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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

MEDCO HEALTH SOLUTIONS, INC., and
MERCK-MEDCO MANAGED CARE, L.L.C.,

Defendants.

Case No.:

**FINAL JUDGMENT and
PERMANENT INJUNCTION**

Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA (“Plaintiff), having filed its Complaint and appearing through its attorney Bill Lockyer, Attorney General, by Albert Norman Shelden, Acting Senior Assistant Attorney General, and defendants MEDCO HEALTH SOLUTIONS, INC., and MERCK-MEDCO MANAGED CARE, L.L.C., (hereafter “defendants”) appearing by David B. Snow, Jr., Chairman, President and C.E.O. and through their attorneys Shearman & Sterling, LLP, by James P. Tallon, and

The parties having consented to the entry of this Final Judgment and Permanent Injunction (“Judgment”) for the purposes of settlement only, without this Judgment constituting evidence against or any admission by any party, and without trial of any issue of fact or law;

NOW THEREFORE, upon the stipulation of the parties hereto IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1.

1 **I. FINDINGS**

2 1. This Court has jurisdiction of the subject matter of this case and of the parties
3 consenting hereto.

4 2. Venue is proper as to all parties in this Court.

5 3. Defendants have done business in this state through the provision of pharmacy benefit
6 management services to persons who are consumers in this state.

7 4. Entry of this Final Judgment and Permanent Injunction (hereafter “Judgment”) is not a
8 finding of liability by the defendants.

9 5. Defendants have, by signature of their counsel hereto, waived any right to appeal,
10 petition for certiorari, or move to reargue or rehear this Judgment. Entry of this Judgment is in the
11 public interest.

12 **II. DEFINITIONS**

13 The following Defined Terms, as used in this Judgment, have the following meaning:

14 “Actual Cost Savings” shall mean, with respect to a proposed Drug Interchange, the actual
15 amount in dollars a Client Plan and Patient, respectively, will save in Net Drug Costs annually if a Drug
16 Interchange occurs at the expected dosage, assuming the Patient will use the drug for twelve months.

17 “Bundled Drug” shall mean a drug for which a rebate is given only on the condition that other
18 drugs from the same manufacturer are included on a formulary.

19 “Clear & Conspicuous” shall mean a disclosure in such size, color, contrast and location, that it
20 is readily noticeable, readable and understandable; is presented in proximity to all information necessary
21 to prevent it from being misleading or deceptive, in a manner that such information is readily noticeable,
22 readable and understandable and not obscured in any manner; and if a print disclosure, it appears in a
23 type size, contrast and location sufficient for a Patient_consumer or Prescriber to read and comprehend
24 it. A statement may not contradict or be inconsistent with any other information with which it is
25 presented. If a statement modifies or is necessary to prevent other information from being misleading or
26 deceptive, then the statement must be presented in proximity to that information, in a manner that is
27 readily noticeable, readable, and understandable, and is not obscured in any manner. A print disclosure
28 must appear in a type size, contrast and location sufficient for a Patient or Prescriber to read and

comprehend it. For purposes of this Consent Judgment, nothing in this definition shall prevent Medco from disclosing prescription, health and safety information first.

“Client Plan” shall mean any governmental entity, employer, insurer, union or other entity that contracts directly with Medco to provide or administer a pharmacy benefit for such plan and its Beneficiaries.

“Currently Prescribed Drug” shall mean a drug prescribed for a Patient that is the subject of a Medco Drug Interchange Solicitation.

“Drug Interchange” shall mean any change from one prescription drug to another, requested by Medco. “Drug Interchange,” however, shall not include those Drug Interchanges:

- a) initiated pursuant to a Drug Utilization Review;
- b) initiated for Patient safety reasons;
- c) required due to market unavailability of the Currently Prescribed Drug;
- d) from a brand drug to its generic or chemical equivalent, as defined by the FDA;
- e) required for coverage reasons, that is, where the Currently Prescribed Drug is not covered by the formulary or plan applicable to the Patient.

“Drug Interchange-Related Health Care Costs” shall mean a Patient’s co-pays for tests, doctor visits, and other health care services that are incurred in accordance with a treating physician’s instructions, and either a) are incurred as a result of a Drug Interchange, for the purpose of assessing the continuum of the previous therapy, for up to six months following a Drug Interchange; or b) are incurred as a result of a Drug Interchange Solicitation, for the purpose of assessing whether to undertake a proposed Drug Interchange. With respect to co-pays that may be incurred for purposes of assessing whether to undertake a proposed Drug Interchange (within clause (b) above), if, following a Drug Interchange Solicitation, a Prescriber or Patient indicates that a proposed Drug Interchange will result in such costs being incurred, Medco in its discretion may cease to seek the proposed Drug Interchange. If a Patient, because of a deductible or cap requirement, pays actual costs of tests or doctor visits instead of co-pays, then that Patient’s Drug Interchange-Related Health Care Costs shall be based on the co-pay (if any) that would apply upon satisfaction of the deductible or the co-pay applicable prior to the cap being met.

1 “Drug Interchange Solicitation” shall mean any communication by Medco for the purpose of
2 requesting a Drug Interchange.

3 “Generic equivalent” shall mean a medication deemed chemically equivalent to a branded drug,
4 signified by an AB rating by the Food and Drug Administration, approval for substitution on any state
5 formulary, or approval for substitution by the Medco P&T Committee.

6 “Manufacturer Payments” shall mean any or all compensation or remuneration Medco receives
7 from a pharmaceutical manufacturer, including but not limited to, rebates, regardless of how
8 categorized, market share incentives, commissions, mail service purchase discounts, and administrative
9 or management fees. It also includes any fees received for sales of utilization data to a pharmaceutical
10 manufacturer. It does not include purchase discounts based upon invoiced purchase terms. For
11 purposes of Medco’s “Manufacturer Payment Reports” provided to Client Plans hereunder, all
12 “Manufacturer Payments” received by Medco fit into one of two categories defined herein, namely,
13 “Manufacturer Formulary Payments” or “Manufacturer Additional Payments.”

