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 8 ELAINE L. CHAO, SECRETARY OF LABOR  
 UNITED STATES DEPARTMENT OF LABOR  
 9

10 UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF CALIFORNIA

11  
 12 ELAINE L. CHAO, Secretary of Labor,  
 United States Department of Labor

Case No.: 2:06-cv-01078-LKK-GGH

13 Plaintiff,

CONSENT ORDER

14 v.

15 PHARMACEUTICAL CARE NETWORK,  
 a California Corporation, and its successors

16 Defendant.  
 17

18  
 19 Plaintiff Elaine L. Chao, Secretary of the United States Department of Labor ("the Secretary")  
 20 and Defendant Pharmaceutical Care Network and its successors ("PCN") have negotiated an agreement  
 21 to settle all civil claims and issues between them in this action (the "Action"), and each consents to the  
 22 entry of this Consent Order by the Court as the sole and complete memorialization of the terms of such  
 23 agreement, which is fully integrated. There are no separate oral, implied, written or collateral agreements,  
 24 other than as expressly set forth herein.

25 A. This Action was filed by the Secretary pursuant to her authority under Title I of the  
 26 Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001 *et seq.*, as amended.  
 27 The Complaint in this Action alleges that PCN violated provisions of Title I of ERISA while acting in a  
 28 fiduciary capacity with respect to the employee welfare benefit plans enumerated below in paragraph 2

1 (the “Affected Plans”).

2 B. PCN acknowledges service of the Complaint and admits that the Court has jurisdiction  
3 over the parties and subject matter of this Action.

4 C. The Secretary and PCN expressly waive Findings of Fact and Conclusions of Law and  
5 consent to the entry of this Consent Order as a full, final and complete resolution of all claims and issues  
6 arising between them in this Action with respect to the Affected Plans without trial or adjudication of any  
7 issue of fact or law raised in the Complaint.

8 D. PCN waives its rights to a separate notice of assessment of the penalty under ERISA  
9 §502(l), 29 U.S.C. § 1132(l), described in paragraph 4 below and to contest that assessment.

10 E. The undersigned each expressly acknowledges and represents that he or she has read this  
11 Consent Order and understands its provisions. The undersigned each acknowledges and represents that  
12 he or she is authorized and empowered to execute this Consent Order on behalf of the party represented.

13 F. For the purposes of this Consent Order, the following definitions apply:

14 (a) “administrative services agreement” means the contract for pharmacy benefit  
15 management services between Payer and PCN;

16 (b) “plan” means an employee welfare benefit plan within the meaning of ERISA § 3(1),  
17 29 U.S.C. § 1002(1), that is covered by ERISA § 4(a), 29 U.S.C. § 1003(a);

18 (c) “rebate” means payments made by drug manufacturers based on the volume and use  
19 of applicable drugs by the participants or beneficiaries of a Payer’s plan and/or a  
20 group of plans including a plan of a Payer, and does not include administrative fees  
21 and other fees paid to PCN for its own account for items provided or services rendered  
22 to drug manufacturers by PCN;

23 (d) “pharmacy benefit management services” means pharmacy or drug benefit  
24 management services, including without limitation, negotiating and contracting for  
25 rebates, maintaining networks of contracted pharmacies, administering pharmacy  
26 claims, and managing managed care pharmacy benefit programs;

27 (e) “Payer” means any entity that has entered into an administrative services agreement  
28 with PCN directly or indirectly (including without limitation, via a third-party

1 administrator or other intermediary) for the provision of pharmacy benefit  
 2 management services for a plan; and

3 (f) “compensation received by PCN” includes any remuneration received or monies  
 4 retained by PCN for the provision of pharmacy benefit management services to a  
 5 Payer or a Payer’s plan, including without limitation, fees from drug manufacturers,  
 6 fees collected from Payers, and any other remuneration or fees, to the extent that such  
 7 remuneration or fees are calculated or received on the basis of the benefits attributable  
 8 to a Payer or a Payer’s plan.

