

## 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”) and the Defense Health Agency (“DHA”), acting on behalf of the TRICARE Program (collectively, the “United States”); and Susan Hertzberg (“Hertzberg”), through her authorized representatives. Collectively, all of the above will be referred to as “the Parties.”

### RECITALS

A. Susan Hertzberg resides in New York, New York. Hertzberg was the Chief Executive Officer of Boston Heart Diagnostics Corporation (“BHD”), a clinical laboratory with its principal place of business in Framingham, Massachusetts that provided laboratory testing for patients referred by physicians and other healthcare providers.

B. On January 31, 2022, the United States filed a complaint in the U.S. District Court for the Eastern District of Texas against Hertzberg and others in a civil action captioned *United States, et al. ex rel. STF LLC v. True Health Diagnostics, LLC, et al.*, No. 4:16-cv-547 (E.D. Tex.) (“Civil Action”). On May 25, 2022, the United States filed an amended complaint against Hertzberg and others at Docket Number 98 in the Civil Action (“United States’ Amended Complaint”).

C. On November 30, 2023, Hertzberg was found guilty by a jury in *United States v. Hertzberg, et al.*, No. 6:22-cr-00003-JDK (E.D. Tex.), of Conspiracy to Commit Illegal Remunerations in violation of 18 U.S.C. § 371. Hertzberg is currently appealing her conviction. Effective April 20, 2025, Hertzberg was excluded pursuant to 42 U.S.C. § 1320a-7(a)(1) from Medicare, Medicaid, and all other Federal healthcare programs, as defined in 42 U.S.C. § 1320a-7b(f), for a period of six (6) years.

D. The United States contends that Hertzberg submitted or caused to be submitted claims for payment to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll (“Medicare”); the Medicaid Program, 42 U.S.C. §§ 1396–1396w-5 (“Medicaid”); and the TRICARE Program, 10 U.S.C. §§ 1071–1110b (“TRICARE”).

E. The United States contends that it has certain civil claims against Hertzberg arising from the conduct alleged in the United States’ Amended Complaint in Counts I and IX, for Presenting or Causing False Claims to Be Presented for Payment, 31 U.S.C. § 3729(a)(1)(A); Counts II and X, for Making or Using False Records or Statements, 31 U.S.C. § 3729(a)(1)(B); Counts III and XII, for Conspiracy to Submit False Claims, 31 U.S.C. § 3729(a)(1)(C); and Counts XIX and XX, for Unjust Enrichment and Payment by Mistake, respectively. The conduct in this paragraph is referred to below as the “Covered Conduct.”

F. This Settlement Agreement is neither an admission of liability by Hertzberg, nor a concession by the United States that its claims are not well founded.

In consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

#### TERMS AND CONDITIONS

1. Under the terms and conditions specified herein, Hertzberg shall pay to the United States Six Hundred Thousand Dollars (\$600,000.00) (“Settlement Amount”), of which no portion is restitution, within thirty (30) calendar days of the Effective Date by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, subject to Paragraph 10 (concerning default) below, and conditioned upon the United States’ receipt of the full payment of the Settlement Amount, the United States releases Hertzberg from

any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801–3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

3. Notwithstanding the release given in Paragraph 2 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 or enforcement right, including mandatory or permissive exclusion from Federal healthcare 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 corporate entities;
- 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.

4. Hertzberg waives and shall not assert any defenses she 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.

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

6. 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 Hertzberg agrees not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, agree not to appeal any such denials of claims, and agree to withdraw any such pending appeals.

7. Hertzberg 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. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Hertzberg or her present or former employees and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil and criminal investigation(s) of the matters covered by this Agreement;

- (3) Hertzberg'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; and
- (5) the payments Hertzberg makes to the United States pursuant to this Agreement,

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

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

c. Treatment of Unallowable Costs Previously Submitted for Payment: Hertzberg further agrees that within ninety (90) days of the Effective Date of this Agreement she 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 Hertzberg, and shall request, and agrees, 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. Hertzberg agrees that the United States, at a minimum, shall be entitled to recoup from Hertzberg 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 Hertzberg on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Hertzberg's 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 Hertzberg's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

8. 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 9 (waiver for beneficiaries Paragraph), below.

