

## **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 (“OIG-HHS”) of the Department of Health and Human Services (“HHS”) (collectively, the “United States”), Pacira Pharmaceuticals, Inc. (“Pacira”), and Jordan C. Schneider (the “Relator”) (collectively, the “Parties”), through their authorized representatives.

### **RECITALS**

A. Pacira is a publicly-traded pharmaceutical company headquartered in Parsippany, New Jersey, which, at all relevant times, distributed, marketed, and sold pharmaceutical products in the United States, including liposomal bupivacaine, a non-opioid analgesic, that was sold under the trade name EXPAREL.

B. On November 14, 2014, Jordan C. Schneider filed a qui tam action in the United States District Court for the District of New Jersey captioned *United States ex rel. Jordan C. Schneider v. Pacira Pharmaceuticals, Inc.*, Civil Action Number 2:14-cv-07021, pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). The Relator alleged, among other things, that Pacira had caused the submission of false claims for payment to federal healthcare programs that were not reimbursable because they were tainted by kickbacks.

C. The United States contends that Pacira caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395III (“Medicare”); and the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (“Medicaid”) (collectively, the “Federal Health Care Programs”).

D. The United States contends that it has certain civil claims against Pacira arising from Pacira offering and/or paying illegal remuneration to health care providers, which remuneration Pacira intended, in whole or in part, to induce purchases of EXPAREL in violation

of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b), as described more specifically in this paragraph. Specifically, the United States contends that, during the period from December 1, 2012, through April 30, 2015, Pacira paid kickbacks in the form of 28 grants (collectively, the “Grants,” and each individually, a “Grant”) to certain health care providers and/or institutions, through which Pacira intended to spur sales of EXPAREL. Pacira has provided a list of the Grants that are the subject of the United States’ contentions, which list also includes the names of the customers associated with each Grant and relevant volume of EXPAREL sales. The United States contends that Pacira sales representatives or marketing executives typically initiated the Grants, which were conditioned upon acceptance of EXPAREL onto the institution’s formulary. The United States contends that certain Pacira executives coached Grant recipients and other employees on how to avoid internal scrutiny of the Grant payments. The United States contends that Pacira approved and funded the Grants despite receiving little or no documented description of the proposed research, and Pacira also did not document a reasonable commercial need or a fair market value assessment for the Grants. The United States contends further that after awarding the Grants, Pacira personnel conducted little or no follow-up on the proposed research, which certain Grant recipients did not carry out according to the original proposal, and sometimes did not perform at all. The United States contends that the Grant payments caused sales of EXPAREL at the recipient institutions to increase during the time period of December 1, 2012, through April 30, 2015. The conduct, actions, and claims described in this paragraph are collectively referred to in this Agreement as the “Covered Conduct.”

E. As a result of the Covered Conduct, the United States alleges that Pacira knowingly caused false or fraudulent claims for EXPAREL to be submitted to Federal Health Care Programs.

F. This settlement agreement is not an admission of liability, and Pacira expressly denies the allegations and contentions of the United States and the Relator.

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

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. Pacira shall pay to the United States Two Million Eight Hundred Eleven Thousand Three Hundred Seventy Dollars and Seventeen Cents (\$2,811,370.17) (the "Settlement Amount") and interest on the Settlement Amount at a rate of 1.875% per annum from December 17, 2019, and continuing until the date of payment, of which One Million Four Hundred Five Thousand Six Hundred Eighty-Five Dollars and Nine Cents (\$1,405,685.09) is restitution, no later than thirty (30) days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by United States Attorney's Office for the District of New Jersey.

2. Conditioned upon the United States receiving the Settlement Amount from Pacira and as soon as feasible after receipt, the United States shall pay Five Hundred Twenty Thousand One Hundred Three Dollars and Forty-Eight Cents (\$520,103.48) to Relator by electronic funds transfer.