9 Accordingly, it is ORDERED, ADJUDGED, AND DECREED that:

10 1. The Court has jurisdiction over the parties to this Consent Order and the subject matter of  
 11 this action and is empowered to provide the relief herein.

12 2. Within ten (10) calendar days of entry of this Consent Order, PCN shall pay a total of  
 13 \$721,323 to the Affected Plans, to be allocated as follows:

	<u>Rebates – Subcontracting Arrangement</u>	<u>Rebates – Retention for Litigation Costs</u>	<u>Retention of Pharmacy Payments<sup>a</sup></u>	<u>Total</u>
14 C.M.T.A.-I.A.M. J.T. 15 Machinists Trust	\$12,106	\$135	\$76,280	\$88,522
16 G.I. Joe's	\$1,590	N/A	\$15,056	\$16,646
17 I.B.E.W. Local 332 Health & 18 Welfare Trust	\$4,199	N/A	\$102,244	\$106,443
19 Idaho Pipe Trades	\$2,751	N/A	N/A	\$2,751
20 Industrial Sheet Metal 21 Workers, No. 16	\$1,055	N/A	\$4,233	\$5,289
22 Local No. 16 I.A.T.S.E.	\$5,965	\$245	N/A	\$6,210
23 Local 598 Plumbing & 24 Pipefitting Industry Health 25 & Welfare Trust	\$1,252	N/A	N/A	\$1,252

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 27  
 28 <sup>a</sup> Settlement allocation for losses attributable to monies withheld by PCN from payments of Payers intended for pharmacy drug claims.

1	Louisiana-Pacific	\$43,197	N/A	\$70,343	\$113,540
2	Monterey Culinary Insurance Fund	\$1,637	\$122	N/A	\$1,759
3	Monterey Culinary Medicare Suppl.	\$209	\$9	N/A	\$218
4					
5	No. Calif. Bakery Drivers Security Fund	\$14,103	\$717	\$6,081	\$20,900
6					
7	No. Calif. General Teamsters Retirees Security Fund	\$10,562	\$533	\$3,040	\$14,135
8					
9	No. Calif. General Teamsters Security Fund	\$48,792	\$1,743	\$16,219	\$66,754
10					
11	Pari-Mutuel Guild of Calif. Local 280 Retirees	\$1,361	\$108	\$20,045	\$21,513
12					
13	Retired Electr. Workers of San Mateo Co. Health & Welfare Trust, Local 595	\$625	\$237	N/A	\$862
14					
15	Stanley Hydraulics	\$214	N/A	N/A	\$214
16					
17	Teamsters Health & Welfare Fund of Philadelphia	\$20,165	N/A	N/A	\$20,165
18					
19	The Standard Insurance Co	\$6,049	N/A	N/A	\$6,049
20					
21	Tri-Counties Welfare Trust	\$4,094	\$203	\$9,775	\$14,073
22					
23	U.A. Local 447 Pipe Trades	\$2,713	\$98	\$25,866	\$28,677
24					
25	Warehousemans' Employers Trust	\$7,621	N/A	\$29,312	\$36,934
26					
27	Washington Bakers Retiree Welfare Trust	\$2,069	N/A	\$1,480	\$3,549
28					
	Washington State Auto Dealers Trust	\$6,621	N/A	N/A	\$6,621
	Western States Local of the Office & Professional Employees Int'l Union, Local 11 Union Trust Fund	\$10,144	N/A	\$128,103	\$138,247

1           3.       Within twenty (20) calendar days of entry of this Consent Order, PCN shall provide to  
2 counsel for the Secretary proof of payments as set forth in paragraph 2.

