

## STATE SETTLEMENT AGREEMENT

### I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the State of California ("the State") and Salix Pharmaceuticals, Inc. ("Salix"), hereinafter collectively referred to as "the Parties," through their authorized representatives.

### II. PREAMBLE

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

A. At all relevant times, Salix, a Delaware corporation with its principal place of business in Raleigh, North Carolina, distributed, marketed and/or sold pharmaceutical products and medical devices in the United States, including drugs sold under the trade names of Xifaxan, Apriso, Relistor, Moviprep, and OsmoPrep; and medical devices sold under the trade names of Solesta and Deflux (collectively with the above drugs, the "Covered Products").

B. On May 15, 2012, Steven R. Peikin, M.D., Seana Swierczek, Christine Moore and Paul Mastrella, ("*Salix I* Relators") filed a *qui tam* action in the United States District Court for the Southern District of New York captioned *United States of America et al., ex. rel Steven R. Peikin, M.D., et al. v. Salix Pharmaceuticals, Inc.*, Civil Action No. 12-cv-3870 ("*Salix I* Complaint"). On October 18, 2012, Relators filed a First Amended Complaint ("*Salix I* Amended Complaint").

On January 30, 2015, Rasvinder Dhaliwal ("*Salix II* Relator" and together with the *Salix I* relators, "Salix Relators") filed a *qui tam* action in the United States District Court for the Southern District of New York captioned *United States of America et al.,*

*ex. rel J. Doe v. Salix Pharmaceuticals, Ltd.*, Civil Action No. 15-cv-00706 (“*Salix II* Complaint”).

These *qui tam* actions will be referred to collectively as the “Civil Actions.”

C. Salix 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.”

D. The State contends that Salix caused claims for payment for the Covered Products to be submitted to the State’s Medicaid Program (see 42 U.S.C. §§ 1396-1396(v)). Claims may be submitted to the State’s Medicaid Program directly or through an intermediary, commonly known as a managed care organization (“MCO”). MCOs contract with State Medicaid programs and the State contends that submission of claims for payment to an MCO constitutes the submission of claims to the State’s Medicaid Program.

E. The State contends that it has certain civil and administrative causes of action against Salix for engaging in the following conduct (the “Covered Conduct”):

The State alleges that from January 2009 through December 2013, Salix knowingly offered and paid remuneration, including honoraria payments and meals, to physicians and other health care professionals who spoke at or attended speaker programs to induce them to recommend, promote, and prescribe the Covered Products in violation of the Federal Anti-Kickback Statute, 42 U.S. C. § 1320a-7b, and state anti-kickback statutes. As a result of the foregoing conduct, the State alleges that Salix knowingly submitted or caused to be submitted false claims for the Covered Products to, or caused

purchases of the Covered Products by, the State's Medicaid program, in violation of the False Claims Act, 31 U.S.C. 3729 *et seq.*, and state false claims acts.

F. This Agreement is made in compromise of disputed claims. This Agreement is neither an admission of liability by Salix, nor a concession by the State that its allegations are not well founded. Salix expressly denies the allegations of the State as set forth herein and in the Civil Actions, except as to the admissions set forth in Paragraph 2 of the Federal Settlement Agreement.

G. 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. Salix agrees to pay to the United States and the Medicaid Participating States (as defined in sub-paragraph (c) below), collectively, the sum of \$54,000,000.00, plus interest, which shall be compounded annually at a rate of 1.75% accruing from March 29, 2016 to the day payment is made under this Agreement (collectively, the "Settlement Amount"). 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.

*Salix Pharmaceuticals, Inc.*  
*Case # 14-02-02*

The debt shall forever be discharged by payments to the United States and the Medicaid Participating States, under the following terms and conditions:

(a) Salix shall pay to the United States the sum of \$46,529,953.20, plus accrued interest, as set forth above ("Federal Settlement Amount"). The Federal Settlement Amount shall be paid pursuant to the terms of the Federal Settlement Agreement.

(b) Salix shall pay to the Medicaid Participating States the sum of \$7,470,046.80, plus accrued interest, as set forth above ("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 45-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 Salix.

(c) Salix shall execute a State Settlement Agreement with any State that executes such an Agreement in the form to which Salix and the State Team have agreed or in a form otherwise agreed to by Salix and an individual State. The State shall constitute a "Medicaid Participating State" provided this Agreement is fully executed by the State and delivered to Salix's attorneys within 45 days of receiving this Agreement. If this condition is not satisfied within 45 days, Salix's offer to resolve this matter with the

individual State shall become null and void absent written agreement between counsel for Salix and the State Team to extend the 45-day period.

