

SETTLEMENT AGREEMENT AND RELEASE

I. PARTIES

This Settlement Agreement (“Agreement”) is entered into between the United States of America, acting through the United States Department of Justice (the “United States”); the State of California, acting through its Office of the Attorney General (“California A.G.”) and its Department of Health Services (“DHS”), SmithKline Beecham Clinical Laboratories, Inc., now known as Quest Diagnostics Clinical Laboratories, Inc. (together “SBCL”); and Relator InSoon Lee (“Lee” or “Relator”) (collectively “the Parties”), through their authorized representatives.

II. PREAMBLE

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

A. SBCL is a corporation organized under the laws of the State of Delaware. At all times relevant hereto, SBCL owned and operated a clinical laboratory facility located at 7600 Tyrone Avenue, Van Nuys, California (“the Van Nuys facility”), which performed clinical laboratory tests on blood, tissue and other specimens obtained from patients, including patients insured by the Medicare and Medicaid programs.

B. Relator resides in the State of California and worked at the Van Nuys facility until March 1996.

C. On or about September 29, 1995, Relator filed a qui tam action in the United States District Court for the Central District of California against SmithKline Beecham, Inc. and John Does 1-100, captioned United States ex rel. InSoon Lee v. SmithKline Beecham, Inc., Case No. 95-6524 (MRP) (the “Civil Action”), alleging that the defendants violated the

federal False Claims Act (31 U.S.C. §§ 3729-3733), the California False Claims Act (Cal. Govt. Code §§ 12651-52), the retaliation provision of the federal False Claims Act (31 U.S.C. § 3730(h)), and California Labor Code § 1102.5, by allegedly failing to perform certain tests in accordance with applicable licensure, certification and regulatory requirements and by allegedly retaliating against the Relator in his employment with SBCL. On March 3, 1997, the United States declined to intervene in the Civil Action. On March 5, 1998, Relator filed his First Amended Complaint naming as defendants SBCL, its then-parent SmithKline Beecham plc, SmithKline Beecham, Inc., and Does 1-100, and again alleging that the defendants violated the federal False Claims Act, the California False Claims Act, the retaliation provision of the federal False Claims Act and California Labor Code § 1102.5, by allegedly failing to perform certain tests in accordance with applicable licensure, certification and regulatory requirements and by allegedly retaliating against the Relator in his employment with SBCL.

D. SBCL submitted or caused to be submitted claims for payment to the Medicare Program (Medicare), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg (1999); and the California Medicaid Program, 42 U.S.C. §§ 1396-1396v (1977) (collectively “the government health care programs”).

E. The United States believes that it may have certain civil claims against SBCL under the federal False Claims Act (31 U.S.C. §§ 3729-33) and other federal statutes and/or common law doctrines, specified in Paragraph 4 below, based on the allegations in the Civil Action that, during the period January 1, 1992 through January 23, 1997, the Van Nuys facility performed the following clinical laboratory tests, or produced laboratory results from those tests, which were allegedly not accurate, reliable or consistent with either applicable

licensure, certification, or other regulatory requirements or SBCL laboratory procedure manual requirements: (1) anti-cardiolipin AB, (2) anti-diuretic hormone (ADH), (3) somatomedin-C (SMC), (4) parvovirus B-19 antibody, (5) chlamydia antibody (SBCL test codes 958 and 2201 (which were billed under CPT 86631 and/or 86632)), (6) thyroglobulin, (7) sex hormone binding globulin (SHBG), (8) H. Pylori antibody, and (9) 1,25 - dihydroxy vitamin D (the "Covered Conduct").

F. The United States may also have certain administrative claims against SBCL under the provisions for civil monetary penalties, 42 U.S.C. § 1320a-7a, for the Covered Conduct.

G. The State of California believes that it may also have certain civil and administrative monetary claims against SBCL for the Covered Conduct, including potential claims under the California False Claims Act (Calif. Govt. Code §§ 12651-52).

H. SBCL denies the allegations set forth in the Civil Action, and specifically denies that it violated the federal False Claims Act, the California False Claims Act, 31 U.S.C. § 3730(h), California Labor Code § 1102.5, or any other statutes and/or common law doctrines with respect to the allegations set forth in the Civil Action.