3           4.       Upon full payment of the amounts set forth in paragraph 2, PCN is hereby assessed a  
4 penalty of 20% of the applicable recovery amount (i.e., \$721,323) pursuant to ERISA § 502(l), 29 U.S.C.  
5 § 1132(l). The Secretary shall accept, as full satisfaction of the assessed penalty, payment by PCN, of a  
6 penalty of \$72,132 to the United States Department of Labor by forwarding a check or other instrument  
7 in the appropriate amount, within five calendar days of full payment of the amount set forth in paragraph  
8 2, to: U.S. Department of Labor, ERISA Civil Penalty, P.O. Box 70942, Charlotte, North Carolina,  
9 28272-0942. The check or other instrument shall be made payable to the United States Department of  
10 Labor and shall reference EBSA Case No. 70-011937(48).

11           5.       PCN agrees to the following disclosures and provisions, as applicable:

- 12           (a) PCN shall disclose to the Payer the source and nature of all compensation received by  
13 PCN for the provision of pharmacy benefit management services, and shall disclose  
14 the source and nature of network participation fees from contracting pharmacies  
15 (including a description of how such fees are currently calculated and a statement that  
16 the amounts of such fees from contracting pharmacies related to the Payer or the  
17 Payer's plan is available upon request) and remuneration from drug manufacturers for  
18 its own account for items provided or services rendered to drug manufacturers;
- 19           (b) If the amount to be paid by the Payer to PCN for pharmacy drug claims is greater than  
20 the amount PCN transmits to the pharmacy for the drug claims, PCN shall disclose to  
21 the Payer that arrangement and that PCN will retain the difference as compensation;
- 22           (c) If the plan requires participants or beneficiaries to pay a copayment for pharmacy drug  
23 claims that is based, in whole or in part, on a percentage of any amount other than the  
24 amount the pharmacy actually receives, PCN shall disclose that arrangement to the  
25 Payer;
- 26           (d) To the extent that the rebates owed to the Payer are based on a percentage of rebate  
27 amounts, and if such percentage is applied to the amount received by PCN net of any  
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1 costs incurred by PCN in the collection of such rebate, PCN shall disclose to the Payer  
2 the basis for calculating the rebate paid to Payer and the nature of such costs;

3 (e) PCN shall provide to the Payer the following: (i) semimonthly invoices that disclose  
4 and identify the amounts of the monies transferred by the Payer or plan directly or  
5 indirectly to PCN for payment of pharmacy drug claims and for pharmacy benefit  
6 management services rendered; (ii) quarterly reconciliations of the monies received  
7 by pharmacies directly or indirectly from PCN for payment of pharmacy drug claims  
8 attributable to the Payer or plan compared to the amounts transferred by the Payer or  
9 the plan to PCN for such claims showing the total differential; and (iii) quarterly  
10 invoices that disclose and identify rebate amounts received by PCN attributable to  
11 drugs used by the participants or beneficiaries of the Payer's plan; and

12 (f) A Payer or plan may, upon request, annually and upon reasonable notice, audit PCN's  
13 books, accounts, records and contracts related to the provision of pharmacy benefit  
14 management services to the Payer or plan as necessary to confirm that PCN is  
15 performing pharmacy benefit management services as required by the administrative  
16 services agreement with Payer, including without limitation, audit of utilization  
17 information relating to the Payer or plan; payments to pharmacies for drug claims  
18 identified by National Drug Code registration number attributable to the Payer or plan;  
19 and amounts of rebates, discounts and similar payments attributable to the Payer or  
20 plan. In addition, a Payer or plan may, upon request, annually and upon reasonable  
21 notice, audit PCN's pharmacy contracts or other arrangements as necessary to  
22 determine amounts of network participation fees from contracting pharmacies related  
23 to the Payer or plan. PCN may designate provided information as confidential, in  
24 which case it may not be disclosed by the requesting party or any other person or  
25 entity without the consent of PCN, unless ordered by a court for good cause shown.

