

## **SETTLEMENT AGREEMENT AND RELEASE**

### **I. PARTIES AND GUARANTORS**

This Settlement Agreement and Release (“Agreement”) is entered into as of the Effective Date, as defined in ¶ III(34) below, by and among the following parties to the Agreement: Ven-A-Care of the Florida Keys, Inc. (the “Relator”), the State of Texas (“Texas”); Thomas Suehs (“Suehs”), in his official capacity as Executive Director of the Texas Health and Human Services Commission (“HHSC”); Alharma USPD Inc., now known as Actavis Mid Atlantic LLC (“Actavis Mid Atlantic”), and Purepac Pharmaceutical Co., now known as Actavis Elizabeth LLC (“Actavis Elizabeth”), and Actavis Inc. The Relator and the State of Texas are collectively referred to as “Plaintiffs.” Actavis Mid Atlantic and Actavis Elizabeth are collectively referred to as “Actavis Defendants.” Actavis Mid Atlantic, Actavis Elizabeth, and Actavis Inc., are collectively referred to as “Actavis.” Plaintiffs, Actavis, Suehs, and HHSC are referred to collectively as the “Parties” and individually as a “Party.” Actavis Group hf. and Actavis Group PTC ehf., which are not parties to this Agreement, are collectively referred to as the “Actavis Guarantors.”

### **II. PREAMBLE**

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

A. Actavis Elizabeth is a Delaware limited liability corporation with its principal place of business in Elizabeth, New Jersey. Actavis Mid Atlantic is a Delaware limited liability corporation with its principal place of business in Lincolnton, North Carolina.

B. Actavis Inc. is a Delaware corporation with its principal place of business in Morristown, New Jersey. Actavis Inc. is the parent corporation of Actavis Mid Atlantic and Actavis Elizabeth.

C. Actavis Group hf. is an Icelandic corporation with its principal place of business in Zug, Switzerland. Actavis Group hf. is the indirect parent of Actavis Inc. Actavis Group PTC ehf. is an Icelandic corporation with its principal place of business in Reykjavik, Iceland. Actavis Group PTC ehf. is the direct parent of Actavis Inc.

D. The pharmaceutical products manufactured, marketed, distributed, and/or sold by Actavis and/or any of the entities identified in the Schedule of Actavis Affiliates attached as Exhibit 1 ("Actavis Entities"), including all drug products with the Labeler Code 00472, 00228, 67767, 46987, 45963, 52152, 23317, and 50962 are referred to as the "Covered Drugs."

E. On or about July 9, 2008, Plaintiffs filed a state court action styled *State of Texas ex. rel. Ven-A-Care of the Florida Keys, Inc. v. Alpharma USPD f/k/a Barre-National, Inc., Purepac Pharmaceutical Co., Actavis Mid Atlantic LLC et al.*, Cause No. D-1-GV-08-001566, in the District Court of Travis County, Texas, 419<sup>th</sup> Judicial District ("Texas Action"). In the Texas Action, Plaintiffs claimed that from January 1, 1991 to the present, the Actavis Defendants knowingly set, reported and/or maintained, or caused to be set, reported and/or maintained, false, fraudulent and/or inflated prices for certain of the Covered Drugs, including prices the Actavis Defendants reported to Texas, which were used by the Texas Vendor Drug Program ("VDP") to establish reimbursement rates, and that the Actavis Defendants submitted or caused to be submitted, false claims to VDP based on the reported prices, and thereby committed multiple unlawful acts under the Texas Medicaid Fraud Prevention Act ("TMFPA"), TEX. HUM. RES. CODE ANN. Chapter 36. The allegations asserted or that could have been asserted in the Texas Action relating to the pricing and price reporting practices of the Actavis Entities with respect to the Covered Drugs, are referred to as the "Covered Conduct." The case went to trial on or about

January 10, 2011, and resulted in a verdict for Plaintiffs on or about February 1, 2011. Judgment on the verdict was entered on or about March 21, 2011 (“Texas Judgment”).

F. The Actavis Defendants have perfected an appeal of the Texas Judgment, which is pending in the 7<sup>th</sup> Court of Appeals in Amarillo (“Actavis Appeal”). To suspend execution on the Texas Judgment pending the appeal, Actavis Mid Atlantic has made two deposits in the total amount of \$25 million dollars with the Travis County District Clerk in lieu of a supersedeas bond and Actavis Elizabeth has deposited the sum of \$25,000 with the Travis County District Clerk in lieu of a supersedeas bond (collectively, the “Cash Deposits”). Contemporaneously with Actavis Elizabeth’s deposit and Actavis Mid Atlantic’s initial deposit, the Actavis Defendants each filed a net worth affidavit pursuant to Rule 24.2, Texas Rules of Appellate Procedure. Plaintiffs have filed a contest to the Actavis Defendants’ claimed net worth pursuant to TRAP 24.2(c), which is pending in the trial court (“Net Worth Contest”).

