

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION

EUFAULA DRUGS, INC. and SCOTT-
COOK, INC.

Plaintiffs,

v.

TDI MANAGED CARE SERVICES, INC.
AND ECKERD HEALTH SERVICES,

Defendants.

Civil Action No. 2:05-CV-00293-MEF

Class Action

STIPULATION OF SETTLEMENT

The undersigned parties (collectively, the “Parties,” and each separately a “Party”) to the above-captioned action (the “Action”), by and through their attorneys, have entered into the following Stipulation of Settlement (this “Settlement Agreement”), subject to the approval of this Court.

RECITALS

WHEREAS:

A. On February 14, 2005, plaintiff Eufaula Drugs, Inc. (“Eufaula Drugs”) filed the initial complaint (the “Complaint”) in the above-captioned civil action (the “Action”) on behalf of itself and all others similarly situated against defendants TDI Managed Care Services, Inc. and Eckerd Health Services (together, “EHS”), claiming that EHS failed to comply with provisions of EHS’s standard pharmacy provider contract (the “EHS Agreement”) governing reimbursement of brand name drugs; and

B. On July 11, 2007, Eufaula Drugs filed an amended complaint (the “Amended Complaint”) joining Scott-Cook, Inc. (“Scott-Cook”) as a named plaintiff in the Action; and

C. On January 25, 2008, plaintiffs Eufaula Drugs and Scott-Cook (together “Plaintiffs”) filed a motion pursuant to Fed. R. Civ. P. 23(b)(3) to certify a plaintiff class in the Action; and

D. By order dated June 25, 2008, this Court certified the following class in this Action:

All pharmacies and/or other similar entities, who entered into a contract which provided for reimbursement of prescriptions according to a formula which included the Average Wholesale Price (“AWP”) with Defendant and/or its predecessors in interest, their successors in interest, and/or their subsidiaries and/or their related entities from February 14, 1999 to October 23, 2003, inclusive.

See Memorandum Opinion and Order dated June 25, 2008 [Docket No. 155] at 20; and

E. Plaintiffs and EHS have engaged in negotiations that have culminated in an agreement to settle and resolve the claims of the Class in the Action, as detailed herein; and

F. Based upon their investigation and the pretrial discovery and motion practice in the Action, counsel for Plaintiffs and the Class have concluded that the terms and conditions of this Settlement Agreement are fair, reasonable and adequate as to Plaintiffs and the Class, and in the best interests of Plaintiffs and the Class, after considering (i) the substantial benefits that Plaintiffs and the Class Members will receive from settlement of the Action, (ii) the attendant risks of continued litigation and the uncertainty of the outcome of the Action, and (iii) the desirability of permitting a settlement to be consummated as provided by the terms of this Settlement Agreement; and

G. EHS has at all times denied, and continues to deny, all allegations whatsoever of any wrongdoing, negligence, fault, or liability, and asserts that its actions have been lawful and proper in all respects and in compliance with the EHS Agreement, but in order to avoid the uncertainties, risks and expense of further litigation, EHS has agreed to settle and terminate all existing or potential claims against it pursuant to the terms and provisions of this Settlement Agreement; provided, however, that in agreeing to settle this Action, EHS in no way acknowledges any wrongdoing, negligence, fault or liability to the Plaintiffs or class members, and no inference of any such liability is to be drawn from the participation in this settlement by EHS, which has raised a number of affirmative defenses to the claims asserted in the Action and asserts its intention, absent a settlement, to continue to seek decertification of the Class, to dispute that a class should be certified for trial, and otherwise to continue with a vigorous defense and proceed to further litigation of this Action;

NOW, THEREFORE, IT IS STIPULATED AND AGREED, by and among the Parties, through their respective attorneys, subject to approval of the Court, and pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, that in consideration of the benefits flowing to the Parties from the settlement, all Settled Claims as against all Released Parties, as hereinafter defined, shall be compromised, settled, released and dismissed with prejudice, upon and subject to the following terms and conditions:

DEFINITIONS

1. **Definitions:** As used in this Settlement Agreement, the following terms shall have the following meanings:

- (a) “Action” has the meaning set forth in the introductory paragraph of this Settlement Agreement.

