

SETTLEMENT AGREEMENT AND RELEASE

I. PARTIES

This Settlement Agreement ("Agreement") is entered into by the State of Michigan and Schering Plough Corporation ("Schering"), a New Jersey corporation with a principal place of business in Kenilworth, New Jersey, hereinafter referred to as "the Parties."

II. PREAMBLE

A. WHEREAS, this Agreement addresses the State of Michigan's civil claims against Schering for the conduct described in filings in United States v. Schering Sales Corporation, Criminal Action No [to be assigned](Eastern District of Pennsylvania) (the "Criminal Action"), for the conduct alleged in Preamble Paragraph F below, and for the conduct described in the currently pending allegations in United States ex rel. v. Schering Plough Corporation, Civil Action No. 98-5688 (Eastern District of Pennsylvania) (the "Civil Action");

B. WHEREAS, Schering Sales Corporation will enter into a plea agreement with the United States pursuant to which, if that agreement is approved by the Court, Schering Sales Corporation will enter a plea of guilty pursuant to Fed. R. Crim. P. 11(c)(1)(C) to a one count Information alleging a violation of Title 42 U.S.C. § 1320a-7(b), arising from the company's payment of a data fee in connection with an effort to maintain formulary status for Claritin at an HMO customer, as more fully described below, and will pay a criminal fine in the amount of Fifty Two Million, Five Hundred Thousand dollars (\$52,500,000) pursuant to the plea of guilty;

C. WHEREAS, at all relevant times, Schering marketed a broad range of drugs with Schering's largest selling prescription products being the Claritin family of non-sedating antihistamines;

D. WHEREAS, at all relevant times Schering employed a range of strategies to gain access to managed care customers' formularies including providing discounts or rebates on all of the Schering products maintained on their formularies;

E. WHEREAS, at all relevant times the Medicaid Rebate Program, 42 U.S.C. § 1396r-8, required participating manufacturers, such as Schering, to provide discounted pricing to Medicaid based upon the lowest price at which the manufacturer sold its products to certain commercial customers. The purpose of these pricing rules is to ensure that Medicaid receives favorable pricing in relation to the pricing available in the commercial marketplace. Schering entered into a rebate agreement with the Health Care Financing Administration ("HCFA"), currently known as the Center for Medicare & Medicaid Services ("CMS"), and Schering's drug products were at all relevant times covered by state Medicaid plans that provided medical assistance for outpatient prescription drugs. 42 U.S.C. §§ 1396a(10)(A); 1396d(a)(12), and 1396r-8(a)(1). Under the Medicaid Rebate Program and rebate agreement with CMS, Schering generally agreed: (i) to report quarterly to CMS its average manufacturer price and best price for its drug products, as defined by 42 U.S.C. §§ 1396r-8(k)(1) and 1396r-8(c)(1)(C) (hereinafter "Best Price"); and (ii) to pay quarterly rebates to the states based on the product of (a) the units of each dosage form and strength paid for under the State Medicaid plan during the rebate period as reported by the state, and (b) the greater of the difference between the average manufacturer price and Best Price, or a minimum rebate

percentage of the average manufacturer price, as further defined in 42 U.S.C. § 1396r-8(c)(1);

F. WHEREAS, the State of Michigan contends that it has certain civil claims against Schering under the False Claims Act, 31 U.S.C. §§ 3729-33, the Medicaid Rebate Program, 42 U.S.C. § 1396r-8, the Drug Pricing Program, 42 U.S.C. § 256b, other federal and state statutes, and/or common law doctrines for failing to include in Best Price certain price concessions on Claritin that Schering provided to two of its largest managed care customers, Cigna and PacifiCare. In each instance Schering agreed to provide these managed care customers with unique items and services of value, including cash incentives, deeply discounted products, and health management programs that were, in the specific context of those customer relationships, clearly targeted and calculated to reduce the health plan's effective cost for Claritin. The State of Michigan contends that, in the particular circumstances of the transactions described below, Schering's failure to treat these value items as additional discounts in the calculation of its Claritin Best Price denied the same price reductions to the State of Michigan's Medicaid program. The specific Covered Conduct is as follows:

(i) The CIGNA Transaction

During the course of 1996 and 1997, Schering and CIGNA entered into agreements that were to govern the pricing that would be available to CIGNA on all of the Schering drugs that CIGNA made available to its enrollees through its health plan formularies, including the Claritin family of products. The agreements each had terms of three years.

