

## SETTLEMENT AGREEMENT

### I. PARTIES

This settlement agreement (Settlement 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 (OIG-HHS) of the Department of Health and Human Services (HHS); the Department of Defense TRICARE Management Activity (TMA), through its General Counsel; the Office of Personnel Management (OPM), which administers the Federal Employees Health Benefits Program (FEHBP); and the U.S. Department of Veteran's Affairs (the VA) (collectively the United States); Merck & Co., Inc. (Merck); and H. Dean Steinke (Relator) (hereafter referred to as the Parties), through their authorized representatives.

### II. PREAMBLE

A. WHEREAS, Merck is a corporation organized under the laws of the State of New Jersey. At all relevant times, Merck manufactured, marketed and sold branded pharmaceutical products in the United States.

B. WHEREAS, this Settlement Agreement addresses the United States' and Relator's civil claims against Merck for the conduct described in the Third Amended Complaint in *United States, et al. ex rel. H. Dean Steinke v. Merck & Co., Inc.*, Civil No. 00-6158, Eastern District of Pennsylvania (UNDER SEAL), (the Civil Action), the conduct described in *State of Nevada ex rel. H. Dean Steinke v. Merck & Co., Inc.*, CV-N-05-322-HDM (RAM), District of Nevada, (the Nevada Civil Action), and the conduct alleged in Preamble Paragraph G, below.

C. WHEREAS, on December 5, 2000, H. Dean Steinke, Relator, filed the Civil Action. Amended Complaints in the Civil Action were filed on October 3, 2002, and November 30, 2004. The Relator filed the Third Amended Complaint on February 5, 2008. In addition, on April 19, 2005, the Relator filed the Nevada Civil Action. The State of Nevada intervened in the Nevada Civil Action on April 25, 2005.

D. WHEREAS, at all material times, for purposes of the conduct described in Section II, Paragraphs G (i) and (ii), Merck participated in the Medicaid Drug Rebate Program, 42 U.S.C. § 1396r-8, which is part of the federal Medicaid Program, Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v. As a participant in the Medicaid Drug Rebate Program, Merck entered into a rebate agreement with the Health Care Financing Administration (HCFA), currently known as the Centers for Medicare and Medicaid Services (CMS), and Merck's drug products were 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 Drug Rebate Program and rebate agreement with HCFA, Merck generally agreed: (i) to report quarterly to HCFA its average manufacturer price and, for single source and innovator

multiple source drugs, best price for its drug products, as defined by 42 U.S.C. §§ 1396r-8(k)(1) and 1396r-8(c)(1)(C); 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). Merck also participated in the Drug Pricing Program, 42 U.S.C. § 256b, which is part of the Public Health Service (PHS) Act, 42 U.S.C. §§ 201-300gg-92. As a participant in the Drug Pricing Program, Merck entered into an agreement with HHS in connection with the pricing of its pharmaceutical products sold to entities such as AIDS drug purchasing assistance programs, community health centers, hemophilia treatment centers, and disproportionate share hospitals, as defined in 42 U.S.C. § 256b(a)(4) (the PHS entities).

E. WHEREAS, at all material times, for purposes of the conduct described in Section II, Paragraph G (iii), the United States contends that Merck submitted or caused to be submitted claims for payment to the TRICARE Program, 10 U.S.C. §§ 1071-1110, the FEHBP, 5 U.S.C. §§ 8901-8914, the Medicare program, 42 U.S.C. §§ 1395-1395 hhh, the Railroad Retirement Medicare Program, administered under the Railroad Retirement Act of 1974, 45 U.S.C. §§ 231-231v, by the United States Railroad Retirement Board, the Medicaid Program (Medicaid), 42 U.S.C. §§ 1396-1396v, and pursuant to the Veterans Health Care Act of 1992, 38 U.S.C. § 8126, (VHCA).

F. WHEREAS, Merck and the States (defined for purposes of this Settlement Agreement as the District of Columbia and every State (except Arizona)), intend to enter into independent settlement agreements regarding the Covered Conduct and the disbursement of the State Settlement Amount (defined in Paragraph 1. c., below).

