

STATE SETTLEMENT AGREEMENT

I. PARTIES

This State Settlement Agreement (“Settlement Agreement”) is entered into between the State of California (“the State”) and McKesson Corporation (“McKesson”), hereinafter collectively referred to as “the Parties.”

II. PREAMBLE

WHEREAS, at all relevant times, McKesson Corporation (“McKesson”), a Delaware corporation with its principal place of business in San Francisco, California, was a wholesaler of pharmaceutical products.

WHEREAS, on or about March 28, 2005, Relator David Morgan (“Relator”) filed a *qui tam* action in the United States District Court for the District of New Jersey captioned *United States ex rel. Morgan v. Express Scripts, Inc., et al.*, Civil Action No. 05-1714, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b), and the false claims statutes of various states (the “Civil Action”). Relator filed amended complaints on or about May 26, 2006, November 30, 2006, and January 26, 2009. McKesson was named as a defendant only in Relator’s second and third amended complaints.

WHEREAS, on April 3, 2012, McKesson and the United States entered into a separate civil settlement agreement for \$187 million plus simple interest accrued thereon at a rate of 2.5% per annum (the “Federal Settlement Amount”). The Federal Settlement Amount includes the sum paid to the United States in settlement of the federal share attributable to the total losses (i.e., the federal share plus the state share) allegedly suffered by the State’s Medicaid Program

("Medicaid"), 42 U.S.C. §§ 1396-1396w-5, due to the "Covered Conduct" as that term is defined below.

WHEREAS, the State contends that it has certain civil causes of action against McKesson for engaging in the following alleged conduct (hereinafter referred to as the "Covered Conduct"): During the period from August 1, 2001 through March 31, 2005, McKesson knowingly increased, to 25% over Wholesale Acquisition Cost ("WAC") or over Direct Price ("DP"), the markups it reported to First DataBank ("FDB") for all brand-name, self-administered, prescription pharmaceuticals, without regard to the lower markups suggested by drug manufacturers for such drugs, and knowingly reported such 25% markups to FDB, when in fact (1) prices with such markups did not accurately reflect the prices that McKesson actually charged its customers for such drugs; (2) McKesson knew that reporting such false and inflated markups to FDB would cause FDB to publish false and inflated Average Wholesale Prices ("AWPs") for such drugs; (3) McKesson knew that FDB described its published AWP as being the product of wholesaler surveys and as reflecting actual prices that wholesalers charged their customers; and (4) McKesson knew that the State would and did use those published AWP to reimburse providers for such drugs. The drugs covered by this Agreement ("the Covered Drugs") are all brand name, self-administered, prescription pharmaceuticals for which FDB published AWP equal to 25% over the drugs' respective WACs or DPs. The State further contends that McKesson's conduct caused the State, which relied on FDB's AWP or the AWP published by Medi-Span which were derived from FDB's AWP, to pay artificially inflated reimbursements for the Covered Drugs for Medicaid claims submitted during the period from August 1, 2001, through December 31, 2009.

WHEREAS, this Settlement Agreement is neither an admission of liability by McKesson, nor a concession by the State that its contentions and claims are not well-founded. McKesson expressly denies the contentions of the State set forth herein and all contentions of Relator in the Civil Action, and further denies any liability or wrongdoing related to those contentions. Neither this Settlement Agreement, its execution, the performance of any obligations under it, nor the fact of settlement, is intended or shall be deemed to be an admission of liability or wrongdoing by McKesson.

NOW, THEREFORE, to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, and for good and valuable consideration as stated herein, the Parties agree and covenant as follows:

III. DEFINITIONS

A. "Effective Date" shall mean the date of signature of the last signatory to this Settlement Agreement.

B. "Eligible State(s)" refers to any or all of the following states: Alaska, Arkansas, California, Colorado, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

C. "Litigating State Deduction" shall mean the aggregate amount allocated to the Litigating States (as that term is defined in Paragraph 3 of this Settlement Agreement), plus

applicable interest accrued thereon, as to which McKesson exercises its rights under Paragraph 3 of this Settlement Agreement.

D. "Medicaid Participating State" means any Eligible State that delivers to McKesson's undersigned counsel within the Opt-In Period a State Settlement Agreement which has been fully and properly executed by the Eligible State in accordance with applicable law.

E. "Non-Participating State Deduction" shall mean the aggregate amount allocated to those Eligible States, plus applicable interest accrued thereon, that do not become Medicaid Participating States.

F. "Opt-In Period" means the period beginning on June 5, 2012, and ending 45 days later, at the close of business, on July 20, 2012, unless McKesson agrees in writing to extend the Opt-In Period to a later date.

G. "State Settlement Agreement" means the final form of settlement agreement containing, without deviation, the terms and provisions set forth in the model agreement that the State Team e-mailed to McKesson's undersigned counsel on June 5, 2012, or a written settlement agreement otherwise agreed to by McKesson and an individual State.

