

**SETTLEMENT AGREEMENT AND GENERAL RELEASE**

This Settlement Agreement and General Release ("Agreement"), is between Ariel Fernandez, Ph.D. ("Dr. Fernandez"), including any executor, administrator, representative, agent, attorney, heir or assign, or anyone acting by or for Dr. Fernandez or on Dr. Fernandez's behalf (collectively, with Dr. Fernandez, referred to as the "Fernandez Group"), and William Marsh Rice University ("Rice University"), including its directors, trustees, officers, employees, students, consultants, agents, attorneys, insurers, reinsurers, employee benefit plans and the fiduciaries and agents of said plans (collectively, with Rice University, referred to as the "Rice University Group"), and is effective as of the date signed below by Dr. Fernandez and transmitted to Rice University's Provost (the "Effective Date"). Dr. Fernandez and Rice University are referred to collectively as the "Parties."

Whereas this Agreement sets forth the complete understanding among the Parties concerning all of Dr. Fernandez's disputes with Rice University, including but not limited to resolution of all claims which Dr. Fernandez has made or could have made against the Rice University Group relating in any way whatsoever to Dr. Fernandez's employment at Rice University or to the investigation of allegations of scientific research misconduct during 2009-2010 (the "Research Misconduct Investigation"); and

Whereas the Parties desire to settle all Dr. Fernandez's disputes, known and unknown, in accordance with the terms and conditions set forth in this Agreement;

Therefore, Dr. Fernandez and Rice University now compromise and settle all claims of Dr. Fernandez and the Fernandez Group against Rice University or any member of the Rice University Group as provided in this Agreement.

The foregoing recitals are a substantive part of this Agreement.

**I. NO ADMISSION OF LIABILITY:** This Agreement is not and shall not be construed as an admission by Rice University, Dr. Fernandez, or any member of the Rice University or Fernandez Groups of any liability or wrongdoing. It is expressly understood that Dr. Fernandez has not admitted to committing research misconduct in the context of the Research Misconduct Investigation.

**II. CONSIDERATION BETWEEN DR. FERNANDEZ AND RICE UNIVERSITY:** In exchange for the Parties' respective promises and obligations under this Agreement, Dr. Fernandez and Rice University agree to the following:

**A. SETTLEMENT PAYMENT:** Dr. Fernandez will be paid the sum of Two Hundred Forty Thousand Dollars and no/100 (\$240,000.00) (the "Amount"), less taxes and withholdings applicable to this sum. The Amount shall be distributed in the following manner:

1. Upon the expiration of seven days following the Effective Date, Rice University will provide a check or direct bank deposit in the gross amount of One Hundred Twenty Thousand Dollars and no/100 (\$120,000.00), less taxes and withholdings applicable to this amount (the "First Severance Payment"), payable to "Ariel Fernandez".

2. Upon departing Rice University on May 15, 2011 (as explained below), Rice University will provide a check or direct bank deposit in the amount of One Hundred Twenty Thousand Dollars and no/100 (\$120,000.00), less taxes and withholdings applicable to this amount (the "Second Severance Payment"), payable to "Ariel Fernandez". Should Dr. Fernandez agree to depart Rice University sooner than May 15, 2011, Rice University agrees to disburse this payment within seven days of his departure.

3. As severance payments, neither the First Severance Payment nor the Second Severance Payment is eligible for Rice retirement contributions.

4. Dr. Fernandez agrees to DEFEND, INDEMNIFY AND HOLD HARMLESS Rice University from any liability, costs or expenses for taxes or penalties sought or claimed by any government authority as a result of or arising out of Rice University's payment of the Amount to Dr. Fernandez.

**B. RESIGNATION AS PROFESSOR:** On the Effective Date, Dr. Fernandez agrees to tender to the Provost of Rice University his resignation from his current appointment as the Karl F. Hasselmann Professor in the Department of Bioengineering. It is expressly understood by the Parties that in so doing Dr. Fernandez is also relinquishing his tenured status at Rice University.

**C. APPOINTMENT AS RESEARCH PROFESSOR:** Upon his resignation as professor, Rice University agrees to appoint Dr. Fernandez as a Research Professor in the Department of Bioengineering, with this appointment being effective only to and including May 15, 2011. In this position, Rice University will pay Dr. Fernandez a monthly salary of \$15,758.78, which if paid over the nine-month academic year of 2010-11 will total \$141,829.00. As Research Professor, Dr. Fernandez will have no teaching responsibilities, but may continue to occupy his current office and reasonably use such campus facilities such as the library and IT resources until his departure on or before May 15, 2011, although his access to areas of campus may be restricted by the Provost. As part of this Agreement, Dr. Fernandez agrees that for the remainder of his time at Rice University he will refrain from submitting any grant proposals on which Rice is proposed as a recipient or supporting institution.