Maintaining this relationship with CIGNA was important to Schering. Each year,

CIGNA's enrollees utilized well over \$100 million of the Schering drugs included on CIGNA health plan formularies, with Claritin comprising a larger portion of that utilization than any other single drug. Under the 1997 agreements, in exchange for the utilization of its drugs, Schering provided CIGNA with a broad range of discounts and rebates of more than \$20 million per year. In addition, Schering also provided CIGNA with valuable health management programs that CIGNA in turn provided to its members.

In 1998, less than one year into the 1997 agreements' three-year term, CIGNA began voicing concerns that Schering's direct-to-consumer advertising had resulted in higher utilization of Claritin than it had projected and therefore also higher costs. CIGNA also complained that the per-unit price it was paying for the Claritin tablet was substantially higher than the per-unit price it was paying for Allegra, its primary competitor. CIGNA asked Schering to increase the Claritin discounts and rebates it was providing to CIGNA under the agreements to meet Allegra's price.

Schering refused CIGNA's request for additional discounts and rebates on Claritin. In response, CIGNA threatened to breach the 1997 agreements and stop reimbursing for certain products in the Claritin family of non-sedating antihistamine products (including the main Claritin tablet product, two Claritin/decongestant tablet products, and a rapidly dissolving form of Claritin tablet called a "Reditab").

In September 1998, based upon Schering's refusal to provide additional Claritin price concessions, CIGNA's Pharmacy and Therapeutics ("P&T") Committee took the drastic and unusual step of voting to recommend to CIGNA's senior management that the Claritin products be removed from CIGNA's health plan formularies. Upon learning of the vote, Schering discussed with CIGNA what it would take financially for CIGNA's

senior management to reject the P&T Committee's recommendation. CIGNA told Schering that it would need to "bring its Claritin price down to Allegra" in order to avoid having it removed from formulary

While Schering was willing to address CIGNA's Claritin pricing concerns, Schering was aware that providing CIGNA with the specific additional Claritin discounts and rebates it was requesting would have required Schering to report lower Claritin Best Prices to the government which would have resulted in increased rebates going to Medicaid.

Instead, Schering ultimately provided CIGNA with a package of other types of payments and services - including a large cash payment for a data report with no practical value to Schering - that was specifically tailored to deliver an amount of value that Schering believed would address CIGNA's Claritin cost concerns. Notwithstanding that the specifically tailored package of benefits Schering provided to CIGNA effectively decreased CIGNA's Claritin prices as CIGNA had requested, the Best Prices Schering reported to the government did not reflect any of these value offerings. In the specific context of the CIGNA transaction, Schering's failure to factor these offerings into its Best Prices thereby deprived the Medicaid program of additional rebates it should have received.

The fact that Schering's multi-million dollar package was intended as a Claritin price concession was evidenced by both the context and content of the deal. In the presentation that Schering made to CIGNA when proposing the deal, Schering provided CIGNA with a calculation explicitly showing how the package of benefits effectively closed the gap between CIGNA's costs for Claritin and Allegra. That the intent of the

deal was to reduce the price of Claritin is further evidenced by the combined components of the deal.