H. "State Team" means the team of attorneys who, on behalf of the Eligible States, investigated the matters covered by this Settlement Agreement, and negotiated with McKesson the terms of the State Settlement Agreement that was transmitted to the State.

IV. TERMS AND CONDITIONS

1. McKesson agrees to pay to the Medicaid Participating States the sum of \$175,172,195.00, plus simple interest accrued thereon at a rate of 2.50% per annum from January 31, 2012, to and including the last day of the Opt-In Period (collectively, the "Total

State Settlement Amount”), less the amount of the Non-Participating State Deduction and the amount of the Litigating State Deduction (the “Net State Settlement Amount”).

2. The individual portion of the Net State Settlement Amount allocated to the State under this Settlement Agreement is the sum of \$23,585,849.18, plus applicable interest accrued thereon (collectively, the “State Amount”).

3. Prior to the date the Net State Settlement Amount becomes due according to Paragraph 4 of this Settlement Agreement, McKesson shall execute a State Settlement Agreement with each Medicaid Participating State; provided, however, that McKesson reserves the right not to execute a State Settlement Agreement with any Eligible State that is engaged in litigation with McKesson in a matter relating to the Covered Conduct (“Litigating State”). If McKesson exercises this right with respect to such a Litigating State, then that state shall not be deemed to have become a Medicaid Participating State.

4. The Net State Settlement Amount shall constitute a debt immediately owing for claimed compensatory damages, and shall forever be discharged by McKesson’s payment of the Net State Settlement Amount no later than seven (7) business days after the expiration of the Opt-In Period by electronic funds transfer to the New York State Attorney General’s National Global Settlement Account (“NY State Account”). This electronic funds transfer shall be made pursuant to written wiring instructions to be provided to McKesson’s undersigned counsel by the State Team no later than the last day of the Opt-In Period.

5. The State Team shall be solely responsible for all the administrative and accounting activities in connection with the money held in the NY State Account, and for disbursing to each Medicaid Participating State its share of the Net State Settlement Amount.

McKesson shall have no responsibility or liability for the administration of the money held in the NY State Account, or the disbursement of that money to each Medicaid Participating State.

6. Subject to the exceptions in Paragraph 8 below, in consideration of the obligations of McKesson set forth in this Settlement Agreement, and conditioned upon receipt of the Net State Settlement Amount in the NY State Account and verification and confirmation by the State Team that the State Amount is included within the Net State Settlement Amount, the State hereby releases McKesson, its past and present parents, predecessors, subsidiaries, each of their past and present directors, officers, principals, agents, and employees, and the successors, assigns, executors and heirs of each of the foregoing (collectively, the “ McKesson Released Entities”), from any civil or administrative monetary cause of action that the State has or may have, as a result of the Covered Conduct related to or arising out of Medicaid reimbursements.

7. Subject to the exceptions in paragraph 8 below, in consideration of the obligations of McKesson set forth in this Settlement Agreement, and conditioned upon receipt of the Net State Settlement Amount in the NY State Account and verification and confirmation by the State Team that the State Amount is included within the Net State Settlement Amount, the State hereby releases and shall refrain from instituting, recommending, directing, or maintaining any administrative action seeking exclusion from the State’s Medicaid program against the McKesson Released Entities for the Covered Conduct. Nothing in this Settlement Agreement precludes the State from taking action against a McKesson Released Entity in the event that a McKesson Released Entity is excluded from the Medicaid program by the federal government, or for conduct and practices other than the Covered Conduct.

8. Notwithstanding any term of this Settlement Agreement, the State specifically does not release the McKesson Released Entities from any of the following liabilities:

- (a) any criminal, civil or administrative liability arising under the State's revenue codes;
- (b) any criminal liability not specifically released by this Settlement Agreement;
- (c) except as expressly covered by the release in paragraph 6 above, any civil or administrative liability that any person or entity, including the McKesson Released Entities, has or may have to the State or to individual consumers or state program payors under any statute, regulation or rule, 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 to 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 Settlement Agreement;
- (g) except as explicitly stated in this Settlement Agreement, any administrative liability, including mandatory exclusion from the State's Medicaid program;
- (h) any liability for express or implied warranty claims or other claims for defective or deficient products and services provided by McKesson;
- (i) any liability for personal injury or property damage or for such other consequential damages arising from the Covered Conduct; or
- (j) any liability for failure to deliver goods or services due.

9. In consideration of the obligations of the State set forth in this Settlement Agreement, and conditioned upon the State fulfilling its obligations under Paragraph 10 of this Settlement Agreement, McKesson hereby waives and discharges the State, its agencies, political subdivisions, employees, servants, and agents from any causes of action (including for attorneys'

fees, costs, and expenses of every kind and however denominated) which McKesson has or may have against the State, its agencies, political subdivisions, employees, servants, and agents, arising from the State's investigation and prosecution of the Covered Conduct. The Parties expressly acknowledge that this release does not extend to any liability based upon obligations created by this Settlement Agreement.