26 6. Within thirty (30) calendar days of entry of this Consent Order, PCN shall send to each  
27 Affected Plan an amendment to the administrative services agreement between PCN and such Payer that  
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1 shall include the disclosures and provisions set forth in paragraph 5, including its subparagraphs, as  
2 applicable.

3 7. All future administrative services agreements with Payers shall include the disclosures  
4 and provisions set forth in paragraph 5, including its subparagraphs, as applicable.

5 8. Within thirty (30) calendar days of entry of this Consent Order, PCN shall send a notice to  
6 each Payer, other than those Payers maintaining Affected Plans, including the disclosures and provisions  
7 set forth in paragraph 5, including its subparagraphs, as applicable, and an offer to amend the  
8 administrative services agreement currently in effect with the Payer to include such disclosures and  
9 provisions, as applicable, to the extent the Payer agrees.

10 9. All disclosures required by this Consent Order shall be in writing.

11 10. The Secretary hereby waives, releases and forever discharges PCN, its affiliates, former  
12 shareholder, successors and assigns, and its present and former directors, officers, employees (including,  
13 but not limited to, Dr. John Skahl and Lilli DuVal), attorneys and agents, both individually and in their  
14 representative capacities from any and all claims asserted in the Complaint in this Action and any and all  
15 claims, damages, losses, costs, penalties, causes of action and disputes of any kind or nature arising from  
16 the acts, omissions, facts or occurrences asserted in the Complaint in this Action and that could have been  
17 alleged at the time of filing, except as provided herein. The Secretary expressly does not release or  
18 dismiss any criminal claims or claims of any state or other federal agency that have been or may be  
19 asserted against PCN.

20 11. PCN expressly waives any and all claims of whatsoever nature which it, jointly or  
21 severally, has or may have against the Secretary, or any of her officers, agents, employees, or  
22 representatives, arising out of or in connection with the filing of this Action, or any other proceedings and  
23 investigations incident thereto, including but not limited to claims under the Equal Access to Justice Act,  
24 5 U.S.C. § 504, 28 U.S.C. § 2412.

25 12. Neither the fact nor the terms of this Consent Order shall be offered or received in  
26 evidence in any action or proceeding for any purpose, including as evidence that PCN was a fiduciary or  
27 committed a fiduciary breach, except (1) an action or proceeding arising under this Consent Order or  
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1 (2) an action or proceeding where the payment made pursuant to this Consent Order on a particular claim  
2 may serve as an offset to recovery.

3 13. This Consent Order is binding upon the United States Department of Labor and PCN and  
4 its successors, and is not binding on any other agency, individual, or entity.

5 14. Each party to this Consent Order shall bear his, her or its own costs, expenses, and  
6 attorneys' fees incurred in connection with this Action and all matters relating thereto. This paragraph  
7 shall not affect any party's entitlement to advancement or indemnification with respect to such costs,  
8 expenses, or attorneys fees under any applicable insurance policy or policies.

9 15. The Court shall retain jurisdiction of this matter for purposes of enforcing this Consent  
10 Order.

11 16. By signing their names to this Consent Order, the parties represent that they are informed  
12 of, understand the effect and purpose of, and agree to this Consent Order.

13 17. This Consent Order may be executed in counterparts, each of which shall be deemed to be  
14 an original, but all of which, taken together, shall constitute one and the same instrument.

15 18. The Court directs the entry of this Consent Order as a final order.

16 IT IS SO ORDERED.

17 /s/Lawrence K. Karlton  
Lawrence K. Karlton  
Senior Judge

18 AGREED:  
19

20  
21 /s/ Jonathan Friedman  
(original signature maintained by attorney)  
22 JONATHAN FRIEDMAN  
23 Chief Legal Officer

/s/ Maureen E. Corcoran  
(as authorized on May 12, 2006)  
24 MAUREEN E. CORCORAN  
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San Francisco, CA 94111

25 PHARMACEUTICAL CARE NETWORK COUNSEL FOR PHARMACEUTICAL CARE  
26 NETWORK



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