G. On April 12, 2011, the Actavis Defendants filed a verified original petition and application for declaratory relief, temporary restraining order, and temporary injunction in Cause No. D-1-GN-11-001082, styled *Alpharma USPD now known as Actavis Mid Atlantic LLC; and Purepac Pharmaceutical Co., now known as Actavis Elizabeth LLC v. Thomas Suehs, in his official capacity as Executive Director of the Texas Health and Human Services Commission*, in the 353<sup>rd</sup> District Court of Travis County, Texas, seeking a judgment (i) declaring that the Texas Judgment, while on or subject to appeal, does not constitute a “final” determination within the meaning of § 36.005 of the TMFPA; and (ii) enjoining Suehs and HHSC from treating the Actavis Defendants as ineligible to supply or sell products under the Texas Medicaid Program pursuant to § 36.005(b) (“Actavis Declaratory Judgment Action”). On June 15, 2011 the Travis County district court granted the Actavis Defendants’ application for a Temporary Injunction,

enjoining Suehs and HHSC from treating the Actavis Defendants as ineligible to supply or sell products under the Texas Medicaid Program pursuant to § 36.005(b) until the earlier of (a) the date on which the Actavis Defendants exhaust their appellate remedies with respect to the Texas Judgment; or (b) further order of the court ("Temporary Injunction"). Suehs and HHSC have perfected an appeal of the Temporary Injunction, which is pending in the 3<sup>rd</sup> Court of Appeals in Austin ("Texas Appeal").

H. On or about April 10, 2000, the Relator filed a *qui tam* action in the United States District Court for the District of Massachusetts captioned *United States ex rel Ven-A-Care of the Florida Keys, Inc. v. Dey et al.*, Civil Action No. 00-10698 (D. Mass.). That complaint was amended under seal on February 15, 2001, and again on February 1, 2002. The complaint was amended a third time under seal on February 15, 2005, to, among other things, add claims against certain of the Actavis Defendants seeking recovery under the Federal False Claims Act, 31 U.S.C. § 3728, *et seq.*, based upon, among other things, the Covered Conduct. That complaint was further amended and unsealed on May 21, 2008. These claims and proceedings are referred to collectively as the "Federal *Qui Tam* Proceedings." It is the intent of the Parties that this settlement release all claims related to the Covered Conduct, including such claims currently included in the Federal *Qui Tam* Proceedings, and that the Relator not share twice in the same recovery. Therefore, the Relator is hereby releasing its claims against the Actavis Defendants arising from the Covered Conduct, including any claims for attorneys' fees, expenses, or a Relator's share, and will not pursue such claims in any forum, including in the Federal *Qui Tam* Proceedings.

I. This Agreement is a compromise by the Parties of all matters in dispute between them arising from the Covered Conduct, Texas Action, Texas Judgment, Actavis Appeal, Net

Worth Contest, Actavis Declaratory Judgment Action, Temporary Injunction, and Texas Appeal (collectively, the "Litigation"). Actavis denies any and all wrongdoing, and denies that it has any liability relating to the Texas Judgment. This Agreement does not constitute an admission of fault or liability by the Actavis Defendants, nor does it constitute evidence of any liability or unlawful conduct on the part of the Actavis Defendants.

J. In order to avoid the delay, uncertainty, inconvenience and expense of continuing the Litigation, and as a result of a mutual desire to settle their disputes, the Parties have reached a full and final settlement as set forth in this Agreement.

K. This Agreement is intended to fully and finally resolve any and all claims by and against the Actavis Defendants in the Litigation, including, without limitation, all of the claims that were brought or could have been brought by, or on behalf of Plaintiffs arising out of the Covered Conduct from September 1, 1991 through the Effective Date of this Agreement relating to the Covered Drugs ("Released Claims").

L. The Plaintiffs have concluded that this Agreement is in the public interest.

M. This Agreement is the result of a compromise of disputed issues of law and fact, and the Actavis Releasees, as defined below, do not admit to any violation of any statute, regulation, or law, or of any liability or wrongdoing, or of the truth of any of the claims or allegations made in the Texas Action, or waive any defenses thereto. The Plaintiffs agree that they will not urge or seek to admit this Agreement as evidence of any fault or liability of the Actavis Releasees in any investigation, administrative claim, action, suit, or proceeding, or federal or state court or arbitration proceeding unless ordered to do so by a state court, federal court, or arbitration panel.

