

(b) Abbott shall pay to the Medicaid Participating States the sum of \$239,148,643, plus accrued interest as set forth above (“Medicaid State Settlement Amount”). Abbott shall pay the Medicaid State Settlement Amount, subject to the non-participating state deduction provision of Sub-paragraph (d) below, no later than seven (7) business days after (i) the expiration of the opt-in period for Medicaid Participating States described in Sub-paragraph (c) below; or, (ii) the Court accepts a Fed. R. Crim P. 11(c)(1)(C) guilty plea as described in Preamble paragraph II.D above in connection with the Criminal Action and imposes the agreed upon sentence, whichever occurs later. The Medicaid State Settlement Amount shall be paid by electronic funds transfer to the New York State Attorney General’s National Global Settlement Account (“NY State Account”) pursuant to written instructions from the State Negotiating Team (“State Team”), which written instructions shall be delivered to counsel for Abbott.

(c) Abbott shall execute a State Settlement Agreement with any State that executes such an Agreement in the form to which Abbott and the State Team have agreed, or in a form otherwise agreed to by Abbott and an individual State. The State

shall constitute a Medicaid Participating State in this Settlement Agreement provided this Settlement Agreement is fully executed by the State and delivered to Abbott's attorneys by May 1, 2012. If this condition is not satisfied, Abbott's offer to resolve this matter with the individual State shall become null and void absent written agreement between counsel for Abbott and the State Team to extend the time period for executing this agreement.

(d) The total portion of the Settlement Amount paid by Abbott in settlement for the Covered Conduct for the State is \$7,881,918.54, consisting of a portion paid to the State under this Agreement and another portion paid to the Federal Government as part of the Federal Settlement Agreement. The individual portion of the Medicaid State Settlement Amount allocated to the State under this Agreement is the sum of \$3,923,652.17, plus applicable interest (the "State Amount"). If the State does not execute this Agreement by May 1, 2012, the State Amount plus interest accrued shall be deducted from the Medicaid State Settlement Amount and shall not be paid by Abbott absent written agreement between counsel for Abbott and the State Team to extend the time period for executing this Agreement.

2. The State agrees to dismiss with prejudice any state law claims including any violations of state statutes equivalent to the federal Food, Drug, and Cosmetic Act, that the State has the authority to dismiss, brought against the Abbott Released Entities defined in Paragraph 3 below, in State or Federal courts for the Covered Conduct.

3. Subject to the exceptions in Paragraph 4 below, and in consideration of the obligations of Abbott set forth in this Agreement, conditioned upon receipt by the State of its share of the Medicaid State Settlement Amount, and subject to Paragraph 12 below

(concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment under this Agreement), the State, on behalf of itself, its officers, agents, agencies, political subdivisions and departments, agrees to release Abbott, together with its current and former parent corporations, subsidiaries, divisions, transferees, and the predecessors, successors, and assigns and any of them and their current or former owners, directors, officers and employees (collectively, the “Abbott 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.

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 Abbott 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 expressed or implied warranty claims or other liability for defective or deficient products and services provided by Abbott;

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

(j) any liability based on a failure to deliver items or services due; or

(k) any liability related to the improper inflation of Average Wholesale Price (AWP) or Average Wholesale Acquisition Costs (WAC).

5. This Agreement is expressly conditioned upon resolution of the Federal Criminal Action. In consideration of the acceptance of Abbott's plea of guilty in the Federal Criminal Action, the State's Medicaid Fraud Control Unit (MFCU) agrees that it shall not further criminally investigate, prosecute, or refer for prosecution or criminal investigation to any agency, any of the Abbott Released Entities for the Covered Conduct, including any violations of state statutes equivalent to the federal Food, Drug, and Cosmetic Act.

6. If Abbott's agreed-upon guilty plea pursuant to Fed. R. Crim. P. 11(c)(1)(C) in the Criminal Action described in the Federal Settlement Agreement at Preamble Paragraph II.D is not accepted by the Court or the Court does not impose the

agreed-upon sentence for whatever reason, this Agreement shall be null and void at the option of either the State or Abbott. If either the State or Abbott exercises this option, which option shall be exercised by notifying all Parties, through counsel, in writing within five (5) business days of the Court's decision, the Parties will not object and this Agreement will be rescinded. If this Agreement is rescinded, Abbott will not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims, actions or proceedings arising from the Covered Conduct that are brought by the State within 90 calendar days of rescission, except to the extent such defenses were available on the day on which the qui tam complaints listed in Federal Settlement Preamble Paragraph II.B, were filed.

7. In consideration of the obligations of Abbott set forth in this Agreement, and the Corporate Integrity Agreement ("CIA") that Abbott has entered into with the Office of the Inspector General of the United States Department of Health and Human Services ("HHS-OIG") in connection with this matter, and conditioned on receipt by the State of its share of the State Medicaid Settlement Amount, except as reserved in Paragraph 3 above and subject to Paragraph 13 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment under this Agreement), 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 the Abbott Released Entities for the Covered Conduct or for the conviction in the Federal Criminal Action. Nothing in this Agreement precludes the State from taking action against Abbott in the event that Abbott is excluded

by the federal government, or for conduct and practices other than the Covered Conduct or the conviction in the Federal Criminal Action.