3. Pacira agrees to pay Relator's attorneys' fees and costs, as contemplated by 31 U.S.C. § 3730(d), in accordance with the terms set forth in a separate agreement being entered into with Relator simultaneously with the execution of this Agreement.

4. Subject to the exceptions in Paragraph 7 (concerning excluded claims) below, and conditioned upon Pacira's full payment of the Settlement Amount, the United States releases Pacira from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729–33; the Civil Monetary Penalties Law, 42

U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801–12; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 7 below, and conditioned upon Pacira’s full payment of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases, remises, and forever discharges Pacira, together with its current and former employees, officers, owners, directors, shareholders, attorneys, agents, insurers, parents, subsidiaries, predecessors, successors, assigns, and affiliated and related entities from any claims, rights, demands, controversies, allegations, causes of action, suits, obligations, judgments, debts, duties, attorneys’ fees, costs, and all other liabilities of any kind or nature whatsoever, known or unknown, suspected or unsuspected, accrued or not accrued, fixed or contingent, in law or in equity, in contract or in tort, under common law, under any federal or state statute or regulation (including without limitation any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-33), and whether or not asserted, that Relator or his respective heirs, successors, attorneys, agents, and assigns otherwise would have standing to bring, have asserted, could have asserted, or may assert in the future against Pacira, from the beginning of time to the Effective Date of this Agreement.

6. OIG-HHS expressly reserves all rights to institute, direct, or maintain any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Pacira and/or its officers, directors and employees under 42 U.S.C. § 1320a-7(a) (mandatory exclusion), or 42 U.S.C. § 1320a-7(b) or 42 U.S.C. § 1320a-7a (permissive exclusion).

7. Notwithstanding the releases given in paragraphs 4 and 5 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 mandatory or permissive 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; and
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

8. Relator and his 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 Relator's receipt of the payment described in Paragraph 2, Relator and his 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.

9. Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases Pacira, together with its current and former employees, officers, owners, directors, shareholders, attorneys, agents, insurers, parents, subsidiaries, predecessors, successors, assigns, and affiliated and related entities, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorneys' fees and costs.

10. Pacira waives and shall not assert any defenses Pacira 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.

11. Pacira fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Pacira 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.

12. Pacira fully and finally releases the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Pacira has asserted, could have asserted, or may assert in the future against the Relator, related to the Covered Conduct and the Relator's investigation and prosecution thereof.

13. 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 contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer, related to the Covered Conduct; and Pacira agrees not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

14. Nothing in this settlement agreement supersedes or modifies the settlement agreement in *Pacira Pharmaceuticals, Inc., et al., vs. United States Food & Drug Administration, et al.*, 15-cv-07055 (S.D.N.Y. 2015).

15. Pacira 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. §§ 1395-1395lll-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Pacira, 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 and any criminal investigation(s) of the matters covered by this Agreement;
- (3) Pacira'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 attorneys' fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment Pacira makes to the United States pursuant to this Agreement and any payments that Pacira may make to Relator, including costs and attorneys' fees

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

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

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



16. 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 17 (waiver for beneficiaries paragraph), below.

17. Pacira 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.

18. Upon receipt of the payment described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1). With the exception of Relator's claim for expenses, attorneys' fees, and costs under 31 U.S.C. § 3730(d), the claims asserted against Pacira in the Civil Action shall be dismissed with prejudice to the Relator; with prejudice to the United States with respect to the Covered Conduct; and without prejudice to the United States as to all other claims.

19. Except as provided in Paragraph 3, above, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

20. Each Party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

21. 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 District of New Jersey. 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.

