

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General of the Department of Health and Human Services (“OIG-HHS”), the Defense Health Agency (“DHA”), including acting on behalf of the TRICARE/CHAMPUS Program, and the United States Office of Personnel Management (“OPM”) (collectively, the “United States”), Frank Strobl and Michael Johnson (collectively and individually, the “Relators”), and The Gores Group (hereafter collectively referred to as the “Parties”), through their authorized representatives.

### RECITALS

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. Therakos is a Florida Corporation that, during all relevant time periods, had its principal place of business in West Chester, Pennsylvania.

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. The United States pays for medical treatment provided with Therakos’ ECP system through federal healthcare programs, including Medicare and Medicaid.

D. The Gores Group owned Therakos until September 2015, when it was sold to a pharmaceutical manufacturer, Mallinckrodt PLC.

E. On December 14, 2016, the Relators filed an amended *qui tam* action in the United States District Court for the Eastern District of Pennsylvania captioned *United States ex rel. Johnson, et al. v. Therakos, Inc., Ortho-Clinical Diagnostics, Inc., Johnson & Johnson, The Gores Group, and Mallinckrodt plc*, Case No. 12-cv-1454 (JHS) (E.D. Pa.), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”).

F. The United States contends that it and the Medicaid Participating States (defined below) have certain civil claims against The Gores Group for causing the submission of false claims to the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (“Medicaid”), the TRICARE Program, 10 U.S.C. §§ 1071-1110b (“TRICARE”), and the Federal Employee Health Benefits Program, 5 U.S.C. §§ 8901-8914 (“FEHBP”) arising from marketing, promotion, sale, and reimbursement of extracorporeal photopheresis for uses not approved by the Food and Drug Administration, in particular, 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.”

G. 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 United States that its claims are not well founded. The Gores Group denies the allegations of the United States 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.

H. The Gores Group has entered into, or will enter into, separate settlement agreements with certain States and the District of Columbia in settlement of the Covered Conduct. States with which The Gores Group executes a Medicaid State Settlement Agreement are referred to herein as the “Medicaid Participating States.”

I. Relators claim entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relators' reasonable expenses, attorneys' fees and costs.

J. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. The Gores Group shall pay to the United States and the Medicaid Participating States a total of \$1,500,000 (the "Total Settlement Amount"), of which \$750,000 is restitution.

a. The Gores Group shall pay EIGHT HUNDRED NINETY-FOUR THOUSAND NINE HUNDRED THREE DOLLARS AND EIGHTEEN CENTS (\$894,903.18) to the United States no later than fourteen (14) business days from the Effective Date of this Agreement (the "Federal Settlement Amount"). Payment of the Federal Settlement Amount shall be made by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Eastern District of Pennsylvania. Interest at the rate of 0.75% will accrue after signature of this agreement until receipt of payment.

b. The Gores Group shall pay SIX HUNDRED FIVE THOUSAND NINETY SIX DOLLARS AND EIGHTY TWO CENTS (\$605,096.82) to the Medicaid Participating States (the "State Settlement Amount") subject to the terms and conditions of the Medicaid State Settlement Agreements between The Gores Group and the Medicaid Participating States.

2. Conditioned upon the United States receiving the Federal Settlement Amount from The Gores Group and as soon as feasible after receipt, the United States shall pay \$214,776.76 to Relators by electronic funds transfer.

3. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon The Gores Group's full payment of the Federal Settlement Amount, the United States releases The Gores Group from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801, *et seq.*, or the common law theories of payment by mistake, unjust enrichment, and fraud.

4. Subject to the exceptions in Paragraph 5 below, and conditioned upon The Gores Group's full payment of the Total Settlement Amount, Relators, for themselves and for their respective heirs, successors, attorneys, agents, and assigns, release The Gores Group and its affiliates from any civil claim the Relators have on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733 against The Gores Group and Therakos, Inc., whether or not asserted, known or unknown, and however denominated or identified.

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

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;

- c. Except as explicitly stated in this Agreement, any administrative liability, including permissive or mandatory exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due;
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

6. Relators and their heirs, successors, attorneys, agents, and assigns shall not object to this Agreement, but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relators' receipt of the payment described in Paragraph 2, Relators and their heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

7. Relators, for themselves, and for their heirs, successors, attorneys, agents, and assigns, release The Gores Group and its affiliates, officers, directors, agents, and employees

from any liability to Relators arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs, any other claims that Relators, individually or collectively, have asserted, could have asserted, or may assert in the future against The Gores Group related to the Covered Conduct and the Relators' investigation and prosecution thereof, or any other matter that are not encompassed by the Covered Conduct.

8. The Gores Group waives and shall not assert any defenses The Gores Group may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be 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 Agreement bars a remedy sought in such criminal prosecution or administrative action.

9. The Gores Group fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that The Gores Group has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants related to the Covered Conduct and the United States' investigation and prosecution thereof.

10. The Gores Group fully and finally releases the Relators from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that The Gores Group has asserted, could have asserted, or may assert in the future against the Relators, related to the Covered Conduct and the Relators' investigation and prosecution thereof, or any other matter that is not encompassed by the Covered Conduct.

