

**SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement (“Agreement”) is entered into by the State of California by and through the California Insurance Commissioner, Ricardo Lara, in his capacity as California Insurance Commissioner (hereinafter “the Commissioner” or “the State”); AbbVie Inc. (“AbbVie”); and Lazaro Suarez (“Relator”) (hereinafter collectively referred to as “the Parties”), through their authorized representatives.

**I. RECITALS**

A. AbbVie is a biopharmaceutical company incorporated in Delaware. AbbVie is headquartered and maintains its principal place of business at 1 North Waukegan Road, North Chicago, Illinois 60064. AbbVie distributes, markets, and sells biopharmaceutical products in the State of California, including a biologic sold under the trade name HUMIRA.

B. A civil action was filed against AbbVie in Alameda County Superior Court on February 15, 2018 which alleged a cause of action under the California’s Insurance Frauds Prevention Act, Insurance Code section 1871.7, *Lazaro Suarez v. AbbVie Inc.*, Case No. RG18893169. The State of California, by and through the Commissioner, filed a notice of intervention on September 6, 2018. The Commissioner and Relator filed a Superseding Complaint on September 18, 2018 (collectively the “Action”). At the time of settlement, a demurrer to the Complaint was pending.

C. The Commissioner and Relator contend that AbbVie directly or through its subsidiaries submitted or caused to be submitted claims for payment to private insurers in the State of California in violation of California’s Insurance Frauds Prevention Act (“IFPA”), Insurance Code section 1871.7 *et al.* (“the IFPA Claims”).

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D. The Commissioner and Relator contend that they have certain IFPA Claims against AbbVie for engaging in the following conduct (which AbbVie denies) (collectively, the Covered Conduct):

- i. The conduct alleged as violating the IFPA in the initial February 15, 2018 Complaint filed by Relator.
- ii. The conduct alleged as violating the IFPA in the State’s September 18, 2018 Superseding Complaint for Civil Penalties, Assessments, Injunction and Other Relief.

E. This Settlement Agreement is neither an admission of liability by AbbVie nor a concession by the Commissioner or the Relator that their claims are not well founded. AbbVie expressly denies any and all allegations asserted by the Commissioner and Relators in the Action and denies that it has any liability relating to the Covered Conduct, but nevertheless wishes to compromise, settle, resolve, and conclude any alleged causes of action. AbbVie maintains that it has numerous defenses to the Commissioner’s and Relator’s claims and denies that it has engaged in any wrongful conduct with respect to the Covered Conduct. Neither this Agreement, nor its execution, nor the performance of any obligation under it, including payment, nor the fact of settlement, is intended to be, or shall be understood as, an admission of liability or wrongdoing, or other expression reflecting upon the merits of the dispute by AbbVie. This Agreement and the allegations described herein are not intended to constitute evidence admissible in a court of law.

F. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the IFPA Claims, the Parties have reached a full, fair, and final settlement as set forth below.

**II. TERMS AND CONDITIONS**

1. **Non-Monetary Terms.** By no later than one-hundred and eighty (180) days after dismissal of the Action by the State and Relator, AbbVie agrees to implement or maintain the following non-monetary terms with respect to its offering or operating the HUMIRA Complete Program (the HUMIRA product support program, including the HUMIRA Ambassador Program) in the State of California. Subject to these terms, the State and Relator agree that they will not assert the continued operation of the HUMIRA Complete Program as a basis for IFPA claims:

- a. A policy requiring that at least five (5) RSVPs from Health Care Providers (“HCPs”) outside the speaker’s own office must be received at least 48 hours before any speaker program, or else the speaker program will be cancelled.
- b. A policy prohibiting HUMIRA sales representatives from inviting HUMIRA prescribing HCPs to offsite business meals, except as part of speaker programs. AbbVie will implement or maintain a conflict of interest policy and train HUMIRA sales representatives under that policy to disclose, and to certify annually that they have disclosed, any social, familial, or other personal relationships with HCPs whom they interact with on behalf of AbbVie that could result in the sales representative hosting those HCPs at their home for a private event involving food or alcohol, in which case the HCP cannot be on the sales representative’s call plan.
- c. A policy that HUMIRA Complete speaker programs must include scientific or medical information that will benefit patient care and may discuss the elements of HUMIRA Complete as they relate to those topics. The program title will not contain the name of the “HUMIRA Complete” patient assistance program.