8. Abbott 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 to the Constitution, that this Agreement bars a remedy sought in such criminal prosecution or administrative action.

9. In consideration of the obligations of the State set forth in this Agreement, Abbott waives and discharges the State, its agencies, political subdivisions, employees, servants, and agents from any causes of action (including attorneys' fees, costs, and expenses of every kind and however denominated) which Abbott 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.

10. The amount that Abbott 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, if applicable, Abbott 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.

11. Abbott shall not seek payment for any of the claims for reimbursement to Medicaid covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors.

12. Abbott 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 Federal Settlement Amount and Medicaid State Settlement Amount. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (a) have intended that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Abbott within the meaning of 11 U.S.C. § 547(c)(1), and (b) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

13. In the event Abbott commences, or another party commences, within 91 days of the Effective Date of this Agreement or any payment made hereunder, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of Abbott's debts, or seeking to adjudicate Abbott as bankrupt or insolvent, or (b) seeking appointment of a receiver, trustee, custodian or other similar official for Abbott or for all or any substantial part of Abbott assets, Abbott agrees as follows, to the extent consistent with applicable law:

(a) Abbott's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. §§ 547 or 548, and Abbott shall not argue or otherwise take the position in any such case, proceeding or action that: (i) Abbott's obligations under this

Agreement may be avoided under 11 U.S.C. §§ 547 or 548; (ii) Abbott was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the State hereunder; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Abbott.

(b) If Abbott's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the State, at its sole option, may rescind the releases provided in this Agreement, and bring any civil and/or administrative action or proceeding against Abbott for the liability that would otherwise be covered by the releases provided in this Agreement. If the State chooses to do so, Abbott agrees that for purposes only of any actions or proceedings referenced in this first clause of this Paragraph, any such actions or proceedings brought by the State (including any proceedings to exclude Abbott from participation in the State's Medicaid program) are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceeding described in the first clause of this Paragraph, and that Abbott shall not argue or otherwise contend that the State's actions or proceedings are subject to an automatic stay; Abbott shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative actions or proceedings which are brought by the State within 90 calendar days of written notification to Abbott that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available before October 31, 2007; and the State has a valid demand against Abbott in the amount of its

share of the Medicaid State Settlement Amount plus applicable multipliers and penalties and it may pursue its demand *inter alia*, in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action or proceeding; and Abbott acknowledges that its obligations set forth in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

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

15. Abbott agrees to cooperate fully and truthfully with any State investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Abbott shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals.

16. 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.

17. 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.

18. 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.

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

20. 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.

21. The undersigned Abbott 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.

22. 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.

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

24. Abbott has publicly announced that it plans to separate into two publicly traded companies, one a diversified medical products company, which may retain the Abbott name, ("Diversified Company") and the other a research-based pharmaceutical company ("Pharmaceutical Company") which will not be a subsidiary or corporate

affiliate of Abbott (this separation is hereinafter referred to as the "Transaction" and the "Effective Time" shall be the date and time that the Transaction becomes effective). In the event the Transaction occurs, and as of the Effective Time, the provisions of Paragraphs 2, 3, 5 and 7 above that run to the benefit of Abbott will continue to apply fully to Abbott, the Diversified Company, Pharmaceutical Company, and their subsidiaries.

25. This Settlement 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.

26. 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.

FOR THE STATE OF CONNECTICUT

State of Connecticut

**State of Connecticut
Division of Criminal Justice
Medicaid Fraud Control Unit**

**State of Connecticut
Department of Social Services
[Connecticut Medicaid Agency]**

By _____
George Jepsen
Attorney General
By Robert B. Teitelman
Assistant Attorney General

By _____
Kevin T. Kane
Chief State's Attorney

By _____
Roderick L. Bremby
Commissioner

Date: _____

Date: _____

Date: _____

ABBOTT

By: _____ Dated: _____

[Name]
Authorized Corporate Officer

By: _____ Dated: _____

Henry J. DePippo, Esq.
Counsel for Abbott

DISTRIBUTION OF PROCEEDS - PRELIMINARY

ABBOTT

State of CONNECTICUT

TOTAL MEDICAID SETTLEMENT (STATE/FEDERAL)	\$7,881,918.54
FEDERAL SHARE	\$3,958,266.37

State Funds Breakdown

1. State Share	\$3,923,652.17
3(a) State Share of Medicaid Restitution	\$1,961,826.09
3(b) State Share of Additional Recoveries	\$1,961,826.09

IF YOU HAVE ANY QUESTIONS CONCERNING THIS ALLOCATION, PLEASE
CONTACT YOUR DESIGNATED TEAM CONTACT:

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