

STATE SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the State of California ("the State") and Wyeth, Inc., Wyeth LLC and Pfizer, Inc. (collectively, "Wyeth"), hereinafter collectively referred to as "the Parties:"

II. PREAMBLE

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

A. Wyeth, Inc. was a Delaware corporation with its headquarters at 5 Giralda Farms, Madison, New Jersey 07940. Pfizer, Inc. ("Pfizer") is a Delaware corporation with principal executive offices located at 235 East 42nd Street, New York, New York 10017. On October 15, 2009, Pfizer acquired Wyeth, Inc. and on November 9, 2009, Wyeth, Inc. converted into a Delaware limited liability company, Wyeth LLC, which is now a wholly-owned subsidiary of Pfizer. At all relevant times, Wyeth distributed, marketed and/or sold pharmaceutical products in the United States, including drugs sold under the trade names, Protonix IV and Protonix Oral.

B. On March 21, 2002, William St. John LaCorte filed a *qui tam* action in the United States District Court for the Eastern District of Louisiana captioned *United States, et al., ex rel. William St. John LaCorte v. Wyeth*, Civ. No. 02-0581 (E.D. La.) (the "LaCorte Action"). LaCorte's complaint alleged that Wyeth sold Protonix Oral tablets to hospitals for as low as \$0.16 per tablet, but did not report that price to federal health care programs. On November 24, 2003, Lauren Kieff filed a *qui tam* action in the United

States District Court for the District of Massachusetts captioned *United States, et al., ex rel. Lauren Kieff v. Wyeth Pharmaceuticals, Inc.*, Civ. No. 03-12366 (D. Mass.) (the “Kieff Action”). Kieff’s complaint alleged that Wyeth bundled sales of Protonix IV with Protonix Oral tablets and reported false prices on those drugs to federal health care programs. On September 19, 2006, the LaCorte Action was transferred to the District of Massachusetts, captioned *United States, et al., ex rel. William St. John LaCorte v. Wyeth*, Civ. No. 06-cv-11724-DPW (D. Mass.) (collectively, the Kieff Action and the LaCorte Action shall be referred to as the “Civil Actions”). On August 26, 2008, Kieff and LaCorte filed amended complaints in their respective cases.

C. The United States intervened in both Civil Actions on April 23, 2009, as to the claims alleging that Wyeth reported false prices, and filed the United States’ Complaint on May 18, 2009. The United States filed an amended complaint on September 14, 2009, and a Second Amended Complaint on February 11, 2016, adding Pfizer as a defendant. On June 15, 2009, fifteen States and the District of Columbia intervened in both Civil Actions, as to the claims alleging that Wyeth reported false prices. They filed an amended complaint on October 9, 2009. On July 15, 2010, nineteen States similarly intervened in both Civil Actions; and on September 21, 2010, another State intervened. In all, thirty five States and the District of Columbia intervened in the Civil Actions.

D. Wyeth has entered into a separate civil settlement agreement (the “Federal Settlement Agreement”) with the United States of America (as that term is defined in the Federal Settlement Agreement) hereinafter referred to as the “United States.”

E. The State contends that, from the third quarter of 2001 through the fourth quarter of 2006 (the "Relevant Period"), Wyeth submitted false quarterly statements to the Centers for Medicare and Medicaid Services ("CMS") of its Best Prices, as defined in 42 U.S.C. § 1396r-8(c)(1)(C), for Protonix Oral tablets and Protonix IV.

F. The State contends that Wyeth engaged in the conduct described in this Paragraph F, which shall constitute the "Covered Conduct." The State further contends that it has certain civil causes of action against Wyeth for engaging in the Covered Conduct as a result of which Wyeth knowingly concealed, avoided or decreased an obligation to pay Medicaid Drug Rebates to the State Medicaid Program for Protonix Oral tablets and Protonix IV during the Relevant Period.

(1) During the Relevant Period, Wyeth sold Protonix Oral tablets and Protonix IV to hospitals at discounted prices pursuant to a contract titled the Protonix Performance Agreement ("PPA"). The PPA created a bundled sale under the terms of the Medicaid Drug Rebate Agreement by linking discounts available to participating hospitals for Protonix IV to discounts on Protonix Oral tablets.

(2) Wyeth did not treat sales of Protonix Oral tablets and Protonix IV under the PPA as bundled within the meaning of the Medicaid Drug Rebate Agreement and therefore did not allocate the discounts available under the PPA "proportionally to the dollar value of the units of each drug sold under the bundled arrangement." Medicaid Drug Rebate Agreement, § I(d).

(3) As a result of its failure to treat the PPA as a bundled arrangement, Wyeth filed false reports of its Best Prices for Protonix Oral tablets and Protonix IV with CMS thereby causing the Unit Rebate Amount for Protonix Oral tablets and Protonix IV to be understated during the Relevant Period.

