

SETTLEMENT AGREEMENT

I. PARTIES

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 (OIG-HHS) of the Department of Health and Human Services (HHS)(collectively the “United States”); Danny Lynn Smart (“the Relator”); and CHRISTUS Health, A/K/A CHRISTUS Health System and CHRISTUS Spohn Health System Corporation (collectively “Defendant CHRISTUS Spohn”); hereafter referred to as “the Parties”, through their authorized representatives.

II. PREAMBLE

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

A. CHRISTUS Health is a Texas corporation that operates CHRISTUS Health System, a not-for-profit health system, in the State of Texas. CHRISTUS Health is the sole member of CHRISTUS Spohn Health System Corporation, a Texas corporation that owns and operates hospitals in Corpus Christi, Texas, including CHRISTUS Spohn Hospital Corpus Christi-Shoreline (“Spohn Shoreline Hospital”), CHRISTUS Spohn Hospital Corpus Christi-South (“Spohn South Hospital”), and CHRISTUS Spohn Hospital Corpus Christi-Memorial (“Spohn Memorial Hospital”).

B. Danny Lynn Smart (“Relator”) is a resident of Texas. From 1993 to 2005, the Relator was employed in the property management department of CHRISTUS Spohn Health System Corporation (“Spohn”). As Spohn’s Director of Property Management relator negotiated,

prepared, and executed lease agreements with physician tenants in Defendant CHRISTUS Spohn's medical office buildings in and around Corpus Christi, Texas.

C. On June 7, 2005, Relator filed a qui tam action in the United States District Court for the Southern District of Texas captioned United States ex rel John Doe v. CHRISTUS Spohn Health System Corporation, No. C-05-CV-287, (hereinafter "the Civil Action") alleging that Defendant CHRISTUS Spohn violated the False Claims Act, 31 U.S.C. §§ 3729-32, by charging referring physicians rent below fair market value at Defendant CHRISTUS Spohn's medical office buildings, and by submitting false and/or fraudulent claims and statements to the government's Medicare and Medicaid programs in violation of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7(b) and the Physician Self-Referral Law ("Stark Law") Statute, 42 U.S.C. § 1395nn et seq.

D. On May 30, 2006, Relator filed his First Amended Complaint captioned United States ex rel Danny Lynn Smart v. CHRISTUS Health et al., No. C-05-CV-287. In the First Amended Complaint, Relator specifically added the government's Tricare Program as another program defrauded by Defendant CHRISTUS Spohn and further alleged that Defendant CHRISTUS Spohn submitted to the government programs fraudulent cost reports with false certifications of compliance, a prerequisite for payment from the government programs. Relator added an individual claim for retaliation against Defendant CHRISTUS Spohn, under the False Claims Act, 31 U.S.C. §3730(h).

E. On February 7, 2008, Relator filed his Second Amended Complaint.

F. On February 11, 2009, Relator filed his Third Amended Complaint.

G. The United States contends that Defendant CHRISTUS Spohn 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. §§ 1395-1395hhh, the Medicaid Program (Medicaid), 42 U.S.C. §§ 1396-1396v, and the Tricare Program, 10 U.S.C. §§ 1071-1109.

H. The United States contends that it has certain civil claims, as specified in Section III.2, below, against Defendant CHRISTUS Spohn for engaging in the following conduct during the period from January 1, 1995 to June 1, 2010: Defendant CHRISTUS Spohn charged certain physicians rent below fair market value at defendant owned medical office buildings in Corpus Christi, Texas. In return, these physicians referred patients to Spohn Shoreline Hospital, Spohn South Hospital, and Spohn Memorial Hospital. As a result, Defendant CHRISTUS Spohn submitted claims to the Medicare and Medicaid Programs for services rendered to these referred patients. These actions violated the False Claims Act, 31 U.S.C. §§ 3729-32, the Anti-Kickback Statute, 42 U.S.C. § 1320a-7(b) and the Physician Self-Referral Law (“Stark Law”) Statute, 42 U.S.C. § 1395nn et seq. The conduct described in this Paragraph is hereinafter referred to as the “Covered Conduct.”