N. Notwithstanding the preceding Paragraph, this Agreement may be used by any Party and pleaded as a defense to any action, suit, or other proceeding that has been or may be instituted, prosecuted, or attempted by any Party to this Agreement against any other Party to this Agreement (including any released party as set out in ¶¶ III(15-17) below), and may be filed, offered, and received into evidence, and otherwise used for such defense.

O. The Plaintiffs understand, acknowledge and agree that (i) they have performed an independent investigation of the allegations of fact and law made in connection with the Texas Action and (ii) they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Litigation and the Covered Conduct. Nevertheless, it is the Parties' intention to resolve their disputes pursuant to the terms of this Agreement and, thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and the Agreement shall not be subject to rescission or modification by reason of any change or difference in the facts or law with respect to the subject matter of the Litigation and the Covered Conduct.

### **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, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The foregoing Preamble is incorporated herein.
2. While the United States is not a signatory to this Agreement, this settlement is conditioned upon the Actavis Defendants' receipt of the United States' written consent to the

Relator's partial dismissal with prejudice of claims against the Actavis Defendants for the Covered Conduct in the Federal *Qui Tam* Proceedings relating to the Texas Medicaid program, referenced in ¶ III(7) below. While the Actavis Guarantors are not signatories to this Agreement, this settlement is conditioned upon the Plaintiffs' receipt of the Actavis Guarantors' Unconditional Guaranty referenced in ¶ III(12) below.

3. In full and final settlement of the Litigation and as consideration for the Released Claims, Actavis shall pay, or shall cause to be paid on their behalf, the sum of eighty-four million (\$84,000,000) dollars (the "Settlement Amount") for the benefit of the Plaintiffs and the United States on the terms, and subject to, the conditions set forth in this Agreement. The Settlement Amount shall be paid in four installments as and during the time frame described below (the "Payment Period"). During the Payment Period, no interest is to accrue on the unpaid portion of the Settlement Amount except in the event of default by Actavis and failure to timely cure as more particularly described below.

4. Within three business days after the Effective Date, the parties to the Texas Action shall file in the trial court an agreed motion and order in the form attached as Exhibit 2, to enable the Actavis Defendants to recover the Cash Deposits with accrued interest.

5. Within five business days following the later of the Effective Date or the release of the Cash Deposits to the Actavis Defendants, Actavis shall pay, or cause to be paid on their behalf, the initial settlement installment totaling thirty-eight million five hundred thousand dollars (\$38,500,000.00) by wire transfers to each Plaintiff and the United States in the respective amounts set forth in the Settlement Installment Schedule attached as Exhibit 3 ("Initial Settlement Installment"). On or before the first anniversary of the Effective Date, Actavis shall pay, or cause to be paid on their behalf, the second settlement installment totaling nineteen

million dollars (\$19,000,000.00) by wire transfers to each Plaintiff and the United States in the respective amounts set forth in the Settlement Installment Schedule. On or before the second anniversary of the Effective Date, Actavis shall pay, or cause to be paid on their behalf, the third settlement installment totaling fifteen million dollars (\$15,000,000.00) by wire transfers to each Plaintiff and the United States in the respective amounts set forth in the Settlement Installment Schedule. On or before the third anniversary of the Effective Date, Actavis shall pay, or cause to be paid on their behalf, the fourth and final settlement installment totaling eleven million five hundred thousand dollars (\$11,500,000.00) by wire transfers to each Plaintiff and the United States in the respective amounts set forth in the Settlement Installment Schedule. All settlement installment payments shall be wired to the Plaintiffs and the United States in accordance with wiring instructions delivered to counsel for the Actavis Defendants by counsel for the Plaintiffs and the United States. Actavis may, at its sole discretion, prepay any settlement installment payment without penalty.

6. Within three business days following payment of the Initial Settlement Installment, the parties to the appeals shall: (a) file in the Actavis Appeal an agreed motion in the form attached as Exhibit 4, advising the 7<sup>th</sup> Court of Appeals of the pending settlement and asking the court to abate all deadlines and proceedings for 90 days or until further order of the court, to enable the Parties to consummate the settlement; and (b) file in the Texas Appeal an agreed motion in the form attached as Exhibit 5, advising the 3<sup>rd</sup> Court of Appeals of the pending settlement and asking the court to abate all deadlines and proceedings for 90 days or until further order of the court, to enable the Parties to consummate the settlement.

