

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

COMMONWEALTH OF MASSACHUSETTS,

v.

JOHNSON & JOHNSON, JANSSEN
PHARMACEUTICALS, INC., ORTHO-MCNEIL-
JANSSEN PHARMACEUTICALS, INC., AND
JANSSEN PHARMACEUTICA, INC.

SUPERIOR COURT

C.A. NO. 2284CV01041

FINAL CONSENT JUDGMENT

The Commonwealth of Massachusetts (the “*Commonwealth*”) and Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (collectively, “*Janssen*” or “*Defendants*”) (together with the Commonwealth, the “*Parties*,” and each a “*Party*”) have entered into a consensual resolution of the above-captioned litigation (the “*Action*”) pursuant to a settlement agreement entitled Janssen Settlement Agreement, dated as of July 21, 2021 (as subsequently updated) (the “*Agreement*”), a copy of which is attached hereto as **Exhibit 1**.¹ The Agreement shall become effective by its terms upon the entry of this Final Consent Judgment (the “*Judgment*”) by the Court without trial

¹ Pages of exhibits C, G and I to the Agreement that relate to states other than Massachusetts have been removed to streamline this filing. A complete copy of the Agreement is available at <https://www.mass.gov/lists/national-opioid-settlements-with-distributors-and-jj>.

or adjudication of any contested issue of fact or law, and without finding or admission of wrongdoing or liability of any kind.

RECITALS:

1. Each Party warrants and represents that it engaged in arm's-length negotiations in good faith. In hereby executing the Agreement, the Parties intend to effect a good-faith settlement.

2. The Commonwealth has determined that the Agreement is in the public interest.

3. Janssen denies the allegations against it and that it has any liability whatsoever to the Commonwealth, its Subdivisions, and/or (a) any of the Commonwealth's or Subdivisions' departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, including its Attorney General and any person in his or her official capacity whether elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, (b) any public entities, public instrumentalities, public educational institutions, unincorporated districts, fire districts, irrigation districts, and other Special Districts, and (c) any person or entity acting in a *parens patriae*, sovereign, quasi-sovereign, private attorney general, *qui tam*, taxpayer, or other capacity seeking relief on behalf of or generally applicable to the general public.

4. The Parties recognize that the outcome of the Action is uncertain and a final resolution through the adversarial process likely will require protracted litigation.

5. Therefore, without any admission of liability or wrongdoing by Janssen or any other Released Entities (as defined in the Agreement), the Parties now mutually consent to the entry of this Judgment pursuant to the terms of the Agreement to avoid the delay, expense, inconvenience, and uncertainty of protracted litigation.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

In consideration of the mutual promises, terms, and conditions set forth in the Agreement, the adequacy of which is hereby acknowledged by all Parties, it is agreed by and between Defendants and the Commonwealth, and adjudicated by the Court, as follows:

1. The foregoing Recitals are incorporated herein and constitute an express term of this Judgment.

2. The Parties have entered into a full and final settlement of all Released Claims of Releasers against Janssen (including but not limited to the Commonwealth) and the Released Entities pursuant to the terms and conditions set forth in the Agreement.

3. The Conditions to Effectiveness of Agreement set forth in Section VIII.A-B of the Agreement have been satisfied.

4. The “Definitions” set forth in Section I of the Agreement are incorporated by reference into this Judgment. The Commonwealth is a “Settling State” within the meaning of the Agreement. Unless otherwise defined herein, capitalized terms in this Judgment shall have the same meaning given to them in the Agreement.

5. The Parties agree that the Court has jurisdiction over the subject matter of the Action and over the Parties with respect to the Action and this Judgment. This Judgment shall not be construed or used as a waiver of any jurisdictional defense Janssen or any other Released Entity may raise in any other proceeding.

6. The Court finds that the Agreement was entered into in good faith.

7. The Court finds that entry of this Judgment is in the public interest and reflects a negotiated settlement agreed to by the Parties. The Action is resolved fully and finally by entry of this Judgment, which shall have the effect of dismissing the Action with prejudice, subject to a retention of jurisdiction by the Court as provided herein and in the Agreement.

8. By this Judgment, the Agreement is hereby approved by the Court, and the Court hereby adopts the Agreement's terms as its own determination of this matter and the Parties' respective rights and obligations.

9. The Court shall have authority to resolve disputes identified in Section XII.F.2 of the Agreement, governed by the rules and procedures of the Court.

10. Payments. Janssen shall pay the Global Settlement Abatement Amounts and Additional Restitution allocable to Massachusetts in accordance with the Agreement. Global Settlement Abatement Amounts shall be allocated and utilized in accordance with the *Massachusetts State-Subdivision Agreement*, a copy of which is attached hereto as **Exhibit 2** and incorporated herein by reference. For avoidance of doubt, only Subdivisions that have accepted the terms of the Agreement, including the releases provided therein, shall be eligible to receive Global Settlement Abatement Amounts. Additional Restitution² shall be allocated: 60% to the Opioid Recovery and Remediation Trust Fund established pursuant to M.G.L. c. 10, §35000 to mitigate the impacts of the opioid epidemic in the Commonwealth; and 40% to an account held by the Office of the Attorney General, pursuant to G.L. c. 12 § 4A, to be used in the Attorney General's sole discretion to support efforts to enforce compliance with Commonwealth and federal laws and regulations that protect Massachusetts health care consumers or otherwise support initiatives to assist Massachusetts health care consumers and programs. Nothing in this paragraph shall be interpreted to be inconsistent with the provisions of Sections VI or X, or any other section of the Agreement.

² Additional Restitution consists of amounts paid to Settling States that did not retain contingency fee counsel. See Agreement Section X, Ex. N.