- d. Guidance and training prohibiting relevant employees from describing Ambassadors to HCPs as “extensions of their offices” and from providing to HCPs any contact information for Ambassadors who interact with HUMIRA patients.
- e. Specific language in HUMIRA Complete enrollment forms disclosing that Ambassadors are provided by AbbVie.
- f. Guidance and training requiring Ambassadors to affirmatively disclose to patients that they are provided by AbbVie and do not work under the direction of the patient's prescribing HCP. AbbVie will implement and/or maintain training providing that Ambassadors are representatives of AbbVie who provide individualized education and product support to patients who have been prescribed an AbbVie product.
- g. Guidance and training provided to Ambassadors to: (1) provide patients with the HUMIRA FDA-approved Medication Guide at any initial in-person product discussion, or, if no in-person discussion will occur, provide instructions for locating it online during any initial telephonic product discussion or mailing it if the patient indicates that he or she lacks internet access; and (2) in response to any question about any potential side effect or safety risk associated with HUMIRA, provide any responsive information contained in the Medication Guide in a manner that is consistent with the Medication Guide and also provide patients with a copy of the Medication Guide, or for telephonic discussions, instructions for locating it online or mailing it if the patient indicates that he or she lacks internet access. This training will include AbbVie specifically

instructing Ambassadors to direct patients to the applicable sections, if any, of the HUMIRA Medication Guide when asked about any side effect and tell patients that the Ambassador does not provide medical or treatment advice and inform patients that all medical and/or treatment-related questions should be discussed with patient's HCP.

- h. Guidance and training instructing Ambassadors not to actively participate in conversations between patients and insurance companies, but that they may only listen in on such conversations with disclosure to all parties that they are on the call, for the purpose of helping the patient interpret and understand the conversation as necessary.
- i. Guidance and training that Ambassadors may not have patient-specific discussions with HUMIRA-prescribing HCPs.
- j. Guidance and training that Ambassadors are not to have their individual performance evaluated or compensated based on patient adherence to HUMIRA.
- k. Language as a separate clause in its HUMIRA Complete-related contracts with major institutions requiring the institution to represent that the institution's signatory is properly authorized to execute the contract.

2. **Settlement Amount.** In exchange for the releases provided herein, AbbVie agrees to pay the sum of twenty-four million dollars (\$24,000,000) (the "Settlement Amount"), which amount is not a penalty or a fine.

3. AbbVie shall pay the Settlement Amount pursuant to payment instructions provided by the Commissioner. AbbVie shall have no responsibility for the allocation of the

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Settlement Amount between the Commissioner and any other individual or entity, including the Relator, or their respective attorneys, and after paying the Settlement Amount, AbbVie shall have no further liability for payment of any further sum of any kind or nature whatsoever. Such payment shall be made within ten (10) business days of the Effective Date pursuant to written instructions to be provided by the California Department of Insurance.