7. Within three business days following payment of the Initial Settlement Installment, the Relator shall file in the Federal *Qui Tam* Proceedings the Stipulation of Partial

Dismissal (“Stipulation”) in the form attached as Exhibit 6, and the United States’ Consent to Partial Dismissal (“Consent”) with attached proposed agreed Order of Dismissal (“Order”), in the form attached as Exhibit 7, and provide copies of the Stipulation, Consent, and Order to counsel for the Actavis Defendants.

8. Within five business days following the 90<sup>th</sup> day after payment of the Initial Settlement Installment, the parties to the appeals shall: (a) file in the Actavis Appeal an agreed motion in the form attached as Exhibit 8, asking the 7<sup>th</sup> Court of Appeals, pursuant to TRAP 42.1(2)(B), to set aside the Texas Judgment without regard to the merits and remand the case to the trial court for dismissal with prejudice in accordance with this Agreement; and (b) file in the Texas Appeal an agreed motion in the form attached as Exhibit 9, asking the 3<sup>rd</sup> Court of Appeals, pursuant to TRAP 42.1(2)(B), to set aside the Temporary Injunction without regard to the merits and remand the case to the trial court for dismissal with prejudice in accordance with this Agreement.

9. Within three business days following the remand of the Actavis Declaratory Judgment action and issuance of mandate to the trial court, the parties to such proceeding shall file in the trial court an agreed motion and order in the form attached as Exhibit 10, dismissing the Actavis Declaratory Judgment Action with prejudice and assessing court costs against the party incurring same.

10. Within three business days following the remand of the Texas Action and issuance of mandate to the trial court, the parties to such proceeding shall file in the trial court an agreed motion and order in the form attached as Exhibit 11, dismissing the Texas Action with prejudice and assessing court costs against the party incurring same.

11. In the event of a default in the payment of any settlement installment and the failure by Actavis, the Actavis Guarantors, or any third party to timely cure the default within fifteen (15) days after receipt by Actavis or the Actavis Guarantors of notice of the default in accordance with the Notice provision set forth in ¶ III(26) below, the entire unpaid balance of the Settlement Amount shall immediately and without further notice to Actavis become due and payable. From and after the date of default, the unpaid balance shall bear interest at the rate of 10% per annum. If at any time any payment of all or any part of the Settlement Amount is rescinded or must otherwise be returned by the Plaintiffs and the United States upon the insolvency, bankruptcy or reorganization of Actavis or the Actavis Guarantors, or otherwise, the Settlement Amount shall be reinstated as though such payment had not been made.

12. To secure payment of the Settlement Amount, Actavis Group hf. and Actavis Group PTC ehf., shall each execute and deliver to Plaintiffs an Unconditional Guaranty in the form attached as Exhibit 12, unconditionally guaranteeing payment of the Settlement Amount in accordance with the terms of this Agreement (“Guaranty”).

13. To further secure payment of the Settlement Amount, Actavis agrees to confess judgment, jointly and severally, in the amount of forty-five million five hundred thousand dollars (\$45,500,000.00), plus post-judgment interest at the annual rate of 10%, compounded annually, from the date of judgment until paid (the “Confessed Judgment Amount”). Pursuant to this paragraph and in accordance with Texas Rule of Civil Procedure 314, on or before the Effective Date (a) Plaintiffs and Actavis, and their respective counsel shall execute and deliver to Plaintiffs a Verified Petition, in the form attached as Exhibit 13, attesting to the justness of the debt and Confessed Judgment Amount, with attached special power of attorney (“Power of Attorney”) executed by Actavis, appointing Assistant Attorney General Raymond C. Winter, or his

designee, as their attorney-in-fact, to file with the Travis County District Clerk the Verified Petition and Power of Attorney, confess judgment on behalf of Actavis, and present the judgment to the District Court of Travis County for entry; and (b) Actavis and their counsel shall each sign and deliver to Plaintiffs a Final Judgment ("Final Judgment") in the form attached as Exhibit 14, confessing judgment jointly and severally as set forth above. The rights and powers granted to Raymond C. Winter or his designee, as attorney-in-fact under the Power of Attorney, include full power of substitution and are granted for the purpose of enforcing the payment obligations of Actavis under this Settlement Agreement. Such rights and powers are coupled with an interest, are irrevocable, and will not be affected by (i) the subsequent bankruptcy of Actavis Mid Atlantic, Actavis Elizabeth and/or Actavis Inc.; (ii) the lapse of time; or (iii) the subsequent disability of any principal. The obligations of Actavis Mid Atlantic, Actavis Elizabeth, and Actavis Inc. under the Verified Petition and the Power of Attorney will continue in effect until the Settlement Amount or the Confessed Judgment Amount, as applicable, has been fully paid in accordance with the terms of this Agreement, and will be fully binding upon each principal and its successors and assigns. Plaintiffs shall have no obligation to undertake any of the foregoing actions, and if Plaintiffs should do so Plaintiffs shall have no liability to Actavis for the sufficiency, adequacy or effect of any such actions taken by Plaintiffs that are in conformance with this Agreement. Plaintiffs agree that they will not file the Verified Petition confessing judgment and Power of Attorney, and will not submit the Final Judgment for entry, unless Actavis defaults in the payment of any installment provided for in ¶ III(5) above and Actavis or the Actavis Guarantors fail to timely cure the default by paying the entire unpaid balance of the Settlement Amount within fifteen (15) days after receipt of written notice of the default given in accordance with the Notice provision set forth in ¶ III(26) below. If Actavis defaults in the