14 “Manufacturer Formulary Payments” shall mean Payments that Medco receives from a
15 manufacturer in return for formulary placement and/or access, or payments that are characterized as
16 “formulary” or “base” rebates or payments pursuant to Medco’s agreements with pharmaceutical
17 manufacturers.

18 “Manufacturer Additional Payments” shall mean all Manufacturer Payments other than
19 Manufacturer Formulary Payments. These payments are not provided by Medco to those Client Plans
20 that have contracted to receive a certain share of “formulary” rebates or payments, although certain
21 Client Plans may contract to receive a certain share of all Manufacturer Payments, including both
22 “Formulary” and “Additional” Payments.

23 “Medco” shall mean Medco Health Solutions, Inc., Merk-Medco Managed Health Care, LLC,
24 and their subsidiaries including all state licensed pharmacy subsidiaries and affiliated companies, their
25 corporate predecessors and successors, and their agents and employees, including pharmacists directly
26 employed by Medco.

27 “Medco Total Product Revenue” shall mean Medco’s net revenue which consists principally of
28 sales of prescription drugs to clients, either through Medco’s network of contractually affiliated retail

1 pharmacies or through Medco's mail order pharmacies. Where Medco acts as a principal in
2 accordance with generally accepted accounting principles, which is the case in the majority of Medco's
3 client contracts, revenues are recognized at the prescription price negotiated with clients, as well as the
4 associated administrative fees.

5 "Minimum Cost Savings" shall mean the minimum amount in dollars a Client Plan and Patient,
6 respectively, will save in their costs annually if a Drug Interchange occurred at the expected dosage.

7 "Net Drug Cost" shall mean the price Medco charges a Client Plan and/or Patient for a
8 prescription drug whether that drug is delivered through a retail pharmacy or mail order. The Net Drug
9 Cost may take into account all discounts, rebates, credits or other payments that lower the cost of the
10 drug, to the extent such payments are provided to the Client Plan. Net Drug Cost may be reduced by
11 Manufacturer Payments to the extent those payments are provided to the Client Plan, but shall not be
12 reduced by Manufacturer Payments that are paid to and retained by Medco.

13 "Participating State Attorneys General" or "participating states" shall mean the Attorneys
14 General of the States of Arizona, California, Connecticut, Delaware, Florida, Illinois, Iowa, Louisiana,
15 Maine, Maryland, Nevada, New York, North Carolina, Oregon, Texas, Vermont, and Washington
16 and the Commonwealths of Massachusetts, Pennsylvania, and Virginia.

17 "Patient" shall mean a person whose prescription drug benefit is administered by Medco.

18 "P&T Committee" shall mean the Pharmacy & Therapeutics Committee maintained by Medco,
19 comprised of at least seven members, all of whom shall be physicians, pharmacists, or other health care
20 professionals, and a majority of whom are actively practicing and who are not employed by Medco,
21 responsible for determining Medco's standard formularies, the clinical appropriateness for Medco
22 concerning Medco's Drug Interchange programs, developing and maintaining clinical criteria used as a
23 basis for Medco's standard coverage management program, and other responsibilities pertaining to the
24 clinical components of programs and services designed to effect drug utilization.

25 "Prescriber" means a physician, dentist, physician's assistant, optometrist or other health care
26 professional authorized by law to write prescriptions for prescription drugs.

27 "Proposed Drug" shall mean the drug or drugs that Medco, in its Drug Interchange Solicitation,
28 proposes to substitute for a Currently Prescribed Drug.

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1 Interchange reversed, unless all of the Proposed Drugs in the current Drug Interchange Solicitation
2 were not among the Proposed Drugs in the prior Drug Interchange Solicitation.

3 **B. Medco's Payment of Drug Interchange-Related Health Care Costs**

4 1. Medco shall pay all out-of-pocket costs for Drug Interchange-Related Health Care
5 Costs incurred by a Patient by reimbursing the Patient for such costs, within thirty days of receipt of a
6 claims form for such costs.

7 2. Medco shall enact and follow a procedure for reimbursing Patients such out-of-pocket
8 costs, by which Medco shall, without limitation, (a) permit Patients, Prescribers or Treating Physicians
9 to request such reimbursement, by phone or in writing, and (b) upon such request, provide a single-
10 page claim form (with instructions) to request reimbursement. For reimbursement requests initiated by
11 Patients (not Prescribers or Treating Physicians), Medco may (but need not) require that the Patient's
12 reimbursement claim provide information showing that Interchange-Related Health Care Costs were
13 incurred, which requirement may be satisfied by a Physician or Prescriber's notation at a designated
14 place on the claim form, or by providing a Physician's written order, or other evidence showing
15 payment of costs (e.g., co-pays for tests or doctor visits) incurred as a result of a Drug Interchange.
16 Medco shall not directly or indirectly prevent or discourage Patients or Doctors from requesting or
17 receiving reimbursement for Drug Interchange-Related Health Care Costs.

18 3. Medco's written communications to both Prescribers and Patients concerning Drug
19 Interchanges, as set forth below, shall Clearly and Conspicuously disclose Medco's policy, consistent
20 with this section, with respect to Drug Interchange-Related Health Care Costs. Medco's telephone
21 communications with Prescribers and Patients concerning Drug Interchanges, as set forth below, shall
22 communicate the existence of Medco's policies with respect to Drug Interchange-Related Health Care
23 Costs. In its communications with Prescribers, Patients and Client Plans, Medco shall not
24 misrepresent, directly or indirectly, its policy with respect to Drug Interchange-Related Health Care
25 Costs.

26 4. Should Drug Interchange-Related Health Care Costs paid to a Patient with respect to
27 any particular Interchange exceed \$500.00, Medco, while complying with the timely reimbursement
28 requirement set forth in B.1., above, may, in its sole discretion, choose to have a third party chosen by

1 Medco to review the costs paid. If a determination is made that the costs were not related to an
2 Interchange, nothing herein shall prevent Medco from pursuing any legal remedies Medco may have
3 against the Patient and any other party involved.

4 **C. Medco's Drug Interchange Solicitation Process and Disclosure of Pricing**
5 **Information**

6 1. Drug Interchange Solicitation to Prescribers.