- (b) “Amended Complaint” has the meaning set forth in paragraph B of the Recitals above.
- (c) “Claim Verification Form” means a pre-printed form, to be delivered contemporaneously with the Settlement Notice, which is to be sent to every Class Member that has a Reimbursement Difference greater than \$0.00, which form will include the Class Member’s name, address and Claim Amount, in substantially the form attached hereto as Exhibit A.
- (d) “Class” means all pharmacies falling within the Class definition set forth in paragraph D of the Recitals above, with the exception of those pharmacies that have exercised their right to opt out of the Class, which pharmacies are listed on Exhibit B to this Settlement Agreement.
- (e) “Class Counsel” means Robert G. Methvin, Jr. and James M. Terrell of McCallum, Methvin & Terrell, P.C. and Kenneth E. Riley of Farris, Riley & Pitt, LLP.
- (f) “Class Counsel Fees and Expenses” means the amount awarded to Class Counsel in the Order and Final Judgment in payment of their attorneys’ fees and expenses as provided in paragraphs 8 and 10 of this Settlement Agreement.
- (g) “Class Member” means a member of the Class.
- (h) “Class Representative Awards” means any amount awarded to Plaintiffs in the Order and Final Judgment pursuant to paragraphs 9 and 10 of this Settlement Agreement.
- (i) “Complaint” has the meaning set forth in paragraph A of the Recitals above.
- (j) “Effective Date” has the meaning set forth in paragraph 23 below.

- (k) “EHS” has the meaning set forth in paragraph A of the Recitals above.
- (l) “EHS Agreement” has the meaning set forth in paragraph A of the Recitals above.
- (m) “Estimated Claim Amount” means an estimate for purposes of a Class Member’s Claim Verification Form of the expected cash distribution that the Class Member will be entitled to receive under the Settlement Agreement, as calculated pursuant to paragraph 14 of this Settlement Agreement.
- (n) “Eufaula Drugs” has the meaning set forth in paragraph A of the Recitals above.
- (o) “Final,” with respect to the Order and Final Judgment, means: (i) if no appeal is filed, the expiration date of the time for filing or noticing of any appeal from the Court’s Order and Final Judgment approving the Settlement Agreement substantially in the form of Exhibit C to this Settlement Agreement; or (ii) the date of final dismissal of any appeal from the Order and Final Judgment, or the final dismissal of any proceeding on certiorari to review the Order and Final Judgment; or (iii) the date of final affirmance of an appeal of the Order and Final Judgment, the expiration of the time to file a petition for a writ of certiorari, or the denial of a writ of certiorari to review the Order and Final Judgment, and, if certiorari is granted, the date of final affirmance of the Order and Final Judgment following review pursuant to that grant.
- (p) “Final Claim Amount” means the cash distribution that a Class Member that has timely returned a valid Settlement Claim to the Settlement Administrator is entitled to receive under the Settlement, as calculated pursuant to paragraph 14 of this Settlement Agreement.
- (q) “Large Claims Class Members” has the meaning set forth in paragraph 14 below.

- (r) “Large Claims Sub-Group” has the meaning set forth in paragraph 13 below.
- (s) “Large Class Claims Amount” has the meaning set forth in paragraph 14 below.
- (t) “Net Class Settlement Amount” has the meaning set forth in paragraph 11 below.
- (u) “No Recovery Sub-Group” has the meaning set forth in paragraph 13 below.
- (v) “Order and Final Judgment” means the proposed order to be entered approving the Settlement substantially in the form attached hereto as Exhibit C.
- (w) “Order for Notice and Hearing” means the proposed order establishing the settlement approval hearing date and directing notice thereof to the Class, substantially in the form attached hereto as Exhibit D.
- (x) “Parties” has the meaning set forth in the introductory paragraph of this Settlement Agreement.
- (y) “Party” has the meaning set forth in the introductory paragraph of this Settlement Agreement.
- (z) “Plaintiffs” has the meaning set forth in paragraph C of the Recitals above.
- (aa) “Reimbursement Difference” means a Class Member’s reimbursement difference calculated using the methodology for calculation of class damages established by Laura Stamm of Analysis Group, Inc.
- (bb) “Released Parties” means EHS and its past and present shareholders, principals, parent corporations, affiliates, subsidiaries, predecessors and successors, and each of their past and present officers, directors, owners, shareholders, principals, members, partners, employees, agents, attorneys, insurers and assigns of any of the foregoing, and all persons acting for them, past or present.
- (cc) “Scott-Cook” has the meaning set forth in paragraph B of the Recitals above.