First, and most critically demonstrating the improper nature of the deal, Schering agreed to make annual cash payments to CIGNA of approximately \$2.5 million that were described as "data processing fees." These payments, the linchpin of the value package, were in exchange for CIGNA's agreement to provide Schering with annual reports containing detailed CIGNA regional utilization data that Schering could use for marketing purposes. In reality, however, under the 1997 agreements, CIGNA was already required to provide (and had been providing) Schering with the same detailed regional data for purposes of calculating Schering's rebate payments to CIGNA, and when Schering purchased the first of the annual reports from CIGNA in 2000, it was never used. The annual reports were therefore of no practical value to Schering except insofar as they amounted to additional Claritin discounts that Schering improperly excluded from its Best Price calculations.

Second, Schering agreed to provide CIGNA's staff model HMO with \$3 million in deep discounts on its purchases of Claritin Reditabs, which contained the same active ingredient as the flagship Claritin tablet product but in a rapidly dissolving form. Schering withheld these discounts from its calculation of the Best Prices it reported to the government for purposes of Medicaid pricing on the basis of an exception for deeply discounted or "nominal" priced drugs. In practice, however, Schering understood that CIGNA would direct physicians in its staff model HMO to substitute some of the prescriptions of its regularly priced Claritin tablets, where clinically appropriate, with prescriptions of the deeply discounted therapeutically identical Claritin Reditabs.

Therefore, in effect, under these circumstances, the deep discounts on Claritin Reditabs were hidden price concessions on Claritin tablets

Third, Schering agreed to provide CIGNA with the equivalent of an interest-free loan through pre-paying rebates owed under its 1997 agreements. Originally under those agreements, Schering made quarterly rebate payments to CIGNA after the end of the quarter to which the rebate pertained. Under a new arrangement, however, Schering agreed to accelerate those payments by making an estimated rebate payment before the end of the quarter to which the rebate pertained, thus giving CIGNA the time benefit of receiving its payments before the end of the quarter. The time value of those pre-payments, which effectively increased the value of the rebates Schering paid CIGNA, was intended to complete the package of benefits Schering provided to CIGNA to maintain Claritin on formulary, but was not factored into the Best Prices that Schering reported to the government. Under these circumstances, the pre-paid rebates were thus also hidden discounts on Claritin.

Finally, under a separate health management contract, Schering also agreed to expand the range of health management services it was providing to CIGNA and to extend its health management programs to additional CIGNA regional sites. For those services, Schering agreed to charge CIGNA a fixed fee of \$ 29 per member per year. That fee, however, was too low to cover Schering's expenses for the expanded programs and Schering was therefore, in effect, subsidizing a portion of the health management costs that CIGNA would otherwise have incurred. In addition, Schering also agreed to hire and pay a CIGNA subsidiary to handle certain administrative functions related to the health management programs. In the specific context of the CIGNA transaction, it was apparent

that the value of this health management arrangement was designed to complement the hidden Claritin discounts that Schering was providing to CIGNA in order to bridge the price gap between Claritin and Allegra.

(ii) The PacifiCare Transaction

Like CIGNA, PacifiCare has historically been one of Schering's most important managed care customers, accounting for more than \$75 million of utilization of Schering's drugs each year. Also, as with CIGNA, after the advent of Schering's direct-to-consumer marketing in 1997, PacifiCare began complaining about the price it was paying for Claritin. It threatened to remove Claritin from its formularies in favor of the less expensive Allegra in order to decrease its drug costs if Schering was unwilling to provide additional price concessions. In response, Schering entered into an agreement with PacifiCare (through a subsidiary) in 1998 (the "1998 Amendment").

The 1998 Amendment specifically addressed PacifiCare's Claritin cost concerns. It included provisions for pre-paid rebates as well as deep discounting or "nominal" pricing on certain Schering products, calculated to reduce PacifiCare's effective cost for Claritin. The most significant value offering in the 1998 Amendment, however, was a novel "risk share" arrangement under which Schering agreed to cover a portion of PacifiCare's annual antihistamine costs. That arrangement was triggered in any year in which PacifiCare's total antihistamine costs - whether for Schering or competitor products - increased by more than 10%. Schering then became responsible for PacifiCare's total antihistamine cost increase up to a cap of 25% of the prior year's costs. For 1998, 1999, and 2000, Schering paid PacifiCare a total of approximately \$25 million pursuant to this "risk share" provision.

