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At an All Purpose Term of the Supreme Court of the State of New York, in and for the County of Albany, at the Albany County Courthouse, Albany, New York. on the 16<sup>th</sup> day of April, 2008.

PRESENT:

Honorable Richard Platkin, J.S.C.  
Justice Presiding

.....X

THE PEOPLE OF THE STATE OF NEW YORK,  
by ELIOT SPITZER, Attorney General  
of the State of New York

Plaintiff

vs.

**Consent Order and  
Judgment**  
Index No. 1150-03

AVENTIS PHARMACEUTICALS INC.

Defendant

.....X

The People of the State of New York, by Andrew Cuomo, Attorney General of the State of New York, having filed this action for an Order and Judgment pursuant to General Business Law § 349, Executive Law § 63(12), Social Services Law § 145-h, Penal Law § 180.00, and 18 N.Y.C.R.R. § 515.2(b)(5), against the Defendant Aventis Pharmaceuticals Inc. (“Aventis”), permanently enjoining Aventis from engaging in the deceptive, fraudulent and unlawful practices alleged in the Complaint, directing Aventis to pay restitution, damages, costs and penalties, and the Parties having consented to the entry of this Order and Judgment,

NOW, upon motion of Andrew Cuomo, Attorney General of the State of New York, attorney for Plaintiff herein (Carol Hunt, Assistant Attorney General, of Counsel) and upon the

consent of the Parties hereto,

IT HEREBY IS ORDERED, ADJUDGED AND DECREED THAT:

### **I. PARTIES**

The Parties to this action are the Plaintiff, the People of the State of New York ("Plaintiff"), and the Defendant, Aventis Pharmaceuticals Inc. ("Aventis"), herein referred to as "the Parties."

### **II. PREAMBLE AND DEFINITIONS**

A. On or about February 26, 2003, the Plaintiff initiated this lawsuit against Aventis in the Supreme Court of the State of New York, County of Albany, originally captioned *People of the State of New York v. Aventis Pharmaceuticals Inc.*, Index No. 1150-03. Aventis was served with a Complaint in this lawsuit (hereinafter the "Complaint"), and the Parties have been litigating this lawsuit.

B. In the Complaint, the Plaintiff makes certain allegations and claims concerning pharmaceutical prices for Aventis drugs, including that Aventis caused certain published "Average Wholesale Prices" ("AWPs") for Aventis drugs to be artificially inflated. The Plaintiff asserts five causes of action against Aventis under New York law for the conduct alleged in the Complaint, and seeks various forms of relief against Aventis, including restitution, damages, treble damages, injunctive relief, civil penalties, and costs. The Plaintiff seeks restitution for the following persons and entities within the State of New York for the following alleged conduct by Aventis:

1. Claims that individual New York consumers covered by Medicare Part B, Medicaid and/or the Elderly Pharmaceutical Insurance Coverage ("EPIC") Program made

inflated co-payments under those programs, for the Aventis drugs covered by those programs, as the result of the conduct of Aventis alleged in the Complaint (hereinafter "Individual Consumer Restitution Claims"), as follows:

(a) Payments for an Aventis drug that were made by a natural person, where the purchase was covered by Medicare Part B (hereinafter "Medicare Individual Consumer Restitution Claims"); and

(b) Payments for an Aventis drug that were made by a natural person, where the purchase was covered by (i) EPIC or (ii) Medicaid; and

2. Claims that the EPIC Program itself made inflated payments for the Aventis drugs covered by EPIC, as the result of the conduct of Aventis alleged in the Complaint (hereinafter "EPIC Program Claims"); and

3. Claims that the New York Medicaid Program itself (which, during the relevant period, was funded by the United States government, the State of New York and the Counties of the State of New York) made inflated payments for the Aventis drugs covered by Medicaid, as follows: That the Plaintiff has civil claims against Aventis under various federal and state statutes and regulations and common law doctrines, including the claims alleged in the Complaint, for engaging in the following alleged conduct: (a) For all Aventis drugs during the period beginning January 1, 1997 through February 26, 2003, Aventis and/or its predecessors knowingly set, reported, and maintained or caused to be set, reported, and maintained false, fraudulent, and inflated Average Wholesale Prices, Suggested List Prices, Net Wholesale Prices, Wholesale Acquisition Costs and/or Wholesale Purchase Prices (the "Reported Prices ") that were substantially higher than the prices that the vast majority of its customers actually paid for

such drugs, resulting in the submission of false and fraudulent claims for reimbursement to Medicaid for Medicaid reimbursements that were substantially higher than the actual acquisition cost for such drugs, and (b) Aventis knowingly used the artificial spread between the false, fraudulent, and inflated Reported Prices and the actual acquisition cost of the Aventis drugs in marketing, promoting, and selling these drugs to existing and potential customers, knowing that such false and fraudulent reporting and marketing schemes would cause its customers to submit false and fraudulent claims for reimbursement to Medicaid for Medicaid reimbursements that were substantially higher than the customers' actual acquisition cost for the Aventis drugs. The claims described in this subparagraph II. B. 3 are collectively referred to hereinafter as the "Medicaid Claims;" and