G. WHEREAS, except as reserved in Paragraph 9, below, the United States contends that it has certain civil and administrative claims against Merck, as specified in Section III, Paragraphs 3, 5, 6, 7, and 8, below for engaging in the following conduct, hereinafter referred to as the Covered Conduct:

i. The SAVE Program: The United States alleges that between April 1998 and March 2006, Merck offered certain tiered discounts (including nominal pricing) and other value to hospitals in connection with the hospitals' purchase of Zocor and Mevacor through the Simvastatin Acute-care Value Enhancement (SAVE) program. The United States alleges that the SAVE program was used to influence Healthcare Providers' (as defined in G(iii) below) choice of prescription drugs, and that Merck improperly reported best price to the United States and the States for Zocor and Mevacor in violation of the Medicaid Rebate Statute.

ii. The VIP Program: The United States alleges that between October 2001 and September 2004, Merck offered certain tiered discounts (including nominal pricing) and other value to hospitals in connection with the hospitals' purchase of Vioxx through the Vioxx

Incentive Program (VIP). The United States alleges that the VIP program was used to influence Healthcare Providers' choice of prescription drugs, and that Merck improperly reported best price to the United States and the States for Vioxx in violation of the Medicaid Rebate Statute.

iii. Other Programs: The United States alleges that between January 1997 and December 2001, Merck paid fees or provided other value in connection with programs and activities (Healthcare Provider Programs) certain of which were offered as an improper inducement to physicians, nurses, physicians' assistants, nurse practitioners, physician organizations, hospitals, managed care organizations, group purchasing organizations, health management organizations and other healthcare providers (Healthcare Providers) for the purpose of influencing the Healthcare Providers' selection and utilization of pharmaceutical products sold by Merck within the United States (Merck Pharmaceutical Products). Healthcare Provider Programs were (1) educational programs, such as Tutorials and Preceptorships; (2) speaker programs, such as Roundtables, Colloquia, Remote Speaker Programs, Facilitated Educational Discussion Groups, Visiting Professorships, and Symposia; (3) promotional programs, such as Peer Discussion Groups, Clinical Discussion Groups, Exhibits at Professional Societies and Trade Associations, Disease Awareness Programs, Lunch and Learns, Representative Facilitated Conferences, and Forums; (4) stock bottle programs, such as Special Promotional Program (SPP) and Special Hospital Promotional Program (SHPP); (5) consulting arrangements, such as Advisory Boards, Visiting Consultant Meetings, and Consultant Meetings; (6) market research programs, such as Thought Leader Market Research; (7) grants, such as Educational Grants and Pharmacy Education Support Grants; (8) clinical and research studies, but not including Phase I, II, or III clinical trials; and (9) gratuities, such as meals, entertainment or gifts.

H. WHEREAS, this Settlement Agreement is made in compromise of disputed claims. This Settlement Agreement is neither an admission of liability by Merck, nor a concession by the United States that its claims are not well founded. Merck expressly denies the allegations of the United States and the Relator as set forth herein and in the Civil Action and denies that it has engaged in any wrongful conduct in connection with the Covered Conduct. Neither this Settlement Agreement, its execution, nor the performance of any obligation under it, including any payment, nor the fact of the settlement, is intended to be, or shall be understood as, an admission of liability or wrongdoing, or other expression reflecting upon the merits of the dispute by Merck.

I. WHEREAS, 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. Merck agrees to pay to the United States and the States, collectively, the total amount of \$399,000.000.00 in principal, plus interest as described herein (the Settlement Amount). The Settlement Amount is to be paid to the United States and the States as follows:

a. Merck and the United States agree that the principal sum of \$218,000,000.00, plus interest accrued at 5.22% per annum beginning April 15, 2007, and continuing through the date of payment, represents the Federal share (the Federal Settlement Amount). Merck agrees to pay the Federal Settlement Amount, less the PHS Amount, defined below, by electronic funds transfer pursuant to written instructions agreed to by the United States and Merck. Merck agrees to make this electronic funds transfer no later than five business days after the Effective Date of this Settlement Agreement.