I. The United States also contends that it has certain administrative claims against Defendant CHRISTUS Spohn for engaging in the Covered Conduct.

J. This Agreement is neither an admission of liability by Defendant CHRISTUS Spohn nor a concession by the United States that its claims are not well founded.

K. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

III. TERMS AND CONDITIONS

1. Defendant CHRISTUS Spohn agrees to pay to the United States \$2,100,000.00 (Two Million and One Hundred Thousand Dollars) (the "Settlement Amount"). From the Settlement Amount, the United States will pay Relator \$630,000.00 (Six Hundred and Thirty Thousand Dollars) (Relator's Share). The Defendant CHRISTUS Spohn further agrees to pay Relator \$150,000.00 (One Hundred Fifty Thousand Dollars) for Relator's individual retaliation claim. The foregoing payments shall be made as follows:

a. Defendant CHRISTUS Spohn agrees to pay the full Settlement Amount to the United States by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Southern District of Texas, within ten business days of the later date of : (i) the Effective Date of this Agreement, or (ii) receipt of the written wire instructions from the United States Attorney's Office for the Southern District of Texas.

b. Contingent upon the United States receiving the Settlement Amount from Defendant CHRISTUS Spohn and as soon as feasible after receipt, the United States agrees to pay Relator's Share to Relator by electronic funds transfer, through his counsel, pursuant to written wire instructions provided to the United States Attorney's Office for the Southern District of Texas by Relator's counsel.

c. Defendant CHRISTUS Spohn further agrees to pay \$150,000.00 (One Hundred and Fifty Thousand Dollars) to Relator, through his counsel, for his individual retaliation claim. Defendant CHRISTUS Spohn agrees to pay the \$150,000.00 (One Hundred and Fifty Thousand Dollars) on the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims), below, in consideration of the obligations of Defendant CHRISTUS Spohn in this Agreement, conditioned upon CHRISTUS Spohn's full payment of the Settlement Amount and Relator's individual retaliation claim, and subject to Paragraph 16, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Defendant CHRISTUS Spohn together with its current and former parent corporations, direct and indirect subsidiaries, brother or sister corporations, divisions; current or former owners, as well as all employees, agents, officers, directors, affiliates, and the successors and assigns of Defendant CHRISTUS Spohn from any civil or administrative monetary claim the United States has or may have for the Covered Conduct 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; the civil monetary provisions of the Stark statute, 42 U.S.C. § 1395nn(g)(3) and (4), or the common law theories of payment by mistake, unjust enrichment, and fraud.

3. Subject to the exceptions in Paragraph 4 (concerning excluded claims), below, in consideration of the obligations of Defendant CHRISTUS Spohn in this Agreement, conditioned upon Defendant CHRISTUS Spohn's full payment of the Settlement Amount and Relator's individual claim, and subject to Paragraph 16, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, agrees to release Defendant CHRISTUS Spohn together with its current and former

parent corporations, direct and indirect subsidiaries, brother or sister corporations, divisions; current or former owners, as well as all employees, agents, officers, directors, affiliates, and the successors and assigns of Defendant CHRISTUS Spohn from any civil monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

4. 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 Defendant CHRISTUS Spohn and Relator) are the following claims of the United States:
 - a. Any civil, criminal, or administrative 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 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 such obligations as are created by this Agreement;
 - f. Any civil or administrative liability of individuals (including current or former directors, officers, employees, agents, or shareholders of Defendant CHRISTUS Spohn) who receive written notification that they are the target of a criminal investigation (as defined in the United States Attorneys' Manual), are indicted, charged, or convicted, or who enter into a plea agreement related to the Covered Conduct.