**D. DEPARTURE FROM RICE UNIVERSITY:** Dr. Fernandez agrees that, on or before May 15, 2011, he will leave Rice University and his employment with Rice will terminate. Upon his departure, Dr. Fernandez may retain the two university-owned laptop computers he possessed as of June 30, 2010, along with software and computer programs of his own devising and any commercial software already installed on these computers as of June 30, 2010, subject to approval by the Provost of an inventory of the property and software being retained and also subject to any applicable license agreements that may restrict non-university use of installed software; the Provost may also require that a copy of various programs and data be retained at Rice pursuant to Rice Policy No. 334 (1). Dr. Fernandez may also retain a printer for use with these laptop computers, subject to approval by the Provost of the equipment being retained.

**E. DISPOSITION OF THE INTERNAL RESEARCH MISCONDUCT INVESTIGATION:** Upon the expiration of seven days following the Effective Date, Rice University will terminate the portions of the Research Misconduct Investigation that are internal to Rice University, as well as issue no additional formal findings within the university regarding the Scientific Misconduct Investigation and will not pursue further the matter through the faculty sanction process. Upon the expiration of seven days following the Effective Date, the Provost of Rice University also agrees not to forward the Research Misconduct Investigation final report to the President with findings and a recommendation for dismissal.

**F. EXTERNAL ASPECTS OF THE RESEARCH MISCONDUCT INVESTIGATION:** The Parties acknowledge that the Research Misconduct Investigation final report – as submitted by the panel – and related materials, along with Dr. Fernandez's responses thereto, have already been transmitted to the Department of Health & Human Services' Office of Research Integrity ("ORI"), along with a letter from Dr. Eugene H. Levy explaining that as the Rice University Provost he accepted the final report and that Dr. Fernandez did not admit to Rice University that he committed research misconduct. The Parties understand that the termination of Rice University's internal sanction process does not limit or bind the ORI in its pursuit of its own procedures, investigation, findings and potential actions. Dr. Fernandez remains free to negotiate or otherwise deal with the ORI regarding the ORI's subsequent actions and

findings with regard to the matters addressed in the Research Misconduct Investigation; Rice University will cooperate with that process to the extent that ORI deems it useful and appropriate. With regard to Dr. Fernandez's publication in *Molecular Pharmaceutics* that is discussed in the Research Misconduct Investigation final report, Rice University agrees to defer any potential action to the ORI, and the Parties understand that ORI may undertake action of its own.

**G. DISPOSITION OF OTHER PENDING MATTERS:** Rice University agrees to cease pursuing further action against Dr. Fernandez in regards to other currently pending matters such as the alleged purchasing irregularities involving startup funds allocated toward his work at Rice University.

**H. DR. FERNANDEZ'S PROMISE OF APPROPRIATE CONDUCT:** Dr. Fernandez agrees that in order to be allowed to serve the remainder of his appointment as a Research Professor, he will at all times, until the date of his departure from Rice University, conduct himself towards any Rice faculty, staff, student, consultant, designee, volunteer or visitor in a professional, business-like manner that is consistent with the policies of Rice University. As part of this promise, Dr. Fernandez agrees that he will refrain from initiating contact with any Rice Bioengineering faculty member, or any Rice employee, consultant, designee, volunteer, or other individual who has been involved in any way in the Research Misconduct Investigation. Dr. Fernandez agrees to refrain from any conduct or interactions with a Rice employee, consultant, designee, volunteer, staff or student that could be reasonably construed as retaliatory, threatening, harassing or disruptive. Failure to conform to these promises and expectations will result in a premature termination of Dr. Fernandez's appointment as a Research Professor, in which event Dr. Fernandez agrees to leave Rice immediately and to refrain from appealing the termination decision. Rice University agrees to exercise this termination option, if it should become necessary, only in good faith. In the event of a breach by Dr. Fernandez of this Section 2(H), Dr. Fernandez will nonetheless receive the Second Severance Payment, but any salary and benefits payments remaining for the period through May 15, 2011 will be forfeit.

