

STATE SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (the “Agreement”) is entered into between the State of California (the “State”) and The Gores Group, collectively, the “Parties.”

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. The Gores Group is a global investment firm headquartered in Los Angeles, California. The Gores Group through TGG Medical Solutions acquired Therakos Inc. (“Therakos”) from Ortho-Clinical Diagnostics, Inc. in or around January 2013 and sold it to pharmaceutical manufacturer Mallinckrodt, PLC in September 2015.

B. Therakos manufactures and markets a medical-device system and a related pharmaceutical product for performing extracorporeal photopheresis (“ECP”) using the UVAR XTS® and Cellex® systems, to treat a disease known as “cutaneous T-cell lymphoma.”

C. On March 22, 2012, Michael Johnson filed a *qui tam* action in the United States District Court for the Eastern District of Pennsylvania captioned *United States ex rel. Michael Johnson v. Therakos, Inc., Ortho-Clinical Diagnostics, Inc. and Johnson & Johnson*, Civil Action No. 12-1454, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b). The operative amended complaint was filed on December 14, 2016, and is captioned *United States ex rel. Michael Johnson and Frank J. Strobl, M.D., Ph.D. v. Therakos, Inc., Ortho-Clinical Diagnostics, Inc., Johnson & Johnson, The Gores Group, and Mallinckrodt plc.*, Civil Action number 12-cv-1454 (the “Civil Action”). The amended complaint named The Gores Group as a defendant related to alleged conduct arising solely during its ownership of Therakos.

D. The Gores Group has entered into a separate civil settlement agreement (the “Federal Settlement Agreement”) with the “United States of America” (“United States”) as that term is defined in the Federal Settlement Agreement.

E. The State contends it has certain civil claims against The Gores Group for causing the submission of false claims to the State’s Medicaid Program (42 U.S.C. Chapter 7 Subchapter XIX), including “managed care entities” as defined by 42 U.S.C. § 1396u-2, arising from the marketing, promotion, sale, and reimbursement of extracorporeal photopheresis for uses not approved by the Food and Drug Administration, in particular, for use to treat pediatric patients, solely during The Gores Group’s ownership of Therakos, defined as being during the period January 1, 2013 through September 30, 2015. This alleged conduct is referred to herein as the “Covered Conduct.”

F. This Agreement is made in compromise of disputed claims. This Agreement is not an admission of facts or liability by The Gores Group, nor a concession by the State that its claims are not well founded. The Gores Group denies the allegations of the State and the Relators set forth herein and in the Civil Action and deny that they engaged in any wrongful conduct in connection with the Covered Conduct.

G. The Parties mutually desire to reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants and obligations set forth in this Agreement, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. The Gores Group agrees to pay to the United States and the Medicaid Participating States (as defined in sub-paragraph (c) and subject to the non-participating state deduction

provision of sub-paragraph (d) below), collectively, the sum of \$1,500,000.00 plus accrued interest (the “Settlement Amount”). The Settlement Amount shall constitute a debt due and owing to the United States and the Medicaid Participating States on the effective date of the Federal Settlement Agreement, as defined therein and subject to the terms of this Agreement. The debt shall forever be discharged by payments to the United States and the Medicaid Participating States under the following terms and conditions:

(a) The Gores Group shall pay to the United States the sum of \$894,903.18 plus accrued interest pursuant to the terms of the Federal Settlement Agreement.

(b) The total Medicaid recovery for the Covered Conduct is \$1,251,492.91 consisting of \$605,096.82 for the states pursuant to this Agreement and \$646,396.09 for the United States pursuant to the Federal Settlement Agreement. The Gores Group shall pay to the Medicaid Participating States the sum of \$605,096.82, plus accrued interest on that amount of 0.75% per annum commencing on the Effective Date and continuing to and including the day payment is made under this Agreement, subject to the non-participating state deduction provision of sub-paragraph (d) below (the “Medicaid Participating State Settlement Amount”), no later than seven (7) business days after the expiration of the 60-day opt-in period for Medicaid Participating States described in sub-paragraph (c) below. The Medicaid Participating State Settlement Amount shall be paid and immediately deposited by electronic funds transfer to the New York State Attorney General’s National Global Settlement Account pursuant to written instructions from the state settlement team (the “State Team”), which written instructions shall be delivered to counsel for The Gores Group. This electronic funds transfer shall constitute tender and negotiation of the State Amount as defined in Paragraph III. 1. (d).

(c) The Gores Group shall execute a State Settlement Agreement with any State that executes such an Agreement in the form to which The Gores Group and the State Team have agreed, or in a form otherwise agreed to by The Gores Group and an individual State. The State shall constitute a Medicaid Participating State provided this Agreement is fully executed by the State and delivered to The Gores Group's attorneys within 60 days of receiving this Agreement. The Gores Group's offer to resolve this matter with the State shall become null and void absent written agreement between counsel for The Gores Group and the State Team to extend the 60-day period.

(d) The total portion of the amount paid by The Gores Group in settlement for the Covered Conduct for the State is \$101,244.17 consisting of a portion paid to the State under this Agreement and another portion paid to the United States as part of the Federal Settlement Agreement. The amount allocated to the State under this Agreement is the sum of \$60,742.13 plus applicable interest (the "State Amount"), of which \$30,371.07 is restitution. If the State does not execute this Agreement within 60 days of receiving this Agreement, the State Amount shall be deducted from the Medicaid State Settlement Amount and shall not be paid by The Gores Group absent written agreement between counsel for The Gores Group and the State Team to extend the time period for executing this Agreement.