Schering also entered into two additional contracts with PacifiCare during the course of 1998 to implement pilot health management programs at PacifiCare sites. Under the first agreement, Schering agreed to implement a "Seniors Health and Wellness" demonstration project designed to evaluate educational and member retention efforts targeted at PacifiCare's senior citizen population. Under the second agreement, Schering agreed to help PacifiCare develop internet-based health management tools.

From the specific context of the negotiation and implementation of these arrangements, it was apparent that Schering tailored and intended their value to address PacifiCare's concerns that Claritin was more expensive than its competitor Allegra. Schering's failure under the specific circumstances of the CIGNA and PacifiCare transactions to include the value of these arrangements in its reported Best Prices improperly denied the State of Michigan the benefit of these commercial price concessions.

The State of Michigan contends that from the First Quarter of 1998 through the Fourth Quarter of 2002, Schering knowingly misreported its Best Prices to CMS for the Claritin tablet family of drugs by failing to include the value of the above arrangements as additional discounts on such drugs resulting in the unlawful denial of these price reductions to the State of Michigan's Medicaid Program. The specific Claritin National Drug Code numbers affected are 00085-0458 (Claritin Tablets), 00085-0635 (Claritin D-12), 00085-0640 (Claritin D-24), 00085-1233 (Claritin D-24), 00085-1128 (Claritin Reditabs).

Schering's conduct as described in this Paragraph F is hereinafter referred to as the "Covered Conduct."

G. WHEREAS, the State of Michigan also contends that it has certain administrative claims against Schering under the provisions for permissive exclusion from the Medicare, Medicaid and other federal health care programs, 42 U.S.C. § 1320a-7(b), and corresponding state statutes for the Covered Conduct;

H. WHEREAS, other than such admissions as Schering Sales Corporation makes in connection with its entry of a plea of guilty pursuant to its plea agreement with the United States, Schering denies the remaining allegations of the State of Michigan as set forth herein and in the Civil Action. Specifically, Schering contends that the additional value offerings to Cigna and PacifiCare were generally permissible and had no impact on Best Price. Schering denies that it has any liability or engaged in any wrongful conduct in connection with the Covered Conduct or the conduct alleged in the civil action.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants, and obligations set forth below in this Agreement, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Schering agrees to pay to the United States and to the states and the District of Columbia that execute a state settlement agreement with Schering (the "Participating States"), collectively, the sum of Two Hundred Eighty-Two Million, Three Hundred Forty Three Thousand, and Twelve dollars (\$282,343,012), (the "Settlement Amount"). The Parties agree that \$53,579,924 of the Settlement Amount has already been rebated to the Participating States and the federal government as a result of the

Claritin family of drugs Best Price refiling in 2003 pursuant to the PacifiCare relationship (the "PacifiCare Adjustment"). The Settlement Amount shall constitute a debt immediately due and owing to the United States and the Participating States on the Effective Date of this Agreement. This debt is to be discharged by payments to the United States and the Participating States, under the following conditions:

A. Schering agrees that the sum of One Hundred Sixty-Five Million, Two Hundred Seventy-Four Thousand, Four Hundred Ninety-Two dollars (\$165,274,492), is the Federal Settlement Amount ("the Federal Settlement Amount") minus the federal portion of the PacifiCare Adjustment. The Federal Settlement Amount (minus the PacifiCare adjustment) shall be paid according to the terms of the civil settlement agreement between Schering and the United States (the "Federal Agreement").

