

SETTLEMENT AGREEMENT AND RELEASE

This Settlement and Release Agreement (the "Agreement") is entered into this 22nd day of October, 2019 (the "Effective Date"), by and between the Commonwealth of Kentucky, acting by and through Attorney General Andy Beshear (the "Commonwealth" or "Plaintiff"), and Bayer Corporation ("Bayer" or "Defendant"). At times, Plaintiff and Defendant are collectively referred to in this Agreement as the "Parties"

I. RECITALS

1.1 **WHEREAS**, on or about January 31, 2014, the Commonwealth filed an Amended Complaint in the case styled *In the Matter of Bayer Corporation*, Franklin Circuit Court, Division I, Civil Action No. 07-CI-00148;

1.2 **WHEREAS**, Plaintiff's allegations are set forth in the Amended Complaint and upon those allegations Plaintiff sought statutory damages under K.R.S. 367.990(1) and (2) as well as civil contempt damages;

1.3 **WHEREAS**, on or about May 24, 2019, the Commonwealth filed a Supplement to the Amended Complaint also in Civil Action No. 07-CI-000148;

1.4 **WHEREAS**, Plaintiff's further allegations are set forth in the Supplement to Amended Complaint and upon those allegations, Plaintiff sought an injunction against Bayer under K.R.S. 367.190 and other law, and that Bayer be compelled to comply with the Consent Judgment entered in 2007 and as modified in 2009 by the Agreed Order Modifying Consent Judgment; and

1.5 **WHEREAS**, in lieu of proceeding to trial in Civil Action No. 07-CI-00148, Plaintiff the Commonwealth of Kentucky *ex rel.* Andy Beshear, Attorney General, and Defendant Bayer Corporation seek to resolve all civil claims, causes of action, damages, restitution, fines,

costs, and penalties that the Commonwealth asserted in the Amended Complaint or the Supplement to Amended Complaint.

NOW, THEREFORE, in consideration of the above premises, the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound thereby, the Parties hereby agree as follows:

II. CONSIDERATION

2.1 In full payment, settlement, satisfaction and release of all existing and potential claims, causes of actions and disputes between the Parties as more fully described in Paragraph 3.1 below, Bayer will pay to Plaintiff the total amount of Seventeen Million U.S. Dollars and no cents (\$17,000,000.00) (the "Settlement Amount"), in one single payment, within twenty-one (21) business days after the Effective Date.

III. RELEASE

3.1. Subject to and expressly conditioned upon payment of the Settlement Amount, Plaintiff, on behalf of the Commonwealth of Kentucky, including by and through its Attorney General, hereby releases and forever discharges the Defendant, including its respective former, present, and future subsidiaries, affiliates, officers, directors, agents, employees, representatives, predecessors, successors, assigns, divisions, suppliers of materials and components and services used in the manufacture of Yasmin and YAZ, distributors and sellers of Yasmin and YAZ, and all entities related to or alleged to be related to Bayer regarding Yasmin and YAZ including but not limited to Schering AG, Berlex, Inc., Berlex Laboratories, Inc., and Berlex International Laboratories, Inc. (inclusively, the "Released Parties") from the following: all civil claims, causes of action, damages, restitution, fines, costs, civil contempt, and penalties arising out of the claims

and allegations that the Attorney General asserted or could have asserted regarding Yaz and Yasmin in Civil Action No. 07-CI-00148, including without limitation those set forth in the Amended Complaint and Supplement to Amended Complaint filed therein.

3.2. Notwithstanding any term of this Order, the Commonwealth specifically reserves and excludes from the Release set forth in Paragraph 3.1, as to any entity or person, including the Released Parties, potential claims for any and all of the following:

- i. Any criminal liability that any person or entity, has or may have;
- ii. Any civil or administrative liability that any person or entity, has or may have under any statute, regulation or rule not expressly covered by the Release in Paragraph 3.1 above, including, but not limited to, any and all of the following claims:

1. State or federal antitrust violations;
2. Reporting practices, including "best price", "average wholesale price" or "wholesale acquisition cost";
3. Medicaid violations, including federal Medicaid drug rebate statute violations, Medicaid fraud or abuse, and/or kickback violations related to any State's Medicaid program;
4. State false claims violations; and,
5. Claims to enforce the terms and conditions of this Settlement Agreement.