7 Medco shall not interchange (or obtain an interchange promise for) the prescription drug of any
8 Patient without first obtaining express verifiable authorization from the Prescriber of the Currently
9 Prescribed Drug. All Medco Drug Interchange Solicitations to a Prescriber shall:

- 10 a) identify the name and title of the person making the Drug Interchange
11 Solicitation;
- 12 b) state that Medco is soliciting a Drug Interchange;
- 13 c) identify the Minimum Cost Savings or Actual Cost Savings to be achieved by
14 interchanging to the Proposed Drug from the Currently Prescribed Drug
- 15 d) describe under what circumstances the Currently Prescribed Drug will continue
16 to be covered by the Client Plan, if such is the case;
- 17 e) describe the difference in co-pay, if any, or the absence of effect on co-pay, if
18 such is the case;
- 19 f) if Medco receives Manufacturer Payments from a drug manufacturer as a result
20 of the Proposed Drug Interchange or the Interchange Solicitation that is not
21 reflected in Net Drug Cost because it is compensation that does not inure to
22 Medco's Client Plan, Medco shall disclose that it receives such compensation
23 or potential compensation;
- 24 g) Disclose the existence of Medco's policy with respect to Drug Interchange-
25 Related Health Care Costs outlined in Paragraph III.B. If the Drug Interchange
26 Solicitation is written, this disclosure shall be clear and conspicuous and direct
27 the Prescriber to the written communication (Confirmation to Prescribers,
28 provided below) for details. If the Drug Interchange Solicitation is by

1 telephone, Medco may disclose its policy by directing the Prescriber to the
2 written communication for details.

- 3 h) Disclose any material differences, as determined by the Medco P&T
4 Committee, between the Currently Prescribed Drug and the Proposed Drug
5 with respect to side effects or potential effects on patient health and safety.

6 2. Authorization and Written Confirmation to Prescribers for Drug Interchanges for home
7 delivery or promises for Drug Interchanges obtained at retail.

- 8 a) Medco shall not Interchange a Patient's drug absent express verifiable
9 authorization from the Prescriber, as communicated (i) directly by the
10 Prescriber (in writing or verbally) or (ii) by a person who affirms (in writing or
11 verbally) that the Interchange has been authorized by the Prescriber. If such
12 authorization is by a person other than the Prescriber and verbal, Medco shall
13 request that person's name and title or position.
- 14 b) Medco shall maintain records memorializing, with respect to each Drug
15 Interchange, how express verifiable authorization was obtained, including the
16 name of the person providing express verifiable authorization of the Drug
17 Interchange; whether the authorization was written or verbal; and, if verbal and
18 by a person other than the Prescriber, that person's title or position, if
19 provided.
- 20 c) Upon such express verifiable authorization of a Drug Interchange, Medco shall
21 send a written communication to the Prescriber confirming the Interchange. If
22 the Solicitation (containing the requirements above) was not in writing, then the
23 written confirmation shall include the information required in Section III.C.1.
24 Regardless whether the Interchange Solicitation was in writing, the written
25 confirmation shall:
- 26 i) identify the Minimum Cost Savings or Actual Cost Savings resulting
27 from the interchange;
- 28 ii) Clearly and Conspicuously disclose Medco's policy with respect to

Drug Interchange-Related Health Care Costs, in accordance with
Section III.B.; and

iii) provide a toll free telephone number for the Prescriber.

3. Interchange Confirmation to Patient.

With respect to Medco home delivery prescriptions, within 24 hours of express verifiable authorization of a Drug Interchange by the Prescriber or dispensing the Proposed Drug, whichever is earlier, Medco shall send to the Patient a written communication (“Written Patient Drug Interchange Notice,”) and make a telephonic communication (“Telephonic Patient Drug Interchange Notice”) advising the Patient of the Prescriber’s approval of the Drug Interchange. Following express verifiable authorization of a Prescriber’s approval of a Drug Interchange for a non-home delivery prescription, Medco shall send the Patient a Written Patient Drug Interchange Notice. The Written Patient Drug Interchange Notice shall Clearly and Conspicuously:

- a) state that Medco requested a Drug Interchange by contacting the Patient’s Prescriber;
- b) state that, following Medco’s Interchange Solicitation, the Prescriber approved the Drug Interchange;
- c) not represent that the Prescriber initiated the Interchange;
- d) identify the Proposed Drug and the Currently Prescribed Drug;
- e) identify the Minimum Cost Savings or Actual Cost Savings;
- f) describe under what circumstances the Currently Prescribed Drug will continue to be covered by the Client Plan, if such is the case;
- g) describe the difference in co-pay, if any, or the absence of effect on co-pay, if such is the case;
- h) if Medco receives compensation from a drug manufacturer as a result of the Proposed Drug Interchange or the Drug Interchange Solicitation that is not reflected in the Net Drug Cost because it is compensation that does not inure to Medco’s Client Plan, Medco shall disclose the fact of such compensation or potential compensation;

- 1 i) disclose Medco's policy with respect to Drug Interchange-Related Health Care
2 Costs, in accordance with Section B; and
3 j) advise the Patient that he or she may decline the Drug Interchange in which
4 case the Patient will receive the Currently Prescribed Drug, if the currently
5 Prescribed Drug remains on the Client Plan's formulary and the Patient is
6 willing to pay any difference in Co-Pay.

7 The Telephonic Patient Interchange Notice made for Medco home delivery Drug Interchanges
8 shall:

- 9 a) state that Medco requested a Drug Interchange by contacting the Patient's
10 Prescriber;
11 b) state that, following Medco's Interchange Solicitation, the Prescriber approved
12 the Drug Interchange;
13 c) not represent that the Prescriber initiated the interchange;
14 d) advise the Patient that further written information about the Drug Interchange
15 will arrive in the mail and give a toll-free telephone number so that the Patient
16 may speak to a customer service representative about the Interchange.

17
18 4. Rejected Interchanges.