- (dd) “Settled Claims” means any and all claims in law or in equity and any and all claims, demands, actions, causes of action, obligations, damages, liabilities, loss, restitution, fines, costs, penalties or expenses including attorneys’ fees of any kind or nature whatsoever, past or present, ascertained or unascertained, whether or not known, suspected or claimed from the beginning of time through and including the Effective Date arising out of or in any way related to the claims that have been or could have been asserted in the Action by the Class Members or any of them against any of the Released Parties arising out of or in any way relating to reimbursement of brand name prescription drug claims under Class Members’ contracts with EHS.
- (ee) “Settlement” means the mutually agreed upon undertakings, terms and conditions contemplated by this Settlement Agreement.
- (ff) “Settlement Agreement” has the meaning set forth in the introductory paragraph above.
- (gg) “Settlement Administration Costs” means costs associated with (i) the delivery of the Settlement Notice to the Class; (ii) the processing of Settlement Claims submitted by Class Members and (iii) the calculation and payment of Settlement Distributions to Class Members including the fees and expenses of the Settlement Administrator. These notice and administration costs include the reasonable costs and expenses associated with identifying Class Members and effecting mailing of notice to the Class, and the administration of the Settlement, including without limitation, the actual costs of printing and mailing the notice, communication with Class Members, administrative expenses incurred, and fees charged by the

Settlement Administrator in connection with delivering the Settlement Notice and Claims Forms, processing the Class Members' allocations and distributing the proceeds from the Net Class Settlement Amount to Class Members that have filed timely Settlement Claims. Settlement Administration Costs shall not include any costs, fees or expenses incurred by Plaintiffs, Class Members, the Class or Class Counsel.

- (hh) "Settlement Administrator" means Administar Services Group LLC.
- (ii) "Settlement Agreement" means this document and all attached Exhibits.
- (jj) "Settlement Claim" has the meaning set forth in paragraph 12 of this Settlement Agreement.
- (kk) "Settlement Claims Amount" has the meaning set forth in paragraph 17 below.
- (ll) "Settlement Consideration" means the Total Class Settlement Amount and the Settlement Administration Costs.
- (mm) "Settlement Notice" means the Notice of Proposed Settlement of Class Action, Settlement Fairness Hearing and Right to Appear, which is to be sent to Class Members substantially in the forms attached hereto as Exhibit E.
- (nn) "Small Claims Class Members" has the meaning set forth in paragraph 14 below.
- (oo) "Small Claims Sub-Group" has the meaning set forth in paragraph 13 below.
- (pp) "Small Class Claims Amount" has the meaning set forth in paragraph 14 below.
- (qq) "Termination Notice" has the meaning set forth in paragraph 24 below.
- (rr) "Total Class Settlement Amount" means a sum equal to Two Million Eight Hundred Thousand Dollars (\$2,800,000.00), from which shall be paid (i) all distributions to be made to Class Members pursuant to this Settlement Agreement

and (ii) any Class Counsel Fees and Expenses and Class Representative Incentive Awards that are approved by the Court.

SETTLEMENT CONSIDERATION

2. **Settlement Consideration:** In consideration for the Settlement of the Action on the terms and conditions set forth in this Settlement Agreement, EHS agrees to pay the Settlement Consideration. No part of the Settlement Consideration constitutes (i) a fine or penalty under any law or (ii) a payment to settle any actual or potential liability for a fine or penalty under any law.

3. **EHS's Payment Obligations To The Class And Class Counsel:** The Total Class Settlement Amount shall constitute the sole and entire obligation of EHS to make any payments to or for the benefit of the Class and/or Class Counsel in connection with the Settlement.

ADMINISTRATION OF THE SETTLEMENT

4. **The Settlement Administrator:** The Settlement Administrator shall administer the Settlement subject to the jurisdiction of the Court. EHS shall pay all Settlement Administration Costs, and produce information with respect to the identification of Class Members from EHS's records; provided, however, that EHS shall be entitled to be reimbursed for all Settlement Administration Costs as provided under this Settlement Agreement. EHS and its counsel shall allow Class Counsel access to all information regarding the administration of the Settlement.