payment of any installment and Actavis or the Actavis Guarantors fail to timely cure the default as provided herein, Plaintiffs may immediately and without further notice file the Verified Petition and Power of Attorney, appear in the Travis County District Court and present the Final Judgment for entry, and take all lawful actions they deem appropriate to enforce and collect the Final Judgment. Plaintiffs agree to credit against the Confessed Judgment Amount any installment payment made prior to an uncured default.

14. The Parties agree that:

- a) timely payment of the Initial Settlement Amount, provided that it is not rescinded or must otherwise be returned by the Plaintiffs and the United States upon the insolvency, bankruptcy or reorganization of Actavis or the Actavis Guarantors, or otherwise;
- b) the execution and delivery of the Guaranty by the Actavis Guarantors;
- c) the execution and delivery of the Verified Petition and Power of Attorney and Final Judgment by Actavis; and
- d) delivery of the fully executed Deutsche Bank Consent Letter (as hereinafter defined) (collectively, the "Release Conditions")

shall fully and finally resolve and satisfy the Litigation, all Released Claims, the Texas Judgment, and all claims for the Covered Conduct. The Parties further agree that all amounts payable to any of the Relator's (or any other Plaintiff's) attorneys or other representatives or advisors shall be paid out of the Settlement Amount without further liability of Actavis.

15. In consideration of the obligations of Actavis in this Agreement, and conditioned on Actavis's satisfaction of the Release Conditions, Relator, for itself and each of its predecessors, successors and assigns, and its and their current and former direct and indirect

parents, affiliates, subsidiaries, divisions, and related business entities, and its and their current and former officers, directors, shareholders, agents, employees, managers, partners, servants, attorneys, advisors and other representatives, fully and finally, irrevocably and unconditionally releases, acquits and forever discharges Actavis and their respective predecessors, successors and assigns, and their current and former direct and indirect parents, affiliates, subsidiaries, divisions, and related business entities, and their current and former officers, directors, shareholders, agents, employees, managers, partners, servants, attorneys, advisors and other representatives (collectively, the "Actavis Releasees") from any and all civil, regulatory and/or administrative claims, complaints, actions, suits, demands, grievances, controversies, allegations, accusations, rights, causes of action, liabilities, judgments, damages or proceedings of any kind or nature, as well as all forms of relief (including all remedies, losses, debts, attorneys' fees, penalties, punitive damages, costs, and expenses of every kind and however denominated), whether sealed or unsealed, known or unknown, foreseen or unforeseen, which have been asserted, could have been asserted or could be asserted in the future under any source of law, contract, in equity or other right against any of the Actavis Releasees based upon or arising out of the Covered Conduct or the Litigation, including the Released Claims. Without limiting the generality of the foregoing, and to the fullest extent that the Relator is capable under applicable law, this release fully discharges and releases the Actavis Releasees from (i) any obligation to pay Medicaid-related damages, restitution, fines and/or penalties arising from the claims prosecuted in the Texas Action; and (ii) any civil obligation to the Relator or its attorneys, including any Relator's share, expenses, attorneys' fees, and costs associated with the Litigation.

