

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General of the Department of Health and Human Services (OIG-HHS) and the TRICARE Management Activity (TMA), through its General Counsel, (collectively the "United States"); the State of Michigan, acting through the Michigan Attorney General's Office; the State of Ohio, acting through the Ohio Attorney General's Office; and Meijer, Inc., its subsidiaries and affiliates ("Meijer") (hereafter referred to as "the Parties"), through their authorized representatives.

II. PREAMBLE

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

- A. Meijer operates a chain of supercenter retail stores that include on-site pharmacy operations.
- B. The United States, the State of Michigan and the State of Ohio (collectively, the "Government Entities") contend that Meijer submitted or caused to be submitted claims for payment to the Medicare Program (Medicare), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395iii; the Medicaid Program (Medicaid), Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396w-1; and the TRICARE Program, 10 U.S.C. §§ 1071-1109.
- C. The Government Entities contend that they have certain civil claims, as specified in Paragraphs 2 through 6, below, against Meijer for engaging in the following conduct during the period from June 8, 1997 to June 30, 2006: employing four pharmacists who were

excluded from participation in Medicare, Medicaid, and other federal programs during this time period; and improperly submitting prescription claims processed by these excluded pharmacists for payment by Medicare, Medicaid, and TRICARE (hereinafter referred to as the "Covered Conduct").

D. The Government Entities also contend that they have certain administrative claims against Meijer for engaging in the Covered Conduct.

E. This Agreement is neither an admission of liability by Meijer nor a concession by the Government Entities that their claims are not well founded.

F. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

III. TERMS AND CONDITIONS

1. Meijer agrees to pay to the Government Entities \$3,000,000 (the "Settlement Amount"). Meijer agrees to pay the Settlement Amount to the United States by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Western District of Michigan. Meijer agrees to make this electronic funds transfer no later than 10 days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 8 (concerning excluded claims), below, in consideration of the obligations of Meijer in this Agreement, conditioned upon Meijer's full payment of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Meijer together with its current and

former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former owners; officers, directors, and affiliates; and the successors and assigns of any of them from any civil or administrative monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

3. Subject to the exceptions in Paragraph 8 (concerning excluded claims), below, in consideration of the obligations of Meijer in this Agreement, conditioned upon Meijer's full payment of the Settlement Amount, the State of Michigan (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Meijer together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former owners; officers, directors, and affiliates; and the successors and assigns of any of them from any civil or administrative monetary claim the State has or may have for the Covered Conduct under Michigan's Medicaid False Claims Act, MCL 400.601 *et seq.*, or the common law theories of payment by mistake, unjust enrichment, and fraud. Meijer has provided assurances satisfactory to the State of Michigan that Meijer promptly and voluntarily implemented corrective actions and has adopted new procedures designed to avoid recurrence of the Covered Conduct.

4. Subject to the exceptions in Paragraph 8 (concerning excluded claims), below, in consideration of the obligations of Meijer in this Agreement, conditioned upon

Meijer's full payment of the Settlement Amount, the State of Ohio (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Meijer together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former owners; officers, directors, and affiliates; and the successors and assigns of any of them from any civil or administrative monetary claim the State has or may have for the Covered Conduct under Ohio Rev. Code Ann. § 5111.03, or the common law theories of payment by mistake, unjust enrichment, and fraud.

5 In consideration of the obligations of Meijer in this Agreement, conditioned upon Meijer's full payment of the Settlement Amount, the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Meijer under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in Paragraph 8 (concerning excluded claims), below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Meijer from Medicare, Medicaid, and other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 8, below.

6. In consideration of the obligations of Meijer in this Agreement, conditioned upon Meijer's full payment of the Settlement Amount, the State of Michigan and State of Ohio agree to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicaid and other State health care programs against Meijer under MCL 400.111d(1) (a)-(f), MCL 400.111e, or Ohio Admin. Code § 5101:3-1-176 for the Covered Conduct, except as reserved in Paragraph 8 (concerning excluded claims), below, and as reserved in this Paragraph. The State of Michigan and State of Ohio expressly reserve all rights to comply with any statutory obligations to exclude Meijer from Medicaid and other State health care programs for reasons listed in 42 U.S.C. § 1320a-7(a), MCL 400.111e(2)(a), (b) or (c); or Ohio Rev. Code Ann. § 5111.03 (C), (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the State of Michigan or State of Ohio from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 8, below.

7. In consideration of the obligations of Meijer set forth in this Agreement, conditioned upon Meijer's full payment of the Settlement Amount, TMA agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the TRICARE Program against Meijer under 32 C.F.R. § 199.9 for the Covered Conduct, except as reserved in Paragraph 8 (concerning excluded claims), below, and as reserved in this Paragraph. TMA expressly reserves authority to exclude Meijer from the TRICARE Program under 32 C.F.R. §§ 199.9 (f)(1)(i)(A), (f)(1)(i)(B), and (f)(1)(iii), based upon the Covered Conduct. This Agreement resolves all TMA overpayments that resulted from the Covered

Conduct. Nothing in this Paragraph precludes TMA or the TRICARE Program from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 8, below.

8. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Meijer) are the following claims of the Government Entities:

- a. Any civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from federal health care programs;
- d. Any liability to the United States (or its agencies), the State of Michigan, or the State of Ohio for any conduct other than the Covered Conduct;
- e. Any liability based upon such obligations as are created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;
- h. Any liability for failure to deliver goods or services due;

i. Any civil or administrative liability of individuals (including current or former directors, officers, employees, agents, or shareholders of Meijer) who receive written notification that they are the target of a federal criminal investigation (as defined in the United States Attorneys' Manual) or a State criminal investigation, are indicted, charged, or convicted, or who enter into a plea agreement related to the Covered Conduct.

9. Meijer waives and shall not assert any defenses Meijer may have to any criminal prosecution or administrative action relating to the Covered Conduct 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 Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

10. Meijer fully and finally releases the United States, the State of Michigan, and the State of Ohio, along with their agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Meijer has asserted, could have asserted, or may assert in the future against the Government Entities, their employees, servants, and agents, related to the Covered Conduct and the Government Entities' investigation and prosecution thereof.

11. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary

or TRICARE or any state payer, related to the Covered Conduct; and Meijer agrees not to resubmit to any Medicare carrier or intermediary or TRICARE or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

12 Meijer agrees to the following:

a. Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395iii and 1396-1396w-1; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Meijer, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be “Unallowable Costs” on government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP):

- (1) the matters covered by this Agreement;
- (2) the Government Entities’ audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Meijer’s investigation, defense, and corrective actions undertaken in response to the Government Entities’ audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney’s fees);
- (4) the negotiation and performance of this Agreement; and

(5) the payment Meijer makes to the Government Entities pursuant to this Agreement, including costs and attorneys fees.

b. Future Treatment of Unallowable Costs: These Unallowable Costs, if any, shall be separately determined and accounted for by Meijer, and Meijer shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Meijer or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Meijer further agrees that within 90 days of the Effective Date of this Agreement it shall, if applicable, identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Agreement) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Meijer or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Meijer agrees that the Government Entities, at a minimum, shall be entitled to recoup from Meijer any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The Government Entities reserve their rights to disagree with any calculations submitted by Meijer or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Agreement) on Meijer or any of its subsidiaries or affiliates cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the Government Entities to audit, examine, or re-examine Meijer's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

13. Meijer agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Meijer 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. Meijer agrees to furnish to the Government Entities, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by its counsel or other agent.

14. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 14 (waiver for beneficiaries paragraph), below.

15. Meijer agrees that it waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

16. Meijer warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the Government Entities of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Meijer, within the meaning of 11 U.S.C. §§ 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Meijer was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

17. Except as expressly provided to the contrary in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

18. Meijer represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

19. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement is the United States District Court for the Western District of Michigan.

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

21. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

22. The individuals signing this Agreement on behalf of Meijer represent and warrant that they are authorized by Meijer to execute this Agreement. The signatories for the United States, the State of Michigan, and the State of Ohio represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

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

24. This Agreement is binding on Meijer's successors, transferees, heirs, and assigns.

25. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

Ryan D. Cobb
Assistant United States Attorney
Western District of Michigan

DATED: _____

BY: _____

GREGORY E. DEMSKE
Assistant Inspector General for Legal Affairs
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

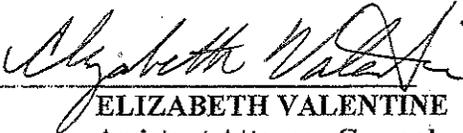
DATED: _____

BY: _____

LAUREL C. GILLESPIE
Deputy General Counsel
TRICARE Management Activity
United States Department
of Defense

STATE OF MICHIGAN

DATED: 12/2/2009

BY: 
ELIZABETH VALENTINE
Assistant Attorney General
PO Box 30218
Lansing, MI 48909

DATED: 12/2/2009

BY: James Brandell w/permission
JAMES R. BRANDELL by 
Director
Bureau of Financial Management
and Administrative Services
Michigan Medicaid Program
Michigan Department of Community Health
201 Townsend Street
Lansing, MI 48913

STATE OF OHIO

DATED: _____

BY: _____

SARAH LYNN
Deputy Chief Counsel
Ohio Attorney General's Office
Administration
State Office Tower
80 East Broad Street, 17th Floor
Columbus, Ohio 43215

MEIJER, Inc.

DATED: _____ BY: Jane G. Kelley
JANEY G. KELLEY
Senior Vice President and
General Counsel
Meijer, Inc.

DATED: 11/17/09 BY: James S. Brady
JAMES S. BRADY
Miller Johnson
Counsel for Meijer, Inc.

DATED: 11/18/09 BY: Thomas S. Crane
THOMAS S. CRANE
Mintz, Levin, Cohn Ferris,
Glovsky and Popeo, P.C.
Counsel for Meijer, Inc.