9. Hertzberg agrees that she 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.

10. The Settlement Amount represents the amount the United States is willing to accept in compromise of its civil claims against Hertzberg arising from the Covered Conduct pursuant to the terms and conditions in this Agreement.

a. Hertzberg shall be in default of this Agreement (Default) if she fails to pay the Settlement Amount as provided in Paragraph 1 above, or if she fails to comply materially with any other term or condition of this Agreement.

b. If Hertzberg fails to pay the Settlement Amount as provided in Paragraph 1 above, Hertzberg shall be in Default of her payment obligations (“Default”). The United States will provide a written Notice of Default, and Hertzberg shall have an opportunity to cure such Default within seven (7) calendar days from the date of receipt of the Notice of Default by paying the remaining unpaid balance of the Settlement Amount and paying any additional interest accruing under the Settlement Agreement up to the date of payment. Notice of Default will be delivered to Hertzberg, or to such other representative as Hertzberg shall designate in advance in writing. If Hertzberg fails to cure the Default within seven (7) calendar days of receiving the Notice of Default and in the absence of an agreement with the United States to a modified payment schedule (“Uncured Default”), the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest on the remaining unpaid balance shall thereafter accrue at the rate of twelve percent (12%) per annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance).

c. In the event of Uncured Default, Hertzberg agrees that the United States, at its sole discretion, may (i) retain any payments previously made, rescind this Agreement, and pursue the Civil Action or bring any civil and/or administrative claim, action, or proceeding against Hertzberg for the claims that would otherwise be covered by the releases provided in Paragraph 2 above, with any recovery reduced by the amount of any payments previously made by Hertzberg to the United States under this Agreement; (ii) take any action to enforce this Agreement in a new action or by reinstating the Civil Action; (iii) offset the remaining unpaid balance from any amounts due and owing to Hertzberg by any department, agency, or agent of the United States at

the time of Default or subsequently; and/or (iv) exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common law or in equity. The United States shall be entitled to any other rights granted by law or in equity by reason of Default, including referral of this matter for private collection. In the event the United States pursues a collection action, Hertzberg agrees immediately to pay the United States the greater of (i) a ten percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States opts to rescind this Agreement pursuant to this Paragraph, Hertzberg waives and agrees not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that (i) are filed by the United States against Hertzberg within one hundred twenty (120) days of written notification that this Agreement has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date. Hertzberg agrees not to contest any offset, recoupment, and /or collection action undertaken by the United States pursuant to this Paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States.

d. In the event of Uncured Default, OIG-HHS may exclude Hertzberg, or extend the period of Hertzberg's exclusion, from participating in all Federal healthcare programs until Hertzberg pays the Settlement Amount, with interest, as set forth above (Exclusion for Default). OIG-HHS will provide written notice of any such exclusion to Hertzberg. Hertzberg waives any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7) and agrees not to contest such exclusion either administratively or in any state or federal court. Reinstatement to program participation is not automatic. If at the end of the period of exclusion, Hertzberg wishes to apply for reinstatement, she must submit a written request for reinstatement to OIG-HHS in

accordance with the provisions of 42 C.F.R. §§ 1001.3001–.3005. Hertzberg will not be reinstated unless and until OIG-HHS approves such request for reinstatement. The option for Exclusion for Default is in addition to, and not in lieu of, the options identified in this Agreement or otherwise available.

11. Upon the United States' receipt of the Settlement Amount, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the claims against Hertzberg in the Civil Action pursuant to Rule 41(a)(1). The Joint Stipulation of Dismissal shall be with prejudice as to the United States' claims in the Civil Action against Hertzberg as to the Covered Conduct and consistent with the terms and conditions of this Agreement.

12. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

13. Each Party and signatory to this Agreement represents that he or she freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

14. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the Eastern District of Texas. 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.

15. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

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

17. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

18. This Agreement is binding on Hertzberg's successors, transferees, heirs, and assigns.


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

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


[SIGNATURE PAGE(S) FOLLOW]

**THE UNITED STATES OF AMERICA**

DATED: 5/29/2026

BY:   
CHRISTOPHER TERRANOVA  
GAVIN THOLE  
Trial Attorneys  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED: 5/28/2026

BY:  Digitally signed by  
BETTY YOUNG  
Date: 2026.05.28  
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JAMES GILLINGHAM  
BETTY YOUNG  
Assistant United States Attorneys  
United States Attorney's Office  
Eastern District of Texas

DATED: 5/27/2026

BY:  Digitally signed by  
SPENCER TURNBULL  
Date: 2026.05.27  
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SUSAN E. GILLIN  
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

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

BY: \_\_\_\_\_  
SALVATORE M. MAIDA  
General Counsel  
Defense Health Agency  
United States Department of Defense

**THE UNITED STATES OF AMERICA**

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

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

CHRISTOPHER TERRANOVA  
GAVIN THOLE  
Trial Attorneys  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

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

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

JAMES GILLINGHAM  
BETTY YOUNG  
Assistant United States Attorneys  
United States Attorney's Office  
Eastern District of Texas

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

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

SUSAN E. GILLIN  
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

DATED: 5/26/2026

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

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**For** SALVATORE M. MAIDA  
General Counsel  
Defense Health Agency  
United States Department of Defense

**SUSAN HERTZBERG**


DATED: May 26, 2026

BY:

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\_\_\_\_\_  
SUSAN HERTZBERG

DATED: May 26, 2026

BY:

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DAVID BITKOWER  
Jenner & Block LLP  
Attorney for Susan Hertzberg