

F I L E D
Clerk of the Superior Court

JUN 23 2011

By: T. APPENBERG, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

**THE PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff,

v.

**GLAXOSMITHKLINE LLC and SB
PHARMCO PUERTO RICO, INC.,**

Defendant.

Case No.

37-2011-00093381-CU-MC-CTL

FINAL JUDGMENT

Plaintiff, the People of the State of California ("Plaintiff" or the "People"), having filed its Complaint and appearing through its attorney, Kamala D. Harris, Attorney General of the State of California, by Judith Fiorentini and Albert Norman Shelden, Deputy Attorneys General, and GlaxoSmithKline LLC and SB Pharmco Puerto Rico, Inc., (hereinafter "SB Pharmco" or "Defendants") by their attorneys, Covington & Burling LLP, by Geoffrey E. Hobart, Matthew J. O'Connor, and Emily Henn, and, Pepper Hamilton LLP, by Nina M. Gussack and Barry H. Boise, having stipulated as follows to the entry of this Final Judgment ("Judgment") by the Court

1 without trial or adjudication of any issue of fact or law, and without admission of wrongdoing or
2 liability of any kind as follows:

3 This Judgment may be signed by any judge of the San Diego Superior Court; and,
4 Plaintiff has filed its Complaint in this matter pursuant to California Business and
5 Professions Code sections 17200 and 17500 *et seq.*; and,

6 Defendants deny the allegations of the Complaint and denies any alleged violations; and,

7 This Judgment is made without trial or adjudication of any issue of fact or law or finding
8 of wrongdoing or liability of any kind; and,

9 Defendants do not admit any violation of law or any wrongdoing and that no part of this
10 Judgment, including its statements and commitments, shall constitute evidence of any liability,
11 fault or wrongdoing by Defendants; and,

12 The Court having considered the pleadings and the Stipulation for Entry of Final
13 Judgment ("Stipulation") executed by the Plaintiff and Defendants filed herewith, and good cause
14 appearing,

15 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

16 **I. PARTIES AND JURISDICTION**

- 17 1. The People of the State of California is the Plaintiff in this case.
- 18 2. GlaxoSmithKline LLC and SP Pharmco Puerto Rico, Inc., are the Defendants in
19 this case.
- 20 3. The Court has jurisdiction over the subject matter of this action, jurisdiction over
21 the parties to this action, and venue is proper in this Court.
- 22 4. Defendants, at all relevant times, have transacted business in the State of
23 California, including, but not limited to, San Diego County.
- 24 5. This Judgment is entered pursuant to and subject to California Business and
25 Professions Code sections 17200 *et seq.* and 17500 *et seq.*

26 **II. DEFINITIONS**

27 The following definitions shall be used in construing this Judgment:

28

1 6. “GlaxoSmithKline LLC” or “GlaxoSmithKline” shall mean GlaxoSmithKline
2 LLC, all of its past and present officers, directors, shareholders, employees, subsidiaries,
3 divisions, predecessors, and successors.

4 7. “SB Pharmco Puerto Rico, Inc.” or “SB Pharmco” shall mean SB Pharmco Puerto
5 Rico, Inc., all of its past and present officers, directors, shareholders, employees, subsidiaries,
6 divisions, and predecessors.

7 8. “Covered Conduct” shall mean Defendants’ production, manufacturing,
8 processing, packing, holding, distribution, and sale of Covered Products manufactured at SB
9 Pharmco’s production facility at Cidra, Puerto Rico.

10 9. “Covered Products” shall mean those products, set forth in Exhibit A.

11 10. “Effective Date” shall mean the date on which a copy of this Judgment, is
12 approved by, and becomes a Judgment, of the Court.

13 11. “Multistate Working Group” shall mean the Attorneys General and their staff
14 representing Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware,
15 the District of Columbia, Florida, Hawaii¹, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine,
16 Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Jersey, North
17 Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee,
18 Texas, Vermont, Washington, West Virginia, and Wisconsin.

19 12. “Multistate Executive Committee” shall mean the Attorneys General and their
20 staff representing Arizona, Florida, Illinois, Maryland, Oregon, Pennsylvania, Tennessee, and
21 Texas.

22 13. “Defendants” shall mean GlaxoSmithKline LLC and SB Pharmco Puerto Rico,
23 Inc.

24
25 ¹ Hawaii is being represented on this matter by its Office of Consumer Protection, an
26 agency which is not part of the state Attorney General’s Office, but which is statutorily
27 authorized to undertake consumer protection functions, including legal representation of the State
28 of Hawaii. For simplicity, the entire group will be referred to as the “Attorneys General,” and
 such designation, as it includes Hawaii, refers to the Executive Director of the State of Hawaii
 Office of Consumer Protection.