19 Unless a Currently Prescribed Drug is no longer on the Client Plan's formulary or the Patient is
20 unwilling to pay any higher applicable Co-Pay or other costs, Medco shall cancel and reverse the Drug
21 Interchange upon written or verbal instructions from a Prescriber or Patient. Medco shall maintain a toll
22 free telephone number(s) during business hours (currently 8:00 a.m. to 8:00 p.m. Eastern, but in any
23 event at least eight hours a day, Monday through Friday) to field telephone calls from Patients and
24 Prescribers in response to Medco's interchange confirmations, and the customer service standards
25 (e.g., waiting time) for those telephone numbers shall be equivalent to Medco's other customer service
26 standards. Upon cancellation, if Medco has not yet dispensed the Proposed Drug, Medco, upon
27 approval of the Prescriber, shall dispense the Currently Prescribed Drug. If Medco has already
28 dispensed the Proposed Drug, Medco shall obtain a prescription for, and dispense the Currently

1 Prescribed Drug, and Medco shall charge the Patient only one co-pay and shipping and handling fees
2 (so that a proposed but reversed Interchange will not increase Patient costs beyond the costs had
3 Medco dispensed the Currently Prescribed Drug). Unless otherwise provided by contract with a Client
4 Plan, Medco shall also bear the expense of shipping the Proposed Drug back to Medco (either by
5 offset or by reversing and crediting the initial co-pay). Medco will provide notice to Client Plan that
6 Client Plans may request information regarding the costs to it resulting from a Patient's rejection of a
7 Proposed Drug Interchange. In the event a Patient will exhaust his or her supply of the Currently
8 Prescribed Drug before a replacement shipment will arrive to the Patient, Medco shall arrange for
9 dispensing of an appropriate quantity of replacement medications at a participating Medco network
10 pharmacy at no additional cost to the Patient. Further, in the event that a Patient reverses an
11 Interchange and Medco is unable to obtain approval from the Prescriber (or a physician covering for
12 Prescriber) for the Currently Prescribed Drug, Medco shall take reasonable steps to provide either the
13 Currently Prescribed Drug or the Proposed Drug before the Patient exhausts his or her existing supply.

14
15 5. P & T Committee representations in all Interchange Communications.

16 With respect to all Drug Interchange Solicitations and communications related to Drug
17 Interchanges, Medco shall not misrepresent the role of Medco's P&T Committee in initiating,
18 reviewing, approving or endorsing a Proposed Drug Interchange or Interchange Solicitation. If Medco
19 mentions the P&T Committee in any Interchange Solicitation or communication related to Drug
20 Interchanges, Medco shall Clearly and Conspicuously:

- 21 a) disclose the role of Medco's P&T Committee in Medco's Interchange
22 proposal;
- 23 b) disclose that the Interchange being proposed by Medco was not initiated by the
24 P&T Committee and not initiated due to medical care considerations;
- 25 c) disclose that the P&T Committee did not consider cost issues, if such is the
26 case.

27 6. With respect to the operation of the P&T Committee, Medco shall provide to each
28 plan (at the Plan's expense, unless the Client Plan contract otherwise provides), upon request:

- a) copies of all information provided to the P&T Committee;
- b) copies of all minutes of the P&T Committee;
 - i) Minutes shall include the list of attendees at the meeting, the record of all votes to approve or disapprove a drug for the formulary, or therapeutic interchange or other action undertaken by the committee, a summary of any discussion of material differences between a Currently Prescribed Drug and a Proposed Drug with respect to side effects or potential effects on patient health and safety, and a summary of all discussions on each agenda point.

In addition, regardless whether provided by contract, Medco shall advise each plan that it may send a representative, at the plan's expense, to attend any P&T Committee meeting, subject to reasonable space limitations, which may restrict the number of such observers at each meeting to five plans.

7. In the event Medco's P&T Committee approves a Drug Interchange with conditions, Medco shall provide a complete description of such conditions to the Prescriber at the time of the Interchange Solicitation.

D. Medco Monitoring of Interchange Health Effects

1. Medco shall monitor the effects of Drug Interchanges requested by Medco upon the health of Patients, and shall report to Medco's P&T Committee, not less than quarterly, the results of such monitoring. Such monitoring shall include, without limitation, a system designed to a) identify Patient and Prescriber communications with Medco that concern the efficacy or health effects of a Drug Interchange, and b) capture information from such communications in a manner that Medco can collect, and generate reports on, Patient and Prescriber communications concerning Drug Interchanges. Medco shall report the results of such monitoring to Medco's P&T Committee, not less than quarterly, and the P&T Committee shall reasonably consider the results of Medco's monitoring.

E. Medco's Disclosure to Client Plans of Compensation From Drug Manufacturers

1. Quarterly and Annual Disclosures. With respect to each Client Plan that has

1 contracted to receive (directly or by credit) any Manufacturer Payments from Medco, for each Medco
2 Fiscal Year during which the Client Plan receives any such Manufacturer Payments, Medco shall
3 provide those Client Plans, for each Medco fiscal quarter and year, a Manufacturer Payments Report.
4 Medco's Manufacturer Payment Reports shall identify, for the reported fiscal quarter or year (the
5 "reporting period"), the information set forth below at (a) through (e). If the precise reported figure is
6 not known by Medco at the time of its report, Medco shall provide its current best estimate of the
7 reported information, provided that, with respect to each report, should the reported information
8 subsequently need revision in accordance with generally accepted accounting principles, Medco will
9 provide an update to the reported information to reflect that revision.

- 10 a) the dollar amount of Medco Total Product Revenue (as defined) for the
11 reporting period, with respect to Medco's entire client base, together with:
- 12 b) the dollar amount of total drug expenditures for each Client Plan;
- 13
- 14 c) the dollar amount of all Manufacturer Payments earned by Medco for the
15 reporting period;
- 16 d) the percentage of all Manufacturer Payments earned by Medco for the
17 reporting period that were Manufacturer Formulary Payments; and
- 18 e) the percentage of all Manufacturer Payments received by Medco during the
19 reporting period that were Manufacturer Additional Payments.

20 Medco's Manufacturer Payment Reports shall present the above information in a Clear and
21 Conspicuous manner that serves to inform Client Plans of all Manufacturer Payments earned by
22 Medco, including, for instance, those Client Plans that share only in Manufacturer Formulary Payments
23 but not Manufacturer Additional Payments.