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

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 Pacira'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 and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

**THE UNITED STATES OF AMERICA**

DATED: July 28, 2020

BY:



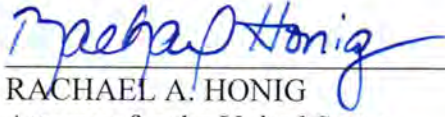
ANDREW A. CAFFREY, III  
Assistant United States Attorney  
United States Attorney's Office  
District of New Jersey

APPROVED:



LEE M. CORTES, JR.  
Chief, Health Care Fraud Unit  
United States Attorney's Office  
District of New Jersey

APPROVED:



RACHAEL A. HONIG  
Attorney for the United States  
United States Attorney's Office  
District of New Jersey

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

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

**PACIRA - DEFENDANT**

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

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

ANTHONY MOLLOY, ESQ.  
General Counsel of Pacira Pharmaceuticals, Inc.

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

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

ALICE S. FISHER, ESQ.  
BENJAMIN NAFTALIS, ESQ.  
Latham & Watkins LLP

CHRISTOPHER PORRINO, ESQ.  
SCOTT B. MCBRIDE, ESQ.  
Lowenstein Sandler LLP

Counsel for Pacira Pharmaceuticals, Inc.

**JORDAN C. SCHNEIDER - RELATOR**

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

\_\_\_\_\_  
JORDAN C. SCHNEIDER

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

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

BRIAN MCCORMICK  
Ross Feller Casey, LLP  
Counsel for Jordan C. Schneider

APPROVED:

\_\_\_\_\_  
RACHAEL A. HONIG  
Attorney for the United States  
United States Attorney's Office  
District of New Jersey

DATED: 07/23/2020 BY: *Lisa M. Re*  
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

**PACIRA - DEFENDANT**

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
ANTHONY MOLLOY, ESQ.  
General Counsel of Pacira Pharmaceuticals, Inc.

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
ALICE S. FISHER, ESQ.  
BENJAMIN NAFTALIS, ESQ.  
Latham & Watkins LLP  
  
CHRISTOPHER PORRINO, ESQ.  
SCOTT B. MCBRIDE, ESQ.  
Lowenstein Sandler LLP  
  
Counsel for Pacira Pharmaceuticals, Inc.

**JORDAN C. SCHNEIDER - RELATOR**

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
JORDAN C. SCHNEIDER

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
BRIAN MCCORMICK  
Ross Feller Casey, LLP  
Counsel for Jordan C. Schneider

APPROVED:

\_\_\_\_\_  
RACHAEL A. HONIG  
Attorney for the United States  
United States Attorney's Office  
District of New Jersey

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

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

**PACIRA - DEFENDANT**

DATED: July 23, 2020

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

ANTHONY MOLLOY, ESQ.  
General Counsel of Pacira Pharmaceuticals, Inc.

DATED: July 27, 2020

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

ALICE S. FISHER, ESQ.  
BENJAMIN NAFTALIS, ESQ.  
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CHRISTOPHER PORRINO, ESQ.  
SCOTT B. MCBRIDE, ESQ.  
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Counsel for Pacira Pharmaceuticals, Inc.

**JORDAN C. SCHNEIDER - RELATOR**

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

\_\_\_\_\_  
JORDAN C. SCHNEIDER

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

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

BRIAN MCCORMICK  
Ross Feller Casey, LLP  
Counsel for Jordan C. Schneider

APPROVED:

\_\_\_\_\_  
RACHAEL A. HONIG  
Attorney for the United States  
United States Attorney's Office  
District of New Jersey

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

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

**PACIRA - DEFENDANT**

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

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

ANTHONY MOLLOY, ESQ.  
General Counsel of Pacira Pharmaceuticals, Inc.

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

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

ALICE S. FISHER, ESQ.  
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Counsel for Pacira Pharmaceuticals, Inc.

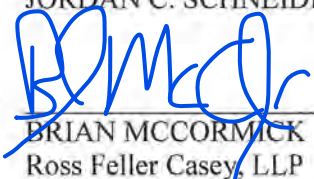
**JORDAN C. SCHNEIDER - RELATOR**

DATED: 27 JULY 2020

  
JORDAN C. SCHNEIDER

DATED: 7.27.20

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

  
BRIAN MCCORMICK  
Ross Feller Casey, LLP  
Counsel for Jordan C. Schneider