

SETTLEMENT AGREEMENT AND RELEASE

I. PARTIES

This Settlement Agreement (“Agreement”) is entered into by the Commonwealth of Kentucky (the “Commonwealth”) and GlaxoSmithKline LLC, formerly known as SmithKline Beecham Corporation d/b/a GlaxoSmithKline (“GSK”), through their authorized representatives. The Commonwealth, together with GSK, are hereinafter referred to as the “Parties.”

II. PREAMBLE

A. On or about November 4, 2004, the Commonwealth initiated a lawsuit against GSK and other defendants in the Franklin Circuit Court, Commonwealth of Kentucky, captioned *Commonwealth of Kentucky ex rel. Jack Conway, Attorney General v. Alpharma USPD, Inc., et al.*, Civil Action No. 04-CI-1487. The Commonwealth subsequently filed a First Amended Complaint in the Commonwealth Lawsuit against GSK and other defendants and, on or about September 28, 2007, the Commonwealth filed a Second Amended Complaint in the Commonwealth Lawsuit against GSK and other defendants (the original Lawsuit and all amendments collectively, the “Commonwealth Lawsuit”). The following claims have been asserted in the Commonwealth Lawsuit: violations of the Kentucky Consumer Protection Act, violations of the Kentucky Medicaid Fraud Statute, and violations of the Kentucky False Advertising Statute. Each of the Parties has vigorously litigated its respective claims and defenses.

B. The Commonwealth alleges that GSK and its predecessors caused claims for payment for their pharmaceutical products to be submitted to the Commonwealth’s Medicaid Program, established pursuant to or in connection with Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1398v (the “Medicaid Program”).

C. The Commonwealth contends, among other things, that since at least 1992 through the date of this Agreement, GSK and its predecessors knowingly set, reported, and maintained, or caused to be set, reported, and maintained, false, fraudulent, and inflated prices for pharmaceutical products they manufactured, marketed, distributed, and/or sold. The Commonwealth alleges that GSK and its predecessors reported, or caused to be reported, prices, including, but not limited to, Average Wholesale Prices (“AWPs”), Suggested List Prices (“SLPs”), Wholesale Acquisition Costs (“WACs”), Wholesale Purchase Prices (“WPPs”), Net Wholesale Prices (“NWPs”) and/or Direct Prices, for their products that were substantially higher than prices that were widely and commonly available. The Commonwealth also contends that GSK and its predecessors knowingly used an artificial spread between the allegedly false, fraudulent, and inflated reported prices and the actual acquisition costs of their products in marketing, promoting, and selling those products to their customers. The Commonwealth further contends that GSK and its predecessors engaged in unfair, deceptive, or unlawful use of AWPs and other pricing information in the sale, promotion and marketing of their products in further violation of Kentucky state laws. The conduct described in this paragraph, together with the allegations set forth in the Commonwealth Lawsuit, is referred to herein as the “Covered Conduct.”

D. The Commonwealth seeks various forms of relief against GSK, including, but not limited to, compensatory and punitive damages, civil penalties, treble damages, restitution, injunctive relief, costs, and attorneys’ fees.

E. This Agreement is neither an admission of facts, wrongdoing or liability by GSK, nor is it a concession by the Commonwealth that the Commonwealth’s claims in the Commonwealth Lawsuit are not well-founded.

F. GSK has asserted a number of defenses to the Commonwealth Lawsuit and has denied, and continues to deny, the Commonwealth's allegations in the Commonwealth Lawsuit and any wrongdoing.

G. On November 3, 2009 the jury trial of this matter commenced. On November 13, 2009 the jury returned a verdict in favor of GSK on the Medicaid Fraud and False Advertising counts. The jury returned a verdict in favor of the Commonwealth on the Consumer Protection count and awarded \$660,860 in compensatory damages. The jury awarded no punitive damages.

H. On January 27, 2010, the Court held a hearing on the Commonwealth's post-trial motion for civil penalties under the Consumer Protection Act. The Court found that GSK willfully violated the KCPA and determined GSK had committed 11,657 violations of the Act. The Court assessed a penalty of \$500 per violation and awarded the Commonwealth five million eight hundred twenty eight thousand five hundred dollars (\$5,828,500).

I. On February 18, 2010, the Court entered Judgment in the amount of six million five hundred four thousand thirty-six dollars and eighteen cents (\$6,504,036.18), and also awarded post-judgment interest (the "Judgment").

J. Following the entry of Judgment by the trial Court, GSK filed post-Judgment motions challenging the jury's verdict on legal grounds and challenging the Court's penalty assessment on numerous grounds, and asserting that the Judgment should be vacated. Those motions are pending. In addition, GSK has reserved all appellate rights.

K. To avoid the delay, expense, inconvenience, and uncertainty of further litigation of post-Judgment motions and a protracted appeal of the Judgment, the Parties mutually desire to reach a complete and final settlement, including a settlement and dismissal of the Commonwealth Lawsuit, as set forth below.