5. **Delivery Of Settlement Notice To The Class:** The Settlement Administrator shall cause the Settlement Notice to be delivered to the Class Members when and as required

under the Order for Notice and Hearing. The Settlement Administrator will also include a Claim Verification Form with each Settlement Notice that is to be delivered to each of the Large Claims Class Members and the Small Claims Class Members.

6. **Delivery Of Required Notices To Governmental Officials:** No later than ten (10) days after the date on which the Parties file the Order for Notice and Hearing and this Settlement Agreement with the Court, EHS shall serve copies of the notice and papers specified in 28 U.S.C. § 1715(b) upon:

- (a) The appropriate State official (as that term is defined in 28 U.S.C. § 1715(a)(2)) of every state in which a Class Member resides; and
- (b) The Attorney General of the United States of America.

7. **Supervision Of Settlement Administrator:** EHS's counsel shall be responsible for supervising the administration of the Settlement, including the delivery of the Settlement Notice and Claim Verification Forms, and disbursement of the Net Class Settlement Amount, subject to review and consent by Class Counsel.

CLASS COUNSEL FEES AND EXPENSES AND CLASS REPRESENTATIVE AWARDS

8. **Application For Class Counsel Fees And Expenses:**
- (a) On or before the deadline for delivery of the Settlement Notice set forth in the Order for Notice and Hearing, Class Counsel will apply to the Court for an award of Class Counsel Fees and Expenses consisting of (i) a fee award of 33 1/3 % of the Total Class Settlement Amount plus (ii) out-of-pocket litigation expenses not to exceed One Hundred Thousand Dollars (\$100,000). EHS will not interfere with, object to, or negatively comment upon Class Counsel's fee and expense reimbursement request.

- (b) The Order and Final Judgment shall specify the total amount, if any, to be awarded to Class Counsel for Class Counsel Fees and Expenses. EHS agrees not to seek appellate review of the award of Class Counsel Fees and Expenses specified in the Order and Final Judgment so long as the amount so awarded is less than or equal to the request for Class Counsel Fees and Expenses set forth in sub-paragraph (a) of this paragraph 8.

9. **Application For Class Representative Awards:** Class Counsel will apply to the Court for Class Representative Awards of Fifteen Thousand Dollars (\$15,000) each for Eufaula Drugs and Scott-Cook, the class representative Plaintiffs herein. EHS will not interfere with, object to, or negatively comment upon Class Counsel's application for such awards. The Order and Final Judgment shall specify the total amount, if any, to be awarded to Plaintiffs as Class Representative Award. EHS agrees not to seek appellate review of the Class Representative Award specified for either Plaintiff in the Order and Final Judgment so long as the amount so awarded to such Plaintiff is less than or equal to Fifteen Thousand Dollars (\$15,000).

10. **Payment of Class Counsel Fees and Expenses and Class Representative Awards:** EHS shall pay any amounts approved by the Court for Class Counsel Fees and Expenses and Class Representative Awards to Class Counsel within ten (10) business days of the Effective Date. To the extent that the Order and Final Judgment or any subsequent appeals thereof award Class Counsel Fees and Expenses or Class Representative Awards in amounts that are less than the requests of Class Counsel set forth in paragraphs 8 and 9 of this Settlement Agreement, neither the Class, nor EHS, nor any of the Released Parties shall have any obligation or liability to compensate Class Counsel or Plaintiffs for the amount by which the amount(s) requested in this Settlement Agreement exceed the amount(s) awarded by the Court.

DISPOSITION OF NET CLASS SETTLEMENT AMOUNT

11. **The Net Class Settlement Amount:** The “Net Class Settlement Amount” shall equal the Total Class Settlement Amount minus (i) the Court-awarded Class Counsel Fees and Expenses and (ii) any Court-awarded Class Representative Awards. EHS will not be obligated to pay or disburse any portion of the Net Class Settlement Amount prior to the time specified in paragraph 17 of this Settlement Agreement.

12. **Submission Of Settlement Claims By Class Members:** Every Class Member with a Reimbursement Difference greater than \$0.00 will receive with its copy of the Settlement Notice a Claim Verification Form that specifies the Estimated Claim Amount that the Class Member is entitled to receive under the Settlement. In order to receive a distribution of cash pursuant to the Settlement, a Class Member must return a signed Claim Verification Form (a “Settlement Claim”) to the Settlement Administrator within forty-five (45) days of the date on which the Settlement Notice is mailed to Class Members pursuant to paragraph 15 of this Settlement Agreement. EHS will be entitled to retain any portion of the Net Class Settlement Amount that is not claimed by means of a timely signed Settlement Claim, provided that any amounts so retained by EHS will first be used to reimburse EHS for its payment of Settlement Administration Costs.