C. Aventis denies all of the Plaintiff's allegations as set forth in the Complaint in this lawsuit and as described above, and specifically denies that it has any liability relating to those allegations.

D. The Parties hereto mutually desire to reach a full and final settlement and dismissal of this lawsuit, in accordance with this Consent Order and Judgment.

### **III. TERMS AND CONDITIONS**

1. Within seven business days of the Effective Date (as defined below in Paragraph III. 17, hereinafter "Effective Date"), Aventis shall pay the State of New York as restitution for the Medicaid Claims and the EPIC Program claims the sum of \$2,793,235.48 by electronic funds transfer pursuant to written instructions to be provided to Aventis by the Plaintiff within four business days of the Effective Date. Aventis' payment of this sum, hereinafter referred to as the "Paragraph III.1. Payment," and Aventis' prior payment to the

federal government of an allocated amount of \$963,496.70 (which federal payment was made pursuant to a prior Settlement Agreement between Aventis and the United States of America, acting through the United States Department of Justice), fully resolves the Plaintiff's and the State's Medicaid Claims and EPIC Program claims. The Parties further agree that the State of New York will share \$561,755.17 of the Paragraph III.1 Payment with the federal government as the federal share of the Paragraph III.1 Payment.

2. As set forth more fully in Addendum A to this Consent Order and Judgment, within 35 days after the end of the first full calendar quarter following the Effective Date and continuing for the period set forth in Addendum A, Aventis will provide, on a confidential basis, certain certified "Pricing Information" (as defined in Addendum A to this Consent Order and Judgment) to (a) the State of New York Medicaid Program, and (b) a national commercial drug price reporting service designated by the State of New York through Addendum B to this Consent Order and Judgment, subject to execution of a confidentiality agreement by such price reporting service. The State of New York shall treat the Aventis Pricing Information reported to the New York Medicaid Program pursuant to this Paragraph, whether received directly from Aventis or indirectly through a commercial drug price reporting service, as confidential commercial or financial information and proprietary trade secrets, unless federal law, as implemented by the federal Centers for Medicare and Medicaid Services, allows such Pricing Information to be made public, and such Pricing Information shall be afforded the maximum degree of confidentiality permitted by state law.

3. The Plaintiff's Medicare Individual Consumer Restitution Claims are fully resolved by the following: New York Medicare Part B beneficiaries who paid an unreimbursed

variable Medicare Part B co-insurance amount for Aventis drugs during the covered period, as defined below, are eligible to file a claim pursuant to the settlement agreement entered into by Aventis and the putative classes in *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456 (U.S. Dist. Court. D. Mass.) (the "MDL No.1456 Class Litigation") which will resolve the putative classes' claims relating to payments for Aventis pharmaceuticals by persons and entities throughout the country (including individuals in the State of New York) who paid for such products on the basis of AWP's (the "MDL No. 1456 Track Two Class Settlement Agreement"). The term "covered period" as used in this paragraph refers to the Class 1 "Class Period" as defined in the MDL No. 1456 Track Two Class Settlement Agreement. The payment of funds to Medicare Part B beneficiaries from and pursuant to the terms of the MDL No. 1456 Track Two Class Settlement Agreement as described in this Paragraph fully resolves the Plaintiff's Medicare Individual Consumer Restitution Claims in this action.

4. Aventis shall pay the State of New York the sum of \$740,000.00 (seven hundred forty thousand dollars) for the costs Plaintiff incurred in connection with this lawsuit, at the time and in the manner set forth in Paragraph III. 1. In the event the MDL No. 1456 Track Two Class Settlement Agreement is not approved or is terminated as provided for in that agreement, the State of New York shall cause this same sum to be refunded to Aventis (unless Aventis and the State of New York reach a contrary agreement).

