

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among: (1) 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), (2) Quest Diagnostics Incorporated and Quest Diagnostics Clinical Laboratories, Inc., and (3) Elisa Martinez (“Relator”) (hereafter, collectively, referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Quest Diagnostics Incorporated is a Delaware corporation that operates clinical laboratories and specimen collection sites, known as “patient service centers,” throughout the United States. Quest Diagnostics Incorporated’s principal place of business is located at 3 Giralda Farms, Madison, New Jersey.

B. For purposes of and as referenced in this Settlement Agreement, Quest Diagnostics Incorporated consists of all of its subsidiaries and affiliates, and Quest Diagnostics Clinical Laboratories, Inc. consists of all of its subsidiaries and affiliates. Quest Diagnostics Incorporated and Quest Diagnostics Clinical Laboratories, Inc., shall hereafter be collectively referred to as “Quest Diagnostics.”

C. On July 27, 2012, Relator filed a *qui tam* action in the United States District Court for the Eastern District of California captioned *U.S. ex rel. Martinez v. Quest Diagnostics Incorporated., et al.* 2:12 – CV - 1970 KJM GGH, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action).

D. The United States contends that Quest Diagnostics submitted or caused to be submitted claims for payment to the Medicare Program (Medicare), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1.

E. The United States contends that it has certain civil claims against Quest Diagnostics arising from the following alleged conduct during the period from January 1, 2004, through December 31, 2014:

1) Quest Diagnostics submitted duplicative claims to Medicare for certain venipuncture services and diagnostic tests performed for the same beneficiary on the same date of service using codes among those listed in Exhibit A hereto; and

2) Quest Diagnostics submitted duplicative claims to Medicare for certain panel tests and certain components of those panels, among the panel tests and their respective components listed in Exhibit B hereto, performed for the same beneficiary on the same date of service.

As a result of the foregoing alleged conduct, the United States contends that Quest Diagnostics knowingly submitted false or fraudulent claims for the subject tests and panels to Medicare and was improperly reimbursed for these services. This conduct is collectively referred to below as the “Covered Conduct.”

F. Quest Diagnostics expressly denies the allegations in the Civil Action and related to the Covered Conduct and expressly denies any wrongdoing or liability for the Covered Conduct or the allegations as set forth in the Civil Action. Neither this Agreement, nor the performance of any obligations under it, including any payment, nor the fact of settlement, is intended to be, or shall be understood as, an admission of liability

or wrongdoing, or expression reflecting upon the merits of the dispute by Quest Diagnostics. This Settlement Agreement is not a concession by the United States that its claims are not well founded.

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 to reach a full and final settlement with the United States and Relator of the Covered Conduct claims and a full and final settlement with Relator of the Civil Action and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Quest Diagnostics shall pay to the United States the sum of \$1,790,000, plus accrued interest at the rate of 2.375% per annum from May 1, 2015, and continuing until and including the day of payment (the "Settlement Amount"). The Settlement Amount shall be paid to the United States under the following terms and conditions:

(a) Quest Diagnostics shall pay to the United States the Settlement Amount by electronic funds transfer pursuant to written instructions from the United States no later than the latter of seven (7) business days after the Effective Date of this Agreement or three (3) business days after receiving written instructions from the United States.

2. Conditioned upon the United States receiving the Settlement Amount from Quest Diagnostics and as soon as feasible after receipt, the United States shall pay \$358,000 to Relator by electronic funds transfer.

3. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon Quest Diagnostics' full payment of the Settlement Amount, the United States releases Quest Diagnostics, together with its current and former parent corporations, predecessors, successors, heirs, transferees, affiliates, direct and indirect subsidiaries, brother or sister corporations, divisions, partners, licensees, and joint ventures; each of Quest Diagnostics' current and former owners, directors, officers, employees, attorneys, members, administrators, shareholders, joint venturers, accountants, and agents; and the successors and assigns of any of them (collectively "Releasees"), 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.

4 (a). Upon Quest Diagnostics' payment of the Settlement Amount to the United States, Relator, for herself and for her family members, heirs, transferees, executors, representatives, successors, employees, non-attorney agents, transferees, assigns and all other persons, firms, partnerships or corporations with whom Relator has been, is now, or may later be affiliated (collectively, "Relator Releasers"), shall release the Releasees from any and all claims, rights, demands, suits, matters, issues, actions, causes of action, liabilities, damages, losses, obligations, sanctions, costs, loss of services, loss of earnings,