(4) Wyeth thereby concealed, avoided or decreased its obligation to pay Medicaid Drug Rebates to the State for Protonix Oral tablets and Protonix IV during the Relevant Period.

To avoid the delay, expense, inconvenience, and uncertainty of protracted litigation of these causes of action, the Parties mutually desire to reach a full and final settlement as set forth below.

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 in this Agreement, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Wyeth agrees to pay to the United States and the Medicaid Participating States (as defined in sub-paragraph (c) below), collectively, the sum of seven hundred eighty four million, six hundred thousand dollars (\$784,600,000.00), plus accrued interest on that amount of 1.875% per annum commencing on May 1, 2016 and continuing and including the day payment is made under this Agreement (collectively, the "Settlement Amount"), as specified in subparagraphs (a) and (b) below. The Settlement Amount shall constitute a debt immediately due and owing to the United States and the Medicaid

Participating States on the Effective Date of the Federal Settlement Agreement, and subject to the terms of this Agreement. The debt shall forever be discharged by payments to the United States and the Medicaid Participating States, under the following terms and conditions:

(a) Wyeth shall pay to the United States the sum of four hundred thirteen million, two hundred forty eight thousand, eight hundred twenty dollars (\$413,248,820.00) plus accrued interest, if any, on that amount at the rate of 1.875% per annum commencing on May 1, 2016 ("Federal Settlement Amount"). The Federal Settlement Amount shall be paid pursuant to the terms of the Federal Settlement Agreement.

(b) Wyeth shall pay to the Medicaid Participating States the aggregate sum of three hundred seventy one million, three hundred fifty one thousand, one hundred eighty dollars (\$371,351,180.00), plus accrued interest, if any ("Medicaid State Settlement Amount"), subject to the non-participating state deduction provision of sub-paragraph (d) below ("Medicaid Participating State Settlement Amount"), no later than fourteen (14) business days after the expiration of the 30 day opt-in period for Medicaid Participating States described in sub-paragraph (c) below. The Medicaid Participating State Settlement Amount shall be paid by electronic funds transfer to the New York State Attorney General's National Global Settlement Account pursuant to written instructions from the State Negotiating Team ("State Team"), which written instructions shall be delivered to counsel for Wyeth.

(c) Wyeth shall execute a State Settlement Agreement with any State that executes such an Agreement in the form to which Wyeth and the State Team have agreed, or in a form otherwise agreed to by Wyeth and an individual State. The State shall constitute a Medicaid Participating State provided this Agreement is fully executed by the State and delivered to Wyeth's counsel within 30 days of receiving this Agreement. If this condition is not satisfied within 30 days Wyeth's offer to resolve this matter with the individual State shall become null and void absent written agreement between counsel for Wyeth and the State Team to extend the 30 day period.

(d) The total portion of the amount paid by Wyeth in settlement for the Covered Conduct for the State is \$48,600,136.80, consisting of a portion paid to the State under this Agreement and another portion paid to the United States as part of the Federal Settlement Agreement. The amount allocated to the State under this Agreement is the sum of \$30,505,330.08, plus applicable interest, if any (the "State Amount"). If the State does not execute this Agreement within 30 days of receiving this Settlement Agreement and that period has not been extended as provided in sub-paragraph (c) above, the State Amount shall be deducted from the Medicaid State Settlement Amount and shall not be paid by Wyeth absent written agreement between counsel for Wyeth and the State Team to extend the time period for executing this Agreement. If Wyeth has paid the Medicaid Participating State Settlement Amount to the New York State Attorney General's National Global Settlement Account before the expiration of the 30 day opt-in period, the New York State Attorney General's Office will return to Wyeth, upon its request, within a reasonable period of time after the expiration of the 30 day opt-in period and/or any

agreed-upon extension of that period any State Amount not claimed by virtue of a State's not executing this Agreement.

2. Upon receipt of the payment described in Paragraph 1, above, the State shall promptly sign and file in the Civil Actions a Joint Stipulation of Dismissal of the Civil Actions pursuant to Rule 41(a)(1) dismissing with prejudice all claims asserted on behalf of the State against Wyeth in the Civil Actions. The State agrees to dismiss with prejudice any state law claims which the State has the authority to dismiss currently pending against Wyeth in the Civil Actions in State or Federal Courts for the Covered Conduct Contingent upon the receipt of their respective State Amounts, the State, if served with the Civil Actions and liable to pay a Relator's share, agrees to pay a Relator's share in the amount of \$4,724,360.47, plus applicable interest. This amount is to be paid through the State Team and has been addressed via side letters with the Relators in the Civil Actions.

3. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of Wyeth set forth in this Agreement, and conditioned upon receipt by the State of its share of the Medicaid State Settlement Amount, the State agrees to release Wyeth, its predecessors and current and former parents, subsidiaries, and successors, (collectively, the "Wyeth Released Entities"), from any civil cause of action that the State has for the Covered Conduct.

4. Notwithstanding any term of this Agreement, the State specifically does not release any person or entity from any of the following liabilities:

- (a) any criminal, civil, or administrative liability arising under state revenue codes;
- (b) any criminal liability not specifically released by this Agreement;
- (c) any civil or administrative liability that any person or entity, including any Released Entities, has or may have to the State or to individual consumers or state program payors under any statute, regulation or rule not expressly covered by the release in Paragraph 3 above, including but not limited to, any and all of the following claims: (i) State or federal antitrust violations; (ii) Claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;
- (d) any liability to the State for any conduct other than the Covered Conduct;
- (e) any liability which may be asserted on behalf of any other payors or insurers, including those that are paid by the State's Medicaid program on a capitated basis;
- (f) any liability based upon obligations created by this Agreement;
- (g) any liability of individuals;
- (h) except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusions from the State's Medicaid program;
- (i) any liability for expressed or implied warranty claims or other claims for defective or deficient products and services provided by Wyeth;
- (j) any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; or
- (k) any liability based on a failure to deliver goods or services due.

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

6. In consideration of the obligations of the State set forth in this Agreement, Wyeth waives and discharges the State, its agencies, employees, and agents from any causes of action (including attorneys' fees, costs, and expenses of every kind and however denominated) which Wyeth has against the State, its agencies, employees, and agents arising from the State's investigation and prosecution of the Covered Conduct.

7. The amount that Wyeth must pay to the State pursuant to Section III, Paragraph 1 above, will not be decreased as a result of the denial of any claims for payment now being withheld from payment by the State's Medicaid program, or any other state payor, for the Covered Conduct; and Wyeth agrees not to resubmit to the State's Medicaid program or any other state payor, any previously denied claims, which denials were based on the Covered Conduct, and agrees to withdraw the appeal of or not to appeal or cause the appeal of any such denials of claims.

8. Wyeth shall not seek payment for any claims for reimbursement to the State's Medicaid Program covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors.

9. Wyeth 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 shall remain solvent following payment of the Settlement Amount and compliance with this Agreement.

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

11. Wyeth agrees to cooperate fully and truthfully with any State investigation relating to the Covered Conduct of individuals or entities not released in this Agreement. Upon reasonable notice, Wyeth shall facilitate, and agrees not to impair, the cooperation of its directors, officers, employees or agents, for interviews and testimony, consistent with the rights and privileges of such individuals and of Wyeth. Upon request, Wyeth agrees to furnish to the State complete and unredacted copies of all non-privileged documents including, but not limited to, reports, memoranda of interviews, and records in their possession, custody or control, concerning the Covered Conduct. Wyeth shall be responsible for all costs it may incur in complying with this paragraph.

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

13. Except as otherwise stated in this Agreement, this Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any liability against any other person or entity.

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

15. In addition to all other payments and responsibilities under this Agreement, Wyeth agrees to pay all reasonable expenses and travel costs of the State Team, including reasonable consultant fees and expenses. Wyeth will pay this amount by separate check made payable to the National Association of Medicaid Fraud Control Units, after the Medicaid Participating States execute their respective Agreements, or as otherwise agreed by the Parties.

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

17. The undersigned Wyeth signatories represent and warrant that they are authorized as a result of appropriate corporate action to execute this Agreement. The undersigned State signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement on behalf of the State through their respective agencies and departments.

18. The Effective Date of this Agreement shall be the date of signature of the last signatory to this Agreement. Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

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

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20. This Agreement constitutes the complete agreement between the Parties with respect to this matter and shall not be amended except by written consent of the Parties.

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

STATE OF CALIFORNIA

On behalf of the California Attorney General's Office:

By: Original Signed by _____ Date: 5/26/2016
Randal Glaser
Deputy Attorney General
Bureau of Medi-Cal Fraud and Elder Abuse
California Department of Justice
1455 Frazee Rd, Suite 315
San Diego, CA 92108

On behalf of the California Medicaid Program:

By: Original Signed by _____ Date: 5/26/16
Jennifer Kent
Director
California Department of Health Care Services
1501 Capitol Avenue, Suite 71.6001
MS 0003
Sacramento, CA 95814

WYETH

Original Signed by
By: _____ Dated: 6/1/10

Carlton Wessel £
Senior Vice President £
Associate General Counsel £
Pfizer Inc. £

Original Signed by
By: _____ Dated: 6/3/10

Brien T. O'Connor
Ropes & Gray LLP
800 Boylston Street
Boston, MA 02199-3600

Counsel to Wyeth, Inc., Wyeth LLC and Pfizer, Inc.