I. To avoid the delay, uncertainty, inconvenience and expense of protracted litigation of the Civil Action, the Parties have agreed to a negotiated settlement and compromise consistent with the terms of this Agreement.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Within seven days of the effective date of this Agreement, SBCL will either pay or cause to be paid to the United States and the State of California a total of Fifty Thousand Dollars (\$50,000) (the "Settlement Amount") to settle the claims set forth in the Civil Action under the federal False Claims Act and the California False Claims Act and in exchange for the releases set forth herein. The payments will be made as follows:

a) SBCL will pay or cause to be paid \$37,500 to the United States by electronic funds transfer pursuant to written instructions to be provided by the United States Department of Justice.

b) SBCL will pay or cause to be paid \$12,500 to the State of California by electronic funds transfer pursuant to written instructions to be provided by the California Department of Justice.

2. Within seven days of the effective date of this Agreement, SBCL will either pay or cause to be paid to Relator and his counsel Three Hundred and Fifty Thousand Dollars (\$350,000) to settle the claims alleged in the Civil Action under 31 U.S.C. § 3730(h) and California Labor Code § 1102.5 as well as any claim for attorneys' fees and costs, including any claim for attorneys' fees and costs under 31 U.S.C. § 3730(d) or California Govt. Code § 12652(g)(8), and for the releases contained in a Mutual Release to be agreed upon between SBCL and Relator.

3. Contingent upon the United States and the State of California receiving the payments set forth in Paragraph 1 above, and as soon thereafter as feasible, the United States and the State of California agree to pay to Relator by electronic funds transfer pursuant to written instructions provided by Relator's counsel as follows:

- a) the United States will pay \$10,312.50 to Relator.
- b) the State of California will pay \$2,500.00 to Relator.

4. Subject to the exceptions in Paragraph 9 below, and conditioned upon payment in full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies and departments) agrees to release (i) SBCL, its current and former parents, affiliates, divisions, subsidiaries, (ii) their predecessors, successors, assigns, transferees, and (iii) any of their current or former directors, officers, and employees ("Released Parties") from any civil or administrative monetary claim the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. §1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, breach of contract and fraud, for the Covered Conduct.

5. After payment of the amounts as set forth in Paragraphs 1 and 2 above, the parties will file with the Court a Stipulation of Dismissal dismissing the Civil Action in its entirety and providing the following: (1) that all claims which were or could have been made in the Civil Action are dismissed with prejudice as to the Relator; (2) that all claims which were or could have been made in the Civil Action based on the Covered Conduct are dismissed with prejudice as to the United States and the State of California; and (3) that all other claims, if any,

made in the Civil Action other than those based on the Covered Conduct are dismissed without prejudice as to the United States and the State of California.

6. SBCL represents that as of the date of this Agreement, SBCL operates its clinical laboratory facilities under a Corporate Integrity Agreement entered into by Quest Diagnostics Incorporated and effective October 1996, as subsequently modified and amended by mutual agreement of Quest Diagnostics Incorporated and the Office of Inspector General, Department of Health and Human Services.

7. In consideration of the obligations of SBCL set forth in this Agreement, and conditioned upon payment in full of the Settlement Amount, the State of California agrees to release the Released Parties from any civil monetary claim the State has or may have for the Covered Conduct, except as reserved in Paragraph 9, below, and as reserved in this Paragraph. Nothing in this Paragraph precludes the State of California from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 9, below.

8. In consideration of the obligations of SBCL set forth in this Agreement, conditioned upon payment in full of the Settlement Amount, the State of California agrees to release and refrain from instituting, directing or maintaining any administrative claim or any action seeking permissive exclusion of SBCL from the California Medicaid Program for the Covered Conduct, except as reserved in Paragraph 9, below, and as reserved in this Paragraph. Nothing in this Paragraph precludes the State from taking action against SBCL in the event that SBCL is excluded by the federal government or against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 9, below.

9. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including SBCL and Relator) are any and all of the following claims of the United States or the State of California:

(a) Any civil, criminal or administrative claims of the United States or the State of California arising under Title 26, U.S. Code (Internal Revenue Code) or California tax laws;

(b) Any claims for criminal liability;

(c) Except as explicitly stated in this Agreement, any claims for administrative liability, including mandatory exclusion from Federal health care programs;

(d) Any claims based upon liability for any conduct other than the Covered Conduct;

(e) Any claims for personal injury or consequential damages;

(f) Any claims based upon such obligations as are created by this Agreement;

(g) Any claims against any individuals, including current or former directors, officers, employees, agents or shareholders of SBCL who are indicted or convicted, or who enter into a criminal plea agreement related to the Covered Conduct; and

(h) Any claims based on services provided by any company, organization, and/or business entity other than SBCL (including its corporate predecessors).

10. The Relator agrees and confirms that the amount recovered by this Settlement Agreement as the federal recovery is fair, adequate and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3739(c)(2)(B) or otherwise.

11. Conditioned upon receipt of the payments described in Paragraph 3, above, the Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, will release and forever discharge, and will be deemed to have released and forever discharged the United States and the State of California, their officers, agents and employees, from any claims pursuant to 31 U.S.C. § 3730 (including, without limitation, §§ 3730 (b), (c), (d), and (d)(1)) and California Govt. Code § 12652 (including, without limitation, § 12652(g)), for a share of the proceeds of the Civil Action, from any claims for a share of the Settlement Amount or of any other recovery by the United States or the State of California, from any claims arising from the filing of the Civil Action, and in full settlement of claims under this Agreement.

12. Conditioned upon receipt of the payment described in Paragraph 2, above, the Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, will release and forever discharge, and will be deemed to have released and forever discharged the Released Parties from any liability to Relator, including without limitation any liability for expenses, attorneys' fees, and costs arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) or California Govt. Code § 12652(g)(8), all as more specifically set forth in a separate Mutual Release to be agreed upon between SBCL and Relator and which is hereby incorporated by reference into this Agreement. Relator will dismiss, with prejudice, all claims stated on his own behalf and in his capacity as a relator in the Civil Action.

13. Conditioned upon execution of this Settlement Agreement by all parties and execution of a separate Mutual Release to be agreed upon between SBCL and Relator, SBCL agrees to release Relator in accordance with the terms of such Mutual Release which is hereby incorporated by reference into this Agreement.

14. SBCL waives and will not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses are based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Settlement bars a remedy sought in such criminal prosecution or administrative action. SBCL agrees that this settlement is not punitive in purpose or effect. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Laws, Title 26 of the United States Code.

15. The Settlement Amount will not be decreased as a result of the denial of claims for payment now being withheld from payment by any payer related to the Covered Conduct, and SBCL agrees not to resubmit to any payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

16. SBCL agrees that all costs (as defined in the Federal Acquisition Regulations ("FAR") § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg (1999) and 1396-1396v, and the regulations promulgated thereunder) incurred by or on behalf of SBCL in connection with: (1) the matters covered by this Agreement, (2) the Government's audit(s) and any civil or criminal investigation(s) of the

matters covered by this Agreement, (3) SBCL's investigation, defense, and corrective actions undertaken in response to the Government's audit(s) and any civil or criminal investigation(s) in connection with the matters covered by this Agreement (including attorney's fees), (4) the negotiation of this Agreement, and (5) the payments made pursuant to this Agreement, are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, Veterans Affairs Program (VA) and Federal Employee Health Benefits Program (FEHBP) (hereafter, "unallowable costs"). If applicable, these unallowable costs will be separately estimated and accounted for by SBCL. SBCL will not charge such unallowable costs directly or indirectly to any contracts with the United States or any state Medicaid program, or seek payment for such unallowable costs through any cost report, cost statement, information report or similar cost-based payment request submitted by SBCL or any of its subsidiaries to the Medicare, Medicaid, TRICARE, VA or FEHBP programs.

