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**From:** Nathalie Leitch  
**Sent:** Monday, May 18, 2009 3:32 PM  
**To:** 'Mike Hilton'  
**Cc:** 'John Librie'  
**Subject:** FW: Valenza agreement  
**Attachments:** #74364 v5 - Dr. Valenza Consulting Agreement.doc

Mike,

The attached agreement for Dr. Valenza has been revised to reflect the three engagements. Are you going to be arriving tomorrow night?

N

-----Original Message-----

From: Nadia Guerra-Ruiz  
Sent: Monday, May 18, 2009 1:41 PM  
To: Nathalie Leitch  
Cc: Matthew Berkle  
Subject: RE: Valenza agreement

Hi Nathalie. Here is the revised agreement reflecting the three engagements. Please execute in duplicate and return a fully executed agreement to the Legal Department for inclusion in our files. Thank you.

Nadia

-----Original Message-----

From: Nathalie Leitch  
Sent: Wednesday, May 13, 2009 10:48 AM  
To: Nadia Guerra-Ruiz  
Cc: Matthew Berkle  
Subject: RE: Valenza agreement

Hi Nadia,

Dr. Valenza has signed the agreement, but we have not yet signed it. If possible, I would like to revise Exhibit A in the agreement to reflect three sessions rather than go the amendment route.

Thanks,  
Nathalie

-----Original Message-----

From: Nadia Guerra-Ruiz  
Sent: Monday, May 11, 2009 11:47 PM  
To: Nathalie Leitch  
Cc: Matthew Berkle  
Subject: RE: Valenza agreement



Hi Nathalie . If the agreement was already signed, then we will need an Amendment, but if it has not been executed, then I can change Exhibit A. Please let me know, which way we are going to proceed. Neither is complicated, but I just need to know so I can prepare the appropriate document.

Nadia

-----Original Message-----

From: Nathalie Leitch  
Sent: Monday, May 11, 2009 5:27 PM  
To: Nadia Guerra-Ruiz  
Cc: Matthew Berkle  
Subject: RE: Valenza agreement

Hi -

Dr. Valenza will be doing three training sessions for us. There was a delay filling four sales territories and we had to add a third wave of training.

The attached agreement addresses two sessions - would you like to amend to cover the third?

Thanks,

Nathalie

-----Original Message-----

From: Nadia Guerra-Ruiz  
Sent: Wednesday, May 06, 2009 2:27 PM  
To: Nathalie Leitch  
Cc: Matthew Berkle  
Subject: RE: Valenza agreement  
Importance: High

Hi Nathalie. Attached is the Consulting Agreement. Please let me know if you or Dr. Valenza have comments.

Nadia Guerra-Ruiz

-----Original Message-----

From: Nathalie Leitch  
Sent: Wednesday, May 06, 2009 1:55 PM  
To: Nathalie Leitch; Nadia Guerra-Ruiz  
Subject: Re: Valenza agreement

I need this now.

----- Original Message -----

From: Nathalie Leitch  
To: Nadia Guerra-Ruiz  
Sent: Wed May 06 11:03:51 2009  
Subject: FW: Valenza agreement

Hi....any update?

-----Original Message-----

From: [mike.hilton@comcast.net](mailto:mike.hilton@comcast.net) [mailto:mike.hilton@comcast.net]  
Sent: Wednesday, May 06, 2009 11:06 AM

To: Nathalie Leitch  
Subject: Valenza agreement

Hi Nathalie

Got a call from Dr Valenza regarding his agreement, any update from legal?

Thanks

Mike

Sent from my Verizon Wireless BlackBerry

**SERVICES AGREEMENT**

This Services Agreement ("Agreement") effective as of the \_\_\_\_ day of May, 2009 (the "Effective Date") by and between **Actavis Kadian LLC**, its affiliates, subsidiaries and related companies, a Delaware limited liability company, with a place of business at: 60 Columbia Road, Building B. Morristown, NJ 07960 (hereinafter referred to as "Actavis" or the "Company"), and **Joseph P. Valenza, M.D.**, an individual located at: 201 Pleasant Hill Road, Chester, New Jersey 07930 (hereinafter referred to as "Dr. Valenza" or as the "Provider"), who together may hereinafter be referred to collectively as "Parties" or individually as "Party."