compensation of any nature whatsoever, and judgments of any kind or nature whatsoever from the beginning of time through the Effective Date of this Settlement Agreement, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, matured or unmatured, for damages (compensatory or punitive), injunctive relief or any other remedy, whether for violation of any federal, state, or local law, contract (expressed, implied or otherwise), duty, standard of care, tort, right, common law, or other source of obligation or theory of recovery that Relator and Relator Releasers may have, may gain, or may assert against any or all the Releasees, including but not limited to: (i) any and all federal and state claims, whether disclosed or undisclosed, which Relator and Relator Releasers have asserted, could have asserted, or may assert now or in the future against any or all the Releasees related to the Civil Action, the Covered Conduct, and the Relator's investigation and prosecution thereof, including but not limited to any civil monetary claim the Relator, for herself and Relator Releasers or on behalf of the United States, has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733, state false claims acts, common law or any other statute creating civil causes of action for relief for conduct alleged in the Civil Action and any civil monetary claim the United States may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733 (for purposes of this subsection (a)(i) of this paragraph and for paragraph 4(b) only, the term "Relator Releasers" shall include relator's attorneys); (ii) any other causes of action under the False Claims Act, §§ 3729-3733, and state false claims acts or otherwise; (iii) any claims with respect to Relator's employment with Quest Diagnostics, including but limited to any claim for retaliation under 31 U.S.C. § 3730(h); (iv) any and

all claims (including attorney's fees, costs, and expenses of every kind and however denominated), under federal or state law, regulation, rule or ordinance, and/or public policy, common law, contract, or tort, including but not limited to any claims arising out of or in any way connected with the Civil Action, the Covered Conduct, and Relator's employment or cessation of employment. Relator and Quest Diagnostics have entered into a separate agreement ("Separate Agreement") relating to Relator's claim for attorney's fees, expenses and costs under 31 U.S.C. § 3730(d) in connection with the Civil Action; nothing in this release shall be deemed to release Relator or Quest Diagnostics from their obligations under the Separate Agreement. On behalf of herself and Relator Releasers, Relator represents that they know of no cause of action that they currently possess, against any or all the Releasees, and Relator and Relator Releasers do not presently harbor any intent to file any legal actions or other type of claims against any or all the Releasees. In connection with this release, Relator, for herself and Relator Releasers, hereby waives all rights or benefits which they have or in the future may have under Section 1542 of the Civil Code of California, which reads 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 DEBTOR". Relator, for herself and Relator Releasers, expressly waives any rights they may have under other statutes or common law principles of similar effect. Relator and Relator Releasers represent and warrant that they are the exclusive owner of the rights, claims, and causes of action herein released and none of

them have previously assigned, reassigned, or transferred or purported to assign, reassign or transfer, any or any portion of any claim, demand, action, cause of action, or other right released or discharged under this Settlement Agreement. Relator, on behalf of herself and Relator Releasers, covenants not to sue or pursue, promote, finance, initiate, commence, maintain, or prosecute any claim, action, cause of action, demand, suit, matter, or proceeding of any kind or nature whatsoever against any or all the Releasees, except that this covenant shall not apply to any breach of this Agreement. Relator and Relator Releasers shall indemnify and hold harmless any or all the Releasees from and against any claim, demand, damage, debt, liability (including payment of attorneys' fees and costs actually incurred whether or not litigation is commenced) based on or arising out of a breach of this covenant.

(b). Upon the Effective Date of Relator's and Relator Releasers' release of Releasees, Releasees shall release Relator and Relator Releasers from any and all claims, rights, demands, suits, matters, issues, actions, causes of action, liabilities, damages, losses, obligations, sanctions, costs, loss of services, loss of earnings, compensation of any nature whatsoever, and judgments of any kind or nature whatsoever from the beginning of time through the Effective Date of this Settlement Agreement, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, matured or unmatured, for damages (compensatory or punitive), injunctive relief or any other remedy, under any federal, state, or local law, regulation, rule or ordinance and/or public policy, contract (expressed, implied or otherwise), duty, standard of care, tort, right, common law, or other source of obligation or theory of recovery (including attorney's fees,

costs, and expenses of every kind and however denominated), including but not limited to any claims arising out of or in any way connected with the Civil Action, the Covered Conduct, and Relator's employment or cessation of employment. Releasees represent that they know of no cause of action that they currently possess, against Relator or any or all the Relator Releasers, and Releasees do not harbor any intent to file any legal actions or other types of claims against Relator and any or all the Relator Releasers. In connection with this release, Releasees, hereby waive all rights or benefits which they have or in the future may have under Section 1542 of the Civil Code of California, which reads 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 DEBTOR". Releasees expressly waive any rights they may have under other statutes or common law principles of similar effect. Releasees represent and warrant that they are the exclusive owner of the rights, claims, and causes of action herein released and none have previously assigned, reassigned, or transferred or purported to assign, reassign or transfer, any or any portion of any claim, demand, action, cause of action, or other right released or discharged under this Settlement Agreement. Releasees covenant not to sue or pursue, promote, finance, initiate, commence, maintain, or prosecute any claim, action, cause of action, demand, suit, matter, or proceeding of any kind or nature whatsoever against Relator and any or all the Relator Releasers. Releasees shall indemnify and hold harmless Relator and any or all the Relator Releasers from and against any claim, demand, damage, debt,

liability (including payment of attorneys' fees and costs actually incurred whether or not litigation is commenced) based on or arising out of a breach of this covenant.