- iii. Any liability under the Kentucky Consumer Protection Act which any person or entity may have to individual consumers or state program payors.

IV. NO ADMISSION OF LIABILITY

4.1 This Agreement is entered into to avoid the uncertainty, time, trouble and expense of further litigation. This Agreement does not constitute an admission by Bayer for any purpose, of any fact or of a violation of any state or federal law, rule, or regulation, nor does this Agreement constitute evidence of any liability, fault, or wrongdoing, including but not limited to liability, fault, or wrongdoing under the Consent Judgment, including as modified under the Agreed Order Modifying Consent Judgment. Bayer enters into this Agreement for the purpose of resolving the concerns of the Commonwealth of Kentucky regarding the allegations set forth in Civil Action No. 07-CI-00148. Bayer does not admit to any violation of the Kentucky Consumer Protection Act, and does not admit any wrongdoing that was alleged or could have been alleged by the Kentucky Attorney General in that civil action.

4.2 This Agreement shall not be construed or used as a waiver or any limitation of any defense otherwise available to Bayer under the Consent Judgment, including as modified by the Agreed Order Modifying Consent Judgment. This Agreement is made without trial or adjudication of any issue of fact or law or finding of liability of any kind. Nothing in this Agreement, including this paragraph, shall be construed to limit or to restrict Bayer's right to use the Consent Judgment, including as modified by the Agreed Order Modifying Consent Judgment, to assert and maintain the defenses of res judicata, collateral estoppel, payment, compromise and settlement, accord and satisfaction, or any other legal or equitable defenses in any pending or future legal or administrative action or proceeding.

V. ADDITIONAL PROVISIONS

5.1. **FILING OF AGREED ORDER DISMISSING CIVIL ACTION NO. 07-CI-00148 WITH PREJUDICE.** The Commonwealth and Bayer agree to submit the attached Agreed

Order to Judge Shepherd at the Franklin Circuit Court, Division I, within 5 business days of execution of the Effective Date, dismissing Civil Action No. 07-CI-00148 with prejudice, expressly including dismissal with prejudice of both the Amended Complaint and the Supplement to Amended Complaint as set forth in the Release above.

5.2. **HEADINGS.** The headings used in this Agreement are intended solely for convenience purposes and do not in any manner amplify, limit, modify, or otherwise affect the interpretation of any of the provisions of this Agreement.

5.3. **SEVERABILITY.** The provisions of this Agreement are severable. If any clause, provision or section of this Agreement shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect the validity or enforceability of any other clause, provision or section of this Agreement, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, provision or section had not been contained herein.

5.4. **CHANGES ONLY BY EXECUTED WRITING.** No waiver, modification, or amendment of the terms of this Agreement shall be valid or binding unless made in writing, signed by the Commonwealth and Defendant, and then only to the extent specifically set forth in such writing.

5.5. **TIME IS OF THE ESSENCE.** Time shall be of the essence with respect to each provision of this Agreement that requires action to be taken by the Commonwealth or Defendants within a stated time period.

5.6. **NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing in this Agreement shall be construed to waive any claims of sovereign immunity the Commonwealth may otherwise have in any action or proceeding.

5.7. **ENTIRE AGREEMENT.** This Agreement sets forth the entire agreement between the Commonwealth and Defendant, and there are no representations, agreements, arrangements, or understanding, oral or written, between the Commonwealth and Defendant relating to the subject matter of this Agreement which are not fully expressed hereto or attached hereto.