14. "Parties" shall mean the People of the State of California and Defendants.

15. "Attorneys General" shall mean the Attorneys General of the Multistate Working Group.

III. COMPLIANCE PROVISIONS

16. In accordance with sections 17203 and 17535 of the California Business and Professions Code:

A. Defendants shall not, as a result of the manner in which the Covered Products are manufactured, make any written or oral claim for the Covered Products that is false, misleading, or deceptive.

B. Defendants shall not, as a result of the manner in which the Covered Products are manufactured, represent that the Covered Products have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities, or qualities that they do not have.

C. Defendants shall not, as a result of the manner in which the Covered Products are manufactured, cause likelihood of confusion or of misunderstanding as to the Covered Products' source, sponsorship, approval, or certification.

IV. DISBURSEMENT OF PAYMENTS: PAYMENT TO THE STATES

17. Within thirty (30) days of the Effective Date of this Judgment, Defendants shall pay \$40.75 million (\$40,750,000) to be divided and paid by Defendants directly to each Attorney General of the Multistate Working Group in an amount to be designated by and in the sole discretion of the Multistate Executive Committee. Said payment shall be used by the Attorneys General for attorneys' fees and other costs of investigation and litigation, or to be placed in, or applied to, the consumer protection enforcement fund, consumer education or litigation or local consumer aid or revolving fund, used to defray the costs of the inquiry leading hereto, or for other uses permitted by state law, at the sole discretion of each Attorney General.

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V. RELEASE

18. Upon entry of this Judgment, the Plaintiff releases and forever discharges Defendants and all of their past and present officers, directors, shareholders, employees, subsidiaries, divisions, parents, predecessors, successors, assigns, and transferees (collectively, the "Released Parties"), from the following: all civil claims, causes of action, *parens patriae* claims, damages, restitution, fines, costs, attorneys' fees, remedies and/or penalties that were or could have been asserted against the Released Parties by the Attorney General under California Business and Professions Code sections 17200 *et seq.* and 17500 *et seq.* or any amendments to these code sections, or by common law claims concerning unfair, deceptive, or fraudulent trade practices resulting from the Covered Conduct, up to and including the Effective Date of this Judgment (collectively, the "Released Claims").

19. Notwithstanding any term of this Judgment, specifically reserved and excluded from the Released Claims as to any entity or person, including Released Parties, are any and all of the following:

A. Any claims related to the marketing or promotion of rosiglitazone that do not relate to the manner in which the product was manufactured at the Cidra, Puerto Rico facility.

B. Any criminal liability that any person or entity, including Released Parties, has or may have to the State of California;

C. Any civil or administrative liability that any person or entity, including Released Parties, has or may have to the State of California, under any statute, regulation, or rule not expressly covered by the release in Paragraph 18 above, including, but not limited to, any and all of the following claims:

i. State or federal antitrust violations;

ii. Medicaid violations, including, but not limited to, federal Medicaid drug rebate statute violations, Medicaid fraud or abuse, and/or kickback violations related to California's Medicaid program;

iii. Claims involving “best price,” “average wholesale price,” or “wholesale acquisition cost”;

iv. State false claims violations; and

v. Claims to enforce the terms and conditions of this Judgment.

D. Actions of state program payors of the State of California arising from the Covered Conduct, except for the release of civil penalties under the state consumer protection laws cited in footnote 3 of the Stipulation.

E. Any claims individual consumers have or may have under the State of California's consumer protection laws against any person or entity, including Released Parties.

VI. DISPUTE RESOLUTION

20. For the purposes of resolving disputes with respect to compliance with this Judgment, should any of the signatory Attorneys General believe that one or both Defendants have violated a provision of this Judgment subsequent to the Effective Date, then such Attorney General shall notify that Defendant or those Defendants in writing of the specific objection, identify with particularity the provisions of this Judgment that the practice appears to violate, and give Defendants thirty (30) days to respond to the notification.

21. Upon receipt of written notice from any of the Attorneys General, each Defendant receiving such notice shall provide a good-faith written response to the Attorney General notification, containing either a statement explaining why that Defendant believes it is in compliance with the Judgment or a detailed explanation of how the alleged violation occurred and statement explaining how and when that Defendant intends to remedy the alleged violation.

22. Except as set forth in Paragraphs 24 and 25 below, the Attorney General may not take any action during the thirty (30) day response period. Nothing shall prevent the Attorney General from agreeing in writing to provide Defendant with additional time beyond the thirty (30) days to respond to the notice.

23. The Attorney General may not take any action during which a modification request is pending before a court pursuant to Paragraph 16 of the Stipulation, except as provided for in Paragraphs 24 and 25 below.