4. In consideration of the obligations of AbbVie set forth in this Agreement, and conditioned upon AbbVie's payment in full of the Settlement Amount as set forth in Paragraph 2, Ricardo Lara in his capacity as Insurance Commissioner for the State of California, for himself, for the State, and for the California Department of Insurance, and its employees, servants, and agents, in their capacity as such, (the "California Entities"), hereby fully and finally releases, acquits, covenants not to sue, and forever discharges AbbVie, its current and former direct and indirect parent corporations and limited liability companies; its and their affiliates, direct and indirect subsidiaries, brother and sister corporations, and divisions; its and their respective current and former corporate owners; the predecessors, successors, transferees, heirs, and assigns of any of them; and AbbVie's and any of their past, present and future owners, shareholders, officers, directors, supervisors, members, managers, employees, agents, attorneys and representatives (collectively, "the AbbVie Released Entities") for all time and to the fullest extent allowed by law, from any and all suits, arbitrations, claims, demands, actions, rights, obligations, limitations, claims, claims for relief, charges, actions, rights, and causes of actions, of any kind, character, or nature whatsoever that the California Entities have standing to bring or may now or in the future have or claim to have against the AbbVie Released Entities, arising in any way out of or connected in any way with the facts, claims and circumstances alleged in, arising under, or arising from the allegations in the Action or the Covered Conduct, including any claim under the Insurance Frauds

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Prevention Act, Insurance Code § 1871.7, for the Covered Conduct, whether known or unknown, fixed or contingent, in law or in equity, or in contract or tort, including but not limited to any and all penalties, fines, assessments, trebling, disgorgements, overcharges, costs, fees, expenses, or general or special damages of any kind or nature.

5. Notwithstanding the releases given in any other paragraph of this Agreement, or any other terms of this Agreement, claims under the California False Claims Act are specifically reserved and are not released by the State.

6. Conditioned upon AbbVie's payment in full of the Settlement Amount set forth in Paragraph 2, Relator, for himself and for his respective heirs, successors, attorneys, agents, and assigns, hereby fully and finally releases, acquits, covenants not to sue, and forever discharges the AbbVie Released Entities for all time and to the fullest extent allowed by law, from any and all suits, arbitrations, claims, demands, actions, rights, obligations, limitations, claims, claims for relief, charges, actions, rights, and causes of actions, of any kind, character, or nature whatsoever that Relator has standing to bring or may now or in the future have or claim to have against the AbbVie Released Entities, arising in any way out of or connected in any way with the facts, claims and circumstances alleged in, arising under, or arising from the allegations in the Action or the Covered Conduct, including any claim Relator has on behalf of the State under the Insurance Frauds Prevention Act, Insurance Code § 1871.7, whether known or unknown, fixed or contingent, in law or in equity, or in contract or tort, including but not limited to any and all penalties, fines, assessments, trebling, disgorgements, overcharges, costs, fees, expenses, or general or special damages of any kind or nature; **provided, however, Relator's claims asserted in *U.S. ex rel. Suarez v, AbbVie, Inc.*, 1:15-cv-08928 (N.D. Ill.), pending in the Northern District of Illinois, are expressly reserved, are not released, and are expressly carved out from the scope of the**

**claims being resolved, dismissed and/or settled by Relator pursuant to this Agreement, including:** (a) any and all claims for reasonable attorneys’ fees, expenses and costs pursuant to the Federal False Claims Act, 31 U.S.C. § 3730(d) or recovery of a Relator’s share of any recovery under the Federal False Claims Act; (b) any and all claims for reasonable attorneys’ fees, expenses and costs pursuant to any state’s false claims act or recovery of a Relator’s share of any recovery under any states’ false claims act; and (c) any and all claims for reasonable attorneys’ fees, expenses and costs pursuant to the Illinois Insurance Claims Frauds Prevention Act, 740 Ill. Comp. Stat. § 92, et seq., or recovery of a Relator’s share of any recovery under that statute (collectively, the “Relator’s Unreleased Claims”). For the avoidance of doubt, Relator does *not* release any claims, including but not limited to claims or rights to fees and costs, in *U.S. ex rel. Suarez v, AbbVie, Inc.*, 1:15-cv-08928 (N.D. Ill.), pending in the Northern District of Illinois Nor does this release apply to claims arising out of breach or performance of this Settlement Agreement.