5. (a) The Individual Consumer Restitution Claims are dismissed with prejudice, but with the right by Plaintiff to reassert those claims (as if, for statute of limitations and laches purposes, they had not been dismissed) in the event the MDL No. 1456 Track Two Aventis Class Settlement Agreement is not approved or is terminated as provided for in that

agreement. This Court shall retain jurisdiction to enforce this Consent Order and Judgment; and

(b) All other claims asserted by Plaintiff in the Complaint are dismissed with prejudice.

6. Nothing in this Consent Order and Judgment shall be construed to deprive any individual of any private right of action under the law.

7. Subject to the exceptions from release set forth in Paragraph 9 below, as of the Effective Date of this Consent Order and Judgment, the Plaintiff and the State of New York on behalf of itself, its officers, agents, agencies and departments release and forever discharge Aventis, its predecessors, subsidiaries, joint venture owners, corporate parents and affiliates, successors and assigns, and its current and former directors, officers and employees, from any and all civil or administrative claims for restitution, damages, injunctive relief, civil forfeiture, civil penalties, fines, costs, attorneys' fees and other relief that the Plaintiff or the State of New York has or may have relating to the Medicaid Claims, as defined in Preamble Paragraph II. B. 3 above. The payment by Aventis of the amount described in Paragraph III.1. above shall fully discharge Aventis from any obligation to pay Medicaid-related restitution, damages, and/or any fine or penalty to the Plaintiff or the State of New York or any of its counties or other subdivisions for such Medicaid Claims.

8. Subject to the exceptions from release set forth in Paragraph 9 below, as of the Effective Date of this Consent Order and Judgment, the Plaintiff and the State of New York on behalf of itself, its officers, agents, agencies and departments release and forever discharge Aventis, its predecessors, subsidiaries, joint venture owners, corporate parents and affiliates, successors and assigns, and its current and former directors, officers and employees, from any

and all civil or administrative claims for restitution, damages, injunctive relief, civil forfeiture, civil penalties, fines, costs, attorneys' fees and other relief that the Plaintiff or the State of New York has or may have relating to all other claims described in paragraph II. B. from the beginning of time up through the following: (a) January 1, 2005 with respect to the Medicare Individual Consumer Restitution Claims and (b) the date this Consent Order and Judgment is entered with respect to all other claims.

9. Notwithstanding any other term of this Consent Order and Judgment, the Plaintiff and the State of New York specifically do not herein release Aventis, its predecessors, subsidiaries, joint venture owners, corporate parents or affiliates, successors or assigns, or its current and former directors, officers, and employees from any and all of the following: (a) any potential criminal, civil or administrative claims arising under the tax laws of the State of New York or its political subdivisions; (b) any criminal liability; (c) except as explicitly stated in this Consent Order and Judgment, any administrative liability, including mandatory exclusion from the State of New York's Medicaid program; (d) any liability to the State of New York (or its agencies) or the Plaintiff for any conduct other than the conduct set forth in the allegations of the Complaint or in Preamble Paragraph II. B herein above; or (e) any claims based upon such obligations as are created by this Consent Order and Judgment.

10. Except as reserved in Paragraph 9 above, the Plaintiff and the State of New York release and will refrain from instituting, directing or maintaining any administrative claim or any action seeking exclusion from the State of New York's Medicaid program against Aventis, its predecessors, subsidiaries, joint venture owners, corporate parents or affiliates, successors or assigns, for the released conduct set forth herein. Nothing in this Consent Order and Judgment

precludes the State of New York from taking action against Aventis in the event that Aventis is excluded by the federal government, or for conduct and practices other than the released conduct set forth herein. The Medicaid Fraud Control Unit for the State of New York will refrain from recommending, causing or attempting to cause any administrative action or sanction, including debarment, by any government agency of the State of New York for the released conduct set forth herein.

11. As of the Effective Date of this Consent Order and Judgment, Aventis fully and finally releases the Plaintiff and the State of New York, its agencies, employees, servants, and agents from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) which Aventis has asserted, could have asserted, or may assert in the future against the Plaintiff or the State of New York, its agencies, employees, servants, or agents that are related to or arising from the investigation and prosecution of the conduct set forth in the Medicaid Claims and the EPIC Program Claims, from the beginning of time up through the date this Consent Order is entered.

12. As of the Effective Date of the MDL No. 1456 Track Two Class Settlement Agreement, Aventis fully and finally releases the Plaintiff and the State of New York, its agencies, employees, servants, and agents from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) which Aventis has asserted, could have asserted, or may assert in the future against the Plaintiff or the State of New York, its agencies, employees, servants, or agents that are related to or arising from the investigation and prosecution of the conduct set forth in the Individual Consumer Restitution Claims, from the beginning of time up through the date this Consent Order and Judgment is entered.