**I. GENERAL WAIVER AND RELEASE:** Dr. Fernandez, for himself and on behalf of the Fernandez Group, hereby waives all claims waivable by law against any member of the Rice University Group (which is defined as stated above but is expressly understood to include, without limitation, Drs. Eugene H. Levy, James S. Coleman, Seiichi P.T. Matsuda, Michael Stern, B. Montgomery Pettitt, and Alan R. Price), and releases each member of the Rice University Group of and from any claims, demands, actions, liabilities or damages (including attorneys' fees), whether known or now unknown, arising out of or relating in any way whatsoever to his employment or association with Rice University through the Effective Date of this Agreement. This waiver and release includes, but is not limited to, rights or claims waivable by law that arise under any federal, state and local constitutions, statutes, ordinances and regulations (such as, without limitation, the Age Discrimination in Employment Act, as amended; the Older Worker Benefits Protection Act; Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1866, as amended; the Civil Rights Act of 1991; the Americans with Disabilities Act of 1990, as amended; the Employee Retirement Income Security Act of 1974, as amended; the Family and Medical Leave Act of 1993; the Fair Labor Standards Act; the Equal Pay Act of 1963, as amended; the Occupational Safety and Health Act; and the Texas Labor Code, as amended), as well as any common law rights or claims, whether arising at law or in equity, including, but not limited to, those claim sounding in tort, estoppel, waiver, personal injury, contract, fraud, misrepresentation, defamation, breach of duty, or negligence of or by any member of the Rice University Group and occurring on or before the Effective Date (collectively, the "Fernandez Group's Released Claims"). The Parties acknowledge that this Agreement does not limit any party's right, where applicable, to file or participate in any investigative proceeding of any federal, state or local government agency; provided, however, to the extent permitted by law, Dr. Fernandez agrees that if such an administrative charge is made, he shall not be entitled to recover any individual monetary relief or other individual remedies pursued in an administrative charge or resulting lawsuit. *Notwithstanding anything in this Agreement to the contrary, to the extent Dr.*

*Fernandez may have existing, vested rights under the terms of ERISA plans sponsored by Rice University, Dr. Fernandez's rights to such vested benefits are not waived and shall continue to be governed by the terms of the applicable plans, if any.*

The Parties acknowledge that the foregoing paragraph is not intended to curtail Dr. Fernandez's ability to make statements or take positions with ORI or other governmental agencies or bodies in connection with the external aspects of the Research Misconduct Investigation (as referred to in Section II (F) above) or any related litigation (subject to the further limitations discussed in Section V below).

Rice University waives all claims against Dr. Fernandez and releases him from any claims, demands, actions, liabilities or damages (including attorneys' fees), whether known or now unknown, arising out of or relating in any way whatsoever to his employment or association with Rice University through the Effective Date of this Agreement. This waiver and release includes, but is not limited to, rights or claims waivable by law that arise under any federal, state and local constitutions, statutes, ordinances and regulations, as well as any common law rights or claims, whether arising at law or in equity, including, but not limited to, those claim sounding in tort, estoppel, waiver, personal injury, contract, fraud, misrepresentation, defamation, breach of duty, or negligence of or by Dr. Fernandez occurring on or before the Effective Date (collectively, "Rice's Released Claims").

**III. DR. FERNANDEZ'S PROMISE NOT TO SUE OR ACCEPT DAMAGES:** Dr. Fernandez promises not to sue or file any claim against or relating to any member of the Rice University Group in any local, state or federal court or forum that relates in any way whatsoever to the Fernandez Group's Released Claims, and Dr. Fernandez further agrees he cannot recover and will not accept damages in any action prosecuted by any other person or entity that arises out of or relates to the Fernandez Group's Released Claims.

**IV. DR. FERNANDEZ'S PROMISE REGARDING CONFIDENTIALITY OF SETTLEMENT:** Dr. Fernandez promises to keep the fact and terms of this Agreement confidential; provided, however, that Dr. Fernandez may disclose the terms of this Agreement (A) as required by law if subject to legal process, and (B) to his immediate family, attorneys, accountants or tax advisors after first advising such persons of their obligation to adhere to the terms of this Agreement's confidentiality provision. In response to any inquiry made to Dr. Fernandez regarding the status of the any claims between the Parties or the employment relationship between Rice University and Dr. Fernandez, it shall not constitute a violation of this Agreement for Dr. Fernandez to state either or both of the following sentences: "Rice University and I have resolved the issues between us. Rice supports my decision to seek a more satisfactory position elsewhere."