24 2. Disclosure at Contracting Stage. Medco shall disclose to each Client Plan or
25 prospective Client Plan, in advance of executing an agreement (whether an initial or renewal contract)
26 with such Client Plan:

- 27 a) that Medco will solicit and receive Manufacturer Payments and that Medco
28 may pass through those payments to Client Plans or may retain those payments

1 for itself, depending on contract terms.

2 b) the information set forth in Medco's Manufacturer Payment Report pursuant to
3 Section E.1 (a), (c), (d) and (e) above, concerning the most recent Medco
4 fiscal year for which such information is publicly available, at the time of the
5 communication under this section.

6 c) that Medco will report, quarterly and annually, on Manufacturer Payments,
7 consistent with Section E(1) above.

8 **F. Additional Price Transparency Remedies**

9 1. Medco shall not refuse to respond to Request for Proposal or Request for Bid from a
10 plan on the grounds that the proposal does not use AWP or prohibits the use of AWP in pricing terms
11 and Medco, if so asked, shall communicate to each plan that pricing methods other than use of AWP
12 are available.

13
14 2. Medco shall not describe relative prices of drugs by use of symbols or other indirect
15 means without disclosing a price range those symbols represent.

16 **IV. REIMBURSEMENT AND CY PRES PAYMENT**

17 The following provisions of this Judgment are entered pursuant to Business and Professions
18 Code sections 17203 and 17535:

19 **A. Reimbursement.**

20 1. Medco shall pay up to \$2.5 million to reimburse "Affected Consumers," as defined
21 below, up to \$25.00 each for out-of-pocket expenses incurred as a result of a "Statin Drug
22 Interchange," using the notification and claims process described in Section IV.A.1 & 2. For purposes
23 of this section, a "Statin Drug Interchange" means a Patient's Drug Interchange, from one already
24 dispensed branded drug to another branded drug within the HMG-CoA Reductase Inhibitors
25 therapeutic class, from January 1, 2000 through the Effective Date. "Affected Consumers" means
26 those persons who (i) following a Statin Drug Interchange, paid co-pays for tests, doctor visits or other
27 health care services incurred as a result of the Statin Drug Interchange, (ii) have not received
28 reimbursement from Medco for those out-of-pocket expenses, and (iii) currently reside in a

1 Participating State or resided in a Participating State at the time of the Statin Drug Interchange at issue.

2
3 2. Medco, or its designee, shall identify and pay Affected Consumers using the following
4 notification and claims process, the costs of which shall be borne by Medco:

5 a) Using its Patient records and records related to Drug Interchanges, Medco shall identify
6 all Patients who had a Statin Drug Interchange, including statin prescriptions filled by a
7 Medco home delivery (mail order) pharmacy or at retail following a “retail promise”
8 letter from Medco (collectively, “Potential Affected Consumers”). Medco shall make
9 reasonable efforts to identify the current address for each Potential Affected Consumer,
10 using its current Patient records and skip-tracing.

11 b) Medco shall mail to each Potential Affected Consumer a “Reimbursement Notice and
12 Claim Form,” in a form (or forms) approved by the participating Attorneys General.
13 The Reimbursement Notice shall, clearly and conspicuously, (i) advise Potential
14 Affected Consumers that Medco reached a settlement with the participating Attorneys
15 General, and that Medco will reimburse Affected Consumers up to \$25.00 for
16 interchange-related expenses, (ii) explain how Affected Consumers may obtain
17 reimbursement, and (iii) explain that Affected Consumers must submit all claims to
18 Medco within six months of the Affected Consumer’s receipt of the notice and claims
19 form.

20 c) The Claim Form, which shall be coupled with the Reimbursement Notice, may request
21 that the Potential Affected Consumer: i) generally describe any costs incurred as a
22 result of a Statin Drug Interchange; and ii) attest, under penalty of perjury, that the
23 information provided on the claim form is true and accurate. The Claim Form also will
24 advise the Potential Affected Consumer that acceptance of reimbursement pursuant to
25 the claims process will reduce, by the reimbursement amount, any recovery by any
26 other means, of out-of-pocket costs attributable to co-pays for tests, doctor visits or
27 other health care services incurred as a result of the Statin Drug Interchange. A pre-
28 paid envelope shall accompany the Reimbursement Notice and Claim Form. The

1 Claim Form also shall provide a toll-free number for Potential Affected Consumers to
2 call should they have questions.

3 d) Medco shall mail all notices as soon as practicable following the Effective Date, but in
4 any event within four months of the Effective Date. Medco then shall accept claims for
5 seven months after the last mailing of notice and claim forms (“the time period”). After
6 expiration of the time period, Medco shall make reimbursement of \$25.00 to each
7 Affected Consumer who submits a completed claim form and attests that he or she
8 incurred out-of-pocket expenses following a Statin Drug Interchange (a “qualified
9 claim”). In the event that, after expiration of the time period, Medco has received
10 qualified claims in an amount that exceeds \$2.5 million based upon a \$25.00 payment
11 (i.e., more than 100,000 qualified claims), then payments to Affected Consumers shall
12 be prorated by dividing the \$2.5 million by the number of qualified claims received.

13 e) Following completion of the above notification and claims process, and in any event not
14 more than 12 months after the Effective Date, Medco shall certify to the participating
15 Attorneys General that it has complied with this reimbursement section and provide a
16 report identifying, without limitation:

- 17 i) the number of Reimbursement and Claims Forms mailed to Potentially Affected
- 18 Consumers,
- 19 ii) the number of phone calls received concerning the notice and claims process,
- 20 iii) the number of claims forms submitted,
- 21 iv) the number of qualified claims submitted,
- 22 v) the total amount in reimbursement paid by Medco to Affected Consumers, and
- 23 vi) the costs of administration of this reimbursement program.

24 **B. Cy Pres Payment.**

25 1. Medco shall pay the participating State Attorneys General \$20,200,000, as described
26 further in this Section IV.B, to be apportioned among the participating states proportionally based upon
27 population, with a minimum per state distribution, as agreed by the participating states. Each state’s
28 proportional share of the \$20.2 million shall be reflected in a schedule provided to Medco in advance

1 of the Effective Date (the “State Schedule”).