13. Aventis waives and will not assert any defenses, under the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution or Article 1, § 6 of the Constitution of the State of New York or under the Excessive Fines Clause of the Eighth Amendment to the United States Constitution or Article I, § 5 of the Constitution of the State of New York, that it may have to any criminal prosecution or administrative action relating to the conduct set forth in the allegations of the Complaint and/or in Preamble Paragraph B herein above, which defenses may be based in whole or in part on a contention that, under those Constitutional provisions, this Consent Order and Judgment bars any remedy sought in such criminal prosecution or administrative action.

14. Nothing in any provision of this Consent Order and Judgment constitutes an agreement by the State of New York concerning the characterization of any payment for purposes of the tax laws of the State of New York or its political subdivisions.

15. Aventis' agreement to the terms and entry of this Consent Order and Judgment do not constitute an admission by any person or entity, and shall not be construed as an admission by any person or entity, with respect to any issues of law or fact.

16. This Consent Order and Judgment is governed by the laws of the State of New York.

17. The Effective Date of this Consent Order and Judgment is the later of: (1) fifteen days after the date on which Aventis and the putative Class Plaintiffs in the MDL No. 1456 Class Litigation file a motion in that litigation seeking Preliminary Approval of the MDL No. 1456 Track Two Class Settlement Agreement; or (2) five days after entry of this Consent Order and Judgment.

18. This Consent Order and Judgment shall be binding on all successors, transferees, heirs and assigns of the Parties.

19. This Consent Order and Judgment constitutes the complete agreement between the Parties with regard to the settlement and dismissal of this lawsuit.

20. Each party agrees to perform any further acts and to execute and deliver any further documents reasonably necessary to carry out their obligations under this Consent Order and Judgment.

21. This Consent Order and Judgment shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that the terms of this Consent Order and Judgment are the result of arm's-length negotiations between the Parties and all Parties have contributed substantially and materially to the preparation of this Consent Order and Judgment.

SO ORDERED:

Albany, New York

Dated: April 16, 2008



Richard Platkin, J.S.C



## ADDENDUM A

### Requirements for Reporting of Aventis "Pricing Information"

Paragraph III.2 of the preceding Consent Order and Judgment requires that within 35 days after the end of the first full calendar quarter following the Effective Date thereunder and continuing for the period set forth in this Addendum A, Aventis will provide, on a confidential basis, certain certified "Pricing Information" to (a) the State of New York Medicaid Program, and (b) a national commercial drug price reporting service designated by the State of New York through Addendum B to this Consent Order and Judgment, subject to execution of a confidentiality agreement by such price reporting service.

On or about August 29, 2007, Aventis entered into a Settlement Agreement with the United States of America, acting through the United States Department of Justice, which resolved certain claims and potential claims relating to payments by Medicare and Medicaid for Anzemet injectibles. In connection with that settlement, Aventis also entered into a Corporate Integrity Agreement ("CIA") with the Department of Health and Human Services, Office of Inspector General ("HHS/OIG"), which is incorporated herein by reference. The State of New York, through a representative of its Medicaid Fraud Control Unit, participated in the negotiation of the CIA.

The CIA imposes specific price reporting requirements on Aventis. As set forth in detail in section III.I of the CIA, Aventis shall report to the entities identified therein certain certified pricing information (collectively referred to as the "Pricing Information"). In particular, Aventis will report an ASP, as defined in Section III.I.2.a of the CIA, for the "ASP Covered Products" described in Attachment C to the CIA, and Aventis will also report an AMP, as defined in Section III.I.2.b of the CIA, for the "AMP Covered Products" described in Attachment C to the CIA. Aventis will also provide the New York State Medicaid Program with a copy of

the Certification required by section III.I.2.d of the CIA along with the Pricing Information described herein.

Aventis' Pricing Information disclosure obligations as set forth in the CIA shall be incorporated herein by reference. The Pricing Information that Aventis shall report to the State of New York and its designated national commercial price reporting service hereunder shall be identical to what Aventis is required to report to States that execute a "Related State Settlement Agreement" as described in the CIA, and the State of New York shall be considered a state that has entered into a Related State Settlement Agreement for purposes of Aventis' reporting obligations thereunder and hereunder. Aventis' obligation to report the Pricing Information hereunder shall continue until the expiration of that obligation under the CIA.



## ADDENDUM B

### Designation of Reporting Service

1) The State of New York requests that the Pricing Information referred to in Section III, Paragraph 2 of this Consent Order and Judgment be sent to First Data Bank (a national commercial drug price reporting service).