17. SBCL further agrees that within 60 days of the effective date of this Agreement it will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers and/or contractors, and Medicaid, VA and FEHBP fiscal agents, any unallowable costs (as defined in the preceding Paragraph) included in payments previously sought from the United States, or any State Medicaid Program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or similar cost-based requests for payment already submitted by SBCL or any of its subsidiaries, and will request, and agree, that such cost reports, cost statements, information reports or cost-based requests for payment, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. SBCL agrees that the United States will be entitled to recoup from SBCL any overpayment as a result of the

inclusion of such unallowable costs on previously-submitted cost reports, information reports, cost statements or similar cost-based requests for payment. Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice, and/or the affected agencies. The United States reserves its rights to disagree with any calculation submitted by SBCL or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in the preceding Paragraph) on SBCL's or any of its subsidiaries' cost reports, cost statements, information reports or similar cost-based request for payment. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in the preceding Paragraph or this Paragraph.

18. This Agreement is intended to be for the benefit of the Parties and the Released Parties (including the other named corporate defendants to the Civil Action) only, and by this instrument the Parties do not release any claims against any other person or entity except as specifically set forth herein.

19. Except as may be expressly provided to the contrary in this Agreement, each party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

20. The Parties agree that this Agreement does not constitute an admission by any person or entity, and shall not be construed as an admission by any person or entity, with respect to any issue of law or fact. The Parties also agree that the performance under this Agreement of any of the obligations of SBCL, its parents, affiliates, divisions, subsidiaries, their predecessors, successors, assigns, transferees, and any of their released (pursuant to Paragraph 4

above) current or former directors, officers, employees or agents, shall not constitute nor be construed as an admission by any person or entity, with respect to any issue of law or fact.

21. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the parties under this Agreement will be the United States District Court for the Central District of California.

22. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

23. The undersigned individuals signing this Agreement on behalf of SBCL represent and warrant that they are authorized by SBCL to execute this Agreement. The undersigned United States and State of California signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

24. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

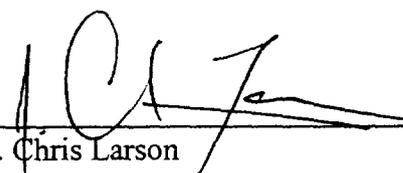
25. This Agreement is binding on successors, heirs, transferees, and assigns of the Parties.

26. This Agreement is effective upon the signature of the last signatory to the Agreement.

THE UNITED STATES OF AMERICA

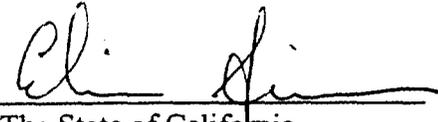
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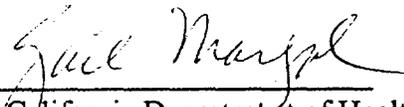
BY:



J. Chris Larson
Trial Attorney
Commercial Litigation Branch
Civil Division
U.S. Department of Justice

THE STATE OF CALIFORNIA

10, 2001 BY: 
The State of California
Office of Attorney General

BY: 
The California Department of Health Services

SMITHKLINE BEECHAM CLINICAL LABORATORIES, INC.,
now known as Quest Diagnostics Clinical Laboratories, Inc.

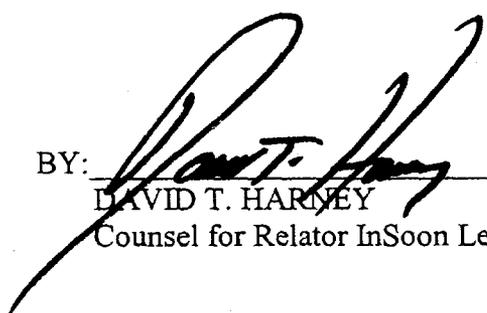
DATED: 5/11/01 BY: Michael E Perozzi
SmithKline Beecham Clinical Laboratories, Inc.,
now known as Quest Diagnostics Clinical Laboratories, Inc.

BY: Thomas H Lee
THOMAS H. LEE, II
Counsel for SmithKline Beecham Clinical Laboratories, Inc.,
now known as Quest Diagnostics Clinical Laboratories, Inc.

INSOON LEE - RELATOR

1/01

BY: 
INSOON LEE

BY: 
DAVID T. HARNEY
Counsel for Relator InSoon Lee