2 2. Within a reasonable time after the Effective Date, but not to exceed 90 days after the
3 Effective Date, each participating State shall elect whether to receive its proportional share as a
4 monetary payment or, in whole or in part, as pharmaceuticals as described further in IV.B.5 & 6,
5 below, and shall provide Medco written notice of its election. Each State electing to receive a
6 monetary payment shall include, in its written notice of election, payment instructions (i.e., to whom
7 payment should be directed). Each State making a partial election (*i.e.*, choosing both monetary
8 payment and pharmaceuticals), shall express the elected monetary payment in dollars, indicating that
9 any balance of that state’s distribution be apportioned to pharmaceuticals.

10 3. Within 14 days of its receipt of such written notice of a State’s election, Medco shall
11 pay to the State, by check and consistent with the State’s reasonable payment instructions, that portion
12 of the State’s proportional share that, consistent with the State’s election, is to be paid in cash (the
13 “Monetary Portion”). Each state’s Monetary Portion shall not exceed the State’s proportional share of
14 the \$20.2 million set forth on the State Schedule. Medco need not pay a State’s Monetary Portion
15 until: a) Medco has received the State’s written notice of election, described above, and b) the State
16 has entered a Consent Order in its state court in substantively the same form as this Consent Order.

17 4. States that receive a monetary payment shall make a *cy pres* distribution of these funds,
18 pursuant to a state-specific Cy Pres Distribution Plan, to a political subdivision(s) thereof or to a state
19 agency or program, a non-profit corporation(s) and/or a charitable organization(s), at the sole
20 discretion of the Attorney General of each Respective State, with the express condition that the funds
21 be used to benefit low income, disabled, or elderly consumers of prescription medications, to promote
22 lower drug costs for residents of that State, to educate consumers concerning the cost differences
23 among medications, or to fund other programs reasonably targeted to benefit a substantial number of
24 persons affected by the Covered Conduct that is the subject of this Judgment.

25 5. As an alternative to monetary payment of their respective proportional share of this *cy*
26 *pres* payment, participating states may elect (as described in B.2, above) to receive their respective
27 payment under this section, in whole or in part, in the form of pharmaceuticals to be provided by
28 Medco, pursuant to section B.6, immediately below. Each State electing to receive pharmaceuticals via

1 the pre-paid generic card described in section B.6(b) below, shall be entitled to receive
2 pharmaceuticals distributed under section B.6(b), valued as described below, in an amount equal to its
3 proportional share of the \$20.2 million cy pres payment plus 25 per cent (the “State pharmaceutical
4 amount”), such that the value of this alternative cy pres distribution would increase to \$25.25 million in
5 the event all Participating States elected to receive pharmaceuticals via the pre-paid generic card.

6 6. Distribution of pharmaceuticals. Medco shall provide pharmaceuticals, up to the State
7 pharmaceutical amount, to each State electing to receive pharmaceuticals (“electing State”), in either or
8 both of two ways, as chosen by the electing State:

- 9 a) Shipment of pharmaceuticals to designated facilities: Medco shall provide
10 pharmaceuticals to facilities designated by the electing State Attorney General or his or
11 her lawful designee (“designated facilities”), by paying for drug purchases by designated
12 facilities up to each designated facility’s allotted pharmaceutical amount, as described
13 herein. A designated facility may be a health clinic, hospital, pharmacy, charitable
14 organization, governmental agency or governmental entity, and must dispense
15 medications in a manner that complies with all applicable state and/or federal laws. The
16 electing State Attorney General shall designate the facilities to receive pharmaceuticals
17 and, for each designated facility, the portion (in dollars) of the State pharmaceutical
18 amount allocated to the facility, up to the total State pharmaceutical amount. Upon
19 such designation, a designated facility, after purchasing pharmaceuticals in its normal
20 course of business, may either: (i) forward to Medco unpaid invoices for
21 pharmaceutical purchases by the designated facility, which Medco shall pay, up to the
22 designated facility’s allotted pharmaceutical amount, within a reasonable time period,
23 not to exceed thirty days after Medco’s receipt; or (ii) forward to Medco paid invoices
24 for pharmaceutical purchases which Medco shall pay, up to the designate facility’s
25 allotted pharmaceutical amount, within a reasonable time period, not to exceed thirty
26 days after Medco’s receipt. Medco may require that all requests for payment from
27 designated facilities pursuant to this subsection be received by Medco within two years
28 of the Effective Date. In the event that invoices forwarded to Medco reflect non-

1 public, proprietary pricing information of a designated facility, the designated facility
2 may take reasonable steps to avoid disclosure of the proprietary pricing information.

- 3 b) Pre-paid generic drugs card: Medco shall provide pre-paid generic drug cards (“drug
4 cards”) to the electing State Attorney General or its lawful designee, for distribution, at
5 the discretion of the Attorney General or its designee, to persons or organizations in the
6 electing State in order to provide generic pharmaceuticals, at no cost, to persons in
7 need, either directly or through organizations. The drug cards shall have a
8 predetermined value (e.g., \$250.00) agreed to by the electing State and Medco
9 (between \$150.00 and \$400.00, available only in \$50.00 increments). Upon
10 distribution of the drug cards, card holders may use the drug card to pay for generic
11 drug prescriptions ordered and filled through Medco’s home delivery pharmacies. To
12 facilitate distribution of drugs paid for by the drug card, Medco may require the card
13 holder to complete a standard enrollment form for its home delivery pharmacies. With
14 respect to such enrollment, and with respect to prescription dispensing practices,
15 protection of personal information, pharmacist consultation and customer service, card
16 holders shall receive Medco’s standard terms and pharmacy services provided to other
17 Patients. Beyond providing its standard pharmacy services and customer service to
18 card holders in connection with filling prescriptions for card holders, Medco shall not
19 market other goods or services to card holders, and shall not sell or provide card
20 holders’ personal information to any other entity. For purposes of exhausting a drug
21 card’s predetermined value, the value of drugs dispensed under each drug card shall be
22 the lower of (i) Medco’s Medicare MAC or (ii) HCFA MAC minus ten percent (-
23 10%), at the time of dispensing. Medco may limit generic dispensing pursuant to this
24 subsection to prescriptions received by Medco within (i) eighteen months of each card
25 holder’s initial enrollment (*i.e.*, first prescription order), or (ii) two years of the Effective
26 Date, whichever is earlier.