7. AbbVie fully and finally releases, waives and discharges the California Entities for all time and to the fullest extent allowed by law, from any and all suits, arbitrations, claims, demands, actions, rights, obligations, limitations, claims, claims for relief, charges, actions, rights, and causes of actions, of any kind, character, or nature whatsoever that AbbVie has standing to bring or may now have or claim to have against the California Entities, arising in any way out of or connected in any way with the facts, claims and circumstances alleged in, arising under, or arising from the IFPA Claims in the Action or the Covered Conduct, whether known or unknown, fixed or contingent, in law or in equity, or in contract or tort, including but not limited to any and all penalties, fines, assessments, trebling, disgorgements, overcharges, costs, fees, expenses, or general or special damages of any kind or nature. This release does not apply to claims arising



from conduct after the date of this Settlement Agreement, including, but not limited to, claims arising out of breach or performance of this Settlement Agreement.

8. AbbVie fully and finally releases Relator, and his respective heirs, successors, assigns and agents, from any claims for all time and to the fullest extent allowed by law, from any and all suits, arbitrations, claims, demands, actions, rights, obligations, limitations, claims, claims for relief, charges, actions, rights, and causes of actions, of any kind, character, or nature whatsoever that AbbVie has standing to bring or may now have or claim to have against Relator, and their respective heirs, successors, assigns and agents, arising in any way out of or connected in any way with the facts, claims and circumstances alleged in, arising under, or arising from the IFPA Claims in the Action or the Covered Conduct, whether known or unknown, fixed or contingent, in law or in equity, or in contract or tort, including but not limited to any and all penalties, fines, assessments, trebling, disgorgements, overcharges, costs, fees, expenses, or general or special damages of any kind or nature. This release does not apply to Relator's Unreleased Claims. Nor does this release apply to claims arising from conduct after the date of this Settlement Agreement, including, but not limited to, claims arising out of breach or performance of this Settlement Agreement.

9. The Parties have conducted their own due diligence regarding their respective Released Claims and all matters relating to their respective Released Claims. This Agreement is expressly intended to release known and unknown claims arising out of the California Entities' Released Claims and the Relators' Released claims respectively, and to the extent it applies, the Parties expressly waive application of Section 1542 of the Civil Code of the State of California, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

10. The agencies and officials of the State, including but not limited to the California Department of Insurance, shall have no liability for a breach, implied or actual, of this Agreement by AbbVie or by Relators, and/or their counsel, with respect to duties they may owe each other under this Agreement. In the event of a breach of this Agreement by either AbbVie or Relator or their counsel with respect to duties owed to each other under this Agreement, such breach will not affect the duties owed to the California Entities by AbbVie and/or Relator under this Agreement.

11. Relator shall have no liability for a breach, implied or actual, of this Agreement by AbbVie or the State, and/or their counsel, with respect to duties they may owe each other under this Agreement. In the event of a breach of this Agreement by either AbbVie or the State or their counsel with respect to duties owed to each other under this Agreement, such breach will not affect the duties owed to Relator by AbbVie under this Agreement.

12. AbbVie shall have no liability for a breach, implied or actual, of this Agreement by the State or by Relator, and/or their counsel, with respect to duties they may owe each other under this Agreement. In the event of a breach of this Agreement by either the State or Relator or their counsel with respect to duties owed to each other under this Agreement, such breach will not affect the duties owed to AbbVie by the State and/or Relator under this Agreement.

13. Upon receipt of AbbVie's payment of the Settlement Amount as provided in Paragraph 2 of this Agreement, the State and Relator shall file dismissals as to AbbVie in the Action. Such dismissals shall be with prejudice.

14. This Agreement hereby fully incorporates by reference the Confidentiality Agreement in this matter, which was entered into by the Commissioner and AbbVie on December 19, 2016, which the Parties agree remains in full force and effect.

15. This Agreement constitutes the entire understanding and agreement among all of the Parties. This Agreement may not be amended except by written consent of the Parties.

16. The Parties to this Agreement agree that no particular Party shall be deemed to be the author of this Agreement or any particular term, provision or condition of this Agreement. The Parties further agree that any ambiguities in this Agreement shall be resolved, and the terms, provisions, and conditions of this Agreement shall be construed and interpreted without regard to which Party may have suggested, drafted, revised, or otherwise authorized this Agreement or any of its particular terms, provisions, or conditions. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not be construed against any Party for that reason in any subsequent dispute.