11. The Total Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any state payer, related to the Covered Conduct.

12. The Gores Group agrees to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of The Gores Group, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) The Gores Group's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment The Gores Group makes to the United States pursuant to this Agreement and any payments that The Gores Group may make to Relators, including costs and attorney's fees

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by The Gores Group, and The Gores Group shall 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 statement, or payment request submitted by The Gores Group or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: The Gores Group further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this 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 payment requests already submitted by The Gores Group or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. The Gores Group agrees that the United States, at a minimum, shall be entitled to recoup from The Gores Group any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or 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 calculations submitted by The Gores Group



or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on The Gores Group or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine The Gores Group's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

13. The Gores Group agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, 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. The Gores Group further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, 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.

14. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 15 (waiver for beneficiaries paragraph), below.

15. If applicable, The Gores Group agrees that it waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries

or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

16. Upon receipt of the payment described in Paragraph 1, above, the Parties shall promptly sign and file a Joint Stipulation of Dismissal with prejudice as to all claims against The Gores Group made on behalf of the United States asserted in the Civil Action pursuant to Rule 41(a)(1).

17. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

18. Each party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

19. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Eastern District of Pennsylvania. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

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

21. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

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

23. This Agreement is binding on The Gore Group's successors, transferees, heirs, and assigns.

24. This Agreement is binding on Relators' successors, transferees, heirs, and assigns.

25. All parties consent to the public disclosure of this Agreement, and information about this Agreement will be made available to the public

26. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

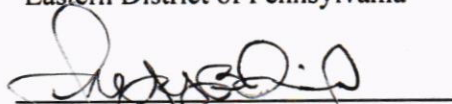
**THE UNITED STATES OF AMERICA**

DATED: 11/17/20

BY: 


WILLIAM M. McSWAIN  
United States Attorney  
Eastern District of Pennsylvania

DATED: 11/17/20

BY: 


GREGORY B. DAVID  
Assistant United States Attorney  
Chief, Civil Division

DATED: 11/17/20

BY: 

CHARLENE KELLER FULLMER  
Assistant United States Attorney  
Deputy Chief, Civil Division

DATED: 11/17/20

BY: 

JOHN T. CRUTCHLOW  
Assistant United States Attorney

DATED: 11/03/2020

BY: 

LISA M. RE  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of Health and Human Services

DATED: \_\_\_\_\_

**WHEELER.BRYA** Digitally signed by  
**N.T.1150385950** WHEELER.BRYAN.T.1150385950  
Date: 2020.11.03 15:35:23 -05'00'

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**SALVATORE M. MAIDA**  
General Counsel  
Defense Health Agency  
United States Department of Defense

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

**EDWARD M. DEHARDE**  
Assistant Director of Federal Employee  
Insurance Operations  
Healthcare and Insurance  
United States Office of Personnel Management

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

LEIGH A. BRADLEY  
General Counsel  
Defense Health Agency  
United States Department of Defense

DATED: \_\_\_\_\_

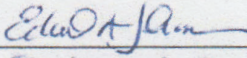
BY: Edward M. DeHarde

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DeHarde  
Date: 2020.11.01 15:05:27 -05'00'

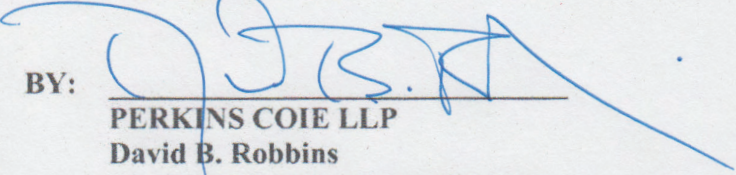
EDWARD M. DEHARDE  
Assistant Director of Federal Employee  
Insurance Operations  
Healthcare and Insurance  
United States Office of Personnel Management

THE GORES GROUP AND TGG MEDICAL SOLUTIONS

DATED: 10/29/2020

BY:   
SR. MANAGING DIRECTOR  
TGG / TGG Medical Solutions

DATED: 10/30/2020

BY:   
PERKINS COIE LLP  
David B. Robbins  
Attorneys for The Gores Group

**THE GORES GROUP - DEFENDANT**

DATED: \_\_\_\_\_


BY: \_\_\_\_\_  
The Gores Group

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
DAVID B. ROBBINS  
BARAK COHEN  
Counsel for The Gores Group

**RELATORS**

DATED: 10/19/2020

BY:   
Frank Strobl

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Michael Johnson

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
BRIAN J. MCCORMICK  
ROSS FELLER CASEY, LLP  
Counsel for Frank Strobl and Michael Johnson



**THE GORES GROUP - DEFENDANT**

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
The Gores Group

DATED: \_\_\_\_\_


BY: \_\_\_\_\_  
DAVID B. ROBBINS  
BARAK COHEN  
Counsel for The Gores Group

**RELATORS**


DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Frank Strobl

DATED: 10-19-20

BY:   
Michael Johnson

DATED: 10-20-20

BY:   
BRIAN J. MCCORMICK  
ROSS FELLER CASEY, LLP  
Counsel for Frank Strobl and Michael Johnson