L. The Commonwealth has determined this Agreement to be in the public interest.

M. This Agreement is the result of a compromise of disputed issues of law and fact, and the Released Parties, as defined below, do not admit to any violation of any statute or law, or of any liability or wrongdoing, or of the truth of any of the claims or allegations of the Commonwealth, or waive any defenses thereto. The Commonwealth agrees that this Agreement may not be used or admitted as evidence of any fault or liability of the Released Parties in any investigation, administrative claim, action, suit, or proceeding, or federal or state court or arbitration proceeding.

III. TERMS AND CONDITIONS

NOW THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants, and obligations in this Agreement, and for other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. The forgoing Preamble is incorporated herein.
2. In full and final settlement of the Commonwealth's claims against it, GSK shall pay a single sum of \$3,750,000 (Three Million Seven-Hundred Fifty Thousand Dollars)

(referred to herein as the “Settlement Amount”). This payment will fully resolve all of the Commonwealth’s claims alleged in the Commonwealth Lawsuit or related to the Covered Conduct (including any claims for damages, penalties, attorneys’ fees, pre-judgment or post-judgment interest, and litigation costs attributable to the litigation of those claims) against the Released Parties, as set forth below.

3. It is agreed and understood that no portion of the Settlement Amount shall be allocated or attributed to or characterized as the payment of fines, penalties, or other punitive damages.

4. The Parties acknowledge that the United States may be entitled to a portion of the Settlement Amount (the “Federal Share”), the determination and payment of which shall be handled separately by and between the Commonwealth and the United States. In the event that the United States is determined to be entitled to a portion of the Settlement Amount, it is understood and agreed that the Commonwealth shall pay the Federal Share from the Settlement Amount. GSK is not a party to any such obligation, agreement, or allocation, has no responsibility or liability as a result thereof, and takes no position on the appropriate allocation.

5. GSK agrees to pay the full Settlement Amount within fifteen (15) days from the Effective Date of this Agreement. To accomplish this payment, GSK shall wire the Settlement Amount into an escrow account (“Account”) designated by Miner Barnhill & Galland, P.C. (counsel for the Commonwealth) for the receipt of funds under this Settlement Agreement. Within five (5) days of the Effective Date, one of the counsel for the Commonwealth from Miner Barnhill & Galland, P.C shall provide the undersigned counsel for GSK with an original letter on Miner Barnhill & Galland, P.C letterhead, signed by two attorneys

from Miner Barnhill & Galland, P.C (with a copy to GSK's undersigned counsel by e-mail pdf), which letter shall specify bank wiring information for the deposit of the Settlement Amount into the designated Account. These wiring instructions are confidential and shall not be disclosed beyond what is necessary to complete this Agreement.

6. Within three (3) business days following receipt by the Commonwealth of the payment of the Settlement Amount, the Commonwealth shall file an Agreed Order To Vacate Judgment and Dismiss with Prejudice in the form attached hereto as Exhibit A and shall take all other necessary steps to cause the prompt dismissal with prejudice of all claims against GSK in the Commonwealth Lawsuit. The Commonwealth agrees that it is not presently prosecuting, will not prosecute or pursue, and will not seek recovery from any *qui tam* "whistleblower" lawsuits or other claims or investigations relating to the Covered Conduct.

7. Subject to the exceptions in Paragraph 8 below, and in consideration of the obligation of GSK as set forth in this Agreement, conditioned upon the payment in full of the Settlement Amount, the Commonwealth, on behalf of itself, and its officers, agents, agencies, and departments, fully and finally releases and forever discharges, and covenants not to sue, GSK and all of its predecessors, current and former parents, divisions, subsidiaries, successors, affiliates, and assigns, and their current and former directors, officers, attorneys and employees, (collectively the "Released Parties") from or for any civil, administrative, or monetary claim that the Commonwealth or any of its political subdivisions has asserted, could have asserted, or may assert in the future against any of the Released Parties for any claims based upon or arising out of the Covered Conduct. The payment of the Settlement Amount fully discharges the Released Parties from any obligations to pay restitution, damages, any fine or penalty, attorneys fees, pre-

judgment or post-judgment interest, litigation costs and/or any other obligation to pay money or restore property to the Commonwealth based upon or arising out of the Covered Conduct.

8. Notwithstanding any term of this Agreement, the Commonwealth specifically does not release any person or entity from any of the following claims or liabilities: (a) any criminal, civil, or administrative claims arising under State revenue codes; (b) any criminal liability; (c) any liability for any conduct other than the Covered Conduct; (d) any claims based upon obligations created under this Agreement; (e) any express or implied warranty claims or other claims for defective or deficient products and/or services provided by GSK; (f) any claims based on liability to parties other than the Commonwealth, its officers, agencies, agents or departments; or (g) any claim based on a failure to deliver items or services due.

9. In consideration of the obligations of GSK as set forth in this Agreement, conditioned upon payment of the Settlement Amount, the Commonwealth agrees to release and refrain from instituting, directing, or maintaining any administrative claim or any action seeking exclusion from the Commonwealth's Medicaid Program against any of the Released Parties based upon or arising out of the Covered Conduct. The Commonwealth's Medicaid Fraud Control Unit further agrees to refrain from recommending, causing, or attempting to cause any administrative action or sanction, including debarment, exclusion, or suspension, by any other government agency of the Commonwealth based upon or arising out of the Covered Conduct. Notwithstanding the above, nothing in this Agreement precludes the Commonwealth from taking action against GSK in the event that GSK is excluded or suspended from the Medicaid program by the federal government or for conduct other than the Covered Conduct.