(d) The total portion of the amount paid by Salix in settlement for the Covered Conduct for the State is \$1,024,024.19, 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 \$563,976.41, plus applicable interest (the "State Amount"). If the State does not execute this Agreement within 45 days of receiving this Settlement Agreement, the State Amount shall be deducted from the Medicaid State Settlement Amount and shall not be paid by Salix absent written agreement between counsel for Salix and the State Team to extend the time period for executing this Agreement.

2. Conditioned on Salix making the payments described in Paragraph 1(d) above, the State agrees to promptly dismiss with prejudice any state law claims which the State has the authority to dismiss currently pending against Salix in State or Federal Courts for the Covered Conduct, including any supplemental state law claims asserted in the Civil Actions. The State further agrees to dismiss without prejudice all other claims against Salix in the Civil Actions. Contingent upon receipt of the State Amount, the State, if served with the Civil Actions and liable to pay Relators' shares, agrees to pay the Salix Relators collectively the amount of \$107,155.52, plus applicable interest. This amount is to be paid through the State Team and has been addressed via side letters with the Salix Relators.

3. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of Salix 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 Salix, together with its current and former direct and indirect parent corporations (“Parents”); its and their affiliates, direct and indirect subsidiaries, brother and sister corporations, and divisions; and its and their corporate predecessors, successors, transferees, and assigns of any of them, (collectively, the “Salix Released Entities”), from any civil or administrative monetary claims or causes of action that the State has for any claims submitted or caused to be submitted to the State’s Medicaid Program as a result of the Covered Conduct. The payment of the amounts required hereunder fully discharges the Released Entities from any obligation to pay Medicaid restitution, Medicaid damages, Medicaid civil fines, and/or Medicaid civil penalties, to the State for the Covered Conduct.

4. Notwithstanding the releases given in Paragraph 3 of this Agreement, or any other term of this Agreement, the following claims of the State are specifically reserved and are not released by this Agreement:

- (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; or (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 based upon obligations created by this Agreement;

(f) except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusions from the State's Medicaid program;

(g) any liability for expressed or implied warranty claims or other claims for defective or deficient products and services provided by Salix, including quality of goods and services;

(h) any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;

(i) any liability based on a failure to deliver goods or services due; or

(j) any liability of individuals.

5. Salix shall be in default of this Agreement if Salix fails to make the required payment of the State Amount set forth in Paragraph 1(d) above, or if it fails to comply materially with any other term of this Agreement that applies to it ("Default"). The State shall provide written notice of any Default in the manner set forth in Paragraph 24 below. Salix shall then have an opportunity to cure the Default within ten (10) calendar days from the date of delivery of the notice of Default. In the event that a Default is not fully cured within ten (10) calendar days of the delivery of the notice of Default ("Uncured Default"), interest shall accrue at the rate of 12% per annum compounded daily on the remaining unpaid principal balance of the State Amount,

beginning seven (7) business days after mailing of the notice of Default. In the event of an Uncured Default, Salix further agrees that the State, at its option, may (a) rescind this Agreement and, following repayment to Salix of the State Amount and interest (less reasonable costs of collection and enforcement described below in this paragraph), reinstate any claims that could be asserted for the Covered Conduct; (b) seek specific performance of this Agreement; (c) offset the remaining unpaid balance of the State Amount (including interest) from any amounts due and owing Salix at the time of default by any department, agency, or agent of the State; or (d) exercise any other rights granted by law, or under the terms of this Agreement, or recognizable at common law or in equity. Salix shall not contest any offset imposed or any collection undertaken by the State pursuant to this Paragraph, either administratively or in any Federal or State court. In addition, Salix shall pay the State all reasonable costs of collection and enforcement under this Paragraph, including attorneys' fees and expenses. In the event that the State opts to rescind this Agreement pursuant to this Paragraph, Salix shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that relate to the Covered Conduct.

6. Salix waives and shall not assert any defenses it may have to criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause of the Fifth



Amendment of the Constitution, or the Excessive Fines Clause of the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

7. In consideration of the obligations of the State set forth in this Agreement, Salix waives and discharges the State, its agencies, officers, employees, and agents from any causes of action (including attorneys' fees, costs, and expenses of every kind and however denominated) which Salix has against the State, its agencies, officers, employees, and agents arising from the State's investigation, prosecution, and settlement of the Covered Conduct, and the State's investigation (as of the Effective Date) of the claims asserted in the *Salix I* Amended Complaint and the *Salix II* Complaint.

8. The amount that Salix must pay to the State pursuant to Paragraph 1(d) 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 Salix 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.

9. Salix 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.

10. Salix represents and warrants that it has reviewed its financial situation 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 reasonably believes as of the date hereof that it shall remain solvent following payment of the Settlement Amount and compliance with this Agreement. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Salix within the meaning of 11 U.S.C. § 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 that is not intended to hinder, delay, or defraud any entity to which Salix was or became indebted to on or after the date of this Agreement, within the meaning of 11 U.S.C. § 548(a)(1).