**V. NO DISPARAGEMENT PROMISE:** Dr. Fernandez promises not to disparage the Rice University Group or its operations, students, staff or employees, including in any communications concerning his employment with or separation from Rice University. Rice University promises not to disparage Dr. Fernandez. The respective promises by Dr. Fernandez and Rice University, however, shall not be deemed to include any statements made or positions taken with ORI or other governmental agencies or bodies in connection with the external aspects of the Research Misconduct Investigation referred to in Section II (F) above; this includes any litigation that Dr. Fernandez may choose to bring relating to the investigation by ORI or other governmental agencies or bodies of the issues raised by the Research Misconduct Investigation, so long as any statements that could be reasonably interpreted as disparaging any member of the Rice University Group are confined to statements or pleadings within actual litigation and not asserted outside the litigation to the press or members of the public. Any breach of this provision by Dr. Fernandez is understood to release the Rice University Group from its obligations under this Section V.

If Dr. Fernandez desires an employment reference from Rice University, he shall refer the person or entity seeking such a reference solely to the Provost of Rice University, who is the only person responsible for responding to any such queries regarding Dr. Fernandez and who will provide any such reference confirmation of

Dr. Fernandez's employment, position title, salary, and dates of employment.

**VI. DR. FERNANDEZ'S PROMISE TO RETURN RICE UNIVERSITY PROPERTY:** Dr. Fernandez promises to return to Rice University any property in his possession that belongs to Rice University.

**VII. DR. FERNANDEZ'S PROMISE REGARDING REHIRE:** Dr. Fernandez acknowledges that he has no right to employment by Rice University or any other member of the Rice University Group. As a free and voluntary act, Dr. Fernandez agrees never to seek or accept direct employment or consulting or contracting employment with Rice University.

**VIII. DR. FERNANDEZ'S PROMISE REGARDING MEDICARE FORM:** Dr. Fernandez promises to personally complete and sign the form attached as **Exhibit A** to this Agreement and provide the completed and signed form to Rice University within five days of the Effective Date.

**IX. RICE UNIVERSITY'S RELIANCE ON DR. FERNANDEZ'S INDEMNIFICATIONS, REPRESENTATIONS AND WARRANTIES:** Dr. Fernandez understands that Rice University is relying upon the promises, indemnifications, representations and warranties he makes in this Agreement and that without each such promise, indemnification, representation and warranty, Rice University would not enter into this Agreement. Dr. Fernandez warrants that he has not assigned, pledged or otherwise transferred any part of any claim or cause of action that is the subject of the Agreement and that no other person or entity has any interest therein. Dr. Fernandez promises that, if any claims released by this Agreement are ever asserted by Dr. Fernandez or by an agent authorized to act in his behalf, Dr. Fernandez will pay any and all losses, costs, obligations and/or penalties due as a result of any such claims and Dr. Fernandez further agrees to **DEFEND, INDEMNIFY AND HOLD HARMLESS** the Rice University Group from any liabilities, costs or losses arising out of or relating to any such claims including, but not limited to, all costs of defense.

**X. ENTIRETY OF AGREEMENT:** This written Agreement constitutes the Parties' full and entire agreement concerning the subject matter it addresses, superseding all prior written and verbal promises and agreements concerning the subject matter herein. This Agreement can be modified only by a writing of like formality signed by both Dr. Fernandez and Rice University. No oral statements by any employee or agent of Rice University shall modify or otherwise affect the terms and provisions of this Agreement.

**XI. ENFORCEMENT:** Any claim that a Party to the Agreement is in breach of the Agreement shall be filed exclusively in a court of competent jurisdiction in Houston, Texas. Any party found to be in breach of this Agreement by a court of competent jurisdiction will be required to pay, in addition to damages, all taxable court costs, all other incidental and consequential costs incurred, and all expert witness fees and reasonable attorneys' fees incurred by the prevailing party in connection with establishing that such a breach has occurred and/or obtaining legal or equitable relief for such breach.

**XII. SEVERABILITY:** In case any one or more of the provisions of this Agreement shall be found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired. Further, any provision found to be invalid, illegal or unenforceable shall be deemed, without further action on the part of the parties to this Agreement, to be modified, amended and/or limited to the minimum extent necessary to render such clauses and/or provisions valid and enforceable.

**XIII. GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard for the conflicts of law rules thereof, except to the extent that federal law applies.

**XIV. NO OTHER REPRESENTATIONS OR AGREEMENTS:** Dr. Fernandez acknowledges that no promises or

representations have been made to induce him to sign this Agreement other than those expressly set forth in this Agreement, and that he has signed this Agreement as his own free and voluntary act after a reasonable period of time to consider the Agreement and after consulting with his attorney.