11. Injunctive Relief. Janssen shall implement the injunctive relief set forth in Exhibit P to the Agreement³ and incorporated into this Judgment as if fully set forth herein, in accordance with the Agreement.

12. Release. The Parties acknowledge that the Attorney General Release attached hereto as **Exhibit 3 (“AG Release”)** and incorporated by reference herein, is an integral part of this Judgment. Pursuant to the Agreement and the AG Release to the maximum extent of the Attorney General’s power, Janssen and the other Released Entities are, as of the Effective Date, hereby released from any and all Released Claims as provided in the Agreement. Further, the provisions set forth in Section IV of the Agreement are incorporated by reference into this Judgment as if fully set forth herein. The Parties acknowledge, and the Court finds, that those provisions are an integral part of the Agreement and this Judgment and shall govern the rights and obligations of all participants in the settlement. Any modification of those rights and obligations may be made based only on a writing signed by all affected parties and approved by the Court.

13. Release of Unknown Claims. The Commonwealth expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any Commonwealth or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

The Commonwealth may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but the Commonwealth

³ The Agreement, together with all of its exhibits, is attached hereto as Exhibit 1.

expressly waived and fully, finally, and forever settled, released and discharged, through the Agreement and Release, any and all Released Claims that may exist as of the Effective Date but which the Commonwealth does not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would have materially affected the Commonwealth's decision to enter into the Agreement.

14. Costs and Fees. The Parties will bear their own costs and attorneys' fees except as otherwise provided in the Agreement.

15. No Admission of Liability. Defendants are consenting to this Judgment solely for the purpose of effectuating the Agreement, and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Defendants expressly deny. No Defendant or Released Entity admits that it caused or contributed to any public nuisance, and no Defendant or Released Entity admits any wrongdoing that was or could have been alleged by the Commonwealth, its Participating Subdivisions and/or Participating Special Districts, or any other person or entity. No part of this Judgment shall constitute evidence of any liability, fault, or wrongdoing by Defendants or any other Released Entity. The Parties acknowledge that payments made under the Agreement are Compensatory Restitution Amounts and are properly characterized as described in Section VI.F of the Agreement.

16. No Waiver. This Judgment is entered based on the Agreement without trial or adjudication of any contested issue of fact or law or finding of liability of any kind. This Judgment shall not be construed or used as a waiver of Janssen's right, or any other Released Entity's right, to defend itself from, or make any arguments in, any other regulatory, governmental, private individual, or class claims or suits relating to the subject matter or terms of this Judgment.

Notwithstanding the foregoing, the Commonwealth may enforce the terms of this Judgment as expressly provided in the Agreement.

17. No Private Right of Action. This Judgment is not intended for use by any third party for any purpose, including submission to any court for any purpose, except pursuant to Section XII.A of the Agreement. Except as expressly provided in the Agreement, no portion of the Agreement or this Judgment shall provide any rights to, or be enforceable by, any person or entity that is not a Settling State or Released Entity. The Commonwealth shall allow Participating Subdivisions in the Commonwealth to notify it of any perceived violations of the Agreement or this Judgment. No Settling State, including the Commonwealth, may assign or otherwise convey any right to enforce any provision of the Agreement.

18. Admissibility. It is the intent of the Parties that this Judgment not be admissible in other cases against Defendants or binding on Defendants in any respect other than in connection with the enforcement of this Judgment or the Agreement. For the avoidance of doubt, nothing herein shall prohibit Defendants from entering this Judgment or the Agreement into evidence in any litigation or arbitration concerning (1) Defendants' right to coverage under an insurance contract or (2) the enforcement of the releases provided for by the Agreement and this Judgment.

19. Preservation of Privilege. Nothing contained in the Agreement or this Judgment, and no act required to be performed pursuant to the Agreement or this Judgment, is intended to constitute, cause, or effect any waiver (in whole or in part) of any attorney-client privilege, work product protection, or common interest/joint defense privilege, and each Party agrees that it shall not make or cause to be made in any forum any assertion to the contrary.

20. Mutual Interpretation. The Parties agree and stipulate that the Agreement was negotiated on an arm's-length basis between parties of equal bargaining power and was drafted

jointly by counsel for each Party. Accordingly, the Agreement is incorporated herein by reference and shall be mutually interpreted and not construed in favor of or against any Party, except as expressly provided for in the Agreement.

21. Retention of Jurisdiction. The Court shall retain jurisdiction of the Parties for the limited purpose of the resolution of disputes identified in Section XII.F.2 of the Agreement. The Court shall have jurisdiction over Participating Subdivisions in the Commonwealth for the limited purposes identified in the Agreement.

22. Successors and Assigns. This Judgment is binding on Defendants' successors and assigns.

23. Modification. This Judgment shall not be modified (by the Court, by any other court, or by any other means) without the consent of the Commonwealth and Defendants, or as provided for in Section XIII.S of the Agreement.

So ORDERED this ____ day of May, 2022.

JUSTICE, SUPERIOR COURT

**APPROVED, AGREED TO AND PRESENTED BY THE PARTIES THROUGH THE
UNDERSIGNED ATTORNEYS ACTING WITH THEIR AUTHORITY:**

COMMONWEALTH OF MASSACHUSETTS

By its Attorney

MAURA HEALEY

ATTORNEY GENERAL

 5/11/22

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For the Janssen Defendants:

Date: 4/22/2022

By: /s/ Marc Larkins

Marc Larkins

Assistant Corporate Secretary, Johnson & Johnson

Approved as to form:

Date: 4/22/2022

By: /s/ Charles Lifland

Charles C. Lifland

O'Melveny & Myers

Counsel for Defendants

Date: 5/10/2022

By: /s/ Jacob Lantry

Jacob Lantry

Campbell Conroy & O'Neil

Local Counsel for Defendants