13. **Sub-Groups For Purposes Of Distribution Of The Net Class Settlement Amount:** For ease of administration and to avoid the expense of processing and mailing small checks to Class Members, the Class will be divided into three subgroups for purposes of distribution of the Net Class Settlement Amount:

- (a) All Class members with a Reimbursement Difference of \$0.00 or less will be included in the “No Recovery Sub-Group.”

- (b) All Class Members that have a Reimbursement Difference greater than \$0.00 but less than or equal to \$15.00 will be included in “Small Claims Sub-Group.”
- (c) All Class Members that have a Reimbursement Difference greater than \$15.00 will be included in the “Large Claims Sub-Group.”

The Net Settlement Amount will be distributed to members of the Small Claims Sub-Group and the Large Claims Sub-Group as set forth in paragraph 17 below. Class Members in the No Recovery Sub-Group are not entitled to receive any cash distribution under the Settlement.

14. **Determination Of Amounts To Be Distributed To Sub-Groups:** The Net Class Settlement Amount will be divided between the Class Members in the Small Claims Sub-Group (the “Small Claims Class Members”) and the Class Members in the Large Claims Sub-Group (the “Large Claims Class Members”) as follows:

- (a) Subject to the requirement to submit a timely Settlement Claim pursuant to paragraph 12 of this Settlement Agreement, Small Claims Class Members will each be entitled to a fixed Claim Amount of \$5. The portion of the Net Class Settlement Amount that is required to pay \$5 to each of the Small Claims Class Members will constitute the “Small Class Claims Amount.”
- (b) The balance of the Net Class Claims remaining after deduction of the Small Class Claims Amount will be the “Large Class Claims Amount.” Subject to the requirement to submit a timely Settlement Claim pursuant to paragraph 12 of this Settlement Agreement, each Large Claims Class Member will each be entitled to a Claim Amount that is equal to:

The Reimbursement Difference for that Large Claims Class Member
divided by

The sum of all Reimbursement Differences for all Large Claims Class Members
multiplied by
The Large Class Claims Amount.

15. **Determination Of Sub-Group Membership And Estimation Of Amounts To Be Distributed To Class Members:** No later than five (5) business days prior to the deadline for delivery of the Settlement Notice set forth in the Order for Notice and Hearing, EHS, with the assistance of Laura Stamm of Analysis Group, will provide to the Settlement Administrator and Class Counsel a list containing the names, addresses and Estimated Claim Amounts for all Class Members. The Estimated Claim Amount for each Class Member will be calculated using the calculation methodology set forth in paragraph 14 of this Settlement Agreement; provided, however, that the Settlement Administrator will assume for purposes of the Estimated Claim Amount calculation that the Net Class Settlement Amount equals the amount that would result in the event that the Court awards Class Counsel Fees and Expenses and Class Representative Awards in the full amounts requested by Class Counsel. The Settlement Administrator will utilize the information contained in the list provided by EHS and Analysis Group pursuant to this paragraph 15 to prepare the Claim Verification Forms to be sent to the Small Claims Class Members and the Large Claims Class Members. Claim Verification Forms will not be prepared for or delivered to Class Members in the No Recovery Sub-Group.

16. **Return And Processing Of Settlement Claims:** Small Claims Class Members and Large Claims Class Members will be instructed to return signed Settlement Claims to the Settlement Administrator if they wish to receive a distribution of cash under the Settlement. The Settlement Administrator will receive and keep the Settlement Claims and maintain a record of

all Class Members that have timely returned signed Settlement Claims and are entitled to distribution of proceeds from the Net Class Settlement Amount.