b. Merck and the United States agree that the sum of \$5,345,128.65, plus interest, represents the PHS share (the PHS Amount) of the Federal Settlement Amount. Merck agrees to transfer the sum of the PHS Amount, including interest accrued at 5.22 per cent per annum beginning April 15, 2007, and continuing through the date of payment, into a segregated bank account no later than ten business days following the Effective Date of this Settlement Agreement. As provided in written instructions agreed to by the Parties, Merck will disburse the PHS Amount to the PHS Entities in the Drug Pricing Program, 42 U.S.C. § 256b, which is part of the Public Health Service Act, 42 U.S.C. § 201-300gg-92, and administered by HHS. Each PHS Entity shall be paid its share of the PHS Amount by Merck by check within thirty (30) days of the Effective Date of this Settlement Agreement.

c. Merck and the States have agreed that the sum of \$181,000,000.00 plus interest represents the State share (the State Settlement Amount) under the terms and conditions agreed upon by Merck and the States under separate State Settlement Agreements (the State Settlement Agreements). The State Settlement Amount, including interest accrued at 1.768 per cent per annum beginning October 5, 2006 through October 23, 2007, and interest accrued at 5.22 per cent per annum beginning October 24, 2007, and continuing through the date of payment, shall be paid to an account designated by the National Association of Medicaid Fraud Control Units negotiating team and each State's individual share shall be disbursed in accordance with the terms of the individual State Settlement Agreements.

2. Merck agrees to pay Relator's attorney's fees of \$3,750,000 to Relator's counsel by electronic funds transfer pursuant to written instructions agreed to by the Parties. Merck agrees to make this electronic funds transfer no later than forty-eight hours after the Effective Date of this Settlement Agreement. No additional attorney's fees shall be paid to or claimed by the Relator as part of the State Settlement Agreements.

3. Subject to the exceptions in Paragraph 9 (reservation paragraph), below, in consideration of the obligations of Merck in this Settlement Agreement, conditioned upon Merck's full payment of the Settlement Amount plus interest, the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Merck, together with its current and former parent corporations, each of its direct and indirect subsidiaries, both current and former, brother or sister corporations, divisions, and the predecessors, successors and assigns of any of them (Merck Released Entities), as well as the interest of the Merck Released Entities in any

joint venture, 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; the Medicaid Rebate Statute, 42 U.S.C. § 1396r-8; the Drug Pricing Program, 42 U.S.C. § 256b; and any statutory provision for which the Civil Division of the Department of Justice has actual and present authority to assert and compromise pursuant to 28 C.F.R. Part 0, Subpart I, 0.45(d) (1995), for the Covered Conduct; and all common law claims for fraud, unjust enrichment, payment by mistake, or breach of contract for the Covered Conduct. The Parties agree that the interest of any non-Merck Released Entity in any joint venture is not within the scope of this release.

4. In consideration of the obligations of Merck in this Settlement Agreement, conditioned upon Merck's full payment of the Settlement Amount, Relator, for himself, his heirs, successors, agents, trustees, beneficiaries and assigns, fully and finally releases, waives and forever discharges Merck, its past and present parents, affiliates, divisions, joint ventures and subsidiaries, and their predecessors, successors and assigns, and their present and former directors, officers, agents and employees from any claim, demand, expenses, debts, liabilities, obligations, costs, damages, injuries, actions and causes of action, that Relator ever had, has, or may have in the future.

5. In consideration of the obligations of Merck in this Settlement Agreement and the Corporate Integrity Agreement (CIA) entered into between OIG-HHS and Merck and conditioned upon Merck's payment in full of the Settlement Amount plus interest, 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 Merck 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 9, below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Merck 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 9, below.

6. In consideration of the obligations of Merck set forth in this Settlement Agreement, conditioned upon Merck's payment in full of the Settlement Amount plus interest, TMA agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the TRICARE Program against Merck, under 32 C.F.R. § 199.9 for the Covered Conduct, except as reserved in Paragraph 9, below and as reserved in this Paragraph. TMA expressly reserves the right to comply with any mandatory obligation to exclude Merck 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. 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 9, below.