B. Schering agrees that the sum of One Hundred Seventeen Million, Sixty-Eight Thousand, Five Hundred Twenty dollars (\$117,068,520), is the State Settlement Amount, (the "State Settlement Amount"), minus the state portion of the PacifiCare Adjustment. The State Settlement Amount (minus the PacifiCare Adjustment) shall be paid into an escrow account from the first payment installment pursuant to Section III, paragraph 1 of the Federal Settlement. The NAMFCU Team is responsible for establishing the escrow account and distributing recoveries to the Participating States under the terms of this agreement. The State Settlement Amount shall be distributed to the Participating States following the latest of the dates on which the following occurs: (1) the Federal Agreement is fully executed by the Parties and delivered to Schering's attorneys, (2) the stipulated dismissal of the Civil Action referenced in Paragraph A of the Preamble, which dismissal provides that upon payment in full of the settlement

amounts, the Federal Court will dismiss that case with prejudice, is actually filed and copies provided to Schering's attorneys; (3) the Court accepts the Fed. R. Crim. P. 11(c)(1)(C) guilty plea in connection with the Criminal Action and imposes the agreed upon sentence, or (4) the state settlement agreements are executed by or on behalf of the Participating States and Schering or as otherwise agreed in writing between Schering the and NAMFCU Team.

C. The total portion of the Settlement Amount (minus the PacifiCare Adjustment) paid by Schering in settlement for the Covered Conduct to the State of Michigan is \$5,872,642.16, consisting of a portion paid to the State of Michigan under this Agreement and another portion paid to the federal government as part of the Federal Agreement. The individual portion of the State Settlement Amount allocable to the State of Michigan under this agreement is the sum of \$2,628,439.57. The State of Michigan acknowledges that its Medicaid program received \$1,572,670.71 in rebates pursuant to the PacifiCare Adjustment.

D. If Schering Sales Corporation's agreed upon guilty plea pursuant to Fed. R. Crim. P. 11(c)(1)(C) in the Criminal Action described in Preamble Paragraph B is not accepted by the Court or the Court does not impose the agreed upon sentence for whatever reason, this Agreement shall be null and void at the option of either the State of Michigan or Schering. If either the State of Michigan or Schering exercises this option, which option shall be exercised by notifying all Parties, through counsel, in writing within ten business days of the Court's decision, the parties will not object and this Agreement will be rescinded. If this Agreement is rescinded, Schering waives any

affirmative defense based in whole or in part on the running of the statute of limitations during the time period from March 4, 2004 through the date of rescission.

2. Subject to the exceptions in Paragraph 3 below, and in consideration of the obligations of Schering set forth in this Agreement, conditioned upon Schering's payment in full of the Settlement Amount, subject to Paragraph 13 below (concerning bankruptcy proceedings commenced within 91 days of the effective date of this Agreement), and subject to the acceptance by the United States District Court for the Eastern District of Pennsylvania of Schering Sales Corporation's guilty plea described in Preamble Paragraph B, the State of Michigan, on behalf of itself, and its officers, agents, agencies, and departments, agrees fully to release, waive, and discharge Schering, its past, present, and future parents, affiliates, divisions, subsidiaries, and their predecessors, successors and assigns, from any civil or administrative monetary claim that the State of Michigan has or may have for to the Covered Conduct.

3. Notwithstanding any term of this Agreement, the State of Michigan specifically does not in this Agreement release Schering, its past, present, and future parents, affiliates, divisions, subsidiaries, and their predecessors, successors and assigns, and its present and former directors, officers, agents, and employees from any and all of the following: (a) any criminal, civil, or administrative claims arising under State of Michigan revenue codes; (b) any criminal liability not specifically released by the Agreement; (c) any civil or administrative liability that Schering has or may have under any state statute, regulation, or rule not covered by the release; (d) any claims based upon obligations created by this Agreement; (e) any liability to the State of Michigan (or its agencies) for any conduct other than the Covered Conduct; (f) any

express or implied warranty claims or other claims for defective or deficient products and services provided by Schering; (g) any claims for personal injury or property damage or for other consequential damages arising from the Covered Conduct; (h) any claim based on a failure to deliver items or services due; or (i) any civil or administrative claims against individuals, including current and former directors, officers, and employees of Schering, its past, present, and future parents, affiliates, divisions, and subsidiaries, and their predecessors, successors, and assigns.