16. In consideration of the obligations of Actavis in this Agreement, and conditioned on Actavis's satisfaction of the Release Conditions, Texas, Suehs, and HHSC, for themselves as

well as their predecessors, successors and assigns, and their current and former direct and indirect affiliates, subsidiaries, political subdivisions (to the full extent of Texas' authority), agencies, departments, and their respective current and former trustees, officials, beneficiaries, officers, directors, agents, employees, managers, partners, servants, attorneys, advisors and other representatives (collectively, the "Texas Releasers"), fully and finally, irrevocably and unconditionally release, acquit and forever discharge the Actavis Releasees from any and all civil, regulatory and/or administrative claims, complaints, actions, suits, demands, grievances, controversies, allegations, accusations, rights, causes of action, liabilities, judgments, damages or proceedings of any kind or nature, as well as all forms of relief (including all remedies, losses, debts, attorneys' fees, penalties, punitive damages, costs, and expenses of every kind and however denominated), whether sealed or unsealed, known or unknown, foreseen or unforeseen, which have been asserted, could have been asserted or could be asserted in the future under any source of law, contract, in equity or other right, against any of the Actavis Releasees based upon or arising out of the Covered Conduct or the Litigation, including the Released Claims. Without limiting the generality of the foregoing, and to the fullest extent that Texas is capable under applicable law, this release fully discharges and releases the Actavis Releasees from any obligation to pay Medicaid-related damages, restitution, fines and/or penalties arising from the Covered Conduct.

17. In consideration of the obligations of the Plaintiffs set forth in this Agreement, Actavis, for themselves and each of their predecessors, successors and assigns, and their current and former direct and indirect parents, affiliates, subsidiaries, divisions, and related business entities, and their current and former officers, directors, shareholders, agents, employees, managers, partners, servants, attorneys, advisors and other representatives (collectively, the

“Actavis Releasers”) fully and finally, irrevocably and unconditionally release, acquit and forever discharge the Texas Releasers and the Relator, as well as Relator’s predecessors, successors, assigns, current and former direct and indirect parents, affiliates, subsidiaries, divisions and related business entities, its and their current and former officers, directors, shareholders, agents, employees, managers, partners, servants, attorneys, advisors and other representatives, from any and all claims, complaints, actions, suits, demands, grievances, controversies, allegations, accusations, rights, causes of action, liabilities, judgments, damages or proceedings of any kind or nature, as well as all forms of relief (including all remedies, losses, debts, attorneys’ fees, penalties, punitive damages, costs, and expenses of every kind and however denominated), whether sealed or unsealed, known or unknown, foreseen or unforeseen, which have been asserted, could have been asserted or could be asserted in the future under any source of law, contract, in equity or other right against the Relator or the Texas Releasers for or arising from the Litigation, any of the Covered Conduct, or the investigation of Actavis, their predecessors or affiliates.

18. The allocation of the Settlement Amount among Texas, the Relator, their respective counsel, and the United States was handled separately by and among the Relator, Texas, and the United States without any involvement of Actavis. Actavis was not consulted about the allocation of the Settlement Amount among the Relator, Texas, and the United States, nor has Actavis had any input into the allocation. For this reason, Actavis is not in a position to agree to the allocation and, as a part of the Agreement, will not contest such allocation, or be deemed to have endorsed or been responsible for, any such allocation or the use of the proceeds by any ultimate recipient. Notwithstanding the foregoing, Plaintiffs agree that no portion of the Settlement Amount shall be allocated, attributed to, or characterized as, the payment of fines,

penalties, or punitive damages. The Settlement Amount shall only be allocated or attributed to, or characterized as, compensatory payments to the Plaintiffs and payments to make Plaintiffs whole for their investigatory costs and other reasonable costs of litigation, including attorneys' fees.

19. In connection with the provisions, covenants, conditions, and restrictions in Actavis's financing facilities and agreements with Deutsche Bank, Actavis represents that (a) Deutsche Bank has waived any provisions, covenants, conditions, and restrictions (i) relating to, prohibiting, or restricting Actavis from entering into and performing this Agreement or (ii) relating to, prohibiting, or restricting the Actavis Guarantors from entering into or performing the Guaranty, and Actavis agrees to provide Plaintiffs with a letter signed by Deutsche Bank, substantially in the form attached as Exhibit 15 ("Deutsche Bank Consent Letter"); and (b) other than the waived covenants, conditions, and restrictions, neither the execution nor performance of this Agreement or the Guaranty would constitute a breach of any provision, covenant, condition, or restriction contained in Actavis's financing facilities and agreements with Deutsche Bank. Actavis represents that the Deutsche Bank Consent Letter will be effective in accordance with its terms.

20. Other than the waived covenants, conditions, and restrictions referenced in Paragraph III(19), Actavis represents and warrants that there is no restriction on its entering into this Agreement.