5.8. **COUNTERPARTS/FACSIMILE.** This Agreement may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same Agreement. A facsimile-transmitted or scanned signature transmitted by electronic transmission is deemed as effective as if it were an original signature. One or more counterparts of this Agreement may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart thereof.

5.9. **SPECIFIC PERFORMANCE.** Any failure by any party to this Agreement to insist upon the strict performance by any other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and such party, notwithstanding such failure, shall have the right thereafter to seek both specific performance of any and all of the provisions of this Agreement and all other available relief.

5.10. **GOVERNING LAW/CHOICE OF FORUM.** By consent of the Parties, the Court shall retain jurisdiction over Civil Action No. 07-CI-00148 and the Parties hereto for the purpose of enforcing this Agreement, and venue as to all matters between the Parties relating hereto or arising out of this Agreement and Agreed Order shall be in the Franklin Circuit Court, Frankfort, Kentucky.

5.11 **AUTHORITY.** The Bayer signatory warrants and represents that he is duly authorized to execute this Agreement and that such signature binds Bayer to the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, and for the mutual consideration set forth above, hereby agree to the above terms and conditions and execute this Agreement as of the Effective Date set forth above.

[SIGNATURE PAGE FOLLOWS]

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Counsel for Defendants

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION I

IN THE MATTER OF
BAYER CORPORATION

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CIVIL ACTION NO. 07-CI-00148

AGREED ORDER

Plaintiff, the Commonwealth of Kentucky (the “Commonwealth”), acting by and through Attorney General Andy Beshear (the “Attorney General”), and Defendant Bayer Corporation (“Defendant”) (collectively, the “Parties”), having reached an agreement for the resolution of the Commonwealth’s Amended Complaint and Supplement to Amended Complaint, and the Court being otherwise sufficiently advised, **THE COURT HEREBY FINDS, ORDERS AND ADJUDGES as follows:**

1. Civil Action No. 07-CI-00148, including the Amended Complaint filed January 31, 2014, and the Supplement to Amended Complaint filed on May 24, 2019, are hereby dismissed with prejudice as set forth in the attached Parties’ Settlement Agreement and Release.
2. All counterclaims are dismissed with prejudice.
3. All parties shall bear their own costs and attorneys’ fees.
4. This Court shall retain jurisdiction over the Parties hereto for the purpose of enforcing their Settlement Agreement and Release, and pursuant to KRS 367.990(1) with regard to the Consent Judgment entered in 2007, as modified in 2009 by the Agreed Order Modifying Consent Judgment, which remains in full force and effect.

5. IT IS FURTHER ORDERED that upon receipt of the Settlement Amount due under the Settlement Agreement and Release, the funds shall be disbursed as follows:

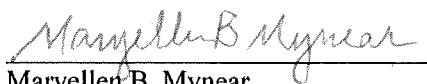
- a. The Commonwealth's Outside Counsel shall receive a contingency fee and reimbursement of advanced litigation fees and expenses from the Settlement Amount as set forth in Personal Service Contract PON2 040 1300001371, and renewed effective July 1, 2018 through June 30, 2020;
- b. \$680,000 of the Settlement Amount shall be paid to the Multi-District Litigation ("MDL") Common Benefit Fund as established by the MDL Plaintiff Steering Committee for the Commonwealth's access to discovery materials in that litigation.
- c. The Office of the Attorney General shall receive \$3,400,000 of the Settlement Amount as its reasonable costs of investigation and litigation per KRS 48.005; and
- d. Any and all remaining amounts of the Settlement Amount after each payment of subsections a., b., and c. above shall be paid to the Commonwealth's General Fund.

SO ORDERED, ADJUDGED AND DECREED this ____ day of _____, 2019:

Honorable Philip Shepherd
Franklin Circuit Court

HAVING SEEN AND AGREED, SO STIPULATED AND ACKNOWLEDGED THIS 22
DAY OF October, 2019

ANDY BESHEAR, ATTORNEY GENERAL
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