17. **Payment Of Final Claim Amounts:** Payment of Class Members' Final Claim Amounts will occur after the Effective Date. The procedure for effectuating payments to Class Members will be as follows:

- (a) Within five (5) business days after the Effective Date, the Settlement Administrator will calculate the Final Claim Amount for every Class Member that has timely returned a signed Settlement Claim to the Settlement Administrator. The Final Claim Amount for each Class Member will be calculated using the calculation methodologies set forth in paragraph 14 of this Settlement Agreement.
- (b) Within ten (10) business days after the Effective Date, the Settlement Administrator shall certify to Class Counsel and EHS the total amount of all Settlement Claims made by Class Members (the "Settlement Claims Amount").
- (c) Within fifteen (15) business days after the date on which the Settlement Administrator certifies the Settlement Claims Amount to Class Counsel and EHS, EHS will pay the Settlement Claims Amount to the Settlement Administrator, which payment will discharge in full all payment obligations of EHS to the Class.
- (d) No later than ninety (90) days after the Effective Date, the Settlement Administrator will deliver to each Class Member that has timely submitted a signed Settlement Claim, at the address indicated on such Settlement Claim, a check for that Class Member's Final Claim Amount.

RELEASE AND COMPROMISE OF DISPUTED CLAIMS

18. **Release of Settled Claims:** Upon fulfillment by EHS of its obligations under this Settlement Agreement, Plaintiffs and Class Members, on behalf of themselves and their past or present respective officers, directors, owners, shareholders, principals, affiliates, subsidiaries, parent corporations, members, partners, employees, agents, attorneys and all persons acting for them, past or present, hereby fully and forever release and discharge the Released Parties of and from each and every Settled Claim, and do release and forever discharge, and shall forever be enjoined from prosecuting, any Settled Claims against any of the Released Parties. With respect to the claims released in this paragraph 18, Plaintiffs and all Class Members agree that they are expressly waiving and relinquishing to the fullest extent permitted by law:

- (a) The provisions rights and benefits conferred by Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

and

- (b) Any law of any state of the United States, federal law or principle of common law which is similar, comparable or equivalent to Section 1542 of the California Civil Code.

19. **Scope of Settlement:** The obligations incurred pursuant to this Settlement Agreement shall be in full and final disposition of the Action and any and all Settled Claims as against all Released Parties.

- 20. **Effect of Settlement As To Class Members' Claims:**

- (a) On the Effective Date, this Settlement shall be deemed final and conclusive against all Class Members. Whether or not a Class Member submits a Settlement Claim or cashes or otherwise negotiates a check for a share of the Net Class Settlement Amount, if any, each Class Member shall be bound by all of the terms of this Settlement Agreement and the Settlement, including the terms of the Order and Final Judgment to be entered in the Action and the releases provided for herein.
- (b) The failure of any Class Member to claim or obtain any relief made available under this Settlement Agreement shall not affect the validity, scope, or enforcement of the releases herein, and all Class Members shall remain bound by said releases whether or not they submit a Settlement Claim pursuant to paragraph 16 of this Settlement Agreement. As to any Class Member that otherwise would be entitled to submit a Settlement Claim under this Settlement Agreement and which for any reason fails to submit a timely Settlement Claim, all rights of such Class Member to receive a cash distribution in this Action or under this Settlement Agreement shall lapse and shall be deemed voluntarily, irrevocably, and permanently waived and forfeited. EHS shall not be required to remit any additional consideration to any Class Members following or on account of such forfeiture by any Class Member.
- (c) As part and parcel of this Settlement Agreement, all Class Members will be permanently barred and enjoined from filing, commencing, prosecuting, intervening in, participating in as class members or otherwise, or receiving any benefits or other relief from any other lawsuit in any state, territorial or federal

court, or any arbitration or administrative or regulatory or other proceeding in any jurisdiction, which asserts claims based on or in any way related to the Settled Claims, and the Court shall retain exclusive continuing jurisdiction to enforce said injunction.

- (d) Plaintiffs and all Class Members hereby expressly agree that all provisions of this paragraph 20 together and separately constitute essential terms of this Settlement Agreement.

OBTAINING JUDICIAL APPROVAL OF THE SETTLEMENT

21. **Motion For Preliminary Approval:** Promptly after this Settlement Agreement has been fully executed, Class Counsel and counsel for EHS shall jointly apply to the Court for entry of an Order for Notice and Hearing, substantially in the form annexed to this Settlement Agreement as Exhibit D.

22. **Terms Of Order And Final Judgment:** If the Settlement contemplated by this Settlement Agreement is approved by the Court, counsel for the Parties shall request that the Court enter an Order and Final Judgment substantially in the form annexed hereto as Exhibit C.