7. In consideration of the obligations of Merck in this Settlement Agreement, conditioned upon Merck's payment in full of the Settlement Amount plus interest, OPM agrees to release and refrain from instituting, directing, or maintaining any administrative action, including seeking civil monetary penalties or exclusion from the FEHBP against Merck, under 5 U.S.C. § 8902a or 5 C.F.R. Part 919 for the Covered Conduct, except as reserved in Paragraph 9, below. Nothing in this Paragraph precludes OPM from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 9, below.

8. In consideration of the obligations of Merck in this Settlement Agreement, conditioned upon Merck's payment in full of the Settlement Amount plus interest, the VA agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from participation in the VHCA against Merck, under 48 C.F.R. §§ 9.400 – 9.409 and 48 C.F.R. §§ 809.400 – 809.407-3 for the Covered Conduct, except as reserved in Paragraph 9, below. Nothing in this Paragraph precludes the VA from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 9, below.

9. Notwithstanding any term of this Settlement Agreement, and specifically reserved and excluded from the scope and terms of this Settlement Agreement as to any entity or person (including Merck and Relator) are the following claims of the United States:

- 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 Settlement Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon such obligations as are created by this Settlement 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; and
- g. Any civil, criminal, or administrative liability for the Covered Conduct in connection with (i) providers of pharmacy services to long term care facilities, or (ii) Novation, LLC, VHA, Inc., University HealthSystem Consortium, or Healthcare Purchasing Partners International, LLC.

10. Relator and his heirs, successors, attorneys, agents, and assigns agree not to object to this Settlement Agreement and agree and confirm that this Settlement Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Contingent upon receipt of the Federal Settlement Amount from Merck, the United States shall pay Relator the Relator's Share in the amount of \$ 44,690,000.00, plus 20.5 percent of the interest that has been paid by Merck to the United States pursuant to the terms of Paragraph 1(a), above, by electronic funds transfer pursuant to the written instructions supplied by Relator's counsel, within five (5) business days after its receipt of the Federal Settlement Amount from Merck. Conditioned on receipt of his Relator's Share, Relator, for himself individually, and for his heirs, successors, agents, and assigns, fully and finally releases, waives, and forever discharges the United States, its officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. § 3730; from any claims arising from the filing of the Civil Action and the Nevada Civil Action; and from any other claims for a share of the Settlement Amount; and in full settlement of any claims Relator may have under this Settlement Agreement. This Settlement Agreement does not resolve or in any manner affect any claims the Government has or may have against the Relator arising under Title 26, U.S. Code (Internal Revenue Code), or any claims arising under this Settlement Agreement. Relator consents to the Government's disclosure of this Settlement Agreement, and information about this Settlement Agreement, to the public.

11. Merck waives and shall not assert any defenses Merck may have to any 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 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. Nothing in this Paragraph or any other provision of this Settlement 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.

12. Merck fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Merck has asserted or could have asserted or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

13. The Settlement Amount plus interest 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 any TRICARE or FEHB carrier or payer, or any state payer, related to the Covered Conduct; and Merck shall not resubmit to any Medicare carrier or intermediary, or any TRICARE or FEHB carrier or payer, or any state payer any previously denied claims related to the Covered Conduct, and shall not appeal any such denials of claims.

14. Merck 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. §§ 1395-1395ggg and 1396-1396v; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Merck, 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, Federal Employees Health Benefits Program (FEHBP) and VA (hereafter, United States Programs):

- (1) the matters covered by this Settlement Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Settlement Agreement;
- (3) Merck's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Settlement Agreement (including attorney's fees);
- (4) the negotiation and performance of this Settlement Agreement;
- (5) the payment Merck makes to the United States pursuant to this Settlement Agreement and any payments that Merck may make to Relator, including costs and attorneys fees; and
- (6) the negotiation of, and obligations undertaken pursuant to the CIA to:
  - (i) retain an independent review organization to perform reviews as described in Section III. D of the CIA; and
  - (ii) prepare and submit reports to the OIG-HHS .

However, nothing in this Paragraph 14.a.(6) that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable to Merck. (All costs described or set forth in this Paragraph 14.a. are hereafter unallowable costs.)