24. Nothing in this Judgment shall be interpreted to limit the State's Civil Investigative Demand ("CID") or investigative subpoena authority.

25. The Attorney General may assert any claim that one or both Defendants have violated this Judgment in a separate civil action to enforce compliance with this Judgment, or may seek any other relief afforded by law, but only after providing Defendant or Defendants an opportunity to respond to the notification as described above; provided, however, that the Attorney General may take any action if the Attorney General believes that, because of the specific practice, a threat to the health or safety of the public requires immediate action.

VII. COMPLIANCE WITH ALL LAWS

26. Except as expressly provided in this Judgment, nothing in this Judgment shall be construed as:

A. Relieving Defendants of their obligation to comply with all applicable state laws, regulations, or rules, or granting permission to engage in any acts or practices prohibited by any law, regulation, or rule; or

B. Limiting or expanding in any way any right any state represented by the Multistate Working Group may otherwise have to enforce applicable state law or obtain information, documents, or testimony from Defendants pursuant to any applicable state law, regulation, or rule, or any right Defendants may otherwise have to oppose any subpoena, civil investigative demand, motion, or other procedure issued, served, filed, or otherwise employed by the State pursuant to any such state law, regulation, or rule.

VIII. GENERAL PROVISIONS

27. This Judgment relates solely to the Covered Conduct.

1 28. Nothing in this Judgment is intended to modify the Settlement Agreement,
2 effective December 15, 2010, between the State of California and GlaxoSmithKline, LLC
3 formerly known as SmithKline Beecham Corporation, d/b/a GlaxoSmithKline, and SB Pharmco,
4 Puerto Rico, Inc (collectively "GSK").

5 29. Nothing will prevent the Attorney General from agreeing in writing to provide
6 Defendants with additional time to perform any act required by the Judgment. The Attorney
7 General shall not unreasonably withhold his or her consent to the request for additional time.

8 30. All notices under this Judgment shall be sent by overnight United States mail. The
9 documents shall be sent to the following addresses:

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11 For GlaxoSmithKline LLC and SB Pharmco Puerto Rico, Inc.:

12 Matthew J. O'Connor
13 Covington & Burling LLP
14 1201 Pennsylvania Avenue, NW
15 Washington, DC 20004-2401

16 Barry H. Boise
17 Pepper Hamilton LLP
18 3000 Two Logan Square
19 Eighteenth and Arch Streets
20 Philadelphia, PA 19103

21 For State of California:
22 Judith Fiorentini, Deputy Attorney General
23 California Attorney General's Office
24 110 West A Street, Suite 1100
25 San Diego, California 92101

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27 31. This Court retains jurisdiction of this Judgment and the Parties hereto for the
28 purpose of enforcing and modifying this Judgment and for the purpose of granting such additional
relief as may be necessary and appropriate.

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32. The Clerk is ordered to enter this Judgment forthwith.

Dated: JUN 23 2011

MICHAEL S. GROCH
JUDGE OF THE SUPERIOR COURT

Exhibit A

Exhibit A - Product Produced at Cidra, Puerto Rico facility 2001 - 2009

PRODUCT NAME
Abreva [®] (Docosanol) Cream 10 %
Albenza [®] (albendazole, USP)
Avandamet [®] (Roglitazone maleate/Metformin HCL)
Avandia [®] (Rosiglitazone Maleate)
Bactroban [®] (Mupirocin) Ointment
Bactroban Cream [®] (Mupirocin Calcium)
Tagamet [®] / Cimetidine USP / Tagamet [®] HB
Compazine [®]
Coreg [®] (carvedilol)
Denavir Cream [®] (Penciclovir) ¹
Dibenzyl [®] ²
Dyazide [®]
Dyrenium [®] ²
Ecotrin [®] Aqueous Film Coated
Factive [®] (gemifloxacin mesylate) ³
Kytril [®] (Granisetron HCl) ⁴
Paxil [®] (Paroxetine HCl) ⁵
Paxil [®] Oral Suspension (Paroxetine HCL)
Paxil CR [®] (Paroxetine HCL)
Relafen [®] (Nabumetone)
Stelazine [®]
Thorazine [®]

¹ Divested as part of GlaxoSmithkline merger but manufactured at Cidra, until transferred to new owner (Novartis).

² Divested product: manufactured at Cidra, until transferred to new owner (Wellspring).

³ Product manufactured under contract agreements with LG Life Sciences LTD (sold to Genesoft in 2002 before approved by the FDA in 2003).

⁴ Divested as part of GlaxoSmithkline merger but manufactured at Cidra, until transferred to new owner (Roche).

⁵ Generic version of product manufactured at Cidra but distributed by PAR Pharmaceutical.