5. Notwithstanding the releases given in paragraphs 3 through 4 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 for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- (g) Any liability for failure to deliver goods or services due; and
- (h) Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

6. Relator and Relator Releasers shall not object to this Agreement and 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 Relator Releasers 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.

7. Quest Diagnostics waives and shall not assert any defenses Quest Diagnostics 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.

8. Quest Diagnostics fully and finally releases the United States and its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Quest Diagnostics 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 and the United States' investigation and prosecution thereof.

9. 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 payor

related to the Covered Conduct; and Quest Diagnostics agrees not to resubmit to any Medicare contractor or any state payor any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

10. Quest 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 Quest Diagnostics, 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 investigation(s) of the matters covered by this Agreement;
- (3) Quest Diagnostics’ investigation, defense, and corrective actions undertaken in response to the United States’ audits and civil 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 payment Quest Diagnostics makes to the United States pursuant to this Agreement and any payments that Quest Diagnostics may make to Relator, including costs and attorney’s fees are unallowable costs for government contracting purposes and under the Medicare Program,

Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter, "Unallowable Costs").

(b) Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Quest Diagnostics, and Quest Diagnostics shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Quest Diagnostics to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: Quest Diagnostics further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare 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 payor, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Quest Diagnostics, 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. Quest Diagnostics agrees that the United States, at a minimum, shall be entitled to recoup from Quest Diagnostics 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 Quest Diagnostics on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Quest Diagnostics' 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 Quest Diagnostics' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

11. 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 12 (waiver for beneficiaries paragraph), below.

12. Quest Diagnostics 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.

13. After payment of the Settlement Amount and the payment of the Relator's expenses, attorneys' fees, and costs pursuant to a separate agreement, the United States and Relator shall file a joint stipulation of dismissal. The dismissal shall be with prejudice as to Relator. With respect to the United States, the dismissal shall be with prejudice as to the Covered Conduct, as that term is defined in the Settlement Agreement, and otherwise without prejudice to the United States.

14. Other than as set forth in the separate agreement regarding payment of the Relator's expenses, attorneys' fees and costs, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

15. 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.

16. 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 Eastern District of California. 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.

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

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

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

20. This Agreement is binding on the Releasees.

21. This Agreement is binding on the Relator and Relator Releasees.

22. The United States may disclose this Agreement and information about this Agreement to the public.

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

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FOR THE UNITED STATES OF AMERICA

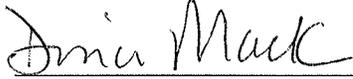
BENJAMIN B. WAGNER
United States Attorney
Eastern District of California

DATED: 8/18/2015 BY: 
CATHERINE J. SWANN
Assistant U.S. Attorney
United States Attorney's Office
Eastern District of California

DATED: 8/14/15 BY: 
ROBERT K. DECONTI
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

FOR QUEST DIAGNOSTICS INCORPORATED

DATED: 8/17/15

BY: 
DINA MACK
Chief Litigation Counsel
Quest Diagnostics Incorporated

DATED: 8/17/15

BY: 
HOPE S. FOSTER
MICHAEL S. GARDENER
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.
Counsel for Quest Diagnostics Incorporated

FOR RELATOR ELISA MARTINEZ

DATED: 8/6/15

BY: *Elisa Martinez*
Elisa Martinez

DATED: 8/6/15

BY: *Michael A. Hirst*
Michael A. Hirst
HIRST LAW GROUP, P.C.
Counsel for Elisa Martinez

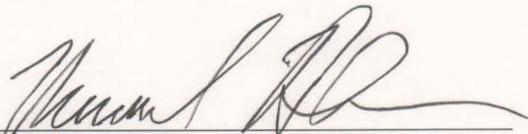
DATED: _____

BY: _____
Michael I. Behn
BEHN & WYETZNER
Counsel for Elisa Martinez

FOR RELATOR ELISA MARTINEZ

DATED: _____ BY: _____
Elisa Martinez

DATED: _____ BY: _____
Michael A. Hirst
HIRST LAW GROUP, P.C.
Counsel for Elisa Martinez

DATED: 8/10/15 BY: 
Michael I. Behn
BEHN & WYETZNER
Counsel for Elisa Martinez