If during the time period covered by Aventis' obligation to provide the State with Pricing Information pursuant to Section III, Paragraph 2 of this Consent Order and Judgment, the State changes or supplements its commercial drug price reporting service, the State may notify Aventis in writing of said change and the effective date. Aventis shall then promptly commence reporting the Pricing Information to the subsequent commercial drug price reporting service in accordance with Section III, Paragraph 2 of this Consent Order and Judgment.

Aventis contact information is as follows:

Susan A. Manardo-Oney  
sanofi-aventis  
Legal Department  
Mail Code: 55A-525A  
55 Corporate Drive  
Bridgewater, New Jersey 08807

### Designation of State Medicaid Contact

2) The State of New York requests that the Pricing Information referred to in Section III, Paragraph 2 of this Consent Order and Judgment be sent to the New York State Medicaid program c/o:

Deborah Bachrach  
Medicaid Director, Deputy Commissioner  
Office of Health Insurance Programs  
New York State Department of Health  
Corning Tower, Rm 166  
Empire State Plaza  
Albany, New York 12237

And

Donna Frescatore  
Deputy Director  
Office of Health Insurance Programs  
New York State Department of Health  
Corning Tower, Rm 1466  
Empire State Plaza  
Albany, New York 12237

**Stipulation  
and Consent**

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF ALBANY

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THE PEOPLE OF THE STATE OF NEW YORK,  
by ELIOT SPITZER, Attorney General of  
the State of New York

Plaintiff

- against -

Stipulation and Consent  
Index No. 1150-03

AVENTIS PHARMACEUTICALS INC.

Defendant  
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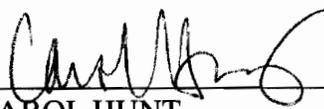
IT IS HEREBY ACKNOWLEDGED, STIPULATED, CONSENTED TO AND AGREED, by and between Plaintiff, the People of the State of New York, and the State of New York, by their attorney, Andrew Cuomo, Attorney General of the State of New York, and Defendant, Aventis Pharmaceuticals Inc. ("Aventis"), as follows:

1. Within five days after the execution of this Stipulation and Consent, Plaintiff shall submit the annexed Consent Order and Judgment to the Court, and the provisions of such Consent Order and Judgment shall not be effective against either party until the Court enters the same and, thereafter, as set forth in the annexed Consent Order and Judgment.
2. The Plaintiff, the State of New York and Aventis hereby consent to the entry of the annexed Consent Order and Judgment.
3. Aventis represents that its Consent to the annexed Consent Order and Judgment is freely and voluntarily entered into without any degree of duress or compulsion whatsoever. The undersigned Aventis signatory represents and warrants that he is duly authorized as a result of appropriate corporate action to consent to the entry of the annexed Consent Order and Judgment.
4. The undersigned signatories for the Plaintiff and the State of New York

Represent that they are signing this Stipulation and Consent in their official capacities and that they are authorized to consent to the annexed Consent Order and Judgment on behalf of the Plaintiff and the State of New York through their respective agencies and departments.

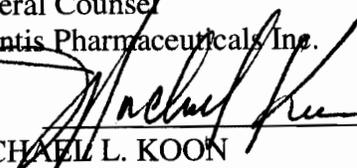
5. The Parties' signing of this Stipulation and Consent may be accomplished by counterparts, each of which shall constitute an original and all of which shall constitute one and the same consent to this Stipulation and Consent.

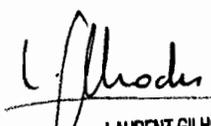
AGREED TO on behalf of the Plaintiff and the State of New York:

  
\_\_\_\_\_  
Dated: 4-10-08  
CAROL HUNT  
Assistant Attorney General  
Office of the New York State Attorney General  
Health Care Bureau  
120 Broadway, 25<sup>th</sup> Floor  
New York, New York 10271  
Counsel to the Plaintiff and the State of New York

AGREED TO on behalf of Aventis Pharmaceuticals Inc.:

By:   
\_\_\_\_\_  
Dated: 9 April 08  
JOHN SPINNATO  
General Counsel  
Aventis Pharmaceuticals Inc.

By:   
\_\_\_\_\_  
Dated: 4/3/08  
MICHAEL L. KOON  
Shook, Hardy & Bacon, L.L.P.  
2555 Grand Avenue  
Kansas City, Missouri 64108  
Counsel to Aventis Pharmaceuticals Inc.

  
\_\_\_\_\_  
LAURENT GILHODES  
Vice President & Chief Financial Officer  
4/9/08