27 Regardless whether an electing State chooses pharmaceutical distribution via payments to designated
28 facilities or generic drug cards, or both, each electing State shall designate, not later than 30 days after

1 the Effective Date, a person to serve as the electing State's liaison with Medco for the purpose of
2 effecting the distribution of pharmaceuticals hereunder (including, for example, notifying Medco of the
3 electing State's choice of distribution, designation of facilities, or determination of drug card values).
4 Not later than 30 days after the Effective Date, Medco shall designate a person to serve as liaison to
5 each electing State to effect such distribution and compliance with this program.

6 **V. PAYMENT OF FEES AND COSTS TO THE STATES**

7 The following provision of this Judgment is entered pursuant to Business and Professions Code
8 sections 17206 and 17536. Fees and Costs to the States. On or before the Effective Date of this
9 Judgment, Medco shall pay \$6.6 million to the participating State Attorneys General, to be distributed
10 among those participating states as agreed by the Attorneys General, for attorney's fees and
11 investigative costs, consumer education, litigation, public protection, consumer protection purposes or
12 local consumer aid funds or any other purpose permitted by state law at the sole discretion of each
13 state's Attorney General. Medco shall pay this amount by check to the Office of the Pennsylvania
14 Attorney General. The Pennsylvania Attorney General shall hold that payment in trust and, as soon as
15 practicable but not later than six months after receipt, shall distribute the payment among the
16 participating states pursuant to the participating states' agreement, provided, however, that, prior to
17 receiving its allotted distribution hereunder, a State has entered in its State a Consent Order in
18 substantively the same form as this Judgment.

19 **VI. GENERAL PROVISIONS**

20 1. Scope of Judgment. The injunctive provisions of this Judgment are applicable to
21 Medco, its officers, agents, employees, and attorneys, and all those persons or entities in active
22 concert or participation with them who receive actual notice of this Judgment by personal service or
23 otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other
24 device.

25 2. Release of Claims. Plaintiff releases Medco and all of its subsidiaries, affiliates, assigns,
26 corporate predecessors and successors ("Releasees") from all civil claims, causes of action, damages,
27 restitution, fines, costs and penalties on behalf of the State with the exception of any claim pursuant to a
28 state false claims act statute or any other right or cause of action belonging to a State proprietary health

1 plan¹, which the State asserted or could have asserted from January 1, 1995, through the date the
2 parties execute this Judgment, under the above-cited consumer protection statutes and any antitrust or
3 unfair competition laws, relating to or based upon the Covered Conduct which is the subject of this
4 Judgment. Medco specifically acknowledges that this settlement and Judgment does not encompass a
5 settlement or release of any claim, right, or cause of action by a State proprietary health plan, and that
6 plaintiff is not settling or releasing Medco with respect to any claim or potential claim of such entities.
7 Except as to the State proprietary health plan, and claims arising pursuant to the state false claim
8 statute, plaintiff agrees that it shall not proceed with or institute any civil action or proceeding, either
9 individually or collectively, based upon these statutes, laws and regulations against the Releasees,
10 including but not limited to an action or proceeding seeking restitution, injunctive relief, fines, penalties,
11 attorneys fees or costs for any conduct undertaken or omissions prior to the date the parties execute
12 this Judgment which relates to the Covered Conduct. Plaintiff shall also not initiate any claim in the
13 nature of a class action with respect to any Covered Conduct from January 1, 1995, through the date
14 the parties execute this Judgment. Medco may plead this Judgment as a full and complete defense to
15 any claim, whether class, individual or otherwise in nature, released hereunder that may be instituted,
16 prosecuted, or attempted by any Settling State with respect to the Covered Conduct.

17 Notwithstanding the foregoing, plaintiff does not release any claim arising under statutes, laws
18 or regulations other than those identified herein and in footnote 2 of the Stipulation for Entry of Final
19 Judgment and Permanent Injunction filed herewith and signed by the plaintiff and defendants and arising
20 out of the Covered Conduct which is the subject matter of this Judgment. Claims excluded from the
21 State's release include, but are not limited to, claims relating to Best Price, Average Wholesale Price or
22 Wholesale Acquisition Cost reporting practices or Medicaid fraud or Abuse. In addition, the State
23 does not release any claim, right or cause of action that could be brought by any consumer or brought
24 by any person or entity other than the State. Moreover, the State may institute an action or proceeding
25 to enforce the terms and provisions of this Judgment or take action based on future conduct by the
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27 ¹ State proprietary health plan means a health plan of a state, state agency, state subdivision, state college university
28 system or any state public or quasi-public entity that contracted with Medco for PBM services.

1 Releasees.

2 3. Preservation of Law Enforcement Action. Nothing herein precludes the State from
3 enforcing the provisions of this Judgment, or from pursuing any law enforcement action with respect to
4 the acts or practices of Medco not covered by this Judgment or any acts or practices of Medco
5 conducted after the Effective Date of this Judgment.

6 4. Compliance with and Application of State Law. Nothing herein relieves Medco
7 of its duty to comply with applicable laws of the State nor constitutes authorization by the State for
8 Medco to engage in acts and practices prohibited by such laws. This Judgment shall be governed by
9 the laws of each of the respective States, with respect to Medco's conduct in each of the States.

10 5. Non-Approval of Conduct. Nothing herein constitutes approval by the State of
11 Medco's therapeutic interchange program or other business practices. Medco shall not make any
12 representation contrary to this paragraph.

13 6. Effective Date. The "Effective Date" shall be the date that Medco executes the
14 Stipulation for Entry of Final Judgment and Permanent Injunction.

15 7. Effective Date of Section III. Notwithstanding that Medco shall endeavor to comply
16 with all injunctive terms in Section III as promptly as practicable, Sections A.4, A.5, B, C, D, and E, all
17 in Section III above, shall be effective 120 days after the Effective Date.