10. Within ten (10) business days of the State's receipt of its share of the Net State Settlement Amount, the State shall dismiss with prejudice any claims which the State currently has pending against McKesson for Medicaid payments implicated by the Covered Conduct, and the Parties shall file in the Civil Action a Stipulation requesting that all claims asserted in the Civil Action against McKesson for the Covered Conduct be dismissed with prejudice.

11. In any criminal prosecution or administrative action relating to the Covered Conduct, McKesson waives and shall not assert any defenses it may have that may be based in whole or in part on a contention that under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Settlement Agreement bars a remedy sought in such criminal prosecution or administrative action.

12. If applicable, the State's share of the Net State Settlement Amount 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 McKesson 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 any such denials of claims.

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

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

15. The Parties shall each bear their own legal and other costs, including attorneys' fees, incurred in connection with this matter, including the preparation and performance of this Settlement Agreement.

16. This Settlement 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.

17. In addition to McKesson's payment of the Net State Settlement Amount, McKesson agrees to pay all reasonable expenses and travel costs of the State Team, including reasonable consultant fees, incurred due to the State Team's work in connection with the Civil Action. McKesson will pay this amount by a separate check, made payable to NAMFCU, within five (5) business days of the State Team confirming in writing to McKesson's undersigned counsel that it has disbursed to each Medicaid Participating State its individual portion of the Net State Settlement Amount.

18. This Settlement Agreement is governed by the laws of the State, and venue for addressing and resolving any and all disputes relating to the performance of this Settlement Agreement shall be the state courts of appropriate jurisdiction within the State.

19. The undersigned McKesson signatories represent and warrant that they are authorized as a result of appropriate corporate action to execute this Settlement Agreement, and

that no further authority or execution by any other person or entity is necessary to fully effectuate this Settlement Agreement. The undersigned State signatories represent and warrant that they are signing this Settlement Agreement in their official capacities and that they are authorized to execute this Settlement Agreement on behalf of the State through their respective agencies and departments, and that no further authority or execution by any other person or entity is necessary to fully effectuate this Settlement Agreement.

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


21. This Settlement Agreement constitutes the complete agreement between the Parties and supersedes any and all prior agreements, negotiations, correspondence, understandings and communications between the Parties, whether written or oral, respecting the subject matter hereof. This Settlement Agreement may not be amended except by written consent of the Parties.

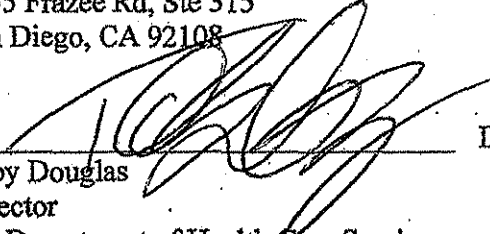
22. This Settlement Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same Settlement Agreement. Facsimiles of signatures and/or electronic signatures in portable document format (.pdf) shall constitute acceptable, binding signatures for purposes of this Settlement Agreement.

23. Should this Settlement Agreement be challenged by Relator as not fair, adequate or reasonable, the Parties each agree to take all reasonable and necessary steps to defend this Settlement Agreement, including through any appeals. If a court of competent jurisdiction sets aside this Settlement Agreement, and such decision is not vacated or reversed on appeal, the State Amount shall be promptly returned to McKesson, and McKesson agrees it will not plead, argue, or otherwise assert time-related defenses of statute of limitations, laches, estoppel, or

similar time-related defenses, to any civil or administrative claims filed, joined or otherwise asserted by the State for the Covered Conduct within ninety (90) days after a final judgment setting aside this Settlement Agreement and the exhaustion or expiration of any rights to appeal, except to the extent that such time-related defenses were available to McKesson on the Effective Date of this Settlement Agreement, giving effect to the terms of any Tolling Agreement between McKesson and the State. Nothing in this Settlement Agreement has any impact on the extent to which any time-related defense is precluded, limited, or otherwise affected by the pendency of the Civil Action.

STATE OF CALIFORNIA

BY:  Date: 6/28/12
Nicholas N. Paul
Supervising Deputy Attorney General
Bureau of Medi-Cal Fraud and Elder Abuse California Department of Justice
1455 Frazee Rd, Ste 315
San Diego, CA 92108

By:  Date: 6/28/12
Toby Douglas
Director
CA Department of Health Care Services
1501 Capitol Avenue, Suite 71.6001
MS 0003
Sacramento, CA 95814

McKESSON CORPORATION

By: Willie C. Bogan

WILLIE C. BOGAN
Secretary
McKesson Corporation
One Post Street
San Francisco, CA 94104

Dated: 7/26/12

By: RH

RYAN G. HASSANEIN
Counsel to McKesson Corporation
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105
rhassanein@mof.com

Dated: 7/26/2012