CONDITIONS FOR FINAL SETTLEMENT

23. **Effective Date:** The “Effective Date” of Settlement shall be the date when all the following shall have occurred:

- (a) Expiration of the period specified under 28 U.S.C. § 1715(d);
- (b) Approval of the Settlement by the Court following notice to the Class and a hearing, as prescribed by Rule 23(e) of the Federal Rules of Civil Procedure;

- (c) An Order and Final Judgment, substantially in the form set forth in Exhibit C annexed hereto, has been entered by the Court has become Final; and
- (d) The time within which any Party may exercise its termination rights under paragraphs 24 and 25 of this Settlement Agreement has expired.

24. **Termination Upon Rejection or Modification Of The Settlement:** Either Plaintiffs or EHS may terminate the Settlement and this Settlement Agreement by providing written notice of their election to do so (“Termination Notice”) to all other Parties within ten (10) business days of the occurrence of any of the following:

- (a) The refusal of the Court to enter the Order for Notice and Hearing in any material respect;
- (b) The refusal of the Court to approve this Settlement Agreement or any material part of it (other than any adjustment to the Class Counsel Fees and Expenses or Class Representative Awards that might be ordered in the discretion of the Court);
- (c) The refusal of the Court to enter the Order and Final Judgment in any material respect; or
- (d) The modification or reversal of the Order and Final Judgment in any material respect by any appellate court of competent jurisdiction (other than any adjustment to Class Counsel Fees and Expenses or Class Representative Awards that might be ordered in the discretion of the Court).

25. **Termination Based On Requests For Exclusion:** In the event that any or all Class Members are afforded the right to opt out of the Class pursuant to Fed. R. Civ. P. 23(e)(3) and the aggregated settlement shares of any Class Members who request exclusion from the Class equal or exceed 10% of the Total Class Settlement Amount, EHS shall have the right to

terminate the Settlement and this Settlement Agreement by providing a written Termination Notice to Plaintiffs within twenty (20) business days of the date on which the period for requesting exclusion from the Class expires.

26. **Effect Of Termination:** Except as otherwise provided herein, in the event the Settlement is terminated pursuant to paragraphs 24 and 25 of this Settlement Agreement, then the Parties shall be deemed to have reverted to their respective status in the Action immediately prior to the execution of this Settlement Agreement and, except as otherwise expressly provided, the Parties shall proceed in all respects as if this Settlement Agreement and any related orders had not been entered. The Parties to this Settlement Agreement and their counsel shall not use any information received, shared, or exchanged in connection with the negotiations relating to this Settlement Agreement.

MISCELLANEOUS PROVISIONS

27. **No Admission Of Wrongdoing:** This Settlement, whether or not consummated, and any proceedings taken pursuant to it:

- (a) Shall not be offered or received against EHS as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by EHS with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action in any litigation, or of any liability, negligence, fault, or wrongdoing of EHS;

- (b) Shall not be offered or received against EHS as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by EHS;
- (c) Shall not be offered or received against EHS as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against EHS, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Settlement; provided, however, that if this Settlement is approved by the Court, EHS may refer to it to effectuate the liability protection granted them hereunder;
- (d) Shall not be offered or received against EHS as evidence of a presumption, concession or admission that the Class is appropriately certified for trial;
- (e) Shall not be construed against EHS as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; and
- (f) Shall not be construed as or received in evidence as an admission, concession or presumption against Plaintiffs or any of the Class Members that any of their claims are without merit, or that any defense asserted by EHS has any merit, or that damages recoverable under the Complaint would not have exceeded the Total Class Settlement Amount.

This Settlement Agreement shall in no event be construed or deemed to be evidence of or an admission or concession on the part of EHS with respect to any claim or of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that EHS has asserted.

The Parties to this Settlement Agreement recognize that the litigation has been filed by Plaintiffs and defended by EHS in good faith and with adequate basis in fact under Federal Rule of Civil Procedure 11, that the litigation is being voluntarily settled after advice of counsel, and that the terms of the Settlement are fair, adequate and reasonable. This Settlement Agreement shall not be construed or deemed to be a concession by any Plaintiff of any infirmity in the claims asserted in the Action.

28. **Exhibits Incorporated By Reference:** All of the exhibits attached to this Settlement Agreement are hereby incorporated by reference as though fully set forth herein.