21. Nothing in this Agreement shall be construed as a waiver of the Sovereign Immunity of Texas.

22. Notwithstanding any other provision of this Agreement, including the release provisions in ¶¶ III(15) through III(17) above, each of the following are specifically reserved and

excluded from the scope and terms of the releases, or are beyond the scope of and are not covered by this Agreement, as applicable:

- (a) Any breach or default of this Agreement;
- (b) Any claims based on or arising out of conduct occurring or circumstances existing after the Effective Date of this Agreement;
- (c) Liability to Texas for any conduct other than the Covered Conduct;
- (d) Any civil or administrative liability that Actavis has or may have under any state statute, regulation, or rule not covered by the release provisions in Paragraphs III(15) through III(17) above;
- (e) Any claims arising from Actavis's or any Actavis affiliate's obligations to pay rebates to Texas under any law or contract, including, but not limited to, under the provisions of the Omnibus Budget Reconciliation Act of 1990 and all amendments thereto;
- (f) The subrogation rights to claims for personal injury or injury to real or personal property arising from usage by a participant or beneficiary in the Medicaid Program of any of the Covered Drugs covered thereunder;
- (g) Any claims based on a failure to deliver products or provide services due;
- (h) Any civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code) or any state tax or revenue law;
- (i) Any criminal liability;
- (j) Any express or implied warranty claims or other claims for defective or deficient products and services provided by Actavis.

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

24. All rights and remedies available to Plaintiffs under this Agreement shall be cumulative of and in addition to all other rights and remedies of Plaintiffs at law, in equity or otherwise, whether or not Plaintiffs shall have taken action to enter the Final Judgment pursuant to ¶ III(13) above. The exercise of any remedy afforded to Plaintiffs under this Agreement shall neither be an election of remedies nor preclude the exercise of any other remedy.

25. Except as set forth in ¶¶ III(3 & 5) above, each Party shall bear its own legal and other costs incurred in connection with the Litigation, including such costs incurred in the preparation and performance of this Agreement.

26. Notice. Any notice, request, demand or other communication required or permitted hereunder shall be given or made in writing and delivered by facsimile transmission, hand delivery, or by certified, registered or express mail, return receipt requested, and addressed as set forth below (or to such other person or address as the applicable Party may from time to time furnish to each other Party in accordance with the terms of this paragraph):

In the case of Actavis, to:

Scott L. Winkelman  
Crowell & Moring LLP  
1001 Pennsylvania Avenue, NW  
Washington, DC 20004-2595  
Fax: (202) 628-5116

With a copy not constituting notice to:

John Duff  
Actavis  
60 Columbia Rd., Bldg B  
Morristown, NJ 07960  
Fax: (973) 993-4303

In the case of Texas, to:

Raymond C. Winter  
Chief, Civil Medicaid Fraud Division  
Office of the Attorney General of Texas  
P.O. Box 12548  
Austin, Texas 78711-2548  
Fax: (512) 499-0712

In the case of the Relator, to:

James J. Breen  
The Breen Law Firm, P.A.  
Suite 260  
5755 North Point Parkway  
Alpharetta, Georgia 30022  
Fax: (678) 252-5545

Such notices, requests, demands or other communications shall be deemed received upon personal delivery, on the first business day following the date of the facsimile transmission, or on the third business day following the date of mailing if sent by registered, certified or express mail.

27. Governing Law; Venue; Jurisdiction.

a) All issues between or among any of the Parties concerning the construction, validity, enforcement, or interpretation of this Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Texas or any other jurisdiction) that would impose or require the application of the laws of any jurisdiction other than the State of Texas.

b) The exclusive jurisdiction and venue of any lawsuit concerning the construction, validity, enforcement, or interpretation of this Agreement shall lie in the state district courts of Travis County, Texas. Actavis agrees to submit to the jurisdiction of the state district courts of Travis County, Texas in any proceeding concerning the construction, validity,

enforcement, or interpretation of this Agreement. This paragraph does not apply to and shall not affect Plaintiffs' right to initiate proceedings in any jurisdiction or venue as may be appropriate for the enforcement and collection of the Final Judgment.

28. This Agreement, together with all attachments and exhibits hereto, constitutes the complete agreement between and among the Parties with regard to the subject matter hereof. All exhibits referenced in this Agreement are incorporated herein and made a part hereof for all purposes. This Agreement may not be amended except by written consent of all the Parties. The failure by any of the Parties to enforce at any time, or for any period of time, any one or more of the terms or conditions of this Agreement, or a course of dealings between the Parties, shall not be a waiver of such terms or conditions or of any Party's right thereafter to enforce each and every term and condition of this Agreement.

29. The individuals signing this Agreement on behalf of a Party represent and warrant that they are authorized to execute this Agreement on behalf of such Party.

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

31. This Agreement is binding and shall inure to the benefit of Actavis and their respective successors, transferees, and assigns.