XV. **DUPLICATE COPIES:** This Agreement may be executed in multiple counterparts, each of which, if fully executed, may be admitted in evidence as a duplicate original.

**Dr. Fernandez has up to twenty-two (22) calendar days to consider this Agreement; he is expressly advised that this Agreement affects important legal rights and he should consult with his attorney before signing it.**

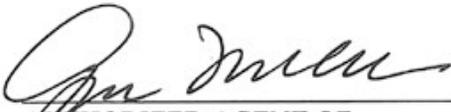
**Dr. Fernandez may revoke this Agreement during a period of seven (7) calendar days following the date he signs the Agreement. Any revocation, to be effective, must be submitted in writing to the Associate Vice-President for Human Resources at Rice University, Mary A. Cronin, and must state: "I hereby revoke my Acceptance of the Settlement Agreement and General Release." Such written revocation must be delivered personally to Mary A. Cronin, 6400 Fannin, Suite 2600, Houston, Texas 77030, within seven (7) calendar days after Dr. Fernandez signs this Agreement.**

**Dr. Fernandez agrees that any modifications, material or otherwise, made to this Agreement do not restart or affect in any manner the original twenty-two calendar day consideration period.**

**I, Dr. Ariel Fernandez, freely and knowingly, and after due consideration, enter into this Agreement intending to waive, settle and release all claims I have or might have against any member of the Rice University Group. I have carefully read each paragraph of this Agreement and by signing below I acknowledge that I agree with and am bound by its terms. I have been advised to and have had the opportunity to consult with my lawyer before signing this Agreement about its meaning and effect on any legal rights I may have.**

By:   
ARIEL FERNANDEZ, Ph.D.

7-15-2010  
Date:

By:   
AUTHORIZED AGENT OF  
WILLIAM MARSH RICE UNIVERSITY

7-15-2010  
Date:

Printed Name: George McClemon  
*provost*

AF: 

**Exhibit A to Settlement Agreement and General Release**

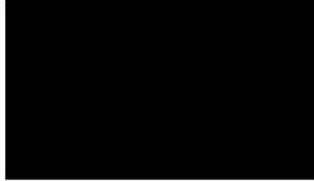
(CMS Statement of Medicare Beneficiary Status)

The Centers for Medicare & Medicaid Services (CMS) is the federal agency that oversees the Medicare program. Many Medicare beneficiaries have other insurance in addition to their Medicare benefits. Sometimes, Medicare is supposed to pay after the other insurance. However, if certain other insurance delays payment, Medicare may make a "conditional payment" so as not to inconvenience the beneficiary, and recover after the other insurance pays.

Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA), a new federal law that became effective January 1, 2009, requires that liability insurers (including self-insurers), no-fault insurers, and workers' compensation plans report specific information about Medicare beneficiaries who have other insurance coverage. This reporting is to assist CMS and other insurance plans to properly coordinate payment of benefits among plans so that your claims are paid promptly and correctly.

We are asking you to answer the questions below so that we may comply with this law.

Please review this picture of the Medicare card to determine if you have, or have ever had, a similar Medicare card.



Section I

Are you presently, or have you ever been, enrolled in Medicare Part A or Part B?		<input type="radio"/> Yes	<input checked="" type="radio"/> No
<i>If yes, please complete the following. If no, proceed to Section II.</i>			
Full Name: (Please print the name exactly as it appears on your SSN or Medicare card if available.)			
ARIEL FERNANDEZ			
Medicare Claim Number:		Date of Birth (Mo/Day/Year)	
Social Security Number: (If Medicare Claim Number is Unavailable)		<input type="radio"/> Male	<input checked="" type="radio"/> Female

Section II

I understand that the information requested is to assist the requesting insurance arrangement to accurately coordinate benefits with Medicare and to meet its mandatory

Ariel Fernandez

Claimant Name (Please Print)

[Redacted]  
Claim Number

Name of Person Completing This Form if Claimant is Unable (Please Print)

[Signature]  
Signature of Person Completing This Form

7-15-2010  
Date

If you have completed Sections I and II above, stop here. If you are refusing to provide the information requested in Sections I and II, proceed to Section III.

Section B

Ariel Fernández  
Claimant Name (Please Print)



Claim Number

For the reason(s) listed below, I have not provided the information requested. I understand that if I am a Medicare beneficiary and I do not provide the requested information, I may be violating obligations as a beneficiary to assist Medicare in coordinating benefits to pay my claims correctly and promptly.

Reason(s) for Refusal to Provide Requested Information:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ABM  
Signature of Person Completing This Form

7-15-2010  
Date