**WITNESSETH:****1. Services and Payment.**

(a) **Services.** Provider agrees to undertake and complete the services that are more fully set forth on the statement of work appended hereto as Exhibit A (the "Services") in accordance with the terms and conditions hereof. Any additional services, or other changes to the Services, shall be incorporated into this Agreement by adding additional Exhibits upon the agreement of the Parties on such changes.

(b) **Responsibilities of Provider.** Provider shall use commercially reasonable efforts: (i) provide the Services in accordance with the terms hereof; (ii) keep the Company advised of the status of the Services; (iii) permit any representative duly authorized in writing by the Company to review and observe from time to time the provision of the Services; and (iv) provide the Company with reports, descriptions, outline procedures and the like, as are appropriate to the nature of the Services, and which are described in Exhibit A.

(c) **Conditions.** Provider acknowledges that the Company operates in a regulated industry and as such must adhere to certain regulations governing the development, manufacture, sale, and distribution of pharmaceutical products. Provider agrees that assisting the Company to comply with such regulations is a material condition to its ability to deliver the Services hereunder and that such assistance complies with the Federal Food Drug and Cosmetics Act ("FDCA") and the regulations and guidance issued pursuant to that Act, as applicable, the Office of the Inspector General Compliance Guidance for Pharmaceutical Manufacturers (68 Fed. Reg. 23,731), the Revised PhRMA Code on Interactions with Healthcare Professionals (effective January 1, 2009) and similar state or federal guidelines, as well as the SafeRx Amendment Act of 2008 and implementing regulations, as amended ("SafeRx Act"), the Prescription Drug Marketing Act of 1987, as amended ("PDMA") and any final regulations or guidelines promulgated thereunder from time to time, the Medicare/Medicaid Anti-kickback Statute set forth at 42 U.S.C. §1320a-7b(b) and equivalent state laws and regulations (the "Anti-kickback Statute"), whether such laws and regulations are now or hereafter in effect, all other applicable federal, state and local regulations and guidance pertinent to the Services. Provider hereby also agrees to comply with the Company's reasonable requests for information and data that the Company in its discretion deems necessary to comply with its record keeping protocols.

(d) **Payment.** As the only consideration due Provider regarding the subject matter of this Agreement, Company will pay Provider for the Services on a flat fee basis, according to the

Rate Schedule set forth in Exhibit A and any other Exhibits annexed hereto as contemplated in Section 1(a) hereof. Provider shall invoice Company monthly for all fees, charges, and expenses incurred during the previous period. All invoices are due and payable within thirty (30) days of the date of receipt of the invoice.

(e) Term. The term of this Agreement will commence on the Effective Date, and continue for the duration of the tasks specified in Exhibit A, unless extended by mutual intent of the Parties.

## 2. Restrictive Covenants.

(a) Ownership. Company shall own all right, title and interest (including patent rights, copyrights, trade secret rights, mask work rights, trademark rights, sui generis database rights and all other intellectual and industrial property rights) relating to any and all inventions (whether or not patentable), works of authorship, mask works, designations, designs, know-how, ideas and information made or conceived or reduced to practice, in whole or in part, by Provider in connection with performance of the Services or any Proprietary Information (as defined below) (collectively, the "Work Product") and Provider will promptly disclose and provide all Work Product to Company. All Work Product shall be deemed work made for hire to the extent allowed by law and Provider hereby makes all assignments necessary to accomplish the foregoing establishment of ownership as if Provider was an employee of Company. Provider shall further assist Company, at Company's expense, to further evidence, record and perfect such assignments, and to perfect, obtain, maintain, enforce, and defend any rights assigned. Provider hereby irrevocably designates and appoints Company as its agent and attorney-in-fact to act for and in Provider's behalf to execute and file any document and to do all other lawfully permitted acts to further the foregoing with the same legal force and effect as if executed by Provider. In addition, the Company hereby grants to the Provider a non-exclusive, non-transferable limited license to use the Work Product and any other intellectual property the Company has authorized it to use in connection with the Services. Notwithstanding the foregoing, Provider shall retain ownership of any intellectual property which it owned prior to the commencement of this Agreement and which has not been created or developed in connection with the provision of the Services ("Provider's IP"), even if Provider's IP is used in connection with the Services. In such event, Provider shall grant Company a non-exclusive license to use the Provider's IP solely in connection with the product of the Services, as is necessary.