5. Relator and his heirs, successors, attorneys, agents, and assigns agree not to object to this Agreement and 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) and, conditioned upon receipt of Relator's share, Relator, for himself individually, and for his heirs, successors, agents, and assigns, fully and finally releases, waives, and forever discharges the United States, its officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. § 3730; from any claims arising from the filing of the Civil Action; and from any other claims for a share of the Settlement Amount; and in full settlement of any claims Relator may have under this Agreement. This Agreement does not resolve or in any manner affect any claims the United States has or may have against the Relator arising under Title 26, U.S. Code (Internal Revenue Code), or any claims arising under this Agreement.

6. Conditioned upon receipt of the payment to the United States of the Settlement Amount stated in Paragraph 1 and upon receipt of the payment to Relator described in Paragraph 1c, Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, agrees to release Defendant CHRISTUS Spohn from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs. Likewise, Defendant CHRISTUS Spohn, for itself and its successors, attorneys, agents, and assigns, agrees to release Relator from any liability to Defendant CHRISTUS Spohn arising from or related to the filing of the Civil Action, or under 31 U.S.C. § 3730(D) for expenses or attorney's fees and costs.

7. Defendant CHRISTUS Spohn waives and shall not assert any defenses Defendant CHRISTUS Spohn 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. 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.

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

9. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare or Texas Medicaid carrier or intermediary or any state payer, related to the Covered Conduct; and Defendant CHRISTUS Spohn agrees not to resubmit to any Medicare or Texas Medicaid carrier or intermediary or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

10. Defendant CHRISTUS Spohn agrees to the following:

a. Unallowable Costs Defined: that 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. §§ 1395-1395hhh and 1396-1396v; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Defendant CHRISTUS Spohn, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be “Unallowable Costs” on government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP):

- (1) the matters covered by this Agreement;
- (2) the United States’ audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
- (3) Defendant CHRISTUS Spohn’s investigation, defense, and corrective actions undertaken in response to the United States’ audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorney’s fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment Defendant CHRISTUS Spohn makes to the United States pursuant to this Agreement and any payments that Defendant CHRISTUS Spohn may make to Relator, including costs and attorneys fees; and

b. Future Treatment of Unallowable Costs: These Unallowable Costs shall be separately determined and accounted for by Defendant CHRISTUS Spohn, and CHRISTUS Spohn 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 Defendant CHRISTUS Spohn or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for

Payment: Defendant CHRISTUS Spohn 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 Defendant CHRISTUS Spohn 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. Defendant CHRISTUS Spohn agrees that the United States, at a minimum, shall be entitled to recoup from Defendant CHRISTUS Spohn 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 Defendant CHRISTUS Spohn or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Defendant CHRISTUS Spohn 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 Defendant CHRISTUS Spohn's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

11. Defendant CHRISTUS Spohn agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Defendant CHRISTUS Spohn 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. Defendant CHRISTUS Spohn 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 its counsel or other agent.

12. 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 14 (waiver for beneficiaries paragraph), below.

13. Defendant CHRISTUS Spohn 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.

14. Defendant CHRISTUS Spohn warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Defendant CHRISTUS Spohn, within the meaning of 11 U.S.C. § 547(c)(1); and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Defendant CHRISTUS Spohn was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

15. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, Defendant CHRISTUS Spohn commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of Defendant CHRISTUS Spohn's debts, or seeking to adjudicate Defendant CHRISTUS Spohn as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Defendant CHRISTUS Spohn or for all or any substantial part of Defendant CHRISTUS Spohn's assets, Defendant CHRISTUS Spohn agrees as follows:

a. Defendant CHRISTUS Spohn's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Defendant CHRISTUS Spohn shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Defendant CHRISTUS Spohn's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Defendant CHRISTUS Spohn was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Defendant CHRISTUS Spohn.