32. This Agreement is binding on and shall inure to the benefit of each of the Plaintiffs, their respective successors, transferees, and assigns.

33. This Agreement has been negotiated at arm's length and between and among persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, this Agreement was drafted by experienced and knowledgeable legal counsel for each

of the Parties. Accordingly, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. The provisions of this Agreement shall be interpreted in a reasonable manner to effectuate the purposes of the Parties and this Agreement.

34. This Agreement is effective on the later of either the date fully signed copies of the Agreement are provided to each Party (along with fully executed originals of the pleadings and documents attached hereto as Exhibits 2, 4, 5, 8, 9, 10, 11, 12, 13, 14, and 15 delivered to Plaintiffs), or the date the Actavis Defendants receive the United States' written consent required pursuant to ¶ III(2) in the form attached hereto as Exhibit 7 (the "Effective Date").

IN WITNESS WHEREOF, the Parties have executed this Agreement:

**ACTAVIS:**

Actavis Mid Atlantic LLC

BY:

 Date: 12/8/2011

Title: Chief Legal Officer, VP

Actavis Elizabeth LLC

BY:

 Date: 12/8/2011

Title: VP, Chief Legal Officer

Actavis Inc.

BY:

 Date: 12/8/2011

Title: VP, Chief Legal Officer

**RELATOR AND ITS ATTORNEY:**

THE BREEN LAW FIRM, P.A.

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

James J. Breen  
The Breen Law Firm, P.A.  
*Counsel to Ven-A-Care of the Florida Keys, Inc.*

VEN-A-CARE OF THE FLORIDA KEYS, INC.

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

T. Mark Jones, President

**TEXAS:**

**State of Texas  
Office of the Attorney General**

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

Raymond C. Winter

Title: Chief, Civil Medicaid Fraud Division  
Office of the Attorney General of Texas

Date: \_\_\_\_\_

Actavis Inc.

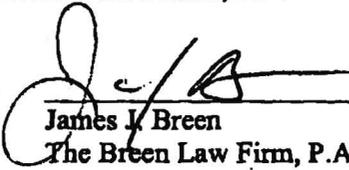
BY:

\_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

**RELATOR AND ITS ATTORNEY:**

THE BREEN LAW FIRM, P.A.

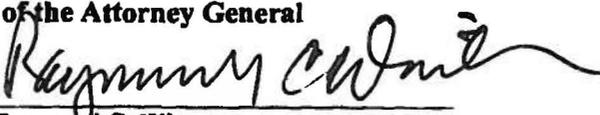
By:  Date: 12/9/11  
James J. Breen  
The Breen Law Firm, P.A.  
*Counsel to Ven-A-Care of the Florida Keys, Inc.*

VEN-A-CARE OF THE FLORIDA KEYS, INC.

By:  Date: 12/8/2011  
T. Mark Jones, President

**TEXAS:**

State of Texas  
Office of the Attorney General

By:   
Raymond C. Winter  
Title: Chief, Civil Medicaid Fraud Division  
Office of the Attorney General of Texas  
Date: 12/9/11

**State of Texas  
Health and Human Services Commission**

By: Thomas Suehs  
Title: \_\_\_\_\_  
Date: 07/27/11

**Thomas Suehs, in his official capacity as  
Executive Director of the Texas Health and  
Human Services Commission**

Date: Thomas Suehs  
07/27/11

- Exhibit 1 Schedule of Actavis Affiliates
- Exhibit 2 Agreed Motion and Order for the Return of Cash Deposits
- Exhibit 3 Settlement Installment Schedule
- Exhibit 4 Agreed Motion to Abate (Actavis Appeal)
- Exhibit 5 Agreed Motion to Abate (Texas Appeal)
- Exhibit 6 Stipulation of Partial Dismissal (Federal *Qui Tam* Proceedings)
- Exhibit 7 United States' Consent to Partial Dismissal and Order of Dismissal
- Exhibit 8 Agreed Motion to Set Aside Judgment and Remand (Actavis Appeal)
- Exhibit 9 Agreed Motion to Set Aside Temporary Injunction and Remand (Texas Appeal)
- Exhibit 10 Agreed Motion and Order (Dismissing Actavis Declaratory Judgment Action)
- Exhibit 11 Agreed Motion and Order (Dismissing Texas Action)
- Exhibit 12 Unconditional Guaranty
- Exhibit 13 Verified Petition for Confession of Judgment and Special Power of Attorney
- Exhibit 14 Final Judgment
- Exhibit 15 Deutsche Bank Consent Letter