2. Contingent upon receipt of the State Amount, the State agrees to dismiss with prejudice any state law claims which the State has the authority to dismiss currently pending against The Gores Group and Therakos in State or Federal Courts for the Covered Conduct, including any supplemental state law claims asserted in the Civil Action. Contingent upon receipt of the State Amount, the State, if served with the Civil Action and otherwise liable to pay a relator's share,

agrees to pay the Relator the amount of \$14,578.11 plus applicable interest. This amount is to be paid through the State Team and has been addressed via a side letter with the Relator in the Civil Action.

3. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of The Gores Group set forth in this Agreement, and conditioned upon tender and negotiation of the State Amount, the State agrees to release The Gores Group, its predecessors and current and former parents, divisions, subsidiaries, affiliates, successors, transferees, heirs, and assigns (collectively, “The Gores Group Released Entities”), from any civil or administrative monetary cause of action that the State has for any claims submitted or caused to be submitted to the State’s Medicaid Program for the Covered Conduct.

4. Notwithstanding the releases given in Paragraph 3 of this Agreement, or any other term of this Agreement, the following claims of the State are specifically reserved and are not released:

- (a) any criminal, civil, or administrative liability arising under state revenue codes;
- (b) any criminal liability;
- (c) any civil or administrative liability that any person or entity, including The Gores Group Released Entities, has or may have to the State or to individual consumers or state program payors under any statute, regulation, or rule not expressly covered by the release in Paragraph 3 above, including, but not limited to, any and all of the following claims: (i) State or federal antitrust violations; and (ii) claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;
- (d) any liability to the State for any conduct other than the Covered Conduct;
- (e) any liability based upon obligations created by this Agreement;

(f) except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from the State's Medicaid Program, which the Gores Group retains the right to contest and defend;

(g) any liability for expressed or implied warranty claims or other claims for defective or deficient products and services, including quality of goods and services;

(h) any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;

(i) any liability for failure to deliver goods or services due; or

(j) any liability of individuals.

5. The Gores Group waives and shall not assert any defenses it may have to criminal prosecution or administrative action for the Covered Conduct, which defenses may be based in whole or in part on a contention, under the Double Jeopardy Clause of the Fifth Amendment of the U.S. Constitution or the Excessive Fines Clause of the Eighth Amendment of the U.S. Constitution, that this Agreement bars a remedy sought in such criminal prosecution or administrative action.

6. In consideration of the obligations of the State set forth in this Agreement, The Gores Group Released Entities waive and discharge the State and any of its agencies, departments, and personnel including, but not limited to, officials, employees, and agents, whether current or former in their official and individual capacities from any causes of action (including attorneys' fees, costs, and expenses of every kind and however denominated) which The Gores Group Released Entities have against the State and any of its agencies, departments, and personnel as previously referenced arising from the State's investigation and prosecution of the Covered Conduct.

7. The amount that The Gores Group must pay to the State pursuant to Paragraph III.1. above will not be decreased as a result of the denial of any claims for payment now being withheld from payment by the State's Medicaid Program, or any other state program payor, for the Covered Conduct.

8. If applicable, The Gores Group shall not seek payment for any claims for reimbursement to the State's Medicaid Program covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third-party payors.

9. The Gores Group expressly warrants that it has reviewed its financial condition and that it is currently solvent, meaning that a fair valuation of its property (exclusive of exempt property) exceeds the sum of its debts.

10. The Parties each represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

11. The Gores Group agrees to cooperate fully and truthfully with any State investigation of individuals or entities not released in this Agreement. Upon reasonable notice of such an investigation, The Gores Group shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available and encourage the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals and of The Gores Group. Upon request, The Gores Group agrees to furnish to the State complete and unredacted copies of all non-privileged documents including, but not limited to, reports, memoranda of interviews, and records in its possession, custody or control, concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf, as well as complete and

unredacted copies of any other non-privileged documents in its possession, custody, or control relating to the Covered Conduct.

12. Except as expressly provided to the contrary in this Agreement, each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

13. Except as otherwise stated in this Agreement, this Agreement is intended to be for the benefit of the Parties only, and the Parties do not release any liability as to any other person or entity.

14. Nothing in this Agreement constitutes an agreement by the State concerning the characterization of the amounts paid hereunder for purposes of the State's revenue code.

15. In addition to all other payments and responsibilities under this Agreement, The Gores Group agrees to pay the State Team's reasonable expenses and fees, including travel costs, consultant expenses, and administrative fees. The Gores Group will pay this amount by separate check made payable to the National Association of Medicaid Fraud Control Units, after the Medicaid Participating States execute their respective Agreements, or as otherwise agreed by the Parties.

16. This Agreement is governed by the laws of the State, and venue for addressing and resolving any and all disputes relating to this Agreement shall be the state courts of appropriate jurisdiction of the State.

17. The undersigned The Gores Group signatories represent and warrant that they are authorized as a result of appropriate corporate action to execute this Agreement. The undersigned State signatories represent that they are signing this Agreement in their official capacities and that

they are authorized to execute this Agreement on behalf of the State through their respective agencies and departments.

18. The Effective Date of this Agreement shall be the date of signature of the last signatory to this Agreement. Facsimiles of signatures shall constitute acceptable binding signatures for purposes of this Agreement.


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

20. This Agreement constitutes the complete agreement between the Parties with respect to this matter and shall not be amended except by written consent of the Parties.

21. 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.

22. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by the Parties to this Agreement and shall not, therefore, be construed against any of the Parties for that reason.

State of California

By:  _____ Dated: _____

RANDAL L. GLASER
Deputy Attorney General
Division of Medi-Cal Fraud and Elder Abuse
Office of the Attorney General
California Department of Justice

The Gores Group

By: Catherine Pollard Dated: _____

Name

Title

Organization

By:  Dated: 2/3/2021

David B. Robbins
Counsel to The Gores Group