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



c. **Treatment of Unallowable Costs Previously Submitted for Payment:** Merck further agrees that within 90 days of the Effective Date of this Settlement Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, Medicaid, FEHBP, and VA fiscal agents, any unallowable costs (as defined in this Paragraph) included in payments previously sought from United States Programs, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Merck 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. Merck agrees that the United States, at a minimum, shall be entitled to recoup from Merck 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 United States reserves its rights to disagree with any calculations submitted by Merck or any of its subsidiaries or affiliates on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Merck or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Settlement Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine Merck's books and records to determine that no unallowable costs have been claimed in accordance with the provisions of this Paragraph.

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

16. This Settlement Agreement is intended to be for the benefit of the Parties only. Other than as set forth in this Settlement Agreement, the Parties do not release any claims against any other person or entity.

17. Merck 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 United States and the States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Settlement Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Merck, 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 Merck was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

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

19. Merck represents that this Settlement Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

20. Relator H. Dean Steinke represents that this Settlement Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

21. This Settlement 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 Settlement Agreement is the United States District Court for the Eastern District of Pennsylvania, except that disputes arising under the CIA shall be resolved exclusively under the dispute resolution provisions in the CIA.

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

23. Within two business days of the Effective Date of the Settlement Agreement, the United States shall file a Notice of Intervention and the United States and the Relator will file a Joint Stipulation of Dismissal with prejudice of the Third Amended Complaint in the Civil Action. The United States and the Relator will notify the Court that the United States' claims and the Relator's claims under the False Claims Act (31 U.S.C. §§ 3729-3733) shall be dismissed as described effective upon receipt by the United States of the Federal Settlement Amount pursuant to and consistent with the terms of this Settlement Agreement.

24. The individuals signing this Settlement Agreement on behalf of Merck represent and warrant that they are authorized by Merck to execute this Settlement Agreement. The individual(s) signing this Settlement Agreement on behalf of Relator represent and warrant that they are authorized by Relator to execute this Settlement Agreement. The United States signatories represent that they are signing this Settlement Agreement in their official capacities and that they are authorized to execute this Settlement Agreement.

25. This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Settlement Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Settlement Agreement.

26. This Settlement Agreement is binding on Merck's successors, transferees, heirs, and assigns.

27. This Settlement Agreement is binding on Relator's successors, transferees, heirs, and assigns.

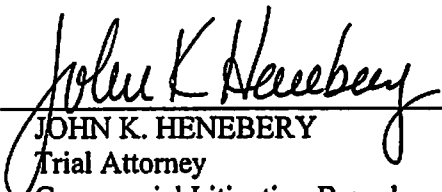
28. As used in this Settlement Agreement, the Effective Date shall mean the date of the signature of the last signatory to the Settlement Agreement.

THE UNITED STATES OF AMERICA

DATED:

2/4/08

BY:

  
JOHN K. HENEBERY  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED:

BY:

VIRGINIA A. GIBSON  
Assistant United States Attorney  
Chief, Civil Division  
Eastern District of Pennsylvania

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

DATED:

BY:

LORRAINE E. DETTMAN  
Assistant Director for Insurance Services Programs  
United States Office of Personnel Management

THE UNITED STATES OF AMERICA

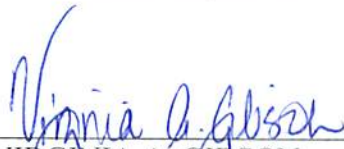
DATED:

BY:

JOHN K. HENEERY  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice


DATED:

BY:

  
VIRGINIA A. GIBSON  
Assistant United States Attorney  
Chief, Civil Division  
Eastern District of Pennsylvania

DATED:

BY:

  
VIVECA D. PARKER  
Assistant United States Attorney

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:

*January 28, 2008*

JAN 28 2008

BY:

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

DATED:

BY:

LORRAINE E. DETTMAN  
Assistant Director for Insurance Services Programs  
United States Office of Personnel Management

**THE UNITED STATES OF AMERICA**

**DATED:**

**BY:**

JOHN K. HENEBERY  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice


**DATED:**

**BY:**

VIRGINIA A. GIBSON  
Assistant United States Attorney  
Chief, Civil Division  
Eastern District of Pennsylvania