b. If Defendant CHRISTUS Spohn's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Defendant CHRISTUS Spohn for the claims that would otherwise be covered by the releases provided in Paragraphs 2 - 3, above. Defendant CHRISTUS Spohn agrees that (i) any such claims, actions, or proceedings brought by the United States (including any proceedings to exclude Defendant CHRISTUS Spohn from participation in Medicare, Medicaid, or other Federal health care programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and Defendant CHRISTUS Spohn shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) Defendant CHRISTUS Spohn shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative

claims, actions, or proceeding that are brought by the United States within 90 calendar days of written notification to Defendant CHRISTUS Spohn that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on June 7, 2005; and (iii) the United States has a valid claim against Defendant CHRISTUS Spohn in the amount of \$800,000,000.00 (Eight Hundred Million Dollars) and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. Defendant CHRISTUS Spohn acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

16. Upon receipt of the payments described in Paragraph 1, above, the United States and Relator shall promptly sign and file in the Civil Action a Motion to Dismiss Defendant CHRISTUS Spohn from the Civil Action. The Dismissal shall be with prejudice to the United States for claims that do not fall within the Covered Conduct, but without prejudice to the United States for claims that do not fall within the Covered Conduct. The dismissal shall be with prejudice to the Relator as to all claims that were or could have been asserted in the Civil Action, or related to the Civil Action, against Defendant CHRISTUS Spohn.

17. Except as expressly provided to the contrary in this Agreement, 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. Defendant CHRISTUS Spohn represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

19. Relator represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

20. 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 is the United States District Court for the Southern District of Texas.

21. For purposes of construction, 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.

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 individuals signing this Agreement on behalf of Defendant CHRISTUS Spohn represent and warrant that they are authorized by Defendant CHRISTUS Spohn to execute this Agreement. The individual(s) signing this Agreement on behalf of Relator represent and warrant that they are authorized by Relator to execute this Agreement. The United States 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 Defendant CHRISTUS Spohn's successors, transferees, heirs, and assigns.

26. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

27. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

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

THE UNITED STATES OF AMERICA

JOSÉ ANGEL MORENO
UNITED STATES ATTORNEY

DATED: 6-15-10

BY: _____

Jose Vela Jr.
Assistant United States Attorney
Southern District of Texas

DEFENDANT CHRISTUS SPOHN

DATED: _____

BY: _____
Bruce Holstien
Chief Executive Officer
CHRISTUS Spohn Health System Corporation

DATED: _____

BY: _____
Marc Brian Collier
Fullbright & Jaworski LLP
Counsel for Defendant CHRISTUS Spohn

RELATOR DANNY LYNN SMART

DATED: _____

BY: _____

Danny Lynn Smart
Relator

DATED: _____

BY: _____

Anthony E. Pletcher
Watts Guerra Craft, LLP
Counsel for Danny Lynn Smart

DATED: _____

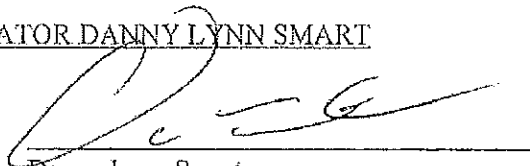
BY: _____

Leland Cage Wavell
Counsel for Danny Lynn Smart

RELATOR DANNY LYNN SMART

DATED: June 14, 2010


BY:



Danny Lynn Smart
Relator

DATED: June 15, 2010

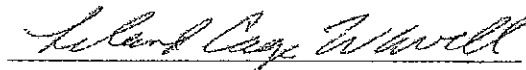
BY:



Anthony E. Pletcher
Watts Guerra Craft, LLP
Counsel for Danny Lynn Smart

DATED: June 10, 2010

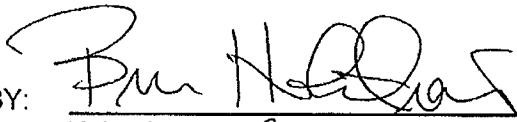
BY:



Leland Cage Wavell
Counsel for Danny Lynn Smart


DEFENDANT CHRISTUS SPOHN

DATED: June 15, 2010

BY: 

Bruce Holstein ^{for}
Chief Executive Officer
CHRISTUS Spohn Health System Corporation

DATED: June 15, 2010

BY: 

Marc Brian Collier
Fulbright & Jaworski LLP
Counsel for Defendant CHRISTUS Spohn