18 **VII. COMPLIANCE PROVISIONS**

19 1. Within 30 days after the Effective Date of this Judgment, Medco must provide a copy of this
20 Judgment and obtain a signed and dated acknowledgment of receipt from:

- 21 a) each officer and director;
- 22 b) Medco senior management, namely, the top 200 leadership positions at
23 Medco, which shall include the Chief Executive Officer, each position that
24 reports to the CEO (excluding Administrative Assistants), each position that
25 reports to a position that reports to the CEO (excluding Administrative
26 Assistants), and all other "grade 3" employee positions under Medco's current
27 grading system;
- 28 c) each manager of Medco pharmacies, manager of managed care operations,

1 and pharmacist involved in drug interchange communications with patients or
2 prescribers; and

3 d) each customer service representative to whom a telephone call concerning
4 Drug Interchanges may be directed in the routine routing of calls.

5 2. For five years from the Effective Date, Medco shall provide a copy of this Judgment
6 and obtain a signed and dated acknowledgment of receipt from future personnel described in 1 (a)
7 through (d) of this section within 30 days after the person assumes such position or responsibilities.

8 3. Medco shall make this Judgment accessible to Client Plans and Patients through its
9 website.

10 4. Medco shall maintain an executive review panel to assess, on a quarterly basis,
11 Medco's compliance with this Judgment. As warranted the panel will review and/or recommend
12 initiatives to ensure that Medco's drug interchange practices and disclosures to Prescribers, Patients
13 and Client Plans comply with this Judgment.

14 5. Medco shall maintain and distribute methods and procedures (M&Ps) establishing a
15 code of conduct for all Medco employees engaged in the drug interchange program. The M&Ps must
16 be designed to establish quality standards for the manner in which information is disseminated to
17 Prescribers and Patients by Medco employees regarding drug interchanges. Medco will review the
18 M&Ps annually with their pharmacists and other personnel involved with the drug interchange program.

19 6. Medco shall create and retain, for a period of five (5) years following the date of
20 creation, books and records that in reasonable detail accurately reflect Medco's compliance with this
21 Judgment. These records must include, but are not limited to, the following:

- 22 a) documents reflecting the current addresses, telephone numbers, fax numbers
23 and email addresses for Medco and its subsidiaries;
- 24 b) the original signed and dated acknowledgements of the receipt of the Judgment
25 described in paragraph 1 of this section;
- 26 c) documents provided to or received from Client Plans concerning any Client
27 Plans' instructions, if any, concerning opting out of any provisions of this
28 Judgment;

- d) an exemplar of each written notice sent to Prescribers regarding Drug Interchanges;
- e) an exemplar of each written notice sent to Patients regarding Drug Interchanges;
- f) A copy of each script used in telephonic communications with Prescribers and Patients relating to Drug Interchanges.
- g) A copy of all training materials used to inform employees of the requirements of this Judgment ;
- h) A copy of all M&Ps developed by the executive review panel;
- i) the P&T Committee information described in Section V.C.(6);
- j) documents concerning the drug pairs subject to Drug Interchanges
- k) documents reflecting Patient rejections of Drug Interchanges; and
- l) Exemplars of Medco's quarterly and annual disclosures to client plans required by section V E of this Judgment.

7. One year after the Effective Date, and then annually for five years from the Effective Date, Medco shall provide to the Attorney General of each Participating State a certification, signed by a Medco senior officer, certifying Medco's compliance with this Judgment. Medco's annual certification may be accompanied by a report showing the manner in which Medco has complied with the Judgment.

8. For a period of five years beginning on the Effective Date of this Judgment, and within thirty (30) days of a written request by an Attorney General, Medco shall provide to that Attorneys General:

- a) Copies of the documents described in the preceding paragraph; and
- b) such other records and documents as the Attorney General determines reasonably bear on compliance with this Judgment.

9. Nothing in this Judgment limits the Attorney General's lawful use of compulsory process to investigate whether Medco has violated any provision of law enforced by the Attorneys General.

VIII. ADMINISTRATIVE PROVISIONS

1 1. Jurisdiction is retained of this matter for all purposes, including but not limited to, the
2 purpose of enabling any of the parties to this Judgment to apply to the Court at any time for such further
3 orders or directives as may be necessary or appropriate for the interpretation or modification of this
4 Judgment, for the enforcement of compliance therewith or for the punishment of violations thereof.

5 2. The State shall give Medco 30 days' notice before filing a motion or other pleading
6 seeking contempt of court or other sanctions for violation of this Judgment. The giving of such notice
7 shall not prevent the State from beginning such proceeding following the expiration of the 30 day
8 period.

9 3. Any party to this Judgment may petition the Court for modification on thirty (30) days'
10 notice to all other parties to this Judgment. Medco may petition for modification if it believes that the
11 facts and circumstances that led to the State's action against Medco have changed in any material
12 respect. The parties by stipulation may agree to a modification of this Judgment, which agreement shall
13 be presented to this Court for consideration; provided that the parties may jointly agree to a
14 modification only by a written instrument signed by or on behalf of both Medco and the State. If
15 Medco wishes to seek a stipulation for a modification from the State, it shall send a written request for
16 agreement to such modification to the Attorney General of the state at least 30 days prior to filing a
17 motion with the Court for such modification. Within 30 days of receipt from Medco of a written
18 request for agreement to modify, the Attorney General of the State shall notify Medco in writing if the
19 Attorney General of the State agrees to the requested modification

20 4. If, after the date of entry of this Judgment, the State, its Attorney General, or any
21 agency of the State enacts or promulgates legislation, rules or regulations with respect to matters
22 governed by this Judgment that conflict with any provision of this Judgment, or if the applicable law of
23 the State shall otherwise change so as to conflict with any provision of this Judgment, the Attorney
24 General shall not unreasonably withhold its consent to the modification of such provision to the extent
25 necessary to eliminate such conflict. Laws, rules, or regulations, or other change in State law, with
26 respect to the matters governed by this Judgment, shall not be deemed to conflict with a provision of
27 this Judgment unless Medco cannot reasonably comply with both such law, rule, or regulation and an
28 applicable provision of this Judgment.

1 Dated: April , 2004

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JUDGE OF THE SUPERIOR COURT

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