**DATED:** 2/5/08

**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

**DATED:**

**BY:**

LORRAINE E. DETTMAN  
Assistant Director for Insurance Services Programs  
United States Office of Personnel Management

THE UNITED STATES OF AMERICA

DATED:

BY: \_\_\_\_\_  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED:

BY: \_\_\_\_\_  
Assistant United States Attorney  
Chief, Civil Division  
Eastern District of Pennsylvania

DATED:

BY: \_\_\_\_\_  
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


DATED: 7/5/2005

BY: Lorraine E. Dettman  
LORRAINE E. DETTMAN  
Assistant Director for Insurance  
Services Programs  
United States Office of Personnel  
Management

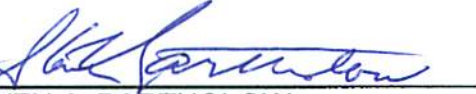
DAVID COPE  
Debarring Official  
Office of the Assistant Inspector General for Legal  
Affairs  
United States Office of Personnel Management

DATED:

1-29-08

BY:   
Jan R. Fry  
Deputy Assistant Secretary  
Office of Acquisition and Logistics  
United States Department of Veteran's Affairs


DATED: *January 29, 2008*

BY:   
STEVEN A. BARTHOLOW  
General Counsel  
Railroad Retirement Board

U.S. DEPT. OF JUSTICE  
US ATTORNEY E.D. OF PA  
2008 JAN 31 P 12:29




1/29/2008



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Office of the Assistant Inspector General for Legal  
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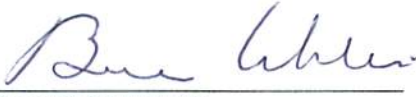
BY:   
Jan R. Frye  
Deputy Assistant Secretary  
Office of Acquisition and Logistics  
United States Department of Veteran's Affairs

DATED:

BY: \_\_\_\_\_  
STEVEN A. BARTHOLOW  
General Counsel  
Railroad Retirement Board

MERCK & CO., INC. - DEFENDANT

DATED: 2/5/08

BY:   
BRUCE KUHLIK  
Executive Vice-President & General Counsel  
Merck & Co., Inc.

DATED: 2/5/08

BY:   
LISA C. DYKSTRA  
Morgan, Lewis & Bockius, LLP  
Counsel for Merck & Co., Inc.

DATED:

BY: \_\_\_\_\_  
ERIC H. HOLDER, JR.  
Covington & Burling LLP  
Counsel for Merck & Co., Inc.

MERCK - DEFENDANT

DATED:

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BRUCE KUHLIK

Executive Vice-President & General Counsel

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LISA C. DYKSTRA

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ERIC H. HOLDER, JR.

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DAVID COPE

Debarring Official  
Office of the Assistant Inspector General  
for Legal Affairs  
United States Office of  
Personnel Management

DATED: BY: \_\_\_\_\_  
MAUREEN REGAN

United States Department of  
Veteran's Affairs

DATED: BY: \_\_\_\_\_  
STEVEN A. BARTHOLOW

General Counsel  
Railroad Retirement Board

MERCK - DEFENDANT

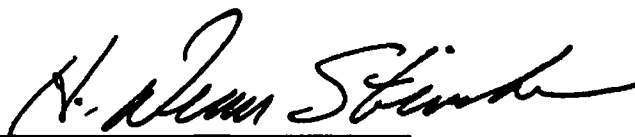
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ERIC H. HOLDER, JR.  
Covington & Burling LLP  
Counsel for Merck

STEINKE - RELATOR

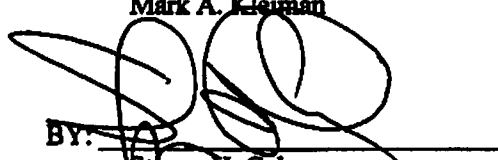
DATED: BY: \_\_\_\_\_  
Relator H. Dean Steinke



DATED:  
Counsel for Steinke

BY:   
Mark A. Kleiman

DATED:  
Counsel for Steinke

BY:   
Steven H. Cohen