4. In consideration of the obligations of Schering set forth in this Agreement and the Corporate Integrity Agreement (“CIA”) that Schering has entered into with the Office of the Inspector General, United States Department of Health and Human Services in connection with this matter, conditioned on Schering’s payment in full of the Settlement Amount, and subject to Paragraph 13 below (concerning bankruptcy proceedings commenced within 91 days of the effective date of this Agreement), the State of Michigan agrees to release and refrain from instituting, directing, recommending or maintaining any action seeking exclusion from the State of Michigan’s Medicaid program against Schering, its past, present, and future parents, affiliates, divisions, subsidiaries, and their predecessors, successors or assigns for the Covered Conduct or the conviction in the Criminal Action. Nothing in this Agreement precludes the State of Michigan from taking action against Schering in the event that Schering is excluded by the federal government, or for conduct and practices other than the Covered Conduct or the conviction in the Criminal Action. The State of Michigan does not have the authority to release Schering from any claims or actions which may be asserted by private payors or insurers, including those that are paid by a state’s Medicaid program on a capitated

basis.

5. The State of Michigan agrees to dismiss with prejudice any lawsuit specifically as to Schering, including any *qui tam* “whistleblower” lawsuit, in which the state has intervened and/or has the authority to dismiss, currently pending against Schering in the courts of the State of Michigan, for to the Covered Conduct.

6. This Agreement is expressly conditioned upon acceptance of Schering Sales Corporation’s plea of guilty in the Criminal Action. In consideration of the acceptance of Schering Sales Corporation’s plea of guilty in the Criminal Action, the State of Michigan agrees that it will not investigate, prosecute, or refer for prosecution or investigation to any agency or other state authority, Schering, its past, present, and future parents, affiliates, divisions, and subsidiaries, and their predecessors, successors, and assigns, for the Covered Conduct.

7. Schering waives and shall not assert any defense it may have to criminal prosecution or administrative action relating to the Covered Conduct, which defense may be based in whole or in part on a contention that, under the Double Jeopardy Clause of the Fifth Amendment of the Constitution or Excessive Fines Clause of the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Schering agrees that this Agreement is not punitive in purpose or effect.

8. Schering, on behalf of itself and its past, present, and future parents, divisions, subsidiaries and affiliates, their predecessors, successors and assigns fully and finally releases, waives and discharges the State of Michigan, its agencies, employees, servants, and agents from any claims (including attorney’s fees, costs, and

expenses of every kind and however denominated) which Schering has asserted, could have asserted, or may be asserted in the future against the State of Michigan, its agencies, employees, servants, and agents, related to or arising from the State of Michigan's investigation and prosecution of the Covered Conduct.

9. The Settlement Amount that Schering must pay pursuant to this Agreement shall not be decreased as a result of the denial of claims for payment now being withheld from payment by the State of Michigan's Medicaid program or any other any State payor, related to the Covered Conduct; and, if applicable, Schering agrees not to resubmit to the State of Michigan's Medicaid program or any other state payer, any previously denied claims, which denials were based on the Covered Conduct, and agrees not to appeal any such denials of claims.

10. Schering agrees to the following:

a. Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation ("FAR") 48 C.F.R. § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Schering, its predecessors, parents, divisions, subsidiaries, or affiliates, and its present or former officers, directors, employees, and agents in connection with the following shall be "Unallowable Costs" on contracts with the State of Michigan and under its Medicaid program: (1) the matters covered by this Agreement and the related plea agreement; (2) the State of Michigan's audit and civil and criminal investigation relating to matters covered by this Agreement; (3) Schering's investigation, defense, and any corrective actions undertaken in response to the State of Michigan's audit and civil

and criminal investigations in connection with the matters covered by this Agreement (including attorneys fees); (4) the negotiation and performance of this Agreement and the plea agreement; (5) the payment of the Settlement Amount and (6) the negotiation of and obligations undertaken pursuant to the CIA to: (a) retain an independent review organization to perform annual reviews as described in Section III of the CIA; and (b) prepare and submit reports to the OIG-HHS. However, nothing in this paragraph affects the status of costs that are not allowable based upon any other authority applicable to Schering.