17. Each Party to this Agreement represents and warrants that such Party has the full right and authority to execute this Agreement. The signatories for the Parties hereto represent and warrant that they have been granted specific authority by their respective principals to execute the Agreement on behalf of the Party. Where applicable, all corporate, partnership, or other organizational action necessary to authorize such execution has been taken and completed. The signatory of each Party to this Agreement has the full right and authority to commit and bind each respective Party to the fullest extent of the law. The undersigned State signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement on behalf of the State through their respective agencies and departments.

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18. The Parties acknowledge that they have obtained the advice of legal counsel before signing this Agreement. The Parties acknowledge that they made the decision to execute this Agreement freely and without any duress or coercion by any person, party or individual. The Parties acknowledge that, in entering into this Agreement, each of them has been fully advised by its own counsel of the meaning and effect of this Agreement, and expressly warrant that they have not relied on any statements, promises, interpretations, facts, or opinions, provided by any other Party or its counsel.

19. This Agreement is a settlement of disputed claims. By executing this Agreement, no Party admits any liability or fault in relation to the matters identified in or subject to this Agreement, and neither the execution of this Agreement nor the consideration therefore shall be construed as an admission as to the merits of any claim released herein.

20. In the event any portion of this Agreement is declared void by a court, such portion shall be severed from this Agreement, and the remaining provisions shall remain in effect, unless the effect of such severance would be to substantially alter the Agreement or obligations of the Parties, in which case the Agreement may be immediately terminated.

21. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement, and each Party shall provide a copy of the signature page with the signature of its authorized representative to the other Parties.

22. This Agreement is binding on AbbVie's successors, transferees, heirs, and assigns.

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

24. This Agreement is effective on the date of signature and transmittal to the other Parties of the last signatory to the Agreement (the "Effective Date" of the Agreement).

25. The Parties further agree that the Court in the Action shall retain jurisdiction over


the Parties to enforce this Agreement.

26. Facsimiles and scanned pdfs of physical (as opposed to typed) signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as noted below.

**THE STATE OF CALIFORNIA, BY AND THROUGH THE CALIFORNIA  
INSURANCE COMMISSIONER**

DATED: 7/20/2020

 Michael J. Levy  
2020.07.20  
11:34:26 -07'00'  
BY: \_\_\_\_\_  
MICHAEL J. LEVY  
Deputy General Counsel for Ricardo Lara in his  
Capacity as Insurance Commissioner  
for the California Department of Insurance

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ABBVIE INC.

DATED: 7/20/20

BY: 

Robert A. Michael  
*Executive Vice President, Chief Financial  
Officer*  
AbbVie Inc.

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

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

Henry J. DePippo  
KIRKLAND & ELLIS LLP  
Counsel for AbbVie Inc.

**ABBVIE INC.**

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

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

Robert A. Michael  
*Executive Vice President, Chief Financial  
Officer*  
AbbVie Inc.

DATED: 7/20/2020 \_\_\_\_\_

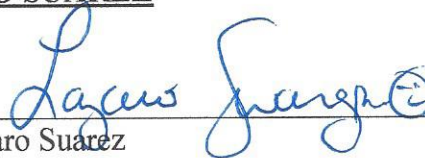
BY:  \_\_\_\_\_

Henry J. DePippo  
KIRKLAND & ELLIS LLP  
Counsel for AbbVie Inc.

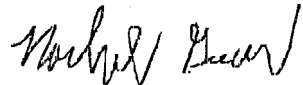


**RELATOR LAZARO SUAREZ**

DATED: July 20, 2020

BY:   
Lazaro Suarez  
Relator

DATED: July 20, 2020

BY:   
Rachel Geman  
Counsel for Relator Lazaro Suarez