(b) Confidential and Proprietary Information. All Work Product generated or developed by the Provider hereunder shall be deemed Confidential and Proprietary Information of the Company. In addition to the provisions set forth in this Section 2(b), the Confidentiality Agreement entered into by the Parties on May 5, 2009 is hereby incorporated herein by reference in its entirety and the term of the Confidentiality Agreement is hereby extended for five (5) years beyond the Term (as defined below) of this Agreement.

(c) Non-Solicitation. As additional protection for Confidential and Proprietary Information, the Parties agree that during the period over which Services are provided, and for one year thereafter, the Parties will not encourage or solicit any employee or consultant of the other Party to leave the other Party for any reason.



(d) Equitable Relief. In the event of a breach or threatened breach by Provider of any provision of this Section 2, the non-breaching Party shall have the right to have such obligation specifically enforced by a court of competent jurisdiction, including without limitation, the right to entry of restraining orders and injunctions (whether preliminary, mandatory, temporary or permanent) against a violation, threatened or actual, and whether or not continuing, of such obligation, without the necessity of showing any particular injury or damage. It is hereby acknowledged and agreed that any such breach or threatened breach would cause irreparable injury to the non-breaching Party and that money damages would not provide adequate remedy. The non-breaching Party may pursue any such remedy available to it concurrently or consecutively in any order as to any such breach or violation and the pursuit of one of such remedies at any time will not be deemed an election of remedies or waiver of the right to pursue any other of such remedies as to such breach or violation or as to any other breach, violation or threatened breach or violation.

(e) Except as required by law, neither Party will use the name of the other Party, nor of any employee of the other Party in connection with any publicity without the prior written approval of the other Party. The Parties recognize that it may be of mutual interest of the Parties to publish in journals or present at professional meetings material related to the Services. Neither Party will publish or present material related to these Services without the prior review and approval of the other Party, such approval not to be unreasonably withheld. Provider will not include any information from or related to the Services that would reveal the Company's identity or specific details of the Services without the Company's review and written approval, such approval not to be unreasonably withheld.

3. Warranties and Representations. Provider hereby warrants and represents, that:

(a) the Services will be performed in a professional and workmanlike manner in accordance with the highest current industry standards applicable to such services and that none of such Services or any part of this Agreement is or will be inconsistent with any obligation, which Provider or any of its employees may have to others;

(b) Provider has all rights, title and interests in and to all computer programs, databases and other intellectual property needed to perform the Services sufficient to enable the Provider to use them in performing the Services;

(c) all work under this Agreement shall be Provider's original work and none of the Services or Work Product or any development, use, production, distribution or exploitation thereof will infringe, misappropriate or violate any intellectual property or other right of any person or entity (including, without limitation, Provider); and,

(d) Provider is authorized to enter into this Agreement and provide the Services to the Company and has the full right to provide the Company with the assignments and rights provided for herein.

4. Compliance with the Law. Each Party will comply with all laws and regulations applicable to its operations insofar as they relate to the matters covered by this Agreement.

- (a) Provider further represents and warrants that:
- (i) it shall materially comply with all international, federal, state and local laws and regulations applicable to its operations, including but not limited to (a) all applicable customs and import/export laws, including rules of origin marking, (b) those dealing with employment opportunity and affirmative action including Executive Order 11246 (Equal Opportunity), 38 U.S.C. § 4212(a) (Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era), 29 U.S.C. § 793 (Affirmative Action for Workers with Disabilities), and (c) 42 U.S.C. § 1320a-7b (Anti-Kickback Statute) and any amendment and applicable regulations pertaining thereto;
  - (ii) it shall comply with all terms of 48 C.F.R. § 52.244-6 (Subcontracts for Commercial Items and Commercial Components) (including the requirement of including this provision in subcontracts awarded under this contract), 15 U.S.C. § 637 (d) (2) and (3) (Utilization of Small Business Concerns), and such provision is hereby incorporated into this Agreement as if fully set forth herein;
  - (iii) pursuant to 48 C.F.R. § 52.209-6, neither it nor its principals was or is debarred, suspended, proposed for debarment or otherwise determined to be ineligible to participate in federal health care programs (as that term is defined in 42 U.S.C. 1320a-7b(f)) or convicted of a criminal offence related to the provision of health care items or services, but has not yet been debarred, suspended, proposed for debarment or otherwise determined to be ineligible to participate in federal health care programs. In the event that Provider, is debarred, suspended, proposed for debarment or otherwise determined to be ineligible to participate in federal health care programs or convicted of a criminal offence related to the provision of health care items or services, Provider will notify Company immediately;
  - (iv) it complies with and shall continue to comply with all federal, state, local and other applicable laws, regulations, conventions or treaties prohibiting any form of child labor or other exploitation of children in the manufacturing and delivery of Provider's products or services;
  - (v) any compensation paid by Company to Provider hereunder is for legitimate, bona-fide services, and that no portion of compensation, if any, paid by Company to Provider has been, or will be paid or pass through to any other person or entity, if such payment of pass through either does or could be construed as violating in any way the applicable provisions of the U.S. Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1. et seq. including any administrative interpretations thereof. Provider further agrees that it will not make any payments, in cash or in kind, to or for the benefit of a representative of any customer to obtain business for Company or to obtain governmental