b. Future Treatment of Unallowable Costs: If applicable, these Unallowable Costs shall be separately estimated and accounted for by Schering and Schering shall not charge such Unallowable Costs directly or indirectly to any contracts with the State of Michigan or its State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Schering, its predecessors, parents, divisions, subsidiaries, or affiliates to the State of Michigan's Medicaid program.

c. Treatment of Unallowable Costs Previously Submitted for Payment: If applicable, Schering further agrees that within 60 days of the Effective Date of this Agreement, it shall identify to the State of Michigan's Medicaid program any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the State of Michigan's Medicaid Program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Schering, its predecessors, parents, divisions, 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. Schering agrees that the State of Michigan shall be entitled to recoup from Schering any overpayment, plus applicable interest, 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 State of Michigan pursuant to the direction of the State of Michigan Attorney General, and/or the affected agencies. The State of Michigan reserves its rights to disagree with any calculations submitted by Schering or its predecessors, parents, divisions, subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Schering or its predecessors, parents, divisions, subsidiaries or affiliates' cost reports, cost statements, or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the State of Michigan to examine or reexamine the Unallowable Costs described in this Paragraph.

11. Schering agrees that it shall not seek payment for any of the monies owed under this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors. Schering waives any causes of action against these beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims for payment covered by this Agreement.

12. Schering expressly warrants that it has reviewed its financial condition and that it is currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and that it is not aware of any reasonably foreseeable

circumstances under which it would not remain solvent following payment of the Settlement Amount. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (a) have intended that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Schering within the meaning of 11 U.S.C. Section 547(c)(1), and (b) have concluded 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 which is not intended to hinder, delay, or defraud any entity to which Schering was or became indebted on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a).

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

(a) Schering's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. §§ 547 or 548, and Schering shall not argue or otherwise take the position in any such case, proceeding or action that: (i) Schering's obligations under this Agreement may be avoided under 11 U.S.C. §§ 547 or 548; (ii) Schering was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment

made to the United States hereunder; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Schering.

(b) If Schering's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the State of Michigan, at its sole option, may rescind the releases in this Agreement, and bring any criminal, civil and/or administrative claim, action or proceeding against Schering for the claims that would otherwise be covered by the releases provided in Paragraph 2 and 4, above. If the State of Michigan chooses to do so, Schering agrees that (i) any such claims, actions, or proceedings brought by the State of Michigan including any proceedings to exclude Schering from participation in its Medicaid program are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceeding described in the first clause of this Paragraph, and that Schering shall not argue or otherwise contend that the State of Michigan's claims, actions, or proceedings are subject to an automatic stay; (ii) Schering shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such criminal, civil or administrative claims, actions, or proceeding which are brought by the State of Michigan within 90 calendar days of written notification to Schering that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on March 24, 2004; and (iii) the State of Michigan has a valid claim against Schering in the amount of Two Hundred Ninety-Two Million, Four Hundred Ninety-One Thousand, Sixty-Eight dollars (\$292,491,068), which the State of Michigan recognizes

has been partially satisfied by Fifty-Three Million, Five Hundred Seventy-Nine Thousand, Nine Hundred Twenty Four dollars (\$53,579,924) the amount that Schering has already paid as a result of its Claritin family of drugs best price refiling in 2003 pursuant to its PacifiCare relationship, and the State of Michigan may pursue its claim, in the case, action, or proceeding referenced in the first clause of this paragraph or in such other claim, action or proceeding it chooses to commence.