10. Nothing in this Agreement, the negotiations leading to this Agreement, or the Parties' willingness to enter into this Agreement, shall be construed as an admission by any person or entity of any liability or wrongdoing of any Party, of the truth of any allegation in the Commonwealth Lawsuit, or of the truth of any allegation in any other AWP-related complaint filed against GSK. The Released Parties expressly deny that they have any liability to the Commonwealth. The Agreement shall not be admissible in evidence for any such purpose in any proceeding, except for purposes of enforcement of its terms.

11. Notwithstanding the preceding Paragraph, this Agreement may be used by either party and pleaded to enforce its terms or as a full and complete defense to any action, suit or other proceeding that has been or may be instituted, prosecuted, or attempted, and may be filed, offered, and received into evidence, and otherwise used for such defense.

12. The Parties state that they rely solely upon their individual judgment, with the advice and assistance of counsel, in making this Settlement Agreement and with respect to its terms.

13. The undersigned representatives represent that they are fully authorized to enter into and execute this Agreement. The Commonwealth further represents that it has obtained all necessary authorizations required for it to enter into this Agreement.

14. None of the Parties to this Agreement shall be considered the drafter of this Agreement or any included provision for the purpose of any statute, case law, or rule of construction that would or might cause any provision to be construed against the drafter.

15. This Agreement shall be governed by and interpreted according to the substantive laws of the Commonwealth of Kentucky without regard to its choice of law or conflict of laws principles.

16. The parties consent to venue to enforce the terms of this Agreement in the Franklin Circuit Court, Commonwealth of Kentucky.

17. This Agreement shall be construed and interpreted to effectuate the Parties' intent, which is to resolve completely the Commonwealth Lawsuit and claims with respect to GSK.

18. This Agreement constitutes the complete agreement between the Parties with regard to the settlement and dismissal of the Commonwealth Lawsuit.

19. This Agreement shall not be modified in any respect except by a writing executed by all parties to this Agreement. The waiver of any rights conferred by this Agreement shall be effective only if made in writing by the waiving Party. The waiver by any Party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior to, subsequent to, or contemporaneous with this Agreement.

20. This Agreement shall be binding on all successors, transferees, heirs, and assigns of the Parties.

21. Each Party agrees to perform any further acts and to execute and deliver any further documents reasonably necessary to carry out this Agreement.

22. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same Agreement. Facsimile or .PDF signatures shall be valid signatures as of the date thereof.

23. Each Party shall bear its own legal and other costs incurred in connection with the Commonwealth Lawsuit, including the preparation and performance of this Agreement except that the Office of the Attorney General may obtain its reasonable costs of litigation, from the Settlement Amount set forth in Paragraph 2 above, if so ordered by the Court, and in the amount ordered by the Court.

24. This Agreement is effective as of the date of signature of the last signatory to the Agreement.

FOR THE COMMONWEALTH OF KENTUCKY

FOR GLAXOSMITHKLINE LLC

By: 

By: Michael F. Corrigan

Name: Paul Thomas

Name: Michael F. Corrigan

Title: Asst. Deputy AG

Title: SUP- FINANCE

Date: 8/12/10

Date: 8/12/10

EXHIBIT A

**COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT — DIVISION I
CIVIL ACTION NO. 04-CI-1487**

COMMONWEALTH OF KENTUCKY
ex rel. JACK CONWAY, ATTORNEY GENERAL

PLAINTIFF

v.

ALPHARMA USPD, INC., *et al.*

DEFENDANTS

**AGREED ORDER TO VACATE JUDGMENT AND DISMISS WITH PREJUDICE AS
TO DEFENDANT SMITHKLINE BEECHAM CORP. d/b/a GLAXOSMITHKLINE**

WHEREAS, upon the agreement of Plaintiff, the Commonwealth of Kentucky, and the Defendant, GlaxoSmithKline LLC, formerly known as SmithKline Beecham Corp. d/b/a/ GlaxoSmithKline (“GSK”), the parties having reached an amicable settlement of the claims in this case and there being no existing counterclaims, cross claims, or third-party claims against GSK,

IT IS HEREBY ORDERED that, pursuant to the agreement of the above-named parties, through their respective counsel of record and pursuant to Rule 41.01(2) of the Kentucky Rules of Civil Procedure, the Judgment entered against GSK is hereby vacated, and all claims against GSK are hereby dismissed with prejudice, and the settling parties shall each bear their own

attorneys' fees and costs. The Attorney General is hereby awarded, from the settlement proceeds, the sum of _____ as the reasonable costs of litigation.

This __ day of August, 2010.

PHILLIP J. SHEPHERD, JUDGE
Franklin Circuit Court Division I

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Commonwealth of Kentucky*