concessions or favourable rulings for Company, or for any other improper purpose;

- (vi) Provider shall not conduct or condone any of the following practices in relation to this Agreement: (a) agreements to discriminate or actual discrimination against other persons based on race, religion, sex, national origin or nationality; (b) furnishing information about the race, religion, sex or national origin of another person, unless required by local law; or (c) paying or otherwise implementing letters of credit that include requirements to take boycott-related actions prohibited by U.S. anti-boycott regulations; and

Any breach by it or any of its directors, officers, or employees of the aforesaid representations and warranties shall be deemed a material breach of this Agreement and shall not prejudice any claims which Company may have against Provider for damages which may arise as a result of said breach, pursuant to the terms of this Agreement.

5. Indemnification. (a) Each Party shall indemnify, defend and hold harmless the other, its respective officers, employees, affiliates or subcontractors for any and all damages, costs, expenses and other liabilities, including reasonable attorneys' fees and court costs, incurred in connection with any third-party claim, action or proceeding arising from any breach of such Party of its obligations hereunder or any of the representations made by it herein; provided, however, that the indemnifying Party hereunder shall have no obligation with regard to any claim, action to proceeding to the extent that it arises from the negligence or willful misconduct of the other Party.

(b) Provider will not be liable to the Company for any loss or expense resulting from any claim arising out of the Provider's use or marketing of any substance involved in any Services. The Company shall indemnify and hold harmless from any claim, liability or expense arising directly or indirectly from Provider's association with the Company as the result of any Services, including, without limitation, any claim, liability or expense arising out of the Company's use or marketing of any substance studied by Provider. In no event will either Party be liable to the other for any indirect or consequential loss or damage.

6. Insurance. The Provider shall, at its own cost and expense, obtain and maintain in full force and effect all necessary insurance in accordance with industry standards during the term of this Agreement. The Provider shall, within seven (7) days of execution of this Agreement, furnish to the Company, a Certificate of Insurance as evidence of the foregoing insurance, which shall provide for thirty (30) days' prior written notice to the Company in the event of cancellation or any material change in such insurance. The Provider will not permit any subcontractor to perform the Services, or any portion thereof, unless such subcontractor(s) is and remains insured in accordance with the insurance requirements set forth herein.

7. Termination. If either Party materially breaches a material provision of this Agreement, the other Party may terminate this Agreement upon thirty (30) days' written notice unless the breach is cured within the notice period. Company also may terminate this Agreement at any time after the Initial Term, with or without cause, upon fifteen (15) business days' notice, but, if (and only if) without cause, Company shall upon termination promptly pay Provider all unpaid



amounts due for Services completed prior to termination and for a reasonable allocation of resources and expenses irrevocably committed to performance of the Services and any activities necessary to conduct an orderly winding down of the Services. Sections 2 (subject to the limitations on Section 2(c) stated therein) through 10 of this Agreement and any remedies for breach of this Agreement shall survive any termination or expiration. Company may communicate such obligations to any other (or potential) client or employer of Provider.

8. Relationship of the Parties. Notwithstanding any provision hereof, for all purposes of this Agreement each Party shall be and act as an independent contractor and not as partner, joint venturer, or agent of the other and shall not bind nor attempt to bind the other to any contract. Provider is an independent contractor and is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including, but not limited to, Workers' Compensation Insurance and Provider agrees to defend, indemnify and hold Company harmless from any and all claims, damages, liability, attorneys' fees and expenses on account of (i) an alleged failure by Provider to satisfy any such obligations or any other obligation (under this Agreement or otherwise), or (ii) any other action or inaction of Provider. Provider will ensure that its employees and agents are bound in writing to Provider's obligations under this Agreement.