29. **Authorization:** Each Party represents and warrants that execution and delivery of this Settlement Agreement have been duly authorized by all necessary actions and that the execution and delivery of this Agreement constitutes a legal, valid and binding obligation of that Party. The persons signing this Settlement Agreement represent and warrant by their signatures that they have authority to sign the Settlement Agreement on behalf of the Party for whom they are signing.

30. **Parties Bound:** This Settlement Agreement shall be binding upon and inure to the benefit of EHS and the Class Members and their respective present and former officers, directors and employees, shareholders, any parent or subsidiary corporations of EHS and the Class Members, and their respective heirs, successors, assigns and transferees.

31. **Representation By Counsel:** Each Party has been represented in the negotiation of this Settlement Agreement by independent counsel and has had the Settlement Agreement fully explained by its own counsel and are aware that the Settlement set forth in the Settlement Agreement (i) provides for payment of Settlement Consideration to and on behalf of the Class

only as set forth in paragraphs 2, 3 and 10-17 of this Settlement Agreement and (ii) will terminate any and all rights of Plaintiffs and the Class Members to pursue the Settled Claims.

32. **No Reliance; Independent Investigation:** Each Party in entering into this Settlement Agreement relies upon its own investigation and judgment in regard to all matters herein contained and has not relied on any representations made by other Parties. This Settlement Agreement is made and entered into by each of the Parties of its own volition and each of the Parties warrants that this Settlement Agreement was made and entered into free of any duress, coercion, or undue influence from any source whatsoever.

33. **Jointly Drafted:** Each Party has participated in the drafting and negotiation of this Settlement Agreement. For all purposes, this Settlement Agreement shall be deemed to have been drafted jointly by the Parties. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Settlement Agreement against the party that drafted it has no application and is expressly waived. The provisions of this Settlement Agreement shall be interpreted in a reasonable manner so as to effectuate the intent of the Parties, and no rule of strict construction shall be applied against any Party to this Agreement.

34. **Entire Agreement; Amendments; Construction With Other Agreements:** This Settlement Agreement constitutes the only existing and binding agreement between the Parties concerning the Settlement and supersedes any prior oral or written agreements concerning the Settlement. The Parties acknowledge that there are no other warranties, promises, assurances or representations of any kind, express or implied, upon which the Parties have relied in entering into this Settlement Agreement, unless expressly set forth herein. This

Settlement Agreement, including the provisions of this paragraph 34, may not be modified, amended or altered in any way except by written agreement signed by each of the Parties.

35. **Counterparts:** This Settlement Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any of the Parties may execute this Settlement Agreement by signing any such counterpart.

36. **Effect of Headings:** The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

37. **Settlement Subject To Judicial Supervision and Approval:** The administration and consummation of the Settlement as embodied in this Settlement Agreement shall be under the authority of the Court and the Court shall retain jurisdiction for the purpose of entering orders providing for awards of Class Counsel Fees and Expenses, Class Representative Awards to Plaintiffs and enforcing the terms of this Settlement Agreement.

38. **Non-Waiver:** The waiver by one Party of any breach of this Settlement Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement Agreement.

39. **Governing Law:** The construction, interpretation, operation, effect and validity of this Settlement Agreement, and all documents necessary to effectuate it, shall be governed by the internal laws of the State of Alabama without regard to conflicts of laws, except to the extent that federal law requires that federal law governs.

40. **Cooperation:** Plaintiffs' Counsel and EHS Counsel agree to cooperate fully with one another in seeking Court approval of the Order for Notice and Hearing, the Settlement

Agreement and the Settlement, and to promptly agree upon and execute all such other documentation as may be reasonably required to obtain Final approval of the Settlement.

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Stipulated and agreed to this 29th day of May 2009

EUFAULA DRUGS, INC. and SCOTT-COOK, INC., Individually and on behalf of the Class certified in the Action,

TDI MANAGED CARE SERVICES, INC., and ECKERD HEALTH SERVICES,

By: /s/ James M. Terrell, Esq.
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Schedule of Exhibits to Settlement Agreement

- Exhibit A:** Claim Verification Form
- Exhibit B:** List of pharmacies excluded from the Class
- Exhibit C:** Form of Order and Final Judgment
- Exhibit D:** Form of Order for Notice and Hearing
- Exhibit E:** Form of Settlement Notice