11. If Salix commences, or a third party commences, any case, action, or other proceeding under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking an order for relief of Salix's debts, or seeking to adjudicate Salix as bankrupt or insolvent; or (b) seeking appointment of a trustee, custodian, or other similar official for Salix or for all or any substantial part of Salix's assets, Salix agrees as follows:

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

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

(b) If Salix'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, at its sole option, may rescind the releases in this Agreement and pursue any civil and/or administrative claim, action, or proceeding against Salix that would otherwise be covered by the releases in Paragraph 3 above. Salix agrees that (i) any such claim, action, or proceeding brought by the State would not be subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the case, action, or proceeding described in the first clause of this Paragraph, and Salix shall not argue or otherwise contend that the claim, action, or proceeding is subject to an automatic stay; (ii) Salix shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any claim, action, or proceeding that is brought by the State or the Salix Relators within 60 calendar days of written notification that the releases in this Agreement have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the date that the *Salix I Amended Complaint* and/or *Salix II Complaint* were originally filed; and (iii) the State has a valid claim against Salix for the full State Amount, and the State may pursue the claim in the case, action, or proceeding described in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

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

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

13. Salix agrees to cooperate fully and truthfully with any State investigation of individuals or entities not released in this Agreement. Specifically, upon reasonable notice, Salix shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers and employees for interviews and testimony, consistent with the rights and privileges of such individuals and of Salix. Upon request, Salix further 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 its possession, custody or control, concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf, as well as complete and unredacted copies of any other non-privileged documents in its possession, custody, or control relating to the Covered Conduct. Salix shall be responsible for all costs it may incur in complying with this paragraph.

14. 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.

15. 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.

16. 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.

17. In addition to all other payments and responsibilities under this Agreement, Salix agrees to pay all reasonable expenses and travel costs of the State Team, including reasonable consultant fees and expenses. Salix 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.

18. 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.

19. The undersigned Salix 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.

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

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

22. 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.

23. 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.

24. Any notices or requests pursuant to this Agreement shall be in writing and shall be delivered by hand, express courier, or email transmission followed by postage-prepaid mail, and shall be addressed as follows:

IF TO THE STATE:

Bernice L. Louie Yew  
Deputy Attorney General  
California Department of Justice  
Bureau of Medi-Cal Fraud and Elder Abuse  
2329 Gateway Oaks Drive, Suite 200  
Sacramento, CA 95833-4252  
Email: [Bernice.Yew@doj.ca.gov](mailto:Bernice.Yew@doj.ca.gov)

IF TO SALIX:

Nancy L. Kestenbaum  
Covington & Burling LLP  
The New York Times Building  
620 Eighth Avenue  
New York, New York 10018  
Email: [nkestenbaum@cov.com](mailto:nkestenbaum@cov.com)

Matthew J. O'Connor  
Patrick M. Phelan  
Covington & Burling LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, D.C. 20001

Email: [moconnor@cov.com](mailto:moconnor@cov.com)  
[pphelan@cov.com](mailto:pphelan@cov.com)

State of California

Original Signed By

By:

J

Dated:

7/25/2016

Bernice L. Yew  
Deputy Attorney General  
OFFICE OF THE ATTORNEY GENERAL

By: \_\_\_\_\_

Dated: \_\_\_\_\_

[Name]  
[Title]  
Medicaid Program



**State of California**

By: \_\_\_\_\_ Dated: \_\_\_\_\_

[Name]  
[Title]  
OFFICE OF THE ATTORNEY GENERAL

Original Signed By

By: \_\_\_\_\_ Dated: 7/7/16

Jennifer Kent  
Director  
California Department of Health Care Services  
1501 Capitol Avenue, Suite 71.6001  
MS 0003  
Sacramento, California 95814 •

SALIX PHARMACEUTICALS, INC.

2 IIIIQD6IQIHG%\  
By: Linda da PaGorpa  
*Senior Vice President and Treasurer  
Salix Pharmaceuticals, Inc.*

Dated: 8/5/16

2 IIIIQD6IQIHG%\  
By: \_\_\_\_\_  
Nancy L. Kestenbaum  
Covington & Burling LLP  
The New York Times Building  
620 Eighth Avenue  
New York, New York 10018  
Email: [nkestenbaum@cov.com](mailto:nkestenbaum@cov.com)

Dated: 8/8/16

Matthew J. O'Connor  
Patrick M. Phelan  
Covington & Burling LLP  
One City Center  
850 Tenth Street, NW  
Washington, D.C. 20001  
Email: [moconnor@cov.com](mailto:moconnor@cov.com)  
[pphelan@cov.com](mailto:pphelan@cov.com)

*Counsel to Salix*