9. Assignment. This Agreement and the services contemplated hereunder are personal to Provider and Provider shall not have the right or ability to assign, transfer, or subcontract any rights or obligations under this Agreement without the written consent of Company. Any attempt to do so shall be void.

10. Notice. All notices under this Agreement shall be in writing, and shall be deemed given when personally delivered, or upon receipt when sent by a reputable overnight courier or by prepaid certified or registered U.S. mail return receipt requested to the address of the Party to be noticed as set forth herein and if to Company, an additional copy shall be sent to: Actavis Kadian LLC, 60 Columbia Road, Building B, Morristown, New Jersey 07960, Attn: Legal Department or such other address as such Party last provided to the other by written notice.

11. Audit. The Provider agrees to maintain accurate and complete records of all contracts, papers, correspondence, copybooks, accounts, invoices, and/or other information in the Provider's possession relating to this Agreement (collectively, "Records"). The Records shall be maintained in accordance with the applicable laws and recognized commercial accounting practices and retained during the term of this Agreement and thereafter for a period of three (3) years after the term of this Agreement. The Provider agrees to permit the Company or its representatives to examine and audit the Records at no charge to the Company, with prior written notification and during normal business hours.

12. Force Majeure. Neither Party will be liable for any failure to perform as required by this Agreement, to the extent such failure to perform is due to circumstances reasonably beyond either Party's control, (Force Majeure). If any such Force Majeure event and resulting inability to perform continues for more than ninety (90) days, then the Party not in breach of contract as a result of the event, or either Party if both are in breach of the Agreement as a result of the event, may terminate this Agreement upon written notice to the other.

13. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or electronic means shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile or electronic means also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, or binding effect hereof.

14. Governing Law. This Agreement shall be governed by the laws of the State of New Jersey, excluding any provisions of law that would lead to the application of any law other than the laws of the State of New Jersey. In the event of a dispute or difference arising under or in connection with this Agreement (including a dispute or difference as to the validity of this Agreement), such dispute or difference shall be referred to and resolved according to the judgment of the New Jersey Courts and the Parties submit to the exclusive jurisdiction of the New Jersey Courts. Notwithstanding the foregoing, the Parties agree that Actavis has the right to seek, to the extent permitted under the laws of any relevant jurisdiction, temporary or permanent injunctive or other similar relief in any other court or other authority of competent jurisdiction in respect of any claims of breach of confidentiality or for an order of specific performance or other injunctive relief.

15. Miscellaneous. The failure of either Party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights. No changes or modifications or waivers to this Agreement will be effective unless in writing and signed by both Parties. In the event that any provision of this Agreement shall be determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. This Agreement and the Exhibits appended hereto constitute the entire agreement of the Parties and supersedes any and all prior negotiations, correspondence, understandings, and agreements between the Parties respecting the subject matter hereof. In the event of any conflict between the terms and conditions set forth in this Agreement and the terms and conditions set forth in any Exhibit annexed hereto, the terms and conditions of this Agreement shall govern. Headings herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

**JOSEPH P. VALENZA, M.D.**

**ACTAVIS KADIAN LLC**

By: \_\_\_\_\_  
Date:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

## **EXHIBIT A**

### **SERVICES**

Provider is being engaged to provide, among other things, services including, but not limited to, preparing and delivering three (3) training presentations related to pain and pain management during the month of May and June, 2009 on Kadian™ (hereinafter the "Product") to the external sales representatives, as agreed to by the Parties ("Services").

In providing the Services, as defined herein, Provider is not authorized to bind the Company or to hold himself out as an employee of the Company.

In the course of these Services, the Company agrees to pay the Provider within fifteen (15) days of the completion of Services an Honoraria amount per training presentation of \$1,750 for a total of \$5,250.00.

Company will reimburse Provider for ordinary and necessary business expenses. Reimbursement will be paid in accordance and subject to the terms and conditions of the Company's then-prevailing travel and expense policies. The term of the Agreement shall be for the duration of the Services, as defined herein commencing on the Effective Date. Any additional services, or other changes to the Services, shall be incorporated into this Agreement by adding additional Exhibits upon the agreement of the Parties on such changes. Such amendment or modification will be in writing and signed by both Parties.