(c) Schering acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

14. The Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity.

15. Nothing in this Agreement constitutes an agreement by the State of Michigan concerning the characterization of the amounts paid hereunder for purposes of the State of Michigan's revenue code

16. Nothing in this Agreement shall limit Schering's right and/or obligation to refile best prices pursuant to the Medicaid Rebate Program

17. In addition to all other payments and responsibilities under this Agreement, Schering agrees to pay all reasonable travel costs and expenses of the NAMFCU Negotiating Team. Schering will pay this amount by separate check or wire transfer made payable to the National Association of Medicaid Fraud Control Units after the Participating States execute this agreement.

18. Schering represents that this Agreement is freely and voluntarily

entered into without any degree of duress or compulsion whatsoever.

19. Schering has entered into a Corporate Integrity Agreement (“CIA”) with the Office of the Inspector General, United States Department of Health and Human Services (“OIG-HHS”), in connection with this matter. The CIA requires Schering to report Average Sales Price (“ASP”) for certain of its products to, among others, all states that participate in this settlement. That ASP information for the State of Michigan shall be provided to:

Medical Services Administration
400 S. Pine St.
Lansing, MI 48909

The CIA also requires Schering to submit to OIG-HHS an annual certification that:

- 1) Schering has in place policies and procedures describing in all material respects the methods for gathering, calculating, verifying and reporting that data and information reported to CMS and/or the State Medicaid programs in connection with the Medicaid Drug Rebate program;
- 2) Schering’s Medicaid Rebate Policies and Procedures have been designed to ensure compliance with its obligations under the Medicaid Drug Rebate Program;
- 3) Schering’s Medicaid Rebate Policies and Procedures were followed in all material respects in connection with the calculation of Average Manufacturer Price and Best Price for its products;
- 4) Schering’s reporting of ASPs as required under the CIA were calculated in accordance with the definition of and requirements relating to ASP set forth in the Medicare Prescription Drug, Improvement and

Modernization Act of 2003 ("MMA") and that statements made in connection with the submission of ASP are true, complete and current and are made in good faith; and

- 5) Schering understands that ASPs reported to State Medicaid programs may be used in the administration of the Medicaid programs for reimbursement purposes.

Schering acknowledges that the State of Michigan may gain access from the OIG-HHS to information that Schering submits to the OIG pursuant to the CIA.

20. This Agreement is governed by the laws of the State of Michigan.

21. The undersigned Schering signatory represents and warrants that he is authorized by the Board of Directors to execute this Agreement. The undersigned State of Michigan signatories represent that they are signing this Agreement in their official capacities and they are authorized to execute this Agreement through their respective agencies and departments.

22. The "Effective Date" of this Agreement shall be on the date of signature of the last signatory to the Agreement. Facsimiles of signatures shall constitute acceptable binding signatures for purposes of this Agreement.

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

24. This Agreement, and the CIA, constitutes the complete agreement between the Parties with regard to the Covered Conduct. This Agreement shall not be amended except by written consent of the Parties, except that only Schering and OIG-HHS must agree in writing to modification of the CIA.

25. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same Agreement.

The State of Michigan

DATED:

7-12-04



State of Michigan
Office of Attorney General
Medicaid Fraud Control Unit

BY:

WILLIAM T. HART

Title:

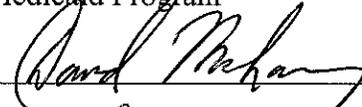
ASSISTANT A.G. IN CHARGE - MFCU

DATED:

July 7, 2004

State of Michigan
Medicaid Program

BY:



Title:

Director - Bureau of
Medicaid Financial Management

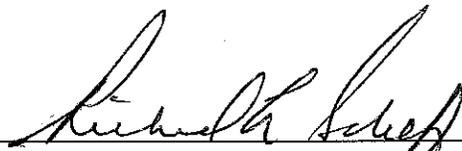
SCHERING-PLOUGH CORPORATION

Dated: 10-5-2004

By: 

BRENT SAUNDERS
Senior Vice President of
Global Compliance and
Business Practices
Schering-Plough Corporation

Dated: 10-5-2004

By: 

RICHARD L. SCHEFF
Montgomery, McCracken,
Walker & Rhoads, LLP